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Wednesday
April 5, 1995

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1126

[DA–95–12]

Milk in the Texas Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends certain provisions of the Texas Federal milk marketing order from March 1, 1995, through July 31, 1995. The suspension removes the diversion limitation applicable to cooperative associations. The suspension was requested by Associated Milk Producers, Inc., a cooperative association representing a substantial number of producers who supply milk to the market. The suspension is necessary to prevent uneconomical and inefficient movements of milk.

EFFECTIVE DATE: March 1, 1995, through July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued February 2, 1995; published February 8, 1995 (60 FR 7465).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its 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.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Texas marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on February 8, 1995 (60 FR 7465) concerning a proposed suspension of a certain provision of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of March 1, 1995, through July 31, 1995, the following provision of the order does not tend to effectuate the declared policy of the Act:

In § 1126.13, paragraph (e)(2).

Statement of Consideration

This rule suspends certain provisions of the producer milk definition in the Texas order for the months of March through July 1995. The suspension removes the limitation on the amount of producer milk that a cooperative may divert to a nonpool plant.

Currently the order permits a cooperative association to divert up to one-third of the amount of producer milk that the cooperative causes to be physically received during the month at handlers' pool plants to nonpool plants. The diversion provisions provide an efficient means to move milk that is in excess of fluid milk needs directly from farms to nonpool plants for manufacturing and still be priced under the order.

Associated Milk Producers, Inc. (AMPI), a cooperative association representing a substantial number of producers who supply milk to the market, requested the suspension. AMPI stated that during recent months the cooperative had reached maximum pooling capability because of the diversion limitations to nonpool plants. AMPI contends that during the flush season (March through July) the cooperative will be adversely impacted as local production expands and the cooperative exceeds the one-third diversion limitation.

Current projections indicate that there will be ample supplies of milk to meet the fluid demand of the market during the months of March through July 1995. It is impractical to require that more milk be shipped by cooperative associations to other pool plants than is needed at such plants merely to gain eligibility for pooling and diversion status. Absent this suspension, costly and inefficient movements of milk will be made to maintain pool status of producers who have historically supplied the fluid milk needs of the market.

Accordingly, it is appropriate to suspend the aforesaid provision beginning March 1, 1995, through July 31, 1995.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary

and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1126

Milk marketing orders.

For the reasons set forth in the preamble, the following provision in Title 7, Part 1126, is amended as follows:

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for 7 CFR Part 1126 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1126.13 [Suspended in part]

2. In § 1126.13, paragraph (e)(2) is suspended for the months of March 1, 1995, through July 31, 1995.

Dated: March 27, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–8354 Filed 4–4–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1131

[DA–95–11]

Milk in the Central Arizona Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends certain provisions of the Central Arizona Federal milk marketing order beginning April 1, 1995, through March 31, 1996. The suspension eliminates the requirement that a cooperative association ship at least 50 percent of its receipts to other handler pool plants to maintain pool status of a manufacturing plant operated by the cooperative. United Dairymen of Arizona, a cooperative association that represents nearly all of the producers who supply milk to the market, requested the suspension. The suspension is necessary to prevent uneconomical and inefficient movements of milk.

EFFECTIVE DATE: April 1, 1995, through March 31, 1996.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued February 2, 1995; published February 8, 1995 (60 FR 7466).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its 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.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Central Arizona marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on February 8, 1995 (60 FR 7466) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. One comment supporting and one comment opposing the suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received and other available information, it is hereby found and determined that for the months of April 1, 1995, through March 31, 1996, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1131.7(c), the words ''50 percent or more of'', ''(including the skim milk and butterfat in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the skim milk and butterfat contained in member producer milk actually received at such plant)'' and ''or the previous 12-month period ending with the current month.''

Statement of Consideration

This rule suspends certain provisions of the Central Arizona order for the months of April 1995 through March 1996. The suspension removes the requirement that a cooperative association that operates a manufacturing plant in the marketing area must ship at least 50 percent of its milk supply during the current month or the previous 12-month period ending with the current month to other handlers' pool plants to maintain the pool status of its manufacturing plant.

Currently the order permits a cooperative association's manufacturing plant, located in the marketing area, to be a pool plant if at least 50 percent of the producer milk of members of the cooperative association is physically received at pool plants of other handlers during the current month or the

previous 12-month period ending with the current month.

The suspension of this shipping requirement was requested by United Dairymen of Arizona (UDA), a cooperative association that represents nearly all of the dairy farmers who supply the Central Arizona market. UDA contends that the continued pool status of their manufacturing plant is threatened by an increase in milk production combined with a drop in Class I sales. UDA states that in 1994 its member production increased 17 percent over the previous year. In 1994, monthly deliveries to distributing plants also increased sufficiently to ensure UDA a safe margin over the minimum 50 percent shipping requirement to maintain pool status of its manufacturing plant.

One dairy farmer filed a comment opposing the suspension action. The dairy farmer opposed the action because it would allow for more milk to continue to be regulated under the order than would otherwise be the case. As a result, the dairy farmer asserted that he would receive a lower blend price than if the action were not taken because some milk would not qualify for regulation under the order.

During the past year, there has been an increase in the production of milk and an increase in distributing plant demand. Primarily, the increased demand is a result of a significant increase in Class I sales in Mexico by Central Arizona handlers. The recent collapse in value of the Mexican peso has curtailed these sales and thus reduced handler requirements for bulk milk deliveries; however, production has not declined. This general increase in production and decline in sales affects all producers in the market equally. If the action were not taken, some milk would not receive the benefits of the blend price resulting from regulation under the order. By taking this action, all producers who have historically supplied the market would continue to share equally in the benefits of regulation without costly and inefficient movements of milk simply to maintain their pool status.

The comment submitted by UDA in support of the proposed suspension clarified the specific order language that UDA requested be suspended. UDA did not intend for the words ''its member producer milk'' and ''received at the pool plants of other handlers during the current month'' to be included in the proposed suspension. Upon review of UDA's request and supporting comment, the order language in § 1131.7(c) to be suspended has been modified to exclude these specific words.

UDA also requested that the suspension be granted for an indefinite period beginning in March 1995. After reviewing the marketing conditions of the Central Arizona marketing area and their relationship with the uncertain value of the Mexican peso, this suspension will be for a one-year period. The marketing conditions indicate that the suspension should not begin until April 1995.

Accordingly, it is appropriate to suspend the aforesaid provisions beginning April 1, 1995, through March 31, 1996.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Two comments were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1131

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7, Part 1131, are amended as follows:

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

1. The authority citation for 7 CFR Part 1131 continues to read as follows:

Authority: Secs. 1–19, 48 Stat 31, as amended; 7 U.S.C. 601–674.

§ 1131.7 [Suspended in part]

2. In § 1131.7(c), the words ''50 percent or more of'', ''(including the skim milk and butterfat in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the skim milk and butterfat contained in member producer milk actually received at such plant)'' and ''or the previous 12-month period ending with the current month.'' are suspended for the months of April 1, 1995, through March 31, 1996.

Dated: March 27, 1995.

Patricia Jensen,

Acting Assistant Secretary. Marketing and Regulatory Programs.

[FR Doc. 95–8353 Filed 4–4–95; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

[Notice 1995–6]

11 CFR Parts 100, 104 and 113

Expenditures; Reports by Political Committees; Personal Use of Campaign Funds

AGENCY: Federal Election Commission.

ACTION: Final rules; announcement of effective date.

SUMMARY: On February 9, 1995, the Commission published the text of revised regulations governing the personal use of campaign funds. 60 FR 7862. These regulations implement portions of the Federal Election Campaign Act of 1971, as amended. The Commission announces that the rules are effective as of April 5, 1995.

EFFECTIVE DATE: April 5, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Today, the Commission is announcing the effective date of its new regulations governing the personal use of campaign funds. The new rules insert a definition of personal use into the Commission's regulations. The rules also amend the definition of expenditure and the reporting requirements for authorized committees in the current regulations.

Section 438(d) of Title 2, United States Code requires that any rules or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on February 3, 1995. Thirty legislative days expired in the House of Representatives on March 23, 1995. Thirty legislative days expired in the Senate on March 22, 1995.

Announcement of Effective Date: 11 CFR 100.8(b)(22), 104.3(b)(4)(i)(B),

113.1(g) and 113.2(a), as published at 60 FR 7862 (February 9, 1995), are effective as of April 5, 1995.

Dated: March 31, 1995.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 95–8310 Filed 4–4–95; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–105, Special Conditions No. 25–ANM–97]

Special Conditions: Saab Aircraft AB Model Saab 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are for the Saab Aircraft AB Model Saab 2000 airplane. This airplane will have novel and unusual design features, relating to its electronic flight control system, when compared to the state of technology envisioned in the airworthiness standards of part 25 of the Federal Aviation Regulations (FAR). These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of part 25.

EFFECTIVE DATE: March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Mark I. Quam, FAA, Standardization Branch, ANM–113, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Line Avenue SW, Renton, Washington 98055–4056; telephone (206) 227–2145, facsimile (206) 277–1320.

SUPPLEMENTARY INFORMATION

Background

Special conditions are prescribed under the provisions of § 21.16 of the FAR when the applicable regulations for type certification do not contain adequate or appropriate standards because of novel or unusual design features. The new Saab 2000 incorporates a number of such design features.

The Saab 2000, certificated on April 29, 1994, is a twin-engined, low-wing, pressurized turboprop aircraft that is configured for approximately 50 passengers. The airplane has two Allison Engine Company AE 2100A engines rated at 3650 shp. The propeller is a 6 bladed Dowty Rotol swept shaped propeller. A single lever controls each prop/engine combination. An Auxiliary Power Unit (APU) will be installed in the tail. The airplane has provisions for two pilots, an observer, two flight attendants, overhead bins, a toilet, and provisions for the installation of a galley. There is a forward and aft stowage compartment and an aft cargo compartment. The airplane has a maximum operating altitude of 31,000 feet.

The Saab 2000 has a fully hydraulically powered electronically controlled rudder and will have fully hydraulically powered electronically controlled elevators as a follow-on design modification. The Powered Elevator Control System (PECS) provides control and power actuation of the left and right elevator surfaces. The PECS also provides aircraft stability augmentation and trim functions.

The proposed elevator system is in many respects similar to the rudder design and is comprised of a mix of analog and digital circuitry and has no mechanical backup. Control columns are connected to Linear Variable Differential Transducers (LVDT), stick damper(s), auto pilot servo, linear springs with break-outs and are interconnected with an electronic disconnect unit.

The position transducers (LVDT), connected to the control columns, provide signals to two Powered Elevator Control Units (PECU). Each PECU controls two Elevator Servo Actuators (ESA) through two separate Servo Actuator Channels (SAC). Each SAC is subdivided into a primary control lane and a monitor lane. Two of the four ESAs, controlled by one PECU, positions one elevator side.

The ESAs have two modes of operation, active and damped. The active mode will result when mode control current from the PECU and hydraulic pressure are available. One active servo actuator is sufficient to operate the elevator surface.

Elevator Servo Actuators valve and actuator ram position feedback are provided by position transducers (LVDT). The PECUs are connected to one Flight Control Computer via the trim relay and two Digital Air Data Computers. The flight control computer also provides a signal to the auto pilot servo.

Stick to elevator gearing is a function of Indicated Airspeed (IAS). Trim and stability augmentation are based on IAS, vertical acceleration and flap position. Stick, trim and elevator position and status information are fed to the Engine Indicating and Crew Alerting System (EICAS).

Each PECU has built in Automatic Preflight Built in test (PBIT) and Continuous Built In Test (CBIT) circuitry and utilizing cross channel nomitoring.

The elevator's actuators are supplied by three hydraulic circuits that are physically separated, isolated, fused and located to minimize common cause failures. The Number 1 hydraulic circuit is powered by the left engine and a backup DC pump and accumulators. The Number 2 hydraulic circuit is powered by the right engine and a backup AC pump and accumulators. THe Number 3 hydraulic circuit is powered by an AC drive pump.

The Number 1 hydraulic circuit powers the left hand (LH) and right hand (RH) outboard servo actuators. The Number 2 hydraulic circuit powers the RH inboard servo actuator. the Number 3 hydraulic circuit powers the LH inboard servo actuator.

Hydraulic warnings and cautions in the event of hydraulic supply failure are provided by the EICAS.

The elevator system is electrically supported by two system sides, a LH and a RH side. The electrical system is normally powered by two AC generators, each driven by a propeller gear box. An APU equipped with a standby generator is installed. When only one of the three generators is working, it supplies power to both LH and RH sides.

Each LH and RH AC system side is connected via a Transformer Rectifier Unit (TRU) to a LH and RH DC system made up of a network of DC buses. A third center TRU is connected to a center circuit. The LH, RH and center buses can be supplied from batteries or from the TRUs. The center TRU will replace a failed RH or LH TRU. When only one TRU unit is working, the LH and RH buses are tied together with power being received from the remaining TRU.

Two DC feeders in addition to two AC feeders provide power aft of the debris zone. The LH side is routed through the ceiling and the RH side is routed through the floor.

Type Certification Basis

The applicable requirements for U.S. type certification must be established in accordance with §§ 21.16, 21.17, 21.19, 21.29, and 21.101 of the FAR. Accordingly, based on the application date of June 9, 1989, and Saab Aircraft AB volunteering for certain later regulations, the TC basis for the Saab 2000 airplane is as follows:

Part 25 as amended by Amendments 25–1 through 25–71, except:

§ 25.361 Engine torque, as amended by Amendment 25–72.

§ 25.365 Pressurized compartment loads, as amended by Amendment 25–72.

§ 25.571 Damage tolerance and fatigue evaluation of structure, as amended by Amendment 25–72.

§ 25.772 Pilot compartment doors, as amended by Amendment 25–72.

§ 25.773 Pilot compartment view, as amended by Amendment 25–72.

§ 25.783(g) Doors, as amended by Amendment 25–72.

§ 25.905(d) Propellers, as amended by Amendment 25–72.

§ 25.933 Reversing systems, as amended by Amendment 25–72.

§§ 25.903 and 25.951 as amended by Amendment 25–73.

§§ 25.851 and 25.854 as amended by Amendment 25–74.

§ 25.729 as amended by Amendment 25–75.

§ 25.813 as amended by Amendment 25–76.

Part 34, as amended on the date of issuance of the type certificate.

Part 36, as amended on the date of issuance of the type certificate.

Special Conditions No. 25–ANM–66, dated 1/12/93, for Lightning and HIRF Protection.

Special Conditions No. 25–ANM–82, dated 3/11/94, for Interaction of Systems and Structure.

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(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

Special Conditions No. 25–ANM–82 were written for the rudder and in anticipation of the installation of the powered elevator. However, as the Saab 2000 could be flown without rudder control during certain failure conditions, and the elevator system was not installed for initial certification, Special Conditions No. 25–ANM–82 were limited to requirements common to both the rudder and follow-on elevator. The Saab 2000, however, requires control and power to the elevator all the time for safe flight and landing. Therefore, these special conditions supplement Special Conditions No. 25–ANM–82 for the powered elevator. The proposed type design of the Saab 2000 contains novel or unusual design features not envisioned by the applicable part 25 airworthiness standards and therefore special conditions are considered necessary in the following areas:

Systems

1. *Operation Without Normal Electrical Power.* In the Saab 2000, a source of electrical power is required by the elevator electronic flight control system. Service experience with traditional airplane designs has shown that the loss of electrical power generated by the airplane's engines is not extremely improbable. The electrical power system of the Saab 2000 must therefore be designed with standby or emergency electrical sources of sufficient reliability and capacity to power essential loads in the event of the loss of normally generated electrical power. The need for electrical power for electronic flight controls was not envisioned by part 25 since in traditional designs, cables and hydraulics are utilized for the flight control system. Therefore, Special Condition No. 1 is adopted as proposed.

2. *Command Signal Integrity.* Command and control of the control surfaces will be achieved by fly-by-wire systems that will utilize electronic (AC, DC, or digital) interfaces. These interfaces involve not only the commands to the control surfaces, but all the control feedback and sensor input signals as well. These signal paths, as well as the electronic equipment that manages them, can be susceptible to damage that may cause unacceptable or unwanted control responses. The damage may originate from electrical equipment failures, mechanical equipment failures or external damage. Therefore, special designs are needed to maintain the integrity of the fly-by-wire interfaces to an immunity level equivalent to that of traditional hydro-mechanical designs. Similar to the conventional steel cable controls, positioning of the electrical control equipment and routing of wire bundles must provide separation and redundancy to ensure maximum protection from damage due to a common cause. Therefore, Special Condition No. 2 is adopted as proposed.

3. *Design Maneuver Requirements.* In a conventional airplane, pilot inputs directly affect control surface movement (both rate and displacement) for a given flight condition. In the Saab 2000, the pilot provides only one of several inputs to the control surfaces, and it is possible that the pilot control displacements specified in §§ 25.331(c)(1), 25.349(a), and 25.351 of the FAR may not result in the maximum displacement and rates of displacement of the elevator. The intent of these noted rules may not be satisfied if literally applied. Therefore, Special Condition No. 3 is adopted as proposed.

Discussion of Comments

Notice of Proposed Special Conditions No. SC–95–1–NM for the Saab Aircraft AB Model Saab 2000 Series Airplanes was published in the **Federal Register** on February 2, 1995 (60 FR 6456). No comments were received.

Special conditions may be issued and amended as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis in accordance with § 21.17(a)(2).

Under standard practice, the effective date of these special conditions would be 30 days after publication in the **Federal Register**. As the intended U.S. type certification date for the Saab 2000 is April 1, 1995, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. 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 airplanes.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 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, the following special conditions are issued as part of the type certification basis for the Saab Aircraft AB Model Saab 2000 series airplanes.

1. *Operations Without Normal Electrical Power.* In lieu of compliance with § 25.1351(d), it must be demonstrated by test, or combination of test and analysis, that the airplane can continue safe flight and landing with inoperative normal engine generated electrical power (electrical power sources excluding the battery and any other standby electrical sources). The airplane operation should be considered at the critical phase of flight and include the ability to restart the

engines and maintain flight for the maximum diversion time capability being certified.

Discussion: The Electronic Flight Control System installations establish the criticality of the electrical power generation and distribution systems, since the loss of all electrical power may be catastrophic to the aircraft.

The Saab 2000 fly-by-wire control system requires a continuous source of electrical power in order to maintain the flight control system. The current § 25.1351(d), ''Operation Without Normal Electrical Power,'' requires safe operation in visual flight rules (VFR) conditions for at least five minutes with inoperative normal power. This rule was structured around a traditional design utilizing mechanical control cables for flight control while the crew took time to sort out the electrical failure and was able to re-establish some of the electrical power generation capability.

In order to maintain the same level of safety associated with traditional designs, the Saab 2000 design must not be time limited in its operation without the normal source of engine generated electrical power. It should be noted that service experience has shown that the loss of all electrical power which is generated by the airplane's engines is not extremely improbable. Thus, it must be demonstrated that the airplane can continue safe flight and landing with the use of its emergency electrical power systems (batteries, auxiliary power unit, etc.). This emergency electrical power system must be able to power loads that are essential for continued safe flight and landing. Also, the availability of emergency electrical power sources, including any credit taken for APU start reliability, must be validated in a manner acceptable to the FAA.

The emergency electrical power system must be designed to supply:

—electrical power required for immediate safety, which must continue to operate without the need for crew action following the loss of the normal electrical power system;

—electrical power required for continued safe-flight and landing;

—electrical power required to restart the engines.

For compliance purposes:

1. A test demonstration of the loss of normal engine generated power is to be established such that:

a. The failure condition should be assumed to occur during night instrument meteorological conditions (IMC) at the most critical phase of flight relative to the electrical power system design and distribution of equipment loads on the system.

b. After the unrestorable loss of the source of normal electrical power, the airplane engines must be capable of being restarted and operations continued in IMC until visual meteorological conditions (VMC) can be reached. (A reasonable assumption can be made that turbine engine driven transport category airplanes will not have to remain in IMC for more than 30 minutes after experiencing the loss of normal electrical power).

c. After 30 minutes of operation in IMC, the airplane should be demonstrated to be capable of continuous safe flight and landing in VMC conditions. The length of time in VMC conditions must be computed based on the maximum flight duration capability for which the airplane is being certified. Consideration for speed reductions resulting from the associated failure must be made.

2. Since the availability of the emergency electrical power system operation is necessary for safe-flight, this system must be available before each flight.

3. The emergency electrical power system must be shown to be satisfactorily operational in all flight regimes.

2. *Command Signal Integrity.* In addition to compliance with § 25.671 of the FAR, it must be shown that for the elevator Electronic Flight Control System (EFCS):

(a) Signals cannot be altered unintentionally, or that the altered signal characteristics are such that the control authority characteristics will not be degraded to a level that will prevent continued safe-flight and landing; and

(b) Routing of wire EFCS wires and wire bundles must provide separation and redundancy to ensure maximum protection from damage due to common cause.

Discussion: The Saab 2000 will be using fly-by-wire (FBW) as a means to command and control the elevator surface actuators. In the FBW design being presented, command and control of the control surfaces will be achieved by electronic (AC, DC, or digital) interfaces. These interfaces involve not only the direct commands to the elevator control surfaces, but feedback and sensor signals as well.

Malfunctions could cause system instabilities, loss of functions or freeze-up of the control actuator. It is imperative that after failure at least one path of the command signal, that is capable of providing safe flight and landing, remains continuous and unaltered.

The current regulations, which primarily address hydro-mechanical flight control systems, §§ 25.671 and 25.672, make no specific or implied reference that command and control signals remain unaltered from external interferences. Present designs feature steel cables and pushrods as a means to control hydraulic surface actuators. These designs are easily identifiable relative to the understanding that they are necessary for safe flight and landing and thus should be protected and continually inspected. However, the FBW designs are not easily discernible from non-essential electronics where placement of equipment and wire runs is not critical. Therefore, FBW requires additional attention when locating the equipment and wire runs.

It should be noted that:

—The wording ''signals cannot be altered unintentionally'' is used in the Special Condition to emphasize the need for design measures to protect the FBW control system from the effects of the fluctuations in electrical power, accidental damage, environmental factors such as temperature, local fires, exposure to reactive fluids, etc. and any disruptions that may affect the command signals as they are being transmitted from their source of origin to the Power Control Actuators.

3. *Design Maneuver Requirements*

(a) In lieu of compliance with § 25.331(c)(1) of the FAR, the airplane is assumed to be flying in steady level flight (point A1 within the maneuvering envelope of § 25.333(b)) and, except as limited by pilot effort in accordance with § 25.397(b), the cockpit pitching control device is suddenly moved to obtain extreme positive pitching acceleration (nose up). In defining the tail load condition, the response of the airplane must be taken into account. Airplane loads which occur subsequent to the point at which the normal acceleration at the center of gravity exceeds the maximum positive limit maneuvering factor, n, need not be considered.

(b) In addition to the requirements of § 25.331(c), it must be established that pitch maneuver loads induced by the system itself (e.g. abrupt changes in orders made possible by electrical rather than mechanical combination of different inputs) are acceptably accounted for.

Issued in Renton, Washington, on March 29, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–8371 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AWA–5]

Modification of the Pensacola Regional, FL, Lexington Blue Grass, KY, Fayetteville Regional/Grannis Field, NC, Pope AFB, NC, and Providence, Theodore Francis Green State, RI, Class C Airspace Areas and Establishment of the Pensacola Regional, FL, and Providence Theodore Francis Green State, RI, Class E Airspace Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule modifies the Class C airspace areas at Pensacola Regional, FL, Lexington Blue Grass, KY, Fayetteville Regional/Grannis Field, NC, Pope AFB, NC, and Providence, Theodore Francis Green State, RI, Airports. This action modifies the Lexington Blue Grass, KY, Fayetteville Regional/Grannis Field, NC, and Pope AFB, NC, airspace designations to reflect continuous operation and availability of services. The effective hours of the Pensacola Regional, FL, and Providence, Theodore Francis Green State, RI, Class C airspace areas are amended to coincide with the associated radar approach control facility's hours of operation. Class C airspace areas are predicated on an operational air traffic control tower

serviced by a radar approach control facility. The designated lateral boundaries and altitudes of these Class C airspace areas will remain as they currently exist. In addition, this action establishes Class E airspace at Pensacola Regional, FL, and Providence, Theodore Francis Green State, RI, Airports, when the associated radar approach control facility is not in operation.

EFFECTIVE DATE: 0901 UTC, May 25, 1995.

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

SUPPLEMENTARY INFORMATION:

History

On March 17, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class C airspace areas at Pensacola Regional, FL, Lexington Blue Grass, KY, Fayetteville Regional/Grannis Field, NC, Pope AFB, NC, and Providence, Theodore Francis Green State, RI, and to establish Class E airspace areas at Pensacola Regional, FL, and Providence, Theodore Francis Green State, RI (60 FR 14397).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Class C and Class E airspace designations are published in paragraphs 4000 and 6002, respectively, 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 C and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class C airspace areas at Pensacola Regional, FL, Lexington Blue Grass, KY, Fayetteville Regional/Grannis Field, NC, Pope AFB, NC, and Providence, Theodore Francis Green State, RI, Airports. This action modifies the Lexington Blue Grass, KY, Fayetteville Regional/Grannis Field, NC, and Pope AFB, NC, airspace designations to reflect continuous operation and availability of services.

The effective hours of the Pensacola Regional, FL, and Providence, Theodore Francis Green State, RI, Class C airspace areas are amended to coincide with the associated radar approach control facility's hours of operation. The designated lateral boundaries and altitudes of these Class C airspace areas will not change. In addition, this action establishes Class E airspace at Pensacola Regional, FL, and Providence, Theodore Francis Green State, RI, Airports when the associated radar approach control facility is not in operation.

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 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 4000—Subpart C—Class C Airspace

* * * * *

ASO FL C Pensacola Regional Airport, FL (Revised)

Pensacola Regional Airport, FL
(Lat. 30°28′25″ N., long. 87°11′12″ W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Pensacola Regional Airport, and that airspace extending upward from 1,400 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the Pensacola Regional Airport, excluding that airspace within the 5-mile circle of the Pensacola NAS, FL, Class C airspace area. This Class C 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.

* * * * *

ASO KY C Lexington, Blue Grass Airport, KY (Revised)

Lexington, Blue Grass Airport, KY
(Lat. 38°02′13″ N., long. 84°36′19″ W.)

That airspace extending upward from the surface to and including 5,000 feet MSL within a 5-mile radius of the Blue Grass Airport; and that airspace extending upward from 2,200 feet MSL to and including 5,000 feet MSL within a 10-mile radius of the airport.

* * * * *

ASO NC C Fayetteville Regional/Grannis Field, NC, (Revised)

Fayetteville Regional/Grannis Field, NC
(Lat. 34°59′29″ N., long. 78°52′48″ W.)
Gray's Creek Airport
(Lat. 34°53′04″ N., long. 78°50′08″ W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Fayetteville Regional/Grannis Field excluding that airspace below 1,400 feet MSL within a 1.5-mile radius of Gray's Creek Airport; and that airspace within a 10-mile radius of the airport extending upward from 1,400 feet MSL to and including 4,200 feet MSL, excluding that airspace contained within Restricted Areas R–5311A, B and C when they are active.

* * * * *

ASO NC C Pope AFB, NC (Revised)

Pope AFB, NC
(Lat. 35°10′16″ N., long. 79°00′52″ W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Pope AFB, excluding that airspace below 1,400 feet MSL contained in the Simmons Army Air Field, NC, Class D airspace area, and excluding that airspace contained within Restricted Areas R–5311A, B and C when they are active; and that airspace within a 10-mile radius of Pope AFB extending upward from 2,000 feet MSL to and including 4,200 feet MSL, beginning at the northern boundaries of R–5311A, B and C clockwise to the 020° bearing from the airport; and that airspace extending upward from 1,400 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the airport beginning at the 020° bearing from the

airport clockwise to the northern boundaries of R–5311A, B and C, excluding that airspace contained in R–5311A, B and C when they are active and excluding that airspace contained in the Fayetteville Regional/Grannis Field Airport, NC, Class C airspace area.

* * * * *

ANE RI C Providence, Theodore Francis Green State Airport, RI (Revised)

Providence, Theodore Francis Green State Airport, RI
(Lat. 41°43′25″ N., long. 71°25′36″ W.)

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Theodore Francis Green State Airport and that airspace extending upward from 1,300 feet MSL to and including 4,100 feet MSL within a 10-mile radius of the airport from the 015° bearing from the airport clockwise to the 195° bearing from the airport, and that airspace extending upward from 1,700 feet MSL to and including 4,100 feet MSL within a 10-mile radius of the airport from the 195° bearing from the airport clockwise to the 015° bearing from the airport. This Class C 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.

* * * * *

Paragraph 6002—Subpart E—Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ASO FL E2 Pensacola Regional Airport, FL (New)

Pensacola Regional Airport, FL
(Lat. 30°28′25′ N., long. 87°11′12″ W.)

Within a 5-mile radius of the Pensacola Regional Airport. This Class E 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.

* * * * *

ANE RI E2 Providence, Theodore Francis Green State Airport, RI (New)

Providence, Theodore Francis Green State Airport, RI
(Lat. 41°43′25″ N., long. 71°25′36″ W.)

Within a 5-mile radius of the Theodore Francis Green State Airport. This Class E 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 Washington, DC, on March 29, 1995.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–8368 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 97

[Docket No. 28162; Amdt. No. 1656]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

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

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

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

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were

applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on March 24, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

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

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

** * * Effective May 25, 1995*

Dunnellon, FL, Dunnellon, VOR/DME RWY 23, Orig
Tampa, FL, Tampa Intl, LOC BC RWY 36R, Amdt 19B, Cancelled
Hampton, GA, Clayton County-Tara Field, VOR/DME–A, Orig
Iowa City, IA, Iowa City Muni, GPS RWY 30, Orig
Oakley, KS, Oakley Muni, NDB OR GPS RWY 34, Amdt 2
Alexandria, LA, Alexandria Int'l, ILS/DME RWY 14, Amdt 1
Cambridge, NE, Cambridge Muni, NDB OR GPS RWY 14, Amdt 3
Cambridge, NE, Cambridge Muni, NDB OR GPS RWY 32, Amdt 3
McCook, NE, McCook Muni, VOR OR GPS RWY 12, Amdt 11
McCook, NE, McCook Muni, VOR OR GPS RWY 21, Amdt 4
McCook, NE, McCook Muni, VOR OR GPS RWY 30, Amdt 10
Buffalo, WY, Johnson County, VOR/DME OR GPS RWY 30, Amdt 5

Note: Iowa City, IA, Iowa City Muni, GPS RWY 30, Orig, EFF 27 APR 95, published in TL95–06, is rescinded.

Note: Oakley, KS, Oakley Muni, NDB OR GPS RWY 34, Amdt 2, EFF 27 APR 95, published in TL95–06, is rescinded.

** * * Effective April 27, 1995*

Connersville, IN, Mettel Field, VOR–A, Orig
Connersville, IN, Mettel Field, VOR/DME or GPS–A, Amdt 5, Cancelled
Connersville, IN, Mettel Field, NDB RWY 18, Amdt 9, Cancelled
Connersville, IN, Mettel Field, NDB RWY 18, Orig
Connersville, IN, Mettel Field, ILS RWY 18, Orig
Connersville, IN, Mettel Field, RNAV or GPS RWY 18, Amdt 5, Cancelled
Davenport, IA, Davenport Muni, ILS RWY 15, Orig
Davenport, IA, Davenport Muni, LOC RWY 15, Amdt 3, Cancelled
Fort Scott, KS, Fort Scott Muni, NDB OR GPS RWY 17, Amdt 11

** * * Effective December 8, 1994*

Steamboat Springs, CO, Steamboat Springs/Bob Adams Field, VOR/DME–C, Amdt 1

** * * Effective Upon Publication*

Philadelphia, PA, Philadelphia Intl, ILS RWY 9L, Amdt 2

[FR Doc. 95–8364 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28163; Amdt. No. 1657]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form

8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on March 24, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

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

2. Part 97 is amended to read as follows:

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

* * * Effective upon publication—

FDC date	State	City	Airport	FDC No.	SIAP
03/08/95	NC	Hickory	Hickory Regional	FDC 5/1075	ILS Rwy 24 Amdt 6. This corrects Notam in TL 95–07.
03/09/95	MO	Perryville	Perryville Muni	FDC 5/1110	VOR/DME RNAV Rwy 19, Amdt 2.
03/13/95	NM	Santa Fe	Santa Fe County Muni	FDC 5/1152	ILS Rwy 2 Amdt 4.
03/20/95	AK	Nome	Nome	FDC 5/1230	NDB/DME OR GPS–1, Rwy 2, Orig B.

Nome

Nome

Alaska

NDB/DME OR GPS–1, RWY 2, ORIG B.
FDC Date: 03/20/95

FDC 5/1230/OME/ FI/P NOME, NOME, AK. NDB/DME OR GPS–1, RWY 2, ORIG B . . . MNM ALT BAIME TO OYN NDB/DME 5400 FEET. GAITS TO OYN NDB/DME 4000 FEET, OME VORTAC TO OYN NDB/DME 3200 FEET, FDV NDB TO OYN NDB/DME 3200 FEET, AND OYN NDB/DME TO OYN 212 BRG/5 DME 2900 FEET. THIS IS NDB/DME OR GPS–1, RWY 2, ORIG C.

Perryville

Perryville Muni

Missouri

VOR/DME RNAV RWY 19, AMDT 2.
FDC Date: 03/09/95

FDC 5/1110/K02/ FI/P PERRYVILLE MUNI, PERRYVILLE, MO. VOR/DME RNAV RWY 19, AMDT 2 . . . CHANGE ALL

REFERENCE TO RWY 01/19 TO RWY 02/20. THIS BECOMES VOR/DME RNAV RWY 20, AMDT 2A.

Hickory

Hickory Regional

North Carolina

ILS RWY 24 AMDT 6.
FDC Date: 03/08/95
THIS CORRECTS NOTAM IN TL 95–07.

FDC 5/1075/HKY/ FI/P HICKORY REGIONAL, HICKORY, NC, ILS RWY 24 AMDT 6 . . . ADD NOTE . . . OBTAIN LCL ALSTG ON CTAF; WHEN NOT RECEIVED, USE WILKES COUNTY ALSTG AND INCREASE ALL DH/MDAS 300 FEET AND ALL VIS 1 MILE. THIS BECOMES ILS RWY 24 AMDT 6A.

Santa Fe

Santa Fe County Muni

New Mexico

ILS RWY 2 AMDT 4.
FDC Date: 03/13/95

FDC 5/1152/SAF/ FI/P SANTA FE COUNTY MUNI, SANTA FE, NM. ILS RWY 2 AMDT 4 . . . CHG NOTE TO READ . . . ADF REQUIRED.

[FR Doc. 95–8363 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–35548]

Establishment of Commission Quorum Requirement

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is amending its rules to specify the number of Commission members that constitute a quorum. The amendments are designed to promote flexibility, finality, and collegiality of agency decisionmaking.

EFFECTIVE DATE: May 5, 1995.

FOR FURTHER INFORMATION CONTACT: Walter B. Stahr, Assistant General Counsel, or C. Hunter Jones, Special Counsel, Office of the General Counsel, at (202) 942–0888.

SUPPLEMENTARY INFORMATION: The Commission is modifying 17 CFR 200.40–200.42 to provide that three members constitute a quorum of the Commission, with two important exceptions. First, if the number of members in office is two or one, that number is sufficient for a quorum. Second, if the number of members in office minus the number disqualified with respect to a matter is two, two constitute a quorum for purposes of that matter.

The Securities Exchange Act of 1934 (''Exchange Act''), unlike many statutes that establish federal agencies, does not establish a quorum requirement for the Commission. In the past, the practice of the Commission has generally been that three members constitute a quorum. *See In re International Paper & Power Co.*, 2 SEC 792, 793 n.1 (1937), *rev'd on other grounds sub nom. Lawless* v. *SEC*, 105 F.2d 574 (1st Cir. 1939). This practice, however, has never been formally adopted as a policy or rule.

The Commission, which currently has only three members, has reconsidered its quorum practice. It has decided to adopt a general rule, with the exceptions discussed below, that three commissioners are required for a quorum. Although this rule may create difficulties when only three commissioners are in office, these difficulties are outweighed by the benefits of having all three commissioners deliberate and vote on matters.

Situations arise, however, in which only two members are able to participate in a matter. When three members are in office, for example, one member may recuse himself or herself from considering a matter. *See* 17 CFR 200.60. Similarly, it is possible that, at some point, there would be only two commissioners in office. In the past, the Commission has resorted to the duty officer procedure to deal with urgent matters as to which only two commissioners are available. *See* 17 CFR 200.42. The duty officer procedure, however, because it is a form of delegation, is not available for rulemaking. *See* Exchange Act Section 4A(a). Moreover, although a duty officer's action is Commission action unless and until the Commission directs otherwise, *see* 17 CFR 200.42(c)(3), the Commission cannot affirm the duty officer's action when only one other Commission member is available to consider the matter. Finally, and perhaps most importantly, it is more consistent with the collegial nature of the Commission to allow the two qualified members to address such matters as a Commission.

The Commission also believes that it would be appropriate to preserve the flexibility necessary to take effective action in the event, however unlikely, that there would be a period with only one commissioner in office. To provide adequate flexibility in this unlikely situation, the Commission is providing that one commissioner would constitute a quorum if no other commissioners are in office. The Commission does not believe it is necessary, at this time, to provide that one commissioner may constitute a quorum when disqualifications result in only one commissioner being available to deal with a particular matter.

Accordingly, the Commission is adopting a new rule, at 17 CFR 200.41, providing that three members constitute a quorum unless only two members or one member are in office, or unless, because of disqualifications, only two members are available to deal with a particular matter. The Commission is also amending 17 CFR 200.40 to clarify that it applies only to meetings that are subject to the Government in the Sunshine Act.

The Commission has determined that these amendments and additions to its procedural rules relate solely to the agency's organization, procedure or practice. Therefore, the provisions of the Administrative Procedure Act (''APA'') regarding notice and comment are not applicable. *See* 5 U.S.C. 553. Similarly, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other laws, are not applicable. *See* 5 U.S.C. 601–612.

Effects on Competition

Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in furthering the purposes of the Exchange Act. *See* 15 U.S.C. 78w(a)(2). The Commission has considered the changes adopted in this release in light of the standards cited in section 23(a)(2) and believes that their adoption would not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

Statutory Basis of Rule

The amendments to the Commission's rules are adopted pursuant to the authorities set forth therein.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

Text of Amendments

For the reasons set out in the preamble, title 17, chapter II, part 200 of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200, subpart B, is revised to read as follows:

Authority: 5 U.S.C. 552b; 15 U.S.C. 78d–1 and 78w.

2. Section 200.40 is revised to read as follows:

§ 200.40 Joint disposition of business by Commission meeting.

Any meeting of the Commission that is subject to the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b, shall be held in accordance with subpart I of this part. The Commission's Secretary shall prepare and maintain a Minute Record reflecting the official action taken at such meetings.

§§ 200.41 and 200.42 [Redesignated as §§ 200.42 and 200.43]

3. Sections 200.41 and 200.42 are redesignated as §§ 200.42 and 200.43, and § 200.41 is added to read as follows:

§ 200.41 Quorum of the Commission.

A quorum of the Commission shall consist of three members; provided, however, that if the number of Commissioners in office is less than three, a quorum shall consist of the number of members in office; and provided further that on any matter of business as to which the number of members in office, minus the number of members who either have disqualified themselves from consideration of such matter pursuant to § 200.60 or are otherwise disqualified from such consideration, is two, two members shall constitute a quorum for purposes of such matter.

§ 200.42 [Amended]

4. In newly redesignated § 200.42, in paragraph (a) the reference to ''§ 200.42'' is revised to read ''§ 200.43'' and in paragraph (b) the reference to ''§ 200.41(a)'' is revised to read ''§ 200.42(a)''.

§ 200.43 [Amended]

5. In newly redesignated § 200.43(c)(1), the reference to ''§ 200.42(a)'' is revised to read ''§ 200.43(a)'' and the reference to ''§ 200.41'' is revised to read ''§ 200.42''.

§ 200.401 [Amended]

6. In § 200.401(a), the reference to ''§ 200.41 or § 200.42'' is revised to read ''§ 200.42 or § 200.43''.

Dated: March 30, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8259 Filed 4–4–95; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 93N–0283]

RIN 0905–AD89

Food Labeling; Placement of the Nutrition Label on Food Packages

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its food labeling regulations to provide increased flexibility in the placement of the nutrition label on packaged foods. In situations in which the principal display and information panels cannot accommodate all the required labeling information, and the package has a total surface area available to bear labeling of greater than 40 square inches (sq in), the amendment allows the nutrition label to be placed on any panel that can be readily seen by the consumer. This action is being taken in response to comments received on the final rule of January 6, 1993, entitled ''Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments,'' (hereinafter ''the implementation final rule''), and on the proposed rule of August 18, 1993, entitled ''Food Labeling; Placement of the Nutrition Label on Food Packages.''

EFFECTIVE DATE: May 5, 1995.

FOR FURTHER INFORMATION CONTACT: Arletta M. Beloian, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5430.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Principal Display Panel and Information Panel

Under FDA's regulations (§ 101.1 (21 CFR 101.1)), the part of a label that is most likely to be displayed, presented, shown, or examined by a consumer under customary conditions of display for retail sale is called ''the principal display panel.'' This panel must include the statement of identity for the product and its net weight. In addition, to provide consistency and uniformity in the presentation of label information to consumers, FDA has provided for a second display panel for information that must be included on the label but that is not required to appear on the principal display panel. This alternate panel is called ''the information panel'' (§ 101.2 (21 CFR 101.2)).

The information panel is defined in § 101.2(a) as that part of the label that is immediately contiguous and to the right of the principal display panel. Section 101.2(a)(1) specifies that if the first panel to the right of the principal display panel is too small to accommodate the necessary information, or is otherwise unusable label space, the panel immediately contiguous and to the right of that part of the label may be used as the information panel. Accordingly, FDA's regulations direct manufacturers to move the information required to appear on the information panel as a unit when the first available information panel will not accommodate all the required information. Pursuant to § 101.2(e), all information appearing on the information panel must be presented in one place without other intervening material.

Section 101.2(b) states that the ingredient listing; name and place of business of the manufacturer, packer, or distributor; and nutrition information must appear either on the principal display panel or on the information panel, unless otherwise specified by regulation. Section 101.2(d)(1) requires that all information required to appear on the principal display panel or the information panel appear on the same panel unless there is insufficient space, in which case it may be divided between the principal display panel and information panel in accordance with §§ 101.1 and 101.2. In determining the sufficiency of the available space, under § 101.2(d)(1), any vignettes, designs, and other nonmandatory label information are not to be considered.

B. Mandatory Nutrition Labeling

In the **Federal Register** of January 6, 1993, FDA issued a final rule entitled ''Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label'' (58 FR 2079) (hereinafter referred to as ''the mandatory nutrition labeling final rule''), which included provisions to require nutrition labeling on most foods that are regulated by FDA and to specify a new format for declaring nutrition labeling. FDA took this action, in part, to implement the Nutrition Labeling and

Education Act of 1990 (Pub. L. 101–535), which amended the Federal Food, Drug, and Cosmetic Act. Section 101.9(i) (21 CFR 101.9(i)), which FDA added to its regulations as part of the mandatory nutrition labeling final rule, states that, except as provided in § 101.9(j)(13), the location of the nutrition label must be in accordance with § 101.2.

In recognizing the demands for label space made by nutrition labeling, the agency included a provision in the mandatory nutrition labeling final rule that allows nutrition information to be presented on any label panel on packages that have a total surface area available to bear labeling of 40 sq in or less (see § 101.9(j)(13)(ii)(D)). The flexibility provided by this provision reflects the agency's recognition that it is more important that the nutrition information be presented on the immediate package than that it be presented in any particular place (58 FR 2079 at 2156). FDA stated that given the consistent appearance of the nutrition information that will be produced by the format elements that it adopted, and the educational efforts of government, industry, and consumer organizations, consumers will know to look for, and be able to recognize, nutrition information, even if it is not presented to the right of the principal display panel. Section 101.9(j)(13)(ii)(D) does not provide an exception, however, for the placement of nutrition information on packages of more than 40 sq in when the principal display and information panels of those packages cannot accommodate all of the required information.

On January 6, 1993, the agency published, along with the mandatory nutrition labeling final rule and various other final rules, the implementation final rule (58 FR 2066). This document gave interested persons 30 days to comment on any technical issues that had not been raised in earlier comments. In response to this document, FDA received a number of comments that requested greater flexibility in the placement of the nutrition label because of the increased amount of space needed to meet the type size and spacing requirements of the new nutrition label. These comments included product labels that illustrated the difficulties presented in trying to place the required label information on the information panel.

In the **Federal Register** of August 18, 1993 (58 FR 44091), FDA published a proposed rule, entitled ''Food Labeling; Placement of the Nutrition Label on Food Packages,'' to amend its regulations on the placement of nutrition information on packages having a total surface area for labeling of greater than 40 sq in. For such situations, the agency proposed to add § 101.9(j)(17). Under this provision, when the package cannot accommodate all information required by regulation on its principal display panel and information panel, the nutrition label may be moved to any alternate panel that can be readily seen by the consumer. Furthermore, under proposed § 101.9(j)(17), the space needed for vignettes, designs, and other nonmandatory label information may be considered when determining the sufficiency of available space on the principal display panel. FDA also proposed to revise: (1) § 101.9(i) to make reference to the exemption from § 101.2 for products covered by proposed § 101.9(j)(17), and (2) § 101.2(d)(1) to exclude from its coverage products that are exempt under § 101.9(j)(17). FDA also proposed to make a number of ancillary modifications to all of the regulations that pertain to relative nutrient content claims, specifically to those sections that require that the statement that compares the amount of the subject nutrient in the product per labeled serving with that in the reference food appear either adjacent to the most prominent claim or on the information panel. Under the proposed modification, the comparative quantitative information may be placed either adjacent to the most prominent claim or to the nutrition label, without regard to the panel on which the nutrition label appears. The agency proposed to make this modification to each regulation in part 101 (21 CFR part 101) that pertains to relative nutrient content claims (e.g., ''more,'' ''light'').

In addition, in response to other comments that FDA received on the implementation final rule, the agency proposed to amend § 101.61(c)(2)(iii) to require that the statement ''not a sodium free food'' on foods that are not sodium free and yet whose label bears a claim of ''unsalted'' be placed adjacent to the nutrition label rather than on the information panel.

Interested persons were given until October 18, 1993, to comment on the proposal.

II. Comments and the Agency's Response

FDA received 19 letters, each containing 1 or more comments, in response to the proposal from trade associations, food manufacturers, a state government, and a foreign government. The comments unanimously supported the proposal. However, a few comments contained suggestions for clarifying the regulations and for modifying additional related sections that were not covered in the proposal. FDA is responding to these comments in this document. In addition, the agency received a few comments that addressed issues such as type size and leading (i.e., format) requirements and specific problems pertaining to the placement of the ingredient list on multi-packs of ready-to-eat cereals. These issues are outside the scope of the proposal, and therefore FDA will not address them in this document.

A. Flexibility in Placement

1. All the relevant comments supported FDA's proposal in § 101.9(j)(17) to allow consideration of the space needed for vignettes, designs, and other nonmandatory label information on the principal display panel in deciding whether the space on that panel and the information panel is adequate for presentation of the nutrition label. One comment, however, objected to the agency's failure to provide for consideration of nonmandatory information on the information panel as part of the determination as to whether there is sufficient space available for the nutrition label. The comment stated that the agency's position that the nutrition facts box will be so recognizable that consumers will not have difficulty locating it regardless of where it appears on the label seems to support giving consideration to space needs for vignettes, designs, and other nonmandatory information on the information panel as well as on the principal display panel. The comment asked that the agency clarify its intent and permit nonmandatory label information on the information panel to be taken into account when deciding whether there is sufficient space on that panel for the nutrition facts box.

The agency's intent in this rulemaking was not to remove all constraints on the placement of the nutrition label but rather to provide added flexibility when needed by industry to facilitate placing the new nutrition label on food packages. In attempting to accomplish this purpose, the proposal did not address the issue of nonmandatory information on the information panel. The agency did not see a need to alter the current requirement in § 101.2(d)(1) that all required information (including the nutrition label; the ingredient list; the name and place of business of the manufacturer, packer, or distributor; and the percent juice declaration) be placed on the information panel, if not on the principal display panel, when there is sufficient space to do so.

In support of the proposal, FDA noted that the appearance of many packages

could be significantly affected if regulations did not allow vignettes, designs, and other nonmandatory information on the principal display panel to be considered in calculating the amount of available label space. The agency also noted that current industry practice almost never places the nutrition label on the principal display panel unless there is no alternative panel on the package. These two factors, which were the impetus for the subject proposal, do not apply to vignettes, designs, and other nonmandatory information on the information panel. Thus, the interests of consumers will be served best by continuing to have this information appear together wherever possible. Moreover, having the nutrition label, the ingredient list, and the name and place of business of the manufacturer, packer, or distributor appear on the same panel simplifies the consumers' search for this information. The comment did not advance any arguments that suggested a countervailing benefit to the public from allowing nonmandatory label information to replace nutrition labeling on the information panel. Accordingly, the agency is not making the requested change.

2. One comment stated that the second sentence of proposed § 101.9(j)(17) needed to be clarified because there was confusion in trade publications about the significance of nonmandatory information on the information panel.

FDA agrees that it is necessary to clarify the differences in the agency's treatment of nonmandatory information on the principal display panel as opposed to on the information panel. Accordingly, the agency is revising § 101.9(j)(17) to add a sentence at the end of the subparagraph that reads: ''Nonmandatory label information on the information panel shall not be considered in determining the sufficiency of available space for the placement of the nutrition label.''

B. Statements of Ingredients, and Name and Place of Business

FDA did not propose to modify the requirement that manufacturers list ingredient information and the name and place of business of the manufacturer, packer, or distributor on the principal display panel or the information panel. Under § 101.9(j)(13) and proposed § 101.9(j)(17), only the nutrition label could be placed on another panel.

3. Three comments urged that the agency allow the ingredient statement (§ 101.4) and the name and place of business of the manufacturer, packer, or distributor (§ 101.5) to be presented adjacent to the nutrition label on any other label panel that can be readily seen by consumers when the information panel is too small to accommodate all the required information. They argued that, although consumers may now look for the ingredient list and the name and place of business statement on the principal display panel or information panel, it was likely that these statements would be seen if listed on the same panel as the nutrition information, which must be readily observable. Furthermore, the comments argued, consumers are accustomed to seeing all of this information on one panel, and manufacturers often incorporate the ingredient list, the name and place of business statement, and the nutrition label into one design.

Among these comments, one recommended revised wording in § 101.4(a)(1) to implement the change, i.e., to state that ingredients are to be listed on either the principal display panel, the information panel, or the label panel on which the mandatory nutrition information appears. The comment stated that because § 101.5(a) requires that the label of a food in package form specify conspicuously the name and address of the manufacturer, packer, or distributor, that regulation need not be amended because it allows manufacturers the option of placing such information in a place where the consumer will see it.

The agency has considered these comments and is not making the requested change because a change of the magnitude of that suggested was not foreshadowed by the proposal. The ingredient statement and the name and place of business statements have appeared on either the principal display or the information panels for nearly 20 years. Allowing the ingredient list and the name and place of business of the manufacturer, packer, or distributor to move off the information panel whenever there is insufficient space for them to appear with the nutrition label would represent a significant redefinition of what constitutes the information panel. While the portion of the food supply that would be affected is unknown, it could be substantial. Companies interested in pursuing this suggestion should submit a citizen petition under § 10.30 (21 CFR 10.30) that would address the possible ramifications of such a change on food packages and on consumers' use of the required label information.

It should be noted, however, that under § 101.2(a)(1), when there is insufficient space on the panel immediately contiguous and to the right of the principal display panel for all required components, the ingredient list; the name and place of business of the manufacturer, packer, or distributor; and the nutrition label may be moved as a unit to the next panel immediately contiguous and to the right of that panel.

C. Clarification

4. One comment requested that FDA allow for the placement of nutrition information on either side of a center-seamed back panel, such as on flexible film bags used for snack foods that do not have information printed on the sides, top, or bottom of the package. The comment argued that the bag is easily rotated from front to back, and that the full center-seamed back panel is in plain view.

Section 101.2(a) states that the ''information panel'' is that part of the label immediately contiguous and to the right of the principal display panel when observed facing the principal display panel. If the part of the label immediately contiguous and to the right of the principal display panel is too small to accommodate the necessary information, the next panel immediately contiguous and to the right of the fold may be used (see § 101.2(a)(1)). In the case of flexible film bags of snack foods with folded or pleated side panels that do not provide any additional usable label space, the back panel of the bag is the information panel. FDA interprets the back panel to be the full back panel of the flexible bag, regardless of the presence or absence of a seam. Therefore, the nutrition label may be located on any part of the back panel. Wherever it is placed, however, § 101.2(e) requires that there be no intervening material between it and the other pieces of required information.

III. Other Provisions

5. All comments addressing the aspect of the proposal on relative nutrient content claims supported the proposed requirement that the comparative quantitative information be positioned adjacent to the most prominent claim or to the nutrition label. However, in light of § 101.2(e), which states that all required information on the information panel appear in one place without other intervening material, the agency is concerned that the proposed codified language pertaining to relative claims in §§ 101.54, 101.56, 101.60, 101.61, and 101.62 that would require quantitative information to be ''declared adjacent to the most prominent claim or to the nutrition label * * *'' might be interpreted to mean that when the

nutrition label remains on the information panel, the quantitative information has to be immediately adjacent to the nutrition label rather than being allowed to be placed elsewhere on the information panel in proximity with other required information, as is in fact the case. Such a literal interpretation of the words ''adjacent to the nutrition label'' could have the unintended effect of requiring current labels containing relative claims to be redesigned for the sole purpose of relocating the quantitative information. The same concern exists for § 101.61(c)(2)(iii), which addresses the placement of the statement ''not a sodium free food'' on foods that are not sodium free and yet whose label bears a claim of ''unsalted.''

To prevent such a misunderstanding, FDA is modifying the codified language pertaining to relative claims (i.e., ''more'' claims: § 101.54(e)(1)(iii)(B) and (e)(2)(iii)(B); ''light'' claims: § 101.56(b)(3)(ii), (c)(1)(ii)(B), (c)(2)(ii)(B), and (g); calorie claims: § 101.60(b)(5)(ii)(B), (b)(6)(ii)(B), (c)(4)(ii)(B), and (c)(5)(ii)(B); sodium claims: § 101.61(b)(6)(ii)(B) and (b)(7)(ii)(B); and fat, fatty acid, and cholesterol claims: § 101.62(b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), (c)(5)(ii)(B), (d)(1)(ii)(F)(*2*), (d)(2)(iii)(E)(*2*), (d)(2)(iv)(E)(*2*), (d)(4)(i)(C)(*2*), (d)(4)(ii)(D)(*2*), (d)(5)(i)(C)(*2*), and (d)(5)(ii)(D)(*2*)) and the general principles governing nutrient content claims in § 101.13(j)(2)(iv)(B) (21 CFR 101.13(j)(2)(iv)(B)) to state that the quantitative information ''shall appear adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.'' (For clarity, FDA is making a small change in the placement of the illustrative example in these regulations and, for consistency, is adding an example to § 101.62(d)(4)(i)(C)(*2*).) Likewise, the agency is modifying § 101.61(c)(2)(iii), which pertains to the placement of the statement ''not a low sodium food,'' to state that the statement shall appear ''adjacent to the nutrition label of the food bearing the claim, or, if the nutrition label is on the information panel, it may appear elsewhere on the information panel in accordance with § 101.2 of this chapter.''

IV. Environmental Impact

The agency previously considered the environmental effects of this rule as announced in the proposed rule of August 18, 1993 (58 FR 44091). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Analysis of Impacts

FDA has examined the impacts of the final 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 final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final 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. Because this final rule will allow for increased flexibility in complying with labeling rules, and therefore results in positive net benefits, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (5 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.2 is amended by revising paragraph (d)(1) to read as follows:

§ 101.2 Information panel of package form food.

* * * * *

(d)(1) Except as provided by § 101.9(j)(13) and (j)(17), all information required to appear on the principal display panel or on the information panel pursuant to this section shall appear on the same panel unless there is insufficient space. In determining the sufficiency of the available space, except as provided by § 101.9(j)(17), any vignettes, designs, and other nonmandatory label information shall not be considered. If there is insufficient space for all of this information to appear on a single panel, it may be divided between these two panels except that the information required pursuant to any given section or part shall all appear on the same panel. A food whose label is required to bear the ingredient statement on the principal display panel may bear all other information specified in paragraph (b) of this section on the information panel.

* * * * *

3. Section 101.9 is amended by revising paragraph (i) and by adding new paragraph (j)(17) to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(i) Except as provided in paragraphs (j)(13) and (j)(17) of this section, the location of nutrition information on a label shall be in compliance with § 101.2.

(j) * * *

(17) Foods in packages that have a total surface area available to bear labeling greater than 40 square inches but whose principal display panel and information panel do not provide sufficient space to accommodate all required information may use any alternate panel that can be readily seen by consumers for the nutrition label. The space needed for vignettes, designs, and other nonmandatory label information on the principal display panel may be considered in determining the sufficiency of available space on the principal display panel for the nutrition label. Nonmandatory label information on the information panel shall not be considered in determining the sufficiency of available space for the nutrition label.

* * * * *

4. Section 101.13 is amended by revising paragraph (j)(2)(iv)(B) to read as follows:

§ 101.13 Nutrient content claims—general principles.

* * * * *

(j) * * *

(2) * * *

(iv) * * *

(B) This statement shall appear adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information

panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

5. Section 101.54 is amended by revising paragraphs (e)(1)(iii)(B) and (e)(2)(iii)(B) to read as follows:

§ 101.54 Nutrient content claims for ''good source,'' ''high,'' and ''more.''

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(B) Quantitative information comparing the level of the nutrient in the product per labeled serving with that of the reference food that it replaces (e.g., ''Fiber content of white bread is 1 gram (g) per serving; (this product) 3.5 g per serving'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

(2) * * *

(iii) * * *

(B) Quantitative information comparing the level of the nutrient in the product per specified weight with that of the reference food that it replaces (e.g., ''The fiber content of 'X brand of product' is 2 g per 3 oz. This product contains 4.5 g per 3 oz.'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

6. Section 101.56 is amended by revising paragraphs (b)(3)(ii), (c)(1)(ii)(B), (c)(2)(ii)(B), and (g) to read as follows:

§ 101.56 Nutrient content claims for ''light'' or ''lite.''

* * * * *

(b) * * *

(3) * * *

(ii) Quantitative information comparing the level of calories and fat content in the product per labeled serving size with that of the reference food that it replaces (e.g., ''lite cheesecake—200 calories, 4 grams (g) fat per serving; regular cheesecake—300 calories, 8 g fat per serving'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2; and

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(B) Quantitative information comparing the level of sodium per labeled serving size with that of the reference food that it replaces (e.g., ''lite soy sauce 500 milligrams (mg) sodium per serving; regular soy sauce 1,000 mg per serving'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

(2) * * *

(ii) * * *

(B) Quantitative information comparing the level of sodium per labeled serving size with that of the reference food that it replaces (e.g., ''lite canned peas, 175 mg sodium per serving; regular canned peas 350 mg per serving'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

(g) The term ''lightly salted'' may be used on a product to which has been added 50 percent less sodium than is normally added to the reference food as described in § 101.13(j)(1)(i)(B) and (j)(1)(ii)(B), provided that if the product is not ''low in sodium'' as defined in § 101.61(b)(4), the statement ''not a low sodium food,'' shall appear adjacent to the nutrition label of the food bearing the claim, or, if the nutrition label is on the information panel, it may appear elsewhere on the information panel in accordance with § 101.2 and the information required to accompany a relative claim shall appear on the label or labeling as specified in § 101.13(j)(2).

7. Section 101.60 is amended by revising paragraphs (b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), and (c)(5)(ii)(B) to read as follows:

§ 101.60 Nutrient content claims for the calorie content of foods.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(B) Quantitative information comparing the level of the nutrient per labeled serving size with that of the reference food that it replaces (e.g., ''Calorie content has been reduced from 150 to 100 calories per serving.'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

(5) * * *

(ii) * * *

(B) Quantitative information comparing the level of the nutrient in the product per specified weight with that of the reference food that it replaces (e.g., ''Calorie content has been reduced from 108 calories per 3 oz to 83 calories per 3 oz.'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(B) Quantitative information comparing the level of the sugar in the product per labeled serving with that of the reference food that it replaces (e.g., ''Sugar content has been lowered from 8 g to 6 g per serving.'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

(5) * * *

(ii) * * *

(B) Quantitative information comparing the level of the nutrient in the product per specified weight with that of the reference food that it replaces (e.g., ''Sugar content has been reduced from 17 g per 3 oz to 13 g per 3 oz.'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

8. Section 101.61 is amended by revising paragraphs (b)(6)(ii)(B), (b)(7)(ii)(B), and (c)(2)(iii) to read as follows:

§ 101.61 Nutrient content claims for the sodium content of foods.

* * * * *

(b) * * *

(6) * * *

(ii) * * *

(B) Quantitative information comparing the level of the sodium in the product per labeled serving with that of the reference food that it replaces (e.g., ''Sodium content has been lowered from 300 to 150 mg per serving.'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information

panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

(7) * * *

(ii) * * *

(B) Quantitative information comparing the level of sodium in the product per specified weight with that of the reference food that it replaces (e.g., ''Sodium content has been reduced from 217 mg per 3 oz to 150 mg per 3 oz.'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

(c) * * *

(2) * * *

(iii) If the food is not sodium free, the statement, ''not a sodium free food'' or ''not for control of sodium in the diet'' appears adjacent to the nutrition label of the food bearing the claim, or, if the nutrition label is on the information panel, it may appear elsewhere on the information panel in accordance with § 101.2.

* * * * *

9. Section 101.62 is amended by revising paragraphs (b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), (c)(5)(ii)(B), (d)(1)(ii)(F)(*2*), (d)(2)(iii)(E)(*2*), (d)(2)(iv)(E)(*2*), (d)(4)(i)(C)(*2*), (d)(4)(ii)(D)(*2*), (d)(5)(i)(C)(*2*), and (d)(5)(ii)(D)(*2*) to read as follows:

§ 101.62 Nutrient content claims for fat, fatty acid, and cholesterol content of foods.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(B) Quantitative information comparing the level of fat in the product per labeled serving with that of the reference food that it replaces (e.g., ''Fat content has been reduced from 8 g to 4 g per serving.'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

(5) * * *

(ii) * * *

(B) Quantitative information comparing the level of fat in the product per specified weight with that of the reference food that it replaces (e.g., ''Fat content has been reduced from 7.5 g per 3 oz to 5 g per 3 oz.'') is declared adjacent to the most prominent claim, to the nutrition label, or, if the nutrition label is located on the information panel, it may appear elsewhere on the information panel in accordance with § 101.2.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(B) Quantitative information comparing the level of saturated fat in the product per labeled serving with that of the reference food that it replaces (e.g., ''Saturated fat reduced from 3 g to 1.5 g per serving'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

(5) * * *

(ii) * * *

(B) Quantitative information comparing the level of saturated fat in the product per specified weight with that of the reference food that it replaces (e.g., ''Saturated fat content has been reduced from 2.5 g per 3 oz to 1.7 g per 3 oz.'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label in on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(F) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of the reference food that it replaces (e.g., ''Contains no cholesterol compared with 30 mg cholesterol in one serving of butter. Contains 13 g of fat per serving.'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

(2) * * *

(iii) * * *

(E) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of the reference food that it replaces (e.g., ''Cholesterol lowered from 30 mg to 5 mg per serving; contains 13 g of fat per serving.'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

(iv) * * *

(E) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of the reference food that it replaces (e.g., ''Cholesterol lowered from 30 mg to 5 mg per serving; contains 13 g of fat per serving.'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

(4) * * *

(i) * * *

(C) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of the reference food that it replaces (e.g., ''[labeled product] 50 mg cholesterol per serving; [reference product] 30 mg cholesterol per serving'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

(ii) * * *

(D) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of the reference food that it replaces (e.g., ''Cholesterol lowered from 55 mg to 30 mg per serving. Contains 13 g of fat per serving.'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

* * * * *

(5) * * *

(i) * * *

(C) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per specified weight with that of the reference food that it replaces (e.g., ''Cholesterol content has been reduced from 35 mg per 3 oz to 25 mg per 3 oz.'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

(ii) * * *

(D) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per specified weight with that of the reference food that it replaces (e.g., ''Cholesterol lowered from 30 mg to 22 mg per 3 oz of product.'') is declared adjacent to the most prominent claim or to the nutrition label, except that if the nutrition label is on the information panel, the quantitative information may be located elsewhere on the information panel in accordance with § 101.2.

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Dated: March 24, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–8067 Filed 3–31–95; 4:32 pm]

BILLING CODE 4160–01–P

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21 CFR Part 876

[Docket No. 92N–0382]

Gastroenterology-Urology Devices; Effective Date of Requirement for Premarket Approval of Testicular Prosthesis

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the testicular prosthesis, a generic type of a surgically implanted medical device intended to simulate the presence of a testicle within the male scrotum. Commercial distribution of this device must cease, unless a manufacturer or importer has filed with FDA a PMA or a notice of completion of a PDP for its version of the testicular prosthesis within 90 days of the effective date of this regulation. This regulation reflects FDA's exercise of its discretion to require a PMA or notice of completion of a PDP for preamendments devices.

EFFECTIVE DATE: April 5, 1995.

FOR FURTHER INFORMATION CONTACT: Mark D. Kramer, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of January 6, 1989 (54 FR 550), the agency identified the testicular prosthesis as one of the high-priority devices that would be subject to PMA or PDP requirements. This rulemaking is consistent with FDA's stated priorities and Congress' requirement that class III devices are to be regulated by FDA's premarket approval review. This action is being taken under the Medical Device Amendments of 1976 (Pub. L. 94–295). The preamble to this rule responds to comments received on the proposal to require the filing of a PMA or a notice of completion of a PDP.

This regulation is final upon publication and requires a PMA or a notice of completion of a PDP for all testicular prostheses classified under § 876.3750 (21 CFR 876.3750) and all devices that are substantially equivalent to them. A PMA or a notice of completion of a PDP for these devices must be filed with FDA within 90 days of the effective date of this regulation. (See section 501(f)(1)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351(f)(1)(A)).)

In the **Federal Register** of November 23, 1983 (48 FR 53012 at 53024), FDA issued a final rule classifying the testicular prosthesis into class III (premarket approval). Section 876.3750 of FDA's regulations setting forth the classification of the testicular prosthesis intended for medical use applies to: (1) Any testicular prosthesis that was in commercial distribution before May 28, 1976, and (2) any device that FDA has found to be substantially equivalent to a testicular prosthesis in commercial distribution before May 28, 1976.

In the **Federal Register** of January 13, 1993 (58 FR 4116), FDA published a proposed rule to require the filing, under section 515(b) of the act (21 U.S.C. 360e(b)), of a PMA or notice of completion of a PDP for the classified testicular prosthesis and all substantially equivalent devices (hereinafter referred to as the January 1993 proposed rule). In accordance with section 515(b)(2)(A) of the act, FDA included in the preamble to the proposal the agency's proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the premarket approval requirements of the act, and (2) the benefits to the public from use of the device (58 FR 4116 at 4118).

The preamble to the January 1993 proposed rule also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's proposed findings and, under section 515(b)(2)(B) of the act (21 U.S.C. 360e(b)(2)(B)), provided the opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any petition requesting a change in the classification of the testicular prosthesis was required to be submitted by January 28, 1993. The comment period initially closed on March 15, 1993. Because of one request, FDA extended the comment period for 60 days to May 14, 1993, to ensure adequate time for preparation and submission of comments (58 FR 15119, March 19, 1993).

FDA did not receive any petitions requesting a change in the classification of the testicular prosthesis. The agency did receive a total of five comments in response to the January 1993 proposed rule. These represent comments from individuals, manufacturers, and professional societies. The comments primarily addressed issues relating to the significant risks associated with the use of testicular prostheses, and the preclinical and clinical data needed to support a future PMA application.

II. Summary and Analysis of Comments and FDA's Response

A. General Comments

1. One comment stated that it appears that FDA has chosen solid silicone elastomer testicular implants for disparate treatment from other silicone implants, even though the basic chemistry, ingredients, and many manufacturing steps are very similar to other class II implantable silicone products. The comment requested that FDA describe the differences between silicone gel-filled and solid silicone elastomer testicular implants, and between silicone gel-filled mammary prostheses and solid silicone elastomer testicular prostheses.

FDA disagrees with this comment. The testicular prosthesis was classified into class III in 1983 because insufficient information existed to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device or to establish a performance standard to provide this assurance. The possible risks identified at the time of classification included: (1) The possible migration of silicone gel from the interior of the prosthesis to adjacent tissue (with or without rupture of the silicone elastomer shell), and (2) possible long-term toxic effects of the silicone polymers from which the prosthesis is fabricated. Therefore, requiring premarket approval for the testicular prosthesis is consistent with the intent to regulate this device as a class III device even in 1983. FDA notes that no requests for a change in

classification based on new information relevant to the classification of the device were submitted in response to the January 1993 proposed rule.

While FDA recognizes that some of the risks of silicone gel testicular prostheses may not necessarily apply to the solid silicone elastomer testicular prosthesis, the requirement that PMA's be submitted applies to the generic class of device comprised of all testicular prostheses. In addition, while FDA recognizes that some of the risks of silicone gel mammary prostheses may not necessarily apply to solid or silicone gel-filled testicular prostheses, the testicular prosthesis is similar in materials and construction to the silicone gel-filled breast prosthesis and, therefore, many of the risks associated with the use of the silicone gel-filled breast prosthesis may also be associated with the solid silicone and silicone gel-filled testicular prosthesis.

2. One comment stated that FDA's inclusion of prospective clinical data requirements in the proposed rule has resulted in a timetable for ultimate PMA submission that appears unreasonable and creates an undue burden on manufacturers. The comment stated that, had firms initiated PMA studies prior to the publication of the proposed rule, they could not have anticipated the new requirements.

FDA disagrees with this comment. More than 10 years have passed since these devices were classified into class III by final regulation. Furthermore, the risks to health detailed in the proposed rule remain consistent with those identified at the time of classification. FDA believes that, consistent with congressional intent, manufacturers have had notice and ample opportunity to gather the information necessary to provide reasonable assurance of the safety and effectiveness of these devices. It is not responsible to suggest that Congress intended manufacturers to remain passive and not develop PMA's until a regulation became final. Indeed, the act specifically requires submissions 30 months after the final classification of a preamendments device or within 90 days of a final regulation, whichever is later. (See section 501(f)(2)(B) of the act). Thus, it is clear that Congress intended that manufacturers anticipate a final regulation and be prepared to submit appropriate applications or discontinue distribution of their devices.

3. One comment stated that FDA's treatment of ear and testicular prostheses (both cosmetic implants) is disparate, because no psychological data was required for ear prostheses, and suggested that the proposed requirement for psychological data is unprecedented in the regulation process.

FDA disagrees with this comment. Ear and testicular prostheses are different devices, and have been classified by different panels. Ear prostheses, which are class II devices, were classified by the General and Plastic Surgery Panel. The review of such plastic surgery prostheses, such as chin prostheses, takes into consideration the quality of life of the patient. FDA notes that psychological data is only part of the effectiveness evaluation outlined in the proposed rule. Moreover, the request for such data is not unprecedented. Such data also were required in PMA's for silicone gel breast implants.

4. One comment stated that FDA should recognize that the solid silicone elastomer testicular prostheses available today are much improved in quality and are implanted using refined surgical techniques that minimize many risks implicated with their early use.

FDA acknowledges that the design of certain testicular prostheses and surgical techniques have evolved over time. FDA believes that neither the literature nor other data currently available to FDA definitively describe differences in the incidence of problems attributable to device design and/or variations in surgical procedures. Sufficient information exists identifying the risks detailed in the proposed rule as risks to health associated with the testicular prosthesis. FDA is requiring the submission of PMA's for this device in order to determine whether these risks can be controlled to provide reasonable assurance of the safety and effectiveness of these devices for their intended use. Even a decline in the incidence of these risks would not be a sufficient reason to abandon the regulation to require PMA's for testicular prostheses, absent a clear delineation and understanding of those risks.

5. One comment stated that Congress never intended ''old'' (preamendments) devices to be subjected to the same scrutiny as ''new'' devices under the premarket approval requirements.

FDA disagrees with this comment. FDA does not believe that Congress intended to differentiate between ''old'' and ''new'' devices with respect to the requirement that valid scientific evidence support a PMA approval. Neither sections 513(a)(3) nor 515(d) of the act (21 U.S.C. 360c(a)(3)) makes any distinction between ''old'' and ''new'' devices with regard to the requirements for approval. However, FDA does expect that more retrospective data, which, by its historical character, is generally less detailed and rigorous than prospectively gathered data, would be available for use in supporting the approval of ''old'' as opposed to ''new'' devices. Scientific evidence, including retrospectively gathered data, is acceptable to support a PMA approval, as long as the data constitute valid scientific evidence within the meaning of § 860.7(c)(2) (21 CFR 860.7(c)(2)).

6. One comment stated that the proposed rule did not address how amendments to PMA's submitted prior to panel review will be handled, and requested that the agency clarify the administrative procedures applicable to such PMA amendments.

PMA amendments submitted prior to advisory panel review will be evaluated to determine whether the information is sufficiently substantive to be considered a ''major'' amendment. A major amendment may extend the review period for up to 180 days as outlined in 21 CFR 814.37(c)(1).

7. One comment stated that FDA should refrain from promulgating the final rule without the specific guidance documents defining certain preclinical and clinical testing requirements.

FDA disagrees with this comment. Section 515(b) of the act does not require FDA to provide guidance for tests for PMA's prior to issuing a call for PMA's. While FDA outlined numerous manufacturing, preclinical, and clinical studies that suggest the content of a PMA for a testicular prosthesis, and issued a detailed guidance document for such PMA's in March 1993, that was discussed at a public meeting of the Gastroenterology and Urology Devices Advisory Panel in April 1993, these tests were suggestive and not intended to bind a PMA applicant to any specific study or set of studies. FDA's ''Draft Guidance for the Content of PMA Applications for Testicular Prostheses'' is available upon request from the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, 1350 Piccard Dr., Rockville, MD 20850.

8. One comment suggested that FDA should reopen the dialogue with industry, scientific, and medical communities in order to develop a consensus on the exact scope and nature of some of the preclinical, material, and clinical data requirements.

FDA agrees that the dialogue with industry and the scientific and medical communities should remain open regarding the information needed to support a PMA. FDA staff have been and continue to be accessible to discuss these requirements as requested.

B. Risks

9. Two comments suggested that the list of risks do not represent ''significant risks'' of testicular prosthesis implantation. The contention was that FDA has not clearly differentiated between significant risks, potential risks, and potential adverse effects, and that FDA should limit identification of risks to those which have been reasonably shown to be significant risks. The comment noted that the potential effects may be divided into short-term effects and long-term effects.

FDA disagrees with this comment. The proposed rule clearly differentiated risks that have been observed with testicular prostheses from those that are potential risks. Erosion, extrusion, displacement, fibrous capsular contracture, infection, and silicone gel leakage are risks that have been reported specifically for the testicular prosthesis. Carcinogenicity, human reproductive and teratogenic effects, immune related connective tissue disorders (immunological sensitization), biological effects of silica, and degradation of polyurethane foam covering some implants were identified as potential risks that, based on review of all available information, FDA believes are relevant to the testicular prosthesis. While FDA agrees that the risks of any implant fall into the broad categories of short-term and long-term risks, FDA believes that many of the risks identified are both short and long-term in nature, rather than exclusively short or long-term.

10. One comment suggested that since erosion, extrusion, and/or displacement are readily correctable by medical intervention, and since revision surgery is possible if explant is necessary, they should not be considered significant risks. Furthermore, the comment suggested that displacement is not a commonly reported adverse event, nor can the prosthesis migrate to a variety of locations within the body.

FDA disagrees with this comment. Insufficient information is available to determine the frequency of these events or their effects. Furthermore, because these risks can necessitate revision surgery or explant, FDA believes they are appropriately identified as significant risks. However, FDA agrees that it was not accurate to state that the prosthesis can ''migrate to a variety of locations within the body,'' but notes that the prosthesis can migrate to, in front of, or behind the contralateral testis or above the scrotum. The discussion of this risk has been modified accordingly.

11. Several comments stated that certain references cited in the proposed rule failed to demonstrate a causal relationship or a strong association between the implantation of a testicular prosthesis and the onset of risks, such as carcinogenicity, teratogenicity, and autoimmune diseases or connective tissue disorders.

FDA agrees that the references cited do not establish or refute the existence of a causal relationship between testicular prostheses and these risks. However, the literature cited by FDA provides evidence that these potential risks are associated with the device and are not trivial. Consequently, investigation of these risks in support of a PMA is necessary.

12. Two comments regarding the potential carcinogenicity of silicone were received. The comments make the contention that the animal studies reported are irrelevant because the observed sarcomas were solely due to physical (solid state) carcinogenesis and such risks are not applicable to humans.

FDA disagrees with these comments. Carcinogenicity is a putative risk secondary to implantation of any material. After review of all available information, the agency continues to believe that carcinogenicity is a potential risk that must be assessed in a PMA.

13. Three comments were on the subject of reproductive and teratogenic effects of the testicular prosthesis. These comments stated that, because the majority of prostheses are placed in middle-aged to elderly men who have had testicular removal as treatment for prostatic cancer, the human reproductive concern is irrelevant. These comments also stated that: (1) There are no reports of adverse effects of testicular prostheses on reproduction, or teratogenic effects on offspring of patients with such prostheses; (2) FDA misinterpreted the results of the literature cited; and (3) only silicone rubber or silicone gel products which contain or are synthesized from phenylmethyl silicones have potential effects on the male reproductive system.

FDA agrees with the comments that, to date, there are no published studies showing reproductive toxic effects or teratogenic effects associated with implantation of silicone materials. While some authors may have concluded that silicone is not a teratogen, FDA believes that there have been no well-designed studies using silicone testicular implants to determine potential human reproductive and teratogenic risks. FDA believes that information in the form of well-designed, single generation animal studies would be appropriate. Additionally, a PMA applicant may choose to submit appropriate human studies, or properly gathered and analyzed historical data, to establish the teratogenic potential of a silicone testicular prosthesis.

FDA agrees that the requirement for reproductive toxicity and teratogenicity information for PMA's should apply for those silicone rubber or silicone gel testicular prostheses which contain or are synthesized from phenylmethyl silicones, but the agency notes that this testing should also be conducted for other silicones until the reproductive and teratogenic profiles of these materials are established.

Finally, FDA agrees that the human reproductive concern may not apply to some testicular implant recipients. However, because a sizable portion of the implant population consists of young males, the concern is relevant. After reviewing all available data, FDA believes that the prolonged contact young males would have with the device presents a potential risk of reproductive effects and teratogenicity in humans.

14. Two comments stated that fibrous capsule formation is a normal wound healing process and, in the case of a testicular prosthesis, aids in keeping the implant in place and preventing migration to other parts of the body. The comments stated that this response occurs following implantation of almost any material and should not be considered a complication or adverse event associated with implantation of testicular prostheses. One comment stated that the incidence rate of fibrous capsular contracture is low, while the second stated that it has never been reported; both argued that it should not be listed as a significant risk.

FDA agrees that fibrous capsule formation is a normal wound healing process that can occur following implantation of almost any material. The agency disagrees, however, that fibrous capsular contracture is not a significant risk of the testicular prosthesis. Fibrous capsular contracture may result in excessive scrotal firmness, discomfort, pain, disfigurement, and displacement of the implant. Moreover, sufficient information exists to identify capsular contracture as a risk to health associated with the testicular implant. FDA believes that literature case reports and product complaints to the manufacturer do not necessarily capture all problems with medical devices.

15. Two comments suggested that the incidence of infection occurs at a rate consistent with other prosthetic implant surgeries and is seldom serious and,

therefore, that infection should not be considered a significant risk.

FDA disagrees with this comment. While the incidence of infection may be similar to other prosthetic devices, data are needed to specifically quantify its incidence and effect. Infection often leads to surgical removal of the implant and, therefore, is a potentially serious adverse event. After review of all available information, FDA continues to believe that infection is a significant risk associated with the testicular prosthesis.

16. Several comments were received on the subject of immune related connective tissue disorders or immunological sensitization. The comments make the following contentions: (1) Silicone stimulates a cell-mediated response only when administered under extraordinary conditions with an adjuvant; (2) there is no evidence to date that hard silicone elastomer has immune system adjuvant properties; (3) recent surveys of populations of women with connective tissue disorders have demonstrated no increase in disease prevalence in women with silicone breast implants; and (4) since scientific studies of women with silicone mammary prostheses have not shown a risk for development of connective tissue disorders, implantees with silicone testicular implants, which have less than one thirtieth the volume of a breast implant, should also not be at risk of connective tissue disorders.

FDA disagrees with these comments. The adjuvant effect of silicone gel is established in animal studies (Ref. 1). A recent study (Ref. 2) suggests that some women with silicone gel-filled breast prostheses may develop atypical immunologic reactions. Therefore, the agency continues to believe that the potential risk of immune related connective tissue disorders or immunological sensitization to implanted silicone testicular prostheses must be assessed in a PMA.

17. One comment stated that, while the scientific evidence to date does not demonstrate any cause and effect relationship between the testicular silicone implant and the subsequent development of autoimmune diseases, additional research needs to be completed.

FDA agrees with this comment.

18. Two comments stated that fumed, amorphous silica is tightly incorporated into the silicone elastomer shell of the testicular prostheses and, as a result, has very different (and reduced) biological activity.

FDA does not believe that there is sufficient information available to conclude that amorphous (fumed) silica does not produce the same kind of biological effects as crystalline silica. Furthermore, while the silica reinforcer material may not be extractable, it can be potentially exposed or shed in the form of particles from the elastomer by the process of abrasive wear. Therefore, FDA believes it is necessary that data demonstrating the safety of amorphous silica should be submitted in PMA's.

C. Benefits

19. One comment stated that it is important to recognize the value of a psychological benefit to patients using these devices, and that although it is more difficult to document and quantify a psychological benefit than a physical benefit, the preponderance of evidence showing a psychological benefit should not be underestimated nor undervalued.

FDA agrees with this comment, and has outlined the data needed to demonstrate the psychological benefit of the testicular prosthesis.

D. Manufacturing

20. One comment stated that cooperation between manufacturers and raw materials suppliers is necessary in order to obtain the manufacturing data required in a PMA.

FDA agrees that a cooperative relationship between manufacturers and raw materials suppliers will make the manufacturing data requirements easier to complete, but the agency notes that much of the materials information needed is on the finished, sterilized device.

21. One comment suggested that the manufacturing information section should be revised to allow the referencing of master file submissions, with more limited chemical characterization (e.g., Fourier Transform Infrared Spectroscopy (FTIR)) to confirm chemical composition, and mechanical testing to establish criteria for lot to lot variability in the cured product.

FDA disagrees with this comment. While proprietary manufacturing information and, perhaps, testing results may be part of a master file, additional information beyond formulation data is needed to document the safety of the materials used to construct the device. The additional information must consist of testing that is more sensitive to process variation than routine FTIR and mechanical tests on the cured product. The chemical, physical, and mechanical properties of the final device are affected not only by the starting raw materials, but by the chemical reaction, processing, and subsequent sterilization of these raw materials to make the final device. Only the device manufacturer, not the raw material supplier, has control over these processes. Consequently, referral to a device master file is not, in itself, adequate to assess the safety of the final sterilized device.

22. One comment noted that the supply of silicone raw materials is in jeopardy due to market withdrawal by several manufacturers. This comment suggested that a guidance document is needed to determine acceptable equivalency and data requirements.

FDA agrees that market withdrawal of silicone raw materials by several manufacturers may limit their availability. In the **Federal Register** of July 6, 1993 (58 FR 36207), FDA published a notice of availability of a guidance entitled ''Guidance for Manufacturers of Silicone Devices Affected by Withdrawal of Dow Corning Silastic Materials.'' The guidance describes the testing procedures to be followed by manufacturers in determining the equivalency of the materials.

E. Extraction Testing

23. One comment stated that the concept of exhaustive extraction and identification and quantification of all chemicals is relatively recent and thus requires method development and validation tantamount to the creation of a new science.

FDA disagrees with this comment. Numerous literature references describe extraction, identification, and quantification of individual silicone components from a variety of matrices using a variety of extraction solvents. While more limited, references exist for supercritical fluid extraction of the low molecular weight components from silicone elastomers. This is not a new science. FDA recognizes the difficulty in quantifying the amount of more than 35 separate components possible given the materials of interest, however present state-of-the-art allows this to be done.

24. One comment stated that FDA's request for molecular characterization of elastomer intermediates, outer shell, patch, and other component parts is not possible since, with the exception of the internal gel component, the parts are composed of solid cured elastomeric material. Furthermore, the comment stated that FDA's request for determination of residual volatile and nonvolatile cyclic compounds is a duplication of the requirement for analysis of extractables set forth in the preclinical data section of the proposed rule.

FDA agrees that this section was unclear. Because only a limited amount of chemical characterization can be

done on highly crosslinked polymers, it is important to characterize the immediate precursors to assure the quality of the base polymers and crosslinking agents. Regarding the determination of residual volatile and nonvolatile cyclic compounds, FDA agrees that this requirement should apply only to the individual structural components (outer shell, patch, internal gel, suture tab, polyurethane foam covering, and any other materials) as they are found in the final sterilized device as described in the preclinical data section, and should not apply to material intermediates and precursors.

25. One comment stated that the requirement of ''complete identification and quantification of all chemicals'' is untenable and unattainable, and should be modified to allow manufacturers to focus on identification and quantification of those substances whose presence in the finished device is known or reasonably anticipated based on composition of starting materials, known additives, reaction byproducts, and potential residues or contaminants from reagents used in processing.

FDA disagrees with this comment. Identification and quantification of the majority of chemicals below a molecular weight of 1,500 for silicones, as specified in the guidance, is possible. For other polymeric materials, different criteria may be acceptable and should be discussed with FDA on a case-by-case basis. While FDA agrees that knowledge of the formulation will assist in predicting what might be found in the final product, it will not delineate what or how much is actually in the final product nor assess how the manufacturing process will affect the final product. Knowledge of the formulation will also help in selecting the appropriate analytical methodology to be used for the analysis.

26. One comment stated that analysis of extractables and subsequent toxicity testing should be performed entirely on the final product, rather than separate structural components, and that FDA should establish threshold limits for extractives based on molecular characteristics.

FDA agrees with the first part of this comment, but notes that the analyst should be aware of the drawback to testing the final product in toto. For example, wide variation in the size of the structural components and their proximity to each other in the final device may result in erroneous conclusions being made regarding the chemical identity and source of extract components. Furthermore, the outside shell of an intact device may preclude exhaustive extraction of the interior gel within a reasonable period of time. Nor does testing of an intact device simulate a prosthesis that has ruptured in vivo. Separate testing of the individual components (materials/adhesives) of the final device is acceptable provided that the formulation of the test specimens is identical to the formulation of the materials used in the actual device and has been subjected to the same curing, post-curing, processing, and sterilization modes as the final whole device. Such testing would also allow an increase in specimen size to accommodate the collection of sufficient extract to perform any analytical and biocompatibility testing. Adjustment of the analytical results on a weight basis can then be calculated for the intact device. Regarding the establishment of threshold limits, FDA agrees in theory, but notes that present limited knowledge of toxicity based on molecular characteristics, especially with respect to siloxanes, makes the establishment of threshold limits impossible.

27. One comment stated that FDA should define what is meant by ''exhaustive extraction''.

FDA's ''Draft Guidance for the Content of PMA Applications for Testicular Prostheses'' provides detailed guidance on extraction for silicone implants. This guidance is available upon request from the Division of Small Manufacturers Assistance (HFZ–220) (see address above in section II A of this document).

F. Physical Testing

28. One comment stated that it seems unnecessary for FDA to require characterization of a physical or chemical property unless it is relevant to the intended use of the device.

FDA notes that no specific physical property tests were cited in the comment. FDA believes that all of the physical property tests identified in the proposed rule are relevant to the intended use of the device.

29. Two comments stated that the testicular prosthesis is too small to use the American Society for Testing and Materials (ASTM) test methods D412 and D624 as stated in the proposed rule, which specify specimen size and test methodology, based on a relationship between a ratio of thickness to area for a known coupon size and configuration. The comment suggested that the ASTM test methods can be used if slabs representing the device formulation are prepared for testing, according to both ASTM D412 and D624.

FDA agrees with this comment. The use of downsized dies for testing smaller samples obtained from finished sterilized devices may be employed. Test slabs mimicking the formulation of the materials used in the actual device and subjected to the same processing and sterilization modes could also be used. This would also apply to the samples used for testing of the integrity of adhered or fused joints. Evaluation of biodegradation effects on physical properties of elastomeric components could be accomplished by physical testing of test slabs explanted from animals.

30. One manufacturer noted that, in its experience, there has never been a case of a testicular implant failure from shell abrasion, and questioned the need for abrasion testing. The comment noted that only two explants had been received in the manufacturer's 9-year history with the device.

FDA disagrees with this comment. The fact that the manufacturer has received only two explanted devices in its 9-year history with the device is not a sufficient reason for dismissing abrasion as a potential failure mode for the device. In addition, other potential adverse effects are associated with abrasion, such as release of silica, inflammation, and granuloma formation.

G. Biocompatibility Testing

31. Two comments stated that mutagenicity and other toxicity testing be required to use mixtures of total extractables rather than individual components.

FDA agrees with this comment.

32. One comment noted that biodegradation testing may require miniature implants in animals, and suggested that the biodegradation studies should consist of microscopy studies, as well as chemical characterization which would be indicative of any degradation process.

FDA agrees with this comment.

33. One comment stated that histopathology should not be required for acute toxicity studies because the duration of the study is insufficient for developing tissue responses.

FDA agrees with this comment.

34. One comment stated that the preclinical requirements exceed the Tripartite Biocompatibility Guidance for Medical Devices (Ref. 3) and even the science of biocompatibility testing.

FDA disagrees with this comment. The agency notes that the biocompatibility requirements were based on the Tripartite Biocompatibility Guidance for Medical Devices.

35. One comment suggested that testing of nonpolar solvent extracts for a variety of biocompatibility tests is not

relevant to the devices currently on the market.

FDA disagrees with this comment. The proposed rule suggests that, at a minimum, ethanol, ethanol/saline (1:9), and dichloromethane should be used. Solvents should be chosen that are expected to solubilize the low molecular weight migrants in a reasonable period of time, thus facilitating exhaustive extraction—not to mimic in vivo conditions. Inasmuch as the chemical nature of all the migrants is not known, it is advisable to use solvents with varying chemical characteristics.

36. One comment suggested that for extracts composed of substances possessing innocuous structures and having low potential exposures, either no testing or only minimal testing should be required.

FDA disagrees with this comment. There is currently limited knowledge of what is and what is not ''innocuous'' based solely on chemical structure. The potential exposure can only be based on the maximum amount found in the final product by analytical tests. However, since polysiloxanes contain many, perhaps more than 35, chemical components as a byproduct of the synthesis, FDA agrees that it is difficult to individually test all components found in the extract. Therefore, FDA will accept testing of the mixtures of total extractables rather than of individual components.

37. One comment stated that the pharmacokinetics testing outlined requires methodology that does not currently exist for solid elastomeric silicone.

FDA agrees in general with the comment regarding solid elastomeric silicone products. However, if the solid elastomers contain leachable components, FDA believes they should be subjected to pharmacokinetics testing.

H. Clinical Investigations

38. Several comments suggested that many of the safety and effectiveness questions raised in the proposed rule can be addressed by evaluation of the available published clinical data, collection and analysis of retrospective epidemiological data and, if necessary, initiation of postmarketing followup studies.

FDA agrees that long-term retrospective epidemiological data, if collected properly, can be very useful in identifying long-term issues pertaining to safety and effectiveness. However, FDA believes it is necessary to require randomized (if at all possible), prospective studies to establish the short-term (in this case, up to 5 years or until physical maturity of the subject) safety and effectiveness data of the testicular implant. Only prospective data collected under a well-designed protocol can adequately address issues of safety and effectiveness relevant to the current population of implant users.

39. One comment stated that FDA focused almost exclusively on ''well-controlled studies'' while ignoring other valid scientific evidence as defined in § 860.7(c)(2).

FDA disagrees with this comment. Although § 860.7(f) does allow valid scientific evidence other than well-controlled investigations, § 860.7(e)(2) notes that ''The valid scientific evidence used to determine the effectiveness of a device shall consist *principally* [emphasis added] of well-controlled investigations.'' Therefore, well-controlled investigations are not only appropriate, but required, with other ''valid scientific evidence'' to be considered in a supporting role. In fact, FDA encourages the submission of all well-documented, valid retrospective data, which are presented in an organized manner.

40. One comment stated that FDA did not identify the duration of the clinical trial needed to establish safety and effectiveness, and suggested that while life-long data are ideally needed, some reduced amount of data should be identified to allow continued distribution of the testicular prosthesis.

FDA notes that the proposed rule suggested that 5-year clinical data, or data collected until the physical maturity of the subject (whichever occurs later) is needed, and that post-approval studies will be needed to address the various long-term issues identified.

41. Two comments requested clarification of what would constitute an adequate control, suggesting that the controls need to be tailored to the specific questions being asked, and that multiple control groups may therefore be necessary. One comment stated that meaningful control data may be either unimportant or impossible to obtain. One comment suggested that the patient should be his own control due to the difficulty in identifying and recruiting an appropriate control group for a male without one or both testicles.

FDA agrees that controls need to be tailored to the specific questions under investigation, and that multiple control groups may therefore be necessary. FDA strongly disagrees that ''meaningful control data may be unimportant.'' However, if ''meaningful control data may be * * * impossible to obtain'', the sponsor must rigorously demonstrate this for the relevant hypothesis. FDA agrees that it may be very difficult or impractical to recruit an appropriate control group. If the sponsor can satisfactorily demonstrate this to be the case, the subject may serve as his own control.

42. One comment noted that epidemiological clinical testing would require many years of patient enrollment to address only hypothetical concerns.

FDA agrees in part with this comment. FDA's ''Guidance to Manufacturers on the Development of Required Post-approval Epidemiologic Study Protocols for Testicular Implants'' permits manufacturers to document whether conditions are too rare to detect in a reasonable study. It also emphasizes that valid case-control studies and retrospective cohort studies are welcome. The guidance is available upon request from the Division of Small Manufacturers Assistance (HFZ–220) (see address above in section II A of this document).

43. One comment suggested that two generation human testing would be needed for teratology testing.

FDA believes that single generation animal studies, properly gathered and analyzed historical clinical data, or other valid scientific evidence would also be appropriate in determining the teratogenic potential of the testicular prosthesis.

I. Need for Psychological Data

44. One comment stated that the psychological benefits of the testicular prosthesis do not need to be evaluated using standardized testing and quantification of benefits because: (1) Studies are available in which patient satisfaction with testicular prostheses has been assessed; (2) the notion that the absence of one or both testicles produces adverse psychological effects on boys and adult males appears to be universally accepted; (3) several anecdotal reports strongly support the use of testicular prostheses for patients with congenital or other absence of testes; and (4) manufacturers make no claims regarding the psychological benefit of the device.

FDA disagrees with these comments. The studies cited were either so small as to be considered anecdotal, did not describe the assessment tools used, used no systematic assessment of the psychological impact of the prostheses, or consisted of particular subpopulations whose applicability to the general population would be questionable. These shortcomings underscore the need for FDA's request for a systematic assessment using reliable and valid measures of the

psychosocial consequences of testicular implants. Regardless of the actual claims made, it is clear that the testicular prosthesis is implanted for its psychosocial benefit to the implant recipient.

45. One comment stated that the intended use of the testicular prosthesis is to construct or reconstruct the size and contour of the male testicle, and that before and after size measurements would be sufficient to demonstrate effectiveness beyond any reasonable doubt. Furthermore, to expect manufacturers to conduct psychological testing in the absence of an FDA-recognized validated test instrument is not appropriate.

FDA disagrees with this comment. While before and after size measurements would be sufficient to show the anatomical effect of the implant, FDA believes that testicular prostheses are primarily used for the psychological benefit. FDA agrees with an earlier comment which stated that the psychological benefit should neither be underestimated nor undervalued. Finally, FDA notes that section 515(b) of the act does not require FDA to provide guidance for tests for PMA's prior to issuing a call for PMA's. While FDA outlined the principles of the psychological/psychosocial data needed in the proposed rule, in the ''Draft Guidance for Preparation of PMA Applications for Testicular Prostheses,'' and at a public meeting of the Gastroenterology and Urology Devices Advisory Panel in April 1993, these tests were suggestive and not intended to bind a PMA applicant to any specific study or set of studies.

46. One comment stated that requiring documentation of psychological benefits through further well-controlled presurgical, immediate postsurgical, and long-term psychological studies using standardized, validated test instruments is inappropriate and would appear to fall outside the intent of the act. Congress intended that medical devices perform as intended, not that they necessarily produce therapeutic effects.

FDA disagrees with this comment. Section 860.7(e)(1) states that there is ''reasonable assurance that a device is effective when it can be determined, based upon valid scientific evidence, that in a significant portion of the target population, the use of the device * * * will provide clinically significant results.'' FDA believes that it is necessary that a PMA demonstrate that the device has a beneficial therapeutic effect, rather than merely demonstrating that a device functions in accordance with its design.

47. One comment stated that psychological testing of the juvenile segment of the potential patient population is impractical and inappropriate, and that FDA should provide specific guidelines on any required psychological testing.

FDA agrees that it may not be feasible to effectively assess the psychosocial impact of testicular prosthesis implantation on children 12 years of age and younger. However, FDA believes that children over 12 years of age should be tested, since sexuality and the physical manifestations of sexuality are psychologically very important to pubescent and adolescent children. Manufacturers are encouraged to contact FDA regarding specific guidelines on this testing.

III. Findings With Respect to Risks and Benefits

A. Degree of Risk

1. *Extrusion/erosion of the testicular prosthesis*. Extrusion and erosion of the testicular implant through the scrotal wall are among the most common complications associated with the use of these devices. Prosthesis extrusion is usually associated with concurrent wound dehiscence in instances where the device was inserted through a scrotal incision. Skin erosion has been reported following implantation of the testicular prosthesis due to the presence of a Dacron suture tab, insertion of an oversized device, or aggressive dissection of the subdartos pocket, and could result in subsequent infection or device extrusion. It has been suggested that the rate of extrusion due to wound dehiscence is between 3 and 8 percent.

2. *Displacement of the testicular prosthesis*. Displacement, or migration, is another commonly reported adverse event. The prosthesis can migrate in front of or behind the contralateral testis or above the scrotum. Displacement can be caused by either inadequate scrotal distension prior to insertion or improper surgical placement/fixation.

3. *Fibrous capsular contracture*. Fibrous capsular contracture, the formation of a constricting fibrous layer around the prosthesis, has been associated with the presence of testicular implants. Capsular contracture may result in excessive scrotal firmness, discomfort, pain, disfigurement, and displacement of the implant.

Although the etiological factors of capsular contracture have not been reported with testicular implants, several factors have been suggested with the breast implant, including hematoma, infection, and foreign body reaction. Despite these reports, no single factor has been demonstrated to be the sole cause of contracture. The etiology of contracture is not understood.

4. *Infection*. Infection, a risk of any surgical implant procedure, is associated with the use of testicular implants. As in any implantation procedure, compromised device sterility and surgical techniques may be major contributing factors to this risk. Usually, the occurrence of infection necessitates the removal of the prosthesis. It has been suggested with the silicone gel-filled breast prosthesis that infection may also contribute to the early development of capsular contracture.

5. *Human carcinogenicity*. Carcinogenesis has been widely discussed as a reputed risk secondary to implantation of any material. Evidence from the literature indicates that, in animal studies, different forms of silicone have been associated with various types of cancer. Cases of several types of cancer in humans have been reported in association with various forms of implanted silicone.

6. *Human reproductive and teratogenic effects*. The effect of certain silicone compounds on the reproductive potential of the male is largely unknown. It has been reported that at least one form of organosiloxane, which is known to be present in some silicone gels, mimics estrogens in the male rat leading to rapid testicular atrophy.

Teratogenesis includes the origin or mode of production of a malformed fetus and the disturbed growth processes involved in the production of a malformed fetus. Studies using silicone fluid in animals have been minimal, and yield contradictory and inconclusive results. Prolonged contact with either the solid silicone device, or the silicone gel-filled membrane and its components, presents a potential risk of teratogenicity in humans. Additionally, the theoretical risk of abnormalities appearing later in life in normally appearing offspring also warrants investigation.

The risk of adverse reproductive and teratogenic effects from testicular implants exists only in the subset of patients who have a single prosthesis with a unilateral, functional testicle.

7. *Immune related connective tissue disorders—immunological sensitization*. Immunological sensitization may be a serious risk associated with the implantation of a testicular prosthesis. Immune related connective tissue disorders have been reported in women who have silicone gel-filled prostheses or who have had silicone injections in augmentation mammoplasty. There are clinical reports of several patients who

have undergone augmentation mammoplasty with silicone gel-filled breast prostheses and later presented with connective tissue disease-like syndromes. Because testicular prostheses consist of similar silicone elastomers and gels, further study of the potential risk of immune related connective tissue disorders in humans with these implants is warranted.

8. *Biological effects of silica*. Amorphous (fumed) silica is bound to the silicone in the elastomer of the testicular prosthesis, and may be fibrogenic and immunogenic. Fumed silica and the silicone shell each elicit cellular responses in rats. The biological effects of silica, particularly the immunologic component of these reactions, present a potential risk and need to be examined.

The following potential risk pertains only to the gel-filled silicone rubber testicular prosthesis:

9. *Silicone gel leakage and migration*. Silicone gel leakage and migration from the silicone elastomer envelope, either from rupture of the envelope or by leaking of the gel through the envelope (gel ''bleed''), are also significant risks of silicone gel-filled testicular prostheses. Rupture of the envelope with gel leakage and subsequent migration may be secondary to surgical technique or mechanical stresses such as routine manual massage, trauma, and wear on the envelope, and necessitates removal of the prosthesis. In addition to the above, silicone gel-filled breast implants, which are similar to testicular implants in materials and construction, are reported to ''bleed'' micro amounts of silicone through the intact silicone elastomer shell into the surrounding tissues. Although diffusion of silicone gel through the elastomer shell has not specifically been measured in the testicular prosthesis, gel bleed continues to be a theoretical risk with this device and needs to be evaluated. Migration of the gel into the human body presents the potential for development of adverse effects such as granulomas or lymphadenopathy. The ultimate fate of migrating silicone gel within the body is currently not well understood.

The following potential risk is associated only with those testicular prostheses that are polyurethane foam covered:

10. *Degradation of polyurethane foam*. The polyurethane foam material that has been used to cover some testicular prostheses is known to degrade over time with a potential breakdown product of 2,4 diaminotoluene (TDA), a known carcinogen in animals. The fate of the degraded product in vivo is unknown to date, and the use of this material in testicular implants may have been discontinued. Case reports of the polyurethane foam covered silicone gel-filled breast implant indicate that there is greater difficulty with the removal of this type of prosthesis due to a fragmented polyurethane shell and/or capsular tissue ingrowth. Foreign body responses have been reported concurrent with the use of the polyurethane foam covered testicular prosthesis in humans.

B. Benefits of the Device

The testicular prosthesis is intended to simulate the presence of a testicle within the male scrotum, and is indicated in subjects who are missing one or both testes due to either congenital or acquired reasons. Testicular prosthesis implantation is a discretionary surgical procedure performed for psychological, rather than for other medical reasons.

Testicular prostheses are commonly used to correct congenital anomalies in young males who are born without one or both testicles (i.e., testicular agenesis or atrophy). Additionally, such devices are often implanted subsequent to removal of one or both testes for one of several reasons: Malignant cancer of the prostate, testicular cancer, testicular torsion, cryptorchidism, failed orchiopexy, epididymitis/orchitis, or testicular trauma.

Men facing orchiectomy (removal of the testicles) may experience depression that accompanies this degenerative change in body image. Such feelings of depression have been equated to the experiences of women who have undergone mastectomy or hysterectomy. Shame and feelings of inferiority are common, and can lead to anxiety, personality changes, changes in one's customary lifestyle, fear of sexual rejection, and psychogenic impotence. It has also been reported that a visible defect in a child's genital region may result in feelings of inferiority, leading to social isolation. Such occurrences may produce psychologic problems, and have an affect upon the child's emotional development and sexual identity. Implantation of a testicular prosthesis may help to alleviate such feelings in males of all ages, thereby improving quality of life. The studies which have been published indicate that recipients of testicular prostheses exhibit a high degree of satisfaction with their surgery.

IV. Final Rule

Under section 515(b)(3) of the act, FDA is adopting the findings as published in the preamble to the proposed rule and is issuing this final rule to require premarket approval of the generic type of device, the testicular prosthesis, by revising § 876.3750(c).

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed with FDA within 90 days of the effective date of this regulation for any testicular prosthesis that was in commercial distribution before May 28, 1976, or that has been found by FDA to be substantially equivalent to such a device on or before the 90th day past the effective date of this regulation. An approved PMA or declared completed PDP is required to be in effect for any such device on or before 180 days after FDA files the application. Any other testicular prosthesis that was not in commercial distribution before May 28, 1976, or that has not, on or before 90 days after the effective date of this regulation, been found by FDA to be substantially equivalent to a testicular prosthesis that was in commercial distribution before May 28, 1976, is required to have an approved PMA or declared completed PDP in effect before it may be marketed.

If a PMA or notice of completion of a PDP for a testicular prosthesis is not filed on or before the 90th day past the effective date of this regulation, that device will be deemed adulterated under section 501(f)(1)(A) of the act, and commercial distribution of the device will be required to cease immediately. The device may, however, be distributed for investigational use if the requirements of the investigational device exemption (IDE) regulations (21 CFR part 812) are met.

Under § 812.2(d) (21 CFR 812.2(d)) of the IDE regulations, FDA hereby stipulates that the exemptions from the IDE requirements in § 812.2(c)(1) and (c)(2) will no longer apply to clinical investigations of the testicular prosthesis. Further, FDA concludes that investigational testicular prostheses are significant risk devices as defined in § 812.3(m) and advises that, as of the effective date of § 876.3750(c), the requirements of the IDE regulations regarding significant risk devices will apply to any clinical investigation of a testicular prosthesis. For any testicular prosthesis that is not subject to a timely filed PMA or notice of completion of a PDP, an IDE must be in effect under § 812.20 on or before 90 days after the effective date of this regulation or distribution of the device for investigational purposes must cease. FDA advises all persons presently sponsoring a clinical investigation involving the testicular prosthesis to submit an IDE application to FDA no later than 60 days after the effective date

of this final rule to avoid the interruption of ongoing investigations.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) and (e)(4) 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.

VI. Analysis of Impacts

FDA has examined the impacts of the final 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 final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final 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. Because the manufacturers of these devices have been aware for a long time, more than 10 years, of the need to prepare PMA's for these devices, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857 and may be seen by interested persons between 9 a.m and 4 p.m. Monday through Friday.

1. Naim, J., and R.J. Lanzafame, ''The Adjuvant Effect of Silicone Gel on Antibody Formation in Rats,'' *Immunological Investigations*, 22(2):151–161, 1993.

2. Bridges, A. J., C. Conley, G. Wang, D. E. Burns, and F. B. Vasey, ''A Clinical and Immunologic Evaluation of Women With Silicone Breast Implants and Symptoms of Rheumatic Disease,'' *Annals of Internal Medicine*, 118(12):929–936, 1993.

3. Tripartite Biocompatibility Guidance for Medical Devices, Office of Device Evaluation General Program Memorandum #87–1, April 24, 1987.

List of Subjects in 21 CFR Part 876

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 876 is amended as follows:

PART 876—GASTROENTEROLOGY–UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 522, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 3601, 371).

2. Section 876.3750 is amended by revising paragraph (c) to read as follows:

§ 876.3750 Testicular prosthesis.

* * * * *

(c) *Date premarket approval application (PMA) or notice of product development protocol (PDP) is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before July 5, 1995, for any testicular prosthesis that was in commercial distribution before May 28, 1976, or that has on or before July 5, 1995, been found to be substantially equivalent to a testicular prosthesis that was in commercial distribution before May 28, 1976. Any other testicular prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: March 13, 1995.

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 95–8383 Filed 4–4–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8591]

RIN 1545–AT28

Valuation of Plan Distributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance to employers in determining the present value of an employee's benefit under a qualified defined benefit pension plan, for purposes of the applicable consent rules and for purposes of determining the amount of a distribution made in any form other than in certain nondecreasing annuity forms. These temporary regulations are issued to reflect changes to the applicable law made by the Retirement Protection Act of 1994 (RPA '94), which is part of the Uruguay Round Agreements Act of 1994. RPA '94 amended the law to change the interest rate, and to specify the mortality table, for the purposes described above. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective April 5, 1995.

These regulations apply to plan years beginning after December 31, 1994, except as provided in § 1.417(e)–1T(d)(8) and (9).

FOR FURTHER INFORMATION CONTACT: Linda S. F. Marshall, (202) 622–4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Short Description

The temporary regulations in this document set out rules for computing the amount of any benefit under a qualified defined benefit pension plan that is paid in any form other than certain annuity forms. These temporary regulations reflect changes made to the law in the Retirement Protection Act of 1994 (RPA '94) Pub. L. 103–465. Under the new law, if the annuity benefit an employee could receive under the plan is converted to a different form of benefit, the non-annuity benefit cannot be less than the value that would be determined using legally required assumptions regarding life expectancy (mortality table) and interest rate. This ensures that the non-annuity benefit will not be less valuable than the annuity benefit.

Under these temporary regulations, the mortality table used under the new law is the mortality table published by the IRS (currently a mortality table commonly used by state insurance commissioners). The interest rate used under the new law is the interest rate on 30-year Treasury securities, as published by the IRS. These temporary regulations allow an employer to choose a monthly, quarterly, or annual period during which the plan's interest rate remains constant, and allow an

employer to determine the rate up to five months before the period begins.

These temporary regulations provide that, for most pension plans in place on December 7, 1994, the employer can choose to have the new law become effective any time between December 8, 1994, and the first day of the first plan year beginning after December 31, 1999. These temporary regulations also specify how employers can amend their pension plans to change the mortality table and interest rate used to compute the amount of a distribution, without causing any prohibited reduction in benefits.

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 417(e). Section 417(e) was amended by RPA '94. These temporary regulations provide guidance related to the determination of the present value of an employee's benefit under a qualified defined benefit pension plan in accordance with the rules of section 417(e)(3).

The rules of section 417(e)(3) are also relevant to the application of section 411(a)(11) and section 415(b). Section 411(a)(11) provides that a participant's benefit with a present value that exceeds $3,500 can be immediately distributed to a participant only with the participant's consent. Under section 411(a)(11)(B), as amended by RPA '94, the present value of a participant's benefit is calculated using the rules of section 417(e)(3). Section 415(b) limits the maximum benefit that can be provided under a qualified defined benefit plan. Under section 415(b)(2)(E)(ii), as amended by RPA '94, the minimum interest rate permitted to be used for certain purposes to determine compliance with the limit under section 415(b) is the applicable interest rate as defined in section 417(e)(3). Because the rules of section 417(e)(3) affect the application of sections 411(a)(11)(B) and 415(b)(2)(E)(ii), the guidance provided by these temporary regulations is relevant to the application of those provisions.

Explanation of Provisions

Section 417(e) restricts the ability of certain qualified retirement plans to distribute a participant's benefit under the plan without the consent of the participant and, in many cases, the participant's spouse. The application of these restrictions is determined based on the present value of the participant's benefit. Prior to amendments made by RPA '94, section 417(e)(3) restricted the interest rate to be used under a plan to calculate the present value of a participant's benefit, but did not impose any restrictions on the mortality table to be used for that purpose.

Under § 1.417(e)–1(d), prior to amendment by these temporary regulations, the interest rate limitations of section 417(e)(3) were applied in determining whether participant or spousal consent to a distribution was necessary, in determining the present value of any accrued benefit, and in determining the amount of many types of distributions. Further, under those regulations, the present value of any optional form of benefit could not be less than the present value of the normal retirement benefit determined in accordance with the interest rate restrictions of section 417(e)(3). Section 767 of RPA '94 modified section 417(e)(3) to provide that the present value of a participant's benefit is not less than the present value calculated by using the applicable mortality table and the applicable interest rate.

Applicable Mortality Table

The applicable mortality table under section 417(e)(3) is defined as the table prescribed by the Secretary based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5)). Currently, the prevailing commissioners' standard table is the 1983 Group Annuity Mortality Table. See Rev. Rul. 92–19, 1992–1 C.B. 227. These temporary regulations provide that the applicable mortality table as described above is to be prescribed by the Commissioner in revenue rulings, notices or other documents of general applicability. That table is set forth in Rev. Rul. 95–6, 1995–4 I.R.B. 22.

Applicable Interest Rate

Under section 417(e)(3), the applicable interest rate is defined as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. These temporary regulations provide that the applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month. Currently, this interest rate is the interest rate published in Federal Reserve releases G.13 and H.15 as the average yield on 30-year Treasury Constant Maturities for the month. The interest rates for July 1994 through February 1995 are specified as follows: 7.58 percent for July 1994, 7.49 percent for August 1994, 7.71 percent for September 1994, 7.94 percent for October 1994, 8.08 percent for November 1994, 7.87 percent for December 1994 (see Notice 95–6, 1995–5 I.R.B. 47), 7.85 percent for January 1995 (see Notice 95–9, 1995–10 I.R.B. 10), and 7.61 percent for February 1995 (see Notice 95–11, 1995–13 I.R.B. 8). The Commissioner will continue to publish this interest rate for each month, shortly after the end of the month.

The interest rate on 30-year Treasury Constant Maturities published monthly in Federal Reserve releases G.13 and H.15 can also be obtained by telephone from the Public Information Department of the Federal Reserve Bank of New York at (212) 720–6130 (not a toll-free number). Information regarding subscriptions to Federal Reserve releases G.13 and H.15 can be obtained from the Publications Department of the Federal Reserve Board of Governors at (202) 452–3244 (not a toll-free number).

Time for Determining Applicable Interest Rate

Section 417(e)(3)(A)(ii)(II) provides that the applicable interest rate for distributions made during a month is the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. These temporary regulations permit selection of a monthly, quarterly or annual period during which the applicable interest rate remains constant. Permitting selection of such a quarterly or annual stability period allows plans to offer greater benefit stability than is provided by the statutory rule, under which the applicable interest rate changes monthly.

These temporary regulations provide that the applicable interest rate for the stability period may be determined as the 30-year Treasury rate for any one of the five calendar months preceding the first day of the stability period. Permitting this ''lookback'' of up to five months provides added flexibility and gives plan administrators and participants more time to comply with applicable notice and election requirements using the actual interest rate (instead of an estimate).

Thus, a plan may change the applicable interest rate monthly, quarterly, or annually, and may determine the rate with reference to one of the five months preceding the month, quarter, or year. For example, if an employer with a calendar year plan wishes to use the same interest rate for

all distributions in the plan year (i.e., the annual stability period) and wishes to provide 90 days for employee notices based on the actual interest rate, the plan can provide that the applicable interest rate for the entire plan year is the 30-year Treasury rate specified by the Commissioner for the prior August (i.e., five calendar months before January 1, the first day of the plan year).

Effective Dates

These temporary regulations are generally effective for plan years beginning after December 31, 1994.

Under section 417(e)(3)(B) and these temporary regulations, the general effective date for the RPA '94 rules is delayed for certain plans until the first plan year that begins after December 31, 1999, unless an employer takes earlier action. The delayed effective date applies to a plan adopted and in effect before December 8, 1994, if the provisions of the plan in effect on December 7, 1994, met the requirements of section 417(e)(3) as in effect on December 7, 1994. For such a plan, the present value of a distribution made before the first day of the first plan year that begins after December 31, 1999, is calculated under the provisions of the plan in effect on December 7, 1994, if the annuity starting date for the distribution occurs before the date a plan amendment applying both the applicable mortality table and the applicable interest rate rules added by RPA '94 is adopted or, if later, is made effective.

These temporary regulations restate the rules applicable to plan years beginning before January 1, 1995, without substantive change. Those pre-1995 rules also apply to later plan years, to the extent that the application of the RPA '94 rules is delayed as described above.

In addition, section 767(d)(1) of RPA '94 permits an employer to elect to accelerate the effective date of the RPA '94 rules, and hence these temporary regulations, in order to apply the RPA '94 rules to distributions with annuity starting dates occurring after December 7, 1994, in plan years beginning before January 1, 1995. An employer that makes a plan amendment applying the applicable mortality table and the applicable interest rate rules of these regulations is treated as making this election as of the date the plan amendment is adopted or, if later, is made effective.

Relationship With Section 411(d)(6)

Section 411(d)(6) provides that a plan does not satisfy the requirements of section 411 if the accrued benefit of a participant is decreased by a plan amendment. In general, a plan amendment that changes the interest rate or the mortality assumptions used for purposes of determining the amount of any accrued benefit is subject to section 411(d)(6). Consistent with regulations in effect prior to amendment by these temporary regulations, these temporary regulations provide limited section 411(d)(6) relief for certain plan amendments that change the time for determining the applicable interest rate. A plan amendment that changes the time for determining the applicable interest rate will not be treated as violating section 411(d)(6), if each distribution made until one year after the later of the amendment's effective date or the amendment's adoption date is calculated using the time for determining the applicable interest rate as provided before or after the amendment, whichever produces the larger benefit. For this purpose, all other plan provisions must be applied as in effect after the amendment.

For example, assume that a calendar year plan is amended in March 1995, effective July 1, 1995, to change the interest rate used to determine the present value of plan distributions from the PBGC interest rate determined as of January 1 of the plan year that contains the annuity starting date, to the 30-year Treasury security interest rate for August of the year before the plan year that contains the annuity starting date. The plan amendment will not be treated as violating section 411(d)(6) if each distribution with an annuity starting date after June 30, 1995, and before July 1, 1996, is calculated using the 30-year Treasury rate for August of the year before the plan year that contains the annuity starting date, or the 30-year Treasury rate for January of the plan year that contains the annuity starting date, whichever produces the larger benefit.

Section 767(d)(2) of RPA '94 provides that a participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) merely because the benefit is determined in accordance with the applicable interest rate rules and the applicable mortality table rules of section 417(e)(3)(A), as amended by RPA '94. These temporary regulations provide that an interest rate may be eliminated under this section 411(d)(6) relief rule if that interest rate is the PBGC interest rate or a rate based on the PBGC interest rate. The PBGC has advised the Service and Treasury that it has not made any decision at this time on whether it will continue to publish the relevant interest rates after the year 2000. Therefore, in amending plans to comply with these temporary regulations, employers should not rely on the continued publication of these rates by the PBGC beyond the year 2000.

These temporary regulations further provide that, where a plan provided for the use of an interest rate not based on the PBGC interest rate prescribed by section 417(e)(3) as in effect before amendments made by RPA '94, a plan amendment that eliminates the use of that interest rate and the associated mortality table may result in a reduction of a participant's accrued benefit, which would violate the requirements of section 411(d)(6). These temporary regulations provide examples of the application of section 411(d)(6) and the special rule of section 767(d)(2) of RPA '94, including an example illustrating the use of a phase-in that provides for a smoother transition from the plan's former terms to the new rules.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Linda S. F. Marshall, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.417(e)–1T also issued under 26 U.S.C. 417(e)(3)(A)(ii)(II).

Par. 2. In § 1.417(e)–1, paragraph (d) is revised to read as follows:

§ 1.417(e)–1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

* * * * *

(d) *Present value requirement.* For rules regarding the present value of a participant's accrued benefit and related matters, see § 1.417(e)–1T(d).

* * * * *

Par. 3. § 1.417(e)–1T is added to read as follows:

§ 1.417(e)–1T Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417 (Temporary).

(a) through (c) [Reserved].

(d) *Present value requirement*—(1) *General rule.* A defined benefit plan must provide that the present value of any accrued benefit and the amount (subject to sections 411(c)(3) and 415) of any distribution, including a single sum, must not be less than the amount calculated using the applicable interest rate described in paragraph (d)(3) of this section (determined for the month described in paragraph (d)(4) of this section) and the applicable mortality table described in paragraph (d)(2) of this section. The present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit determined in accordance with the preceding sentence. The same rules used for the plan under this paragraph (d) must also be used to compute the present value of the benefit for purposes of determining whether consent for a distribution is required under paragraph (b) of this section.

(2) *Applicable mortality table.* The applicable mortality table is the mortality table based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5)), that is prescribed by the Commissioner in revenue rulings, notices, or other guidance, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(3) *Applicable interest rate*—(i) *General rule.* The applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(ii) *Example.* This example illustrates the rules of this paragraph (d)(3):

Example. Plan A is a calendar year plan. For its 1995 plan year, Plan A provides that the applicable mortality table is the table described in Rev. Rul. 95–6, 1995–4 I.R.B. 22, and that the applicable interest rate for Plan A is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for the first full calendar month preceding the calendar month that contains the annuity starting date. Participant P is age 65 in January 1995, which is the month that contains P's annuity starting date. P has an accrued benefit payable monthly of $1,000 and has elected to receive a distribution in the form of a single sum in January 1995. The annual interest rate on 30-year Treasury securities as published by the Commissioner for December 1994 is 7.87 percent. To satisfy the requirements of section 417(e)(3) and this paragraph (d), the single sum received by P may not be less than $111,351.

(4) *Time for determining interest rate*—(i) *General rule.* The applicable interest rate to be used for a distribution is the rate determined under paragraph (d)(3) of this section for the applicable lookback month. The applicable lookback month for a distribution is the lookback month (as described in paragraph (d)(4)(iii) of this section) for the month (or other longer stability period described in paragraph (d)(4)(ii) of this section) that contains the annuity starting date for the distribution. The time for determining the applicable interest rate for each participant's distribution must be determined in a consistent manner that is applied uniformly to all participants in the plan.

(ii) *Stability period.* A plan must specify the period for which the applicable interest rate remains constant. This stability period may be one calendar month, one plan quarter, or one plan year.

(iii) *Lookback month.* A plan must specify the lookback month that is used to determine the applicable interest rate. The lookback month may be the first, second, third, fourth, or fifth full calendar month preceding the first day of the stability period.

(iv) *Additional determination dates.* The Commissioner may prescribe, in revenue rulings, notices or other guidance, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*)), other times that a plan may provide for determining the applicable interest rate.

(v) *Example.* This example illustrates the rules of this paragraph (d)(4).

Example. Employer X maintains Plan A, a calendar year plan. Employer X wishes to amend Plan A so that the applicable interest rate will remain fixed for each plan quarter, and so that the applicable interest rate for distributions made during each plan quarter can be determined approximately 80 days before the beginning of the plan quarter. To comply with the provisions of this paragraph (d)(4), Plan A is amended to provide that the applicable interest rate is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for the fourth calendar month preceding the first day of the plan quarter during which the annuity starting date occurs.

(5) *Use of alternative interest rate and mortality table.* If a plan provides for use of an interest rate or mortality table other than the applicable interest rate or the applicable mortality table, the plan must provide that a participant's benefit must be at least as great as the benefit produced by using the applicable interest rate and the applicable mortality table. For example, where a plan provides for use of an interest rate of 7% and the UP–1984 Mortality Table (see § 1.401(a)(4)–12, *Standard mortality table*) in calculating single-sum distributions, the plan must provide that any single-sum distribution is calculated as the greater of the single-sum benefit calculated using this actuarial basis (i.e., 7% and the UP–1984 Mortality Table) and the single sum calculated using the applicable interest rate and the applicable mortality table.

(6) *Exceptions.* This paragraph (d) (other than the provisions relating to section 411(d)(6) requirements in paragraph (d)(10) of this section) does not apply to the amount of a distribution under a nondecreasing annuity payable for a period not less than the life of the participant or, in the case of a QPSA, the life of the surviving spouse. A nondecreasing annuity includes a QJSA, QPSA and an annuity that decreases merely because of the cessation or reduction of Social Security supplements or qualified disability payments (as defined in section 411(a)(9)).

(7) *Defined contribution plans.* Because the accrued benefit under a defined contribution plan equals the account balance, a defined contribution plan is not subject to the requirements of this paragraph (d), even though it is subject to section 401(a)(11).

(8) *Effective date*—(i) *In general.* This paragraph (d) is effective for distributions with annuity starting dates in plan years beginning after December 31, 1994.

(ii) *Optional delayed effective date of Retirement Protection Act of 1994 (RPA '94)(108 Stat. 5012) rules for plans adopted and in effect before December 8, 1994.* For a plan adopted and in effect before December 8, 1994, the application of the rules relating to the

applicable mortality table and applicable interest rate under paragraphs (d) (2) through (4) of this section is delayed to the extent provided in this paragraph (d)(8)(ii), if the plan provisions in effect on December 7, 1994, met the requirements of section 417(e)(3) and § 1.417(e)–1(d) as in effect on December 7, 1994 (as contained in 26 CFR part 1 revised April 1, 1995). In the case of a distribution from such a plan with an annuity starting date that precedes the optional delayed effective date described in paragraph (d)(8)(iv) of this section, and that precedes the first day of the first plan year beginning after December 31, 1999, the rules of paragraph (d)(9) of this section (which generally apply to distributions with annuity starting dates in plan years beginning before January 1, 1995) apply in lieu of the rules of paragraphs (d) (2) through (4) of this section. The interest rate under the rules of paragraph (d)(9) of this section is determined under the provisions of the plan as in effect on December 7, 1994, reflecting the interest rate or rates published by the Pension Benefit Guaranty Corporation (PBGC) and the provisions of the plan for determining the date on which the interest rate is fixed. The above described interest rate or rates published by the PBGC are those determined by the PBGC (for the date determined under those plan provisions) pursuant to the PBGC's methodology under the regulations of the PBGC for determining the present value of a lump sum distribution on plan termination under 29 CFR Part 2619 that were in effect on September 1, 1993 (as contained in 29 CFR part 2619 revised July 1, 1994).

(iii) *Optional accelerated effective date of RPA '94 rules.* This paragraph (d) is also effective for a distribution with an annuity starting date after December 7, 1994, during a plan year beginning before January 1, 1995, if the employer elects, on or before the annuity starting date, to make the rules of this paragraph (d) effective with respect to the plan as of the optional accelerated effective date described in paragraph (d)(8)(iv) of this section. An employer is treated as making this election by making the plan amendments described in paragraph (d)(8)(iv) of this section.

(iv) *Determination of delayed or accelerated effective date by plan amendment adopting RPA '94 rules.* The optional delayed effective date of paragraph (d)(8)(ii) of this section, or the optional accelerated effective date of paragraph (d)(8)(iii) of this section, whichever is applicable, is the date plan amendments applying both the applicable mortality table of paragraph (d)(2) of this section and the applicable interest rate of paragraph (d)(3) of this section are adopted or, if later, are made effective.

(9) *Plan years beginning before January 1, 1995*—(i) *Interest rate.* (A) For distributions made in plan years beginning after December 31, 1986, and before January 1, 1995, the following interest rate described in paragraph (d)(9)(i)(A)(*1*) or (*2*) of this section, whichever applies, is substituted for the applicable interest rate for purposes of this section—

(*1*) The rate or rates that would be used by the PBGC for a trusteed single-employer plan to value the participant's (or beneficiary's) vested benefit (PBGC interest rate) if the present value of such benefit does not exceed $25,000; or

(*2*) 120 percent of the PBGC interest rate, as determined in accordance with paragraph (d)(9)(i)(A)(*1*) of this section, if such present value exceeds $25,000. In no event shall the present value determined by use of 120 percent of the PBGC interest rate result in a present value less than $25,000.

(B) The PBGC interest rate may be a series of interest rates for any given date. For example, the PBGC interest rate for immediate annuities for November 1994 is 6%, and the PBGC interest rates for the deferral period for that month are as follows: 5.25% for the first 7 years of the deferral period, 4% for the following 8 years of the deferral period, and 4% for the remainder of the deferral period. For November 1994, 120 percent of the PBGC interest rate is 7.2% (1.2 times 6%) for an immediate annuity, 6.3% (1.2 times 5.25%) for the first 7 years of the deferral period, 4.8% (1.2 times 4%) for the following 8 years of the deferral period, and 4.8% (1.2 times 4%) for the remainder of the deferral period. The PBGC interest rates are the interest rates that would be used (as of the date of the distribution) by the PBGC for purposes of determining the present value of that benefit upon termination of an insufficient trusteed single employer plan. Except as otherwise provided by the Commissioner, the PBGC interest rates are determined by PBGC regulations. See 29 CFR part 2619 for the applicable PBGC rates.

(ii) *Time for determining interest rate.* (A) Except as provided in paragraph (d)(9)(ii)(B) of this section, the PBGC interest rate or rates are determined on either the annuity starting date or the first day of the plan year that contains the annuity starting date. The plan must provide which date is applicable.

(B) The plan may provide for the use of any other time for determining the PBGC interest rate or rates provided that such time is not more than 120 days before the annuity starting date if such time is determined in a consistent manner and is applied uniformly to all participants.

(C) The Commissioner may, in revenue rulings, notices or other guidance, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*)), prescribe other times for determining the PBGC interest rate or rates.

(iii) *No applicable mortality table.* In the case of a distribution to which this paragraph (d)(9) applies, the rules of this paragraph (d) are applied without regard to the applicable mortality table described in paragraph (d)(2) of this section.

(10) *Relationship with section 411(d)(6)*—(i) *In general.* Except as provided in this paragraph (d)(10), a plan amendment that changes the interest rate, the time for determining the interest rate, or the mortality assumptions used for the purposes described in paragraph (d)(1) of this section is subject to section 411(d)(6). But see § 1.411(d)-4, Q&A 2(b)(2)(v) (regarding plan amendments relating to involuntary distributions).

(ii) *Change in time for determining interest rate.* Notwithstanding the general rule of paragraph (d)(10)(i) of this section, if a plan amendment changes the time for determining the applicable interest rate (including an indirect change as a result of a change in plan year), the amendment will not be treated as reducing accrued benefits in violation of section 411(d)(6) merely on account of this change if the conditions of this paragraph (d)(10)(ii) are satisfied. Any distribution for which the annuity starting date occurs in the one-year period commencing at the time the plan amendment is effective (if the amendment is effective on or after the adoption date) must use the interest rate as provided under the terms of the plan after the effective date of the amendment, determined at either the date for determining the interest rate before the amendment or the date for determining the interest rate after the amendment, whichever results in the larger distribution. If the plan amendment is adopted retroactively (that is, the amendment is effective prior to the adoption date), the plan must use the interest rate determination date resulting in the larger distribution for the period beginning with the effective date and ending one year after the adoption date.

(iii) *Section 411(d)(6) relief for plan amendments pursuant to changes to section 417 made by RPA '94*—(A)

Replacement of PBGC interest rate. A participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) merely because of a plan amendment that changes any interest rate or mortality assumption used to calculate the present value of a participant's benefit under the plan (even if the amendment provides for temporary additional benefits to accommodate a more gradual transition from the plan's old interest rate to the new rules), if the following conditions are satisfied—

(*1*) The amendment replaces the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) as the interest rate used under the plan in determining the present value of a participant's benefit under this paragraph (d); and

(*2*) After the amendment is effective, the present value of a participant's benefit under the plan cannot be less than the amount calculated using the applicable mortality table and the applicable interest rate for the first full calendar month preceding the calendar month that contains the annuity starting date.

(B) *Replacement of non-PBGC interest rate*. The section 411(d)(6) relief provided in paragraph (d)(10)(iii)(A) of this section does not apply to a plan amendment that replaces an interest rate other than the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) as an interest rate used under the plan in determining the present value of a participant's benefit under this paragraph (d). Thus, the accrued benefit determined using that interest rate and the associated mortality table is protected under section 411(d)(6). For purposes of paragraphs (d)(10)(iii)(A) and (B) of this section, an interest rate is based on the PBGC interest rate if the interest rate is defined as a specified percentage of the PBGC interest rate or as the PBGC interest rate minus a specified number of basis points.

(C) *Plan amendment providing for prior determination date or up to two months earlier*. If the special rule of paragraph (d)(10)(iii)(A) of this section would apply to a plan except that the applicable interest rate is determined for a month other than the first full calendar month preceding the calendar month that contains the annuity starting date, a participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) if the applicable interest rate is determined for the calendar month that contains the date as of which the PBGC interest rate was determined immediately before the amendment, or for one of the two calendar months immediately preceding that month, or if the plan amendment satisfies the conditions of paragraph (d)(10)(ii) of this section.

(D) *Examples*. The provisions of this paragraph (d)(10)(iii) are illustrated by the following examples:

Example 1. On December 31, 1994, Plan A provided that all single-sum distributions were to be calculated using the UP–1984 Mortality Table and 100% of the PBGC interest rate for the date of distribution. On January 4, 1995, and effective on February 1, 1995, Plan A was amended to provide that all single-sum distributions are calculated using the applicable mortality table and the annual interest rate on 30-year Treasury securities for the first full calendar month preceding the calendar month that contains the annuity starting date. This amendment of Plan A is not considered to reduce the accrued benefit of any participant in violation of section 411(d)(6).

Example 2. On December 31, 1994, Plan B provided that all single-sum distributions were to be calculated using the UP–1984 Mortality Table and an interest rate equal to the lesser of 100% of the PBGC interest rate for the date of distribution, or 6%. On January 4, 1995, and effective on February 1, 1995, Plan B was amended to provide that all single-sum distributions are calculated using the applicable mortality table and the annual interest rate on 30-year Treasury securities for the second full calendar month preceding the calendar month that contains the annuity starting date. The 6% interest rate provided for under the plan is not based on the PBGC interest rate. Therefore, to satisfy the requirements of section 411(d)(6), the plan must provide that the single-sum distribution payable to any participant must be no less than the single-sum distribution calculated using the UP–1984 Mortality Table and an interest rate of 6%, based on the participant's benefits under the plan accrued through January 31, 1995, and based on the participant's age at the annuity starting date.

Example 3. (a) Employer X maintains Plan C, a calendar year plan. As of December 7, 1994, Plan C provided for single-sum distributions to be calculated using the PBGC interest rate as of the annuity starting date for distributions not greater than $25,000, and 120% of that interest rate (but not an interest rate producing a present value less than $25,000) for distributions over $25,000. Employer X wishes to delay the effective date of the RPA '94 rules for a year, and to provide for an extended transition from the use of the PBGC interest rate to the new applicable interest rate under section 417(e)(3). On December 1, 1995, and effective on January 1, 1996, Employer X amends Plan C to provide that single-sum distributions are determined as the sum of—

(i) The single-sum distribution calculated based on the applicable mortality table and the annual interest rate on 30-year Treasury securities for the first full calendar month preceding the calendar month that contains the annuity starting date; and

(ii) A transition amount.

(b) The amendment provides that the transition amount for distributions in the years 1996–99 is a transition percentage of the excess, if any, of the amount that the single-sum distribution would have been under the plan provisions in effect prior to this amendment over the amount of the single sum described in paragraph (a)(i) of this *Example 3*. The transition percentages are 80% for 1996, decreasing to 60% for 1997, 40% for 1998 and 20% for 1999. The amendment also provides that the transition amount is zero for plan years beginning on or after the year 2000. Plan C is not considered to have reduced the accrued benefit of any participant in violation of section 411(d)(6) by reason of this plan amendment.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: March 15, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–8229 Filed 4–4–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 580

Civil Money Penalties—Procedures for Assessing and Contesting Penalties

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The purpose of this document is to change the address listed in § 580.6 of Regulations 29 CFR part 580, which is used for administrative hearing requests. This revision is being made in order to streamline the process by which hearing requests are acknowledged by consolidating all aspects of processing hearing requests into the operations of the office which issued the administrative determination upon which the request for a hearing is based.

EFFECTIVE DATE: This rule is effective April 5, 1995.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3506, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 219–8412. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule imposes no reporting or recordkeeping requirements on the public.

II. Background

Section 580.6 of the regulations requires that any person desiring to request an administrative hearing on a notice of determination issued by the Department of Labor (assessing civil money penalties for violations under section 12 of the FLSA relating to child labor, or repeated and willful violations of sections 6 and 7 relating to the minimum wage and overtime requirements of the FLSA) must do so in writing within 15 days after the date of receipt of the notice. Additionally, section 580.6 specifies that the written hearing request shall be made to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

This revision is being made in order to streamline the process by which hearing requests are acknowledged by consolidating all aspects of processing hearing requests into the operations of the office which issued the administrative determination upon which the request for a hearing is based. Accordingly, all such hearing requests are not to be made to the Wage and Hour official that issued the determination in care of the address of the office that originated the determination.

III. Summary of Rule

Section 580.6 of regulations, 29 CFR part 580, is amended to provide for a new address for purposes of requesting administrative hearings. Hearing requests are now directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. Under the amended regulation, these requests will be directed to the Wage and Hour Division official who issued the determination, at the address appearing on the determination notice.

Executive Order 12866

This rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866. The rule merely adopts a technical address change, which will facilitate the timeliness and handling of the hearing process. Accordingly, these changes are not expected to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1165, 5 U.S.C. 601 *et seq.* pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2). The rule simplifies the handling of hearing requests and will not have a significant economic impact on a substantial number of small entities.

Administrative Procedure Act

This regulation is procedural in nature. Accordingly, the Secretary, for good cause, finds pursuant to 5 U.S.C. 553(b)(3), that prior notice and public comment are unnecessary, impracticable, and contrary to the public interest.

The Secretary also for good cause finds, pursuant to 5 U.S.C. 553(d)(3), that this rule should take effect immediately because it is merely a technical procedural change which does not affect any substantive rights.

Document Preparation: This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 580

Administrative practice and procedure, Child labor, Employment, Labor, Law enforcement, Penalties.

For the reasons set forth above, 29 CFR part 580 is amended as set forth below.

Signed at Washington, DC, on this 30th day of March, 1995.

Maria Echaveste,

Administrator, Wage and Hour Division.

PART 580—CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES

1. The authority citation for part 580 continues to read as follows:

Authority: 29 U.S.C. 9a, 203, 211, 212, 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App.; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 13–71, 36 FR 8755; 5 U.S.C. 500, 503, 551, 559; sec. 9, Pub. L. 101–157, 103 Stat. 938; sec. 3103, Pub. L. 101–508.

2. Paragraph (a) of § 580.6 is revised to read as follows:

§ 580.6 Exception to determination of penalty and request for hearing.

(a) Any person desiring to take exception to the determination of penalty shall request an administrative hearing pursuant to this part. The exception shall be in writing to the official who issued the determination at the Wage and Hour Division address appearing on the determination notice, and must be received no later than 15 days after the date of receipt of the notice referred to in § 580.3 of this part. No additional time shall be added where service of the determination of penalties or of the exception thereto is made by mail.

* * * * *

[FR Doc. 95–8335 Filed 4–4–95; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 94–107]

RIN 2115–AF00

Ninth District Marine Inspection and Captain of the Port Zone Boundaries

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the descriptions of several Marine Inspection and Captain of the Port zone boundaries in the Ninth Coast Guard District to reflect recent organizational changes. These changes will clarify Coast Guard responsibilities with the Ninth District. These changes will not impact the type or level of Coast Guard services performed.

EFFECTIVE DATE: May 5, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council, (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 3406, Washington, DC 20593–0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: ENS Harry E. George, Office of Marine Safety, Security and Environmental

Protection (G–MPS–3), Room 1108, (202) 267–0491.

SUPPLEMENTARY INFORMATION:

Drafting Information: The principal persons involved in drafting this document are ENS Harry E. George, Project Manager, Port Safety and Security Division, and C.G. Green, Project Counsel, Office of Chief Counsel.

Background and Purpose

During 1994, the Coast Guard carried out three separate organizational changes that revised the Marine Inspection (MI) and Captain of the Port (COTP) zones of responsibility and consolidated and relocated MI and COTP offices for several units in the Ninth Coast Guard District. The Coast Guard is amending the descriptions of MI and COTP zone boundaries and offices in the Ninth Coast Guard District to reflect these recent organizational changes.

The Coast Guard is proceeding directly to a final rule under section 533(b)(3)(A) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), which excludes rulemakings relating to agency organization, procedure, or practice from the requirements of public notice and comment.

Discussion of Comments and Changes

Section 3.45–35, describing the Sturgeon Bay Marine Inspection Zone, and paragraph (c) of § 3.34–30, describing the Milwaukee Marine Inspection Zone, are being deleted. In February, 1994, the Sturgeon Bay Marine Inspection Zone was combined with the Milwaukee Inspection Zone and the Marine Inspection Office in Sturgeon Bay, Wisconsin was merged with the Marine Inspection Office in Milwaukee, Wisconsin. The new Milwaukee Marine Inspection Zone covers the same area and has the same boundaries as the Milwaukee Captain of the Port Zone, so the two zones and their offices can be described in a single CFR section. Paragraph (b) of § 3.45–30, therefore, is being revised to describe the boundaries and the office locations for both the new Milwaukee Marine Inspection Zone and the Milwaukee Captain of the Port Zone.

Section 3.45–45 is being revised to change the name of the St. Ignace Marine Inspection Zone to the Sault Ste. Marie Marine Inspection Zone. In July, 1994, the Marine Inspection Office in St. Ignace, Michigan was closed and a new Marine Inspection Office was opened in Sault Ste. Marie, Michigan, colocated with the Sault Ste. Marie Captain of the Port Office. The St. Ignace Marine Inspection Zone and the Sault Ste. Marie Captain of the Port Zone had the same boundaries, but each zone was named for the location of the office servicing it. The St. Ignace Marine Inspection Zone has therefore been renamed to Sault Ste. Marie Marine Inspection Zone, to reflect the change in office location, but with no change to the boundary description of the zone.

Sections 3.45–60, Chicago Captain of the Port Zone, and 3.45–80, Grand Haven Captain of the Port Zone, are being deleted. In July, 1994, Captain of the Port Zone Chicago and Captain of the Port Zone Grand Haven were combined into a single COTP zone, and the Captain of the Port Office in Grand Haven, Michigan was merged with the Captain of the Port Office in Chicago, Illinois. The area of the combined Chicago and Grand Haven COTP zones is now known as the Chicago Captain of the Port Zone and has the same boundaries as the Chicago Marine Inspection Zone. Section 3.45–15, describing the Chicago Marine Inspection Zone, therefore, is being revised to describe the boundaries and the office locations for both the Chicago Marine Inspection Zone and the new Chicago Captain of the Port Zone.

Regulatory Evaluation

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

Small Entities

This regulation is administrative in nature and is not expected to have any economic impact on small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule involves changes to names and descriptions of Marine Inspection and Captain of the Port zones of responsibility in the Ninth Coast Guard District and clearly does not have any environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 3

Organization and functions (Government agencies). For the reasons set out in the preamble, the Coast Guard amends Title 33, part 3, of the Code of Federal Regulations as follows:

PART 3—[AMENDED]

1. The authority citation for part 3 continues to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.45, 1.46.

2. Section 3.45–15 is revised to read as follows:

§ 3.45–15 Chicago Marine Inspection Zone and Captain of the Port Zone.

(a) The Chicago Marine Inspection Office and the Chicago Captain of the Port Office are located in Chicago, Illinois.

(b) The Chicago Marine Inspection Zone and the Chicago Captain of the Port Zone include those parts of Michigan, Indiana, Ohio, and Illinois within the following boundaries: From the Illinois-Wisconsin boundary at longitude 90° W.; thence due east to longitude 87° W.; thence due north to latitude 44°15′ N., thence northeasterly to latitude 44°43′ N., longitude 86°40′ W.; thence due east to longitude 84°30′ W.; thence due south to latitude 41° N.; thence due west to longitude 90° W.; thence due north to the starting point.

3. Section 3.45–30 is amended by removing paragraph (c) and revising paragraph (b) to read as follows:

§ 3.45–30 Milwaukee Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(b) The boundary of the Milwaukee Marine Inspection Zone and the Milwaukee Captain of the Port Zone starts at the Illinois-Wisconsin boundary at longitude 90° W.; thence due east to longitude 87° W.; thence due north to latitude 44°15′ N.; thence northeasterly to latitude 44°43′ N., longitude 86°40′ W.; thence due north to latitude 45°27′ N.; thence due west to longitude 88°30′ W.; thence due north to latitude 46°20′ N.; thence due west to longitude 90° W.; thence due south to the starting point.

§ 3.45–35 [Removed]

4. Section 3.45–35 is removed.

5. Section 3.45–45 is revised to read as follows:

§ 3.45–45 Sault Ste. Marie Marine Inspection Zone and Captain of the Port Zone.

(a) The Sault Ste. Marie Marine Inspection Office and the Sault Ste. Marie Captain of the Port Office are located in Sault Ste. Marie, Michigan.

(b) The boundary of the Sault Ste. Marie Marine Inspection Zone and the Sault Ste. Marie Captain of the Port Zone starts at the international boundary at latitude 44°43′ N.; thence due west to longitude 86°40′ W.; thence due north to latitude 45°27′ N.; thence due west to longitude 88°30′ W.; thence due north to latitude 46°20′ N.; thence northeasterly to the shore of Lake Superior at longitude 87°45′ W.; thence northerly to Manitou Island Light, located at latitude 47°25′ N., longitude 87°35′ W.; thence due north to the international boundary at longitude 87°35′ W.; thence southeasterly along the international boundary to the starting point.

§ 3.45–60 [Removed]

6. Section 3.45–60 is removed.

§ 3.45–80 [Removed]

7. Section 3.45–80 is removed.

Dated: February 8, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–8387 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 265

Demands for Testimony or Records in Certain Legal Proceedings

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule establishes a procedure for Postal Service response to subpoenas or other demands for Postal Service employees to testify about, or produce records concerning, Postal Service matters in private litigation or other proceedings in which the United States is not a party.

EFFECTIVE DATE: April 5, 1995.

FOR FURTHER INFORMATION CONTACT: Julie A. Holvik, Attorney, (312) 765–5230.

SUPPLEMENTARY INFORMATION: The rule provides that, in response to subpoenas or other demands for testimony or records concerning Postal Service matters in private litigation or other proceedings in which the United States is not a party, Postal Service employees may testify or produce records only if the General Counsel or the General Counsel's delegate authorizes compliance with the demand. In making this determination, the General Counsel or his or her delegate will consider whether compliance is in accordance with applicable laws, privileges, rules, authority, and regulations and would not be contrary to the interests of the United States.

On February 17, 1995, the Postal Service published a notice of proposed rulemaking (60 FR 8610–8612) with a 30-day comment period. No comments were received during the comment period. Accordingly, the rule is adopted as proposed.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Freedom of information, Government employees.

For the reasons set out above, 39 CFR part 265 is amended as follows.

PART 265—RELEASE OF INFORMATION

1. The authority citation for part 265 is revised to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

2. Section 265.12 is added to read as follows:

§ 265.12 Demands for testimony or records in certain legal proceedings.

(a) *Scope and applicability of this section.* (1) This section establishes procedures to be followed if the Postal Service or any Postal Service employee receives a demand for testimony concerning or disclosure of:

(i) Records contained in the files of the Postal Service;

(ii) Information relating to records contained in the files of the Postal Service; or

(iii) Information or records acquired or produced by the employee in the course of his or her official duties or because of the employee's official status.

(2) This section does not create any right or benefit, substantive or procedural, enforceable by any person against the Postal Service.

(3) This section does not apply to any of the following:

(i) Any legal proceeding in which the United States is a party;

(ii) A demand for testimony or records made by either House of Congress or, to the extent of matter within its jurisdiction, any committee or subcommittee of Congress;

(iii) An appearance by an employee in his or her private capacity in a legal proceeding in which the employee's testimony does not relate to the employee's official duties or the functions of the Postal Service; or

(iv) A demand for testimony or records submitted to the Postal Inspection Service (a demand for Inspection Service records or testimony will be handled in accordance with rules in § 265.11).

(4) This section does not exempt a request from applicable confidentiality requirements, including the requirements of the Privacy Act. 5 U.S.C. 552a.

(b) *Definitions.* The following definitions apply to this section:

(1) *Adjudicative authority* includes, but is not limited to, the following:

(i) A court of law or other judicial forums, whether local, state, or federal; and

(ii) Mediation, arbitration, or other forums for dispute resolution.

(2) *Demand* includes a subpoena, subpoena duces tecum, request, order, or other notice for testimony or records arising in a legal proceeding.

(3) *Employee* means a current employee or official of the Postal Service.

(4) *General Counsel* means the General Counsel of the United States Postal Service, the Chief Field Counsels, or an employee of the Postal Service acting for the General Counsel under a delegation of authority.

(5) *Legal proceeding means:*

(i) A proceeding before an adjudicative authority;

(ii) A legislative proceeding, except for a proceeding before either House of Congress or before any committee or subcommittee of Congress; or

(iii) An administrative proceeding.

(6) *Private litigation* means a legal proceeding to which the United States is not a party.

(7) *Records custodian* means the employee who maintains a requested record. For assistance in identifying the custodian of a specific record, contact

the Records Officer, United States Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260–5240.

(8) *Testimony* means statements made in connection with a legal proceeding, including but not limited to statements in court or other forums, depositions, declarations, affidavits, or responses to interrogatories.

(9) *United States* means the federal government of the United States and any of its agencies, establishments, or instrumentalities, including the United States Postal Service.

(c) *Requirements for submitting a demand for testimony or records.* (1) Ordinarily, a party seeking to obtain records from the Postal Service should submit a request in accordance with the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Postal Service's regulations implementing the FOIA at 39 CFR 265.1 through 265.9 or the Privacy Act, 5 U.S.C. 552a and the Postal Service's regulations implementing the Privacy Act at 39 CFR 266.1 through 266.9.

(2) A demand for testimony or records issued pursuant to the rules governing the legal proceeding in which the demand arises must:

(i) Be in writing;

(ii) Identify the requested record and/or state the nature of the requested testimony, describe the relevance of the record or testimony to the proceeding, and why the information sought is unavailable by any other means; and

(iii) If testimony is requested, contain a summary of the requested testimony and a showing that no document could be provided and used in lieu of testimony.

(3) Procedures for service of demand are made as follows:

(i) Service of a demand for testimony or records (including, but not limited to, personnel or payroll information) relating to a current or former employee must be made in accordance with the applicable rules of civil procedure on the employee whose testimony is requested or the records custodian. The requester also shall deliver a copy of the demand to the District Manager, Customer Services and Sales, for all current employees whose work location is within the geographic boundaries of the manager's district, and any former employee whose last position was within the geographic boundaries of the manager's district. A demand for testimony or records must be received by the employee whose testimony is requested and the appropriate District Manager, Customer Services and Sales, at least ten (10) working days before the date the testimony or records are needed.

(ii) Service of a demand for testimony or records other than those described in paragraph (c)(3)(i) of this section must be made in accordance with the applicable rules of civil procedure on the employee whose testimony is requested or the records custodian. The requester also shall deliver a copy of the demand to the General Counsel, United States Postal Service, 475 L'Enfant Plaza, SW, Washington DC 20260–1100, or the Chief Field Counsel. A demand for testimony or records must be received by the employee and the General Counsel or Chief Field Counsel at least ten (10) working days before the date testimony or records are needed.

(d) Procedures followed in response to a demand for testimony or records. (1) After an employee receives a demand for testimony or records, the employee shall immediately notify the General Counsel or Chief Field Counsel and request instructions.

(2) An employee may not give testimony or produce records without the prior authorization of the General Counsel.

(3)(i) The General Counsel may allow an employee to testify or produce records if the General Counsel determines that granting permission:

(A) Would be appropriate under the rules of procedure governing the matter in which the demand arises and other applicable laws, privileges, rules, authority, and regulations; and

(B) Would not be contrary to the interest of the United States. The interest of the United States includes, but is not limited to, furthering a public interest of the Postal Service and protecting the human and financial resources of the United States.

(ii) An employee's testimony shall be limited to the information set forth in the statement described at paragraph (c)(2) of this section or to such portions thereof as the General Counsel determines are not subject to objection. An employee's testimony shall be limited to facts within the personal knowledge of the employee. A Postal Service employee authorized to give testimony under this rule is prohibited from giving expert or opinion testimony, answering hypothetical or speculative questions, or giving testimony with respect to privileged subject matter. The General Counsel may waive the prohibition of expert testimony under this paragraph only upon application and showing of exceptional circumstances and the request substantially meets the requirements of this section.

(4) The General Counsel may establish conditions under which the employee may testify. If the General Counsel authorizes the testimony of an employee, the party seeking testimony shall make arrangements for the taking of testimony by those methods that, in the General Counsel's view, will least disrupt the employee's official duties. For example, at the General Counsel's discretion, testimony may be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

(5) If a response to a demand for testimony or records is required before the General Counsel determines whether to allow an employee to testify, the employee or counsel for the employee shall do the following:

(i) Inform the court or other authority of the regulations in this section; and

(ii) Request that the demand be stayed pending the employee's receipt of the General Counsel's instructions.

(6) If the court or other authority declines the request for a stay, or rules that the employee must comply with the demand regardless of the General Counsel's instructions, the employee or counsel for the employee shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951), and the regulations in this section.

(7) The General Counsel may request the assistance of the Department of Justice or a U.S. Attorney where necessary to represent the interests of the Postal Service and the employee.

(8) At his or her discretion, the General Counsel may grant a waiver of any procedure described by this section, where waiver is considered necessary to promote a significant interest of the United States or for other good cause.

(9) If it otherwise is permissible, the records custodian may authenticate, upon the request of the party seeking disclosure, copies of the records. No employee of the Postal Service shall respond in strict compliance with the terms of a subpoena duces tecum unless specifically authorized by the General Counsel.

(e) *Postal Service employees as expert witnesses.* No Postal Service employee may testify as an expert or opinion witness, with regard to any matter arising out of the employee's official duties or the functions of the Postal Service, for any party other than the United States, except that in extraordinary circumstances, the General Counsel may approve such expert testimony in private litigation. A Postal Service employee may not testify as such an expert witness without the express authorization of the General Counsel. A litigant must obtain authorization of the General Counsel

before designating a Postal Service employee as an expert witness.

(f) *Substitution of Postal Service employees.* Although a demand for testimony may be directed to a named Postal Service employee, the General Counsel, where appropriate, may designate another Postal Service employee to give testimony. Upon request and for good cause shown (for example, when a particular Postal Service employee has direct knowledge of a material fact not known to the substitute employee designated by the Postal Service), the General Counsel may permit testimony by a named Postal Service employee.

(g) *Fees and costs.* (1) The Postal Service may charge fees, not to exceed actual costs, to private litigants seeking testimony or records by request or demand. The fees, which are to be calculated to reimburse fully the Postal Service for processing the demand and providing the witness or records, may include, among others:

(i) Costs of time spent by employees, including attorneys, of the Postal Service to process and respond to the demand;

(ii) Costs of attendance of the employee and agency attorney at any deposition, hearing, or trial;

(iii) Travel costs of the employee and agency attorney;

(iv) Costs of materials and equipment used to search for, process, and make available information.

(2) All costs for employee time shall be calculated on the hourly pay of the employee (including all pay, allowance, and benefits) and shall include the hourly fee for each hour, or portion of each hour, when the employee is in travel, in attendance at a deposition, hearing, or trial, or is processing or responding to a request or demand.

(3) At the discretion of the Postal Service, where appropriate, costs may be estimated and collected before testimony is given.

(h) *Acceptance of service.* This section does not in any way abrogate or modify the requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) regarding service of process.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–8226 Filed 4–4–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–31–01–6845a; A–1–FRL–5177–1]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; U Restricted Emission Status

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision approves 310 CMR 7.02(12), entitled ''U Restricted Emission Status,'' into the Massachusetts SIP. The intended effect of this action is to approve a SIP revision by the Commonwealth of Massachusetts to incorporate regulations for the issuance of federally enforceable operating permits which restrict sources' potential to emit criteria pollutants such that sources can avoid reasonably available control technology (RACT), title V operating permit requirements, or otherwise applicable requirements. This also extends federal enforceability of hazardous air pollutants (HAPs). This action is being taken in accordance with the Implementation Plans Section and the State Programs Section of the Clean Air Act.

DATES: This action will become effective June 5, 1995, unless notice is received May 5, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., (LE–131), Washington, DC 20460; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Ida E. Walker, for criteria pollutants (617) 565–9168 or Janet Beloin, for HAPs (617) 565–2734.

SUPPLEMENTARY INFORMATION: On June 6, 1994, the Commonwealth of Massachusetts submitted a formal revision to its State Implementation Plan (SIP) to incorporate regulations for the issuance of federally enforceable operating permits. The revision consists of the addition of 310 CMR 7.02(12), entitled ''U Restricted Emission Status.'' The Commonwealth of Massachusetts adopted these regulations in order to have the authority to issue federally enforceable operating permits under its SIP. In order to extend the federal enforceability of state operating permits to hazardous air pollutants (HAPs), EPA is also approving this regulation pursuant to section 112(l) of the Act.

Summary of SIP Revision

The Commonwealth of Massachusetts' principal purpose for adopting the operating permit regulations of 310 CMR 7.02(12) is to have a federally enforceable means of expeditiously restricting potential emissions such that sources can avoid RACT, title V operating permit requirements, or otherwise applicable requirements, as well as reduce annual compliance fees. The operating permit provisions in title V of the Clean Air Act Amendments of 1990 have created additional interest in mechanisms for limiting sources' potential to emit, thereby allowing the sources to avoid being defined as ''major'' with respect to title V operating permit programs. A key mechanism for such limitations is the use of federally enforceable state operating permits (FESOPs). The EPA issued general guidance on FESOPs in the **Federal Register** on June 28, 1989 [54 FR 27274]. This rulemaking evaluates whether Massachusetts has satisfied the requirements for this type of federally enforceable limitation on potential to emit. Each of the five criteria, as specified in the **Federal Register** of June 28, 1989, for approval of a state's program for the issuance of FESOPs under its SIP and how the state's submittal satisfies those criteria are presented below:

Criterion 1. The state's operating permit program (i.e. the regulations or other administrative framework describing how such permits are issued) must be submitted to and approved by EPA as a SIP revision: On June 6, 1994, the Commonwealth of Massachusetts submitted an administratively and technically complete SIP revision request to EPA consisting of 310 CMR 7.02(12) ''U Restricted Emission Status.''

That SIP revision is the subject of this rulemaking action.

Criterion 2. The SIP revision must impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made in accordance with the approved operating permit program) and provide that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not ''federally enforceable'' by EPA: 310 CMR 7.02(12)(f) requires sources to obtain permits to operate and authorizes Massachusetts to establish terms and conditions in these permits ''assuring compliance with such limitations and controls.'' Additionally, the ''Restricted emission status issued pursuant to 310 CMR 7.02(12) for the purpose of restricting federal potential emissions must be federally enforceable.''

Criterion 3. The state operating permit program must require that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any applicable limitations and requirements contained in the SIP, or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise ''federally enforceable'' (e.g. standards established under Sections 111 and 112 of the Clean Air Act): 310 CMR 7.02(12)(f)(2) contains regulatory provisions which state ''All emission limitations, controls, and other requirements imposed by such restricted emission status must be at least as stringent as all other applicable limitations and requirements contained in the Massachusetts SIP . . . or *that are* otherwise federally enforceable.'' In addition, these rules contain no provisions authorizing terms and conditions any less stringent than these other applicable requirements, which remain federally enforceable.

Criterion 4. The limitations, controls, and requirements of the state's operating permits must be permanent, quantifiable, and otherwise enforceable as a practical matter: 310 CMR 7.02(12)(f) (1) and (2) contain regulatory provisions which satisfy this criterion. In addition, these subparagraphs require that permit restrictions contain ''per unit emission factors, production and/or operational limitations and controls, and monitoring, recordkeeping, and reporting requirements capable of assuring compliance with such limitations and controls.''

Criterion 5. The state operating permits must be issued subject to public participation. This means that the state agrees, as part of its program, to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be ''federally enforceable.'' This process must also provide for an opportunity for public comment on the permit applications prior to issuance of the final permits: 310 CMR 7.02(12)(g)(2) (a), (b), (c) and (g) contain provisions which satisfy this criterion.

The Commonwealth of Massachusetts has also requested approval of its Restricted Emission Status program under section 112(l) of the Act for the purpose of creating federally enforceable limitations on the potential to emit of HAPs. Approval under section 112(l) is necessary because the proposed SIP approval discussed above only extends to criteria pollutants for which EPA has established national ambient air quality standards under section 109 of the Act. Federally enforceable limits on criteria pollutants or their precursors (i.e., VOC's or PM–10) may have the incidental effect of limiting certain HAPs listed pursuant to section 112(b).[1] As a legal matter, no additional program approval by the EPA is required beyond SIP approval under section 110 in order for these criteria pollutant limits to be recognized as federally enforceable. However, section 112 of the Act provides the underlying authority for controlling *all* HAP emissions, regardless of their relationship to criteria pollutant controls.

The EPA has determined that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989 **Federal Register** notice, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989 notice does not address HAPs because it was written prior to the 1990 amendments to section 112. The June 28, 1989 criteria are basic principles which are not unique to criteria pollutants. Therefore, the five criteria discussed above are applicable to FESOP approvals under section 112(l) as well as under section 110.

In addition to meeting the criteria in the June 28, 1989 notice, a FESOP program for HAPs must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows the EPA to approve a program only if the program: (1) Contains adequate authority to assure compliance with any section 112 standard or requirement; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

The EPA plans to codify the approval criteria for programs limiting potential to emit HAPs, in Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the Act. (See 58 FR 62262, November 26, 1993.) The EPA currently anticipates that these regulatory criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989 notice. FESOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will be approved as meeting the criteria in EPA's June, 1989 notice. Therefore, further approval actions for those programs will not be necessary.

The EPA believes it has authority under section 112(l) to approve programs to limit potential to emit HAPs directly under section 112(l) prior to this revision to Subpart E. EPA is therefore proposing approval of Massachusetts' Restricted Emission Status Program now so that Massachusetts may begin to issue federally enforceable synthetic minor permits as soon as possible.

Regarding the statutory criteria of section 112(l)(5) referred to above, the EPA believes Massachusetts' Restricted Emission Status program contains adequate authority to assure compliance with section 112 requirements since the third criterion of the June 28, 1989 notice is met, that is, the program in 310 CMR 7.02(12)(f)(2) states that all requirements in the Restricted Emissions Status program must be at least as stringent as all other applicable federally enforceable requirements. Please note that a source which receives a Restricted Emission Status permit may still need a title V operating permit under 310 CMR 7.00 Appendix (C)(2)(a)(5) if EPA promulgates a MACT standard which requires non-major sources to obtain title V permits.

Regarding the requirement for adequate resources, the EPA believes Massachusetts has demonstrated that it can provide for adequate resources to support the Restricted Emission Status program through an annual compliance assurance fee and a restricted emissions permit fee. EPA believes this mechanism will be sufficient to provide for adequate resources to implement this program. For more information

[1] The EPA issued guidance on January 25, 1995 addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

regarding the fees program, refer to the Technical Support Document.

The EPA also believes that Massachusetts' Restricted Emission Status program provides for an expeditious schedule which assures compliance with section 112 requirements.

This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in Massachusetts's program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate federally enforceable limit by the relevant deadline. Finally, the EPA believes it is consistent with the intent of section 112 and the Act for States to provide a mechanism through which sources may avoid classification as a major source by obtaining a federally enforceable limit on potential to emit. EPA has long recognized federally-enforceable emissions or operational limits as a means to stay below major source thresholds under the Act. This approval merely applies the source principles to another set of pollutants and regulatory requirements under the Act.

The EPA's review of this SIP revision indicates the criteria for approval as provided in the June 28, 1989 **Federal Register** notice [54 FR 27282] and in section 112(l)(5) of the Act have been satisfied.

During the development of this rule, EPA and Massachusetts have been asked whether permits the Commonwealth has issued pursuant to these regulations prior to today's action approving this program into the SIP are nevertheless federally enforceable. In the preamble to the regulations that EPA promulgated on June 28, 1989 (54 FR 27274), which set forth the five criteria outlined above for a federally enforceable operating permit program, EPA indicated that it would ''consult with States on methods by which existing operating permits could be made federally enforceable under a subsequently approved State operating permits program.'' 54 FR at 27284. The preamble went on to discuss options for securing EPA approval of previously issued permits. As EPA concluded in its approval of the Illinois FESOP program (57 FR 59931 (Dec. 17, 1992)), these options were not intended to be a complete list of alternatives. To avoid burdensome requirements to reprocess each previously issued permit, EPA will use the same approach announced in that Illinois approval for determining whether such permits are federally enforceable and for ratifying their status as enforceable under the approved SIP.

EPA today finds the existing Massachusetts regulations to be consistent with federal requirements. If the Commonwealth followed its own procedures, each permit issued under this regulation was subject to public notice and comment, with notice to EPA. Moreover, the regulation requires each permit to be enforceable as a practical matter. Therefore, EPA will consider all previously issued operating permits which were processed in a manner consistent with the State regulations federally enforceable with the promulgation of this rule, provided that any permits the State wishes to make federally enforceable are submitted to EPA and are accompanied by documentation that the procedures approved today were followed in issuing the permit.

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, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective June 5, 1995 unless adverse or critical comments are received by May 5, 1995.

If EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent notice 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 on June 5, 1995.

Final Action

EPA is approving 310 CMR 7.02(12), ''U Restricted Emission Status,'' effective in the Commonwealth of Massachusetts on February 25, 1994 under sections 110 and 112(l) of the CAA.

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, section 112(l), 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).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 5, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations,

Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Hazardous air pollutants.

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

Dated: March 3, 1995.

John P. DeVillars,

Regional Administrator, Region I.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(105) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(105) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on June 6, 1994.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated June 6, 1994 submitting a revision to the Massachusetts State Implementation Plan.

(B) 310 CMR 7.02(12) ''U Restricted Emission Status'' effective in the Commonwealth of Massachusetts on February 25, 1994.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

3. In § 52.1167, Table 52.1167 is amended by adding new state citations for 310 CMR 7.02(12) to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations.

TABLE 52.1167—EPA-APPROVED MASSACHUSETTS REGULATIONS

State citation	Title/subject	Date submitted by State	Dated approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*		*	*	*
310CMR 7.02(12) .	U Restricted Emission Status.	6/6/94	April 5, 1995	[Insert *FR* citation from published date].	105	This rule limits a source's potential to emit, therefore avoiding RACT, title V operating permits
*	*	*		*	*	*

[FR Doc. 95–8216 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IL92–1–6336a; FRL–5165–8]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) approves Illinois' February 7, 1994, request to incorporate smaller source permit rule amendments into the Illinois State Implementation Plan (SIP). The purpose of these smaller source amendments is to lessen the permitting burden on small sources and on the permitting authority by reducing the frequency and/or the requirement for operating permit renewal for sources emitting less than twenty-five tons per year total of regulated air pollutants. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this action, USEPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

DATES: This final rule will be effective June 5, 1995 unless an adverse comment is received by May 5, 1995. If the effective date of this action is delayed due to adverse comments, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the Illinois submittal are available for public review during normal business hours, between 8 a.m. and 4:30 p.m., at the above address. A copy of this SIP revision is also available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), room 1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Genevieve Nearmyer, Permits and Grants Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Telephone: (312) 353–4761.

SUPPLEMENTARY INFORMATION:

The USEPA is approving the smaller source amendments to Title 35: Environmental Protection of the Illinois Administrative Code (35 IAC), Subtitle B: Air Pollution, Chapter I: Pollution Control Board Parts 201 and 211 as received on February 10, 1994, as a requested SIP revision. The purpose of the smaller source amendments is to lessen the permitting burden on small sources and the permitting authority by reducing the frequency and/or the requirement of operating permit renewal for sources emitting less than 25 tons per year total of regulated air pollutants. A permit obtained through the smaller source operating permit rules would not necessarily expire within a five year period as in other operating permit programs. The permit will continue as a legally binding State document until the source modifies its operations, withdraws its permit or becomes subject to a new applicable requirement. At that time, the Illinois Environmental Protection Agency (IEPA) will

determine whether or not the smaller source permit rules are still a valid means of permitting the source and either issue a revised small source operating permit or direct the source in the appropriate permitting procedures. Small source operating permits are not exempt from any other permit requirements such as annual reporting and obtaining necessary construction permits. However, since these permits will not go through a public comment period nor be subjected to USEPA review, they will not be federally enforceable for the purpose of limiting a source's potential to emit. See 54 FR 27281 (June 28, 1989). Consequently, they cannot be used for exemption from the section 112, Title V Operating Permit Program or any other major source requirements of the Act. With an estimated 6,000 sources eligible for this program, much of the expense and administrative burden of the operating permit renewal process would be eliminated. The rationale for USEPA's approval is summarized in this rule. A more detailed analysis is set forth in a technical support document which is available for inspection at the Region 5 Office listed above.

The small source air permit program rules originated before the Illinois Pollution Control Board (IPCB) on April 2, 1993. Two public hearings were held: May 25, 1993 in Chicago and May 26, 1993 in DeKalb. On July 22, 1993, the IPCB adopted the amended proposal pursuant to comments received for first notice. On October 7, 1993, the IPCB adopted and submitted to the Joint Committee on Administrative Rules (JCAR) a second notice proposal. On November 16, 1993, JCAR stated they had no objections to the rules. The rules became effective on December 7, 1993.

The following sections of part 201 have been changed to accommodate the small source operating permit program.

Subpart D: Section 201.162 Duration

This section which was incorporated in the Illinois SIP at 40 CFR 52.720 (c)(84) on December 17, 1992 (57 FR 59928) had stated that the duration of an operating permit is defined as being no longer than five years but was changed to exempt sources subject to Subpart E of Part 201, the small source air permit program, from the limited permit life.

Subpart D: Section 201.163 Joint Construction and Operating Permits

Section 201.163 which was incorporated in the Illinois SIP at 40 CFR 52.720 (c)(84) on December 17, 1992 (57 FR 59928) had previously stated that in cases where the construction of a source or air pollution control equipment is sufficiently standard, the Illinois Environmental Protection Agency (IEPA) may issue a joint construction and operating permit valid for no longer than five years but was changed to exempt sources subject to Subpart E of Part 201, the small source air permit program, from the limited permit life.

The following rules have been added to Parts 201 and 211 to define the terms of the small source operating permit program.

Subpart E: Section 201.180 Applicability

Sources are eligible for small source operating permits if their total emissions of all regulated air pollutants are less than 25 tons per year and are not subject to the title V operating permits program under Section 39.5 of the Illinois Environmental Protection Act. Cases where sources may appear to be eligible for the small source operating permit program but are subject to title V include sources with the potential to emit 10 tons per year of any one or 25 tons per year of an aggregate of hazardous air pollutants as listed in Section 112(b) of the Clean Air Act of 1990 or 25 tons per year of volatile organic compounds or nitrous oxides in the severe ozone nonattainment areas, specifically McHenry, Lake, Kane, Cook, Du Page, Will Counties and Oswego Township in Kendall County and Aux Sable and Goose Lake Townships in Grundy County of Illinois. If the source's potential to emit is greater than the Act's major source thresholds such as those mentioned above but the source's actual emissions are lower than the thresholds, a federally enforceable limit on potential to emit would be required to avoid title V operating permit requirements. A small source operating permit is not federally enforceable for purposes of limiting potential to emit because a public comment period and USEPA review are not required and, therefore, the small source operating permit can not be used to limit a source's potential to emit.

If the source is eligible for a small source operating permit and its existing operating permit has not expired pursuant to a renewal request from IEPA then, the permit will remain in effect until the permit is superseded by a new or revised permit or it is withdrawn upon the request of the permittee.

Sources obtaining a small source operating permit must still comply with all rules in part 201 including, but not limited to, monitoring, recordkeeping and annual reporting unless otherwise stated. If a source modifies the method of operation or equipment or installs new emission units a construction permit must be obtained pursuant to Parts 201 and 203 of 35 Illinois Administrative Code.

Subpart E: Section 201.181 Expiration and Renewal

A small source operating permit will terminate if a revised permit is issued, if the permittee withdraws the permit or, 180 days after IEPA sends a request for renewal.

A request for renewal of an operating permit may be sent to a source in cases where there has been a change in requirements applicable to the source, verification of application accuracy, or suspicion of noncompliance. Renewal procedures will use the existing rules for air permit processing found in Subpart D and for revocation and revision rules found in Subpart F of 35 Illinois Administrative Code 201.

Appeals to the IPCB may only be made within 35 days of a final determination by IEPA. Final determinations include denial of a permit, issuance of a permit with conditions, or an incomplete application determination. A request for renewal notice is not grounds for an appeal.

Subpart E: Section 201.187 Requirement of a Revised Permit

The permittee has the obligation to obtain a new or revised permit prior to the operational changes. Changes are considered to be increases in emissions in excess of the permitted emissions, a modification as defined at 35 Illinois Administrative Code 201.102, changes in operations that violate an existing permit condition, or a change in ownership, company name, or address. If a revised permit is not obtained the source remains subject to the existing operating permit and may be in violation of the obligation to apply for a new or revised permit. If the operational changes remove the source from the applicability of the small source air permit program, the permittee shall apply for a revised permit under subpart D of part 201 or under section 39.5 of the Illinois Environmental Protection Act.

Subpart B: Section 211.5500 Regulated Air Pollutant

The definition of regulated air pollutant which was incorporated in the Illinois SIP at 40 CFR 52.720(c)(100) on September 9, 1994 (59 FR 46562) has been changed to reflect the definition in 40 CFR part 70. The definition of regulated air pollutant as it pertains to the applicability of a small source eligible for a small source operating

permit has been changed to incorporate any air contaminant that is regulated by the air pollution subtitle.

When summing the source's emissions it is IEPA's intention to focus on the five criteria pollutants; nitrogen oxides, sulfur dioxides, particulate matter, volatile organic compounds, and carbon monoxides. This is to avoid double counting of pollutants which fall under both the hazardous air pollutant category and either the volatile organic compound or particulate matter category in the 25 ton per year applicability cut-off. This method of accounting for emissions does not relieve the source of the obligation of accounting for hazardous air pollutants emissions for title V applicability purposes.

Final Rulemaking Action

This permitting program was designed to alleviate the permitting burden on IEPA. Since it is IEPA's intention to permit all sources within the state, this program will allow IEPA more time to spend on the larger sources by greatly reducing the number of smaller source permits that must be renewed every five years. These permits can also be processed much faster without the public comment and USEPA review requirements. The trade-off for the faster processing time is that the small source operating permits can not be used for sources requiring federally enforceable permits for such things as limiting their potential to emit below the major source thresholds. This permitting program does not exempt sources from other permit requirements such as annual reporting and obtaining construction permits thus allowing IEPA to maintain oversight of the smaller sources. IEPA also has the authority to require a source to apply for renewal of its permit if there has been a change in requirements applicable to the source, IEPA wishes to verify application accuracy, or IEPA suspects noncompliance.

For the reasons stated above, USEPA is approving the State's request to incorporate small source permit rules into the Illinois SIP. The specific rules being approved are as follows: Sections 201.162 Duration, 201.163 Joint Construction and Operating Permits, 201.180 Applicability, 201.181 Expiration and Renewal and 211.5500 Regulated Air Pollutant.

The USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the USEPA is proposing to approve the requested SIP revision should adverse or critical comments be filed. This action will be effective on June 5, 1995 unless adverse or critical comments are received by May 5, 1995.

If the USEPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rule that withdraws this 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 USEPA 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 June 5, 1995.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any 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.*, USEPA 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, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 5, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur dioxide, Volatile organic compounds.

Dated: February 24, 1995.

Valdas V. Adamkus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(105) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c)* * *

(105) On February 7, 1994, the State submitted revisions intended to create a permit program for small sources. The purpose of these revisions is to lessen the permitting burden on small sources and the permitting authority by reducing the frequency and/or the requirement of operating permit renewal for sources emitting a total of less than 25 tons per year of regulated air pollutants. A permit obtained through these procedures is intended to continue as a legally binding State document until the source modifies its operations, withdraws its permit or becomes subject to a new applicable requirement. At that time, the State will determine whether the small source procedures continue to be appropriate and issue a revised small source permit

or direct the source in following the correct permit procedures. Since small source permits are not subject to a public comment period or review by USEPA, they are not federally enforceable and cannot be used to limit sources' potential to emit and thereby exempt them from the requirements of the title v operating permit program.

(i) Incorporation by reference. Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board.

(A) Subchapter a: Permits and General Provisions, Part 201: Permits and General Provisions.

(1) Subpart D: Permit Applications and Review Process, Section 201.162 Duration and Section 201.163 Joint Construction and Operating Permits. Amended at 17 Ill. Reg., effective December 7, 1993.

(2) Subpart E: Special Provisions for Operating Permits for Certain Smaller Sources, Section 201.180 Applicability, Section 201.181 Expiration and Renewal and Section 201.187 Requirement for a Revised Permit Added at 17 Ill. Reg., effective December 7, 1993.

(B) Subchapter C: Emission Standards and Limitations for Stationary Sources, Part 211: Definitions and General Provisions, Subpart B: Definitions, Section 211.5500 Regulated Air Pollutant. Adopted at 17 Ill. Reg., effective December 7, 1993.

[FR Doc. 95–8219 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[AK7–1–6588a; FRL–5171–5]

Approval and Promulgation of State Implementation Plans; Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the State Implementation Plan (SIP) revision submitted by the state of Alaska. This revision establishes and requires the implementation of a basic motor vehicle inspection and maintenance (I/M) program in the Municipality of Anchorage (MOA) and the Fairbanks North Star Borough (FNSB). The intended effect of this action is approval of a basic motor vehicle I/M program. This action is being taken under Section 110 of the Clean Air Act.

DATES: This final rule is effective on June 5, 1995 unless adverse or critical comments are received by May 5, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air & Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air & Radiation Branch, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and the Alaska Department of Environmental Conservation, 410 Willoughby, Suite 105, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Christi Lee, EPA, Air and Radiation Branch (AT–082), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION:

I. Clean Air Act Requirements

The Clean Air Act, as amended in 1990 (CAAA or Act), requires states to make changes to improve existing I/M programs or implement new ones. Section 187(a)(4) and section 182(a)(2)(B) requires any carbon monoxide (CO) nonattainment area which has been classified as ''moderate'' (pursuant to section 181(a) of the Act) or worse with an existing I/M program that was part of a SIP, or any area that was required by the 1977 Amendments to the Act to have an I/M program, to immediately submit a SIP revision to bring the program up to the level required in past EPA guidance or to what had been committed to previously in the SIP whichever was more stringent.

In addition, Congress directed the EPA in section 182(a)(2)(B) to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The states were to incorporate this guidance into the SIP for all areas required by the Act to have an I/M program.

On November 5, 1992 (57 FR 52950), the EPA published a final regulation establishing the I/M requirements, pursuant to section 182 and 187 of the Act. The I/M regulation was codified at 40 CFR part 51, Subpart S, and requires states to submit an I/M SIP revision which includes all necessary legal authority and the items specified in 40 CFR 51.372 (a)(1) through (a)(8) by November 15, 1993. The state of Alaska has met these requirements.

The EPA has designated two areas as CO nonattainment in the state of Alaska. The Anchorage CO nonattainment area, classified as Moderate greater than or equal to 12.7 ppm, is bounded by the Municipality of Anchorage (MOA) urban area. The Fairbanks CO nonattainment area, classified as Moderate less than or equal to 12.7 ppm, is bounded by the Fairbanks North Star Borough (FNSB) urban area. The nonattainment and boundary designations for CO were published in the **Federal Register** (FR) on November 6, 1991, and November 30, 1992, and have been codified in the Code of Federal Regulations (CFR). See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), codified at 40 CFR 81.300–81.437. Based on these nonattainment designations, basic I/M programs are required in both the Anchorage and Fairbanks nonattainment areas.

By this action, the EPA is approving this submittal. The EPA has reviewed the state submittal against the statutory requirements and for consistency with the EPA regulations. EPA summarizes the requirements of the Federal I/M regulations as found in 40 CFR 51.350–51.373 and its analysis of the state submittal below. Parties desiring additional details on the Federal I/M regulation are referred to the November 5, 1992 FR notice (57 FR 52950) or 40 CFR 51.350–51.373.

II. Background

On July 11, 1994 the state of Alaska submitted to EPA a SIP revision for a basic I/M program that had an adequate public notice and public hearing process (May 19, 1994) and was adopted on June 9, 1994. The Lieutenant Governor filed revisions to 18 AAC 52 on May 25, 1994, and the Air Quality Control Plan revisions on July 6, 1994, becoming effective on June 24, 1994 and August 5, 1994, respectively.

The July 11, 1994 SIP revision was reviewed by EPA to determine completeness shortly after submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V. The submittals were found to be complete and a letter dated July 15, 1994 was forwarded to the Governor of Alaska indicating the completeness of the submittal.

III. State Submittal

Both Anchorage and Fairbanks are classified as moderate CO nonattainment areas. Since the 1980

census population of each urbanized area was under 200,000, neither community is required to implement an enhanced I/M program. The state submittal provides for upgrading the existing I/M programs to EPA approved basic I/M programs in the Municipality of Anchorage (MOA) and Fairbanks North Star Borough (FNSB). Both the MOA and the FNSB programs will consist of annual, decentralized, test-and-repair which meets the requirements of EPA's performance standard and other requirements contained in the Federal I/M rule. All testing will be performed by certified stations or referee facilities. Other aspects of the Alaska I/M program include: an ''Valley'' I/M program for vehicles commuting into Anchorage from the Matanuska-Susitna (Mat-Su) borough, testing of 1968 and later vehicles in Anchorage and testing of 1975 and later vehicles in Fairbanks, a test fee to ensure the state has adequate resources to oversee the implementing agencies and implement the valley program, enforcement by registration denial, commitment to testing convenience, quality assurance, data collection and analysis, reporting, test equipment and test procedure specifications, commitment to ongoing public information, inspector training and certification, and penalties against inspector incompetence. An analysis of how the Alaska I/M program meets the Federal SIP requirements (by section of the Federal I/M rule) is provided below.

A. Applicability

The SIP needs to describe the applicable areas in detail and, consistent with 40 CFR 51.372, needs to include the legal authority or rules necessary to establish program boundaries.

The Alaska I/M program specified in 18 AAC 52 is divided into two programs (Anchorage and Fairbanks), based on the designated implementing agency. Both programs are locally implemented and operated, with the MOA and the FNSB having legal and administrative responsibility for their respective programs. The existing programs cover the entire MOA and FNSB. An additional I/M program, Matanuska-Susitna Valley (Valley) is not linked to a specific geographical area, but is aimed at vehicles that are regularly operated in but not registered in the Anchorage I/M program area. The Alaska Department of Environmental Conservation (ADEC) is responsible for administering the Valley I/M program. The state regulations establishing Alaska's I/M program requirements and boundaries are included in 18 AAC 52.

B. Basic I/M Performance Standard

The I/M programs provided for in the SIP are required to meet a performance standard for basic I/M for the pollutants that caused the affected area to come under I/M requirements. The performance standard sets an emission reduction target that must be met by a program in order for the SIP to be approvable. The SIP must also provide that the program will meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met. The state has submitted a modeling demonstration using the EPA computer model, MOBILE 5a showing that the basic performance standard is met for both Anchorage and Fairbanks I/M programs.

C. Network Type

The SIP needs to include a description of the network to be employed, the required legal authority, and, in the case of areas making claims for case-by-case equivalency, the required demonstration.

Alaska has chosen to implement decentralized, test-and-repair I/M programs which are managed and operated by MOA, FNSB and the state with a small amount of contractor support.

Legal authority contained in AS 46.03.020(10), 46.14.030 and 46.14.510; and 18 AAC 52.045 authorizes the state to implement this program.

D. Adequate Tools and Resources

The SIP needs to include a description of the resources that will be used for program operation, which includes: (1) A detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment, and any other requirements discussed throughout, and (2) a description of personnel resources, the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions and the training attendant to each function.

The Alaska I/M program as stipulated in 18 AAC 52.020 is funded solely by collection of a ten dollar certificate of inspection fee assessed to each vehicle passing the I/M test. Legal authority contained in AS 44.46.025 authorizes the state to collect fees for this program. The MOA, FNSB and the state commit to providing the necessary administrative, personnel, and equipment resources to fully implement and maintain the Alaska I/M program. The I/M programs will be carried out under local or state oversight, with assistance from contractors. In the event that either the MOA or FNSB is unable or unwilling in the future to provide adequate tools or resources, the state commits to take over the administration of the program (18 AAC 52.030).

The SIP narrative also describes the budget, staffing support, and equipment needed to implement the program. The MOA funds approximately 7.0 full-time employees (FTE), the FNSB funds 3.5 FTE and the state funds .25 FTE. The MOA and the state will utilize 3.0 FTE contractor personnel to support their programs.

Referee facilities in the MOA and FNSB provide public information and assistance, motorist and certified mechanic assistance, referee functions, and training and testing of inspectors and certified mechanics. The MOA program, which incorporates the Valley program, contracts out for referee facility services while the FNSB referee facility is operated by FNSB staff.

E. Test Frequency and Convenience

The SIP needs to include the test schedule in detail including the test year selection scheme if testing is other than annual. Also, the SIP needs to include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process.

The MOA and FNSB I/M programs require annual inspections for all subject motor vehicles (18 AAC 52.005). However, an implementing agency may, with approval from ADEC and the DMV, authorize the owner or lessee of a vehicle to obtain a biennial certificate of inspection during the first six years of vehicle life, if the failure rates of the designated categories of vehicles are below a minimum rate set by the implementing agency and approved by ADEC (18 AAC 52.035(e)). In addition the MOA exempts new vehicles from their first annual inspection.

Since the test-and-repair inspection program has been in operation since 1985 for both programs, no special start-up testing scheme is required. The network is satisfactorily addressed in the SIP.

Legal authority for registration and testing of used vehicles newly arriving into the I/M area is contained in AS 46.14.510 and 18 AAC 52.005.

F. Vehicle Coverage

The SIP needs to include a detailed description of the number and types of vehicles to be covered by the program, and a plan for how those vehicles are to be identified, including vehicles that are

routinely operated in the area but may not be registered in the area. Also, the SIP needs to include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of subject vehicles which will be impacted. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP needs to include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement.

In the MOA, program coverage includes all 1968 and newer model year light-duty cars and trucks and heavy-duty gasoline powered trucks, registered or required to be registered within the nonattainment areas. The FNSB program covers the above vehicles from 1975 and newer. Vehicles will be identified through the state of Alaska's Driver and Motor Vehicle Services database. In addition, any 1968 or newer model used to commute into MOA is subject to I/M testing through the Valley program.

Fleet vehicles are subject to the same program requirements and testing procedures as other vehicles. However, fleets are allowed to self-test, as long as they are certified as official test stations; they must use certified I/M mechanics; all tests and certificate issuance must be conducted using certified Alaska BAR–90 TAS; and they must comply with all other I/M program requirements. Fleet licenses can be removed if fleet operation does not meet standards.

The FNSB vehicles that obtain seasonal exemptions are subject to the program but prohibited from being driven during the winter CO season. Approximately 4,000 FNSB vehicles are in this category. Since they are not operated during the CO nonattainment period there is no discounting of those vehicles.

In addition to the required I/M programs, ADEC is now subjecting those vehicles registered outside the MOA but primarily operated within the MOA to a Mat-Su Valley I/M program. The Valley program has the same basic design features as the Anchorage program.

Further, vehicles registered in one AK I/M area but primarily operated in the other may be tested in either area, but must pass an annual I/M test.

G. Test Procedures and Standards

The SIP needs to include a description of each test procedure used. The SIP also needs to include the rule, ordinance or law describing and establishing the test procedures.

The legal authority to establish test procedures and standards is contained in AS 46.03..020, 46.14.030 and 46.14.510. Written test procedures for a 2-speed idle test and pass/fail standards for all subject vehicles have been established. All vehicles are subject to the HC and CO emission cutpoints set forth in 18 AAC 52.050, and repairs must be made if a vehicle fails any of these cutpoints.

H. Test Equipment

The SIP needs to include written technical specifications for all test equipment used in the program and shall address each of the requirements in 40 CFR 51.358 of the Federal I/M rule. The specifications need to describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The Alaska I/M SIP commits to meeting the California BAR 90 accuracy standards. The SIP addresses the requirements in 40 CFR 51.358 and includes descriptions of performance features and functional characteristics of the computerized test systems in the submitted respective program design documents. The necessary test equipment, required features, and acceptance testing criteria are also contained in the SIP.

I. Quality Control

The SIP needs to include a description of quality control and recordkeeping procedures. The SIP needs to include the procedures manual, rule, and ordinance or law describing and establishing the procedures of quality control and requirements.

The Alaska I/M SIP narrative contains descriptions and requirements establishing quality control procedures which are similar but not identical to the Federal I/M rule. Alaska's program provides for less frequent calibration requirements than the federal I/M rule requires. However, the frequency requirements for gas calibrations and leak checks contained in the Alaska BAR–90 Test Analyzer Systems are identical to those contained in the current California BAR–90 specification. In addition, Alaska's program does not require ambient zero air to be drawn from outside the test bay due to the extreme weather conditions in Alaska. EPA believes there is adequate justification for these exceptions. Alaska's quality control procedures will help ensure that equipment calibrations are properly performed and recorded as well as maintaining compliance document security.

J. Waivers and Compliance Via Diagnostic Inspection

The SIP needs to include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate needs to be used for estimating emission reduction benefits in the modeling analysis. Also, the state needs to take corrective action if the waiver rate exceeds that estimated in the SIP or revise the SIP and the emission reductions claimed accordingly. In addition, the SIP needs to describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration. Lastly, the SIP shall include the necessary legal authority, ordinance, or rules to issue waivers, set and adjust cost limits as required, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions.

Legal authority to issue waivers and administer the waiver system is contained in AS 46.03.020, 46.14.030 and 46.14.510. Under 18 AAC 52.060 waivers may be issued in the Alaska I/M programs for the following reasons: repair cost exceedance, diesel engine, seasonal waiver, special circumstances that make it impractical to test a vehicle, modification to the dedicated use of an approved alternate fuel, out-of-area use, economic hardship, parts unavailability or grey market vehicle.

For the MOA and state programs, necessary emissions-related repairs must be made up to a maximum annual repair cost of $450 for non-tampering-related repairs. The FNSB program has a minimum annual repair cost of $350 for non-tampering-related repairs. For all programs a maximum annual repair cost of $500 exists for vehicles tampered with prior to July 1, 1985. If the least expensive repair would be in excess of $500, then one repair must be made regardless of cost. Vehicles that have been tampered with since July 1985 must be completely repaired, regardless of cost.

A waiver rate of 1% is assumed for both the MOA and FNSB. If the waiver rate for either program, as reported to EPA in the annual Alaska I/M report, is higher, the state will take corrective action to lower the applicable waiver rate by possibly requiring motorists that apply for a waiver to reduce initial emissions by a specified amount before a waiver may be issued or limiting the model years that are eligible for a waiver or limiting waivers on vehicles to only one inspection cycle. If any of the waiver rates cannot be lowered to the level committed to in the SIP, the state

will revise the I/M emission reduction projections in the SIP and will implement other program changes as necessary to ensure the performance standard is met.

The seasonal waiver is issued to a vehicle owner who agrees that the vehicle will not be operated in an I/M area during the winter CO season. Vehicles which acquire such waivers are issued different colored license tabs, to make it easier to identify seasonally waived vehicles that are being operated illegally during winter months. If a motorist violates the seasonal waiver, no seasonal waiver may be issued in the future to any vehicle owned by that motorist.

K. Motorist Compliance Enforcement

The SIP needs to provide information concerning the enforcement process, including: (1) A description of the existing compliance mechanism if it is to be used in the future and the demonstration that it is as effective or more effective than registration-denial enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this section; (3) a description of and accounting for all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other special classes of subject vehicles, e.g. those operated in (but not necessarily registered in) the program area. Also, the SIP needs to include a determination of the current compliance rate based on a study of the system that includes an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism need to be supported with detailed analyses. In addition, the SIP needs to include the legal authority to implement and enforce the program. Lastly, the SIP needs to include a commitment to an enforcement level to be used for modeling purposes and to be maintained, at a minimum, in practice.

The motorist compliance enforcement program will be implemented, primarily, by Alaska's Department of Motor Vehicle Services (DMV), which will ensure that owners of all subject vehicles are denied registration unless they provide valid proof of having received a certificate indicating they passed an emissions test or a valid I/M waiver, which was issued within a 90-day period prior to the registration renewal date. Owners of noncomplying vehicles operating illegally in I/M areas will be identified and issued notices of violation (NOV). A vehicle owner that is issued an NOV will have 30 days to provide proof of I/M compliance. The I/M programs will request DMV to revoke the vehicle's registration in cases of continued noncompliance. The Alaska State Troopers and local law enforcement agencies will provide on-road enforcement of the program.

In addition, the Department will identify program evaders and other noncomplying vehicles (e.g. out-of-area commuter vehicles) through interactive searches of several databases. Owners of vehicles identified in this manner will be notified by the Department of the need to obtain an annual inspection.

The following vehicle types are exempt from the Alaska I/M program: A vehicle not principally located or operated in an I/M area; a 1967 or older vehicle for the MOA program (1974 or older in the FNSB program); a new vehicle with less than 2,500 miles; a gasoline-powered vehicle that is 12,000 pounds unladen weight or heavier, a special test vehicle that has received a state exemption; a military tactical vehicle; motorcycles, golf carts, all-terrain vehicles, snow machines and mopeds; and a vehicle in Alaska for less that 30 days.

All fleet vehicles, including rental cars, are subject to the same program requirements and testing procedures as other vehicles. Leased vehicles and other vehicles subject to one of the Alaska programs but not necessarily registered in an I/M area must also comply with all applicable program requirements.

The state commits to the level of enforcement needed to ensure compliance rates of no less than 95 percent and 96 percent, in the MOA and FNSB respectively. The legal authority to implement and enforce the program is included in AS 46.03, 46.014 and 18 AAC 52.100.

L. Motorist Compliance Enforcement Program Oversight

The SIP needs to include a description of enforcement program oversight and information management activities.

ADEC will audit the local I/M programs on a regular basis, and will implement a quality assurance program to ensure effective overall performance of the enforcement systems in both areas. ADEC will allow EPA to conduct regular audits of the I/M enforcement program. ADEC, MOA, and FNSB will also perform periodic parking lot surveys to assess the compliance rate of the in-use fleet.

M. Quality Assurance (QA)

The SIP needs to include a description of the quality assurance program, and written procedures manuals covering both overt and covert performance audits, record audits, and equipment audits. This requirement does not include materials or discussion of details of enforcement strategies that would ultimately hamper the enforcement process.

The Alaska I/M SIP includes a description of its quality assurance program. The ongoing QA program will be conducted to discover, correct and prevent fraud, waste, and abuse. The program includes quarterly performance audits following established written procedures, performed at certified I/M stations. The audits will include, at a minimum, checks for appropriate certificate security, recordkeeping practices, proper display of licenses and other required information, proper maintenance and calibration of the TAS, and ability of the certified mechanic to properly perform an I/M test.

In addition to the quarterly audit, overt and covert vehicle audits will be conducted on an unscheduled and as-needed basis. Alaska has proposed the following exceptions to the federal performance audit requirements provided under 40 CFR 51.363(a): the state will perform one quarterly audit per facility (i.e. four audits per station per year), plus at least one overt vehicle audit per station per year. EPA believes this to be adequate to ensure program quality and comply with the federal I/M rule. Alaska also believes that the remote covert auditing requirement is infeasible in Alaska due to the state's unique weather conditions, and resultant station design and operation. Unlike most other states, inspections in Alaska are conducted in enclosed test stations where remote covert observations are impossible, particularly during the wintertime. The state believes that other performance tracking and auditing tools dramatically reduce the need to use remote covert audits to maintain effective quality assurance and compliance enforcement programs against certified stations and mechanics. Given Alaska's unique circumstances EPA concurs.

Test records will be audited on a monthly basis, using established written procedures to assess individual certified mechanic and station performance. Equipment audits will be performed during each quarterly performance audit, using established written procedures, to ensure the accuracy and reliability of all required test equipment. Each I/M inspector will be formally

trained and knowledgeable in all aspects of the I/M program. Ongoing training will be provided to I/M inspectors to insure that they maintain an adequate level of knowledge. The performance of each I/M inspector will be evaluated at least once annually to identify any possible problem areas.

N. Enforcement Against Contractors, Stations and Inspectors

The SIP needs to include the penalty schedule and the legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations. In the case of state constitutional impediments to immediate suspension authority, the state Attorney General shall furnish an official opinion for the SIP explaining the constitutional impediment as well as relevant case law. Also, the SIP needs to describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts, and jurisdictions are involved; who will prosecute and adjudicate cases; and other aspects of the enforcement of the program requirements, the resources to be allocated to this function, and the source of those funds. In states without immediate suspension authority, the SIP needs to demonstrate that sufficient resources, personnel, and systems are in place to meet the three day case management requirement for violations that directly affect emission reductions.

Under the Administrative Procedures Act (AS 44.62), the Department or other I/M implementing agency must provide notice and opportunity for hearing before suspending, revoking, or refusing to renew a station's or mechanic's certification issued under 18 AAC 52 or the MOA or FNSB local implementing ordinances. In addition, neither the Department nor the local I/M implementing agencies have citation powers under Alaska Statute. As a result of these factors, Alaska is unable to comply with requirements contained in 40 CFR 51.364 for the imposition of mandatory minimum penalties or the immediate suspension of station or mechanic certifications. If the Department files a civil action under AS 46.03.760, there are mandatory court imposed damages of $500 for the first day. Because of this, the state is proposing an alternative enforcement mechanism which will allow the I/M office to issue an NOV upon finding a violation of the I/M program requirements. A hearing will be held within three working days of the NOV which will allow penalties to be assessed depending on the nature and severity of the violation. If the hearing results support a serious violation the station or mechanic's certification will be suspended for a minimum of 6 months under the Department's emergency powers authority, if the criteria for an emergency exists as provided in AS 46.03.820. Continued violation of program requirements may result in permanent revocation of certification under 18 AAC 52, after notice and opportunity for hearing, or the filing of a civil or criminal action against a certified station or mechanic under AS 46.03.760 or 46.03.790. A finding of incompetence will result in mandatory training before inspection privileges are restored. EPA concludes that this satisfies federal requirements for enforcement against contractors and inspectors.

O. Data Analysis and Reporting

The SIP needs to describe the types of data to be collected. The SIP commits ADEC to submitting an annual report to EPA by July of each year, which will cover the preceding calendar year and contain statistics for the I/M test data, quality assurance results, quality control activities, and enforcement activities. In addition, the state commits to submitting a biennial report on the overall status of the Alaska I/M program to EPA. At a minimum, Alaska commits to address all of the data elements listed in 51.366 of the federal I/M rule.

P. Inspector Training and Licensing or Certification

The SIP needs to include a description of the training program, the written and hands-on tests, and the licensing or certification process.

Under 18 AAC 52. and the MOA and FNSB I/M implementing ordinances, formal training and licensing is required for all inspectors (certified mechanics). The Alaska I/M SIP provides for the implementation of training, certification, and refresher programs for emission inspectors. Training will include all elements required by 51.367(a) of the EPA I/M rule. Certification is good for a period of two years, with passage of a refresher training course required for license renewal.

Q. Improving Repair Effectiveness

The SIP needs to include a description of the technical assistance program to be implemented, and a description of the repair technician training resources available in the community.

The Alaska SIP commits the Department to working with MOA and FNSB to assist the motor vehicle industry in properly diagnosing and repairing emission-related defects. This assistance will include each program's establishment of a telephone hotline service to assist certified mechanics and other qualified technicians with specific repair problems. Mechanics newsletters will also be distributed to all certified mechanics on an as-needed basis, to inform them of program changes, training course schedules, common problems being experienced in the I/M program, and diagnostic tips.

PC-based I/M management software will be used to provide the I/M programs with station and mechanic specific estimates of repair effectiveness. Effectiveness estimates applicable to each certified station will be distributed by the I/M program to that station on at least an annual basis.

IV. This Action

The EPA is approving the Alaska I/M SIP (Section 3.1, OAR 340–24–300 through 340–24–355; and section 5.4) as meeting the requirements of the CAAA and the Federal I/M rule. All required SIP items have been adequately addressed as discussed in this **Federal Register** action.

V. Administrative Review

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).

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 June 5, 1995 unless, within 30 days of its publication, 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 notice that will withdraw the final action. All public comments received will 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 June 5, 1995.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

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

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 5, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Reporting and recordkeeping requirements.

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

Dated: March 2, 1995.

Chuck Clarke,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Alaska

2. Section 52.70 is amended by adding paragraph (c) (21) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(21) On July 11, 1994 ADEC submitted a SIP revision for a basic motor vehicle inspection and maintenance (I/M) program in the Municipality of Anchorage (MOA) and the Fairbanks North Star Borough (FNSB).

(i) Incorporation by reference.

(A) July 11, 1994 letter from the Governor of Alaska to the Regional Administrator of EPA submitting Alaska's amendments to the Air Quality Control Plan and to 18 AAC 52, Emissions Inspection and Maintenance Requirements for Motor Vehicles; the amendments to 18 AAC 52 (52.005, .015, .020, .030, .035, .040, .045, .050, .055, .060, .065, .070, .075, .080, .085, .090, .095, .100, .105, .400, .405, .410, .415, .420, .425, .430, .440, .445, .500, .505, .510, .515, .520, .525, .527, .530, .535, .540, .545, .550, and .990), effective February 1, 1994; and the State Air Quality Control Plan, Vol. II: Analysis of Problems, Control Actions, Modifications to Section I, June 9, 1994; Vol. II: Analysis of Problems, Control Actions, Modifications to Section I, II, III and V, adopted January 10, 1994; Vol. III: Appendices, Modifications to Section III.A, June 9, 1994; Vol. III: Appendices, Modifications to Section III.B, June 9, 1994; and Vol. III: Appendices, Modifications to Section III.C, June 9, 1994.

[FR Doc. 95–8313 Filed 4–4–95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 12

RIN 1090–AA42

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: This action finalizes an interim final rule the Department published in response to the publication by the Office of Management and Budget (OMB) of revised OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.''

Agencies were required to adopt those standards which would be imposed on grantees in codified regulations within six months after publication in the **Federal Register**.

Over 200 comments were received by OMB from Federal agencies, non-profit organizations, professional organizations, and others in response to the notice published on August 27, 1992, (57 FR 39018) requesting comments on proposed revisions. The comments were considered in developing the final version. Consequently, the Department published an interim final rule because of the previous request for comment process used in the development of the Circular, the large number of comments already received and considered by OMB and the Federal agencies, and due to the limited flexibility to revise the rule provided by OMB.

EFFECTIVE DATE: May 5, 1995.

FOR FURTHER INFORMATION CONTACT: Dean A. Titcomb, (Chief, Acquisition and Assistance Division), (202) 208–6432.

SUPPLEMENTARY INFORMATION: OMB Circular A–110 (58 FR 62991) covers both grants made by Federal agencies and subgrants made by States to nongovernmental organizations.

Following the August 26, 1994, publication in the **Federal Register** (59 FR 44040), no public comments were received by the Department.

This final rule essentially adopts all the language in the Circular with two exceptions. At Section 12.904, language has been added to describe the procedure for handling requests for

class deviations and case-by-case exceptions. At Section 12.915, the Department is revising the provision concerning use of the metric system of measurement. This revision indicates that the system should be used to the maximum extent possible and that both metric and inch-pound units (dual units) may be used if necessary during any transaction period(s).

The reference to the small purchase threshold currently being $25,000 in section 12.944(e)(2) has been changed to $100,000. This change is based on a provision of the Federal Acquisition Streamlining Act of 1994.

The Circular inadvertently misstates the applicability of the statute commonly known as the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352. The statute applies to organizations which apply or bid for an award exceeding $100,000, not $100,000 or more. We have made this correction in Appendix A.

Two other changes have been made to Appendix A because of recent changes brought about by the Federal Acquisition Streamlining Act of 1994. The threshold for the requirement to include a provision for compliance with the Copeland ''Anti-Kickback Act'' (18 U.S.C. 874) was raised from $2,000 to $100,000.

The threshold for the requirement to include the provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333) was raised to $100,000.

Other minor editorial changes are being made to conform with language in the Circular.

The Department is amending 43 CFR part 12, by revising subpart F to implement these requirements.

Executive Order 12866, Paperwork Reduction Act, and Regulatory Flexibility Act

This final rule was not subject to Office of Management and Budget review under Executive Order 12866.

The Department has determined that this rule will not have a significant economic impact on a substantial number of small entities because it does not affect the amount of funds provided in the covered programs, but rather modifies and updates administrative and procedural requirements. This final rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Effects

The Department has determined that this rule does not constitute a major Federal action having a significant impact on the human environment under the National Environmental Policy Act of 1969.

Executive Order No. 12778

The Department has certified to the Office of Management and Budget that this proposed rule meets the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration, Grant program.

Dated: March 15, 1995.

Bonnie R. Cohen,

Assistant Secretary-Policy, Management and Budget.

For the reasons set forth in the preamble, Title 43, part 12 of the Code of Federal Regulations is amended as set forth below:

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 6101 note, 7501; 41 U.S.C. 252a, 701 *et seq.*; sec. 307, Pub. L. 103–332, 108 Stat. 2499; sec. 501, Pub. L. 103–316, 108 Stat. 1723; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12674, 3 CFR, 1989 Comp., p. 215; E.O. 12731, 3 CFR, 1990 Comp., p. 306; OMB Circular A–102; OMB Circular A–110; OMB Circular A–128; and OMB Circular A–133.

2. Part 12 is amended by revising subpart F to read as follows:

Subpart F—Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

General

Sec.
12.901 Purpose.
12.902 Definitions.
12.903 Effect on other issuances.
12.904 Deviations.
12.905 Subawards.

Pre-Award Requirements

12.910 Purpose.
12.911 Pre-award policies.
12.912 Forms for applying for Federal assistance.
12.913 Debarment and suspension.
12.914 Special award conditions.
12.915 Metric system of measurement.
12.916 Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580 codified at 42 U.S.C. 6962).
12.917 Certifications and representations.

Post-Award Requirements

Financial and Program Management

12.920 Purpose of financial and program management.
12.921 Standards for financial management systems.
12.922 Payment.
12.923 Cost sharing or matching.
12.924 Program income.
12.925 Revision of budget and program plans.
12.926 Non-Federal audits.
12.927 Allowable costs.
12.928 Period of availability of funds.

Property Standards

12.930 Purpose of property standards.
12.931 Insurance coverage.
12.932 Real property.
12.933 Federally-owned and exempt property.
12.934 Equipment.
12.935 Supplies and other expendable property.
12.936 Intangible property.
12.937 Property trust relationship.

Procurement Standards

12.940 Purpose of procurement standards.
12.941 Recipient responsibilities.
12.942 Codes of conduct.
12.943 Competition.
12.944 Procurement procedures.
12.945 Cost and price analysis.
12.946 Procurement records.
12.947 Contract administration.
12.948 Contract provisions.

Reports and Records

12.950 Purpose of reports and records.
12.951 Monitoring and reporting program performance.
12.952 Financial reporting.
12.953 Retention and access requirements for records.

Termination and Enforcement

12.960 Purpose of termination and enforcement.
12.961 Termination.
12.962 Enforcement.

After-the-Award Requirements

12.970 Purpose.
12.971 Closeout procedures.
12.972 Subsequent adjustments and continuing responsibilities.
12.973 Collection of amounts due.

Appendix A to Subpart F—Contract Provisions

General

§ 12.901 Purpose.

This subpart establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations.

§ 12.902 Definitions.

Accrued expenditures means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) goods and other tangible property received;

(2) services performed by employees, contractors, subrecipients, and other payees; and,

(3) other amounts becoming owed under programs for which no current services or performance is required.

Accrued income means the sum of:

(1) earnings during a given period from:

(i) services performed by the recipient, and

(ii) goods and other tangible property delivered to purchasers, and

(2) amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

Acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout means the process by which a Federal agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal awarding agency.

Contract means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

Cost sharing or matching means that portion of project or program costs not borne by the Federal Government.

Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

Disallowed costs means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

Equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Excess property means property under the control of any Federal awarding agency that, as determined by the Secretary, is no longer required for its needs or the discharge of its responsibilities.

Exempt property means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

Federal funds authorized means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

Federal share of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

Funding period means the period of time when Federal funding is available for obligation by the recipient.

Intangible property and debt instruments means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

Obligations means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

Outlays or expenditures means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of: cash disbursements for direct charges for goods and services; the amount of indirect expense incurred; the value of in-kind contributions applied; and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

Prior approval means written approval by an authorized official evidencing prior consent.

Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 12.924 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patients and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

Project costs means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a

recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Project period means the period established in the award document during which Federal sponsorship begins and ends.

Property means, unless otherwise stated, real property, equipment, supplies, intangible property and debt instruments.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

Recipient means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include, at the discretion of the Federal awarding agency, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

Research and development means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions.

(1) *Research* is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied.

(2) *Development* is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

Small awards means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $100,000).

Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of ''award'' in this section.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

Supplies means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (''subject inventions''), as defined in 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.''

Suspension means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under the Department of the Interior Regulations implementing E.O.'s 12549 and 12689, ''Debarment and Suspension.'' See subpart D of 43 CFR part 12.

Termination means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Third party in-kind contributions means the value of noncash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unliquidated obligations, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Unrecovered indirect cost means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

Working capital advance means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 12.903 Effect on other issuances.

For awards subject to this subpart, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this subpart shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in Section 12.904.

§ 12.904 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this subpart when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this subpart shall be permitted only in unusual circumstances. Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB. All requests for class deviations shall be processed through the Assistant Secretary-Policy, Management, and Budget. Federal awarding agencies may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies. Bureau/office application of less restrictive requirements when awarding small awards, except for those requirements which are statutory, as well as exceptions on a case-by-case basis, will be handled by designated officials identified in bureau/office procedures.

§ 12.905 Subawards.

Unless sections of this subpart specifically exclude subrecipients from

coverage, the provisions of this subpart shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals, or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' 43 CFR part 12.

Pre-Award Requirements

§ 12.910 Purpose.

Sections 12.011 through 12.917 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 12.911 Pre-award policies.

(a) *Use of Grants and Cooperative Agreements, and Contracts.* In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–6308) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, ''substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.'' Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public Notice and Priority Setting.* Federal awarding agencies shall notify the public of their funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 12.912 Forms for applying for Federal assistance.

(a) Federal awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, ''Controlling Paperwork Burdens on the Public,'' with regard to all forms used by the Federal awarding agency in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the Federal awarding agency.

(c) For Federal programs covered by E.O. 12372, ''Intergovernmental Review of Federal Programs,'' the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the *Catalog of Federal Domestic Assistance.* The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review. (See also 43 CFR part 9).

(d) Federal awarding agencies that do not use the SF–424 form will indicate whether the application is subject to review by the State under E.O. 12372.

§ 12.913 Debarment and suspension.

Federal awarding agencies and recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12689, ''Debarment and Suspension,'' subpart D of 43 CFR part 12. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 12.914 Special award conditions.

(a) Federal awarding agencies may impose additional requirements as needed, if an applicant or recipient:

(1) Has a history of poor performance;

(2) Is not financially stable;

(3) Has a management system that does not meet the standards prescribed in this part;

(4) Has not conformed to the terms and conditions of a previous award; or

(5) Is not otherwise responsible.

(b) Additional requirements may only be imposed provided that the applicant or recipient is notified in writing as to:

(1) The nature of the additional requirements;

(2) The reason why the additional requirements are being imposed;

(3) The nature of the corrective action needed;

(4) The time allowed for completing the corrective actions; and

(5) The method for requesting reconsideration of the additional requirements imposed.

(c) Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 12.915 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies will follow the provisions of E.O. 12770, ''Metric usage in Federal Government Programs.'' When applicable, the awarding agency shall request that measurement-sensitive information to be included as part of the application, be expressed in metric units. When required by the awarding agency, for grants to recipients, the following term and condition will be incorporated into the grant:

Provision

All progress and final reports, other reports, or

All progress and final reports, other reports, or publications produced under this award shall employ the metric system of measurements to the maximum extent practicable. Both metric and inch-pound units (dual units) may be used if necessary during any transition period(s). However, the recipient may use non-metric measurements to the extent that the recipient has supporting documentation that the use of metric measurements is impracticable or is likely to cause significant inefficiencies or loss of markets to the recipient, such as when foreign competitors are producing competing products in non-metric units.

End of Provision

§ 12.916 Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580 codified at 42 U.S.C. 6962).

Under the Act, any State agency or agency of a political subdivision of a State that is using appropriated Federal funds must comply with section 6002 of RCRA. Section 6002 of RCRA requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions of higher education and hospitals that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of

recycled products pursuant to the EPA guidelines.

§ 12.917 Certifications and representations.

Unless prohibited by statute or codified regulation, each Federal awarding agency is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Post-Award Requirements

Financial and Program Management

§ 12.920 Purpose of financial and program management.

Sections 12.921 through 12.928 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 12.921 Standards for financial management systems.

(a) Federal awarding agencies shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 12.952. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for their reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (31 U.S.C. 6501 note) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, ''Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs.''

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records, including cost accounting records, that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Federal awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above in § 12.921 (c) and (d), the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

§ 12.922 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain or demonstrate written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability as established in § 12.921. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purposes of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances will be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270, ''Request for Advance or Reimbursement,'' or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special Federal awarding agency instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. Federal awarding agencies may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Federal awarding agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit a request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Federal awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Federal awarding agency may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Federal awarding agency shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, Federal awarding agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraph (h)(1) or (h)(2) of this section apply:

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements; or

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, ''Managing Federal Credit Programs.'' Under such conditions, the Federal awarding agency may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, Federal awarding agencies shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding opportunities for women-owned and minority-owned business enterprises, recipients are encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless paragraph (k)(1), (2) or (3) apply:

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, P.O. Box 6021, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. In keeping with Electronic Funds Transfer rules, (31 CFR part 206), interest should be remitted to the HHS Payment Management System through an electronic medium such as the FEDWIRE Deposit system. Recipients which do not have this capability should use a check. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this subpart, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF–270, Request for Advance or Reimbursement. Each Federal awarding agency shall adopt the SF–270 as a standard form for all nonconstruction programs where electronic funds transfer or predetermined advance methods are not used. Federal awarding agencies, however, have the option of using this form for construction programs in lieu of the SF–271, ''Outlay Report and Request for Reimbursement for Construction Programs.''

(2) SF–271, Outlay Report and Request for Reimbursement for Construction Programs. Each Federal awarding agency shall adopt the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, a Federal awarding agency may substitute the SF–270 when the Federal awarding agency determines that it provides adequate information to meet Federal needs.

§ 12.923 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria:

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Federal awarding agency.

(7) Conform to other provisions of this subpart, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a Federal awarding agency authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraph (c) (1) or (2) of this section:

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) the current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated

property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraph (g) (1) or (2) of this section apply:

(1) If the purpose of the award is to assist the recipient to acquire equipment, buildings, or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed their fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(i) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(1) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(2) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

§ 12.924 Program income.

(a) Federal awarding agencies shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with Federal awarding agency regulations or the terms and conditions of the award, shall be used in one or more of the following ways:

(1) added to funds committed to the project or program by the Federal awarding agency and recipient and used to further eligible project or program objectives;

(2) used to finance the non-Federal share of the project or program; or

(3) deducted from the total project or program allowable cost in determining the net allowable costs upon which the Federal share of costs is based.

(c) When an agency authorizes the disposition of program income as described in paragraph (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) If the Federal awarding agency does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 12.914.

(e) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by Federal awarding agency regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§ 12.930 through 12.937).

(h) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 12.925 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon Federal awarding agency requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from Federal awarding agencies for one or more of the following program or budget related reasons:

(1) Change in the scope or the objective of the project or program (even

if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.

(6) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with OMB Circular A–21, ''Cost Principles for Institutions of Higher Education,'' OMB Circular A–122, ''Cost Principles for Non-Profit Organizations,'' or 45 CFR part 74, appendix E, ''Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals,'' or 48 CFR part 31, ''Contract Cost Principles and Procedures,'' as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved award, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraph (c)(1) and (c)(4) of this section, Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by this subpart and OMB Circulars A–21 and A–122. Such waivers may include authorizating recipients to do any one or more of the following:

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Federal awarding agency. All pre-award costs are incurred at the recipient's risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing, with the supporting reasons and revised expiration date, at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. The conditions that prevent issuance of a one-time extension are:

(i) the terms and conditions of award prohibit the extension;

(ii) the extension requires additional Federal funds; or

(iii) the extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Federal awarding agency provides otherwise in the award or in the agency's regulations, the prior approval requirements described in paragraph (e)(1) through (3) of this section are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of the transfer exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. No Federal awarding agency shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) No other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from Federal awarding agencies for budget revisions whenever paragraph (h) (1), (2) or (3) of this section apply:

(1) the revision results from changes in the scope or the objective of the project or program;

(2) additional Federal funds are needed to complete the project; or

(3) the recipient requests a revision that involves specific costs for which prior written approval requirements may be imposed under § 12.927.

(i) No other prior approval requirements for specific items will be imposed unless OMB approves a deviation.

(j) When a Federal awarding agency makes an award that provides support for both construction and nonconstruction work, the Federal awarding agency may require the recipient to request prior approval before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5,000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Federal awarding agency indicates that a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, the Federal awarding agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 12.926 Non-Federal audits.

Certain recipients and subrecipients shall be subject to non-Federal audits in accordance with the applicable directive from the table in this section.

Type of recipient	Applicable directive
Institution of higher education or other non-profit organization.	OMB Circular A–133.
State or local government	Single Audit Act 31 U.S.C. 7501–7507 and 43 CFR part 12, subpart B.
Hospital	OMB Circular A–133 or audit requirements of the Federal awarding agency.

§ 12.927 Allowable costs.

Federal awarding agencies shall determine allowable costs in accordance with the type of entity incurring the costs, using the appropriate directive from the table below.

Entity incurring costs	Applicable directive
State, local, or Federally recognized Indian Tribe.	OMB Circular A–87, Cost Principles for State and Local Governments.
Non-profit organization	OMB Circular A–122, Cost Principles for Non-profit Organizations and 43 CFR 12.927(b).
Institution of Higher Education	OMB Circular A–21, Cost Principles for Educational Institutions.
Hospital	45 CFR part 74, appendix E, Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.
Commercial organization or non-profit organization listed in Attachment C of OMB Circular A–122.	48 CFR part 31, Contract Principles and Procedures or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 12.928 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency.

Property Standards

§ 12.930 Purpose of property standards.

Sections 12.931 through 12.937 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Federal awarding agencies shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 12.931 through 12.937.

§ 12.931 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 12.932 Real property.

Each Federal awarding agency shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following.

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the awarding agency.

(b) The recipient shall obtain written approval by the Federal awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the Department of the Interior.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from the Federal awarding agency or its successor. The Federal awarding agency will give one or more of the following disposition instructions:

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Federal awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 12.933 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually to the Federal awarding agency an inventory listing of federally-owned property in their custody. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Federal awarding agency for further utilization.

(2) If the Federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710(I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, ''Improving Mathematics and Science Education in Support of the National Education Goals.'') Appropriate instructions shall be issued to the recipient by the Federal awarding agency.

(b) *Exempt property.* Exempt property. When statutory authority exists, the Federal awarding agency has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Federal awarding agency considers appropriate. Such property is ''exempt property.'' Should a Federal awarding agency not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 12.934 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest

in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds, and shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the Federal awarding agency, then (2) Activities sponsored by other Federal agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Federal awarding agency.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Federal awarding agency to determine whether a requirement for the equipment exists in other Federal agencies. The Federal awarding agency shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient will be reimbursed by the Federal awarding agency for such costs incurred in its disposition.

(h) The Federal awarding agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when the third party is otherwise eligible under existing statutes. The transfer shall be subject to the following standards.

(1) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(2) The Federal awarding agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with Federal funds and federally-owned equipment.

If the Federal awarding agency fails to issue disposition instructions within the 120-calendar-day period, the recipient shall apply the standards of this section, as appropriate.

(3) When the Federal awarding agency exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 12.935 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 12.936 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

(c) Unless waived by the Federal awarding agency, the Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use the data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 12.934(g).

§ 12.937 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standard

§ 12.940 Purpose of procurement standards.

Sections 12.941 through 12.948 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 12.941 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 12.942 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 12.943 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bids or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 12.944 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide, at a minimum, that:

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government; and

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of ''brand name or equal'' descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to use small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The ''cost-plus-a-percentage-of-cost'' or ''percentage of construction cost'' methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, ''Debarment and Suspension.'' See 43 CFR part 12.

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review of procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $100,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a ''brand name'' product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 12.945 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 12.946 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection;

(b) Justification for lack of competition when competitive bids or offers are not obtained; and

(c) Basis for award cost or price.

§ 12.947 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and documents, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 12.948 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the provisions below in all contracts and subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid

guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ''bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of appendix A to this subpart, as applicable.

Reports and Records

§ 12.950 Purpose of reports and records.

Sections 12.951 through 12.953 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 12.951 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 12.926.

(b) The Federal awarding agency shall prescribe the frequency of submission for performance reports. Except as provided in § 12.951(f), performance reports will not be required more frequently than quarterly or less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Federal awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) A final technical or performance report shall be required after completion of the project only if the awarding agency determines this to be appropriate.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Federal awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) Federal awarding agencies may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 12.952 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) *SF–269 or SF–269A, Financial Status Report.*

(i) Each Federal awarding agency will require recipients to use either the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. A Federal awarding agency may, however, have the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

(ii) The Federal awarding agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop accrual information through best estimates based upon an analysis of the documentation on hand.

(iii) The Federal awarding agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The Federal awarding agency shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Federal awarding agency upon request by the recipient.

(2) *SF–272, Report of Federal Cash Transactions.*

(i) When funds are advanced to recipients, the Federal awarding agency shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. The Federal awarding agency shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) Federal awarding agencies may require forecasts of Federal cash requirements in the ''Remarks'' section of the report.

(iii) When practical and deemed necessary, Federal awarding agencies may require recipients to report in the ''Remarks'' section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. The Federal awarding agencies may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) Federal awarding agencies may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the Federal awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or

(C) When the electronic payment mechanisms provide adequate data.

(b) When the Federal awarding agency needs additional information or more frequent reports, the following shall be observed:

(1) When additional information is needed to comply with legislative requirements, Federal awarding agencies shall issue instructions to require recipients to submit such information under the ''Remarks'' section of the reports.

(2) When a Federal awarding agency determines that a recipient's accounting system does not meet the standards in § 12.921, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Federal awarding agency, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Federal awarding agencies are encouraged to shade out any line item on any report if not necessary.

(4) Federal awarding agencies may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) Federal awarding agencies may provide computer or electronic outputs to recipients when such action expedites or contributes to the accuracy or reporting.

§ 12.953 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Federal awarding agency, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocation plans, etc., as specified in § 12.953(g).

(c) Copies of original records may be substituted for the original records if authorized by the Federal awarding agency.

(d) The Federal awarding agency will request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a Federal awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Federal awarding agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no Federal awarding agency shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Federal awarding agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal awarding agency.

(g) *Indirect cost rate proposals, cost allocation plans, etc.* Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of the submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to the Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Termination and Enforcement

§ 12.960 Purpose of termination and enforcement.

Sections 12.961 and 12.962 set forth uniform suspension, termination and enforcement procedures.

§ 12.961 Termination.

(a) Awards may be terminated in whole or in part only if paragraph (a)(1), (a)(2) or (a)(3) of this section applies.

(1) By the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Federal awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the Federal awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraph (a) (1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 12.971(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 12.962 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Federal awarding agency may, in addition to imposing any of the special conditions outlined in § 12.914, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Federal awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the Federal awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c)(1) and (2) of this section apply:

(1) The costs result from obligations which are properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the Federal awarding agency implementing regulations (see 43 CFR part 12).

After-the-Award Requirements

§ 12.970 Purpose.

Sections 12.971 through 12.973 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 12.971 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Federal awarding agency may approve extensions when requested by the recipient.

(b) Unless the Federal awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Federal awarding agency shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Federal awarding agency has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Federal awarding agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 12.931 through 12.937.

(g) If a final audit has not been performed prior to the closeout of an award, the Federal awarding agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 12.972 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of the Federal awarding agency to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 12.926.

(4) Property management requirements in §§ 12.931 through 12.937.

(5) Records retention as required in § 12.953.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in § 12.973(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 12.973 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by paragraph (*a*)(1), (2) or (3) of this section:

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR chapter II, ''Federal Claims Collection Standards.''

Appendix A to Subpart F—Contract Provisions

All contracts awarded by a recipient, including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, ''Equal Employment Opportunity,'' as amended by E.O. 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

2. *Copeland ''Anti-Kickback'' Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of $100,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction''). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $100,000 for construction contracts and for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of more than $100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—No contracts shall be made to parties listed on the General Services Administration's ''Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs'' in accordance with E.O.s 12549 and 12689, ''Debarment and Suspension.'' This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding their exclusion status and that of their principals.

[FR Doc. 95–8175 Filed 4–4–95; 8:45 am]

BILLING CODE 4310–RF–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–278; RM–8344]

Radio Broadcasting Services; Pequot Lakes, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 261A to Pequot Lakes, Minnesota, as that community's second FM broadcast service in response to a petition filed by Minnesota Christian Broadcasters, Inc. *See* 58 FR 62318, November 26, 1993. Canadian concurrence has been obtained for this allotment at coordinates 46–36–11 and 94–18–33 without a site restriction. With this action, this proceeding is terminated.

DATES: Effective May 12, 1995. The window period for filing applications for Channel 261A at Pequot Lakes will open on May 12, 1995, and close on June 12, 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. 93–278, adopted March 21, 1995, and released March 28, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission'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 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: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Pequot Lakes, Channel 261A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–7945 Filed 4–4–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 552, 554, 573, 576, and 577

[Docket No. 93–68; Notice 2]

RIN 2127–AD83

Petitions for Rulemaking, Defect and Noncompliance Orders; Standards Enforcement and Defect Investigations; Defect and Noncompliance Reports; Record Retention; and Defect and Noncompliance Notification

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) is amending several provisions of its regulations that pertain to its enforcement of the provisions of Chapter 301 of Title 49 of the United States Code (49 U.S.C. 30101–169, formerly the National Traffic and Motor Vehicle Safety Act), with respect to manufacturers' obligations to provide notification and remedy without charge to owners of motor vehicles or items of motor vehicle equipment that have been determined not to comply with a Federal motor vehicle safety standard or to contain a defect related to motor vehicle safety.

Some of the rules published today implement provisions added by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), regarding requirements for notification of certain vehicle lessees and for a second notification to owners of recalled vehicles and items of motor vehicle equipment in the event that NHTSA determines that the original notification has not resulted in an adequate number of vehicles or items of equipment being returned for remedy.

This rule also amends the regulation governing NHTSA's consideration of petitions for rulemaking or for an investigation of an alleged safety-related defect or a noncompliance with a Federal motor vehicle safety standard (49 CFR part 552) and NHTSA's procedures following an initial determination that a safety-related defect exists. 49 CFR part 554. The rule also makes several changes in the regulations governing the form and content of defect and noncompliance reports submitted to NHTSA by manufacturers (49 CFR part 573); and to the agency's record retention requirements. 49 CFR part 576. Finally, this rule amends various sections of 49 CFR part 577 regarding the requirements for notification to owners, purchasers, dealers and lessees of safety-related defects and noncompliances.

DATES: *Effective date:* The amendments made in this rule are effective May 5, 1995.

Any petitions for reconsideration must be received by NHTSA no later than May 5, 1995.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Jonathan D. White, Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, room 5319, Washington, DC 20590; (202) 366–5227.

SUPPLEMENTARY INFORMATION: These amendments are being adopted by NHTSA after considering comments received from numerous sources in response to a Notice of Proposed Rulemaking (NPRM) published on September 27, 1993. 58 FR 50314. NHTSA received comments on some or all of the proposed amendments from the following: ABAS Marketing, Inc. (Strait Stop); American Honda Motor Company (Honda); American Automobile Manufacturers Association (AAMA); Association of International Automobile Manufacturers (AIAM); Advocates for Highway and Auto Safety (Advocates); AM General Corporation (AM General); Blue Bird Body Company (Blue Bird); CIMS; Center for Auto Safety (CAS); Fleetwood Enterprises, Inc. (Fleetwood); The Kelly-Springfield Tire Company (Kelly-Springfield); Motor and Equipment Manufacturers' Association (MEMA); Mack Trucks, Inc. (Mack); Midland-Grau Heavy Duty Systems, Inc. (a subsidiary of Echlin, Inc.) (Midland); Navistar International Transportation Corporation (Navistar); National Automobile Dealers Association (NADA); R.L. Polk & Company (Polk); Sierra Products, Inc. (Sierra); Truck Manufacturers; Toyota Motor Corporate Services of North America (Toyota); and Volkswagen of America, Inc (Volkswagen). The reasons for the proposals were fully discussed in the NPRM.

Not all of the amendments proposed in the NPRM are being adopted as final rules today. With respect to the proposed amendment of 49 CFR part 577 regarding the duty of manufacturers to notify dealers of defects and noncompliances that are determined to exist, discussed in the NPRM (see 58 FR at 50320), NHTSA has decided that it needs additional time to consider the appropriate action to take in light of the issues raised by some of the commenters. Since these issues do not affect the remaining proposed amendments, the agency has decided to issue a final rule with respect to those amendments while it resolves the issues relating to dealer notification.

The regulatory provisions amended by this final rule implement the National Traffic and Motor Vehicle Safety Act of 1966, as amended (''Act''), which was originally set out at 15 U.S.C. 1381 *et seq.* Recently, as part of a comprehensive codification of transportation laws, the Act was reenacted as Chapter 301 of Title 49 of the United States Code. Pub.L. 103–272 (July 5, 1994). Congress specified in section 6(a) of the statute that the codification is not to be construed as making any substantive changes, but changed the wording of almost every section. Some of these changes affect the wording of sections of NHTSA's regulations that are being amended in this final rule. The agency believes it is desirable that the language of its regulations be consistent with that used in the statute. Therefore, this rule also makes technical amendments to the regulations covered by this notice to make their wording conform to the language used in the recodification. Any such amendments will be noted in the appropriate section of the preamble. The agency emphasizes that, because

Congress did not intend the changes in terminology to be substantive, these amendments are technical only and do not alter the meaning of the regulations.

Amendments to Part 552—Petitions for Rulemaking and for Defect and Noncompliance Investigations

Part 552 implements the citizen petition provisions of 49 U.S.C. 30162 (formerly section 124 of the Act). This rule adopts the proposed amendments to 49 CFR 552.6 and 552.8 in order to remove any possible ambiguity with regard to the factors that NHTSA may consider when deciding whether to grant or deny a citizen petition. The new language of § 552.8 makes it clear that the regulation does not limit NHTSA's discretion to consider factors such as resource allocation, agency priorities, and likelihood of success in litigation which might arise from the order, when deciding whether to grant or deny petitions filed pursuant to the Act. The amendment also deletes the reference in § 552.6 to a determination by the Associate Administrator that there is a ''reasonable possibility'' that the requested order will be issued.

While the amended regulation lists some specific factors that the agency may consider in deciding whether to grant or deny the petition, the listing is not intended to be exhaustive. It does not preclude the agency from considering factors not listed. The rule does not require the agency to consider all factors listed, nor does it set an order of priority in which the factors must be considered.

Two commenters, CAS and Advocates, expressed the view that the proposed amendment is too broad or vague, that it should specify safety as the first factor that NHTSA should consider, and that it should list certain other specific factors that the agency must consider. While safety is certainly one factor that the agency will consider, these commenters fail to recognize that the regulation is intended to be consistent with the broad discretion given to NHTSA by the Act to grant or deny petitions. The United States Court of Appeals for the District of Columbia Circuit recognized the breadth of the discretion conferred by the Act in *Center for Auto Safety* v. *Dole*, 846 F.2d 1532 (D.C. Cir. 1988), *on rehearing, vacating* 828 F.2d 799 (1987). In that case, the court specifically rejected an argument by CAS that NHTSA could not consider factors other than safety in deciding whether to grant or deny a petition for a safety-related defect or noncompliance proceeding.

Amendments to Part 554—Safety Defect and Standards Noncompliance Decisions

NHTSA is also amending 49 CFR 554.10 and 554.11, which implement the provisions of the Act governing initial and final decisions of safety-related defect or noncompliance by the Secretary. 49 U.S.C. 30118(a) and (b) (formerly section 152 of the Act). Section 554.10 is amended by deleting subsection (e) in its entirety; and § 554.11 is amended by deleting subsection (c), which provides that if the Administrator decides that a failure to comply or a safety-related defect ''does not exist,'' he or she will notify the manufacturer and publish ''this finding'' in the **Federal Register**.

As stated in the NPRM, the Act does not require a decision by NHTSA that a failure to comply or a safety-related defect does not exist. And, as a practical matter, the Administrator rarely if ever makes an affirmative decision that there is no failure to comply or no safety-related defect. Rather, if the Administrator believes that the information at his or her disposal does not warrant a final decision of defect or noncompliance, the investigation is closed, subject to its possible reopening if additional evidence is obtained.

To minimize the possibility that the public might be subject to confusing assertions by manufacturers that there has been a decision that a safety-related defect or noncompliance does not exist, the agency has decided to adopt the amendments proposed in the NPRM. The amended section will provide that if the Administrator elects, following an initial decision under 49 U.S.C. 30118(a), to close an investigation without making a final decision that a failure to comply or a safety-related defect exists, he or she will notify the manufacturer and will publish a notice of that closing in the **Federal Register**.

Honda commented that the regulation should give the agency the option of finding that a defect or noncompliance does not exist when it closes an investigation. Its rationale is that in the absence of such a decision, the public would be left in doubt about whether a vehicle did or did not have the defect or noncompliance. The agency has no reason to believe that the absence of such decisions in the past has been a source of confusion for the public. It sees no significant safety benefit to be gained from making such decisions; and continuing an investigation until proof of such a negative could be obtained would divert scarce resources from other areas.

NHTSA also will delete § 554.10(e), which provides that if the Administrator determines that a failure to comply or a safety-related defect ''does not exist,'' he or she may, at his/her discretion, within 60 days invite interested persons to submit views on the investigation at a public meeting as superfluous. The agency has never held a public meeting following the closing of an investigation. However, if it should so choose, it may do so even in the absence of such a regulation. No commenter objected to this change.

Amendments to Part 573—Defect and Noncompliance Reports

NHTSA is amending several sections of 49 CFR part 573 regarding leased vehicles; the timing and duration of remedy campaigns; submission of draft owner notification letters to the agency; advance submission of schedules for notification and availability of remedy under certain circumstances; quarterly reports on the progress of recall campaigns; identification by vehicle manufacturers of suppliers of defective or noncompliant equipment; identification by equipment manufacturers of vehicle manufacturers that have been supplied with defective or noncompliant equipment; and requirements for submission of information regarding the scope of a recall campaign in certain instances.

Definitions

NHTSA is amending § 573.4, ''Definitions,'' to include definitions of the terms ''leased motor vehicle,'' ''lessor,'' and ''lessee,'' because those terms are not currently defined in part 573. (These definitions will also be added to part 577.) The definition of ''leased motor vehicle'' is identical to that which appears in 49 U.S.C. 30119(f)(1). The definitions of ''lessor'' and ''lessee'' in this amendment are consistent with the definition of ''leased motor vehicle.''

Under the definitions proposed in the NPRM, only lessors that leased five or more vehicles for a term of at least four months in the year preceding the date of the notification would be covered by these regulatory provisions. One commenter, NADA, suggested that the definition of ''lessor'' be changed to make clear that the lessor is the owner, as reflected on the vehicle's title, of any five or more leased vehicles, as of the date of notification by the manufacturer of the recall.

NHTSA believes that NADA's comment provides a useful clarification of the term ''lessor,'' by adding the lessor is the owner as shown on the vehicle's title. It is also reasonable to

limit the term ''lessor'' to those who have ownership at the time of the notification by the manufacturer of the recall, so that the obligations of lessors would not be imposed on those who no longer owned the recalled vehicle at that time.

NHTSA is also adopting an amendment to § 573.4 which defines the term ''readable form,'' to mean a form that is either readable by the unassisted eye or by machine. As proposed, the definition required parties submitting information in machine readable form to obtain prior written approval from NHTSA's Office of Defects Investigation, confirming that equipment needed to read the information is readily available to NHTSA. Toyota commented that for all similar information responses, once a manufacturer has obtained approval for the original response in that form, it should not have to obtain approval for future submissions in the same form. NHTSA believes that one-time approval of a machine-readable format should suffice to ensure that the agency receives information in a form which makes it accessible to it. Requiring approval each time information is submitted would be duplicative and would unnecessarily reduce the efficiency of the recall notification process. Accordingly, the rule adopted today incorporates the changes suggested by Toyota.

NHTSA does not believe a system that permitted oral approval, as suggested by AAMA, would be workable. In the event that a question arose about the agency's approval of a particular format, it would be desirable to have a written record showing the scope of the approval.

Scope of Recall

The agency is amending 49 CFR 573.5(c)(2) to require, as part of the manufacturer's report to NHTSA of its defect or noncompliance decision, an explicit statement of how the population that will be covered by the recall was identified and of how the recall population differs from any similar vehicles or items of equipment that are not covered by the recall. If the information is not available to the manufacturer at the time of filing its part 573 report, it must so state in that report and furnish an estimated date when it expects it to be available. When there is such a delay, the manufacturer must furnish the information to NHTSA within five Federal government working days of when it becomes available.

Manufacturers often decide that a safety-related defect or noncompliance exists in only some portion of their production of a given model or item of equipment; for example, in vehicles or items of equipment manufactured between certain dates, or in certain locations, or with certain engines or options. On several occasions within the past few years, manufacturers have had to revise the scope of their recalls after they or NHTSA uncovered information indicating that additional vehicles or equipment items contained the defect or noncompliance.

Although some manufacturers have included information in their part 573 reports that explains the basis on which they selected the specific vehicles or equipment items that will be covered by a recall, NHTSA's current regulations do not explicitly require manufacturers to do so. NHTSA has found that when this information is not provided, it has been difficult to ascertain whether the scope of the recall proposed by the manufacturer is adequate. The amendment will ensure that the agency has the information it needs to ensure that the recall scope proposed by the manufacturer is correct.

AAMA and Blue Bird opposed the amendment on the ground that the agency already has the authority to request this information in individual cases as needed. AAMA also commented that requiring it in all cases will be unduly burdensome, and that NHTSA does not need this information for every recall. These were the only comments on this proposal.

The fact that NHTSA has authority to ask for this information in individual cases is not a reason for not requiring it across the board. Requiring it by regulation will make NHTSA's oversight of the recall process more efficient, because it will eliminate the need for the agency to decide in each case whether to ask for the information. Moreover, it will ensure that the information is available even in those instances in which NHTSA might fail to request the information because the need for it is not apparent at the time the manufacturer submits its defect or noncompliance report.

NHTSA does not believe it is unduly burdensome to require this information, which will ordinarily be readily available to the manufacturer at the time it files its part 573 report. In making a defect or noncompliance decision, the manufacturer is likely to have identified the particular vehicles or items of equipment covered by the recall, and it will, of necessity, have a basis for that identification. The amendment does permit later filing when a manufacturer does not have the information at the time the report is submitted.

NHTSA also disagrees with AAMA's contention that the agency does not ''need'' the information in every recall. Whenever the manufacturer is recalling fewer than all similar vehicles or items of equipment, the agency needs to know why the scope of the recall is limited in order to ensure that the recall campaign adequately covers the population affected by the defect or noncompliance. In the past, there have been instances in which a manufacturer expanded the scope of a recall after NHTSA obtained information showing that other vehicles or items of equipment had the same defect or noncompliance. The delay in the agency's learning about the additional defective or noncomplying vehicles or equipment items exposed members of the public to a safety risk that could have been avoided had the information explaining the scope of the recall been available to NHTSA when the manufacturer first notified NHTSA of its decision to recall.

Identification of Suppliers and Customers

NHTSA is amending § 573.5(c)(2) to require the manufacturer of a recalled vehicle or item of equipment to identify the supplier (if different from the vehicle manufacturer) of any component or assembly that contains the defect or noncompliance, and to require an equipment manufacturer that decides that a defect or non-compliance exists in its product to identify all manufacturers that purchased the defective or non-complying components for use in new motor vehicles or new items of equipment.

Both of these requirements will assist the agency in assuring at an early point in the recall process that a recall encompasses all vehicles and items of equipment that contain defective or noncomplying components rather than being inappropriately limited to a single manufacturer's production. Identification of the supplier will, at the outset of the campaign, permit the agency to contact the supplier promptly to ascertain whether the same component was distributed to other manufacturers or as replacement equipment. Likewise, early identification of the supplier's other customers (if any) will permit the agency to contact the affected manufacturers sooner to apprise them of their responsibilities under the Act once a defect or noncompliance in an item of equipment has been identified.

AAMA, AM General and Blue Bird expressed views about this proposal. AAMA and Blue Bird contended that such a requirement would be unduly burdensome for manufacturers. The agency disagrees. In many instances, manufacturers already provide this information to NHTSA when they are

conducting a recall. Moreover, in most if not all recalls, the manufacturer will know the particular component or components that caused the defect or noncompliance in the completed product, and will certainly be aware of the identity of the entity that supplied the component. If the manufacturer believes that the defect or noncompliance is not caused by a component or assembly from an outside supplier, it need not provide any information in response to this provision. Moreover, any burden is far outweighed by the safety benefit of allowing the agency to identify other vehicles or items of equipment with the same defective or noncompliant component.

Both Blue Bird and AAMA also noted that the agency already has the authority to request this information in individual recalls. While this statement is correct, it is not a reason for not adopting this provision. The information required by the amendment is obviously more accessible to the manufacturer than to the agency; the agency may not be able to identify all cases in which it is appropriate to request such information. Moreover, the amendment ensures that this type of information will be available to NHTSA at the beginning of the recall process. This will have the safety benefit of permitting earlier identification of other vehicles or items of equipment with the same defect or noncompliance, which will minimize the length of time that the public is exposed to a safety risk because it avoids unnecessary delay in making the remedy available to all affected owners.

Section 30102(b)(1) of Title 49 does not, as AAMA argues, prohibit the agency from requiring manufacturers to provide this information for components that are not replacement equipment as defined by that section. That section merely states that the vehicle manufacturer, and not the component manufacturer, is responsible for remedying a defect or noncompliance in a component installed in a vehicle as original equipment. It does not preclude NHTSA from obtaining information about the identity of the manufacturer or supplier of components used as original equipment. The agency does not intend to use the information to hold the component manufacturer responsible for remedying the defect or noncompliance. Its purpose is to learn from the latter whether any other vehicle manufacturer used the same component in its vehicles, so that the agency can then contact the manufacturer of those vehicles to ascertain whether additional recalls should be conducted.

AM General expressed a concern that this provision could have an adverse effect on suppliers whose components are identified by manufacturers as defective, in instances where further examination reveals that they are not in fact the cause of the defect or noncompliance. The number of instances in which such incorrect identification occurs is likely to be quite small because, in most instances, the cause of the problem has already been identified by the time the manufacturer makes its decision that there is a safety-related defect or noncompliance. If a manufacturer is still uncertain as to whether a defect or noncompliance is attributable to a component or assembly from an outside supplier when it files its defect or noncompliance report with NHTSA, the manufacturer's report should make that uncertainty clear. Any adverse publicity that does erroneously affect a supplier can be countered by publicizing the correct information when it becomes available. Finally, the safety benefit of having this information available to NHTSA, as described above, will far outweigh the risk that, in a few instances, a supplier might be incorrectly identified as the origin of a defective or noncomplying product.

Schedule for Notification Campaigns

Although many recalls are implemented within a reasonable time of the decision that a safety-related defect or noncompliance exists, NHTSA has noted an increase in the number of recalls in which there has been a significant delay between the manufacturer's decision that a defect or noncompliance exists and the commencement of the manufacturer's recall campaign. There have also been a limited number of instances in which the duration of the campaign was inordinately extended. The manufacturers in question have generally sought to justify these delays and extensions on the basis that needed parts and/or facilities were not available and it would therefore be pointless to notify owners of the defect or noncompliance.

While such unavailability may in certain cases justify some delay, it is important that the agency be aware of the manufacturer's anticipated schedule at the earliest possible time in order to assure that notification campaigns under the Act are commenced in a timely fashion and completed within an appropriate time period. In addition, in some instances, even if implementation of the remedy must be deferred (e.g., because needed parts are not available), it is appropriate for the manufacturer to send an interim notification to advise consumers of actions they should take prior to repairs being made. Finally, the agency needs to be able to respond to questions about the timing of the recall from the public and/or the media.

Therefore, NHTSA proposed to amend 49 CFR 573.5(c)(8) to require manufacturers to provide information about their schedule for owner notification, along with a description of any factors that they anticipated could interfere with the schedule. Under the proposal, schedules would have been required for all recalls. In addition, the NPRM proposed that if a manufacturer planned to begin the campaign more than 30 days after its defect or noncompliance decision, or planned to spread the notification campaign over more than 45 days, the manufacturer would have to identify the basis for such a delay. In addition, the NPRM proposed that if a manufacturer were unable to follow the schedule it had originally submitted, it would have to inform NHTSA promptly and submit a revised schedule.

AAMA opposed the proposal on several grounds: that it would make NHTSA a participant in, rather than an observer of, the recall process; that it would use manufacturer resources that would otherwise be devoted to implementing the recall campaign; that it is unneeded because most recall campaigns are implemented within a reasonable time; and that the requirement for a schedule would not speed up the remedy of vehicles because manufacturers would still need time to design and test parts, design and test the remedy, and train personnel.

NHTSA, as the agency charged by Congress with enforcement of the notification and remedy provisions of the Act, is of necessity a ''participant'' in the recall process. An integral part of this responsibility is to ensure that manufacturers carry out their recall obligations in a reasonable manner, which includes avoiding undue delay in sending owners notification of the defect or noncompliance.

The agency does not believe that the requirement will divert resources that would otherwise be used in the campaign; or that it will cause a delay in the implementation of recall campaigns, as Blue Bird commented. A manufacturer that determines that a recall is necessary will necessarily have to develop a schedule for implementing the recall. The proposal and the rule as adopted simply require that, for those relatively rare recalls for which a delay is anticipated, the schedule, along with

an explanation thereof, be provided to NHTSA.

AIAM opposed the proposal because it did not believe that manufacturers should be required to explain normal design, production, and distribution delays. It argued that only unique delays in a particular recall campaign, or delays of more than 75 or 90 days in sending out notification, should have to be explained. Moreover, it noted that foreign-based manufacturers need more than 30 days to initiate notification and begin the remedy because of the need to be in contact with their headquarters, and that it often takes more than 30 days to get an updated owner list from R. L. Polk.

The purpose of this provision is to ensure that the recall campaign is initiated within a reasonable time after the defect or noncompliance determination. NHTSA is not concerned with whether the delay is due to ordinary or unique circumstances. Its interest is in whether it is *reasonable.* The information the amendment requires is intended to enable NHTSA to evaluate the reasonableness of the delay, and to provide for interim notification where appropriate.

NHTSA believes that most notification campaigns can be commenced within 30 days of a manufacturer's defect or noncompliance decision and completed within 45 after they are commenced. However, to eliminate any ambiguity in calculating time periods, and to provide manufacturers with slightly more time, NHTSA has revised the final rule so that the periods in question are calculated from the date of the notice to the agency of the defect or noncompliance decision.

Based on past experience, and given the availability of telefax and other rapid electronic means of communication, that time period should be sufficient to allow manufacturers to obtain the information they need, either from Polk or from parent companies or suppliers located overseas. Moreover, if more time is required, the manufacturer need only advise the agency and explain the basis for the delay. NHTSA will not disapprove reasonable schedules for recall campaigns.

Advocates supported the requirement for a schedule, but also suggested that manufacturers be required to notify all owners within 30 days of notifying NHTSA of the defect or noncompliance. Advocates explained that any delays in the availability of the remedy could be explained to owners in the notification letter. NHTSA believes that a 30-day requirement for notification under all circumstances is unnecessarily rigid. It prefers to have the flexibility to decide on a case-by-case basis whether a proposed schedule is unreasonable.

AM General opposed the proposal because it believed that the manufacturer would be bound by the schedule, which would limit its flexibility in conducting the recall campaign. It also expressed concern that NHTSA needed to define more clearly the circumstances under which it would take action against a manufacturer under this section and what the action would be. Finally, it commented that NHTSA normally is able to learn of problems with recall campaigns through its regular interaction with manufacturers, and that the agency already has sufficient means at its disposal to compel a manufacturer to act more quickly.

Contrary to AM General's contention, the amendment does not unreasonably limit manufacturer flexibility. The amendment clearly states that if unexpected circumstances arise, that would result in unanticipated delay, the manufacturer may submit a revised schedule. If there are valid reasons for the delay, there would be no agency action against the manufacturer.

Honda commented that a definition of the term ''campaign'' is needed, to clarify whether it means notification to owners or the availability of the remedy. The agency has revised the regulatory language to clarify that the time periods triggering the need to submit a schedule refer to owner notification. However, NHTSA has also added language to clarify that if the remedy will not be available at the time owners are notified of the defect or noncompliance, the manufacturer's report must state when the remedy will be provided. This requirement makes explicit what was already implicit in existing § 573.5(c)(8) (redesignated by this amendment as § 573.5(c)(8)(i)), which requires each manufacturer to include in its report ''a description of its program for *remedying* the defect or noncompliance.'' (Emphasis added.)

Based on its consideration of the comments received on the NPRM, and on its experience in monitoring manufacturer compliance with the notification and remedy requirements of the Act, NHTSA now believes that it is not appropriate to require manufacturers to submit the detailed scheduling information such as that proposed in the NPRM for *every* recall campaign. Instead, the agency believes it is appropriate to focus on recalls in which the manufacturer intends to delay commencement or completion of the notification campaign to assure that such delays are not unreasonable.

For recalls in which the manufacturer intends to commence owner notification within 30 days, and to complete the notification campaign within 75 days of notifying NHTSA, it is unlikely that the agency would find that the schedule was unreasonable or would create a significant safety problem. Accordingly, the detailed scheduling information proposed in the NPRM will not be required for those recalls. (Of course, NHTSA has the authority to require manufacturers to provide scheduling and related information on a case-by-case basis, even apart from these general regulatory requirements.)

In those cases where the manufacturer intends to exceed the time periods set out in the amended final rule, there is a greater likelihood that the remedy will not be available within a reasonable time, as required by 49 U.S.C. 30120(c). Therefore, the amendment adopted today retains the requirement proposed in the NPRM for filing a schedule for the campaign and a detailed description of the factors on which the proposed schedule is based in such instances. Such factors will often include the time frame for development and testing of the specific remedy for the defect or noncompliance, the time frame for production of any necessary parts, and the anticipated date(s) for distribution of those parts to dealers and/or owners.

The final rule also retains the requirement that if a manufacturer becomes aware that circumstances will delay implementation of the recall, it must promptly inform NHTSA of the reasons for the delay and submit a new schedule. Such submission must also contain the basis for the new schedule, which shall also be subject to disapproval by the Administrator.

The preamble to the NPRM noted that a manufacturer that intended to seek an exemption from the recall requirements of the Act pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556 on the basis that the defect or noncompliance was ''inconsequential as it relates to motor vehicle safety'' would have to advise the agency of its intention to do so in its initial report under part 573. In its comments, AIAM suggested that the schedule requirement be waived when a manufacturer intends to file an inconsequentiality petition.

The agency agrees that it would not be appropriate to require a manufacturer that intends to petition for inconsequentiality to file a schedule at the time it notifies the agency of a defect or noncompliance, since no recall will take place if the petition is granted. However, this does not mean that the schedule requirement should be completely waived in such

circumstances, since if the petition is denied, the manufacturer will have to conduct a recall within a reasonable time thereafter. Therefore, NHTSA has added a new § 573.5(c)(8)(v) to clarify that the time periods for filing a schedule for owner notification shall run from the date of the agency's denial of the petition, whether or not the manufacturer appeals that denial pursuant to 49 CFR 556.7.

The final rule also adds a new § 573.5(c)(8)(vi) to require that in the event a manufacturer that had informed NHTSA in its part 573 report that it intended to file a petition for an inconsequentiality exemption does not do so within the 30-day period established by 49 CFR 556.4(c), the time frame for filing a schedule specified in § 573.5(c)(8)(ii) would begin to run from the end of that 30-day period. If NHTSA finds that manufacturers are abusing this provision in order to avoid filing the required schedules, it will take appropriate action.

Submission of Proposed Owner Letters to the Agency

NHTSA is also amending 49 CFR 573.5(c) to add a requirement that manufacturers submit to the agency for review, copies of their proposed owner notification letters before, rather than after, the letter is sent to owners. (In the NPRM, this proposed amendment was added to paragraph (9) of § 573.5(c). However, for the sake of clarity the agency has decided that this requirement should be in a separate paragraph. Accordingly, in the final rule, the requirement for submission of proposed owner letters will be paragraph (10) of § 573.5(c). The paragraph on recall campaign numbers, designated as (10) in the NPRM will now be paragraph (11).) The final rule provides that the manufacturer must submit a proposed owner notification letter to the Office of Defects Investigation (ODI) at least five Federal government business days prior to the date it intends to begin mailing. As noted in the NPRM, the purpose of this requirement is to allow NHTSA to review a manufacturer's draft to ascertain whether it complies with all statutory and regulatory requirements before mailing, since sending a corrected letter *after* the first mailing causes unnecessary expense and could confuse owners.

AAMA asserted that NHTSA lacks the statutory authority to ''dictate, edit or approve in advance'' a manufacturer's notification to owners. The amendment does not purport to grant to the agency any authority to ''dictate'' the precise wording of owner notification letters. While NHTSA has the authority pursuant to 49 U.S.C. 30118(e) (formerly section 156 of the Act) to order manufacturers to take specified steps if it decides that they have not adequately carried out their notification responsibilities, this amendment is part of a more informal process. NHTSA's experience has been that when it identifies deficiencies in a proposed owner notification letter, most manufacturers are willing to make appropriate changes. In any event, the fact that the agency may not be able to compel a manufacturer legally to modify an owner notification letter at that stage does not mean that the agency cannot or should not take steps to try to convince manufacturers to make appropriate changes in an effort to maximize the response to recall campaigns.

AAMA's fear that the regulation will lead to NHTSA's ''micromanaging'' the form and content of letters simply is not warranted. The agency has neither the time nor the interest to get involved in the minute details of rewriting owner notification letters that meet statutory and regulatory requirements. The extent of its involvement will be to ensure to the maximum possible extent that those letters meet all such requirements.

Several commenters expressed concern that requiring such advance review could unduly delay the recall notification process. Some also suggested that the agency add a provision permitting a manufacturer to send the letter if it has not heard from NHTSA within a specified time. As noted above, this amendment does not provide NHTSA with the authority to force a manufacturer to delay its owner notification campaign until the agency approves the wording of the manufacturer's proposed owner letter. Thus, the amendment is unlikely to add any delay at all, since manufacturers almost always prepare drafts of owner notification letters well before the actual mailing begins. In any event, the amendment specifically authorizes the agency to waive this requirement where warranted by safety considerations or other appropriate factors.

Nevertheless, in order to ensure that the agency has adequate time to review the draft letter and contact the manufacturer to resolve any problems, the amendment requires the manufacturer to submit the proposed letter by a means which allows verification that the letter was received by ODI and indicates the date of receipt. The agency encourages manufacturers to send their draft notification letters to ODI by fax, at 202–366–7882 (primary) or 202–366–1767 (alternate). Other means that provide verification of receipt are overnight delivery (either by Express Mail or private delivery service) addressed to: Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5319, Washington, DC 20590; and hand delivery to ODI at that address. Neither first-class mail nor certified mail would be acceptable because of lengthier delivery times and/or the absence of proof of receipt.

Two commenters, AAMA and Truck Manufacturers, support the present system, which requires manufacturers to submit copies of owner notification letters to NHTSA only *after* mailing to owners. AM General suggested amending the proposal to require sending copies of owner notification letters to NHTSA on the same day they are mailed to owners. AAMA states that there is no need for the amendment because most letters already meet the requirements of part 577 and because many manufacturers currently send draft copies of owner notification letters to NHTSA in advance of mailing.

The fact that many manufacturers already seek out NHTSA's advance approval is not an argument against the amendment. To the contrary, it shows that it is practicable and desirable. Similarly, the fact that most owner letters comply with regulatory requirements does not provide a basis for not trying to assure that even more letters fully comply.

As pointed out in the NPRM, NHTSA has had several experiences in which an owner notification letter has failed to comply with all of the requirements of part 577. In such instances, it would rarely be productive (and might be confusing and counterproductive) to require the manufacturer to send a second, corrected letter. The amendment will also increase the agency's ability to respond to questions about the recall from the public and/or the media by ensuring that the agency is informed about the specifics of the notification letter before the manufacturer actually initiates the recall.

Finally, the agency views as neither necessary nor desirable Toyota's suggestion that NHTSA incorporate in its regulations a provision allowing it to waive requirements for owner notification letters in certain instances, such as negotiated settlements. NHTSA's broad discretion to enter into negotiated settlements of enforcement matters has already been recognized by the courts. *See Center for Auto Safety* v. *Lewis*, 685 F.2d 1381 (D.C. Cir. 1982). In any event, the amendment as proposed and adopted specifically allows the agency to waive this requirement.

Quarterly Reports

NHTSA is amending 49 CFR 573.6(a) to establish specific due dates for quarterly reports on the progress of ongoing recall campaigns. The NPRM proposed to amend this section by establishing due dates for quarterly reports on the twentieth calendar day after the close of each calendar quarter.

Most commenters favored the idea of amending this provision. The two that did not—Midland and Truck Manufacturers—favored maintaining the present system largely because the proposed schedule would not give enough time for some manufacturers (especially small companies that are not computerized) to submit their reports. AAMA favored amending the due dates, but also expressed the view that the dates in the proposal would not allow some companies enough time. Kelly-Springfield expressed the same view. The agency has decided to adopt the schedule suggested by AAMA, which sets definite calendar dates on which the reports would be due, but allows more time than the language proposed in the NPRM. Under the final rule, manufacturers must file their quarterly reports of recall campaign status no later than April 30 for the quarter ending March 31, July 30 for the quarter ending June 30, October 30 for the quarter ending September 30; and January 30 for the quarter ending December 31, unless the specified filing date falls on a weekend or Federal holiday. In such cases, the quarterly report would be due on the next day on which the Federal government is open for business.

NHTSA believes that this schedule allows a reasonable amount of time for all manufacturers, even those that are small and lack computer facilities. Since the date is always the same, i.e., the 30th of the given month, the agency believes it will be easier to keep track of than Kelly-Springfield's suggestion, which was the last business day of the month.

The NPRM also proposed to amend § 573.6(b) by adding a new paragraph (6) that would require both vehicle and equipment manufacturers to indicate separately in their quarterly reports the number of vehicles and items of equipment that are repaired and/or returned by dealers prior to their first sale to the public. AAMA, AM General, Blue Bird, and Truck Manufacturers opposed the proposal because of the added cost and time that would be needed to prepare the quarterly report. AAMA added that it saw no justification for such a requirement. No other commenter opposed the proposal, with Midland favoring it and Volkswagen taking a neutral position but giving information on the time and cost entailed in making the changes that would be needed to its computer system to track inventory return information separately.

After reviewing these comments, the agency has decided to make the requirement applicable only to equipment manufacturers, rather than to both vehicle and equipment manufacturers as proposed in the NPRM. Under 49 U.S.C. 30116, defective and noncompliant motor vehicles in dealer inventory must be, and usually are, repaired by the dealer prior to sale to the public; whereas that section requires the manufacturer of equipment to repurchase the defective or noncomplying items that are in inventory at the time of the defect or noncompliance decision. In addition, the agency believes that there is a greater need for the agency to keep track of whether defective or noncomplying equipment is being returned by dealers and retailers to manufacturers because of the greater number of items that are involved in equipment recalls, the higher percentage of items that are kept in the inventories of dealers and retailers at any given time, and the greater likelihood that dealer/retailer inventory will contain items subject to recall. In addition, the agency is clarifying that manufacturers should include in this category items returned prior to first sale to the public from all retailers, not just ''dealers,'' as well as from distributors of the items in question.

Recordkeeping for Leased Vehicles

NHTSA is amending 49 CFR 573.7 to require manufacturers to maintain information concerning notification of owners of leased vehicles if the manufacturer knows that a vehicle is leased, and to require lessors of leased vehicles to maintain certain information concerning notifications they send to the lessees of those vehicles. The final rule adds a provision that was not in the NPRM: that the records with respect to notification of lessees must be maintained for one calendar year following the expiration of the lease. The agency added this provision because it was necessary to make clear to lessors and manufacturers how long these records must be maintained. The other record retention requirements in part 573 specify a length of time for which the records must be kept.

In the NPRM, NHTSA proposed to amend § 573.7(a) to require the manufacturer to identify those vehicles on its list of owners/purchasers receiving notification which it knows to be leased. The proposal would not have required a separate list of those vehicles that were leased, but would have required that leased vehicles be clearly identified as such. The agency also proposed to add a new § 573.7(d), which would have required each lessor notifying its lessees of a defect or noncompliance to maintain a list of the names and address of the lessees, to include the name and address of the lessee, the VIN, and the date the lessor sent the notification to the lessee. Based on the comments received on that proposal, which are summarized below, the agency has decided to adopt a final rule which differs in some respects from the original proposal.

AAMA, NADA, Polk, Truck Manufacturers and Toyota opposed the proposal in the NPRM. AIAM supported the proposal with modifications. AAMA, Truck Manufacturers and Toyota based their opposition on the difficulty that manufacturers would have identifying which vehicles in a recall are leased, and the cost and burden of developing a system that would enable a manufacturer to keep track of this information. Polk's opposition was based on the difficulty of ascertaining from state vehicle registration records whether or not a vehicle is leased.

The agency notes that the proposal in the NPRM would have required manufacturers to maintain records of notifications sent to ''known lessors.'' This would not have required manufacturers to identify in its records leased vehicles other than those it already knew to be leased. However, because of the apparent misunderstanding of the extent of the manufacturer's obligation under the first proposal, NHTSA is implementing a revised and simplified version of this requirement, which is intended to make clear that the lists maintained by manufacturers under this section do not need to identify those vehicles that are leased except to the extent that the manufacturer already has that information at the time it sends the notification letter.

AAMA also noted that to assure that lessees receive notification of a recall, it would be necessary to include language in the notification letter directing lessors to notify lessees in all notification letters. Although the first NPRM did not propose such a requirement, the agency has decided, after considering comments on the proposed amendments to part 577 regarding notification of lessees, that the simplest and most effective way to ensure that lessees will be notified is to require manufacturers to include in all

notification letters sent to vehicle owners a statement that if the vehicle is leased, the lessor must send the notification letter (or a copy thereof) to the lessee. That amendment is discussed more fully elsewhere in this notice.

NADA opposed the proposal to require each lessor to maintain a list of the names and addresses of the lessees it has notified. NADA stated that if lessors are required to forward all recall notification letters to lessees, there is no need to require lessors to keep records of those lessees to which it sent the letters. It also commented that it would be unduly burdensome for small leasing companies to keep the ''detailed'' records that would be required by the proposal.

NHTSA notes that the obligation of lessors to keep records of all lessees who have been notified of a recall is analogous to the obligation of a manufacturer to keep records of those whom it has notified. It is, however, less complex because, unlike the manufacturer list, it does not need to be updated each quarter for status of the remedy, and requires only a one-time entry for the date on which the notification was sent to the lessee.

As stated in the NPRM, NHTSA has found the information maintained by manufacturers pursuant to § 573.7 to be useful in the agency's efforts to evaluate whether manufacturers' notification and remedy campaigns are adequate. Because Congress amended the Safety Act to require lessors to send recall notifications to lessees (see 49 U.S.C. 30119(f)), NHTSA needs the same type of information from lessors in order to evaluate whether lessors are adequately carrying out their obligations. While the agency recognizes that this recordkeeping may impose a burden on some lessors, that burden is outweighed by the safety benefit of having such information available.

Copies of Manufacturer Communications

NHTSA is also amending § 573.8 to clarify that the requirement that manufacturers furnish NHTSA with copies of ''all notices, bulletins and other communications * * * sent to more than one manufacturer, distributor, dealer, or purchaser, regarding any defect in his vehicles or items of equipment * * * whether or not such defect is safety-related,'' applies to communications made by electronic means. It is making the same amendment to § 573.5(c)(9), which requires manufacturers to send to NHTSA ''a representative copy of all notices, bulletins, and other communications that relate directly to the defect or noncompliance and are sent to more than one manufacturer, distributor, dealer or purchaser,'' within five days of sending them to the manufacturers, distributors, dealers or purchasers.

Only one commenter, AIAM, opposed this proposal. It stated that NHTSA lacks the authority under the Act to require this ''additional'' information from manufacturers. AIAM's objection is misplaced. The amendment does not increase the scope of the agency's existing authority to require manufacturers to submit certain types of information. It merely makes explicit a requirement that was already inherent in the regulations as previously written.

Recall Identification Numbers

In order to minimize confusion during NHTSA's monitoring of recall campaigns and to improve the agency's response to owners and prospective purchasers, NHTSA is adding a new provision to part 573 (§ 573.5(c)(11)), which requires manufacturers to provide the manufacturer's identification number for each recall if it is not identical to the campaign number assigned by the agency. In the NPRM, this amendment was designated § 573.5(c)(10). However, the agency has decided to redesignate it as § 573.5(c)(11) in the final rule because it has revised the numbering of the preceding paragraph. The amendment is otherwise identical to that proposed in the NPRM. No commenter raised any issues relating to this amendment.

Amendments to Part 576—Record Retention

NHTSA is amending 49 CFR 576.5 to provide that records concerning malfunctions that may be related to motor vehicle safety and that refer to a specific vehicle must be retained for eight years from the close of the model year during which the vehicle was manufactured (i.e., the date on which the last vehicle was produced for the model year). This amendment differs from that proposed in the NPRM. In the amendment as proposed, the eight-year time period began to run with the date the vehicle was sold, and retention would also have been required for records for five years after they were acquired or generated, if that was later than eight years after the date of sale.

NHTSA decided to change the language from that proposed in the NPRM after considering the comments of several manufacturers, whose objections to the proposal focused principally on the requirement that the eight years be counted from the date of sale. These manufacturers asserted that a requirement that records be kept according to sale date would be unworkable and unreasonably costly and burdensome. See comments of AAMA, AIAM, Chrysler, Navistar and Toyota. These commenters, as well as Blue Bird and Fleetwood, suggested that basing the record retention requirement on the model year of production would be more workable.

After careful consideration, NHTSA believes that the commenters have raised legitimate concerns. The suggested alternative would be more workable and less costly, and would not reduce the availability of relevant records.

The agency has also decided to eliminate the language in the NPRM that would have required manufacturers to maintain records for five years from the date they were acquired or generated, if that would be later than eight years from the date of sale. The number of records that would be retained beyond those that are generated within the first eight years after the model year of production is likely to be small. Moreover, the potential benefits would be slight, since most investigations of defects and noncompliances begin far earlier than eight years after production. However, notwithstanding this amendment, the agency retains the authority to require a manufacturer to retain records for vehicles more than eight years old if it has an open investigation of an alleged noncompliance or safety-related defect that includes such vehicles.

Amendments to Part 577—Defect and Noncompliance Notification

The agency is amending several sections of 49 CFR part 577 to revise the provisions regarding notification of safety-related defects and noncompliances with Federal motor vehicle safety standards.

Definitions

NHTSA is amending § 577.4, ''Definitions,'' to add definitions of the terms ''lessor,'' ''lessee'' and ''leased motor vehicle.'' As was the case with the amendment of the definition section of part 573 to incorporate these terms, the amendment to this section is being made to implement 49 U.S.C. 30119(f), the statutory section that requires that lessees of motor vehicles receive notification of safety-related defects and noncompliances.

The definition of ''lessor'' adopted today is slightly different from that in the NPRM. This is necessary to make it consistent with the definition of the same term in part 573 as amended today. The agency decided to adopt a suggestion of a commenter, NADA, that

defines the lessor as the owner, as reflected on the vehicle's title, of any five or more leased vehicles, as of the date of notification by the manufacturer of the recall. The definitions adopted today for the terms ''lessee'' and ''leased motor vehicle'' are the same as those in the NPRM. No commenter objected to the proposed changes in § 577.4.

Marking of Recall Notification Envelopes

The agency is amending § 577.5(a) to add a requirement for marking the envelope in which recall notification letters are sent by requiring that the envelope containing the notification bear, in all capital letters, the words ''SAFETY,'' ''RECALL'' and ''NOTICE,'' in any order. Other words may be included, and the type may be any size as long as it is larger than that used for the address. The language must be also be distinguishable from other wording on the front of the envelope in some manner other than size, such as by typeface (e.g., bold, italic), color, and/or underlining.

This amendment differs slightly from the proposal in the NPRM. The proposal would have required use of the phrase, ''SAFETY RECALL NOTICE'' in boldface capital letters. In response, several commenters suggested alternative wording. Others expressed the view that the current system works well enough, that the proposal did not give manufacturers enough flexibility, or that it would be too costly and/or burdensome to change the envelopes now in use.

NHTSA believes that the cost of adding new wording to recall notification envelopes will be relatively low, and will be outweighed by the safety benefit of making it more likely that the recipient will read the letter. Moreover, while the present system works well, in many cases there is need for improvement in the rate of owner response to recalls. Accordingly, the agency believes that it is appropriate to require manufacturers to mark the outside of recall notification envelopes to alert recipients to the importance of their contents.

However, there is merit to the view expressed in some comments that more flexibility should be allowed than would have been permitted under the proposal in the NPRM. The agency believes that the amendment adopted today should satisfy concerns about flexibility in envelope format while calling recipients' attention to the contents of the envelope. However, to ensure that envelopes comply with regulatory requirements, the amendment includes a requirement for one-time submission of envelope format to the agency. Once a given format is approved, the manufacturer need not submit its envelope format again before using it for other recalls, unless there are changes.

This review will, like the agency review of draft notification letters discussed earlier in this preamble, be limited to ensuring that the envelope markings comply with the minimum requirements of the regulations. The agency's experience with advance review of notification letters has been that it makes the notification process more efficient because it allows the manufacturer to correct any aspects of the material that do not comply with the regulations before undertaking the entire mailing. Advance review of envelope format would doubtless have the same effect.

Notification for Leased Vehicles

NHTSA is amending § 577.5 to add new subsections (h) and (i), which establish requirements for notification of lessees of leased vehicles concerning the existence of safety-related defects or noncompliances in their vehicles.

As proposed in the NPRM, subsection (h) would have required a manufacturer to send different notification letters, depending on whether or not the vehicle was leased. The proposal would have required the manufacturer to include language describing the lessor's duty to provide notification to the lessee only in letters sent by the manufacturer to a known lessor of a leased motor vehicle, and to provide the lessor with a copy of the notification to be sent to lessees.

A number of commenters noted that to the extent that the proposed amendment would require manufacturers to identify the vehicles in the recall population that are leased, it would present a problem because manufacturers often do not know which vehicles are leased and which are not. For example, Polk opposed the proposal on the grounds that state vehicle registration records do not identify lessors/lessees, so that obtaining this information for notification purposes would be extremely difficult. AIAM and Honda made similar comments.

Other commenters objected to notifying lessors or lessees separately from other vehicle owners, or to the requirement that manufacturers include a separate copy of the notification letter for the lessee in the mailing to the lessor. See comments of NADA, Toyota and Truck Manufacturers. These commenters suggested including in all owner notification letters a statement of a lessor's obligation to notify a lessee of the recall campaign.

NHTSA believes that there is merit to the concerns these commenters have raised about this aspect of the proposal. In addition, to the extent that the language of the proposal would have meant that only owners of vehicles known by the manufacturer to be leased vehicles would have received a notification that informed them of their obligation to provide notification to lessees, it would have meant that lessees of vehicles not known by the manufacturer to be leased—a potentially large number—would not receive any notification of safety-related defects or noncompliances and the availability of a remedy without charge.

Accordingly, NHTSA has decided to modify subsection (h) to require manufacturers to include in *all* notification letters a statement of lessors' obligations regarding recall notification letters. If the manufacturer is sending the letter to a recipient that it knows to be a lessor of lessee of a leased vehicle it may use language that is not identical to that in letters sent to recipients whose vehicles are not known to be leased. However, in all cases, the letter must clearly state the lessor's obligation under Federal law to provide notification to lessees of its vehicles and to comply with regulations regarding retaining records of notifications sent to lessees. The amendment does not require the manufacturer to furnish the lessor with a separate copy of the notification letter to be sent to lessees.

The final rule adopts § 577.5(i) as proposed in the NPRM. That subsection restates the requirement of 49 U.S.C. 30119(f), which requires a lessor who receives notification of a safety-related defect or noncompliance in a leased motor vehicle to send a copy of the notification to the lessee of the vehicle. It adds to the statutory language requirements that the lessor send the notification to the lessee as prescribed by new § 577.7(a)(2)(iv), which requires that the notice be sent by first-class mail, and that it be sent to the lessee no more than 10 calendar days from the date the lessor received the notification from the manufacturer. Finally, it clarifies that the requirement applies to all notifications, both initial and follow-up, except where the manufacturer has notified all of a lessor's lessees directly.

Timing of Owner Notification Letters

The agency is amending § 577.7, ''Time and Manner of Notification,'' with modifications from the language proposed in the NPRM. Those changes

are based on its consideration of the comments on the NPRM.

The NPRM proposed to amend § 577.7(a)(1) to give the agency authority to order a manufacturer to notify owners of a safety-related defect or noncompliance on a specific date, when it finds that such a letter would be in the public interest. A number of manufacturers objected to the original proposal because it did not contain any criteria upon which the decision would be based, and failed to require NHTSA to consult with the manufacturer before deciding to order notification on a specific date. The agency believes that it is desirable to provide a list of criteria to assure both manufacturers and the public that the decision is based on consideration of all appropriate and relevant factors. It is also desirable to allow the manufacturer to make its views known to the agency before the decision is made.

Accordingly, the agency has modified the proposed regulatory language by adding a list of factors that may be considered by the agency, and a requirement that the agency consult with the manufacturer before making the decision. The factors that may be considered include the severity of the risk to safety; the likelihood of occurrence of the defect or noncompliance; whether there is something that an owner can do to reduce either the likelihood of occurrence of the defect or noncompliance or the severity of the consequences; whether there will be a delay in the availability of the remedy from the manufacturer; and the anticipated length of any such delay. The agency may also consider other factors relevant to whether early notification would be in the interest of safety.

Several commenters objected to the proposed change on the grounds that the agency already has the authority to require owner notification on a specific date. NHTSA agrees with this statement, but does not agree that it is a reason for not adopting this provision. The agency believes that it is desirable to make this authority explicit because there have been instances when manufacturers have refused to notify owners of a safety-related defect or noncompliance in conformity with a NHTSA request. Having a regulation authorizing the agency to require notification on a date certain will make manufacturer compliance more certain.

AAMA and Chrysler commented that the change is unnecessary because the manufacturer, and not the agency, is in the best position to know when early notification (i.e., notification prior to the time a remedy is available) is warranted. NHTSA disagrees. As the agency charged by statute with enforcing the notification and remedy requirements of the Act, it is in the best position to consider objectively *all* of the factors, including the safety of the public, that need to be considered, and to give them appropriate weight. Based on some manufacturers' past history of undue reluctance to comply with NHTSA requests to notify owners of a defect or noncompliance prior to the availability of a remedy, the agency believes that it is unwise to entrust responsibility for making this judgment solely to the manufacturer. Moreover, the changes made in the NPRM language to give manufacturers the opportunity to submit their views should be adequate to address concerns expressed by some manufacturers that their concerns would not be considered.

The agency notes that it does not intend to exercise the authority to designate a date for owner notification letters except in cases where the commencement of the remedial campaign will be delayed substantially and there appear to be safety benefits associated with a prompt owner notification.

Advocates commented that all owners should be notified immediately after the agency is informed of the existence of the defect or noncompliance, so that they would be able to take measures to minimize the effect of the defect or noncompliance until the remedy is available. It proposes a two-step notification process for all recalls, with the first owner notification to be sent within 30 days of agency notification, and a second notice to be sent later regarding the remedy. CAS also supported a 30-day deadline for notification in all recalls.

As stated above in connection with the amendment to § 573.5(c)(8), the agency does not believe it would be productive to establish a 30-day deadline for all recalls, or to institute a mandatory two-step notification process for all recalls. Given that recalls can vary widely in such matters as the number of items, the severity of the hazard, the complexity of the remedy and the size and resources of the manufacturer, the agency believes that an approach that allows for flexibility in handling each recall individually is preferable. Further, the two-step notification process introduces the possibility of owner confusion. The agency believes that these factors, along with the increased cost of sending a second owner letter, will outweigh the safety benefit of such a process in most circumstances.

Timing of Notification to Lessees

The agency is also adding a new paragraph (iv) to subsection (a)(2) of § 577.7. The new paragraph requires that a lessor must send its lessees a copy of the manufacturer's notification letter by first-class mail within 10 days of receiving it. No commenter opposed this proposal.

Disclaimers

NHTSA is amending § 577.8, ''Disclaimers,'' to make clear that that section's prohibition of disclaimers of the existence of a safety-related defect or noncompliance applies equally to follow-up notifications. The agency received no comments on this proposal.

Follow-up Notification

The final rule also adds a new § 577.10, which sets forth the criteria under which the agency will determine whether a manufacturer must conduct a follow-up notification campaign and the requirements applicable to such campaigns. This new section implements 49 U.S.C. 30119(e) (formerly section 153(d) of the Act), which authorizes NHTSA to require manufacturers to send a second notification of a defect or noncompliance, ''in such manner as (NHTSA) may by regulation prescribe,'' where the agency determines that the initial notification campaign has not resulted in an adequate number of vehicles or items of equipment being returned for remedy. With minor changes, the final rule adopts the proposals in the NPRM.

New § 577.10(b) sets forth criteria that NHTSA may consider in making a determination under this provision. The criteria include, but are not limited to, the percentage of covered vehicles or items of equipment that have already been returned for remedy; the amount of time that has elapsed since the prior notification was sent; the likelihood that a follow-up notification will increase the number of vehicles or items of equipment receiving the remedy; the seriousness of the safety risk from the defect or noncompliance; and whether the prior notification(s) undertaken by the manufacturer complied with the requirements of the statute and regulations.

The agency does not intend that this list of factors be exhaustive. Accordingly, paragraph (b)(6) makes it clear that NHTSA may consider additional factors as it deems appropriate.

Section 577.10(c) provides that a manufacturer is required to provide follow-up notification only with respect

to vehicles or items of equipment that have not been returned for remedy pursuant to the prior notification(s). Pursuant to paragraph (d), the manufacturer is required to send the follow-up notification to all categories of recipients (i.e., owners, first purchasers, lessors, lessees, manufacturers, distributors, dealers, and retailers) that received the prior notification(s), except where the agency determines that a lesser scope is appropriate.

Paragraph (e) describes the required contents of the follow-up notification. The notice will have to include a statement that identifies it as a follow-up to an earlier notification, and must urge the recipient to present the vehicle or item of equipment for remedy. In addition, except where the agency determines otherwise, the notice must include the other information required to be included in an initial notification letter.

Paragraph (f) requires that the outside of the envelope or other communication containing the follow-up notification meet the same requirements as an envelope containing an initial notification, as set forth in 49 CFR 577.5(a). Unlike the NPRM, the final rule does not recite those requirements verbatim, but rather incorporates them by reference to the appropriate section of these regulations.

Paragraph (g) allows the agency to authorize use of postcards or other media rather than letters for follow-up notification where appropriate.

AAMA and Blue Bird commented that the regulation is not needed because manufacturers already send out follow-up notification, and that follow-up notifications are likely to cause owner confusion. These comments challenge the wisdom of the decision by Congress to authorize NHTSA to require follow-up notification, rather than the substantive merit of NHTSA's proposed regulation. Since Congress has decided that it is appropriate to give NHTSA this authority, and has authorized NHTSA to promulgate implementing regulations, these comments are not persuasive.

AIAM and Toyota commented that the regulation should mandate, rather than permit, NHTSA to consider the factors listed. The agency believes that mandatory language would be unwise because it would unduly restrict its discretion. Flexibility is essential to administration of the agency's recall program, given the highly varied nature of safety recalls. However, the agency will generally consider the enumerated factors, since they are relevant to the need for a follow-up notification.

The NPRM proposed that the scope, timing, form and content of the follow-up notification would be ''designed by the Administrator, in consultation with the manufacturer.'' AIAM commented that the regulation should state that the follow-up notification letter will be ''developed,'' rather than ''designed'' by the agency, and that the content of the letter should be a cooperative effort between NHTSA and the manufacturer. Toyota also commented that the agency should only be involved in ''approving'' the follow-up notification, not in ''designing'' it; and that if NHTSA has problems with a manufacturer's follow-up notification, it should consult with the manufacturer to work out the problem.

The agency interprets these comments to express reservations about the extent of NHTSA's control over follow-up notification letters. The agency believes that it must have such control, in order to carry out its statutory responsibility to maximize the effectiveness of recall campaigns. However, the agency has decided to change the word ''designed'' in § 577.10(a) to ''established,'' to reflect the fact that the scope, timing, form, and content of the follow-up notification will result from consultation between NHTSA and the manufacturer, rather than from independent NHTSA action.

Advocates and CAS commented that evaluation of safety risk should not be a criterion equal to the others, since the existence of a recall indicates that there is a safety risk. While recalls under the Act are by their nature safety-related, some defects and noncompliances pose a much greater risk to safety than others, by virtue of such factors as the severity of the consequences and the likelihood that the problem will occur. NHTSA believes that it is entirely appropriate for it to consider the degree of the risk to safety as a factor in deciding whether to require a manufacturer to undertake a follow-up notification. However, the agency notes that it is not required to give equal weight to all of the listed criteria.

Advocates and CAS also favored setting a minimum permissible completion rate for all recalls, with follow-up notification for all recalls falling below that percentage. Midland commented that NHTSA should define what is considered to be an inadequate completion rate; and Navistar said NHTSA should set ''guidelines'' for when a follow-up notification would be required.

As previously stated, NHTSA believes that it is important for it to retain substantial discretion and flexibility in order to carry out the responsibility to maximize the effectiveness of recalls. Setting a minimum completion requirement for all recalls would seriously restrict this flexibility. Moreover, such a system would be neither fair nor workable, given the number of factors that affect the completion rate, such as the nature of the item (whether vehicle, tire or equipment), its age, the seriousness of the defect, and the means used to notify owners (e.g., individual notification letter or public notice).

CAS suggested that follow-up notification should be required for all recalls involving a defect or noncompliance that poses a significant safety risk. In addition to the difficulty of defining when a defect or noncompliance presents a ''significant safety risk,'' the agency does not believe it would be reasonable to impose a requirement such as this, which fails to take into account whether a recall has achieved a high completion rate.

CAS also commented that the follow-up notification should be sent by certified mail, not post card. NHTSA continues to believe that it should retain discretion to decide what medium or media would be the most effective for follow-up notification in each individual case.

Mack Truck supported the follow-up notification regulation, noting that it has a practice of automatically sending a second notice if recall work has not been done on a vehicle by the end of the second calendar quarter of a recall campaign.

Navistar commented that the recall completion rate should be based on the number of vehicles in service, not the number produced. The agency assumes that this comment refers to one of the factors the NPRM listed for consideration by NHTSA in deciding whether to require follow-up notification: the percentage of vehicles or items of equipment that have been presented for remedy (proposed § 577.10(b)(1)). The agency believes it is reasonable to continue its practice of computing recall completion rates based on the number of recalled units produced, rather than the number in service as suggested by Navistar. The number of items produced is a definite number that is provided to NHTSA by the manufacturer when it reports its decision that there is a safety-related defect or noncompliance, whereas the number of items in service can never be more than a rough estimate. Having such a definite number makes it possible for NHTSA to compute recall completion rates with greater accuracy than would be possible using an estimate of how many items are in service.

Moreover, the number of items in service will change during the course of any recall, which would greatly complicate the task of arriving at precise completion rates. Moreover, the final rule specifically provides that recall completion rate is only one of several criteria upon which the agency will base a decision to require a follow-up notification. In deciding whether a recall completion rate is inadequate, the agency will consider the age of the recalled items and other factors which might significantly reduce the number of items in service at the time of the recall. It recognizes that a lower completion rate is to be expected where there has been significant attrition in the population of items in use by the time of the recall, or where the nature of the recalled item (e.g., something that is disposable or very inexpensive) makes it less likely that owners will respond to a recall.

Navistar also commented that NHTSA should only require a follow-up notification where it can be shown that it will significantly improve the completion rate. Such a standard is unworkable and is also inconsistent with the language Congress used in authorizing NHTSA to require follow-up notification. It would be difficult, if not impossible, to demonstrate in advance that a follow-up notification would result in a significant improvement of the recall completion rate. Moreover, the Navistar standard is inconsistent with 49 U.S.C. 30119(e), which authorizes the agency to order a second notification when ''notification * * * has not resulted in an adequate number of vehicles or items of motor vehicle equipment being returned for remedy.''

Navistar also expressed concern that unnecessary follow-up notices could result in customer confusion and wasted effort, especially when recalled vehicles are old and a significant number have been scrapped. The agency believes that the criteria to be considered by the agency will provide adequate protection against the ''wasted effort'' that Navistar fears.

Polk commented that state vehicle registration records do not identify lessors/lessees, so that obtaining this information for renotification purpose would be extremely difficult. The agency has addressed these concerns in the sections of the final rule concerned with leased vehicle notification by requiring all notification letters to include a statement directing lessors to notify their lessees. See 49 CFR 577.5(i).

Toyota suggested adding another factor to be considered: the likelihood that the owner will experience the safety-related defect or noncompliance. NHTSA does not believe that this is an appropriate criterion. In the large majority of recalls, there is no way of predicting the likelihood that an owner will experience the defect or noncompliance. It would be inconsistent with the purpose of the Act, which is to prevent accidents, injuries and fatalities before they happen, to fail to notify an owner based on a prediction that the problem is not likely to occur in a particular vehicle. The final rule does take account of the fact that there may be instances in which the population that is appropriate for follow-up notification will be smaller than that covered by the original recall campaign. Section 577.10(d) allows NHTSA to narrow the scope of the population that will receive follow-up notification in appropriate instances.

Toyota also commented that a low completion rate should not be the only reason the agency uses to justify requiring renotification. In § 577.10(b), the final rule lists five specific factors, including but not limited to the completion rate, that the agency may consider. It also authorizes NHTSA to consider other factors that are consistent with the purpose of the Act.

NHTSA's Toll-Free Hotline

The agency is adopting a final rule amending § 577.5(g)(1)(vii) to state that the telephone number for its toll-free Auto Safety Hotline for calls originating in the Washington, D.C. area is (202) 366–0123. The agency received no comments on this proposed change.

Technical Amendments

NHTSA is adopting several technical amendments to 49 CFR Parts 552, 554, 573 and 577 that are needed to make these parts consistent with the new codification of the enabling statute as Chapter 301 of Title 49 of the United States Code (Pub. L. 103–272 (July 5, 1994)) and with the language of the amendments adopted today. These amendments did not appear in the NPRM, but do not require notice and comment because they are technical amendments only. They do not change the meaning of these regulations.

With respect to part 552, the technical amendments are as follows. Because the final rule amends the title of § 552.8 to replace ''Determination whether to commence a proceeding'' with ''Notification of agency action on the petition,'' the contents to part 552 is amended to reflect this change. In addition, § 30162(a) of Title 49 of the United States Code now refers to a petition for a proceeding to *decide*, rather than to *determine*, whether to issue an order requiring a manufacturer to provide notification and remedy for a safety-related defect or noncompliance. Accordingly, § 552.1, Scope, is amended to change the word ''determination'' to ''decision.'' Section 552.2, Purpose, is amended to change ''determinations'' to ''decisions.'' Section 552.3, General, is amended to change ''determine'' to ''decide.'' The first sentence of § 552.7, Public Meeting, is amended to change ''determination'' to ''decision.'' Finally, § 552.9(b), Grant of Petition, is amended to change ''determine'' to ''decide.''

The agency is also adopting the following technical amendments to part 554. The contents section is amended to change the word ''determinations'' to ''decisions'' for the headings of §§ 554.10 and 554.11. Section 554.2, Purpose, is amended to change ''National Traffic and Motor Vehicle Safety Act (the Act)'' to ''49 U.S.C. Chapter 301.'' Section 554.3, Application, is amended to change the statutory citations to reflect the new codification in Title 49. The headings of §§ 554.10 and 554.11 are amended to change the word ''determinations'' to ''decisions,'' in order to be consistent with the new statutory language at 49 U.S.C. 30118. The text of these subsections is also amended to replace the words ''determine[s]'' or ''determination'' with ''decide[s]'' or ''decision'', respectively, wherever they appear.

The technical amendments to part 573 are as follows. Paragraphs (b)–(f) of § 573.3 are amended to change the words ''determined to exist'' to ''decided to exist.'' The definition of ''Act'' in the first paragraph of § 573.4, Definitions, is amended to replace ''the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381, *et seq.*)'' with ''49 U.S.C. Chapter 301.'' The agency is also amending the second sentence of § 573.5(c)(1) to replace ''§ 110(e) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1399(e)'' with ''49 U.S.C. § 30164(a).'' The latter two amendments are necessary because the July 1994 codification repealed the National Traffic and Motor Vehicle Safety Act of 1966, as amended, and replaced it with a codification in Title 49 of the United States Code.

The agency is adopting the following technical amendments to part 577. The Contents to part 577 is amended by changing ''Sec. 577.5 Notification pursuant to a manufacturer's determination'' to ''Sec. 577.5 Notification pursuant to a manufacturer's decision''; and by changing ''Sec. 577.6 Notification pursuant to Administrator's

determination'' to ''Sec. 577.6 Notification pursuant to Administrator's decision.'' Section 577.4, Definitions, is amended by changing the definition of the term ''Act'' from ''the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1391 *et seq.*'' to ''49 U.S.C. Chapter 301.''

The title of section 577.5 is changed from ''Notification pursuant to a manufacturer's determination'' to ''Notification pursuant to a manufacturer's decision.'' The first sentence of § 577.5(a) is amended by changing ''section 157 of the Act'' to ''49 U.S.C. 30118(e).'' Paragraphs (1) and (2) of § 577.5(c) are amended to replace the word ''determined'' with ''decided'' in the text to be used by manufacturers in recall notification letters. Section 577.5(d) is amended by changing ''determines'' to ''decides.''

The title of § 577.6 is changed from ''Notification pursuant to Administrator's determination'' to ''Notification pursuant to Administrator's decision.'' Section 577.6(a) is amended by changing ''section 152 of the Act'' to ''49 U.S.C. section 30118(b).'' Section 577.6(b) is amended by changing ''determines'' to ''decides'' in subsection (3); by changing ''determination'' to ''decision'' in subsection (5); by changing ''determination'' to ''decision'' in subsections (9)(i) (A) and (C); and by changing ''determination'' to ''decision'' in subsections (10)(iv) and (11). Section 577.6(c)(1) is amended by changing ''determination'' to ''decision.'' Section 577.7, Time and manner of notification, is amended by revising subsection (a)(2)(ii)(B) by replacing ''determined'' by ''decided,'' by replacing ''necessary'' with ''required'' and by replacing ''determine'' with ''require.''

Rulemaking Analyses and Notices

1. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this final rule and determined that it is neither ''major'' within the meaning of Executive Order 12291 nor ''significant'' within the meaning of the Department of Transportation regulatory policies and procedures.

The provisions of this final rule that would result in additional costs would be the one that extends from five to a maximum of eight years the period for which motor vehicle manufacturers must retain records concerning malfunctions that may be related to motor vehicle safety; and the one that authorizes NHTSA to require manufacturers of motor vehicles and motor vehicle equipment to mail a follow-up notification of a safety-related defect or noncompliance if it determines that the number of vehicles or items of equipment that have received the remedy is inadequate.

Other provisions that will result in additional costs are the one that would require vehicle lessors to mail notification of safety-related defects or noncompliances with Federal motor vehicle safety standards to each lessee of a vehicle covered by the notification and remedy campaign and the requirement that lessors maintain lists of lessees to whom they send such notification.

The costs associated with requiring manufacturers to retain records for a longer period should be minimal if not negligible, and would be offset by the benefit that would result from the manufacturers' ability to determine the existence of safety-related defects and noncompliances with safety standards in a wider range of vehicles, as well as the enhancement of NHTSA's enforcement efforts, particularly with respect to latent defects and noncompliances. The cost of sending out a follow-up notification will be less than that incurred for an initial notification, as it will be required only in those cases in which the agency makes a determination that the response to the first notification is inadequate; and will only involve a fraction of the vehicles or items of equipment subject to the initial recall, i.e., those that have not yet been remedied. The cost of the follow-up notification will be outweighed by the benefit of increasing the number of noncompliant and defective vehicles and items of motor vehicle equipment that are remedied. In addition, the provisions relating to follow-up notification are required by the amendments added by ISTEA.

The cost of vehicle lessor notification of lessees is offset by the safety benefit that would result from the increased number of individuals who would return for remedy a vehicle or item of equipment that has a safety-related defect or does not comply with a Federal motor vehicle safety standard. In addition, this provision is required by the amendments added by ISTEA.

The cost of the requirement that vehicle lessors maintain lists of lessees of leased vehicles involved in notification and remedy campaigns is outweighed by the fact that these records will enable NHTSA to enforce the statutory requirement that lessees be notified of the existence of safety-related defects or standards noncompliances in their vehicles and of the availability of a remedy without charge for the defect or noncompliance. In addition, the information to be retained is minimal, consisting only of the identities of the vehicle, the lessee and the recall, and the date the lessor sent the notification to the lessee.

2. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

The regulations implementing the statutory amendment authorizing NHTSA to require a follow-up notification in instances where it determines that an initial notification has not resulted in the remedy of an adequate number of defective or non-complying vehicles or items of motor vehicle equipment will affect motor vehicle equipment manufacturers who are small businesses. However, the agency anticipates that the effect on those entities will not be significant because the proposed regulations implementing this provision allow flexibility in the amount of information that would be required for the second notification, and also permit reducing postage costs through the use of post-cards instead of first-class letters in appropriate circumstances.

The new provisions requiring lessors to notify lessees of safety-related defects or noncompliances in leased motor vehicles, which are being adopted pursuant to a statutory amendment requiring such notification, will also affect vehicle lessors who are small businesses. However, NHTSA anticipates that the effect of these amendments on these entities will be minimized by the exception to the requirement for notification by the lessor in cases where a lessor and a manufacturer have agreed that the manufacturer will notify lessees directly. In addition, the amendments provisions should result in a safety benefit as more leased vehicles will be returned for remedy of safety-related defects and noncompliances with Federal motor vehicle safety standards.

With respect to the additional recordkeeping requirements adopted for vehicle lessors, the amount of information required is small and should not place any significant cost burdens on the lessors. The information is essential to the agency's ability to enforce the new provisions requiring lessors to notify lessees of safety-related defects and noncompliances with Federal motor vehicle safety standards in their vehicles, and the economic

impact will be outweighed by the benefit to safety from NHTSA's ability to enforce this provision effectively.

To the extent the above amendments do have an impact on small businesses, those impacts are minimal and would be offset by the safety benefits that they would provide.

3. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, the agency has analyzed the environmental impacts of this rulemaking action and determined that implementation of this action will not have a significant impact on the quality of the human environment. The new record-keeping requirements will not introduce any new or harmful matter into the environment.

4. Paperwork Reduction Act

Certain provisions in the final rule that would require manufacturers to submit information to NHTSA, and to retain other information, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The provision in the rule that would require vehicle lessors to retain information is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, this requirement has been submitted to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Comments on the proposed information collection requirements were solicited in the NPRM. No comments on these requirements were received by NHTSA.

5. Executive Order 12612 (Federalism)

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

List of Subjects

49 CFR Part 552

Administrative practice and procedure; Motor vehicle safety; Reporting and recordkeeping requirements.

49 CFR Part 554

Administrative practice and procedure; Motor vehicle safety.

49 CFR Part 573

Imports; Motor vehicle safety; Motor vehicles; Reporting and recordkeeping requirements; tires.

49 CFR Part 576

Motor vehicle safety; Reporting and recordkeeping requirements.

49 CFR Part 577

Motor vehicle safety.

In consideration of the foregoing, parts 552, 554, 573, 576, and 577 of title 49 of the Code of Federal Regulations are amended as follows:

PART 552—PETITIONS FOR RULEMAKING, DEFECT, AND NONCOMPLIANCE ORDERS

1. The authority citation for Part 552 is revised to read as follows:

Authority: 49 U.S.C. 30111, 30118, 30162; delegation of authority at 49 CFR 1.50.

2.–3. Section 552.1 is revised to read as follows:

§ 552.1 Scope.

This part establishes procedures for the submission and disposition of petitions filed by interested persons pursuant to 49 U.S.C. Chapters 301, 305, 321, 323, 325, 327, 329 and 331 to initiate rulemaking or to make a decision that a motor vehicle or item of replacement equipment does not comply with an applicable Federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety.

4. Section 552.2 is revised to read as follows:

§ 552.2 Purpose.

The purpose of this part is to enable the National Highway Traffic Safety Administration to identify and respond on a timely basis to petitions for rulemaking or defect or noncompliance decisions, and to inform the public of the procedures following in response to such petitions.

5. Section 552.3 is revised to read as follows:

§ 552.3 General.

Any interested person may file with the Administrator a petition requesting him:

(a) to commence a proceeding respecting the issuance, amendment or revocation of a motor vehicle safety standard, or

(b) to commence a proceeding to decide whether to issue an order concerning the notification and remedy of a failure of a motor vehicle or item of replacement equipment to comply with an applicable motor vehicle safety standard or a defect in such vehicle or equipment that relates to motor vehicle safety.

6. Section 552.6 is revised to read as follows:

§ 552.6 Technical review.

The appropriate Associate Administrator conducts a technical review of the petition. The technical review may consist of an analysis of the material submitted, together with information already in the possession of the agency. It may also include the collection of additional information, or a public meeting in accordance with § 552.7.

7. Section 552.8 is revised to read as follows:

§ 552.8 Notification of agency action on the petition.

After considering the technical review conducted under § 552.6, and taking into account appropriate factors, which may include, among others, allocation of agency resources, agency priorities and the likelihood of success in litigation which might arise from the order, the Administrator will grant or deny the petition. NHTSA will notify the petitioner of the decision to grant or deny the petition within 120 days after its receipt of the petition.

PART 554—STANDARDS ENFORCEMENT AND DEFECT INVESTIGATIONS

8. The authority citation for part 554 is revised to read as follows:

Authority: 49 U.S.C. 30102–103, 30111–112, 30117–121, 30162, 30165–67; delegation of authority at 49 CFR 1.50.

9.–10. Section 554.2 is revised to read as follows:

§ 554.2 Purpose.

The purpose of this part is to inform interested persons of the procedures followed by the National Highway Traffic Safety Administration in order more fairly and effectively to implement 49 U.S.C. Chapter 301.

11. Section 554.3 is revised to read as follows:

§ 554.3 Application.

This part applies to actions, investigations, and defect and noncompliance decisions of the National Highway traffic Safety Administration under 49 U.S.C. 30116, 30117, 30118, 30120 and 30165.

12. Section 554.10 is amended by revising paragraphs (a), (b), (c), introductory test, (c)(2) and (c)(4), and by removing paragraph (e), to read as follows:

§ 554.10 Initial decisions and public meetings.

(a) An initial decision of failure to comply with safety standards or of a safety-related defect is made by the Administrator or his delegate based on the completed investigative file compiled by the appropriate office.

(b) The decision is communicated to the manufacturer in a letter which makes available all information on which the decision is based. The letter advises the manufacturer of his right to present information, views, and arguments to establish that there is no defect or failure to comply or that the alleged defect does not affect motor vehicle safety. The letter also specifies the time and place of a public meeting for the presentation of arguments or sets a date by which written comments must be submitted. Submission of all information, whether at a public meeting or in written form, is normally scheduled about 30 days after the initial decision. The deadline for submission of information can be extended for good cause shown.

(c) Public notice of an initial decision is made in a **Federal Register** notice that—

* * * * *

(2) Summarizes the information on which the decision is based.

* * * * *

(4) States the time and place of a public meeting or the deadline for written submission in which the manufacturer and interested persons may present information, views, and arguments respecting the decision.

* * * * *

13. Section 554.11 is revised to read as follows:

§ 554.11 Final decisions.

(a) The Administrator bases his final decision on the completed investigative file and on information, views, and arguments submitted at the public meeting.

(b) If the Administrator decides that a failure to comply or a safety-related defect exists, he orders the manufacturer to furnish the notification specified in 49 U.S.C. 30118 and 30119 and to remedy the defect or failure to comply.

(c) If the Administrator closes an investigation following an initial determination, without making a final determination that a failure to comply or a safety-related defect exists, he or she will so notify the manufacturer and publish a notice of that closing in the **Federal Register**.

(d) A statement of the Administrator's final decision and the reasons for it appears in each completed public file.

PART 573—DEFECT AND NONCOMPLIANCE REPORTS

14. The authority citation for part 573 is revised to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

§ 573.3 [Amended]

15. Section 573.3 is amending by revising paragraphs (b) through (f) to read as follows:

* * * * *

(b) In the case of a defect or noncompliance decided to exist in a motor vehicle or equipment item imported into the United States, compliance with §§ 573.5 and 573.6 by either the fabricating manufacturer or the importer of the vehicle or equipment item shall be considered compliance by both.

(c) In the case of a defect or noncompliance decided to exist in a vehicle manufactured in two or more stages, compliance with §§ 573.5 and 573.6 by either the manufacturer of the incomplete vehicle or any subsequent manufacturer of the vehicle shall be considered compliance by all manufacturers.

(d) In the case of a defect or noncompliance decided to exist in an item of replacement equipment (except tires) compliance with §§ 573.5 and 573.6 by the brand name or trademark owner shall be considered compliance by the manufacturer. Tire brand name owners are considered manufacturers (49 U.S.C. 10102(b)(1)(E)) and have the same reporting requirements as manufacturers.

(e) In the case of a defect or noncompliance decided to exist in an item of original equipment used in the vehicles of only one vehicle manufacturer, compliance with §§ 573.5 and 573.6 by either the vehicle or equipment manufacturer shall be considered compliance by both.

(f) In the case of a defect or noncompliance decided to exist in original equipment installed in the vehicles of more than one manufacturer, compliance with § 573.5 is required of the equipment manufacturer as to the equipment item, and of each vehicle manufacturer as to the vehicles in which the equipment has been installed. Compliance with § 573.6 is required of the manufacturer who is conducting the recall campaign.

16. Section 573.4 is amended by revising the definition of ''Act'' and by adding the following definitions, in alphabetical order, to read as follows:

§ 573.4 Definitions.

* * * * *

Act means 49 U.S.C. Chapter 301.

* * * * *

Leased motor vehicle means any motor vehicle that is leased to a person for a term of at least four months by a lessor who has leased five or more vehicles in the twelve months preceding the date of notification by the vehicle manufacturer of the existence of a safety-related defect or noncompliance with a Federal motor vehicle safety standard in the motor vehicle.

Lessee means a person who is the lessee of a leased motor vehicle as defined in this section.

Lessor means a person or entity that is the owner, as reflected on the vehicle's title, of any five or more leased vehicles (as defined in this section), as of the date of notification by the manufacturer of the existence of a safety-related defect or noncompliance with a Federal motor vehicle safety standard in one or more of the leased motor vehicles.

Readable form means a form readable by the unassisted eye or readable by machine. If readable by machine, the submitting party must obtain written confirmation from the Office of Defects Investigation immediately prior to submission that the machine is readily available to NHTSA. For all similar information responses, once a manufacturer has obtained approval for the original response in that form, it will not have to obtain approval for future submissions in the same form. In addition, all coded information must be accompanied by an explanation of the codes used.

17. Section 573.5 is amended by revising the second sentence of paragraph (c)(1) and the introductory text of paragraph (c)(2), by adding paragraphs (c)(2)(iv) and (v), by redesignating paragraph (c)(8) as paragraph (c)(8)(i), by adding new paragraphs (c)(8)(ii)—(vi), and by adding new paragraphs (c)(10) and (c)(11), to read as follows:

§ 573.5 Defect and noncompliance information report.

* * * * *

(c) * * * In the case of a defect or noncompliance decided to exist in an imported vehicle or item of equipment, the agency designated by the fabricating manufacturer pursuant to 49 U.S.C. section 30164(a) shall be also stated.

* * *

(2) Identification of the vehicles or items of motor vehicle equipment potentially containing the defect or noncompliance, including a description of the manufacturer's basis for its

determination of the recall population and a description of how the vehicles or items of equipment to be recalled differ from similar vehicles or items of equipment that the manufacturer has not included in the recall.

* * * * *

(iv) In the case of motor vehicles or items of motor vehicle equipment in which the component that contains the defect or noncompliance was manufactured by a different manufacturer from the reporting manufacturer, the reporting manufacturer shall identify the component and the manufacturer of the component by name, business address, and business telephone number. If the reporting manufacturer does not know the identity of the manufacturer of the component, it shall identify the entity from which it was obtained.

(v) In the case of items of motor vehicle equipment, the manufacturer of the equipment shall identify by name, business address, and business telephone number every manufacturer that purchases the defective or noncomplying component for use or installation in new motor vehicles or new items of motor vehicle equipment.

* * * * *

(8)(i) A description of the manufacturer's program for remedying the defect or noncompliance. The manufacturer's program will be available for inspection in the public docket, Room 5109, Nassif Building, 400 Seventh Street, SW, Washington DC 20590.

(ii) If a manufacturer anticipates that its notification campaign will commence more than 30 days after it has notified NHTSA that a safety-related defect or noncompliance exists, or anticipates that the notification campaign will not be completed within 75 days after it has notified NHTSA of that decision, the manufacturer shall include with its report to NHTSA a proposed schedule for the notification campaign, from commencement through completion. If the remedy for the defect or noncompliance is not available at the time of the owner notification, the report shall state when the remedy will be provided to owners. The manufacturer shall also identify and describe in detail the factors on which the proposed schedule is based. The manufacturer's proposed schedule shall be subject to disapproval by the Administrator, if the Administrator determines that it will lead to unreasonable delays in the notification of and remedy for the defect or noncompliance.

(iii) The manufacturer shall describe any factors that it anticipates could interfere with its ability to adhere to the proposed schedule and state with specificity the likely effect of each such factor.

(iv) A manufacturer that is unable to conduct its notification campaign in accordance with the schedule submitted pursuant to paragraph (c)(8)(ii) of this section, or that is otherwise unable to complete owner notification within 75 days after notifying NHTSA of its defect or noncompliance decision, shall promptly advise NHTSA of its inability to do so and provide an explanation for such inability, along with a revised schedule, or a new schedule in those instances in which the manufacturer had not previously submitted a schedule. Such submission shall contain the basis for the new or revised schedule, which shall also be subject to disapproval by the Administrator.

(v) If a manufacturer intends to file a petition for an exemption from the recall requirements of the Act on the basis that a defect or noncompliance is inconsequential as it relates to motor vehicle safety, it shall notify NHTSA of that intention in its original report to NHTSA of the defect or noncompliance. If such a petition is filed and subsequently denied, the time period under which an owner notification schedule must be filed under paragraph (c)(8) of this section shall run from the date of the denial of the petition.

(vi) If a manufacturer advises NHTSA that it intends to file such a petition, and does not do so within the 30-day period established by 49 CFR 556.4(c), the time periods for ascertaining whether an owner notification schedule must be filed under this section shall run from the end of that 30-day period. Any such schedule must be filed no later than the fifth business day after that date.

* * * * *

(10) Except as authorized by the Administrator, the manufacturer shall submit a copy of its proposed owner notification letter to the Office of Defects Investigation (''ODI'') no fewer than five Federal government business days before it intends to begin mailing it to owners. Submission shall be made by any means which permits the manufacturer to verify promptly that the copy of the proposed letter was in fact received by ODI and the date it was received by ODI.

(11) The manufacturer's campaign number, if it is not identical to the identification number assigned by NHTSA.

18. Section 573.6 is amended by revising the first sentence of paragraph (a), adding a new paragraph (b)(6) and adding a new paragraph (d) to read as follows:

§ 573.6 Quarterly reports.

(a) Each manufacturer who is conducting a defect or noncompliance notification campaign to manufacturers, distributors, dealers, or owners shall submit to NHTSA a report in accordance with paragraphs (b), (c), and (d) of this section. * * *

(b) * * *

(6) In reports by equipment manufacturers, the number of items of equipment repaired and/or returned by dealers, other retailers, and distributors to the manufacturer prior to their first sale to the public.

* * * * *

(d) The reports required by this section shall be submitted in accordance with the following schedule, except that if the due date specified below falls on a Saturday, Sunday or Federal holiday, the report shall be submitted on the next day that is a business day for the Federal government:

(1) For the first calendar quarter (January 1 through March 31), on or before April 30;

(2) For the second calendar quarter (April 1 through June 30), on or before July 30;

(3) For the third calendar quarter (July 1 through September 30), on or before October 30; and

(4) For the fourth calendar quarter (October 1 through December 31), on or before January 30.

19. Section 573.7 is amended by revising the heading of the section and by adding new paragraphs (d) and (e) to read as follows:

§ 573.7 Lists of purchasers, owners, lessors and lessees.

* * * * *

(d) If a manufacturer has in its possession at the time it sends notification of a safety-related defect or noncompliance information that a vehicle concerning which notification has been sent is a leased motor vehicle, the list(s) maintained by a manufacturer pursuant to paragraph (a) of this section shall identify the vehicle as a leased motor vehicle, and shall identify the person or entity to whom notification was sent as the lessor or lessee of the vehicle (as appropriate), if that information is known to the manufacturer. The manufacturer may also maintain a separate list which includes only leased vehicles, provided that it is clearly identified as such, and that it meets the other requirements for a list prepared pursuant to paragraph (a) of this section.

(e) Each lessor of leased motor vehicles shall maintain, in a form suitable for inspection, such as computer information storage devices or card files, a list of the names and addresses of all lessees to which the lessor has provided notification of a defect or noncompliance pursuant to 49 CFR 577.5(i). The list shall also include the make, model, and vehicle identification number of each such leased vehicle, and either the date on which the lessor mailed notification of the defect or noncompliance to the lessee, or a statement that the manufacturer agreed on a specified date to mail the notification directly to the lessee. A manufacturer that provides notification directly to lessees shall maintain a list containing the same information as that required by this paragraph to be maintained by lessors sending notifications to lessees. The information required by this paragraph must be retained by the manufacturer or lessor (whichever sent the notification to the lessee) for one calendar year from the date the vehicle lease expires.

20. Section 573.8 is revised to read as follows:

§ 573.8 Notices, bulletins, and other communications.

Each manufacturer shall furnish to the NHTSA a copy of all notices, bulletins, and other communications (including those transmitted by computer, telefax or other electronic means, and including warranty and policy extension communiqués and product improvement bulletins), other than those required to be submitted pursuant to § 573.5(c)(9), sent to more than one manufacturer, distributor, dealer, lessor, lessee, or purchaser, regarding any defect in its vehicles or items of equipment (including any failure or malfunction beyond normal deterioration in use, or any failure of performance, or any flaw or unintended deviation from design specifications), whether or not such defect is safety-related. Copies shall be in readable form and shall be submitted monthly, not more than five (5) working days after the end of each month.

PART 576—RECORD RETENTION

21. The authority citation for part 576 is revised to read as follows:

Authority: 49 U.S.C. 30112, 30115, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

22. Section 576.5 is revised to read as follows:

§ 576.5 Basic requirements.

Each manufacturer of motor vehicles shall retain as specified in § 576.7 every record described in § 576.6 for eight years from the last date of the model year in which the vehicle to which it relates was produced.

23. Section 576.6 is revised to read as follows:

§ 576.6 Records.

Records to be retained by manufacturers under this part include all documentary materials, films, tapes, and other information-storing media that contain information concerning malfunctions that may be related to motor vehicle safety. Such records include, but are not limited to, communications from vehicle users and memoranda of user complaints; reports and other documents, including material generated or communicated by computer, telefax or other electronic means, that are related to work performed under, or claims made under, warranties; service reports or similar documents, including electronic transmissions, from dealers or manufacturer's field personnel; and any lists, compilations, analyses, or discussions of malfunctions that may be related to motor vehicle safety contained in internal or external correspondence of the manufacturer, including communications transmitted electronically.

PART 577—DEFECT AND NONCOMPLIANCE NOTIFICATION

24. The authority citation for part 577 is revised to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30115, 30117–121, 30166–167; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

25.–26. Section 577.4 is amended by revising the definition of ''Act'', and by adding the following definitions, in alphabetical order, to read as follows:

§ 577.4 Definitions.

* * * * *

Act means 49 U.S.C. Chapter 30101–30169.

* * * * *

Leased motor vehicle means any motor vehicle that is leased to a person for a term of at least four months by a lessor who has leased five or more vehicles in the twelve months preceding the date of notification by the vehicle manufacturer of the existence of a safety-related defect or noncompliance with a Federal motor vehicle safety standard in the motor vehicle.

Lessee means a person who is the lessee of a leased motor vehicle as defined in this section.

Lessor means a person or entity that is the owner, as reflected on the vehicle's title, of any five or more leased vehicles (as defined in this section), as of the date of notification by the manufacturer of the existence of a safety-related defect or noncompliance with a Federal motor vehicle safety standard in one or more of the leased motor vehicles.

* * * * *

27. Section 577.5 is amended by revising the heading of the section and the fourth sentence of paragraph (a), by adding a new fifth, sixth and seventh sentence to paragraph (a), by revising paragraphs (c)(1) and (2) and the parenthetical in paragraph (g)(1)(vii), and by adding new paragraphs (h) and (i), to read as follows:

§ 577.5 Notification pursuant to a manufacturer's decision.

(a) * * * The information required by paragraphs (d) through (h) of this section may be presented in any order. The manufacturer shall mark the outside of each envelope in which it sends an owner notification letter with a notation that includes the words ''SAFETY,'' RECALL,'' and ''NOTICE,'' all in capital letters and in type that is larger than that used in the address section, and is also distinguishable from the other type in a manner other than size. Except where the format of the envelope has been previously approved by NHTSA, each manufacturer must submit the envelope format it intends to use to NHTSA at least 5 Federal government business days before mailing to owners, in the same manner as is required by § 573.5(c)(9) for owner notification letters.

* * * * *

(c) * * *

(1) ''(Manufacturer's name or division) has decided that a defect which relates to motor vehicle safety exists in (identified motor vehicles, in the case of notification sent by a motor vehicle manufacturer; identified replacement equipment, in the case of notification sent by a replacement equipment manufacturer);'' or

(2) ''(Manufacturer's name or division) has decided that (identified motor vehicles, in the case of notification sent by a motor vehicle manufacturer; identified replacement equipment, in the case of notification sent by a replacement equipment manufacturer) fail to conform to Federal Motor Vehicle Safety Standard No. (number and title of standard).''

(g) * * *

(1) * * *

(vii) * * * (Washington, DC area residents may call 202–366–0123) * * *

* * * * *

(h) A statement that describes a lessor's obligation under Federal law to provide a lessee of the vehicle to which the notification letter refers with a copy of the letter; and to maintain a record which identifies the lessee(s) to whom it sent a copy of the letter, the date it sent the letter, and the Vehicle Identification Number(s) of the vehicle(s) that it has leased to that lessee and to which the notification applies. The statement must also include the definition of ''lessor'' set forth in § 577.4 of this part. If the notification is being sent directly from a manufacturer to an individual or entity that the manufacturer knows to be a lessee, the manufacturer need not include a definition of lessor, but must state the requirement of Federal law regarding notification of lessees and that it is providing notification in place of the lessor.

(i) Any lessor who receives a notification of a determination of a safety-related defect or noncompliance pertaining to any leased motor vehicle shall send a copy of such notice to the lessee as prescribed by § 577.7(a)(2)(iv). This requirement applies to both initial and follow-up notifications, but does not apply where the manufacturer has notified a lessor's lessees directly.

28. Section 577.6 is amended by revising the heading of the section and paragraph (a), paragraphs (b)(2)(i) and (ii), (b)(3), and (b)(5), paragraphs (b)(9)(i)(A) and (C), and paragraphs (b)(10)(iv), (b)(11), and (c)(1), to read as follows:

§ 577.6 Notification pursuant to Administrator's decision.

(a) *Agency-ordered notification.* When a manufacturer is ordered pursuant to 49 U.S.C. 30118(b) to provide notification of a defect or noncompliance, he shall provide such notification in accordance with §§ 577.5 and 577.7, except that the statement required by paragraph (c) of § 577.5 shall indicate that the decision has been made by the Administrator of the National Highway Traffic Safety Administration.

(b) * * *

(2) * * *

(i) ''The Administrator of the National Highway Traffic Safety Administration has decided that a defect which relates to motor vehicle safety exists in (identified motor vehicles, in the case of notification sent by a manufacturer of motor vehicles; identified replacement equipment, in the case of notification sent by a manufacturer of replacement equipment);'' or

(ii) ''The Administrator of the National Highway Traffic Safety Administration has decided that (identified motor vehicles in the case of notification sent by a motor vehicle manufacturer; identified replacement equipment, in the case of notification sent by a manufacturer of replacement equipment) fail to conform to federal Motor Vehicle Safety Standard No. (number and title of standard).''

(3) When the Administrator decides that the defect or noncompliance may not exist in each such vehicle or item of replacement equipment, the manufacturer may include an additional statement to that effect.

* * * * *

(5) A clear description of the Administrator's stated basis for his decision, as provided in his order, including a brief summary of the evidence and reasoning that the Administrator relied upon in making his decision.

* * * * *

(9) * * *

(i) * * *

(A) A statement that the remedy will be provided without charge to the owner if the Court upholds the Administrator's decision;

* * * * *

(C) A statement that, if the Court upholds the Administrator's decision, he will reimburse the owner for any reasonable and necessary expenses that the owner incurs (not in excess of any amount specified by the Administrator) in repairing the defect or noncompliance following a date, specified by the manufacturer, which shall not be later than the date of the Administrator's order to issue this notification.

* * * * *

(10) * * *

* * * * *

(iv) The manufacturer's recommendations of service facilities where the owner could have the repairs performed, including (in the case of a manufacturer required to reimburse if the Administrator's decision is upheld in the court proceeding) at least one service facility for whose charges the owner will be fully reimbursed if the Administrator's decision is upheld.

(11) A statement that further notice will be mailed by the manufacturer to the owner if the Administrator's decision is upheld in the court proceeding.

* * * * *

(c) * * *

(1) The statement required by paragraph (c) of § 577.5 shall indicate that the decision has been made by the Administrator and that his decision has been upheld in a proceeding in the Federal courts; and

* * * * *

29. Section 577.7 is amended by adding a new sentence at the end of paragraph (a)(1), by adding a new last sentence to paragraph (a)(2)(i), and by adding new paragraph (a)(2)(iv), and revising paragraph (a)(2)(ii)(B), to read as follows:

§ 577.7 Time and manner of notification.

(a) * * *

(1) Be furnished within a reasonable time after the manufacturer first decides that either a defect that relates to motor vehicle safety or a noncompliance exists. The Administrator may order a manufacturer to send the notification to owners on a specific date where the Administrator finds, after consideration of available information and the views of the manufacturer, that such notification is in the public interest. The factors that the Administrator may consider include, but are not limited to, the severity of the safety risk; the likelihood of occurrence of the defect or noncompliance; whether there is something that an owner can do to reduce either the likelihood of occurrence of the defect or noncompliance or the severity of the consequences; whether there will be a delay in the availability of the remedy from the manufacturer; and the anticipated length of any such delay.

(2) * * *

(i) * * * The manufacturer shall also provide notification to each lessee of a leased motor vehicle that is covered by an agreement between the manufacturer and a lessor under which the manufacturer is to notify lessees directly of safety-related defects and noncompliances.

(ii) * * *

* * * * *

(B) (Except in the case of a tire) if decided by the Administrator to be required for motor vehicle safety, by public notice in such manner as the Administrator may require after consultation with the manufacturer.

* * * * *

(iv) In the case of a notification to be sent by a lessor to a lessee of a leased motor vehicle, by first-class mail to the most recent lessee known to the lessor. Such notification shall be mailed within ten days of the lessor's receipt of the notification from the vehicle manufacturer.

* * * * *

30. Section 577.8 is revised to read as follows:

§ 577.8 Disclaimers.

(a) A notification sent pursuant to §§ 577.5, 577.6, 577.9 or 577.10 regarding a defect which relates to motor vehicle safety shall not, except as specifically provided in this part, contain any statement or implication that there is no defect, that the defect does not relate to motor vehicle safety, or that the defect is not present in the owner's or lessee's vehicle or item of replacement equipment. This section also applies to any notification sent to a lessor or directly to a lessee by a manufacturer.

(b) A notification sent pursuant to §§ 577.5, 577.6, 577.9 or 577.10 regarding a noncompliance with an applicable motor vehicle safety standard shall not, except as specifically provided in this part, contain any statement or implication that there is not a noncompliance, or that the noncompliance is not present in the owner's or lessee's vehicle or item of replacement equipment. This section also applies to any notification sent to a lessor or directly to a lessee by a manufacturer.

31. A new § 577.10 is added to read as follows:

§ 577.10 Follow-up notification.

(a) If, based on quarterly reports submitted pursuant to § 573.6 of this part or other available information, the Administrator decides that a notification of a safety-related defect of a noncompliance with a Federal motor vehicle safety standard sent by a manufacturer has not resulted in an adequate number of vehicles or items of equipment being returned for remedy, the Administrator may direct the manufacturer to send a follow-up notification in accordance with this section. The scope, timing, form, and content of such follow-up notification will be established by the Administrator, in consultation with the manufacturer, to maximize the number of owners, purchasers, and lessees who will present their vehicles or items of equipment for remedy.

(b) The Administrator may consider the following factors in deciding whether or not to require a manufacturer to undertake a follow-up notification campaign:

(1) The percentage of covered vehicles or items of equipment that have been presented for the remedy;

(2) The amount of time that has elapsed since the prior notification(s);

(3) The likelihood that a follow-up notification will increase the number of vehicles or items of equipment receiving the remedy;

(4) The seriousness of the safety risk from the defect or noncompliance;

(5) Whether the prior notification(s) undertaken by the manufacturer complied with the requirements of the statute and regulations; and

(6) Such other factors as are consistent with the purpose of the statute.

(c) A manufacturer shall be required to provide a follow-up notification under this section only with respect to vehicles or items of equipment that have not been returned for remedy pursuant to the prior notification(s).

(d) Except where the Administrator determines otherwise, the follow-up notification shall be sent to the same categories of recipients that received the prior notification(s).

(e) A follow-up notification must include:

(1) A statement that identifies it as a follow-up to an earlier communication;

(2) A statement urging the recipient to present the vehicle or item of equipment for remedy; and

(3) Except as determined by the Administrator, the information required to be included in the initial notification.

(f) The manufacturer shall mark the outside of each envelope in which it sends a follow-up notification in a manner which meets the requirements of § 577.5(a) of this part.

(g) Notwithstanding any other provision of this Part, the Administrator may authorize the use of other media besides first-class mail for a follow-up notification.

Issued on: March 24, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–8130 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 950118017–5081–02; I.D. 122994A]

RIN 0648–AH82

Atlantic Sea Scallop Fishery; Framework Adjustment 4; Temporary Reduction in Crew Size Limit

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Framework Adjustment 4 to the Atlantic Sea Scallop Fishery Management Plan (FMP). This framework adjustment temporarily adjusts the maximum crew limit on certain vessels participating in the scallop fishery from nine to seven through February 29, 1996.

EFFECTIVE DATE: May 1, 1995.

ADDRESSES: Copies of Amendment 4, its regulatory impact review, the initial regulatory flexibility analysis, the final supplemental environmental impact statement, and the supporting documents for Framework Adjustment 4 are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, NMFS, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

The final rule implementing Amendment 4 to the FMP was published on January 19, 1994 (59 FR 2757), with an effective date for most measures of March 1, 1994. The amendment retained the FMP's objectives to: (1) Restore adult stock abundance and age distribution; (2) increase yield per recruit for each stock; (3) evaluate plan research, development and enforcement costs; and (4) minimize adverse environmental impacts on sea scallops.

Amendment 4 changed the primary management strategy from a meat count (size) control to effort control. The amendment controls total fishing effort through limited access permits and a schedule of reductions in allowable days-at-sea. Supplemental measures include limits on increases in vessel fishing power to control the amount of fishing pressure and to help control the size of scallops landed, gear restrictions, and limits on the number of crew members. The amendment also includes a framework procedure for adjusting the management measures in the FMP. Initially, the maximum crew size was set at nine.

In response to very high levels of recruitment documented in the Mid-Atlantic resource area (Regional Director's Status Report, January 1994), the New England Fishery Management Council (Council) recommended lowering the maximum crew size limit from nine to seven until December 31, 1994. NMFS concurred and through Framework Adjustment 1, which was published on July 19, 1994 (59 FR

36720), with an effective date of August 17, 1994, lowered the maximum crew size from nine to seven until December 31, 1994.

Because the conditions that justified lowering the maximum crew size limit to seven still exist, the Council recommended extending the maximum crew size limit of seven through the end of the 1995–96 scallop fishing year.

The adjustments being made through the framework process (§ 650.40) are within the scope of analyses contained in Amendment 4 and the final supplemental environmental impact statement. Supplemental rationale and analyses of expected biological effects, economic impacts, impacts on employment, and safety concerns are contained within the supporting documents for Framework Adjustments 1 and 4 (see **ADDRESSES**).

NMFS is adjusting the scallop regulations following the procedure for framework adjustments established by Amendment 4 and codified in 50 CFR part 650, subpart C. The Council followed this procedure, by developing and analyzing the actions over the span of at least two Council meetings, on October 26 and December 8, 1994. However, because the December 8, 1994, meeting was not announced as the second and final of the two required meetings, the Council recommended that the Director, Northeast Region, NMFS (Regional Director) publish the measures contained in Framework Adjustment 4 as a proposed rule to ensure that the public has been afforded sufficient opportunity for notice and comment.

In accordance with the regulations, public comments on the framework adjustment were taken by the Council during its October 26, 1994, and December 8, 1994, meetings. The comments made at those meetings, as well as written comments received, were discussed in detail in the proposed rule (60 FR 8622, February 15, 1955) and are not repeated here.

No additional comments were received during the comment period that followed publication of the proposed rule, and the proposed rule is adopted as final without change.

Classification

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

When this rule was proposed, the Assistant General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that, if adopted as proposed, it would not have a significant economic impact on a substantial number of small entities because: (1) It would be unlikely to force vessels to cease or substantially modify operations, (2) many vessels already carried crew sizes of seven or less because of low stock abundance of sea scallops, and (3) short-term benefits of harvesting immature sea scallops in 1995 that have never produced young for future years would be greatly outweighed by longer-term benefits to small entities for the next several years. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: March 29, 1995.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 650 is amended as follows:

PART 650—ATLANTIC SEA SCALLOP FISHERY

1. The authority citation for part 650 continues to read as follows:

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

2. Section 650.21, paragraph (c) is revised to read as follows:

§ 650.21 Gear and crew restrictions.

* * * * *

(c) *Crew restrictions*. Limited access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, when not docked or moored in port through February 29, 1996, and nine people aboard when not docked or moored in port thereafter, including the operator, unless participating in the small dredge program specified in paragraph (e) of this section, or otherwise authorized by the Regional Director.

* * * * *

[FR Doc. 95–8249 Filed 3–30–95; 3:55 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 65
Wednesday, April 5, 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 956

[Docket No. 94AMA-FV–956–1; FV93–956–1PR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Secretary's Decision and Referendum Order on the Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision proposes the issuance of a marketing agreement and order for Walla Walla Sweet Onions in southeast Washington and northeast Oregon and provides growers the opportunity to vote in a referendum to determine if they favor the proposed order. For the purposes of this document, the term ''Walla Walla Sweet Onions'' refers to sweet onions grown in the proposed production area, which consists of designated parts of Walla Walla County, Washington, and designated parts of Umatilla County, Oregon. The proposed order and agreement would authorize production and marketing research and marketing development and promotion projects, including paid advertising, and would authorize container markings. The order would be administered by a ten-member committee consisting of six producer members, three handler members, and a public member. The order would be financed by assessments on handlers of Walla Walla Sweet Onions grown in the production area. A primary objective of this program would be to improve producer returns by strengthening consumer demand through various promotional activities and by reducing production and marketing costs through production and marketing research. Walla Walla Sweet Onion producers would vote in a referendum to determine if they favor issuance of the proposed marketing order.

DATES: The referendum shall be conducted from April 7 through April 14, 1995. The representative period for the purpose of the referendum herein ordered is January 1, 1994, through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon, 97204; telephone: 503–326–2724, FAX: 503–326–7440; or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; telephone: 202–690–0464, FAX: 202–720–5698.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing, issued October 26, 1993, and published in the **Federal Register** on October 29, 1993 (58 FR 58105); Recommended Decision and Opportunity to File Written Exceptions to the Proposed Marketing Agreement and Order, issued November 3, 1994, and published in the **Federal Register** on November 10, 1994 (59 FR 56254).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

This proposed marketing agreement and order was formulated on the record of a public hearing held at Walla Walla, Washington, on November 15, 1993, to consider a proposed marketing agreement and order regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). Approximately 25 witnesses, including Walla Walla Sweet Onion producers, handlers, and a Washington State University researcher, testified in support of the order. Proponents emphasized that Walla Walla Sweet Onion producers need a Federal marketing order to effectively compete with other sweet onion producing areas. No one present at the hearing testified in opposition to the proposed order. At the close of the hearing, January 15, 1994, was established as the date by which briefs, statements, and proposed corrections to the transcript were due. No briefs were received.

The proponents testified that Walla Walla Sweet Onion producers, in order to remain competitive with other sweet onion producing areas, must conduct research and promotion programs to reduce production and marketing costs and increase sales. Such programs should include production and marketing research projects and promotion projects, including paid advertising.

Testimony indicated that voluntary research and development efforts by the Walla Walla Sweet Onion industry have not been successful because of the lack of a coherent research and development plan with broad-based industry support. Also, a relatively small percentage of the U.S. onion crop is produced in the proposed production area in Walla Walla County, Washington, and Umatilla County, Oregon, and individual producers and handlers cannot implement an effective research, marketing development, and promotion program. By contrast, most other onion growing areas in the United States are large enough to convince private entities, such as seed companies, to conduct production research and developmental efforts with the result being new varieties specifically suited to those areas. Proponents believe that an industry-wide program is therefore necessary to enable the pooling of resources to address common problems. A single producer or even two or three producers cannot marshal the resources necessary to conduct effective research, marketing, and promotion programs including paid advertising.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on November 3, 1994, filed with the Hearing Clerk, U. S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions Thereto by December 12, 1994.

One exception was received from Mr. David R. Darrington of Agri-Pack, Inc., Pasco, Washington. Mr. Darrington's exception concerned : (1) His belief that the proponent group's intent was to limit the production of Walla Walla Sweet Onions and competition among Walla Walla producers and handlers; (2) his belief that low producer returns in recent years were due to low quality onions; (3) the extent of sweet onion production in the State of Washington; (4) the sweetness of Walla Walla onions on a season to season basis; and (5) the soil type required to grow Walla Walla Sweet Onion varieties that can be marketed as Walla Walla Sweet Onions, and the size of the proposed production area. These points are discussed in the *Findings and Conclusions* below.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service considered the economic impact of this action on small entities. The record indicates that there are approximately nine handlers of Walla Walla Sweet Onions in the proposed production area and 50 producers. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers as those having annual receipts of less than $500,000. The majority of the handlers and producers may be classified as small entities.

During the 1992 season, commercial shipments of Walla Walla Sweet Onions totaled about 390,000 hundredweight at an average f.o.b. price of $16.60 per hundredweight for a total value of $6,474,000. An indeterminate volume, probably about 10 percent, was sold at roadside stands. While there is a great variance in the size of individual handlers' operations, the record indicates that nearly all of the handlers that would be regulated under this order would qualify as small firms under the SBA's definition. Witnesses testified that because most of the producers and handlers of Walla Walla Sweet Onions are small, they are unable to individually finance the types of research and promotion efforts needed by the industry. A marketing order program would provide a means for these small entities to pool their resources and work together to solve their common problems. Witnesses testified that such action is necessary for this relatively small industry to remain profitable in the face of intense competition from larger production areas.

Acreage and supplies of Walla Walla Sweet Onions have declined in recent years, and proponents believe that the order would provide a much needed means of halting a drop in grower returns experienced in past seasons. This would be achieved by strengthening demand, developing new markets for existing supplies and encouraging increased production. Also, costs could be reduced through production research. Thus, the order would be expected to have a positive impact on producer returns.

The order would authorize the collection of assessments from handlers of Walla Walla Sweet Onions grown in designated parts of Walla Walla County, Washington, and Umatilla County, Oregon. Assessment funds would be used to finance production research projects that could reduce costs by reducing the occurrence of onion diseases, controlling plant pests, and developing varieties with more desirable flavor, quality, and size. Assessment funds could also be used to strengthen demand and expand markets for Walla Walla Sweet Onions through marketing research and development and product promotion programs, including paid advertising. Projects to develop better methods of handling, shipping or storing onions, to explore additional or alternative uses of onions, to check nutritive values, and similar research are some examples of marketing research. Examples of marketing development projects include exploring marketing possibilities, contacting buyers, distributing educational material relating to the handling and marketing of onions, and the dissemination of the results of current or past marketing research projects.

The order would be administered by a committee composed of Walla Walla Sweet Onion producers, handlers, and a public member nominated by growers and handlers and selected by the Secretary of Agriculture (Secretary). Daily administration of the order would be carried out by a staff hired by the committee. The order would not regulate the production of Walla Walla Sweet Onions and would place no restriction on the quality or quantities of Walla Walla Sweet Onions that could be handled.

The principal requirements of the order that would affect handlers would be the requirements that they pay assessments on fresh market shipments of Walla Walla Sweet Onions to fund research and promotion programs and that container markings could be regulated. The amount of the assessment rate is not specified in the proposed order, but witnesses at the hearing indicated that an appropriate rate might be five cents per 50-pound bag for administrative costs; research and promotion costs could require an additional five to seven cents per bag or more. Any assessment rate to cover committee expenses that may be established would be recommended by the committee to the Secretary for approval.

The order would also impose some reporting and recordkeeping requirements on handlers. Handler testimony indicated that the expected burden that would be imposed with respect to these requirements would be negligible. Most of the information that would be reported to the committee is already compiled by handlers for other uses and is readily available. In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of that Act, the information collection and recordkeeping requirements that may be imposed by this order have been submitted to OMB for approval. Those requirements would not become effective prior to OMB approval. Any requirements imposed would be evaluated against the potential benefits to be derived and it is expected that any added burden resulting from increased recordkeeping would not be significant when compared to those anticipated benefits.

Reporting and recordkeeping requirements issued under comparable marketing order programs impose an average annual burden on each regulated handler of about one hour and a two year record retention requirement. It is reasonable to expect that a comparable burden may be imposed under this order on the estimated nine handlers of Walla Walla Sweet Onions.

The Act requires that prior to the issuance of an order, a referendum be conducted of affected producers to determine if they favor issuance of the order. The ballot material that will be used in conducting the referendum will be submitted to and approved by OMB prior to use. It is estimated that it would take an average of 10 minutes for each of the approximately 50 Walla Walla Sweet Onion growers to participate in the voluntary referendum balloting. Additionally, it has been estimated that it would take approximately ten minutes for each of the nine handlers to complete the marketing agreement. In determining that the order would not have a significant economic impact on

a substantial number of small entities, all of the issues discussed above were considered. The order provisions have been carefully reviewed and every effort has been made to eliminate any unnecessary costs or requirements. Although the order may impose some additional costs and requirements on handlers, it is anticipated that the order would help to strengthen demand for Walla Walla Sweet Onions. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefitting handlers and producers alike. Accordingly, it is determined that the order would not have a significant economic impact on a substantial number of small handlers or producers.

Findings and Conclusions

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the November 10, 1994, issue of the **Federal Register** (59 FR 56254) are hereby approved and adopted subject to the following additions and modifications:

In his exception, Mr. Darrington stated his support for research and promotion programs. However, he also stated that he believes the proponent group's intent is to limit production of Walla Walla Sweet Onions and competition among Walla Walla producers and handlers. The Act, which is the legislative authority for the proposed order, provides no authority to either limit the production of a commodity or restrict competition within an industry. The proposed production area has been recognized since the beginning of the twentieth century as having unique soil properties, properties the adjacent areas do not share, to the same degree. However, the production of Walla Walla Sweet Onions uses less than half of the acreage in the Walla Walla Valley; growers wishing to produce Walla Walla Sweet Onions could buy, lease, or rent acreage within the area. Therefore, the size of the production area would not adversely affect competition. The order, as proposed, would authorize research and development projects, including paid advertising. The order also would permit the committee, as representatives of the industry, to establish, with Secretarial approval, container labeling requirements. No other regulatory activity would be authorized.

Mr. Darrington stated that any low grower returns in recent years were due to poor quality onions, not poor market conditions. Poor market conditions can be the result of poor quality product sold on the market. However, poor market conditions can also be caused by excessive supplies of local product in the market place and excessive supplies of onions from other growing areas, or a combination of all of these factors. Although this part of Mr. Darrington's exception could have merit, it does not alter the findings of the Recommended Decision which addressed poor market conditions for Walla Walla Sweet Onions because poor market conditions often are a result of a poor quality commodity.

Mr. Darrington disagreed with the statement in the Recommended Decision that half or more of the non-storage onions grown in Washington came from the Walla Walla Valley and that half of all Walla Walla Sweet Onion acreage is outside the Walla Walla Valley. The exhibits and testimony presented at the hearing indicate that the Walla Walla Valley produces at least half of Washington State's non-storage onion crop. The evidence does not support Mr. Darrington's statement.

Mr. Darrington also stated that there are other areas in the nation that have marketing orders for their specific onions, but none of them are restricted to such a small area as proposed by this order. This is true. However, section 11 (B) of the Act states that orders issued under this section shall be limited in their application to the smallest regional production areas or regional marketing areas, or both, as the case may be, which the Secretary finds practicable, consistently with carrying out such declared policy. The record indicates that the parts of Walla Walla and Umatilla Counties which are the proposed production area constitute the smallest practicable area.

Mr. Darrington stated that climate and variety are the major factors determining the sweetness of an onion; and that there are years when Walla Walla sweets are far from being sweet due to the growing conditions. This is probably true of all onions, but has no relevance on the findings of the recommended decision.

Mr. Darrington further states that the soil type in the proposed production area is not unique to that area. However, testimony was given to the contrary; witnesses stated that the unique growing conditions in the proposed production area, particularly the low sulfur content of the soil, yield a sweeter, milder onion than is grown elsewhere. Therefore, in order for an onion to be labeled as a Walla Walla Sweet, it would have to be produced in the proposed production area.

Mr. Darrington states that the proposed order allows any onion variety, other than a sweet Spanish hybrid, grown in the proposed production area to be called a Walla Walla Sweet Onion and that there are a number of varieties grown in the production area that are not sweet. Mr. Darrington states that the order would permit growers within the production area to grow whatever variety they wish and call it a Walla Walla Sweet Onion. As the order is proposed, the committee may, with the approval of the Secretary, exempt individual varieties from any regulations issued under the order. This would allow the committee to prevent onions that do not qualify as ''sweet onions'' from being marketed as Walla Walla Sweet Onions. Thus, it is the intent that the Walla Walla onion industry would have control over the varieties of onions marketed as Walla Walla Sweet Onions.

Mr. Darrington states that the order proposes that onion seeds not be regulated under the order, and that producers may sell seed onions grown within the production area wherever they wish outside of the area. Onions produced from any Walla Walla onion seed planted outside of the Walla Walla Sweet Onion production area do not qualify as Walla Walla Sweet Onions. For an onion to be assessed and marked as a Walla Walla Sweet Onion, it must be grown within the Walla Walla Sweet Onion production area established by the order and the variety must be recognized by the U.S. Department of Agriculture or recommended by the committee and approved by the Secretary as a sweet onion. Onions that do not meet these criteria may not be marketed as Walla Walla Sweet Onions and would not be assessed. Therefore, although Mr. Darrington's statement with respect to onion seeds is correct, it is not relevant to this discussion.

Mr. Darrington states that the proposed area appears to be very self-serving to the group that is supporting this order. This is true, inasmuch as marketing orders and agreements are self imposed instruments that provide industry members with a means to provide orderly marketing conditions. This proposed order would authorize production and marketing research and marketing development and promotion projects, including paid advertising, and would authorize container markings. This order would also prohibit onions grown outside of the proposed production area from being marketed as Walla Walla Sweets, thus improving returns to producers within the production area by strengthening consumer demand through various promotional activities and by reducing production and marketing costs through

production and marketing research. Thus, for the reasons stated, those parts of Mr. Darrington's exception that are relevant are denied.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are denied.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled ''Order Regulating the Handling of Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon.'' This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et. seq.*) to determine whether the issuance of the annexed order regulating the handling of sweet onions grown in the Walla Walla Valley of southeast Washington and northeast Oregon is approved or favored by producers, as defined under the terms of the order, who, during the representative period were engaged in the production of sweet onions in the Walla Walla Valley of southeast Washington and northeast Oregon.

The representative period for the conduct of such referendum is hereby determined to be January 1, 1994, through December 31, 1994.

The agents of the Secretary to conduct such referendum are hereby designated to be Gary D. Olson and Robert J. Curry, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland Oregon, 97204; telephone 503–326–2724, FAX 503–326–7440.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Dated: March 30, 1995.

Patricia A. Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

Order Regulating the Handling of Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon.[1]

Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon a proposed marketing agreement and order regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order regulate the handling of sweet onions grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

(3) The marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of Walla Walla Sweet Onions produced in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of Walla Walla Sweet Onions grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon, shall be in conformity to, and in compliance with, the terms and conditions of the said order, as follows:

The provisions of the proposed marketing agreement and order contained in the Recommended Decision issued by the Administrator on November 3, 1994, and published in the **Federal Register** on November 10, 1994 (59 FR 56254), shall be and are the terms and provisions of this order and are set forth in full herein. Sections 956.97 through 956.99 apply only to the proposed marketing agreement and not to the proposed order.

1. Title 7, Chapter IX is proposed to be amended by adding part 956 to read as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

Subpart—Order Regulating Handling

Definitions

Sec.
956.1 Secretary.
956.2 Act.
956.3 Person.
956.4 Production area.
956.5 Walla Walla Sweet Onions.
956.6 Handler.
956.7 Registered handler.
956.8 Handle.
956.9 Container.
956.10 Producer.
956.11 Varieties.
956.12 Committee.
956.13 Fiscal period.

Administrative Committee

956.20 Establishment and membership.
956.21 Term of office.
956.22 Nominations.
956.23 Selection.
956.24 Qualifications and acceptance.
956.25 Alternates.
956.26 Vacancies.
956.27 Failure to nominate.
956.28 Procedure.
956.29 Expenses.
956.30 Powers.
956.31 Duties.

Expenses and Assessments

956.40 Expenses.
956.41 Budget.
956.42 Assessments.
956.43 Accounting.
956.44 Excess funds.
956.45 Contributions.

Research and Development

956.50 Research and development.

Regulation

956.61 Recommendation for regulations.
956.62 Container markings.
956.63 Handling for specified purposes.
956.64 Minimum quantities.
956.65 Notification of regulations.
956.66 Safeguards.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Reports

956.80 Reports and recordkeeping.

Miscellaneous Provisions

956.85 Termination or suspension.
956.87 Proceedings after termination.
956.88 Effect of termination or amendment.
956.89 Compliance.
956.90 Right of the Secretary.
956.91 Duration of immunities.
956.92 Agents.
956.93 Derogation.
956.94 Personal liability.
956.95 Separability.
956.96 Amendments.
956.97 Counterparts.
956.98 Additional parties.
956.99 Order with marketing agreement.

Authority: 7 U.S.C. 601–674.11

Definitions

§ 956.1 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department of Agriculture who has been delegated, or to whom authority may hereafter be delegated, the authority to act for the Secretary.

§ 956.2 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 956.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 956.4 Production area.

Production area means a tract of land in Umatilla County, Oregon, and Walla Walla County, Washington, based on surveyors' maps, enclosed by the following boundaries: Commencing at the Southeast corner of Section 13, Township (Twp.) 5 North, Range (Rge.) 36 East, W.M.; thence Westerly along the South line of Sections 13, 14, 15, 16, 17, and 18 in Twp. 5 North, Rge. 36 East, Sections 13, 14, 15, 16, 17, and 18 in Twp. 5 North, Rge. 35 East, Sections 13, 14, 15, 16, 17, and 18 in Twp. 5 North, Rge. 34 East, Sections 13, 14, and 15 in Twp. 5 North, Rge. 33 East, W.M. to the East right of way line of the Northern Pacific Railway, as it runs Northwesterly through Vansyckle Canyon; thence Northwesterly along said Easterly right of way line to a point in the Northwest 1/4 of Section 20, Twp. 7 North, Rge. 32 East, W.M. where said line intersects the South right of way of the Union Pacific Railway, said intersection being commonly known as Zangar Junction; thence Easterly along said South right of way line of the Union Pacific Railway to a point in the Southwest 1/4 of Section 23, Twp. 7 North, Rge. 32 East where said line intersects the South right of way line of Washington State Highway No. 12; thence Easterly along said South right of way line to the intersection with the West line of Section 34, Twp. 7 North, Rge. 33 East, W.M.; thence North, along the West line of Sections 34, 27, 22, 15, 10, and 3 in Twp. 7 North, Rge. 33 East, W.M., and the West line of Sections 34, 27, and 22 in Twp. 8 North, Rge. 33 East, W.M. to the Northwest corner of said Section 22; thence East along the North line of said Section 22 to the Northeast corner thereof; thence North along the West line of Sections 14, 11, and 2 in Twp. 8 North, Rge. 33 East, W.M. to the Northwest corner of said Section 2; thence East along North lines of Sections 2 and 1 in Twp. 8 North, Rge. 33 East, W.M. and the North line of Section 6, Twp. 8 North, Rge. 34 East, W.M. to the centerline of the Touchet River; thence Northerly and Easterly along said centerline of the Touchet River as it runs through Twp. 9 North, Rge. 34 East, Twp. 9 North, Rge. 35 East, Twp. 10 North, Rge. 35 East, Twp. 10 North, Rge. 36 East, Twp. 9 North, Rge. 36 East, and Twp. 9 North, Rge. 37 East to a point on the East line of Section 11 in Twp. 9 North, Rge. 37 East, W.M., thence South along the East line of Sections 11, 14, 23, 26, and 35 in Twp. 9 North, Rge. 37 East, W.M., the East lines of Sections 2, 11, 14, 23, 26, and 35 in Twp. 8 North, Rge. 37 East, W.M., the East lines of Sections 2, 11, 14, 23, 26, and 35 in Twp. 7 North, Rge. 37 East, W.M., and the East lines of Sections 2, 11, and fractional Section 14 in Twp. 6 North, Rge. 37 East, W.M., to a point on the Washington-Oregon State line; thence West along said State Line to the closing corner on the West side of Section 18 in Twp. 6 North, Rge. 37 East, W.M.; thence South along the West line of Sections 18, 19, 30, and 31 in Twp. 6 North, Rge. 37 East, W.M. and the West line of Sections 6, 7, and 18 in Twp. 5 North, Rge. 37 East to the corner common to Sections 18 and 19 in Twp. 5 North, Rge. 37 East, W.M. and 13 and 24 in Twp. 5 North, Rge. 36 East, W.M., Being the True Point of Beginning of this Legal Description.

§ 956.5 Walla Walla Sweet Onions.

Walla Walla Sweet Onions means all varieties of *Allium cepa* grown within the production area, except Spanish hybrid varieties. The committee may, with the approval of the Secretary, exempt individual varieties from any or all regulations issued under this part.

§ 956.6 Handler.

Handler is synonymous with *shipper* and means any person (except a common or contract carrier of Walla Walla Sweet Onions owned by another person) who handles Walla Walla Sweet Onions or causes Walla Walla Sweet Onions to be handled.

§ 956.7 Registered handler.

Registered handler means any person with adequate facilities for preparing Walla Walla Sweet Onions for commercial market, who has requested such registration and is so recorded by the committee, or any person who has access to such facilities and has recorded with the committee the ability and willingness to assume customary obligations of preparing Walla Walla Sweet Onions for commercial market. The committee may recommend, for approval of the Secretary, procedures with respect to handler registration.

§ 956.8 Handle.

Handle is synonymous with *ship* and means to package, load, sell, transport, or in any way place Walla Walla Sweet Onions or cause Walla Walla Sweet Onions to be placed in the current of commerce within the production area or between the production area and any point outside thereof. Such term shall not include the transportation, sale, or delivery of harvested Walla Walla Sweet Onions to a handler within the production area for the purpose of having such Walla Walla Sweet Onions prepared for market.

§ 956.9 Container.

Container means a box, bag, crate, hamper, basket, package, or any other receptacle used in the packaging, transporting, sale, shipment, or other handling of Walla Walla Sweet Onions.

§ 956.10 Producer.

Producer is synonymous with *grower* and means any person engaged in a proprietary capacity in the production of Walla Walla Sweet Onions for market.

§ 956.11 Varieties.

Varieties means and includes all classifications, subdivisions, or types of Walla Walla Sweet Onions according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture or recommended by the committee and approved by the Secretary.

§ 956.12 Committee.

Committee means the Walla Walla Sweet Onion Committee established pursuant to § 956.20.

§ 956.13 Fiscal period.

Fiscal period means the period beginning on June 1 and ending on May 31 of each year, or other such period as may be recommended by the committee and approved by the Secretary.

Administrative Committee

§ 956.20 Establishment and membership.

(a) The Walla Walla Sweet Onion Committee, consisting of ten members, is hereby established. The committee shall consist of six producer members, three handler members, and one public member. Each member shall have an alternate who shall have the same qualifications as the member.

(b) A producer shall have three years of experience in producing onions in order to qualify for committee membership. At the time of selection, no more than two producer members may be affiliated with the same handler.

§ 956.21 Term of office.

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of committee members and their respective alternates shall be for three fiscal periods beginning on June 1 or such other date as recommended by the committee and approved by the Secretary. The terms shall be determined so that one-third of the grower membership and one-third of the handler membership shall terminate each year. Members and alternates shall serve during the term of office for which they are selected and have been qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, or until their successors are selected and have qualified.

(b) The term of office of the initial members and alternates shall begin as soon as possible after the effective date of this subpart. One-third of the initial industry members and alternates shall serve for a one-year term, one-third shall serve for a two-year term, and one-third shall serve for a three-year term. The initial, as well as all successive terms of office of the public member and alternate member shall be for three years.

(c) The consecutive terms of office for all members shall be limited to two three-year terms. There shall be no such limitation for alternate members.

§ 956.22 Nominations.

Nominations from which the Secretary may select the members of the committee and their respective alternates may be made in the following manner:

(a) The committee shall hold or cause to be held, within the production area and prior to April 1 of each year or by such other date as may be specified by the Secretary, one or more meetings of producers and handlers for the purpose of designating one nominee for each of the member and alternate member positions which are vacant or will be vacant at the end of the fiscal period;

(b) In arranging for such meetings the committee may, if it deems such desirable, cooperate with existing organizations and agencies;

(c) Nominations for committee members and alternate members shall be provided to the Secretary, in such manner and form as the Secretary may prescribe, not later than 30 days prior to the end of the fiscal period within which the current term of office expires;

(d) Only producers may participate in designating nominees for producer committee members and their alternates and only handlers may participate in designating nominees for handler committee members and their alternates;

(e) Each person who is both a handler and a producer may vote either as a handler or as a producer, but not both;

(f) Each person is entitled to cast only one vote on behalf of him or herself, his or her partners, agents, subsidiaries, affiliates and representatives, in designating nominees for committee members and alternates. An eligible producer's or handler's privilege of casting only one vote, as aforesaid, shall be construed to permit such voter to cast one vote for each producer member and alternate member position to be filled or each handler member and alternate member position to be filled, but not both.

(g) Every three years, at the first meeting following selection, the committee shall nominate the public member and alternate for a three-year term of office.

(h) The committee shall prescribe such additional qualifications, administrative rules and procedures for selection and voting for each candidate as it deems necessary and as the Secretary approves.

§ 956.23 Selection.

The Secretary shall select members and alternate members of the committee from the nominations made pursuant to § 956.22 or from other qualified persons.

§ 956.24 Qualification and acceptance.

Any person nominated to serve as a member or alternate member of the committee shall, prior to selection by the Secretary, qualify by filing a written background and acceptance statement indicating such person's willingness to serve in the position for which nominated.

§ 956.25 Alternates.

An alternate member of the committee shall act in the place and stead of the member for whom such person is an alternate, during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, that member's alternate shall serve until a successor to such member has qualified and is selected.

§ 956.26 Vacancies.

To fill any vacancy occasioned by the failure of any person nominated as a member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of a member or alternate, a successor for the unexpired term may be selected by the Secretary from nominations made pursuant to § 956.22 from previously unselected nominees on the current nominee list, or from other eligible persons.

§ 956.27 Failure to nominate.

If nominations are not made within the time and manner prescribed in § 956.22 the Secretary may, without regard to nominations, select the members and alternates on the basis of the representation provided for in § 956.20

§ 956.28 Procedure.

(a) Six members of the committee shall constitute a quorum, and six concurring votes shall be required to pass any motion or approve any committee action, except that recommendations made pursuant to § 956.61 shall require seven concurring votes.

(b) The committee may provide for meetings by telephone, telegraph, facsimile, or other means of communication, and any vote cast orally at such meetings shall be confirmed promptly in writing: *Provided*, That if an assembled meeting is held, all votes shall be cast in person.

§ 956.29 Expenses.

Members and alternates shall serve without compensation but shall be reimbursed for such expenses authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under this part.

§ 956.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 956.31 Duties.

It shall be among the duties of the committee:

(a) At the beginning of each fiscal period, or as soon thereafter as practicable, to meet and organize, to select a chairperson and such other officers as may be necessary, to select subcommittees, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as the Secretary may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to Walla Walla Sweet Onions and to engage in such research and service activities which relate to the production, handling, or marketing of Walla Walla Sweet Onions as may be approved by the Secretary;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee. Such minutes, books, and records shall be subject to examination at any time by the Secretary or the Secretary's authorized agent or representative;

(g) To make available to producers and handlers the committee voting record on recommended regulations and on other matters of policy;

(h) Prior to each fiscal period, to submit to the Secretary a budget of its proposed expenses for such fiscal period, together with a report thereon, and a recommendation as to the rate of assessment for such period;

(i) To cause its books to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may require; the report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report shall be furnished to the Secretary, and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers: *Provided,* that confidential information shall be removed from all copies made available to the public; and

(j) To consult, cooperate, and exchange information with other onion marketing committees and other individuals or agencies in connection with all proper committee activities and objectives under this subpart.

Expenses and Assessments

§ 956.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by the committee for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in §§ 956.42 and 956.45.

§ 956.41 Budget.

Prior to each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee shall recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 956.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each person who first handles Walla Walla Sweet Onions shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers, at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations or other available information.

(c) At any time during, or subsequent to, a given fiscal period, the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the assessment rate. Such increase in the assessment rate shall be applicable to all Walla Walla Sweet Onions which were handled by each handler thereof during such fiscal period.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions of this part are suspended or become inoperative.

(e) To provide funds for the administration of the provisions of this part during the initial fiscal period or the first part of a fiscal period when neither sufficient operating reserve funds nor sufficient revenue from assessments on the current season's shipments are available, the committee may accept payment of assessments in advance or may borrow money for such purposes.

(f) The committee may impose a late payment charge or an interest charge, or both, on any handler who fails to pay any assessment in a timely manner. Such time and the rates shall be recommended by the committee and approved by the Secretary.

§ 956.43 Accounting.

(a) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternate members, employees, agents, and all other such persons associated with the committee to account for all receipts, disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member, alternate member, employee, or agent of the committee, such person shall account for all receipts, disbursements, funds, property, and records pertaining to the committee's activities for which such person was responsible, deliver all property and funds in such person's possession to the committee, and execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such person pursuant to this part.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this part, or during any period or periods when regulations are not in effect and, upon determining such action is appropriate, the Secretary may direct that such person or persons

shall act as trustee or trustees for the committee.

§ 956.44 Excess funds.

If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(a) The committee, with approval of the Secretary, may establish an operating reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established, except funds in the reserve shall not exceed the equivalent of approximately two fiscal period's budgeted expenses. Such reserve funds may be used:

(1) To defray any expenses authorized under this part;

(2) To defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses;

(3) To cover deficits incurred during any fiscal period when assessment income is less than expenses;

(4) To defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and

(5) To cover necessary expenses of liquidation in the event of termination of this part.

(b) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate except that to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

(c) If such excess is not retained in a reserve as provided in paragraph (a) of this section, each handler entitled to a proportionate refund of the excess assessments collected shall be credited at the end of a fiscal period with such refund against the operations of the following fiscal period unless such handler demands payment thereof, in which event such proportionate refund shall be paid as soon as practicable.

§ 956.45 Contributions.

The committee may accept voluntary contributions but these shall be used only to pay expenses incurred pursuant to § 956.50. Such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use.

Research and Development

§ 956.50 Research and development.

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development, and marketing promotion projects, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of Walla Walla Sweet Onions. Any such project for the promotion and advertising of Walla Walla Sweet Onions may utilize an identifying mark, including but not limited to registered trademarks and logos, which shall be made available for use by all handlers in accordance with such terms and conditions as the committee, with the approval of the Secretary, may prescribe. The committee may register such logos with the Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office. The expense of such projects shall be paid from funds collected pursuant to §§ 956.42 and 956.45.

(b) In recommending projects pursuant to this section, the committee shall give consideration to the following:

(1) The expected supply of Walla Walla Sweet Onions in relation to market requirements;

(2) The supply situation among competing onion areas and communities;

(3) The anticipated benefits from such projects in relation to their costs;

(4) The need for marketing research with respect to any market development activity; and

(5) Other relevant factors.

(c) If the committee concludes that a program of research and development should be undertaken, or continued, in any fiscal period, it shall submit the following for the approval of the Secretary:

(1) Its recommendations as to the funds to be obtained pursuant to §§ 956.42 and 956.45;

(2) Its recommendations as to any research projects; and

(3) Its recommendations as to promotion activity and paid advertising.

(d) Upon conclusion of each activity, but at least annually, the committee shall summarize and report the results of such activity to the Secretary.

(e) All marketing promotion activity engaged in by the committee, including paid advertising, shall be subject to the following terms and conditions:

(1) No marketing promotion, including paid advertising, shall refer to any private brand, private trademark, or private trade name;

(2) No promotion or advertising shall disparage the quality, use, value, or sale of like or any other agricultural commodity or product, and no false or unwarranted claims shall be made in connection with the product; and

(3) No promotion or advertising shall be undertaken without reason to believe that returns to producers will be improved by such activity.

Regulation

§ 956.61 Recommendation for regulations.

The committee shall recommend regulations to the Secretary whenever it deems it advisable, as provided in § 956.62. The committee also may recommend modification, suspension, or termination of any regulation, or amendments thereto, in order to facilitate the handling of Walla Walla Sweet Onions for the purposes authorized in § 956.63. The committee may also recommend amendment, modification, termination, or suspension of any regulation issued under this part.

§ 956.62 Container markings.

The committee may, with the approval of the Secretary, provide a method, through rules and regulations issued pursuant to this part, for fixing the marking of containers which may be used in the packaging or handling of Walla Walla Sweet Onions, including appropriate logo or other container markings to identify the contents thereof. Further, the committee may, with the approval of the Secretary, establish through rules and regulations such safeguards as may be necessary to ensure that such container marking requirements are in compliance with the rules and regulations.

§ 956.63 Handling for specified purposes.

Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary may issue special regulations, or modify, suspend, or terminate requirements in effect pursuant to §§ 956.42 and 956.62 or any combination thereof, in order to facilitate the handling of onions for the following purposes:

(a) Shipments of Walla Walla Sweet Onions for relief or to charitable institutions;

(b) Shipments of Walla Walla Sweet Onions for livestock feed;

(c) Shipments of Walla Walla Sweet Onions for planting and for plants;

(d) Shipments of Walla Walla Sweet Onions as salad onions;

(e) Shipments of Walla Walla Sweet Onions for all processing uses including, pickling, peeling, dehydration, juicing, or other processing;

(f) Shipments of Walla Walla Sweet Onions for disposal;

(g) Shipments of Walla Walla Sweet Onions for seed;

(h) Shipments of Walla Walla Sweet Onions for packing or storing within the production area or outside the production area, but within specified locations in the States of Oregon and Washington; and

(i) Shipments of Walla Walla Sweet Onions for other purposes which may be specified.

§ 956.64 Minimum quantities.

The committee, with the approval of the Secretary, may establish minimum quantities below which Walla Walla Sweet Onion shipments will be free from the requirements in, or pursuant to, §§ 956.42, 956.62, and 956.63, or any combination thereof.

§ 956.65 Notification of regulations.

The Secretary shall notify the committee of each regulation issued and of each amendment, modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

§ 956.66 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent Walla Walla Sweet Onions shipped, pursuant to §§ 956.63 and 956.64, from entering channels of trade for other than the purpose authorized therefor.

(b) The committee, with the approval of the Secretary, may also prescribe rules and regulations governing the issuance, and the contents, of Certificates of Privilege, if such certificates are prescribed as safeguards by the committee. Such safeguards may include requirements that:

(1) Handlers shall first file applications with the committee to ship such Walla Walla Sweet Onions.

(2) Handlers shall pay the pro rata share of expenses provided by § 956.42 in connection with such Walla Walla Sweet Onions.

(3) Handlers shall obtain Certificates of Privilege from the committee prior to effecting the particular onion shipment.

(c) The committee may rescind any Certificate of Privilege, or refuse to issue any Certificate of Privilege, to any handler if proof is obtained that Walla Walla Sweet Onions shipped by the handler for the purposes stated in the Certificate of Privilege were handled contrary to the provisions of this part.

(d) The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

(e) The committee shall make reports to the Secretary as requested, showing the number of applications for such certificates, the quantity of Walla Walla Sweet Onions covered by such applications, the number of such applications denied and certificates granted, the quantity of Walla Walla Sweet Onions handled under duly issued certificates, and such other information as may be requested.

Reports

§ 956.80 Reports and recordkeeping.

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following:

(1) The acreage of Walla Walla Sweet Onions grown;

(2) The quantities of Walla Walla Sweet Onions received by such handler;

(3) The quantities of Walla Walla Sweet Onions disposed of by such handler;

(4) The disposition date of such Walla Walla Sweet Onions;

(5) The manner of disposition of such Walla Walla Sweet Onions; and

(6) The identification of the carrier transporting such Walla Walla Sweet Onions.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that any information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of individual handler's identity or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the Walla Walla Sweet Onions received and disposed of by such handler as may be necessary to verify reports submitted to the committee pursuant to this section.

Miscellaneous Provisions

§ 956.85 Termination or suspension.

(a) The Secretary may at any time terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operations of any or all of the provisions of this subpart whenever it is found that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever it is found that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of Walla Walla Sweet Onions: Provided, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such Walla Walla Sweet Onions produced for market, but such termination shall be announced at least 90 days before the end of the current fiscal period.

(d) Within six years of the effective date of this subpart the Secretary shall conduct a continuance referendum to ascertain whether continuance of this subpart is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by a majority of producers who, during a representative period determined by the Secretary, have been engaged in the production for market of Walla Walla Sweet Onions in the production area. Such termination shall be announced on or before the end of the fiscal period.

(e) The provisions of this subpart shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 956.87 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as joint trustees, for the purpose of liquidating the affairs of the committee, of all funds and property then in the possession, or under control, of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of said committee and of the trustees, to such person as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments

necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in said committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 956.88 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart;

(b) Release or extinguish any violation of this subpart or of any regulations issued under this subpart; and

(c) Affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 956.89 Compliance.

No handler shall handle Walla Walla Sweet Onions except in conformity to the provisions of this part.

§ 956.90 Right of the Secretary.

The members of the committee, including successors and alternates, and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 956.91 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 956.92 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 956.93 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 956.94 Personal liability.

No member or alternate of the committee or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 956.95 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 956.96 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

§ 956.97 Counterparts.

This agreement may be executed in multiple counterparts, and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 956.98 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by the handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 956.99 Order with marketing agreement.

Each signatory handler hereby requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of Walla Walla Sweet Onions in the same manner as is provided for in this agreement.

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

United States Department of Agriculture, Agricultural Marketing Service

Marketing Agreement Regulating the Handling of Onions Grown in Walla Walla County, Washington, and Umatilla County, Oregon

The parties hereto, in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), and in accordance with the applicable rules of practice and procedure effective thereunder (7 CFR, Part 900), desire to enter into this marketing agreement regulating the handling of onions grown in Walla Walla County, Washington, and Umatilla County, Oregon; and each party hereto agrees that such handling shall, from the effective date of this marketing agreement, be in conformity to, and in compliance with, the provisions of said marketing agreement.

The provisions of §§ 956.1 to 956.96, inclusive, of Marketing Order No. 956, (7 CFR, Part 956) of the order annexed to and made a part of the decision of the Secretary of Agriculture with respect to a proposed marketing agreement and order regulating the handling of onions grown in Walla Walla County, Washington, and Umatilla County, Oregon, plus the following additional provisions shall be, and the same hereby are, the terms and conditions hereof; and the specified provisions of said annexed order are hereby incorporated into this marketing agreement as if set forth in full herein.

§ 956.97 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 956.98 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 956.99 Order with marketing agreement.

Each signatory handler hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of onions in the same manner as is provided in this agreement.

The undersigned hereby authorizes the Director, or Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, to correct any typographical errors which may have been made in this marketing agreement.

In Witness Whereof, the contracting parties, acting under the provisions of the act, for the purpose and subject to the limitations therein contained, and not otherwise, have hereto set their respective signatures and seals.

_____
(Firm Name)

_____
(Mailing Address)

_____
(City, State, and ZIP Code)

By: [1] _____
(Signature)

_____
(Title)

_____
(Date of Execution)

(Corporate Seal: if none, so state)

(For use by incorporated handlers)

Certification of Resolution

(Corporation Only)

At a duly convened meeting of the Board of Directors of

_____

held at _____

on the _____ day of _____ 19____,

Resolved, That _____ shall become a party of the marketing agreement regulating the handling of onions grown in Walla Walla County, Washington, and Umatilla County, Oregon, which annexed to and made part of the decision of the Secretary of Agriculture, and it is further,

Resolved, That

_____
(Name)

_____
(Title)

and _____
(Name)

_____
(Title)

be, and the same hereby are, authorized and directed severally or jointly to sign, execute, and deliver counterparts of the said agreement to the Secretary of Agriculture.

I, _____

Secretary of _____

do hereby certify this is a true and correct copy of a resolution adopted at the above named meeting as said resolution appears in the minutes thereof.

_____
(Signature)

_____
(Address of Firm)

(Corporate Seal: if none, so state)

[FR Doc. 95–8428 Filed 4–4–95; 8:45 am]

BILLING CODE 3410–02–P

[1] If one of the contracting parties to this agreement is a corporation, my signature constitutes certification that I have the power granted to me by the Board of Directors to bind this corporation to the marketing agreement.

Note: Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Administration Building, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503, regarding OMB No. 0581–0089. When replying, refer to the OMB Number and Form Number in your letter.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AWA–7]

Proposed Modification of the Cedar Rapids Municipal Airport, IA, Corpus Christi International Airport, TX, Harlingen Rio Grande Valley International Airport, TX, Abilene Regional Airport, TX, Dyess AFB, TX, and Santa Barbara Municipal Airport CA, Class C Airspace Areas and Proposed Establishment of the Cedar Rapids Municipal Airport, IA, Class E Airspace Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the Class C airspace areas at Cedar Rapids Municipal Airport, IA, Corpus Christi International Airport, TX, Harlingen Rio Grande Valley International Airport, TX, Abilene Regional Airport, TX, Dyess AFB, TX, and Santa Barbara Municipal Airport, CA. Class C airspace areas are predicated on an operational air traffic control tower (ATCT) serviced by a radar approach control facility. These areas would be modified to reflect the radar approach control facility's hours of operation. This proposal would not change the designated boundaries or altitudes of these Class C airspace areas. In addition, this notice proposes to establish Class E airspace at Cedar Rapids Municipal Airport, IA, when the associated radar approach control facility is not in operation.

DATES: Comments must be received on or before April 28, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC–200], Airspace Docket No. 94–AWA–7, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Nelson, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9295.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped, postcard on which the following statement is made: ''Comments to Airspace Docket No. 94–AWA–7.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class C airspace areas at Cedar Rapids Municipal Airport, IA, Corpus Christi International Airport, TX, Harlingen Rio Grande Valley International Airport, TX, Abilene Regional Airport, TX, Dyess AFB, TX, and Santa Barbara Municipal Airport, CA. Class C airspace areas are predicated on an operational ATCT serviced by a radar approach control facility. These areas would be modified to reflect the radar approach control facility's hours of operation. This proposal would not change the designated boundaries or altitudes of these Class C airspace areas. In addition, this notice proposes to establish Class E airspace at Cedar Rapids Municipal Airport, IA, when the associated radar approach control facility is not in operation. Class C and Class E airspace designations are published in paragraphs 4000 and 6002, respectively, 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 C and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments 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, when promulgated, will not have a significant 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).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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.

Section 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 4000—Subpart C—Class C Airspace

* * * * *

ACE IA C Cedar Rapids Municipal Airport, IA (Revised)

Cedar Rapids Municipal Airport, IA
(lat. 41°53′05″ N., long. 91°42′40″ W.)

That airspace extending upward from the surface to and including 4,900 feet MSL within a 5-mile radius of Cedar Rapids Municipal Airport and that airspace extending upward from 2,100 feet MSL to and including 4,900 feet MSL within a 10-mile radius of Cedar Rapids Municipal Airport. This Class C 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.

* * * * *

ASW TX C Corpus Christi International Airport, TX (Revised)

Corpus Christi International Airport, TX
(lat. 27°46′13″ N., long. 97°30′04″ W.)

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Corpus Christi International Airport, and that airspace extending upward from 1,200 feet MSL to 4,000 feet MSL within a 10-mile radius of the airport from the 287° bearing from the airport clockwise to the 197° bearing from the airport, and that airspace extending upward from 1,500 feet MSL to 4,000 feet MSL within a 10-mile radius of the airport from the 197° bearing from the airport clockwise to the 287° bearing from the airport.

* * * * *

ASW TX C Harlingen, TX (Revised)

Rio Grande Valley International Airport, TX
(lat. 26°13′42″ N., long. 97°39′16″ W.)

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Rio Grande Valley International Airport, excluding that airspace east of Arroyo Colorado that is north of the Southern Pacific Railroad; and that airspace extending upward from 2,000 feet MSL to 4,000 feet MSL within a 10-mile radius of the airport from Farm Road 1420 and Arroyo Colorado clockwise to the Southern Pacific Railroad; and that airspace extending upward from 1,300 feet MSL to 4,000 feet MSL to the 10-mile radius of the airport from the Southern Pacific Railroad clockwise to U.S. Highway 83 (Business Route); and that airspace extending upward from 1,500 feet MSL to 4,000 feet MSL from U.S. Highway 83 (Business Route) clockwise to U.S. Highway 77 (Business Route); and that airspace extending upward from 1,200 feet MSL to 4,000 feet MSL from U.S. Highway 77 (Business Route) clockwise to Farm Road 1420. This Class C 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.

* * * * *

ASW TX C Abilene Regional Airport, TX (Revised)

Abilene Regional Airport, TX
(lat. 32°24′40″ N., long. 99°40′55″ W.)

That airspace extending upward from the surface to and including 5,800 feet MSL within a 5-mile radius of the Abilene Regional Airport, excluding that airspace from the surface to 3,600 feet MSL east of long. 99°39′00″ W., and north of the Abilene VORTAC 103°/283° radial within 5 miles of the airport; and that airspace extending upward from 3,600 feet MSL to and including 5,800 feet MSL within a 10-mile radius of the airport north of the Abilene VORTAC 103°/283° radial; and that airspace extending upward from 4,300 feet MSL to and including 5,800 feet MSL within a 10-mile radius of the airport south of the Abilene VORTAC 103°/283° radial.

* * * * *

ASW TX C Dyess AFB, TX (Revised)

Dyess AFB, TX
(lat. 32°25′12″ N., long. 99°51′25″ W.)

That airspace extending upward from the surface to and including 5,800 feet MSL within a 5-mile radius of Dyess AFB; and that airspace extending upward from 3,600 feet MSL to and including 5,800 feet MSL within a 10-mile radius of Dyess AFB north of the Abilene VORTAC 103°/283° radials; and that airspace extending upward from 4,300 feet MSL to and including 5,800 feet MSL within a 10-mile radius of the Dyess AFB and south of the Abilene VORTAC 103°/283° radials. This Class C airspace area excludes any

airspace included within the Abilene Regional Airport, TX, Class C airspace area.

* * * * *

AWP CA C Santa Barbara Municipal Airport, CA (Revised)

Santa Barbara Municipal Airport, CA
(lat. 34°25′34″ N., long. 119°50′26″ W.)

That airspace within a 5-mile radius of the Santa Barbara Municipal Airport extending upward from the surface to and including 4,000 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 1,500 feet MSL to and including 4,000 feet MSL, excluding that airspace from the 295° bearing from the airport, between the 5- and 10-mile radius, clockwise to the 090° bearing from the airport. This Class C 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.

* * * * *

Paragraph 6002—Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ACE IA E2 Cedar Rapids Municipal Airport, IA (New) Cedar Rapids Municipal Airport, IA

(lat. 41°53′05″ N., long. 91°42′40″ W.)

Within a 4.2-mile radius of the Cedar Rapids Municipal Airport. This Class E 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 Washington, DC, on March 29, 1995.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–8370 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–12–95]

RIN 1545–AT27

Valuation of Plan Distributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance to employers in determining the present value of an employee's benefit in a qualified defined benefit pension plan, for purposes of determining the amount of a distribution made in any form other than a nondecreasing annuity payable for a period not less than the life of the participant or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by July 5, 1995. Outlines of topics to be discussed at the public hearing scheduled for Tuesday, July 25, 1995, at 10 a.m. must be received by July 7, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (EE–12–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (EE–12–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Linda S. F. Marshall, (202) 622–4606; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 417. The temporary regulations provide guidance to employers in determining the present value of an employee's benefit in a qualified defined benefit pension plan.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, July 25, 1995, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by July 5, 1995 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by July 7, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the regulations is Linda S. F. Marshall, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.417(e)–1 also issued under 26 U.S.C. 417(e)(3)(A)(ii)(II).

§ 1.417 [Amended]

Par. 2. Paragraph (d) of § 1.417(e)–1 is revised to read as follows:

[The text of proposed paragraph (d) is the same as the text of § 1.417(e)–1T(d) published elsewhere in this issue of the **Federal Register**].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–8230 Filed 4–4–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–029]

33 CFR Chapter I

46 CFR Chapter I

Regulatory Reinvention Public Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings; request for comments.

SUMMARY: As part of the President's Regulatory Reinvention Initiative, the Coast Guard will conduct several public meetings outside the Washington, DC area. The meetings are intended to open additional lines of communication between the Coast Guard and the regulated public. Each meeting will be attended by a senior Coast Guard official, and will be open to the public.

DATES: The meetings will be held April 11, 1995 in New York, NY; April 12, 1995 in Boston, MA; and April 21 in Seattle, WA. Times for each meeting are provided below under **SUMMARY**. Written comments should be received by June 5, 1995.

ADDRESSES: The meetings will be held at the following locations: New York, NY—University of New York Maritime College, Fort Schuyler, Throgs Neck Station, New York; Boston, MA—Black Falcon Passenger Terminal, Massachusetts Port Authority, 1 Black Falcon Ave., Boston, MA 02210; Seattle, WA—Thirteenth Coast Guard District, 915 2nd Ave., Seattle, WA. Written comments may be mailed to the Executive Secretary, Marine Safety Council, Commandant (G–LRA), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander Thomas Cahill, Executive Secretary, Marine Safety Council, Commandant (G–LRA), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593, telephone (202) 267–0132.

SUPPLEMENTARY INFORMATION: Over the past eighteen months, the Coast Guard conducted a comprehensive review of its regulatory process. This review included meetings with members of regulated communities and advisory committees. Although the Coast Guard is proud of its frequent and ongoing interaction with the regulated community, the need for additional public involvement in the regulatory process was an area specifically identified for improvement. It is only through keeping in touch with those affected that the Coast Guard can truly judge if its regulatory and compliance efforts are effective and efficient. As a result, the Coast Guard's new regulatory procedures manual requires regulatory project managers to provide opportunities for public involvement at the earliest stages of a regulatory project. Additionally, the Coast Guard's ongoing Maritime Regulatory Reform effort is intended to remove unnecessary regulatory burdens on the maritime industry.

In his memorandum of March 4, 1995, President Clinton directed the heads of all Federal departments and agencies to make regulatory reinvention a top priority. He identified four steps to be taken. These steps are: (1) Cut obsolete regulations; (2) reward results, not red tape; (3) get out of Washington and create grassroots partnerships; and (4) negotiate, don't dictate. The Coast Guard is taking a number of additional actions to achieve the President's goals of reducing the regulatory burden and improving compliance through cooperation.

One of these actions is to conduct a number of public meetings during the month of April to discuss regulatory reinvention. The meetings are intended to allow members of the regulated community the opportunity to talk directly with senior Coast Guard officials involved in the regulatory process, and raise concerns with current regulatory and enforcement policies. The senior Coast Guard officials identified below currently plan to attend the meetings listed below. Rear Admiral Gregory Penington, Chief of the Office of Navigation Safety and Waterway Services at Coast Guard Headquarters, will attend the meeting of the Navigation Safety Advisory Council in Seattle, WA on April 21, 1995. This meeting will begin at 8 a.m. Rear Admiral James Card, Chief of the Office of Marine Safety, Security, and Environmental Protection at Coast Guard Headquarters, will attend an ''Industry Day'' meeting in New York, NY on April 11, 1995. This meeting will begin at 9 a.m. Rear Admiral John Shkor, Chief Counsel of the Coast Guard and Chairman of the Marine Safety Council, the Coast Guard's regulatory oversight body, will attend an ''Industry Day'' meeting in Boston, MA on April 12, 1995. This meeting will begin at 9 a.m., with registration beginning at 8:30 a.m. The locations for these meetings are listed above under **ADDRESSES**.

In addition to the above meetings, a number of other ''Industry Day'' meetings are scheduled in Portland, OR; Warren, RI; Valdez, AK; Cape Cod, MA; Milwaukee, WI; Anchorage, AK; Alameda, CA; Hampton Roads, VA; Tampa, FL; Mobile, AL; and Agana, Guam. These meetings will be hosted by the local Coast Guard Captain of the Port, and regulatory reinvention will be a key topic. The Coast Guard Captain of the Port for each area can provide additional details on the date and time for each meeting. Additionally, on April 20, 1995, the Coast Guard will hold a public meeting in Washington, DC to discuss regulatory reform. The details of this meeting will be announced by a separate notice in the **Federal Register**.

Persons affected by or interested in Coast Guard regulatory actions are also invited to submit written comments as indicated under **ADDRESSES** above.

Dated: March 24, 1995.

John E. Shkor,

Rear Admiral, U.S. Coast Guard Chief Counsel.

[FR Doc. 95–8389 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 232

Conduct on Postal Service Property

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule will amend Postal Service property regulations by providing that when conduct that is a violation of Federal or State criminal law is committed on Postal Service property, it is also a violation of Postal Service regulations, and that the fine and/or imprisonment penalties of 39 CFR 232.1(p) may be imposed for the proscribed conduct when Federal and State prosecution of the criminal law violation are declined.

DATES: Comments must be received on or before May 5, 1995.

ADDRESSES: Written comments should be mailed or delivered to the Counsel, Postal Inspection Service, 475 L'Enfant Plaza SW., Room 3411, Washington, DC 20260–2181.

FOR FURTHER INFORMATION CONTACT: Henry J. Bauman, Counsel, Postal Inspection Service, (202) 268–4415.

SUPPLEMENTARY INFORMATION: Postal Service regulations on conduct on postal property are published in title 39 of the Code of Federal Regulations (CFR) as § 232.1. One purpose of this proposed rule is to clarify that prohibited conduct on postal property includes violations of: (1) State, Territory, Possession, and District criminal laws assimilated onto exclusive Federal property under 18 U.S.C. 13, Assimilated Crimes Act; and (2) Federal, State, Territory, Possession, and/or District criminal laws that apply to the geographic areas in which nonexclusive properties owned or leased by the Postal Service are located.

Another purpose of this proposed rule is to provide that when conduct that is a violation of Federal, State, Territory, Possession, and/or District criminal law is committed on Postal Service property, it is also a violation of Postal Service regulations. Persons committing such prohibited conduct are subject to the penalty provisions of 39 CFR 232.1(p) (i.e., a fine of not more than $50 and/or imprisonment of not more than 30 days), when prosecution of the criminal law violation is declined by Federal, State, Territory, Possession, or District prosecutors.

List of Subjects in 39 CFR Part 232

Federal buildings and facilities, Penalties, Postal Service.

Accordingly, 39 CFR part 232 is proposed to be amended as set forth below.

PART 232—CONDUCT ON POSTAL PROPERTY

1. The authority citation for part 232 continues to read as follows:

Authority: 39 U.S.C. 401, 403(b)(3), 404(a)(7); 40 U.S.C. 318, 318a, 318b, 318c; sec. 613, Treasury, Postal Service, and General Government Appropriations Act, 1992, Pub. L. 102–141, 18 U.S.C. 13, 3061; 21 U.S.C. 802, 844.

2. Section 232.1 is amended by adding a new paragraph (r) to read as follows:

§ 232.1 Conduct on postal property.

* * * * *

(r) *Other prohibited conduct.* (1) The regulations in this section for conduct on Postal Service property also include:

(i) State, Territory, Possession, and District criminal laws assimilated onto exclusive Federal property under 18 U.S.C. 13, Assimilated Crimes Act; and

(ii) Federal, State, Territory, Possession, and/or District criminal laws that apply to the geographic areas in which nonexclusive properties owned or leased by the Postal Service are located.

(2) When a violation of a Federal, State, Territory, Possession, or District criminal law is committed on Postal Service property, it is also a violation of Postal Service regulations and is therefore subject to the penalty provisions of paragraph (p) of this section when prosecution of the criminal law violation is declined by Federal, State, Territory, Possession, or District prosecutors.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–8227 Filed 4–4–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–5185–2]

Notice and Open Meeting of the Negotiated Rulemaking Advisory Committee for Small Nonroad Engine Regulations

AGENCY: Environmental Protection Agency.

ACTION: FACA committee meeting—negotiated rulemaking on small nonroad engine regulations.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), EPA is giving notice of the next meeting of the Advisory Committee to negotiate a rule to reduce air emissions from small nonroad engines. Small nonroad engines are engines which are spark ignited gasoline engines less than 25 horsepower. The meeting is open to the public without advance registration. Agenda items for the meeting include reports from the task groups and discussions of the draft structure of the emissions standard.

DATES: The committee will meet on April 18, 1995 from 10 a.m. to 6 p.m., and on April 19, 1995 from 8 a.m. to 4 p.m.

ADDRESSES: The location of the meeting will be the Courtyard by Marriott, 3205 Boardwalk, Ann Arbor, MI 48108; phone: (313) 995–5900.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Lisa Snap, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor, Michigan 48105, (313) 668–4200. Persons needing further information on committee procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street, S.W. Washington, DC 20460, (202) 260–5495, or the Committee's facilitators, Lucy Moore or John Folk-Williams, Western Network, 616 Don Gaspar, Santa Fe, New Mexico, 87501, (505) 982–9805.

Dated: March 31, 1995.

Deborah Dalton,

Designated Federal Official.

[FR Doc. 95–8502 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[MA–31–01–6845b; A–1–FRL–5177–2]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; U Restricted Emission Status

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision approves 310 CMR 7.02(12), entitled ''U Restricted Emission Status,'' into the Massachusetts SIP. EPA is also proposing to extend the federal enforceability of this regulation to hazardous air pollutants. In the Final Rules Section of this **Federal Register**, EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before May 5, 1995.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air,

Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Ida E. Walker, for criteria pollutants (617) 565–9168 or Janet Beloin, for HAPS (617) 565–2734.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 3, 1995.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 95–8217 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IL92–1–6336b; FRL–5165–9]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to approve Illinois' February 7, 1994, request to incorporate smaller source permit rule amendments into the Illinois State Implementation Plan (SIP). The purpose of these smaller source amendments is to lessen the permitting burden on small sources and on the permitting authority by reducing the frequency and/or the requirement for operating permit renewal for sources emitting less than twenty-five tons per year of regulated air pollutants. In the final rules section of this **Federal Register**, the USEPA is approving this action as a direct final rule without prior proposal because USEPA views this as a noncontroversial action 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 USEPA 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 the proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed rule must be received on or before May 5, 1995.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Genevieve Nearmyer, Permits and Grants Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4761.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: February 24, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–8220 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[AK7–1–6588b; FRL–5171–6]

Approval and Promulgation of State Implementation Plans; Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Alaska for the purpose of reducing the National Air Quality Standards (NAAQS) for carbon monoxide (CO). The SIP revision was submitted by the state to satisfy certain federal Clean Air Act requirements for a basic motor vehicle inspection and maintenance (I/M) program in the Municipality of Anchorage and the Fairbanks Northstar Borough area. 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 this proposed rule, no further activity is contemplated in relation to this rule. If the 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 notice.

DATES: Comments on this proposed rule must be received in writing by May 5, 1995.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT–082), Air Programs Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

The State of Alaska Department of Environmental Conservation; 410 Willoughby, Suite 105, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Christi Lee, Air Programs Branch (AT–082), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: March 2, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–8314 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 94–040]

RIN 2115–AE85

Vessel Rebuilt Determinations

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise its rules regarding rebuilt determinations to provide guidelines to clarify the standard for determining when work on a vessel constitutes a rebuilding of that vessel. The rebuilt standard has been criticized as too subjective to provide guidance to vessel owners, who often must make critical business planning decisions with the outcome of a potential rebuilt determination by the Coast Guard in mind. The proposed guidelines, if adopted, would establish clear upper and lower thresholds relevant to rebuilt determinations and would provide for greater certainty to vessel owners making business decisions regarding work to be performed on their vessels.

DATES: Comments must be received on or before July 5, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–040), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Burley, Vessel Documentation and Tonnage Survey Branch; (202) 267–1492.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 94–040) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information: The principal persons involved in drafting this document are Ms. Laura Burley, Project Manager; Lieutenant Commander Don M. Wrye, Attorney Advisor, Vessel Documentation and Tonnage Survey Branch; and Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Background and Purpose

When Congress enacted the Merchant Marine Act, 1920, popularly referred to as the ''Jones Act,'' it included a provision to provide for a protected cabotage trade. Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. app. 883), generally prohibited the transportation of merchandise in the coastwise trade except in vessels built in and documented under the laws of the United States and owned by citizens of the United States. In 1956, Congress amended Section 27 by enacting what is known as the ''Second Proviso.'' Under the proviso, as enacted, a vessel of more than 500 gross tons entitled to engage in the coastwise trade which is then rebuilt outside the United States permanently loses the right to engage in the coastwise trade. Further, the proviso required owners of vessels of more than 500 gross tons documented in the United States which are rebuilt outside the United States to make a report of the circumstances of the rebuilding to the Secretary.

As originally proposed, the proviso contained a definition of ''rebuilt.'' However, the definition was determined to be problematic and was deleted. The legislative history noted that a ''generally accepted'' definition of the term as applied to vessels may be found in the case of *United States* v. *The Grace Meade*, 25 F. Cas. 1387 (E.D. Va. 1876) (No. 15,243). That definition is that ''a vessel is considered rebuilt if any considerable part of the hull of the vessel in its intact condition, without being broken up, is built upon.'' Further, the legislative history noted, the definition had been adopted by the Supreme Court in *New Bedford Dry Dock Co.* v. *Purdy* (The Jack-O'Lantern), 258 U.S. 96 (1922), and had been incorporated into the regulations of the Bureau of Customs, which then administered the vessel documentation program, as a regulatory standard.

In 1960, Congress amended the Second Proviso. (Pub. L. 86–583.) The 1960 amendment closed a loophole which permitted foreign-built midbodies to be towed to the United States and then incorporated into the domestic rebuilding of an existing vessel in an operation known as ''jumboizing.'' As amended, the Second Proviso provided that a vessel of more than 500 gross tons eligible to engage in the coastwise trade which was then rebuilt permanently lost the right to engage in the coastwise trade unless the ''entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel,'' was effected within the United States.

In 1988, the Second Proviso was once again amended to eliminate the 500 gross ton parameter for vessels rebuilt outside the United States. (Pub. L. 100–239.) Now, any vessel which has acquired the lawful right to engage in the coastwise trade which is later rebuilt outside the United States permanently loses coastwise trading privileges.

The Second Proviso is implemented by the Coast Guard primarily by regulations at 46 CFR § 67.177. The regulatory standard in § 67.177 states that a vessel is rebuilt when ''any considerable part of its hull or superstructure is built upon or substantially altered.'' While the wording of the regulatory standard has remained stable over the years, the Coast Guard's administration of the standard has changed.

Prior to September 1989, the Coast Guard evaluated whether work performed on a vessel constituted a rebuilding under the regulatory standard by focusing on whether the nature of the work was structural or nonstructural. In September 1989, the Coast Guard issued a rebuilt determination for work performed on the vessel *Monterey*. The *Monterey* determination explained that application of the Coast Guard's regulatory standard involves a two-step process. The first step is to identify work which involves building upon or

alteration of the hull or superstructure. Once the relevant work has been identified, the second step is to determine whether that work involves a considerable part of the hull or superstructure. If it does, then the vessel has been rebuilt.

As a result of the regulatory requirement, the Coast Guard frequently receives applications for preliminary determinations whether work to be performed on a vessel outside the United States would constitute a rebuilding. In support of an application for a preliminary rebuilt determination, the applicant will generally enclose extensive documentation addressing the character and scope of the work to be performed including plans, drawings, contracts, work orders, and materials lists. The applicant then attempts to show that the work will not build upon or ''substantially'' alter ''any considerable part'' of the vessel's hull or superstructure. Often, comparisons are made between the before and after area of the hull and superstructure; the weight of steel to be replaced or added to the vessel's total steelweight; or the cost of the planned work to the overall value of the vessel.

Sometimes, the vessel representative does not submit an application for a rebuilt determination or any supporting documentation until after the work is performed. While this approach is permissible, it assumes the risk that the Coast Guard may determine that the vessel has been rebuilt, with the disastrous consequence of loss of trading entitlements. In other cases, the work actually done on the vessel differs from or exceeds the planned work, with possible adverse effects on the final determination. In any event, following completion of the work, if the quantum of work involved raises a reasonable belief that the vessel has been rebuilt, the vessel representative must apply for a final rebuilt determination. Because of the wording of the standard and the unique nature of each vessel, every rebuilt determination is evaluated on a case-by-case basis.

Because the regulatory standard contains a number of undefined terms which could be problematic, the Coast Guard decided to seek public input on the advisability of engaging in a rulemaking. Two public meetings were held, both preceded by a notice in the **Federal Register**. The first meeting was on November 16, 1993 (58 FR 51298), and the second on February 15, 1994 (59 FR 725). The stated purpose of the public meetings was to obtain public input concerning whether the Coast Guard should undertake rulemaking to develop clearer standards for vessel rebuilt determinations, whether a negotiated rulemaking procedure would be appropriate, and to discuss problems encountered under existing procedures and possible solutions.

On May 10, 1994, the Coast Guard published a policy statement in the **Federal Register** (CGD 93–063; 59 FR 24060) announcing that it was planning to undertake rulemaking regarding vessel rebuilt determinations. Also, the policy statement concluded that, based on a review of its rebuilt determinations since the *Monterey* determination, work performed on a vessel which involved five percent or less of the vessel's steelweight has never been determined to constitute a rebuilding.

Discussion of Proposed Rules

The Coast Guard proposes to revise 46 CFR 67.177 regarding vessel rebuilt determinations. Section 67.177 would first restate the existing standard that a vessel is rebuilt ''when any considerable part of its hull or superstructure is built upon or substantially altered.'' Application of that standard would remain essentially a two-step process.

The standard, by its terms, encompasses only work which involves building upon or substantial alteration of a considerable part of the hull or superstructure of the vessel. Therefore, the first step in applying the standard must be to identify hull and superstructure work as distinguished from other work on the vessel. Once the relevant work has been identified, the second step in applying the standard is to determine whether that work results in a ''considerable part'' of the hull or superstructure being built upon or substantially altered. If it does, the vessel will be deemed to have been rebuilt.

To identify work constituting building upon or a substantial alteration of the hull or superstructure of a vessel, the hull and superstructure must be defined. Both terms are defined in 46 CFR 67.3. The hull is the shell, or outer casing, and internal structure below the main deck which provide both the flotation envelope and structural integrity of the vessel in its normal operations. The superstructure includes the main deck and any other structural part of the vessel above the main deck. Parts of the hull or superstructure include the shell plating, keel, decks, supporting bulkheads, beams, frames, girders, stringers, and other structural items.

On the other hand, the delivery, installation aboard the vessel, and modification or overhaul of inventory, equipment, furnishings, and stores are not included as parts of the hull or superstructure. Such inventory, equipment, furnishings, and stores include: Office inventory and equipment; medical stores and equipment; charts and flags; navigation and signaling equipment; portable VHS radio sets and rechargers; radio equipment; automatic telephone system; office amplifiers and loudspeakers; public address system; spare parts; mooring lines, towing lines, and manually operated rope storage wheels; lifeboats and liferafts; lifesaving equipment; firefighting equipment; CO2 systems; workshop tools and equipment; galley, pantry, and bar equipment; plates, crockery, cutlery, and glassware; games, gambling tables, and entertainment equipment; musical instruments; jacuzzis; print shop, photo laboratory and projector room equipment; bedding; table linens; window curtains; baggage handling equipment; steel storage shelves; deck furniture; cabin pictures and works of art; and furnishings for crew cabins, messes, recreation rooms, passenger cabins, lounges, public spaces, and service rooms.

Also, the installation and modification or overhaul of machinery, including foundations, that could be removed without affecting the structural integrity of the vessel are not included as part of the hull or superstructure. Among items of this type are: anchor windlass; steering machinery; bow thruster (the bow thruster tunnel must be constructed in the United States); elevator machinery; water systems evaporators and pumps; ventilation and air conditioning system units, motors, and compressors; garbage disposal system incinerator and compactor; steam turbine alternators, transformers, and electric motors; oily bilge separator; and sludge discharge pump.

Finally, many items involved in outfitting and maintaining the vessel that could be performed without affecting the structural and watertight integrity of the vessel are also not included as parts of the hull or superstructure. Among items of this type are: installation of windows and portholes; installation of partitions for interior spaces; installation of interior stairs (stairway trunks constructed in the United States); renewal of exterior stairways; renewal of handrails on passenger decks; installation of glass panes; repairs of exterior non-watertight steel doors; renewal of exterior fire hose lockers; overhaul of existing side gates, portholes, or watertight doors; cleaning and painting of the chain locker; sandblasting and painting of anchor chain; reinstallation of radar masts and modification of radar foundations;

overhaul of sound-powered telephone system; installation of new navigation consoles; extension of general and fire alarm system; installation of heat detectors; installation of new lifeboat davits or the reinstallation of repaired lifeboat davits and winches; installation of life-jacket lockers; installation or modification of interior spaces such as cabins, lounges, and restrooms; sandblasting, painting, or coating of decks; general sandblasting and painting; renewal of drain pipes and gratings; installation of scuppers; installation and extension of piping systems; installation of insulation, linings, ceiling panels, floor coverings, and interior doors; installation of prefabricated bathroom modules; installation of signs, funnel marks, and name plates; overhaul of external cathodic protection system; installation of electrical distribution and lighting systems; and installation and overhaul of electrical cables.

To determine whether any ''considerable part'' of the hull or superstructure, as defined, has been built upon or altered, the relevant work must be viewed in relation to the hull or superstructure of the vessel as a whole. Generally, the weight of the material involved in the relevant work is compared to the steelweight of the vessel as a whole. In cases where steelweights are not readily determined, as for work on a wooden or fiberglass vessel for example, the surface area of the relevant work is compared to the surface area of the vessel as a whole and, to the maximum extent practicable, a comparable steelweight is determined for the work performed and for the vessel as a whole. The term ''steelweight'' is generically used in the proposed rule relative to the construction material of the vessel.

Paragraph (a) of proposed § 67.177 would address the statutory provision that a vessel, regardless of its material of construction, is deemed rebuilt when a major component of the hull or superstructure not built in the United States is added to the vessel.

Paragraph (b) of proposed § 67.177 would establish numerical parameters for rebuilt determinations for vessels of which the hull and superstructure are constructed of steel or aluminum. A vessel would be deemed rebuilt if the relevant work performed constitutes more than 10 percent of the vessel's steelweight. Thus, 10 percent of the vessel's steelweight would be set as the upper parameter, beyond which a rebuilding would occur in every case.

A vessel may or may not be deemed rebuilt if the relevant work performed constitutes more than 5 percent but not more than 10 percent of the vessel's steelweight. In this case, the vessel owner bears the burden to demonstrate that the nature of the work performed, its scope in relation to the vessel as a whole, its cost as compared to the cost of the vessel, or other such factors, justify a conclusion that the vessel has not been rebuilt.

A vessel would not be considered rebuilt if the relevant work performed constitutes 5 percent or less of the vessel's steelweight. Thus, 5 percent of the vessel's steelweight would be set as the lower parameter, at or below which a rebuilding would be deemed to not have occurred in any case.

Paragraph (c) of proposed § 67.177 would establish numerical parameters for rebuilt determinations for vessels of which the hull and superstructure are constructed of a material other than steel or aluminum. The numerical parameters would be the same as those used in paragraph (b). However, for the parameters to work for vessels of which the hull and superstructure are constructed of a material other than steel or aluminum, the concept of comparability is introduced.

The comparability concept requires that the applicant for a rebuilt determination evaluate the vessel and, based on its overall size, class, configuration, or other such factors, calculate to the maximum extent practicable what the steelweight of the vessel as a whole would be if it were constructed of steel or aluminum. The applicant would also be required to evaluate the quantum of work performed on the vessel and, based on its scope, area or square footage of sideshell, decks, or bulkheads involved compared to the area or square footage of similar surfaces on the entire vessel, or other such factors, calculate to the maximum extent practicable what the steelweight of the work performed would be if the material used was steel or aluminum. The Coast Guard particularly solicits comment from vessel owners, shipyards, repair facilities, and other interested parties concerning the feasibility and practicality of the comparability concept.

Vessels of mixed construction, for example, a vessel the hull of which is constructed of steel or aluminum and the superstructure of which is constructed of fiberglass, would be addressed by paragraph (d) of proposed § 67.177. The applicant for a rebuilt determination would, using the comparability concept, calculate to the maximum extent practicable the total steelweight of the vessel and the steelweight of the work performed on the non-steel/aluminum portion of the vessel. The comparable steelweight of the work performed on the non-steel/aluminum portion of the vessel would then be aggregated with the work performed on the portion of the vessel constructed of steel or aluminum. The same numerical parameters used in paragraph (b) would then be applied to the aggregate of the work performed on the vessel to determine whether the vessel had been rebuilt.

Pursuant to paragraph (e) of proposed § 67.177, an application for a rebuilt determination, where required, would have to be filed within 30 days following completion of the work or redelivery of the vessel, whichever occurs first. An application for a rebuilt determination would be required if the work was performed outside of the United States and it is determined to constitute or be comparable to more than 5 percent of the vessel's steelweight, or if a major component of the hull or superstructure which was not built in the United States was added to the vessel. In addition, paragraph (e) would state the items required to be submitted with an application for a rebuilt determination. Generally, these materials consist of a statement applying for the determination, a detailed statement of the work performed and naming the place or places where the work was performed, applicable steelweight calculations, sketches or blueprints of the work performed, and any other material the Coast Guard may request in support of the determination.

Paragraph (f) of proposed § 67.177 would provide an alternative under which a vessel owner may submit a written statement to the Commandant declaring a vessel rebuilt outside the United States. By using this alternative, the owner who intends to forgo the restricted trading privileges may avoid submitting the detailed materials required for a rebuilt determination. A note would be added at the end of the proposed section explaining that a statement submitted in accordance with paragraph (f) does not constitute an application for a rebuilt determination and, therefore, does not require payment of a fee.

Lastly, the materials required to be submitted for a preliminary rebuilt determination would be specified in paragraph (g) of proposed § 67.177. Generally, these materials consist of a statement applying for the preliminary determination, a detailed statement of the work to be performed and naming the place or places where the work is to be performed, projected applicable steelweight calculations, sketches or

blueprints of the planned work, and any other material the Coast Guard may request in support of the preliminary determination.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. However, it is considered significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) due to the interests expressed by a segment of the maritime industry and the Canadian Government. The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposal would, if adopted, merely clarify existing policies and practices followed in evaluating rebuilt determinations. As such, the proposed changes would be administrative in nature and provide better guidance to vessel owners planning for work to be performed on their vessels. In fact, by providing clearer guidance, the proposal, if adopted, would help vessel owners to avoid costs associated with an unexpected, and unintended, determination that their vessel has been rebuilt.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The Coast Guard expects the economic impact of this proposal to be minimal because this proposal would, if adopted, merely clarify existing policies and practices followed in evaluating rebuilt determinations. As such, the proposed changes would be administrative in nature and would provide better guidance to vessel owners planning for work to be performed on their vessel. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other similar requirements.

This proposal contains collection-of-information requirements in 46 CFR § 67.177. However, these collection-of-information requirements are the same as those contained in the existing regulations which have been previously approved by OMB and assigned Control No. 2115–0110. This proposal would add no new or additional collection-of-information requirements. The proposed changes, if adopted, may even reduce paperwork submissions by providing sufficiently clear guidance that many of the applications for preliminary rebuilt determinations may become unnecessary.

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.lB, this proposal is categorically excluded from further environmental documentation. This proposal has been determined to be categorically excluded because the changes proposed are administrative in nature and clearly have no environmental impact. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 67

Fees, Incorporation by reference, Vessels.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR part 67 as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110; 46 U.S.C. app. 841a, 876; 49 CFR 1.46.

2. Section 67.177 is revised to read as follows:

§ 67.177 Application for rebuilt determination.

A vessel is rebuilt when any considerable part of its hull or superstructure is built upon or substantially altered. In determining whether a vessel is rebuilt, the following parameters apply.

(a) Regardless of its material of construction, a vessel is deemed rebuilt when a major component of the hull or superstructure not built in the United States is added to the vessel.

(b) For a vessel of which the hull and superstructure is constructed of steel or aluminum—

(1) A vessel is deemed rebuilt when work performed on its hull or superstructure constitutes more than 10 percent of the vessel's steelweight.

(2) A vessel may be considered rebuilt when work performed on its hull or superstructure constitutes more than 5 percent but not more than 10 percent of the vessel's steelweight.

(3) A vessel is not considered rebuilt when work performed on its hull or superstructure constitutes 5 percent or less of the vessel's steelweight.

(c) For a vessel of which the hull and superstructure is constructed of material other than steel or aluminum—

(1) A vessel is deemed rebuilt when work performed on its hull or superstructure constitutes a quantum of work determined, to the maximum extent practicable, to be comparable to more than 10 percent of the vessel's steelweight, calculated as if the vessel was wholly constructed of steel or aluminum.

(2) A vessel may be considered rebuilt when work performed on its hull or superstructure constitutes a quantum of work determined, to the maximum extent practicable, to be comparable to more than 5 percent but not more than 10 percent of the vessel's steelweight, calculated as if the vessel was wholly constructed of steel or aluminum.

(3) A vessel is not considered rebuilt when work performed on its hull or superstructure constitutes a quantum of work determined, to the maximum extent practicable, to be comparable to 5 percent or less of the vessel's steelweight, calculated as if the vessel was wholly constructed of steel or aluminum.

(d) For a vessel of mixed construction, such as a vessel the hull of which is constructed of steel or aluminum and the superstructure of which is

constructed of fibrous reinforced plastic, the steelweight of the work performed on the portion of the vessel constructed of a material other than steel or aluminum will be determined, to the maximum extent practicable, and aggregated with the work performed on the portion of the vessel constructed of steel or aluminum. The numerical parameters described in paragraph (b) of this section will then be applied to the aggregate of the work performed on the vessel compared to the vessel's steelweight, calculated as if the vessel was wholly constructed of steel or aluminum, to determine whether the vessel has been rebuilt.

(e) The owner of a vessel currently entitled to coastwise, Great Lakes, or fisheries endorsements which is altered outside the United States and the work performed is determined to constitute or be comparable to more than 5 percent of the vessel's steelweight, or which has a major component of the hull or superstructure not built in the United States added, must file the following information with the Commandant within 30 days following the earlier of completion of the work or redelivery of the vessel to the owner or owner's representative:

(1) A written statement applying for a rebuilt determination, outlining in detail the work performed and naming the place(s) where the work was performed;

(2) Calculations showing the actual or comparable steelweight of the work performed on the vessel, the actual or comparable steelweight of the vessel, and comparing the actual or comparable steelweight of the work performed to the actual or comparable steelweight of the vessel;

(3) Accurate sketches or blueprints describing the work performed; and

(4) Any further submissions requested by the Commandant.

(f) Regardless of the extent of actual work performed, the owner of a vessel currently entitled to coastwise, Great Lakes, or fisheries endorsements may, as an alternative to filing the items listed in paragraph (e) of this section, submit a written statement to the Commandant declaring the vessel rebuilt outside the United States. The vessel will then be deemed to have been rebuilt outside the United States with loss of trading privileges.

(g) A vessel owner may apply for a preliminary rebuilt determination by submitting:

(1) A written statement applying for a preliminary rebuilt determination, outlining in detail the work planned and naming the place(s) where the work is to be performed;

(2) Calculations showing the actual or comparable steelweight of work to be performed on the vessel, the actual or comparable steelweight of the vessel, and comparing the actual or comparable steelweight of the planned work to the actual or comparable steelweight of the vessel;

(3) Accurate sketches or blueprints describing the planned work; and

(4) Any further submissions requested by the Commandant.

Note: A statement submitted in accordance with paragraph (f) of this section does not constitute an application for a rebuilt determination and does not require payment of a fee.

Dated: October 21, 1994.

J. C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–8386 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GC Docket No. 95–21; DA 95–490]

Ex Parte Presentations in Commission Proceedings

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission previously adopted a notice of proposed rulemaking proposing to amend its regulations concerning ex parte presentations in Commission proceedings. (See 60 FR 8995, Feb. 16, 1995.) By order of the General Counsel the comment and reply dates have been extended four weeks. The intended effect of this action is to give members of the public additional time to comment on the Commission's proposal.

DATES: Comments must be filed on or before April 13, 1995; reply comments must be filed on or before April 28, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington DC. 20554.

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 418–1760.

SUPPLEMENTARY INFORMATION:

Order

Adopted: March 13, 1995; Released: March 15, 1995.

1. Under consideration by the Commission is a Motion to Extend Time in Which to File Comments and Replies filed March 8, 1995 by the Federal Communications Bar Association (FCBA).

2. The FCBA requests that the time for filing comments and reply comments in this proceeding be extended until June 14, and June 29, 1995, respectively. It asserts that this additional time is required to afford it an opportunity to ascertain the thinking of its members and prepare effective comments following both an April 25, 1995 seminar, to be held in conjunction with the FCBA's Continuing Legal Education Committee, which will address the issues raised in this proceeding, and consideration of the views expressed there by the FCBA's Executive Committee at its regularly scheduled meeting on May 23, 1995. It appears that immediate action on this Motion is warranted, pursuant to 47 CFR 1.45(e), so that all interested parties will have prompt notice of the pertinent filing deadlines.

3. After careful consideration of the Motion, we have determined that the FCBA has not made a showing that would warrant extending the time to the full extent requested. Given the fact that the primary purpose of this proceeding is to proceed without undue delay to improve the public's ability to communicate with the Commission in a manner that comports with fundamental principles of fairness, the public interest will be best served by a four week extension of time for the filing of comments and reply comments.

4. Accordingly, *it is ordered*, Pursuant to the authority delegated under 47 CFR 0.251(b) that the Motion to Extend Time in Which to File Comments and Replies filed March 8, 1995 by the Federal Communications Bar Association is granted in part and is denied in part and that the time for filing comments and reply comments is extended to April 13, 1995 and April 28, 1995.

Federal Communications Commission.

William E. Kennard,

General Counsel.

[FR Doc. 95–8338 Filed 4–4–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 16, and 52

[FAR Case 94–711]

Federal Acquisition Regulation; Task and Delivery Order Contracts Public Meeting

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

ACTION: Notice of change of location of public meeting on FAR case 94–711.

SUMMARY: At 60 FR 14346, March 16, 1995, a proposed rule was published amending the Federal Acquisition Streamlining Act, proposed an amendment to the Federal Acquisition Regulation (FAR) to implement statutory requirements of the Act with regard to task and delivery order contracts. A public meeting on this matter was scheduled to be held at the GSA Auditorium. That location is no longer available and this notice is to announce a new location for the meeting. The time and date of the meeting have not changed, only the location.

DATES: The Task and Delivery Order Contracts meeting will be held on April 13, 1995, at 1:00 p.m.

ADDRESSES: The public meeting will now be held at the Department of Interior Auditorium, 1849 C Street, NW., First Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, FAR Secretariat, General Services Administration, 18th and F Streets, NW., Washington, DC 20405. Telephone: (202) 501–4755.

Dated: March 30, 1995.

Edward Loeb,

Deputy Project Manager for Implementation of the Federal Acquisition Streamlining Act of 1994.

[FR Doc. 95–8300 Filed 4–4–95; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190–199

[Docket No. PS–139; Notice No. 1]

Improving the Pipeline Safety Program; Public Meetings and Request for Comments Related to Regulatory Review and Customer Service

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

ACTION: Public meetings and request for comments.

SUMMARY: This notice announces a nationwide series of three public meetings during April and May to seek information from the public on regulatory reform and improved customer service for RSPA's pipeline safety program.

DATES: Meetings: Public meetings will be held as follows:

(1) April 25, 1995, in Dallas, Texas.
(2) April 27, 1995, in Lakewood, Colorado.
(3) May 15, 1995, in Houston, Texas.

Comments: This notice invites comments on both regulatory reform and improved customer service. Participation in the meeting is not a prerequisite for the submission of written comments. Please submit comments before May 31, 1995.

ADDRESSES: Meetings: See **SUPPLEMENTARY INFORMATION** for specific times, locations and agendas.

Comments: Please address written comments to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Comments may also be faxed to (202) 366–4566. Comments should identify the docket (Docket No. PS–139). The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., Monday through Friday, except on public holidays when the office is closed.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918 regarding the subject matter of this notice; or the Dockets Unit (202) 366–4900; RSPA, Department of Transportation, Washington, DC 20590–0001. Any person wishing to speak should notify Jenny Donohue at (202) 366–4046 with an estimate of the time required for their statement.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those that are outdated or in need of reform. The President also directed that front line regulators ''* * * get out of Washington and create grassroots partnerships'' with people affected by agency regulations. RSPA is reviewing the Pipeline Safety Regulations (49 CFR Parts 190–199) in response to the President's directive.

On September 11, 1993, the President signed an Executive Order on setting customer service standards. The Executive Order requires continual reform of the executive branch's management practices and operations to provide service to the public that matches or exceeds the best service available in the private sector. RSPA is seeking information from customers of its pipeline safety program to determine the kind and quality of services they want and their level of satisfaction with existing services.

Conduct of Meetings

Meetings will be informal, intended to produce a dialogue between agency personnel and those persons directly affected by the pipeline safety programs, regulations and customer services. The meeting officer reserves the right to limit time allocated to speakers, if necessary, to ensure that all have an opportunity to speak. Other individuals will have an opportunity to present their comments after scheduled speakers complete their comments, subject to the approval of the presiding officer. Conversely, meetings may conclude before the scheduled time if all persons wishing to participate have been heard.

Meeting Schedule

The public meetings will be held as follows:

(1) April 25, 1995, from 4:30 p.m. to 6:00 p.m., in Dallas, Texas, at Loews Anatole Hotel, 2201 Stemmons Freeway, Dallas, TX. 75207, in the ''Emerald Room''. This meeting will be held concurrently with the American Petroleum Institute's 46th Annual Pipeline Conference.

(2) April 27, 1995, from 9:00 a.m. to 4:00 p.m., in Lakewood, Colorado, Denver Federal Center, U.S. Geological Survey, Building 25, Lecture Hall A & B (first floor), Lakewood, CO.

(3) May 15, 1995, from 9:00 a.m. to 4:00 p.m., in Houston, Texas, Sheraton Crown Hotel & Conference Center, 15700 John F. Kennedy Boulevard, Houston, Texas 77032.

Areas of Regulatory Concern

In calling on agencies to cut obsolete regulations, the President directs each agency to consider the following issues in its review of the regulations:

- Is this regulation obsolete?
- Could its intended goal be achieved in more efficient, less intrusive ways?
- Are there better private sector alternatives, such as market mechanisms, that can better achieve the public good envisioned by the regulation?
- Could private business, setting its own standards and being subject to public accountability, do the job as well?
- Could the States or local governments do the job, making Federal regulation unnecessary?

RSPA suggests that persons commenting on the pipeline safety program consider these issues.

The President's call for regulatory reform provides opportunities for eliminating or improving pipeline safety regulations. RSPA is undertaking a page-by-page review of the Pipeline Safety Regulations and is identifying certain sections of the regulations that are candidates for elimination, revision, clarification or relaxation.

Improvements to Customer Service

RSPA is soliciting comments on the kind and quality of services its customers want and their level of satisfaction with the services currently provided by the pipeline safety program. RSPA will use the comments to establish service standards and measure results against them; provide customers with choices in both the sources of service and the means of delivery; make information, services, and complaint systems easily accessible; and provide the means to address customer complaints. RSPA's current customer services include providing guidance in understanding and complying with the Pipeline Safety Regulations and processing exemptions, approvals, registrations, grant applications, and enforcement actions. Other customer services include conduct of pipeline safety seminars, and the development and dissemination of training and informational materials.

Issued in Washington, DC on March 31, 1995.

Cesar De Leon,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 95–8362 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD 22

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for Woundfin, Virgin River Chub, and Virgin Spinedace and Notice of Public Hearing

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The Fish and Wildlife Service (Service) proposes to designate critical habitat for the Virgin River chub (*Gila seminuda = G. robusta seminuda*), the Virgin spinedace (*Lepidomeda mollispinis mollispinis*), and the woundfin (*Plagopterus argentissimus*). The Virgin River chub and wouldfin are listed as endangered; the Virgin spinedace has been proposed for listing as threatened (May 18, 1994), but the listing has not been finalized as yet. There is considerable overlap in critical habitat proposed for the three species, the proposed designation includes 330.8 km (206.8 mi) of the Virgin River and its tributaries in portions of Utah, Arizona, and Nevada. The Service proposes 151.7 km (94.8 mi) of critical habitat for the woundfin (approximately 13.5 percent of its historical range); 151.7 km (94.8 mi) for the Virgin River chub (70.8 percent of its historical range, excluding the chub occupying the Muddy River); and 201.9 km (126.2 mi) for the Virgin spinedace (87.3 percent of its historical range). The majority of the land to be designated as critical habitat is under Federal or private ownership.

All three fish species are endemic to the Virgin River Basin of southwestern Utah, northwestern Arizona, and southeastern Nevada. The proposed critical habitat designation includes portions of the mainstem Virgin River and its tributaries, including the 100-year floodplain. This proposed critical habitat would result in additional review requirements under section 7 of the Act with regard to Federal agency actions. Section 4 of the Act requires the Service to consider economic costs and benefits prior to making a final decision on the size and scope of critical habitat.

DATES: Comments will be accepted until June 5, 1995.

A public hearing will be held from 5 p.m. to 9 p.m., with registration beginning at 4:30 p.m., on Monday, May 8, 1995. Requests for additional public hearings must be received by May 22, 1995.

ADDRESSES: Requests for additional public hearings or comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Salt Lake City Field Office, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. The public hearing will be in the Garden Room at the St. George Hilton Inn, 1450 South Hilton Drive, St. George, Utah. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. Copies of comments and materials received also will be available for public inspection at the Washington County Public Library in St. George, Utah.

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Williams, Assistant Field Supervisor, Salt Lake City Field Office, at the above address, (801) 524–5001.

SUPPLEMENTARY INFORMATION:

Background

The woundfin (*Plagopterus argentissimus*) and Virgin River chub (*Gila seminuda =G. robusta seminuda*) are presently listed as endangered pursuant to the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Virgin spinedace (*Lepidomeda mollispinis mollispinis*) was proposed for listing on May 18, 1994, as threatened under the Act. In the subsequent text, all three species of fish are referred to as ''listed fishes'' even though the Virgin spinedace has only been proposed for listing at this time. These three fishes are all endemic to the Virgin River Basin. The Virgin River flows generally along the Hurricane Fault, which forms the boundary between the Colorado Plateau and the Great Basin. These two geologic provinces are quite dissimilar. The Colorado Plateau is characterized by horizontal-lying strata eroded into canyons, plateaus, and mesas. Long, isolated mountain ranges separated by broad alluvial valleys typify the Great Basin province. The Virgin River originates in south-central Utah, running in a southwest direction from Utah to northwestern Arizona, and southeastern Nevada for approximately 320 kilometers (km) (200 miles (mi)) before emptying into Lake Mead. Prior to the completion of Boulder (Hoover) Dam in 1935, the Muddy River in southeastern Nevada joined the Virgin River before the latter emptied into the Colorado River. These two rivers now flow separately into the Overton Arm of Lake Mead.

These Virgin River fishes have declined in numbers due to the cumulative effects of environmental impacts which include dewatering from numerous diversion projects; proliferation of nonnative fishes; and alterations to natural flow, temperature, and sediment regimes.

Woundfin

Based on early records, the original range of the woundfin extended from near the junction of the Salt and Verde Rivers at Tempe, Arizona, to the mouth of the Gila River at Yuma, Arizona (Gilbert and Scofield 1898, Minckley 1973). Woundfin were also found in the mainstem Colorado River from Yuma (Jordan and Evermann 1896, Meek 1904, Follett 1961) upstream to the Virgin River in Nevada, Arizona, and Utah and into La Verkin Creek, a tributary of the Virgin River in Utah (Gilbert and Scofield 1898, Snyder 1915, Miller and Hubbs 1960, Cross 1975). However, there is reason to believe that the woundfin occurred further upstream in the Verde, Salt, and Gila Rivers in Arizona.

Except for the mainstem of the Virgin River, woundfin were extirpated from most of their historical range. Woundfin presently range from Pah Tempe Springs (also called La Verkin Springs) on the mainstem of the Virgin River and the lower portion of La Verkin Creek in Utah, downstream to Lake Mead. A single specimen was taken from the middle Muddy (Moapa) River, Clark County, Nevada, in the late 1960's and since that time no additional specimens have been collected (Deacon and Bradley 1972).

Adult and juvenile woundfin inhabit runs and quiet waters adjacent to riffles with sand and sand/gravel substrates. Adults are generally found in habitats with water depths between 0.15 and 0.43 meters (m) (0.5 and 1.4 feet (ft)) with velocities between 0.24 and 0.49 meters per second (m/s) (0.8 and 1.6 feet per second ft/s)). Juveniles select areas with slower and deeper water, while fry are found in backwaters and stream margins which are often associated with growths of filamentous algae. Spawning takes place during the period of declining spring flows.

Virgin River Chub

The Virgin River chub was described as a full species (*Gila seminuda*) in 1875 (Cope and Yarrow 1875) and it was thought to be restricted to the Virgin River between Hurricane, Utah, and its confluence with the Colorado River. However, Ellis (1914) considered this chub to be an intermediate between the roundtail chub (*G. robusta*) and bonytail chub (*G. elegans*), and reduced it to a subspecies (*G. robusta seminuda*) of the roundtail chub.

Until recently, the Fish and Wildlife Service (Service) and other authorities (Holden and Stalnaker 1970, Minckley 1973, Smith et al. 1977) have treated the chub in the Muddy River as a separate, unnamed subspecies of roundtail chub (Moapa roundtail chub = *G. robusta* ssp.). Since 1982, the Service has considered this chub to be a Category 2 candidate species (47 FR 58455, 54 FR 556, 56 FR 58804).

In a recent taxonomic study of the genus *Gila*, DeMarais et al. (1992) asserted that full species status (*G. seminuda*) was warranted for the Virgin River chub. The Muddy River form is included in *G. seminuda*, although it is a separate population. *Gila seminuda* most likely arose through hybridization involving *G. robusta* and *G. elegans*. These taxonomic revisions were recently accepted by the Service, American Fisheries Society, and the American Society of Ichthyologists and Herpetologists Fish Names Committee (Mr. Joseph S. Nelson, American Fish Society, *in litt.* 1993). This proposal to designate critical habitat does not include the Muddy River form of the Virgin River chub. However, the Service will review the status of the Muddy River population of the Virgin River chub.

The Virgin River chub was first collected in the 1870's from the Virgin River near Washington, Utah. Historically, it was collected from the mainstem Virgin River from Pah Tempe Springs, Utah, downstream to the confluence with the Colorado River in Nevada (Cope and Yarrow 1875, Cross 1975). Presently, the Virgin River chub occurs within the mainstem Virgin River from Pah Tempe Springs downstream to at least the Mesquite Diversion.

Adult and juvenile Virgin River chub select deep runs or pools with slow to moderate velocities containing boulders or other instream cover over a sand substrate. Generally, larger fish occupy deeper habitats; however, there is no apparent correlation with velocity. Chub are generally found in velocities ranging up to 0.76 m/s (2.5 ft/s).

Virgin Spinedace

The historical distribution of the Virgin spinedace is not well known. Holden (1977) speculated that the species occurred in most of the clear water tributaries and in several mainstem reaches of the Virgin River in southwestern Utah, northwestern Arizona, and southeastern Nevada. Museum records and species survey information support this historic distribution (Rinne 1971, Cross 1975, Valdez et al. 1991, Addley and Hardy 1993).

Over the last 50 years, there has been a decline in the range of the species with about a 37–40 percent (83 km, 52 mi) habitat loss due to human impacts (Valdez et al. 1991, Addley and Hardy 1993). Stream reaches that once contained spinedace (but are now dewatered) include portions of the East Fork of Beaver Dam Wash, the Santa Clara River downstream Gunlock Reservoir, Mogatsu Creek, Ash Creek near Toquerville, Leeds Creek, and the mainstem Virgin River between Quail Creek Diversion and Pah Tempe Springs. Current distribution of the spinedace includes portions of the mainstem Virgin River and 11 of its tributaries and subtributaries including the East Fork Virgin River, Shunes Creek, North Fork Virgin River, North Creek, La Verkin Creek, Ash Creek, Santa Clara River, Beaver Dam Wash, Coal Pits Wash, Moody Wash, and Mogatsu Creek.

Virgin spinedace are found in runs or pools in clear streams. The presence of cover either in the form of vegetation, boulders, debris, or undercut banks is also characteristic. Substrates in occupied habitats include rubble/cobble, gravel, sand, and silt. Spinedace are found in streams at depths of 0.1 to 0.9 m (0.3 to 2.9 ft) and with current velocities between 0.1 and 1.0 m/s (0.3 to 3.2 ft/s).

Importance of the Virgin River Floodplain

Components of the river system include the mainstem channel in which water is maintained most or all of the year and the upland habitats which are inundated during spring flows. These seasonally flooded habitats contribute to the biological productivity of the river system by providing nutrients (allochthonous energy) and terrestrial food sources to aquatic organisms (Hesse and Sheets 1993). Additionally, Hynes (1970) reported that streams with higher percentages of vegetation contained higher densities of aquatic invertebrates. The Virgin River contains little aquatic vegetation and produces a minimum of autochthonous (indigenous) organic matter. Thus, the fauna of the Virgin River is dependent on allochthonous energy inputs from the floodplain that provide much of the food base.

Studies of the major floodplain rivers of the world have documented the value of flooded bottomlands and uplands for fish production (Welcomme 1979). Due to their mobility, many species of fishes

are able to take advantage of food sources from flooded lands. Indeed, many fishes have developed migratory strategies that allow them to utilize inundated areas as spawning, nursery, and foraging areas (Lowe-McConnel 1975, Welcomme 1979). In this context, a rich food source of terrestrial origin may enhance fish growth, fecundity, and/or survival. Use of these inundated floodplains increases the energy available for spawning and is necessary for reproductive success in some species (Finger and Stewart 1987). In many cyprinid fishes, including these Virgin River natives, spawning is associated with seasonal rains and flooding of rivers. Flood-related changes in the river environment not only induce spawning for many species, but these changes comprise the ultimate factors limiting the survival of eggs, larvae, or young fish (Hontela and Stacey 1990).

Loss of floodplain habitats in the Missouri River Basin has reduced fish biomass production as much as 98 percent (Karr and Schlosser 1978). Inundation of floodplain habitats during spring flows also provides areas with warmer water temperatures, low velocity resting habitat, and cover from predation. Recent studies in the Colorado River system show that the life histories and welfare of native riverine fishes are linked to the maintenance of a natural or historic flow regimen (i.e., hydrological pattern of high spring and low autumn-winter flows that vary in magnitude and duration depending on annual precipitation patterns and runoff from snowmelt) (Tyus and Karp 1989, 1990). Minckley and Meffe (1987) suggest that loss of flooding will result in extirpation of many of the native fish species in the Colorado River system.

Previous Federal Actions

The woundfin was listed as endangered on October 13, 1970 (35 FR 16047), and critical habitat was proposed on November 2, 1997 (42 FR 57329). However, on March 6, 1979, the proposal for critical habitat was withdrawn (44 FR 12382) due to the 1978 amendments to the Act, which required proposals to be withdrawn if not finalized within 2 years. A Woundfin Recovery Plan was originally approved in July 1979 and subsequently revised on March 1, 1984. On July 24, 1985, the Service proposed the reintroduction of the woundfin into the Gila River drainage in Arizona and determined this population to be ''nonessential experimental'' in accordance with section 10(j) of the Act (50 FR 30188).

On August 23, 1978, the Service proposed the listing as endangered and the designation of critical habitat for the Virgin River chub (43 FR 37668). This proposal was also withdrawn (45 FR 64853; September 30, 1980), due to the 1978 amendments to the Act. The Virgin River chub was later listed as endangered on August 24, 1989 (54 FR 35305). Critical habitat was proposed on June 24, 1988 (51 FR 22849); however, the final determination was postponed. When the Virgin River chub was listed, the Muddy River form was omitted due to the uncertainty of its taxonomy. The Virgin River Fishes Recovery Plan, which is under final preparation, includes the woundfin and Virgin River chub (but not the Muddy River form).

The Virgin spinedace was proposed for listing as a threatened species on May 18, 1994 (59 FR 25875). A proposal to designate critical habitat for the spinedace was delayed because the Service felt that the three fish species would receive greater protection if critical habitat was designated simultaneously.

On March 18, 1994, the U.S. District Court, Colorado (Court) ordered the Service to designate critical habitat for the Virgin River chub, woundfin, and Virgin spinedace (if listed before December 31, 1994). The Court ordered that critical habitat be proposed no later than April 1, 1995, and be finalized by December 1, 1995.

Although the listing of the Virgin spinedace has not been finalized, the designation of critical habitat is being proposed for it, in order to allow for public comment on all three species. The final rule for critical habitat designation will also reflect the listed status of the Virgin spinedace as of that date.

Definition of Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical 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 the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary of the Interior (Secretary) designate critical habitat at the time the species is determined to be endangered or threatened. Critical habitat is now proposed for the woundfin, Virgin River chub, and Virgin spinedace.

Role of Critical Habitat in Species Conservation

The designation of critical habitat is one of several measures available to assist in the conservation and recovery of a species. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) regardless of whether or not the areas are currently occupied by the listed species. Such designations alert Federal agencies, States, the public, and other organizations to the areas' importance to the conservation and recovery of the species. Critical habitat also identifies areas that may require special management or protection considerations. Areas designated as critical habitat receive protection under section 7 of the Act. This is in regards to actions carried out, funded, or authorized by a Federal agency that are likely to adversely modify or destroy critical habitat. Section 7 requires that Federal agencies consult with the Service on actions that may destroy or adversely modify critical habitat.

Designation of critical habitat only affects Federal actions that occur in the areas and does not automatically prohibit certain actions or create a management plan for a listed species. Such designation does not have a direct effect on habitat not specified as critical habitat. Critical habitat designation may increase protection of designated areas and assists in the recovery of species. Areas outside of critical habitat, containing one or more of the primary constituent elements, serve to maintain ecosystem integrity, thereby indirectly contributing to recovery.

Relationship of Critical Habitat to Recovery Plan

Recovery plans, developed in accordance with section 4(f) of the Act, address the steps needed to recover a species throughout its range and provide guidance, that may include population goals and identification of areas in need of protection or special management. In developing a recovery plan, the relationships between critical habitat and other current planning efforts should be evaluated. Recovery plans should recommend actions for managing designated critical habitat on Federal lands, as well as critical habitat under other landownership.

Primary Constituent Elements

In determining areas for designation as critical habitat, the Service considers those physical and biological features that are essential for the conservation of the species. Such physical and biological features (in 50 CFR 424.12) include, but are not limited to, the following items:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally

(5) Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

In addition, the Act stipulates that areas containing these elements may require special management considerations or protection.

In determining critical habitat for the Virgin River fishes, the Service focused on the primary physical and biological elements essential to the conservation of each species. The Service is required to list these elements together with a description of the designated critical habitat.

The primary constituent elements determined necessary for the survival and recovery of these Virgin River fishes include, but are not limited to:

Water—A quantity of water of sufficient quality (i.e., temperature, dissolved oxygen, contaminants, nutrients, turbidity, etc.) that is delivered to a specific location in accordance with a hydrologic regime that is identified for the particular life stage for each species.

Physical Habitat—Areas of the Virgin River Basin that are inhabited or potentially habitable by fish for use in spawning, nursing, feeding, and rearing, or corridors between such areas. In addition to river channels, these areas also include side channels, secondary channels, backwaters, springs, and other areas which provide spawning, nursery, feeding, or rearing habitats, or access to these habitats.

Biological Environment—Food supply, predation, and competition are important elements of the biological environment and are considered components of this constituent element. Food supply is a function of nutrient supply, productivity, and availability to each life stage of the species. Predation and competition, although considered normal components of this environment, may be out of balance due to nonnative fish species in many areas.

Habitat requirements for the listed fishes vary. In designating an area as critical habitat for more than one of the species, the Service assessed the area for all applicable constituent elements. Specific information on primary constituent elements for each of these fish species is given in the following section.

Proposed Critical Habitat Designation

Woundfin—The proposed designation of critical habitat for the woundfin is the mainstem Virgin River, extending from the confluence of Ash-La Verkin Creeks to above Lake Mead. The Virgin River was divided into five distinct reaches (due to its current functions hydrologically) and these reaches total 151.7 km (94.8 mi) as measures along the center line of each reach (Table 1). This represents approximately 13.5 percent of the woundfin's historical habitat. Due to the lack of historical data on the distribution of the woundfin in Arizona, this number is only an estimate. These proposed reaches flow through both public and private lands (Table 2).

Virgin River Chub—The proposed designation of critical habitat for the Virgin River chub is the mainstem Virgin River, extending from the confluence of Ash-La Verkin Creeks to above Lake Mead. Due to the hydrological current functions of the Virgin River, it was divided into five distinct reaches (Table 1) and these reaches total 151.7 km (94.8 mi). This represents approximately 70.8 percent of the historical habitat within the Virgin River Basin, excluding the range historically occupied by the Muddy River chub population. These reaches flow through both public and private land (Table 2).

Virgin Spinedace—The Service proposes 16 reaches within the Virgin River Basin as critical habitat for the Virgin spinedace (Table 1) and these reaches total 201.9 km (126.2 mi). This represents approximately 87.7 percent of the historical habitat for this species (230.2 km or 143.9 mi) (Valdez et al. 1991). Critical habitat is being proposed for the mainstem Virgin River, the East and North Forks of the Virgin River, Beaver Dam Wash, Shunes Creek, Moody Wash, Mogatsu Creek, the Santa Clara River, Ash Creek, La Verkin Creek, and North Creek. These reaches flow through both public and private lands (Table 2).

TABLE 1.—PROPOSED CRITICAL HABITAT IN KILOMETERS (MILES) FOR VIRGIN RIVER LISTED FISHES

State	Woundfin	Virgin River Chub	Virgin Spinedace	State Totals [a]
Arizona	50.6 (31.6)	50.6 (31.6)	1.3 (0.8)	51.9 (32.4)
Nevada	41.5 (25.9)	41.5 (25.9	.....	41.5 (25.9
Utah	59.6 (37.3)	59.6 (37.3)	200.6 (125.4)	237.4 (148.4)
Total	151.7 (94.8)	151.7 (94.8)	201.9 (126.2)	330.8 (206.8)

[a] State totals do not equal the cumulative totals of the three species due to considerable overlap of proposed critical habitat among species.

TABLE 2.—SHORELINE OWNERSHIP IN KILOMETERS (MILES) OF PROPOSED CRITICAL HABITAT FOR VIRGIN RIVER LISTED FISHES [a]

Ownership	Woundfin	Virgin River Chub	Virgin Spinedace
Federal [b]	85.2 (53.3)	85.2 (53.3)	76.8 (48.0)
State	7.5 (4.8)	7.5 (4.8)	2.8 (1.8)
Tribal	.....	.....	9.7 (6.1)
Private	59.0 (36.8)	59.0 (36.8)	112.6 (70.4)

TABLE 2.—SHORELINE OWNERSHIP IN KILOMETERS (MILES) OF PROPOSED CRITICAL HABITAT FOR VIRGIN RIVER LISTED FISHES [a]—Continued

Ownership	Woundfin	Virgin River Chub	Virgin Spinedace
Total	151.7 (94.8	151.7 (94.8)	201.9 (126.2)

[a] Landownership was typically the same on both riverbanks. However, in several reaches (1.5 km or less) the river formed a boundary between Federal and private lands. Based upon the location of the channel, these reaches were identified as either Federal or private, not both. Therefore, distances may be doubled to represent ownership along both riverbanks.

[b] Federal lands include those managed by the Bureau of Land Management, Forest Service, and National Park Service.

Virgin River Floodplain

The riparian zone within the 100-year floodplain of the Virgin River reaches is being proposed as critical habitat, but only those portions of the 100-year floodplain that contain constituent elements are being designated for critical habitat. Developed lands not considered critical habitat within the 100-year floodplain boundary include, but are not limited to, existing paved roads, bridges, parking lots, dikes, levees, railroad tracks, railroad trestles, water diversion canals outside of natural stream channels, active gravel pits, cultivated agricultural land, and residential, commercial, and industrial developments. These developed areas do not contain primary constituent elements and will not contribute to the species' recovery.

Effects of Critical Habitat Designation

Section 7(a)(2) of the Act requires that activities Federal agencies authorize, fund, or carry out do not destroy or adversely modify designated critical habitat. This is in addition to the requirement of section 7(a)(2) that Federal agencies insure that their actions do not jeopardize the continued existence of a listed species. A Federal agency must consult with the Service if a proposed action of theirs affects a listed species or its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified in 50 CFR part 402.

Once critical habitat is designated, section 7(a)(4) of the Act and implementing regulations (50 CFR 402.10) require that Federal agencies confer with the Service on any action which will destroy or adversely modify the designated areas. Conference reports provide advisory conservation recommendations to assist a Federal agency in identifying and resolving conflicts that may be caused by the proposed action.

If a Federal agency requests consultation under section 7 of the Act, and the Service concurs, a formal conference report may then be issued. Formal conference reports on proposed critical habitat contain an opinion prepared in accordance with formal consultation procedures as if the critical habitat were already designated. Such a formal conference report is adopted as the biological opinion pursuant to 50 CFR 402.10(d) when the critical habitat is designated, provided no significant information or changes in the action occur that would alter the content of the opinion.

Designation of critical habitat focuses on the primary constituent elements within the defined reaches and their contribution to the species recovery, and includes consideration of the species' biological needs and factors that will contribute to its recovery (i.e., distribution, numbers, reproduction, and viability). In evaluating Federal actions, the Service will consider the action's impact on factors used to determine critical habitat of the Virgin River listed fishes. These factors include the primary constituent elements of water, physical habitat, and biological environment. The ability of an area to provide these constituent elements into the future and the reaches' capability to contribute to the recovery of the species will also be considered. The potential level of allowable impacts or habitat reduction in critical habitat reaches will be determined on a case-by-case basis during section 7 consultation.

For species with multiple critical habitat reaches, each reach has local and rangewide roles in contributing to the conservation of the species. The loss of a single reach may not jeopardize the continued existence of the species, but it could significantly reduce the critical habitat's contribution to recovery of a species. In some cases, the destruction of a reach proposed as critical habitat could result in the loss of an entire population, thereby preculding any recovery and reducing the likelihood of survival of the species. The proposed critical habitat reaches in the Virgin River Fishes Recovery Plan include areas important for recovery of these fishes.

Examples of Proposed Actions

Section 4(b)(8) requires for any proposed or final regulation; designation of critical habitat, a brief description and evaluation of those activities that may adversely modify or destroy such habitat or those activities that may be affected by such designation. Destruction or adverse modification of critical habitat is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of a listed species. Some activities disturb or remove the primary constituent elements within designated critical habitat for the Virgin River fishes. These activities include actions that reduce the volume and timing of water flows, destroy or eliminate access to spawning and nursery habitat, prevent recruitment, impact food sources, contaminate the river, or increase predation and competition by nonnative fishes. In contrast, other activities such as recreation (i.e., boating, hiking, hunting, etc.), some types of farming and ranching, may not adversely modify critical habitat.

Areas designated as critical habitat for the Virgin River listed fishes support a number of proposed and existing commercial and noncommercial activities. Some activities that will affect critical habitat include construction and operation of hydroelectric facilities, irrigation, flood control, bank stabilization, oil and gas drilling, mining, grazing, stocking or introduction of nonnative fishes, municipal water supplies, and resort facilities. Federal activities include the Sandstone Reservoir, Pah Tempe Pipeline, Halfway Wash Project, Lake Powell Pipeline, water wheeling, water leasing, Washington Fields Pumpback, and dewatering of springs for municipal and industrial purposes. Commercial activities that will not destroy or adversely modify critical habitat include river float trips and guided sport fishing. Noncommercial activities such as boating, fishing, and various activities associated with nature appreciation are largely associated with private recreation and most likely will not affect critical habitat. Section 7 of the Act only applies to Federal actions (i.e., projects, permits, loans, etc.) and each Federal action must be evaluated on a case-by-case basis.

Consideration of Economic and Other Factors

Section 4(b)(2) of the Act considers economic and other relevant impacts in determining whether to exclude any proposed areas from the final designation of critical habitat. The Service may exclude areas from critical habitat designation when the costs or impacts outweigh the benefits, provided that exclusion will not result in extinction of a species. An economic analysis was conducted on the costs of the proposed critical habitat designation (Brookshire et al. 1995). The study area for the economic analysis encompassed portions of the Virgin River Basin in Utah, Arizona, and Nevada.

The biological requirements for the recovery of these listed fishes and regional economic activities were assessed and form the basis of the economic analysis. The biological requirements include adjustments in water diversions in the Virgin River Basin and/or mitigation of nonflow-related activities within the 100-year floodplain. The effects of recovery efforts on future water depletions in the basin also were taken into consideration. The impacts of these possible changes on current and prospective economic activities were estimated using input-output models for each county and region in the Virgin River Basin. Direct and indirect impacts on employment, wages, and State and Federal revenues derived from business and personal income taxes were also factored into the exclusion process. The results of these models are found in the economic analysis document prepared for determining critical habitat for these particular fish species (Brookshire et al. 1995). This complete economic analysis is part of the administrative record which is available to the public upon request.

Economic Analysis Methodology

The economic analysis provides insights into the reallocation of resources from the perspectives of both economic efficiency and distribution or equity. The efficiency criterion determines whether designating areas as critical habitat produces any net gains to society. The equity criterion looks at the resulting distribution of gains and losses. The study region for which the economic analysis was conducted includes Washington and Iron Counties in Utah, Clark County in Nevada, and the portion of Mohave County in Arizona located north of the Colorado River. The time frame chosen for the study encompasses a 45-year period (1995 through 2040) projected to recover the listed fishes.

Washington County, Utah, and Clark County, Nevada are two counties that will be directly affected by any actions taken by the Service on behalf of the listed fishes. Presently, these counties are among the fastest growing areas in the United States. From 1980 to 1990, Washington County's population grew by 52 percent, while Clark County's grew by 62.5 percent. The Virgin River also flows through a portion of Mohave County in Arizona. This area has a very small population and a modest economic base. Iron County, Utah, (lies north of Washington County) is a rapidly growing area that is economically closely linked to Washington County. Although the Virgin River does not flow through Iron County, any economic impacts on Washington County would be felt in Iron County as well.

The linkage between the biological requirements for the survival and recovery of the listed fishes and economic activities in the region formed the basis for the economic analysis. As an index of these biological requirements, adjustments made in the operations of the Quail Creek Reservoir and agricultural diversions on the Virgin River were included. The effects of recovery efforts on projected future water development and delivery projects were taken into consideration. The direct effects on the agencies responsible for water development and delivery also were taken into consideration. The direct and indirect impacts of these possible changes on current and prospective economic activities were then estimated for each county and regional economy.

One cannot predict the outcome of future section 7 consultations involving listed fishes in the region. Economic impacts associated with the critical habitat designation depends on the time required for the recovery of the listed fishes. County and regional economic impacts are of interest when considering the effects of critical habitat designations. County economic impacts are the direct and indirect impacts of the critical habitat designations on specific geographic areas. County economic impacts were analyzed using input-output (I–O) models that organize the basic accounting relationships that describe the production section of the economy (Brookshire et al. 1995). The I–O model is based on the assumption that all sectors of the economy are related, and the production of a good or service can be described by a recipe whose ingredients are the outputs from other sectors of the economy. The primary inputs are labor, capital, and other raw resources. Through its multiplier analysis, the I–O model is capable of generating estimates of the changes in output for economic sectors, changes in employment, and changes in income due to the critical habitat designation. The models report total impacts resulting from interactions among the different sectors of the economy.

Regional economic efficiency impacts refer to the overall net impacts on the regional economy after accounting for the effects of intercounty transfers. The goal of a regional efficiency analysis is to determine whether an action would have an overall positive or negative impact on the regional economy.

A separate I–O model was developed for each county and focused on the direct and indirect impacts generated by the critical habitat designation (Brookshire et al. 1995). In most cases, impacts on a given county generated impacts on neighboring counties. Thus, it was necessary to investigate potential offsetting impacts. As a result, an I–O model was constructed that investigated the impacts for an entire region (all four counties).

Economic activity for the models was estimated using Impact Analysis for Planning (IMPLAN) 1990 data sets that were updated and projected through the year 2040, using data from the Bureau of Economic Analysis of the U.S. Department of Commerce. The IMPLAN data set contains 528 economic sectors that were aggregated to 16 sectors (Brookshire et al. 1995).

The I–O models used in this study are essentially demand-side models. The conventional way to introduce impacts into such models is through a vector of changes in final demands. That is, the impacts reduce the regional demand for the output of the sector that experiences a direct impact. However, this method is not logical for determining effects on the agricultural sector because these effects are generated by converting agricultural sectors to municipal and industrial (M&I) uses. This conversion effectively reduces the quantity of output in the agricultural sectors by restricting the supply of a key input. For this reason, a mixed modeling approach was used, in which the agricultural impacts are represented as a supply-side shock used to generate an exogenous level of output in the agricultural sectors. The direct impacts in the remaining sectors are modeled as more typical changes in final demand.

The study utilized three scenarios to explore the impacts of preserving the listed fishes upon the water needs of the projected human population. Projected

economic activity to the year 2040 in the Virgin River Basin, if no flows and habitat are protected to preserve the listed fishes, is compared to projected economic activity if flows and habitat are preserved for the fish. The baseline scenario represents a ''without fish'' projection of economic growth that is then compared to two ''with fish'' projections. All of the scenarios used the same population projection.

The baseline ''without fish'' scenario (WOFBA) is based upon the water development plans of water districts in the Virgin River Basin: the Washington County Water Conservation District (WCWCD) and the Las Vegas Valley Water District. The ''without fish'' scenario determines how much water will be needed for municipal and industrial development in order to satisfy the population projections. This scenario accepts the Boyle (1994) water need projections under a limited conservation assumption. Thus, the water needs of the expanding population base are determined by a gallons-per-day-per-capita value, which assumes a level of conservation above the existing consumption observed in the region.

The ''with fish'' structural scenario (WFST) asks the same questions as in the baseline scenario. The fundamental differences are—(1) Given the water needs associated with preserving the listed fishes, the structural water development projects must be brought on line at an earlier time, and (2) winter flows below Quail Creek Diversion remain at 2.4 cubic meters per second (86 cubic feet per second) rather than 1.4 cubic meters per second (50 cubic feet per second) as in the ''without fish'' scenario. Generally, the volume of water available from each new project is not directly affected by the actions taken on behalf of the listed fishes. However, the maintenance of the 86 cfs instream flow for the listed fishes results in less available water for municipal use. Therefore, water projects are required to come on line sooner to meet the projected demand. In addition, the agricultural retirement program must begin earlier. In this scenario, the per-capita consumption of water is the same as in the baseline.

The ''with fish'' conservation scenario (WFCO) addresses the water needs of the growing population and the listed fishes through a combination of conservation and agricultural retirements. Conservation requires that per-capita consumption should fall. This is achieved through water-saving technologies incorporated into new homes and industrial facilities.

All of the scenarios utilize the reallocation of agricultural water to urban and industrial uses and/or to habitat preservation for the listed fishes. Whether habitat is preserved for fish, water must be reallocated as the human population continues to grow. The impacts of critical habitat designation affect the timing of the reallocation of resources, and not the quantity of water that must be reallocated. The ''with fish'' agricultural scenario produces three sets of direct impacts which are outlined below.

(1) Agriculture—The conversion of use will occur earlier than under the baseline scenario, with the result that agricultural output is projected to decline under the ''with fish'' scenario. The method if incorporating this impact into the I–O models is to introduce a reduction in the allocation of water to the affected agricultural sectors. This translates directly into a specified reduction in the dollar value of the output of the agriculture sector. This mechanism was used to generate the decline in agricultural output in the baseline (WOFBA) projection. Water was pulled from agriculture to meet the needs of the growing M&I sectors. The growth in the nonagricultural sectors of the economy, reported in the WOFBA projection, is predicated on the conversion of water to M&I uses.

(2) Water Delivery Projects—To meet the baseline growth projection for Washington County, several water delivery projects are under consideration. Supplying instream water for the fishes will require these projects to be built earlier than in the ''without fish'' baseline. This may result in an increased cost of water delivery. This cost increase is driven by increased user cost of the funds devoted to the projects. The increased cost of each accelerated project is incorporated as an increase in the weighted average cost per acre-foot of water delivered to the users. Thus, a new delivery project could increase in the user's total ''water bill.'' A cost increase for a basic input is incorporated into the I–O models as an equiproportionate reduction in the level of expenditure in each sector of the economy.

(3) Electric Power—WCWCD runs two small hydroelectric power facilities and sells the power to the local grid. As a result of diversions that put water into the Virgin River to meet fish needs, power production may decline. For electricity users in the area, there is no impact as a result of this change because the amount of power produced is small and seasonal and the decline will be made up through load shifting. For the WCWCD, however, the change in the operation of the river would result in loss of revenue that must be made up through higher revenues from the sale of water. In this model, the impact is treated as a cost increase across all sectors in proportion to their level of economic activity. The motivation for the argument is identical to that presented in the previous section.

To these three direct impacts, the ''with fish'' conservation scenario adds another class of direct impacts.

(1) Conservation Expenditures—Expenditures for low-water-using appliances, landscaping changes, and other water-saving equipment (i.e., timed sprinklers) in new structures only. These expenditures are modeled as being offset by reductions elsewhere in the construction sector. For example, costs due to the installation of low-water-using appliances are offset through lower expenses elsewhere in the construction budget. To ensure that the analysis errs on the side of overstating the impacts, all conservation-related expenditures are assumed to be made outside the region, and all offsetting reductions in expenditures are assumed to be incurred by local suppliers. Thus, conservation-related expenditures are introduced into the I–O models as a negative impact for the region.

It should be emphasized that the water delivery projects mentioned in these scenarios are necessary in any case to support the water needs of the region's growing population. Actions taken to preserve and restore the listed fish species in the Virgin River will affect only the timing of these projects. They are not the primary reason for why these projects must be built. The same is true for the agricultural conversions that are required to satisfy the region's growing municipal and industrial water needs. Using some Virgin River water to meet the listed fishes' requirements may affect the timing of agricultural retirements. However, it is not the root cause for the retirements nor will it involve condemnation of any agricultural lands. Agricultural conversions will continue to be voluntary market transactions.

Actions taken on behalf of the listed fishes result in two types of direct impacts to the affected economies. The instream flows for the fishes require that the conversion of agricultural water to M&I uses take place earlier than without the fish consideration. It is important to note that actions taken on behalf of the fishes affect only the timing of this conversion.

Setting aside instream flows for the listed fishes requires the timing of some planned water delivery projects to be

altered. Actions taken on behalf of the fishes affect only the timing of water delivery projects that are required to support the growing human population.

Results of the Economic Analysis

The Virgin River Basin has an economy that is service-oriented, thus reflecting the popularity of the region as a retirement and recreation area. Employment, earnings, and tax revenues are reported for each of the sectors analyzed in the I–O models, as well as for the regional economy. The three scenarios investigated in this study are based on the assumption of sustained regional population growth rates during the 45-year study period, even though a decline is expected as desirable building sites become scarce. The growing population's water needs will be met by constructing a series of dams to increase the region's water supply for municipal and industrial uses. This will also improve water quality in the Virgin River. In addition, retirement of agricultural land is expected when water and agricultural land are used for other purposes.

The Act requires that the economic effects of designating critical habitat be computed separately from the total economic effects of listing and critical habitat designation. Table 3 summarizes the effects of critical habitat designation under the WFST and WFCO impact scenarios. These effects are reported for the entire Virgin River region, including Washington County and Clark Counties.

TABLE 3.—COUNTY AND REGIONAL-LEVEL PRESENT VALUE AND ANNUALIZED INCREMENTAL CRITICAL HABITAT IMPACTS (1990 $ MILLIONS) (3 PERCENT DISCOUNT RATE)

	Output	Employment	Earnings	Tax revenues
WFST vs WOFBA:				
Washington:				
Present Value	−47.496		−13.617	−6.182
Percent Deviation from WOFBA	−0.0016	−0.0019	−0.0016	−0.0016
Annualized Values	−1.947	−26	−0.558	−0.253
Clark:				
Present Value	−10.63		−0.827	−0.632
Percent Deviation from WOFBA	−0.00001	−0.0001	0	0
Annualized Values	−0.428	−1	−0.034	−0.026
Region:				
Present Value	−59.818		−14.961	−6.283
Percent Deviation from WOFBA	−0.0001	−0.0001	0	−0.00001
Annualized Values	−2.453	−30	−0.613	−0.258
WFCO vs. WOFBA:	Output	Employment	Earnings	Tax Revenues
Washington:				
Present Value	−13.742		−2.065	−0.133
Percent Deviation form WOFBA	−0.00046	−0.00011	−0.00024	−0.00003
Annualized Values	−0.563	4	−0.085	−0.005
Region:				
Present Value	−20.938		−1.12	−1.476
Percent Deviation from WOFBA	0	0	0	0
Annualized values	−0.858	4	−0.046	−0.061

Under the WFST scenario, the present value of output changes in the Washington County economy due to critical habitat designation is −$1.95 million annually. This constitutes 0.0016 percent of the present value of the baseline stream of output (WOFBA). Employment and earnings effects are presented in the report and are similar to that of the output effects.

For Clark County, the output effects of the critical habitat designation are −$0.43 million annually. The baseline economy of Clark County is much larger than that of Washington County. Consequently, the effects of the designation of critical habitat on the economy are smaller. The cumulative output effects represent only 0.00001 percent of the baseline level of economic activity. Both the earnings and tax revenue effects are too small to be reliably reported as deviations from the baseline level of economic activity.

For the region as a whole, the output effect of designating critical habitat is −$2.45 million annually (0.0001 percent). The other aggregate effects are of similar relative magnitudes.

Water use conservation can significantly mitigate the effects of designating critical habitat for these listed fishes. This is also true for the critical habitat effects alone. Under the WFCO scenario, the present value of the output changes in Washington County is −$13.7 million, 0.00046 percent of the baseline level of activity. For the region as a whole, the output effects of designating critical habitat are −$20.9 million, an amount too small to calculate as a percentage of the baseline. There are no conservation scenario impacts for Clark County for reasons discussed later.

National Efficiency Effects

To obtain true measures of national efficiency impacts, exact welfare changes must be computed. These are calculated as changes in aggregate household utility. In general, I–O models are not capable of producing such values because they lack a fully modeled household sector. However, reasonable approximations may be obtained through aggregate factor payments. These omit surplus measures (producer and consumer) and hence understate the aggregate changes in national efficiency. They do, however, provide a reasonable approximation under certain assumptions.

In many applications of I–O analysis for use as inputs to a cost-benefit analysis, aggregate factor payments (value added) are used to represent the national efficiency effect of a policy change or action. This measure is correct only for cases in which the value-added change can be attributed solely to the policy change or action undertaken. In the case of the listed fishes, this assumption is reasonable because all changes in resource allocation can be attributed to actions taken on behalf of the fishes by virtue of the methodology followed in this study.

Including secondary effects in computing national efficiency impacts is valid because these effects are technological in nature rather than pure

transfers. That is, the linkages in the economy between productive sectors arise from the basic production functions in the economy. Thus, a direct impact occurring in one sector of the economy will generate ripple effects throughout the economy. Such effects are solely attributable to the initial direct impact.

The I–O model permits computation of this factor income, and it may be used to measure the national efficiency effects of various changes in the economy, such as those introduced by actions taken on behalf of the listed fishes. Aggregate factor payments are computed for the baseline (WOFBA) scenario and for the ''with fish'' scenarios (WFST and WFCO).

The factor payments capture the value added from the production side of the local economy. Because some of the output change is captured through leakages to the rest of the world (principally the United States), the total factor payments changes will be smaller than the total output changes.

Based on these results, it is not surprising that the effects of the factor payments are small for the county-level and regional analysis. Under the WFST scenario, the efficiency losses to the nation are a $32.2 million reduction in value added. The annualized value of this reduction is −$1.32 million. With water conservation measures, the cumulative change (over the 45-year period) in value added is −$10.68 million (−$0.438 million as an annualized value). Water conservation mitigates most of the impacts associated with the critical habitat designation.

For Washington County, the present value of the cumulative changes (over the 45-year period) in value added is −$24.62 million for the WFST scenario. With the inclusion of water conservation measures, this value falls to −$8.153 million (annualized value −$0.764 million).

For Clark County, the present value of the cumulative changes (over the 45-year period) is −$4.649 million (annualized value is −$0.191 million).

Conclusions of the Economic Analysis

The three described impact scenarios were analyzed and it is useful to distinguish them in summarizing the economic effects of actions taken on behalf of the listed fishes. The baseline scenario (WOFBA) represents the way in which the county-level and regional economies would grow over the 45-year study period if no actions were taken to protect the listed species. The entire region is projected to experience population growth at rates well above the national average. Projected population growth and economic development will lead to shifts in resource use. Consequently, agricultural water will be converted to M&I uses resulting in a decline in agricultural output. At the same time, several required water delivery projects are planned to provide water to sustain the projected growth levels.

The WFST scenario takes the baseline regional projection and introduces measures designed to protect and recover the listed fishes. These measures result in more rapid conversion of agricultural water and the acceleration of some water delivery projects. Thus, agricultural production declines more quickly under the WFST scenario. Water costs also rise as a result of the earlier development of these projects, and the effect is a reduced level of final demand in all sectors.

In summary, all of the economic effects of the WFST scenario indicate that preserving and recovering the listed fishes will have a relatively small impact on the overall economy. Some sectors will experience greater declines than others, but the overall decline in economic activity is projected to be small.

Since water usage rates in Washington County are high compared to other southwestern cities, a conservation scenario (WFCO) was analyzed. In this scenario, consumption levels were reduced through the use of water-conserving appliances, fixtures, and landscaping, applied to new construction only. Conservation is not without some cost. These costs were introduced into the models in the form of crowding-out other expenditures. Thus, construction costs were projected to increase. Offsetting this cost increase are the savings that will result from delaying the planned construction of new water delivery facilities. A further offset is provided because agricultural water is converted to M&I uses at a slower pace.

The overall effect of conservation is an almost complete mitigation of the economic effects associated with actions undertaken on behalf of the listed fishes. In fact, by the latter part of the study period, there are negative effects only in the agriculture and construction sectors. However, latter effects are likely overstated in the analysis due to the extreme nature of the complete crowding-out assumption.

The Service has prepared detailed documents further explaining the biology of each fish species (Maddux et al. 1995) and the economic analysis process used to determine critical habitat (Brookshire et al. 1995). These documents are available to supplement this notice and for public review. Copies may be obtained by contacting the field office (see **ADDRESSES** section).

Available Conservation Measures

The purpose of the Act, as stated in section 2(b), is to provide a means to conserve the ecosystems upon which endangered and threatened species depend and to provide a program for the conservation of listed species. Section 2(c)(1) of the Act declares that ''* * * all Federal departments and agencies shall seek to conserve endangered and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.''

The Act mandates the conservation of listed species through various mechanisms, such as section 7 (requiring Federal agencies to further the purposes of the Act by carrying out conservation programs and insuring that Federal actions will not likely jeopardize the continued existence of the listed species or result in the destruction or adverse modification of critical habitat), section 9 (prohibition of taking of listed species), section 10 (research permits and habitat conservation plans), section 6 (cooperative State and Federal grants), land acquisition, and research. The section 7 requirement that Federal agencies consult with the Service if their actions may impact critical habitat enables the Service to assess Federal activities that may impair survival and recovery potential, thus ensuring that such actions are considered in relation to the goals and recommendations of the recovery plan.

Public Comments Solicited

The Service finds that any final action resulting from this proposal be accurate and effective as possible. Therefore, the Service requests comments or suggestions from the public, other concerned government agencies, Indian Nations, the scientific community, commercial interests, or any other interested party concerning this proposed rule. Comments are particularly sought concerning:

(1) The location and reasons why any Federal or non-Federal lands (either proposed critical habitat or additional areas) should or should not be determined to be critical habitat as provided by section 4 of the Act;

(2) Current and planned activities in the vicinity of proposed critical habitat areas and their possible impacts on proposed critical habitat;

(3) Other physical and biological features that are essential to the conservation of the species and in need of special management or protection;

(4) Specific information on the scale, location, and distribution of primary constituent elements on all ownership and land designations;

(5) Information concerning health of the ecosystems on which the woundfin, Virgin River chub, and Virgin spinedace depend;

(6) Information on the economic benefits and costs that would result from this proposed designation of critical habitat;

(7) Data and information relevant to determining whether the benefits of excluding a particular area from critical habitat outweigh the benefits of specifying the area as critical habitat;

(8) The methods and thresholds the Service might use in determining whether the costs of designating an area outweigh the benefits of designation;

(9) Methods of analysis useful in evaluating economic and other relevant impacts;

(10) Information regarding the suitability or unsuitability of critical habitat boundaries of the 100-year floodplain (as defined on Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs));

(11) Information about areas of land or water located within the outer boundaries of the proposed critical habitat, but that do not provide primary constituent elements and thus can be excluded. Of particular interest are means to describe these areas of land within specific limits using reference points and lines as found on standard topographical maps.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

Public Hearings

The Act provides for at least one public hearing on this proposal, if requested within 45 days from date of publication of this proposal in the **Federal Register**. Requests for a hearing must be made in writing and addressed to the Field Supervisor, Salt Lake City Field Office (see **ADDRESSES** section). The Service has arranged for a public hearing to be held on May 8, 1995, from 5 p.m. to 9 p.m., with registration beginning at 4:30 p.m., at the St. George Hilton Inn, 1450 South Hilton Drive, St. George, Utah.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, 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).

Required Determinations

This proposed rule was reviewed under Executive Order 12866. The rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within the proposed critical habitat, significant economic impacts will not result from this action. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this action, and the rule contains no recordkeeping requirements as defined under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule does not require a federalism assessment under Executive Order 12612 because it would not have any significant federalism effects as described in the order.

References Cited

A complete list of all references cited is available upon request from the Field Supervisor, Salt Lake City Field Office (see **ADDRESSES** section).

Authors

The primary authors of this proposal are Henry R. Maddux and Janet A. Mizzi of the Service's Salt Lake City Field Office; Selena J. Werdon of the Service's Nevada State Office; and Lesley A. Fitzpatrick of the Service's Arizona State Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, 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.

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by revising the ''critical habitat'' entry for ''Chub, Virgin River'' and ''Woundfin'' under Fishes, to read ''17.95(e)''.

3. It is proposed to amend § 17.95(e) by adding critical habitat of the Virgin River chub (*Gila robusta seminuda=G. seminuda*) and woundfin (*Plagopterus argentissimus*) in the same alphabetical order as these species occur in 17.11(h).

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(e) * * *

Virgin River Chub (*Gila seminuda*)

Legal descriptions for St. George (Utah-Arizona) and Littlefield (Arizona) were obtained from the 1987 Bureau of Land Management (BLM) maps (Surface Management Status 30×60 Minute Quadrangle). Legal descriptions for Overton (Nevada-Arizona) were obtained from the 1989 BLM maps (Surface Management Status 30×60 Minute Quadrangle). Critical habitat areas proposed for the Virgin River chub in each State are as follows:

Utah, Washington County. The Virgin River from its confluence with Ash-La Verkin Creeks in T.41S., R.13W., Sec. 23 (Salt Lake Base and Meridian) to Washington Fields Diversion in T.42S., R.14W., Sec. 21 (Salt Lake Base and Meridian).

Utah, Washington County. The Virgin River from the Washington Fields Diversion in T.42S., R.14W., Sec. 21 (Salt Lake Base and Meridian) to the Johnson Diversion in T.42S., R.15W., Sec. 27 (Salt Lake Base and Meridian).

Utah, Washington County. The Virgin River from the Johnson Diversion in T.42S., R.15W., Sec. 27 (Salt Lake Base and Meridian) to the Arizona-Utah border in T.43S., R.17W., Sec. 36 (Salt Lake Base and Meridian).

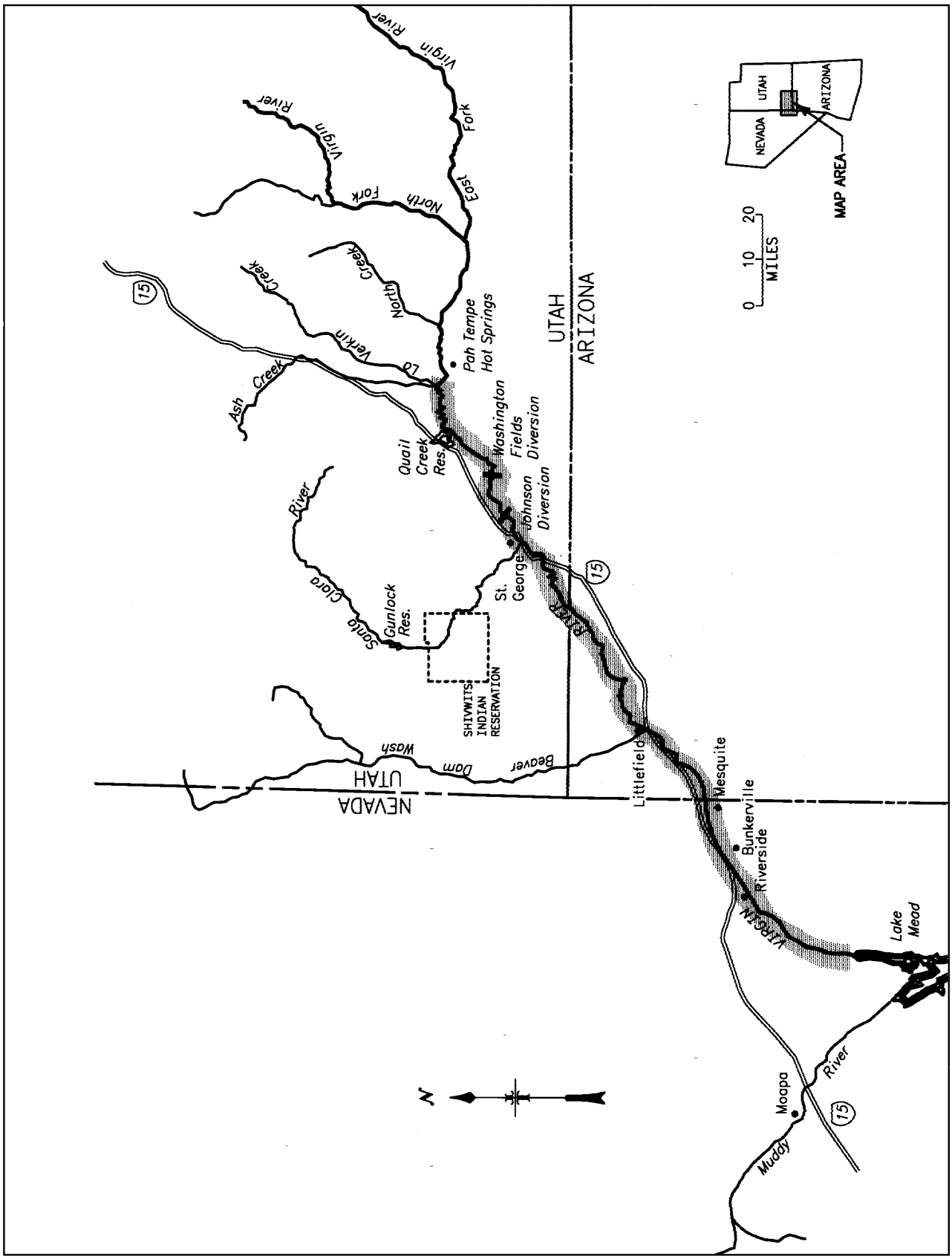
Arizona, Mohave County. The Virgin River from the Arizona-Utah border in T.42N., R.13W., Sec. 33 (Salt Lake Base and Meridian) to the Arizona-Nevada border in T.39N., R.16W., Sec. 2 (Salt Lake Base and Meridian).

Nevada, Clark County. The Virgin River from the Arizona-Nevada border in T.13S., R.71E., Sec. 15 (Salt Lake Base and Meridian) to the highwater level of Lake Mead in T.16S., R.68E., Sec. 1 (Salt Lake Base and Meridian).

Known constituent elements include water, physical habitat, and biological environment as required for each particular life stage for each species.

Note: Map follows.

BILLING CODE 4310–55–M



BILLING CODE 4310–55–C

Woundfin (*Plagopterus argentissimus)*

Legal descriptions for St. George (Utah-Arizona) and Littlefield (Arizona) were obtained from the 1987 BLM maps (Surface Management Status 30×60 Minute Quadrangles). Legal descriptions for Overton (Nevada-Arizona) were obtained from the 1989 BLM maps (Surface Management Status 30×60 Minute Quadrangles). Critical habitat areas proposed for the woundfin in each State are as follows:

Utah, Washington County. The Virgin River from its confluence with Ash-La Verkin Creeks in T.41S., R.13W., Sec. 23 (Salt Lake Base and Meridian) to the Washington Fields Diversion in T.42S., R.14W., Sec. 21 (Salt Lake Base and Meridian).

Utah, Washington County. The Virgin River from the Washington Fields Diversion in T.42S., R.14W., Sec. 21 (Salt Lake Base and Meridian) to the Johnson Diversion in T.42S., R.15W., Sec. 27 (Salt Lake Base and Meridian).

Utah, Washington County. The Virgin River from the Johnson Diversion in T.42S., R.15W., Sec. 27 (Salt Lake Base and Meridian) to the Arizona-Utah border in T.43S., R.17W., Sec. 36 (Salt Lake Base and Meridian).

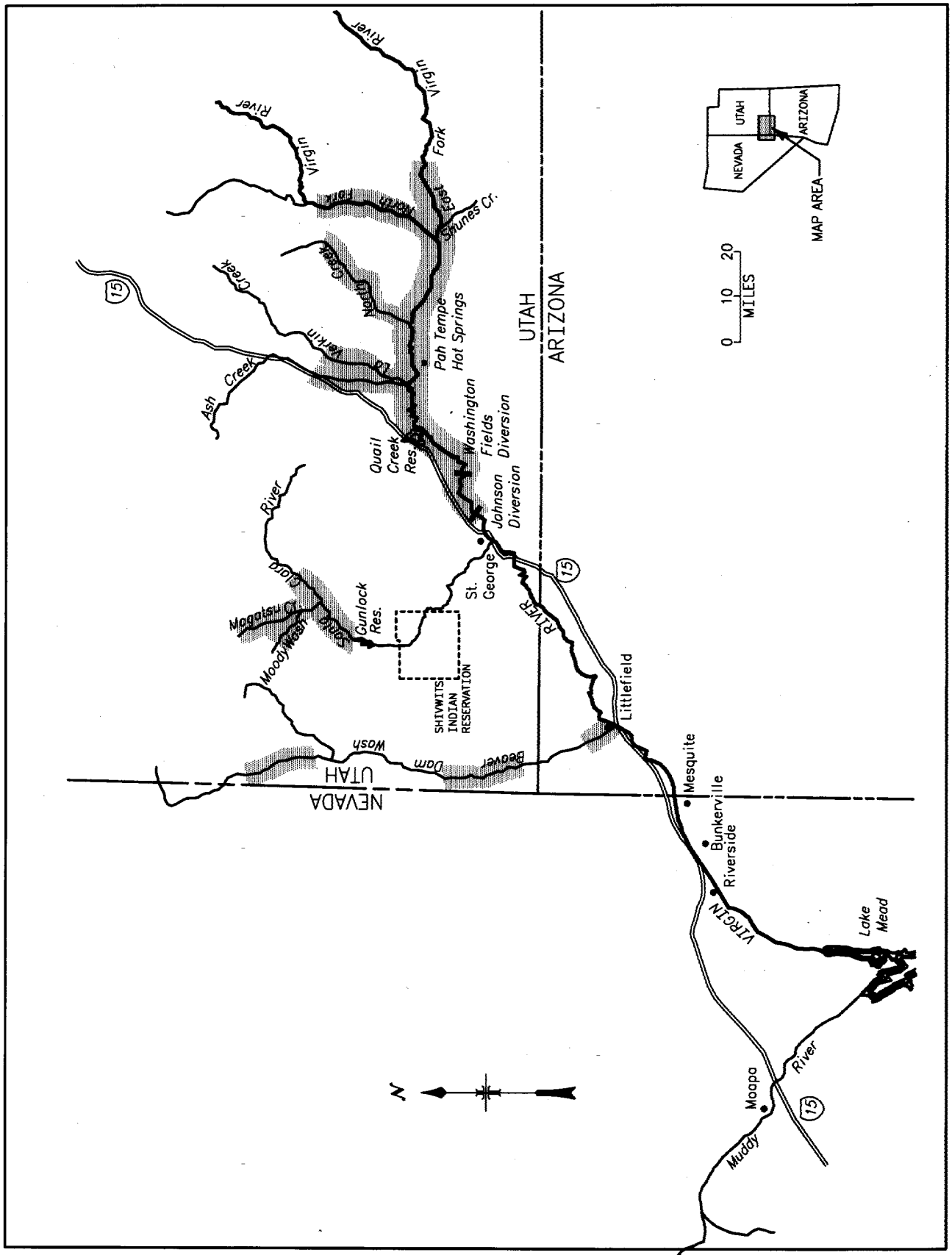
Arizona, Mohave County. The Virgin River from the Arizona-Utah border in T.42N., R. 13W., Sec. 33 (Salt Lake Base and Meridian) to the Arizona-Nevada border in T.39N., R.16W., Sec. 2 (Salt Lake Base and Meridian).

Nevada, Clark County. The Virgin River from the Arizona-Nevada border in T.13S., R.71E., Sec. 15 (Salt Lake Base and Meridian) to the highwater level of Lake Mead in T.16S., R.68E., Sec. 1 (Salt Lake Base and Meridian).

Known constituent elements include water, physical habitat, and biological environment as required for each particular life stage for each species.

Note: Map follows.

BILLING CODE 4310–55–M



BILLING CODE 4310–55–C

4. The proposed rule published in the **Federal Register** of May 18, 1994, pages 25875–25880, adding the Virgin spinedace to § 17.11(h) is amended by revising the critical habitat entry for ''Spinedace, Virgin'' to read ''17.95(e)''.

5. The proposed rule published in the **Federal Register** of May 18, 1994, pages 25875–25880, adding the Virgin spinedace to § 17.11(h) is further amended by adding critical habitat of the Virgin spinedace (*Lepidomeda mollispinis mollispinis*) to § 17.95(e) in the same alphabetical order as the species occurs in 17.11(h).

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(e) * * *

* * * * *

Virgin Spinedace (*Lepidomeda mollispinis mollispinis*)

Legal descriptions for St. George (Utah-Arizona) and Littlefield (Arizona) were obtained from the 1987 BLM maps (Surface Management Status 30 × 60 Minute Quadrangles). Legal descriptions for Kanab (Utah-Arizona) were obtained from the 1983 BLM maps (Surface Management Status 30 × 60 Minute Quadrangles). Critical habitat areas proposed for the Virgin spinedace in each State are as follows:

Arizona, Mohave County. Beaver Dam Wash from the confluence with the Virgin River in T.40N., R.15W., Sec. 4 (Salt Lake Base and Meridian) upstream 1.3 km (0.8 mi) in T.40N., R15W., Sec. 5 (Salt Lake Base and Meridian).

Utah, Kane County. The East Fork of the Virgin River from the falls in Parunuweap Canyon in T.42S., R.9W., Sec. 5 (Salt Lake Base and Meridian) to its confluence with the North Fork of the Virgin River in T.42S., R.10W., Sec. 5 (Salt Lake Base and Meridian).

Utah, Kane County. Shunes Creek from the Second Creek confluence in T.42S., R.10W., Sec. 11 (Salt Lake Base and Meridian) to its confluence with the East Fork of the Virgin River in T.42S., R.10W., Sec. 4 (Salt Lake Base and Meridian).

Utah, Washington County. Beaver Dam Wash from the Narrows in T.39S., R.20W., Sec. 1 (Salt Lake Base and Meridian) to 0.4 km (0.25 mi) upstream of the confluence with East Bunker Peak Wash in T.40S., R.19W., Sec. 5 (Salt Lake Base and Meridian).

Utah, Washington County. Beaver Dam Wash from Horse Canyon in T.41S., R.19W., Sec. 31 (Salt Lake Base and Meridian) downstream through Lytle Ranch downstream to Iverson Ranch in T.42S., R.20W., Sec. 13 (Salt Lake Base and Meridian).

Utah, Washington County. Moody Wash from the lower end of Racer Canyon in T.38S., R.17W. Sec. 33 (Salt Lake Base and Meridian) to just below the Dixie National Forest Boundary in T.39S., R.17W., Sec. 26 (Salt Lake Base and Meridian).

Utah, Washington County. Mogatsu Creek from the falls downstream of Bingham Ranch in T.39S., R.16W., Sec. 30 (Salt Lake Base and Meridian) to its confluence with the Santa Clara River in T.40S., R.17W., Sec. 14 (Salt Lake Base and Meridian).

Uath, Washington County. Santa Clara River from Veyo Hot Springs in T.39S., R.16W., Sec. 32 (Salt Lake Base and Meridian) to the upstream end of Gunlock Reservoir in T.40S., R.17W., Sec. 29 (Salt Lake Base and Meridian).

Utah, Washington County. Santa Clara River from downstream of the dam forming Gunlock Reservoir in T.41S., R.17W., Sec. 5 (Salt Lake Base and Meridian) to its confluence with the Virgin River in T.43S., R.15W., Sec. 6 (Salt Lake Base and Meridian).

Utah, Washington County. Ash Creek from Toquerville Springs in T.40S., R.13W., Sec. 35 (Salt Lake Base and Meridian) to its confluence with the Virgin River in T.41S., R.13W., Sec. 23 (Salt Lake Base and Meridian).

Utah, Washington County. La Verkin Creek from Chute Falls in T.40S., R.12W., Sec. 30 (Salt Lake Base and Meridian) to its confluence with the Virgin River in T.41S., R.13W., Sec. 23 (Salt Lake Base and Meridian).

Utah, Washington County. North Creek from the confluence of the Left and Right Forks in T.40S., R.11W., Sec. 33 (Salt Lake Base and Meridian) to its confluence with the Virgin River in T.41S., R.12W., Sec. 23 (Salt Lake Base and Meridian).

Utah, Washington County. The Virgin River from the confluence of Ash-La Verkin Creeks in T.41S., R.13W., Sec. 23 (Salt Lake Base and Meridian) to the Washington Fields Diversion in T.42S., R.14W., Sec. 21 (Salt Lake Base and Meridian).

Utah, Washington County. The North Fork of the Virgin River from the Narrows in T.40S., R10W., Sec. 34 (Salt Lake Base and Meridian) to its confluence with the East Fork of the Virgin River in T.42S., R.10W., Sec. 5 (Salt Lake Base and Meridian).

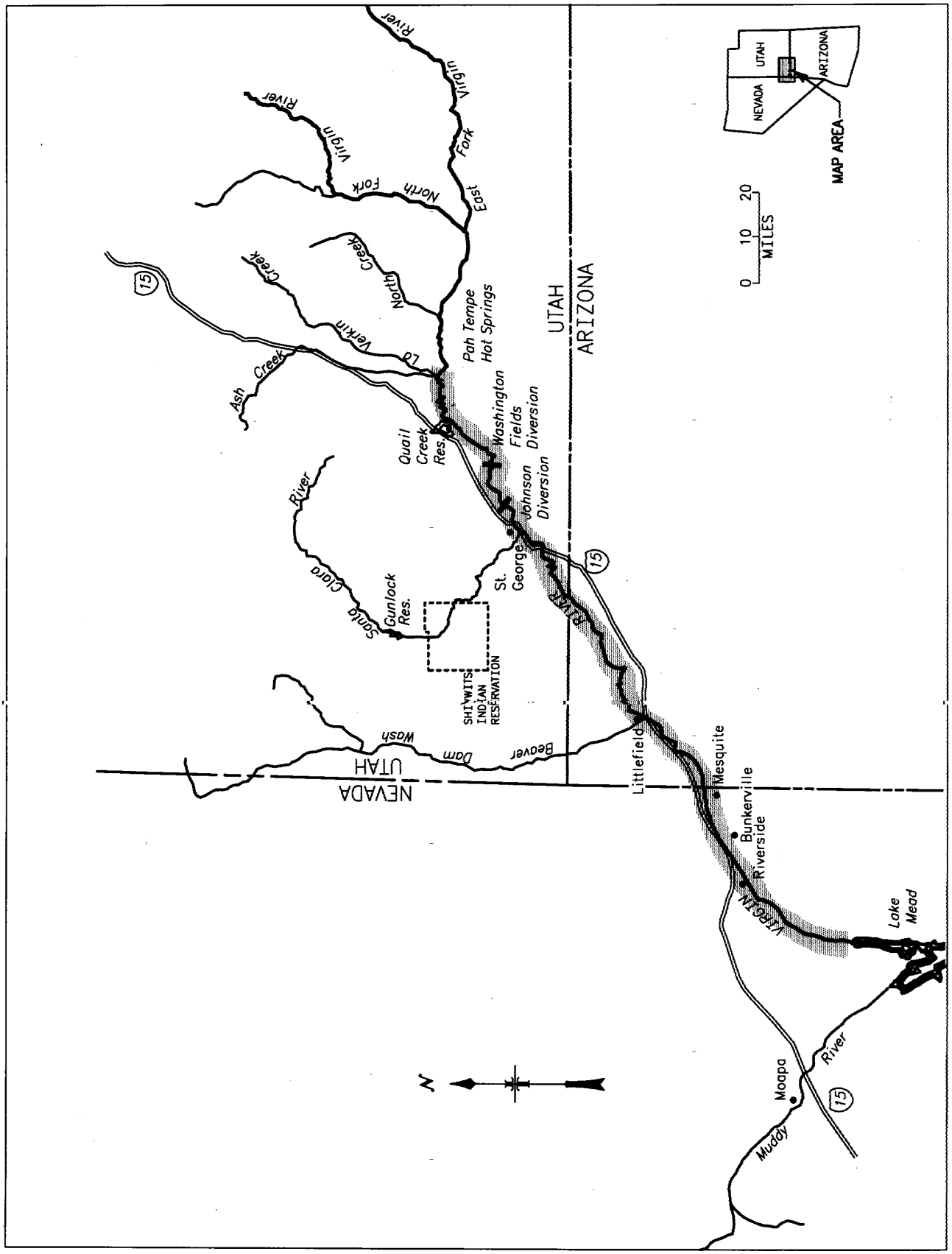
Utah, Washington County. The Virgin River from the confluence of the East and North Forks in T.42S., R.10W., Sec. 5 (Salt Lake Base and Meridian) to the Quail Creek Diversion in T.41S., R.14W., Sec. 36 (Salt Lake Base and Meridian).

Utah, Washington County. The Virgin River from the Quail Creek Diversion in T.41S., R.12W., Sec. 30 (Salt Lake Base and Meridian) to the confluence of Ash-La Verkin Creeks in T.41S., R.13W, Sec. 23) (Salt Lake Base and Meridian).

Known constituent elements include water, physical habitat, and biological environment as required for each particular life stage for each species.

Note: Map follows.

BILLING CODE 4310–55–M



BILLING CODE 4310–55–C

Dated: March 29, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–8301 Filed 3–31–95; 2:53 pm]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 60, No. 65

Wednesday, April 5, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Committee on Governmental Processes of the Administrative Conference of the United States.

DATES: Wednesday, April 12, 1995, at 1:30 p.m.

LOCATION: Office of the Chairman, Administrative Conference of the United States, Suite 500, 2120 L Street, NW., Washington, DC (Library, 5th Floor).

FOR FURTHER INFORMATION: Deborah S. Laufer, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee on Governmental Processes will meet to continue discussion of when federal government lawyers and other government employees may participate in voluntary public service activities. There are possible restrictions in conflict of interest statutes, and both government-wide and agency-specific regulations governing employee participation in outside activities, ethics laws, and the use of government property.

Dated: March 31, 1995.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 95–8474 Filed 4–4–95; 8:45 am]

BILLING CODE 6110–01–W

DEPARTMENT OF AGRICULTURE

Forest Service

Supplemental Environmental Impact Statement, Central Prince of Wales Project, Tongass National Forest, Ketchikan Area, AK

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Tongass National Forest—Ketchikan Area proposes to review and analyze information on ''falldown'' and to calculate its effect, if any, on ''sustainable'' timber harvest in the Central Prince of Wales project area covered in the previous environmental impact statement and record of decision issued August 6, 1993. The proposed action is to provide approximately 290 million board feet of timber in support of the Ketchikan Pulp Company Long-Term Timber Sale Contract, Contract Number A10fs–1042.

ADDRESSES: Send written comments to Forest Supervisor, Tongass NF—Ketchikan Area, Federal Building, Ketchikan, AK 99901.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed analysis and supplemental environmental impact statement should be directed to Pete Griffin, Tongass NF—Ketchikan Area, Federal Building, Ketchikan, AK 99901, phone: (907) 225–3101.

SUPPLEMENTARY INFORMATION: The purpose of the project is to provide approximately 290 million board feet of timber in support of the Ketchikan Pulp Company Long-Term Timber Sale Contract, Contract Number A10fs–1042. The purpose of the supplement is to evaluate information available to the Forest Service with regard to falldown. The effects of falldown as related to sustainable harvest levels will also be analyzed. Factors related to falldown include economic, biological, and physical.

Alternatives to be analyzed will include those alternatives as described in the CPOW FEIS including the no action alternative.

The following issues have been identified:

1. Falldown.
2. Sustainability.

Scoping was completed for the CPOW project in 1992. Council on Environmental Quality regulations (40 CFR 1502.9(c)(4)) do not require scoping for a supplement. Additional public scoping meetings are not planned. Public comment during the analysis is welcome and the public will have an opportunity to comment on the draft supplement when issued.

The draft supplemental environmental impact statement is expected to be issued in May 1995. The comment period on the draft supplemental environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process.

First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v *NRDC, 435 U.S. 519, 553, (1978).*

Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022, (9th Cir. 1986) and *Wisconsin Heritages, Inc.,* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the supplemental environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement.

Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Issuance of the final supplemental environmental impact statement is projected in September 1995. The responsible official for the decision is the Forest Supervisor, Tongass NF—Ketchikan Area, Federal Building, Ketchikan, AK 99901.

Dated: March 28, 1995.

David D. Rittenhouse,

Forest Supervisor.

[FR Doc. 95–8323 Filed 4–4–95; 8:45 am]

BILLING CODE 3410–11–M

Eastern Washington Cascades Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades PIEC Advisory Committee will meet on April 25, 1995 in the Campbell's Conference Center, 104 W. Wooden, Chelan, Washington. The meeting will begin at 9:00 a.m. and continue until 4:00 p.m. Agenda items to be covered include: (1) The President's Forest Plan and background leading up to the advisory committee; (2) introduction of members and orientation; (3) operating guidelines and ground rules; (4) charter and purpose of the Province Advisory Committee; (5) relationship between the Advisory Committee and the PIEC; (6) brief presentation by Advisory Committee members on the reason for their interest in committee membership; and (7) Open public forum. All Eastern Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attain.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, P.O. Box 811, Wenatchee, Washington 98807, 509–662–4335.

Dated: March 30, 1995.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 95–8321 Filed 4–4–95; 8:45 am]

BILLING CODE 3410–11–M

Yakima Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yakima PIEC Advisory Committee will meet on April 26, 1995 in the Hal Holmes Conference Center, 201 N. Ruby, Ellensburg, Washington. The meeting will begin at 9:00 a.m. and continue until 4:00 p.m. Agenda items to be covered include: (1) The President's Forest Plan, and background leading up to the advisory committee; (2) introduction of members and orientation; (3) operating guidelines and ground rules; (4) charter and purpose of the Province Advisory Committee; (5) relationship between the Advisory Committee and the PIEC; (6) brief presentation by Advisory Committee members on the reason for their interest in committee membership; and (7) open public forum. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, P.O. Box 811, Wenatchee, Washington, 98807, 509–662–4335.

Dated: March 30, 1995.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 95–8322 Filed 4–4–95; 8:45 am]

BILLING CODE 3410–11–M

Food Safety and Inspection Service

[Docket No. 95–012N]

National Advisory Committee on Microbiological Criteria for Foods; Meeting

Notice is hereby given that a meeting of the National Advisory Committee on Microbiological Criteria for Foods will be held on April 17 and 18, 1995, at the Arlington Renaissance Hotel, 950 North Stafford Street, Arlington, VA 22203, (703) 528–6000. The meetings will be held from 1:00 PM to 5:00 PM on April 17 and from 8:00 AM to 5:00 PM on April 18.

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria pertaining to microorganisms that indicate whether food has been produced using good manufacturing practices. The meeting will include discussion of the following topics as time permits:

I. Ethics Training

II. Raw Poultry Labeled Fresh

III. Generic HACCP for Broiler Chickens

IV. Future Topics

V. Public Comments

Notice is hereby given on the members appointed to the Committee. The members are: Dr. Gary Acuff, Texas A&M, College Station, TX; Dr. Robert Buchanan, Food Safety and Inspection Service, Washington, DC; Col. H. Wayne Derstine, U.S. Army, Ft. Sam Houston, TX; Dr. Michael Doyle, University of Georgia, Athens, GA; Dr. David Dreesen, University of Georgia, Athens, GA; Dr. Robert Gravani, Cornell University, Ithaca, NY; Dr. Michael Jahncke, National Marine Fisheries Service, Pascagoula, MS; Dr. Marilyn Kilgen, Nicholls State University, Thiboidaux, LA; Dr. Jong Lee, Oregon State University, Corvallis, OR; Dr. Joseph Madden, Center for Food Safety and Applied Nutrition, Washington, DC; Dr. Ann Marie McNamara, Food Safety and Inspection Service, Washington, DC; Dr. Michael Osterholm, State of Minnesota, Minneapolis, MN; Dr. Merle Pierson, Virginia Polytechnic and State University, Blacksburg, VA; Dr. Morris Potter, Centers for Disease Control, Atlanta, GA; Dr. Philip Roane, Howard University, Washington, DC; Dr. Mark Tamplin, University of Florida, Gainesville, FL; Dr. Donn Ward, North Carolina State University, Raleigh, NC.

The Committee meeting is open to the public on a space available basis. Interested persons may file comments before and after the meeting. Comments should be addressed to: Mr. Craig Fedchock, Advisory Committee Specialist, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 311, 1255 22nd Street NW., Washington, DC 20250–3700. Background materials and the meeting agenda are available for inspection by contacting Mr. Fedchock on (202) 254–2517.

Done at Washington, DC, on: March 28, 1995.

Michael R. Taylor,

Administrator, Food Safety and Inspection Service.

[FR Doc. 95–8237 Filed 4–4–95; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Technical Information Service (NTIS).
Title: Telecommunications Planning.
Form Number(s): NA.
Agency Approval Number: None.
Type of Request: New collection—Expedited Review.
Burden: 500 hours.
Number of Respondents: 10,000.
Avg Time Per Response: 3 minutes.
Needs and Uses: FedWorld began as a pilot in FY 1993, and became the electronic hub for public access to U.S. and foreign Government documents directories, and information services. The system now needs a major expansion to provide its customers with cost-effective, state-of-the-art telecommunications access to the growing libraries and database services. To obtain the vital information essential to the establishment of a state-of-the-art telecommunications system, NTIS will mount a one-time survey on FedWorld for a period of 6–12 months. The data will be captured electronically and analyzed by the FedWorld Program Manager.
Affected Public: Businesses or other for-profit institutions, individuals or households, not-for-profit institutions, and Federal Government, state, local or tribal governments.
Frequency: One time only.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Virginia Huth, (202) 395–6929.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Virginia Huth, OMB Desk Officer, room 10236, New Executive Office Building, Washington, DC 20503.

Memorandum

Questionnaire: Telecommunications Planning (10 questions)
Announcement: FedWorld is planning to upgrade its telecommunications services. Our goal is to provide FedWorld customers with cost-effective, state-of-the-art telecommunications access to our growing libraries and database services. You can help FedWorld plan efficiently by responding to our 10-question Telecommunications Questionnaire. Thank you for your assistance.

Question 1:

How do you primarily access FedWorld?

a. Local telephone call via Modem (Metropolitan, Washington, DC area)
b. Long-Distance Dial via Modem—direct connect
c. Long-Distance Dial via Modem to Internet/Telnet
d. Direct Connect via Internet/Telnet
e. Direct Connect via Internet/Web
f. Other

Question 2: [ask only if response to question 1 was answered b].

Would you subscribe to a new FedWorld access service if you could potentially save up to 50% on your long-distance charges?

a. Yes
b. No

Question 3: [ask only if response to question 1 was answered b]

Are your current long-distance charges a deterrent to using FedWorld?

a. Yes
b. No

Question 4: [ask only if response to question 1 was answered b]

Would you use FedWorld more often if your long-distance charges were lower?

a. Much more
b. Somewhat more
c. About the same

Question 5:

From what location do you usually connect to FedWorld?

United States Regions

a. Northeastern/New England—(ME, VT, NH, NY, MA, CT RI)
b. Mid-Atlantic—(PA, NJ, DE, MD, DC, VA, WV)
c. Southeastern—(NC, SC, GA, FL, TN, AL, MS, PR)
d. Greater Southwest—(TX, LA, AK, OK, NM)
e. Heartland/Mid-West—(MO, IA, NE, KS)
f. Great Lakes—(MN, MI, IL, WI, IN, OH, KY)
g. Rocky Mountain—(CO, WY, UT, ND, SD, MT)
h. Pacific—(CA, NV, AZ, HI)
i. Northwest/Artic—(OR, WA, ID, AK)

International Regions

j. Canada
k. Latin America/Caribbean
l. Western Europe
m. Central/Eastern Europe
n. Russia and Independent States
o. Near East/South Asia
p. Africa
q. Southeast Asia
r. East Asia
s. Japan
t. Australia/New Zealand

Question 6:

How many times (on average) do you connect to FedWorld per week?

a. Less than 1
b. 1–5
c. 6–10
d. 11–20
e. More than 20

Question 7:

How much time do you spend on FedWorld per session (on average)?

a. Less than 5 minutes
b. 5–10 minutes
c. 11–15 minutes
d. 16–20 minutes
e. 21–30 minutes
f. Over 30 minutes

Question 8:

If you use a modem to connect to FedWorld, at what modem speed (baud) do you connect?

a. 300/1200
b. 2400
c. 4800
d. 9600
e. 9600 (capable of 14.4)
f. 9600 (capable of 28.8)
g. Do not connect via modem (Internet direct connect)

Question 9:

Would there be any additional value to you if FedWorld were accessible through other information services such as CompuServe, Dialog, America Online, Prodigy, etc.?

a. CompuServe
b. Dialog
c. America Online
d. Prodigy
e. Other Online Service
f. No additional value

Question 10:

Is your primary use of FedWorld done on behalf of one of the following?

a. Federal Government
b. Private Industry—Large Business
c. Private Industry—Small Business
d. Private Industry—Certified 8(a) Minority/Disadvantage Business

e. Consultant

f. Educational Institution

g. State/Local Government

h. Personal Interests

i. Other Reasons.

Dated: March 30, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–8256 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

President's Export Council: Meeting of the Subcommittee on Europe, Japan, and the Newly Independent States

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The President's Export Council Subcommittee on Europe, Japan, and the Newly Independent States will hold an open meeting to discuss topics related to impediments to U.S. exports and commercial opportunities in the above regions. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979 to advise the President on matters relating to U.S. export trade. It was most recently renewed on September 30, 1993, by Executive Order 12689.

DATES: April 13, 1995, from 9:30 a.m.–3:00 p.m.

ADDRESSES: Main Commerce Building, Room 3407, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Vince Bonner, President's Export Council, Room 2015B, Washington, D.C. 20230. Seating is limited and will be on a first come, first serve basis.

FOR FURTHER INFORMATION CONTACT: Vince Bonner, President's Export Council, Room 2015B, Washington, D.C. 20230.

Dated: March 28, 1995.

Jane Siegel,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 95–8278 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

[I.D. 032495E]

Endangered Species; Permits

On December 23, 1994, notice was published (59 FR 66296) that an application had been filed by Boyd Kynard of the National Biological Survey, to take listed shortnose sturgeon as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-222).

Notice is hereby given that on March 29, 1995, as authorized by the provisions of the ESA, NMFS issued Permit Number 944 for the above taking, subject to certain conditions set forth therein.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which is the subject of this permit; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This permit was also issued in accordance with and is subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The application, permit, and supporting documentation are available for review by interested persons in the following offices, by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508–281–9250).

Dated: March 30, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–8251 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 032395A]

Marine Mammals and Endangered Species; Permits

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

ACTION: Receipt of application for a scientific research permit (P586).

SUMMARY: Notice is hereby given that Continental Shelf Associates, Inc. (principal investigator: Stephen Viada), has applied in due form for a permit to take the marine mammals and sea turtles listed below for the purpose of scientific research.

DATES: Written comments must be received on or before May 5, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250);

Director, Southeast Region, NMFS, 9721 Executive Center Drive, N., St. Petersburg, FL 33702–2432 (813/893–3141).

Written data or views, or requests for a public hearing on this request, should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR parts 217-227).

The applicant seeks authorization to take by harassment an unspecified number of Atlantic bottlenose dolphins, (*Tursiops truncatus*), common dolphins (*Delphinus delphis*), striped dolphin (*Stenella coeruleoalba*), Atlantic spotted dolphins (*Stenella frontalis*), harbor porpoise (*phocoena*), Risso's dolphins (*Grampus griseus*), Atlantic white-sided dolphins (*Lagenorhynchus acutus*), rough-toothed dolphins (*Steno bredanensis*), long-finned pilot whales (*Globicephala melaena*), short-finned pilot whales (*Globicephala macrorhynchus*), pygmy sperm whales (*Kogia breviceps*), dwarf sperm whales (*Kogia simus*), Cuvier's beaked whales (*Ziphius cavirostris*), dense-beaked

whales (*Mesoplodon densirostris*), Antillean beaked whales (*Mesoplodon europaeus*), true's beaked whales (*Mesoplodon mirus*), white whales (*Delphinapterus leucas*), sperm whales (*Physeter macrocephalus*), fin whales (*Balaenoptera physalus*), minke whales (*Balaenoptera acutorostrata*), blue whales (*Balaenoptera musculus*), sei whales (*Balaenoptera borealis*), humpback whales (*Megaptera novaeangliae*), Northern right whales (*Eubalaena glacialis*), killer whales (*Orcinus orca*), Bryde's whales (*Balaenoptera edeni*), and pygmy killer whales (*Feresa attenuata*). In addition, the applicant seeks authorization to take annually by harassment 180 leatherback sea turtles (*Dermochelys coriacea*) and 270 loggerhead sea turtles (*Caretta caretta*). Proposed taking will be by close approach (within 650 feet) of a fixed-wing aircraft at a speed of 80–140 mph to document the presence, density, and distribution of marine mammals. Surveys will be conducted from April 1995 through October 1996 in Norfolk, Virginia, and Mayport, Florida, and will encompass the continental shelf edge (300–600 feet depth contours). The results of the aerial survey will provide an adequate biological assessment of the two proposed survey areas with respect to habitat utilization by marine mammals and aid in selecting a candidate site for shock testing the SEAWOLF submarine.

Dated: March 30, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–8252 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 031795B]

Endangered Species; Permits

On February 13, 1995, an application was filed by the Idaho Department of Fish and Game (IDFG) for a modification to their scientific research and enhancement Permit 795 (P503A). Permit 795, issued on July 29, 1992, allows IDFG to carry out scientific research and enhancement activities, including a captive broodstock program, with endangered Snake River sockeye salmon (*Oncorhynchus nerka*) as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

To reduce risks, some aspects of the endangered Snake River sockeye salmon captive broodstock program have been divided between IDFG and NMFS's Northwest Fisheries Science Center (NWFSC). Eggs taken from the only female sockeye that returned to Redfish Lake in 1991 were transferred from Idaho to the University of Washington's Big Beef Creek Hatchery in Seattle, under the responsibility of NMFS, as authorized by Permit 795. These eggs were reared to maturity and spawned with the major complication being the incidence of Bacterial Kidney Disease (BKD). The degree of BKD infection was recorded based on the optical density (O.D.) of samples as determined by Enzyme-linked Immunosorbent Assay (ELISA).

The eggs with O.D.'s of less than 0.2 have been transferred back to Idaho for final rearing. Idaho will not accept eggs with higher BKD levels. The higher BKD level eggs are being held and hatched at Big Beef Creek Hatchery rather than culled. The capability to raise these fish to smolt size does not exist at Big Beef Creek Hatchery. The health and well-being of these listed fish is in jeopardy because they will have to be killed if they are not transferred to an adequate rearing facility. IDFG, in coordination with NWFSC, applied for a modification to Permit 795 to allow the transfer of these listed fish to the Oregon Department of Fish and Wildlife (ODFW) Mitchell Act funded rearing facility at Bonneville Hatchery for final rearing. ODFW will rear the fish at Bonneville Hatchery in accordance with the guidelines recommended by the Integrated Hatchery Oversight Team. ODFW employs these hatchery practices in their other fishery production programs. ODFW will be acting as an agent of IDFG under the terms and conditions of Permit 795 in the care and maintenance of these fish until a separate ESA Section 10 permit is issued to NWFSC authorizing the release of these fish, which is expected to occur in the spring of 1996. The release locations and other aspects of the release strategy will be determined by the results of a joint technical meeting on this issue, to be held later this year among the involved agencies and Tribes.

Notice is hereby given that on March 29, 1995, as authorized by the provisions of the ESA, NMFS issued an amendment of Modification 4 to Permit 795 for the above take, subject to certain conditions set forth therein.

Notice is hereby given that the Idaho Department of Fish and Game (IDFG) has applied in due form for Modification 6 to scientific research and enhancement Permit 795 (P503A) to take listed species as authorized by the ESA and the NMFS regulations governing listed fish and wildlife permits.

For Modification 6 to Permit 795, IDFG requests authorization to: (1) release broodyear (BY) 1994 juvenile sockeye progeny of listed adults directly into Redfish Lake or into net pens in Redfish Lake in July and directly into the lake in October, 1995; (2) release BY 1994 juvenile sockeye progeny of listed adults directly into Pettit Lake in June, 1995; and (3) modify a condition in the permit requiring that an auxiliary water supply must accompany any vehicle used to transport listed sockeye salmon to pertain to the transport of listed adults only. The releases of listed sockeye broodstock into Pettit Lake has previously been denied by NMFS since the lake is stocked annually with rainbow trout for recreational fishing, under the authority of Permit 908. NMFS is concerned about possible interactions between stocked rainbow trout and listed sockeye salmon in the lake, primarily diet overlap and predation. Permit 795 expires on July 31, 1997.

Written data or views, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, NMFS, NOAA, 525 North East Oregon St., Suite 500, Portland, OR 97232 (503-230-5400).

Dated: March 29, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–8254 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 032195A]

Marine Mammals

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

ACTION: Modification no. 2 to scientific research permit no. 789 (P135C).

SUMMARY: Notice is hereby given that a request for modification of scientific research permit no. 789 submitted by Dr. James H.W. Hain, NMFS, NOAA, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA, 02543–1026, has been granted.

ADDRESSES: The modified permit is available for review by interested persons in the following offices by appointment:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298, (508/281–9150); and

Director, Southeast Region, NMFS, 9721 Executive Center Drive, N., St. Petersburg, FL 33702–2432 (813/893–3141).

SUPPLEMENTARY INFORMATION: On January 20, 1995, notice was published in the **Federal Register** (60 FR 4148) that a modification of permit no. 789, issued August 24, 1992 (57 FR 39672), and modified January 14, 1993 (58 FR 6116), had been requested by the above-named individual. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the Regulations Governing the Taking, Importing, and Exporting of Endangered Species (50 CFR part 222).

The modification authorized the holder to take 5 blue whales (*Balaenoptera musculus*), 25 sei whales (*Balaenoptera borealis*), 25 killer whales (*Orcinus orca*), 25 Mesoplodont beaked whales (*Mesoplodon spp.*), 500 saddleback dolphins (*Delphinus delphis*), 250 Atlantic white-sided dolphins (*Lagenorhynchus albirostris*), 100 Risso's dolphins (*Grampus griseus*), 250 harbor porpoise (*Phocoena phocoena*), 1,000 harbor seals (*Phoca vitulina*), and 500 gray seals (*Halichoerus grypus*) annually for photo-identification and observational purposes.

Issuance of this modification, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 30, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–8253 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bahrain

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 21, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and Bahrain, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Bilateral Textile Agreement, effected by exchange of notes dated April 4, 1993 and June 9, 1993, between the Governments of the United States and Bahrain.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 21, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Bahrain and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated April 4, 1993 and June 9, 1993, between the Governments of the United States and Bahrain.

Category	Twelve-month restraint limit [1]
Group I	
237, 239, 330–336, 338, 339, 340–342, 345, 347, 348–354, 359, 431–436, 438–440, 442–448, 459, 630–636, 638, 639, 640–647, 648, 649, 650–654, 659, 831–836, 838, 839, 840, 842–847, 850–852, 858 and 859, as a group.	34,185,000 square meters equivalent.
Sublevels in Group I	
338/339	475,007 dozen.

Category	Twelve-month restraint limit [1]
340/640	227,900 dozen of which not more than 170,925 dozen shall be in Categories 340–Y/640–Y [2]

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8286 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Amendment and Establishment of Import Restraint Limits and Restraint Periods for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and establishing limits and restraint periods.

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Agreements Act, the current restraint period agreed upon by the Governments of the United States and the Federative Republic of Brazil is being amended and new limits are being established for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these new limits supersede those notified to the Uruguay Round Textiles Monitoring Body (TMB) contained in the Bilateral Textile Agreement, effected by exchange of notes dated May 4, 1994 and June 27, 1994, between the Governments of the United States and the Federative Republic of Brazil.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current restraint period and establish new limits for the period beginning on April 1, 1994 and extending through December 31, 1994 and the period beginning on January 1, 1995 and extending through December 31, 1995. The limits for Categories 218, 219, 225, 300/301, 338/339/638/639, 347/348, 350 and 369–D for the April 1, 1994 through December 31, 1994 period have been adjusted, variously, for swing, carryforward and carryover. The 1995 limits for Categories 219, 225 and 350 have been reduced for carryforward used during the April 1, 1994 through December 31, 1994 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 13308, published on March 21, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 16, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1994 and extends through March 31, 1995.

Effective on April 7, 1995, you are directed, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), to amend the restraint period to end on December 31, 1994 at the limits listed below. These limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated May 4, 1994 and June 27, 1994, between the Governments of the United States and the Federative Republic of Brazil.

Category	Nine-month restraint limit [1]
Aggregate Limit 200–239, 300–369, 400–469 and 600–670, as a group.	289,042,868 square meters equivalent.
Sublevels in the aggregate	
218	4,163,080 square meters.
219	13,351,805 square meters.
225	6,974,048 square meters.
300/301	5,646,093 kilograms.
313	28,985,329 square meters.
314	4,892,509 square meters.
315	14,677,526 square meters.
317/326	13,343,204 square meters.
334/335	95,749 dozen.
336	53,195 dozen.
338/339/638/639	1,120,275 dozen.
342/642	281,930 dozen.
347/348	809,089 dozen.
350	113,722 dozen.
361	723,445 numbers.
363	15,440,057 numbers.
369–D [2]	403,475 kilograms.
410/624	7,116,377 square meters of which not more than 1,930,456 square meters shall be in Category 410.
433	13,400 dozen.

Category	Nine-month restraint limit [1]
445/446	52,496 dozen.
604	337,800 kilograms of which not more than 258,176 kilograms shall be in Category 604–A [3].
607	3,136,720 kilograms.
647/648	319,167 dozen.
669–P [4]	1,149,503 kilograms.

[1] The limits have not been adjusted to account for any goods exported after March 31, 1993.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 604–A: only HTS number 5509.32.0000.

[4] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 7, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Brazil and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated May 4, 1994 and June 27, 1994, between the Governments of the United States and the Federative Republic of Brazil.

Category	Twelve-month restraint limit [1]
Aggregate Limit	
200–239, 300–369, 400–469 and 600–670, as a group.	406,380,457 square meters equivalent.
Sublevels in the aggregate	
218	5,002,642 square meters.
219	17,457,739 square meters.
225	8,381,013 square meters.
300/301	6,784,733 kilograms.
313	42,013,307 square meters.
314	6,878,634 square meters.
315	20,635,901 square meters.
317/326	18,759,908 square meters.
334/335	134,618 dozen.
336	74,789 dozen.
338/339/638/639	1,346,200 dozen.
342/642	396,380 dozen.
347/348	972,256 dozen.
350	144,400 dozen.
361	1,017,129 numbers.
363	21,707,981 numbers.
369–D [2]	484,843 kilograms.
410/624	10,005,285 square meters of which not more than 2,597,354 square meters shall be in Category 410.
433	18,030 dozen.
445/446	70,632 dozen.
604	474,931 kilograms of which not more than 362,984 kilograms shall be in Category 604–A [3].
607	4,410,078 kilograms.
647/648	448,734 dozen.
669–P [4]	1,616,145 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 604–A: only HTS number 5509.32.0000.

[4] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

Imports charged to these category limits for the period April 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the 1995 levels set forth in this directive.

The conversion factor for Categories 338/339/638/639 is 10 square meters per dozen.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8290 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Limit for Certain Cotton and Wool Textile Products Produced or Manufactured in Colombia

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 21, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated November 18, 1994 between the Governments of the United States and the Republic of Colombia establishes limits for textile products in Categories 315 and 443 for the period beginning on January 1, 1995 and extending through December 31, 1995.

These limits will be subject to revision pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) on the date that Colombia becomes a member of the World Trade Organization.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to a Memorandum of Understanding (MOU) dated November 18, 1994 between the Governments of the United States and the Republic of Colombia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 21,

1995, entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in the following categories, produced or manufactured in Colombia and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following levels:

Category	Twelve-month limit [1]
315	18,460,748 square meters.
443	122,412 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

Imports charged to the category limits for the period January 1, 1994 through December 31, 1994, shall be charged against that levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Should Colombia become a member of the World Trade Organization (WTO), the limits set forth above will be subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreement on Textiles and Clothing and any administrative arrangement notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8281 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs revising limits pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and Costa Rica, as notified to the Uruguay Round Textiles Monitoring Body (TMB) are being amended to establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995. Since Costa Rica is now a member of the World Trade Organization (WTO), the limits published in the **Federal Register** on December 6, 1994 (60 FR 62715) are being amended. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Memorandum of Understanding (MOU) dated December 23, 1993 between the Governments of the United States and Costa Rica. The guaranteed access levels remain unchanged.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 62715, published on December 6, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on April 7, 1995, you are directed, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), to increase the levels for the following categories. These limits supersede those contained in the Memorandum of Understanding dated December 23, 1993 between the Governments of the United States and Costa Rica.

Category	Twelve-month limit [1]
340/640	827,190 dozen.
342/642	305,362 dozen.
347/348	1,393,997 dozen.
443	206,570 numbers.
447	11,138 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The guaranteed access levels remain unchanged.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangement notified to the Textiles Monitoring Body.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8289 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Amendment and Establishment of Import Restraint Limits and Restraint Periods for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Czech Republic

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and establishing limits and restraint periods.

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the current restraint period agreed upon by the Governments of the United States and the Czech Republic is being amended and new limits are being established for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these limits supersede those notified to the Uruguay Round Textiles Monitoring Body (TMB) contained in the Bilateral Textile Agreement, effected by exchange of notes dated August 12, 1993 and April 11, 1994, between the Governments of the United States and the Czech Republic.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current restraint period and establish new limits for the period beginning on June 1, 1994 and extending through December 31, 1994 and the period beginning on January 1, 1995 and extending through December 31, 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 30346, published on June 13, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 7, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in the Czech Republic and exported during the twelve-month period which began on June 1, 1994 and extends through May 31, 1995.

Effective on April 7, 1995, you are directed, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), to amend the current restraint period to end on December 31, 1994 at the following limits. These limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated August 12, 1993 and April 11, 1994, between the Governments of the United States and the Czech Republic.

Category	Seven-month restraint limit [1]
410	883,750 square meters.
433	3,471 dozen.
435	2,284 dozen.
443	42,311 numbers.
624	927,500 square meters.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1994.

Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 7, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in the Czech Republic and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated August 12, 1993 and April 11, 1994, between the Governments of the United States and the Czech Republic.

Category	Twelve-month restraint limit [1]
410	1,527,609 square meters.
433	6,000 dozen.
435	3,948 dozen.
443	73,137 numbers.
624	1,668,938 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

Imports charged to these category limits for the period June 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8291 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and the Dominican Republic, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Memorandum of Understanding (MOU) dated November 15, 1994, between the Governments of the United States and the Dominican Republic.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits and guaranteed access levels for 1995. The limit for Category 448 has been reduced for carryforward used during 1994.

A description of the textile and apparel categories in terms of HTS

numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 6594, published on March 4, 1987; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 14, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Dominican Republic and exported during the period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Memorandum of Understanding (MOU) dated November 15, 1994, between the Governments of the United States and the Dominican Republic.

Category	Restraint limit
338/638	686,208 dozen.
339/639	816,588 dozen.
340/640	706,414 dozen.
342/642	497,120 dozen.
347/348/647/648	1,691,018 dozen of which not more than 893,366 shall be in Categories 647/648.
351/651	846,870 dozen.
433	20,875 dozen.
442	70,875 dozen.
443	129,666 numbers.
444	70,875 numbers.
448	32,185 dozen.
633	103,652 dozen.

Imports charged to these category limits for the periods January 1, 1994 through December 31, 1994 and December 1, 1994 through December 31, 1994 (Categories 442 and 444) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Additionally, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), effective on April 14, 1995, guaranteed access levels are being established for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States in cotton, wool and man-made fiber textile products in the following categories for the period January 1, 1995 through December 31, 1995:

Category	Guaranteed access level
338/638	1,150,000 dozen.
339/639	1,150,000 dozen.
340/640	1,000,000 dozen.
342/642	1,000,000 dozen.
347/348/647/648	8,050,000 dozen.
351/651	1,000,000 dozen.
433	21,000 dozen.
442	65,000 dozen.
443	50,000 numbers.
444	30,000 numbers.
448	40,000 dozen.
633	60,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of February 25, 1987, as amended, shall be denied entry unless the Government of the Dominican Republic authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8296 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 20, 1995.

FOR FURTHER INFORMATION CONTACT:

Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and Hong Kong, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Bilateral Textile Agreement of August 4, 1986, as amended and extended, and Memoranda of Understanding (MOUs), dated July 29, 1992, August 18, 1992 and November 23, 1992, between the Governments of the United States and Hong Kong.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the

implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 20, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Hong Kong and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Textile Agreement of August 4, 1986, as amended and extended, and Memoranda of Understanding (MOUs) dated July 29, 1992, August 18, 1992 and November 23, 1992, between the Governments of the United States and Hong Kong.

Category	Twelve-month restraint limit[1]
Group I:	
200–229, 300–326, 360–369, 400–414, 464–469, 600–629 and 665–670, as a group.	220,381,584 square meters equivalent.
Sublevels in Group I:	
219	35,321,104 square meters.
218/225/317/326	64,700,379 square meters.
611	5,568,848 square meters.
617	3,513,522 square meters.
Group I Subgroup:	
200, 226/313, 314, 315, 369(1) and 604, as a group	98,987,150 square meters equivalent.
Within Group I Subgroup:	
200	304,525 kilograms.
226/313	63,358,475 square meters.
314	17,087,020 square meters.
315	8,447,881 square meters.
369(1)[2] (shoptowels)	694,245 kilograms.
604	209,036 kilograms.
Group II:	
237, 239, 330–359, 431–459, 630–659, 843 and 844, as a group	802,205,145 square meters equivalent.
Sublevels in Group II:	
237	1,021,391 dozen.
239	4,682,189 kilograms.
331	3,847,971 dozen pairs.
333/334	267,671 dozen.
335	316,221 dozen.
338/339[3] (shirts and blouses other than tank tops and tops, knit)	2,687,784 dozen.
338/339(1)[4] (tank tops and knit tops)	2,019,346 dozen.
340	2,573,837 dozen.
345	407,169 dozen.
347/348	6,152,226 dozen of which not more than 6,152,226 dozen shall be in Categories 347–W/348–W[5]; not more than 4,662,390 dozen shall be in Category 348–W; not more than 3,027,891 dozen shall be in Category 347 (other than W); not more than 4,662,390 dozen shall be in Category 348 (other than W).
352	6,007,683 dozen.
359(1)[6] (coveralls, overalls and jumpsuits)	537,469 kilograms.
359(2)[7] (outer vests)	1,120,195 kilograms.
433	9,287 dozen.
434	9,970 dozen.
435	70,758 dozen.
436	92,157 dozen.
438	756,881 dozen.
442	82,379 dozen.
443	58,146 numbers.
444	37,301 numbers.
445/446	1,251,023 dozen.
447/448	62,914 dozen.
631	566,886 dozen pairs.
633/634/635	1,200,639 dozen of which not more than 449,065 dozen shall be in Categories 633/634 and not more than 921,956 dozen shall be in Category 635.
638/639	4,512,233 dozen.
641	779,695 dozen.
644	38,450 numbers.
645/646	1,297,341 dozen.
647	471,574 dozen.
648	997,558 dozen of which not more than 997,558 dozen shall be in Category 648–W[8].

Category	Twelve-month restraint limit[1]
649	726,035 dozen.
650	150,141 dozen.
652	4,325,207 dozen.
659(1)[9] (coveralls, overalls and jumpsuits)	594,043 kilograms.
659(2)[10] (swimsuits)	239,756 kilograms.
Group II Subgroup:	
336, 341, 342, 350, 351, 636, 640, 642 and 651, as a group	147,327,497 square meters equivalent.
Within Group II Subgroup:	
336	197,271 dozen.
341	2,605,315 dozen.
342	497,713 dozen
350	122,956 dozen.
351	1,100,368 dozen.
636	265,493 dozen.
640	836,995 dozen.
642	211,130 dozen.
651	287,523 dozen.
Group III:	
831–842 and 847–859, as a group	44,619,970 square meters equivalent.
Sublevels in Group III:	
834	10,805 dozen.
835	103,325 dozen.
836	144,383 dozen.
840	613,759 dozen.
842	231,750 dozen.
847	329,610 dozen.
Limits not in a group:	
845(1)[11] (sweaters made in Hong Kong)	1,103,156 dozen.
845(2)[12] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	2,640,536 dozen.
846(1)[13] (sweaters made in Hong Kong	178,391 dozen.
846(2)[14] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	429,854 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.
[2] Category 369(1): only HTS number 6307.10.2005.
[3] Categories 338/339: all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.
[4] Categories 338/339(1): only HTS numbers 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.
[5] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.
[6] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.
[7] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.
[8] Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.
[9] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.
[10] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.
[11] Category 845(1): only HTS numbers 6103.29.2074, 6104.29.2079, 6110.90.9024, 6110.90.9042 and 6117.90.9015.
[12] Category 845(2): only HTS numbers 6103.29.2070, 6104.29.2077, 6110.90.9022 and 6110.90.9040.
[13] Category 846(1): only HTS numbers 6103.29.2068, 6104.29.2075, 6110.90.9020 and 6110.90.9038.
[14] Category 846(2): only HTS numbers 6103.29.2066, 6104.29.2073, 6110.90.9018 and 6110.90.9036.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

The conversion factors for merged Categories 333/334, 633/634/635 and 638/639 are 33, 33.90 and 13, respectively.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8295 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–M

Establishing and Amending Import Restraint Limits and Amending a Restraint Period for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing directives to the Commissioner of Customs establishing and amending limits and amending a restraint period.

EFFECTIVE DATE: April 12, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and Indonesia, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended to establish limits for the period January 1, 1995 through December 31, 1995. Pursuant to the ATC, these limits supersede those notified to the TMB contained in the Memoranda of Understanding (MOUs) dated September 23, 1994 and February 24, 1995 between the Governments of the United States and Indonesia.

In the letters published below, the Chairman of CITA directs the Commissioner of Customs to amend the current restraint period for Category 435 and establish new limits for the period beginning on July 1, 1994 and extending through December 31, 1994 and the period beginning on January 1, 1995 and extending through December 31, 1995.

A directive to reduce the limits for certain categories for carryforward used during 1994 will be published in the **Federal Register** at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 55834, published on November 9, 1994; and 60 FR 5655, published on January 30, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on April 12, 1995, you are directed to no longer count imports of textile products in Categories 600, 669–P [1] and 670–L [2], produced or manufactured in Indonesia and exported during the period January 1, 1995 through December 31, 1995 (see directive dated December 13, 1994).

Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 12, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Indonesia and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Memoranda of Understanding dated September 23, 1994 and February 24, 1995 between the Governments of the United States and Indonesia.

Category	Twelve-month restraint limit [a]
Levels in Group I	
200	675,564 kilograms.
219	7,504,437 square meters.
225	5,255,052 square meters.
300/301	3,211,421 kilograms.
313	13,616,722 square meters.
314	47,546,185 square meters.
315	21,604,102 square meters.
317/617/326	20,866,447 square meters of which not more than 3,083,244 square meters shall be in Category 326.
331/631	1,916,182 dozen pairs.
334/335	175,593 dozen.
336/636	490,473 dozen.
338/339	948,245 dozen.
340/640	1,167,789 dozen.
341	702,369 dozen.
342/642	291,947 dozen.
345	339,589 dozen.
347/348	1,284,568 dozen.
350/650	134,881 dozen.
351/651	379,532 dozen.
359–C/659–C [b]	1,109,400 kilograms.
359–S/659–S [c]	1,167,789 kilograms.
360	1,039,328 numbers.
361	1,039,328 numbers.
369–S [d]	716,840 kilograms.
433	11,073 dozen.
443	82,146 numbers.
445/446	55,045 dozen.
447	16,429 dozen.
448	20,232 dozen.
604–A [e]	557,538 kilograms.
611	4,951,774 square meters.
613/614/615	19,794,028 square meters.
618	4,671,157 square meters.
619/620	7,240,294 square meters.
625/626/627/628/629.	22,154,954 square meters.
634/635	233,558 dozen.
638/639	1,214,502 dozen.
641	1,780,531 dozen.
643	259,833 numbers.
644	363,765 numbers.
645/646	614,574 dozen.
647/648	2,546,091 dozen.
847	321,692 dozen.
Group II	
201, 218, 220, 222-224, 226, 227, 229, 237, 239, 330, 332, 333, 349, 352–354, 359–O [f], 362, 363, 369–O [g], 400, 410, 414, 431, 432, 434, 435, 436, 438, 439, 440, 442, 444, 459, 464, 465, 469, 603, 604–O [h], 606, 607, 621, 622, 624, 630, 632, 633, 649, 652–654, 659–O [i], 665, 666, 669–O [j], 670–O [k], 831–836, 838, 839, 840, 842–846, 850–852, 858 and 859, as a group.	71,373,272 square meters equivalent.

[1] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[2] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

Category	Twelve-month restraint limit [a]
Subgroup in Group II	
400, 410, 414, 431, 432, 434, 435, 436, 438, 439, 440, 442, 444, 459, 464, 465 and 469, as a group.	2,900,000 square meters equivalent.
In Group II subgroup	
435	45,522 dozen.

[a] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[b] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[c] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[d] Category 369–S: only HTS number 6307.10.2005.

[e] Category 604–A: only HTS number 5509.32.0000.

[f] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S).

[g] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[h] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A)

[i] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[j] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[k] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

Imports charged to these category limits for the period July 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the six-month period beginning on July 1, 1994 and extending through December 31, 1994. This directive also amends the directive issued to you on January 13, 1995 concerning textile products in Category 435, produced or manufactured in Indonesia and exported during the period December 29, 1994 through March 28, 1995.

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, you are directed, effective on April 12, 1995, to remove Categories 433, 447 and 448 from coverage in Group II and the Group II subgroup. These categories will no longer be subject to a group limit. The import charges already made to Categories 433, 447 and 448 shall be retained. The limits established in the November 3, 1994 directive for Categories 433 and 447 for the period July 1, 1994 through December 31, 1994 shall remain the same.

Also, you are directed to amend the restraint period for Category 435 to begin on July 1, 1994 and extend through December 31, 1994. Category 435 shall remain subject to the levels for Group II and the Subgroup in Group II. You are directed to amend and establish limits for the July 1, 1994 through December 31, 1994 period as follows. These limits supersede those contained in the Memorandum of Understanding dated February 24, 1995, between the Governments of the United States and Indonesia.

Category	Six-month limit [a]
Levels in Group I	
448	10,000 dozen.
Subgroup in Group II	
400, 410, 414, 431, 432, 434, 435, 436, 438, 439, 440, 442, 444, 459, 464, 465 and 469, as a group.	1,433,373 square meters equivalent.
In Group II subgroup	
435	22,500 dozen.

[a] The limits have not been adjusted to account for any imports exported after June 30, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8287 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Amendment and Elimination of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Jamaica

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and eliminating limits pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round

Agreements Act, the limits agreed upon by the Governments of the United States and Jamaica, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended to establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995. Since Jamaica is now a member of the World Trade Organization (WTO), the limits published in the **Federal Register** on December 6, 1994 (60 FR 62717) are being amended. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Bilateral Cotton, Wool, Man-Made Fiber Textile Agreement of August 27, 1986, as amended and extended, and the Memorandum of Understanding (MOU) dated November 8, 1983 between the Governments of the United States and Jamaica.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 62717, published on December 6, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber and other vegetable fiber textiles and textile products, produced or manufactured in Jamaica and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on April 10, 1995, you are directed, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), to increase the limits for the categories listed below. Also, you are directed to eliminate the limits and import charges for Categories 336/636, 342/642 and 447. These limits supersede those contained in the Bilateral Cotton, Wool, Man-Made Fiber Textile Agreement of August 27, 1986, as amended and extended, and the Memorandum of Understanding (MOU) dated November 8, 1983 between the Governments of the United States and Jamaica.

Category	Twelve-month restraint limit [1]
331/631	537,500 dozen pairs.
338/339/638/639	1,059,810 dozen.
340/640	495,594 dozen of which not more than 419,350 dozen shall be in shirts made from fabrics with two or more colors in the warp and/or the filling in Categories 340–Y/640–Y [2].
341/641	622,315 dozen.
345/845	153,558 dozen.
347/348/647/648	1,143,932 dozen.
352/652	1,709,250 dozen.
445/446	51,020 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The limits set forth above are subject to adjustment in the future according to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

The guaranteed access levels remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8288 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Kenya

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and the Republic of Kenya, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Bilateral Textile Agreement, effected by exchange of notes dated August 23, 1994 and October 25, 1994, between the Governments of the United States and the Republic of Kenya.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 14, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Kenya and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede

those contained in the Bilateral Textile Agreement, effected by exchange of notes dated August 23, 1994 and October 25, 1994, between the Governments of the United States and the Republic of Kenya.

Category	Twelve-month restraint limit [1]
340/640	387,000 dozen.
360	2,795,000 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8299 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6707. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and the Republic of Korea, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended to establish import restraint limits for the period beginning on January 1, 1995 and extending throughout December 31, 1995. Pursuant to the ATC, these limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated November 21 and December 4, 1986, as amended and extended, between the Governments of the United States and the Republic of Korea.

A directive to reduce the limits for certain categories for carryforward used during 1994 will be published in the **Federal Register** at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531 published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 14, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated November 21 and December 4, 1986, as amended and extended, between the Governments of the United States and the Republic of Korea.

Category	Twelve-month restraint limit [1]
Group I:	
200–223, 224–V [2], 224–O [3], 225–229, 300–326, 360–363, 369–O [4], 400–414, 464–469, 600–629, 665–669, and 670–O [5], as a group.	400,928,648 square meters equivalent.
Sublevels with in Group I:	
200	420,254 kilograms.
201	1,755,449 kilograms.
218	8,518,676 square meters.
219	7,756,843 square meters.
224–V	9,778,688 square meters.
300/301	2,857,574 kilograms.
313	46,568,763 square meters.
314	25,964,699 square meters.
315	17,277,301 square meters.
317/326	17,306,163 square meters.
363	997,309 numbers.

Category	Twelve-month restraint limit [1]
410	3,421,192 square meters.
604	347,912 kilograms.
607	1,022,242 kilograms.
611	3,407,471 square meters.
613/614	5,679,117 square meters.
617	4,709,512 square meters.
619/620	91,056,389 square meters.
624	8,310,904 square meters.
625/626/627/628/629	14,538,540 square meters.
669–P [6]	2,091,164 kilograms.
Group II:	
237, 239, 330–359, 431–459 and 630–659, as a group	572,231,408 square meters equivalent.
Sublevels within Group II:	
237	56,513 dozen.
239	943,861 kilograms.
333/334/335	255,561 dozen of which not more than 130,620 dozen shall be in Category 335.
336	54,007 dozen.
338/339	1,135,824 dozen.
340	590,629 dozen of which not more than 306,673 dozen shall be in Category 340–D [7].
341	172,774 dozen.
342/642	205,408 dozen.
345	110,343 dozen.
347/348	420,254 dozen.
350	15,707 dozen.
351/651	215,786 dozen.
352	167,919 dozen.
353/354/653/654	255,464 dozen.
359–H [8]	2,419,045 kilograms.
433	13,676 dozen.
434	7,014 dozen.
435	33,934 dozen.
436	14,365 dozen.
438	57,594 dozen.
440	194,953 dozen.
442	48,546 dozen.
443	322,056 numbers.
444	52,900 numbers.
445/446	51,304 dozen.
447	87,529 dozen.
448	34,152 dozen.
459–W [9]	92,383 kilograms.
631	283,530 dozen pairs.
632	1,501,973 dozen pairs.
633/634/635	1,343,372 dozen of which not more than 152,336 dozen shall be in Category 633 and not more than 567,707 dozen shall be in Category 635.
636	256,716 dozen.
638/639	5,230,216 dozen.
640–D [10]	3,078,202 dozen.
640–O [11]	2,565,168 dozen
641	1,030,164 dozen of which not more than 38,912 dozen shall be in Category 641–Y [12].
643	763,195 numbers.
644	1,148,195 numbers.
645/646	3,526,045 dozen.
647/648	1,279,175 dozen.
650	22,986 dozen.
659–H [13]	1,267,397 kilograms.
659–S [14]	169,042 kilograms.
Group III:	
831–844 and 847–859, as a group	18,160,219 square meters equivalent.
Sublevel within Group III:	
835	28,262 dozen.
Group IV:	
845	2,315,056 dozen.
846	815,708 dozen.
Group VI:	
369–L/670–L/870 [15]	66,639,071 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.
[2] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.
[3] Category 224–O: all remaining HTS numbers in Category 224.

[4] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369–L); and 5601.21.0090.
[5] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).
[6] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.
[7] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.
[8] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.
[9] Category 459–W: only HTS number 6505.90.4090.
[10] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.
[11] Category 640–O: all HTS numbers except 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030 (Category 640–D).
[12] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.
[13] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.
[14] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6111.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.
[15] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified by the Textiles Monitoring Body.

The conversion factors for the following merged categories are listed below:

Category	Conversion factor (square meters equivalent/category unit)
333/334/335	33.75
369–L/670–L/870	3.8
633/634/635	34.1
638/639	12.96

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8294 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Kuwait

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and the State of Kuwait, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended to establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995. The limit for Category 361 is zero. Pursuant to the ATC, these limits supersede those notified to the TMB contained in the Memorandum of Understanding (MOU) dated May 10, 1994 between the Governments of the United States and the State of Kuwait.

A directive to reduce the limits for certain categories for carryforward used during 1994 will be published in the **Federal Register** at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 10, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Kuwait and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Memorandum of Understanding dated May 10, 1994 between the Governments of the United States and the State of Kuwait.

Category	Twelve-month restraint limit [1]
340/640	215,000 dozen.
341/641	118,250 dozen.
361	—0—

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

Imports charged to these category limits for the period June 1, 1994 through December 31, 1994 shall be charged to those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8283 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6709. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and Macau, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended to establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these limits supersede those notified to the TMB and contained in the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated March 29, 1994 and May 21, 1994, between the Governments of the United States and Macau.

A directive to reduce the limits for certain categories for carryforward used during 1994 will be published in the **Federal Register** at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on April 10, 1995, you are directed to no longer count imports of textile products in Categories 237, 331/831, 631, 652/852, 670 and 845/846, produced or manufactured in Macau and exported during the period January 1, 1995 through December 31, 1995 (see directive dated December 12, 1994).

Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 10, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Macau and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated December 28, 1993 and January 9, 1984, as amended and extended, between the Governments of the United States and Macau.

Category	Twelve-month restraint limit [1]
Levels in Group I	
219	2,520,000 square meters.
225	8,820,000 square meters.
313	6,300,000 square meters.
314	1,050,000 square meters.
315	3,150,000 square meters.
317	6,300,000 square meters.
326	2,520,000 square meters.
333/334/335/833/834/835.	227,432 dozen of which not more than 119,802 dozen shall be in Categories 333/335/833/835.
336/836	53,906 dozen.
338	292,781 dozen.
339	1,226,359 dozen.
340	277,118 dozen.
341	178,735 dozen.
342	80,859 dozen.
345	49,443 dozen.
347/348/847	693,007 dozen.
350/850	53,906 dozen.
351/851	64,688 dozen.
359–C/659–C [2]	323,438 kilograms.
359–V [3]	107,813 kilograms.
611	2,520,000 square meters.
625/626/627/628/629.	6,300,000 square meters.
633/634/635	481,605 dozen.
638/639/838	1,499,730 dozen.
640	106,632 dozen.
641/840	183,273 dozen.
642/842	106,776 dozen.
645/646	249,956 dozen.
647/648	504,237 dozen.
659–S [4]	107,813 kilograms.
Group II	
400–469, as a group	1,466,122 square meters equivalent.
Sublevel in Group II	
445/446	79,041 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

The conversion factor (square meters equivalent/category unit) for Categories 445/446 is 12.4.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8285 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 28, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6712. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and Malaysia, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended to establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these limits supersede those notified to the TMB contained in the Memorandum of Understanding (MOU) dated November 3, 1994 between the Governments of the United States and Malaysia.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 28, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Memorandum of Understanding (MOU) dated November 3, 1994 between the Governments of the United States and Malaysia.

Category	Twelve-month restraint limit [1]
Fabric Group	
218, 219, 220, 225–227, 313–315, 317, 326, 611, 613/614/615/617, 619 and 620, as a group.	99,498,880 square meters.
Sublevels within the group	
218	5,708,757 square meters.
219	27,655,755 square meters.
220	27,655,755 square meters.
225	27,655,755 square meters.
226	27,655,755 square meters.
227	27,655,755 square meters.
313	32,983,928 square meters.
314	39,682,160 square meters.
315	27,655,755 square meters.
317	27,655,755 square meters.
326	5,348,000 square meters.
611	3,208,800 square meters.
613/614/615/617	31,745,728 square meters.
619	4,278,400 square meters.
620	5,348,000 square meters.
Other Specific Limits	
200	240,736 kilograms.
237	323,908 dozen.
300/301	2,553,268 kilograms.
331/631	1,753,036 dozen pairs.
333/334/335/835	201,037 dozen of which not more than 120,622 dozen shall be in Category 333 and not more than 120,622 dozen shall be in Category 835.
336/636	390,315 dozen.
338/339	967,685 dozen.
340/640	1,127,165 dozen.
341/641	1,460,848 dozen of which not more than 521,158 dozen shall be in Category 341.
342/642/842	349,905 dozen.
345	134,176 dozen.
347/348	410,107 dozen.
350/650	126,189 dozen.
351/651	217,118 dozen.
363	3,401,328 numbers.
435	14,871 dozen.
438–W [2]	12,170 dozen.
442	18,123 dozen.
445/446	28,767 dozen.
604	1,119,551 kilograms.
634/635	681,820 dozen.
638/639	401,644 dozen.
645/646	307,202 dozen.

Category	Twelve-month restraint limit [1]
647/648	1,445,654 dozen of which not more than 1,011,957 dozen shall be in Category 647–K [3] and not more than 1,011,957 dozen shall be in Category 648–K [4].
Group II 201, 222–224, 229, 239, 330, 332, 349, 352–354, 359–362, 369, 400–434, 436, 438–O [5], 439, 440, 443, 444, 447, 448, 459, 464–469, 600–603, 606, 607, 618, 621, 622, 624–630, 632, 633, 643, 644, 649, 652–654, 659, 665–670, 831–834, 836, 838, 839, 840 and 843–859, as a group.	38,884,834 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 438–W: only HTS numbers 6104.21.0060, 6104.23.0020, 6104.29.2051, 6106.20.1010, 6106.20.1020, 6106.90.1010, 6106.90.1020, 6106.90.2520, 6106.90.3020, 6109.90.1540, 6109.90.8020, 6110.10.2080, 6110.30.1560, 6110.90.9074 and 6114.10.0040.

[3] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20.1060 and 6113.00.9044.

[4] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2010, 6104.63.2025, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

[5] Category 438–O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.8020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.9072, 6114.10.0020 and 6117.90.9025.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8293 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 28, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and Mauritius, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated October 2 and 5, 1981, as amended and extended, between the Governments of the United States and Mauritius.

A directive to reduce the limits for certain categories for carryforward used during 1994 will be published in the **Federal Register** at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 28, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Mauritius and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following lilmits. These limits supersede those contained in the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated October 2 and 5, 1981, as amended and extended, between the Governments of the United States and Mauritius.

Category	Twelve-month restraint limit [1]
Knit group 345, 438, 445, 446, 645 and 646, as a group.	143,604 dozen.
Levels not in a group	
237	185,185 dozen.
335/835	73,612 dozen.
336	86,624 dozen.
338/339	346,790 dozen.
340/640	564,375 dozen of which not more than 343,549 dozen shall be in Categories 340–Y/640–Y [2].
341/641	390,955 dozen.
347/348	729,977 dozen.
351/651	171,681 dozen.

Category	Twelve-month restraint limit [1]
352/652	1,455,855 dozen of which not more than 1,237,478 dozen shall be in Category 352.
442	11,510 dozen.
604–A [3]	343,201 kilograms.
638/639	398,809 dozen.
647/648/847	537,769 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[3] Category 604–A: only HTS number 5509.32.0000.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8298 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6713. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and the Philippines, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended and extended, between the Governments of the United States and the Philippines.

A directive to reduce the limits for certain categories for carryforward used during 1994 will be published in the **Federal Register** at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on April 6, 1995, you are directed to no longer count imports of textile products in Categories 669–P [1] and 670–L [2], produced or manufactured in the Philippines and exported during the period beginning on January 1, 1995 and extending through December 31, 1995 (see directive dated December 13, 1994).

Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 6, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those limits contained in the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended and extended, between the Governments of the United States and the Philippines.

Category	Twelve-month restraint limit [a]
Levels in Group I	
237	1,430,328 dozen.
239	8,630,179 kilograms.
331/631	4,631,855 dozen pairs.
333/334	224,063 dozen of which not more than 32,166 dozen shall be in Category 333.
335	145,842 dozen.
336	530,733 dozen.
338/339	1,903,813 dozen.
340/640	845,404 dozen.
341/641	762,870 dozen.
342/642	459,058 dozen.
345	136,706 dozen.
347/348	1,608,284 dozen.
350	121,022 dozen.
351/651	500,693 dozen.
352/652	1,966,353 dozen.
359–C/659–C [b]	680,266 kilograms.
361	1,528,693 numbers.
369–S [c]	346,516 kilograms.
431	164,313 dozen pairs.
433	3,235 dozen.
443	39,122 numbers.
445/446	26,721 dozen.
447	7,430 dozen.
611	4,587,729 square meters.
633	29,579 dozen.
634	366,999 dozen.
635	322,346 dozen.
636	1,383,123 dozen.
638/639	1,955,735 dozen.
643	706,523 numbers.
645/646	628,616 dozen.
647/648	970,423 dozen.

[1] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[2] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

Category	Twelve-month restraint limit [a]
649	6,343,947 dozen.
650	86,619 dozen.
659–H [d]	1,139,676 kilograms.
847	755,926 dozen.
Group II	
200–229, 300–326, 330, 332, 349, 353, 354, 359–O [e], 360, 362, 363, 369–O [f], 400–414, 432, 434–442, 444, 448, 459, 464–469, 600–607, 613–629, 630, 632, 644, 653, 654, 659–O [g], 665, 666, 669–O [h], 670–O [i], 831–846 and 850–859, as a group.	127,763,555 square meters equivalent.
Sublevel in Group II	
604	1,620,705 kilograms.

[a] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[b] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[c] Category 369–S: only HTS number 6307.10.2005.

[d] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[e] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C).

[f] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[g] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H).

[h] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[i] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8279 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6716. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and the Republic of Singapore, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated May 31 and June 5, 1986, as amended and extended, between the Governments of the United States and the Republic of Singapore.

A directive to reduce the limits for certain categories for carryforward used during 1994 will be published in the **Federal Register** at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on April 10, 1995, you are directed to no longer count imports of textile products in Categories 200–220, 223–229, 300/301, 313–330, 332, 333/633, 336, 345, 349, 350, 351/651, 352/652, 353/354/653/654, 359–369, 400–434, 436, 438, 439, 440–444, 445/446, 447, 448, 459–469, 600–603, 606, 607, 611–630, 632, 636, 643, 644, 649, 650, 659–S [1], 659–V [2], 659–O [3] and 665–670, produced or manufactured in Singapore and exported during the period beginning on January 1, 1995 and extending through December 31, 1995 (see directive dated November 29, 1994).

Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of

[1] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[2] Category 659–V: only HTS numbers 6110.30.1030, 6110.30.1040, 6110.30.2030, 6110.30.2040, 6110.30.3030, 6110.30.3035, 6110.90.9052, 6110.90.9054, 6201.93.2020, 6202.93.2020, 6211.33.0054 and 6211.43.0076.

[3] Category 659–O: all HTS numbers except 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6110.30.1030, 6110.30.1040, 6110.30.2030, 6110.30.2040, 6110.30.3030, 6110.30.3035, 6110.90.9052, 6110.90.9054, 6201.93.2020, 6202.93.2020, 6211.33.0054 and 6211.43.0076 (Category 659–V).

March 3, 1972, as amended, you are directed to prohibit, effective on April 10, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Singapore and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated May 31 and June 5, 1986, as amended and extended, between the Governments of the United States and the Republic of Singapore.

Category	Twelve-month restraint limit [a]
222	405,104 kilograms.
237	241,890 dozen.
239	466,257 kilograms.
331	429,621 dozen pairs.
334	67,047 dozen.
335	201,679 dozen.
338/339	1,154,742 dozen of which not more than 674,842 dozen shall be in Category 338 and not more than 750,340 dozen shall be in Category 339.
340	808,149 dozen.
341	203,210 dozen.
342	125,051 dozen.
347/348	943,814 dozen of which not more than 589,884 dozen shall be in Category 347 and not more than 458,799 dozen shall be in Category 348.
435	6,658 dozen.
604	844,322 kilograms.
631	468,945 dozen pairs.
634	255,974 dozen.
635	261,948 dozen.
638	940,151 dozen.
639	3,299,258 dozen.
640	172,290 dozen.
641	281,023 dozen.
642	266,382 dozen.
645/646	144,194 dozen.
647	542,852 dozen.
648	1,494,911 dozen.

[a] The limits have not been adjusted to account for any imports exported after December 31, 1994.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8284 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Amendment and Establishment of Import Restraint Limits and Restraint Periods for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and establishing limits and restraint periods.

EFFECTIVE DATE: April 21, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the current restraint period agreed upon by the Governments of the United States and the Slovak Republic is being amended and new limits are being established for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Bilateral Textile Agreement, effected by exchange of notes dated August 6, 1993 and October 6, 1993, between the Governments of the United States and the Slovak Republic.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current restraint period and establish new limits for the period beginning on June 1, 1994 and extending through December 31, 1994 and the period beginning on January 1, 1995 and extending through December 31, 1995. The base limits for the new restraint periods have been adjusted to reflect previous adjustments made to the June 1, 1994 through May 31, 1995 limits. The 1995 limit for Category 443 has been reduced for carryforward used during 1994. The limits for Categories 433 and 443 for the June 1, 1994 through December 31, 1994 period will be filled upon opening. Goods shipped in excess of these limits will be charged to the corresponding categories for the 1995 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 30346, published on June 13, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 7, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Slovak Republic and exported during the twelve-month period which began on June 1, 1994 and extends through May 31, 1995.

Effective on April 21, 1995, you are directed, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), to amend the current restraint period to end on December 31, 1994 at the limits listed below. These limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated August 6, 1993 and October 6, 1993, between the

Governments of the United States and the Slovak Republic.

Category	Seven-month restraint limit [1]
410	216,612 square meters.
433	6,446 dozen.
435	9,736 dozen.
443	61,390 numbers.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1994.

Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 21, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Slovak Republic and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated August 6, 1993 and October 6, 1993, between the Governments of the United States and the Slovak Republic.

Category	Twelve-month restraint limit [1]
410	398,928 square meters.
433	11,143 dozen.
435	16,830 dozen.
443	89,313 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

Imports charged to these category limits for the period June 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8292 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 11, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6717. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and Thailand, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended to establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these limits supersede those notified to the TMB contained in the Bilateral Textile Agreement of September 3, 1991, as amended and extended, between the Governments of the United States and Thailand.

A directive to reduce the limits for certain categories for carryforward used during 1994 will be published in the **Federal Register** at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 11, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Thailand and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Textile Agreement of September 3, 1991 between the Governments of the United States and Thailand.

Category	Twelve-month restraint limit [1]
239	5,027,120 kilograms.
Levels in Group I	
200	955,433 kilograms.
218	15,870,000 square meters.
219	5,095,643 square meters.
300	3,821,732 kilograms.
301–P [2]	3,821,732 kilograms.
301–O [3]	764,347 kilograms.
313	17,834,750 square meters.
314	40,765,143 square meters.
315	25,478,214 square meters.
317/326	10,696,000 square meters.
363	16,560,839 numbers.
369–D [4]	182,170 kilograms.
369–S [5]	254,782 kilograms.
604	596,104 kilograms of which not more than 382,173 kilograms shall be in Category 604–A [6].
607	2,547,821 kilograms.
611	12,507,030 square meters.

Category	Twelve-month restraint limit [1]
613/614/615	38,505,600 square meters of which not more than 22,420,829 square meters shall be in Categories 613/615 and not more than 22,420,829 square meters shall be in Category 614.
617	13,904,800 square meters.
619	5,732,598 square meters.
620	5,732,598 square meters.
625/626/627/628/629.	11,230,800 square meters of which not more than 8,917,375 square meters shall be in Category 625.
669–P [7]	5,373,563 kilograms.
Group II	
237, 330–359, 431–459, 630–659 and 831–859, as a group.	235,721,528 square meters equivalent.
Sublevels in Group II	
331/631	1,390,619 dozen pairs.
334/634	496,825 dozen.
335/635/835	394,912 dozen.
336/636	254,782 dozen.
338/339	1,647,881 dozen.
340	229,304 dozen.
341/641	541,412 dozen.
342/642	471,347 dozen.
345	242,043 dozen.
347/348/847	665,618 dozen.
351/651	191,086 dozen.
359–H/659–H [8]	1,117,749 kilograms.
433	9,287 dozen.
434	11,464 dozen.
435	52,097 dozen.
438	17,197 dozen.
442	19,970 dozen.
638/639	1,942,146 dozen.
640	420,390 dozen.
645/646	254,782 dozen.
647/648	907,024 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 301–P: only HTS numbers 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000 and 5206.45.0000.

[3] Category 301–O: only HTS numbers 5205.21.0000, 5205.22.0000, 5205.23.0000, 5205.24.0000, 5205.25.0000, 5205.41.0000, 5205.42.0000, 5205.43.0000, 5205.44.0000 and 5205.45.0000.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369–S: only HTS number 6307.10.2005.

[6] Category 604–A: only HTS number 5509.32.0000.

[7] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[8] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

The conversion factors for merged Categories 359–H/659–H and 638/639 are 11.5 and 12.96, respectively.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8282 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6718. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the limits agreed upon by the Governments of the United States and the Republic of Turkey, as notified to the Uruguay Round Textiles Monitoring Body (TMB), are being amended to establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995. Pursuant to the ATC, these limits supersede those notified to the TMB contained in the Bilateral Textile Agreement, effected by exchange of notes dated July 29 and August 6, 1991, as amended, and the Memorandum of Understanding (MOU) dated October 5, 1994 between the Governments of the United States and the Republic of Turkey.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on , entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Turkey and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following limits. These limits supersede those contained in the Bilateral Textile Agreement, effected by exchange of notes dated July 29 and August 6, 1991, as amended and extended, and the Memorandum of Understanding dated

October 5, 1994 between the Governments of the United States and the Republic of Turkey.

Category	Twelve-month restraint limit [1]
Fabric Group	
219, 313, 314, 315, 317, 326, 617, 625/626/627/628/629, as a group.	141,404,089 square meters of which not more than 32,313,717 square meters shall be in 219; 39,494,543 square meters shall be in 313; 22,978,643 square meters shall be in 314; 30,877,553 square meters shall be in 315; 32,313,717 square meters shall be in 317; 3,590,412 square meters shall be in 326; 21,542,479 square meters shall be in 617.
Sublevel in Fabric Group	
625/626/627/628/629.	14,546,560 square meters of which not more than 5,818,624 square meters shall be in 625; 5,818,624 square meters shall be in 626; 5,818,624 square meters shall be in 627; 5,818,624 square meters shall be in 628; and 5,818,624 square meters shall be in 629.
Limits not in group	
200	1,363,441 kilograms.
300/301	6,638,496 kilograms.
335	286,630 dozen.
336/636	675,172 dozen.
338/339/638/639	4,203,906 dozen of which not more than 2,606,422 dozen shall be in Categories 338–S/339–S/638–S/639–S [2].
340/640	1,353,617 dozen of which not more than 384,987 dozen shall be in shirts made from fabric of two or more colors in the warp and/or the filling in Categories 340–Y/640–Y [3].
341/641	1,336,760 dozen of which not more than 467,866 dozen shall be in blouses made from fabric of two or more colors in the warp and/or the filling in Categories 341–Y/641–Y [4].
342/642	751,607 dozen.
347/348	4,089,253 dozen of which not more than 1,422,420 dozen shall be in trousers in Categories 347–T/348–T [5].
350	426,276 dozen.
351/651	681,543 dozen.
361	1,433,150 numbers.
369–S [6]	1,481,604 kilograms.
410/624	1,063,098 square meters of which not more than 687,887 square meters shall be in Category 410.
448	36,479 dozen.
604	1,710,206 kilograms.
611	42,784,000 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[3] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[4] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054; Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[5] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[6] Category 369–S: only HTS number 6307.10.2005.

Imports charged to these category limits for the periods January 1, 1994 through December 31, 1994 and July 1, 1994 through December 31, 1994 (Category 611) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustments in the future pursuant to the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8280 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

March 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and adjusting limits.

EFFECTIVE DATE: April 21, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated January 26, 1991 and February 5, 1991, as amended and extended, between the Governments of the United States and the United Arab Emirates establishes limits for the period beginning on January 1, 1995 and extending through December 31, 1995. The limits for Categories 226/313, 326, 334/634, 335/635/835, 351/651, 363, 369–O, 369–S and 647/648 have been reduced for carryforward used during 1994.

These limits will be subject to revision pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) on the date that the United Arab Emirates becomes a member of the World Trade Organization.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1995 limits. The 1995 levels for Categories 315 and 361 are zero.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notices 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 30, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated January 26, 1991 and February 5, 1991, as amended and extended, between the Governments of the United States and the United Arab Emirates; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended and extended, you are directed to prohibit, effective on April 21, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
219	984,967 square meters.
226/313	1,509,052 square meters.
315	–0–.
317	27,171,497 square meters.
326	1,483,973 square meters.
334/634	189,372 dozen.
335/635/835	128,611 dozen.
336/636	173,969 dozen.
338/339	496,482 dozen of which not more than 330,987 dozen shall be in Categories 338–S/339–S [2].
340/640	307,792 dozen.
341/641	269,519 dozen.
342/642	214,117 dozen.
347/348	368,815 dozen of which not more than 184,407 dozen shall be in Categories 347–T/348–T [3].
351/651	145,185 dozen.
352	283,704 dozen.
361	–0–.
363	5,000,000 numbers.
369–O [4]	500,572 kilograms.
369–S [5]	68,857 kilograms.
638/639	200,734 dozen.
647/648	271,433 dozen.
847	180,660 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[5] Category 369–S: only HTS number 6307.10.2005.

Imports charged to these category limits for the periods December 27, 1992 through December 31, 1994 (Category 219), March 1, 1993 through December 31, 1994 (Categories 226/313), July 28, 1993 through December 31, 1994 (Category 317), October 28, 1993 through December 31, 1994 (Categories 326, 335/635/835 and 369–S), and January 1, 1994 and extending through December 31, 1994 (remaining categories) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Should the United Arab Emirates become a member of the World Trade Organization (WTO), the limits set forth above will be subject to adjustment in the future pursuant to the Uruguay Round Agreement on Textiles and Clothing and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–8297 Filed 4–4–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program

ACTION: Notice.

The FY 1995 Strategic Investment Plan of the Strategic Environmental Research and Development Program (SERDP) is available for public review for a period of 30 days.

This document is available for public review at 2200 Clarendon Boulevard, Suite 900, Arlington, VA 22201. To schedule an appointment, contact Mr. Blake Henke at 703 525–5300 extension 546.

Dated: March 29, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–8238 Filed 4–4–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board New World Vista Directed Energy Panel will meet on 21 April 1995 at Kirtland Air Force Base, New Mexico from 8 a.m. to 5 p.m.

The purpose of the meeting is to receive briefings and have discussions concerning Directed Energy.

The meeting will be closed to the public in accordance with Section 552b

of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liasion Officer.

[FR Doc. 95–8375 Filed 4–4–95; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board New World Vista Space Technology Panel and Space Applications will meet on 22–23 June 1995 at the Aerospace Corporation, El Segundo, CA from 8 a.m. to 5 p.m.

The purpose of the meeting is to receive briefings and have discussions concerning Space Technology.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–8376 Filed 4–4–95; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board New World Vista Space Technology Panel will meet on 10–12 May 1995 at Lincoln Laboratory, MA from 8 a.m. to 5 p.m. The purpose of the meeting is to receive briefings and have discussions concerning Space Technology.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–8377 Filed 4–4–95; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Spring General Membership Meeting (New World Vistas Workshop) will meet on 2–5 May 1995 at Maxwell AFB, AL from 0800 to 5 p.m.

The purpose of the meeting is to fulfill the yearly Spring general membership requirement and to provide information and insight into the challenging agenda issues as set forth in Spacecast 20/20 and New World Vistas.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liasion Officer.

[FR Doc. 95–8378 Filed 4–4–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 25–27 April 1995.

Time of Meeting: 0800–1700, 25 & 26 April 1995; 0800–1730, 27 April 1995.

Place: Arlington, VA.

Agenda: The Army Science Board's Logistics and Sustainability Subgroup will meet for discussions focused on current doctrine, missions, functions, force structures and modules, and technologies reference Army Logistical Support to Military Operations Other Than War. Briefings will be provided covering logistics perspectives in UN policies, NGOs, PVOs, medical logistics, MOOTW and Reserve and National Guard elements and lessons learned from Haiti. These meetings will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–8246 Filed 4–4–95; 8:45 am]

BILLING CODE 3710–08–M

Intent to Supplement the December 1991 Joint EIS/EIR (Environmental Impact Statement/Environmental Impact Report) for the ARWI (American River Watershed Investigation) Originally Filed With EPA in January 1992 With a Joint DSEIS/SDEIR (Draft Supplemental Environmental Impact Statement/Supplemental Draft Environmental Impact Report) on the ARWI

AGENCIES: U.S. Army Corps of Engineers, DOD, in cooperation with the State of California, The Reclamation Board, and with the Sacramento Area Flood Control Agency.

ACTION: Notice of intent to prepare a joint DSEIS/SDEIR.

SUMMARY: The reevaluation of the ARWI includes a DSEIS/SDEIR identifying and assessing new flood control alternatives and reanalyzing measures presented in the December 1991 EIS/EIR. When complete, this document will become part of the SIR (Supplemental Information Report). The DSEIS/SDEIR will describe the significance of the impacts of potential alternatives on the area's natural and cultural resources and mitigation requirements for the alternatives evaluated. The study area includes lands within the American River watershed and the Deer Creek area of the Cosumnes River basin. These alternatives examined in detail include construction of a peak flow detention dam, with various outlet configurations, near Auburn on the North Fork, American River; modifications to Folsom Dam; levee improvements on the lower American River; and increasing the flood storage allocation space in Folsom Reservoir.

FOR FURTHER INFORMATION: Please address comments and/or questions regarding this DSEIS/SDEIR to Colonel John N. Reese, District Engineer, ATTN: Mr. Michael Welsh, Planning Division, Environmental Planning Section, CESPK–PD–R, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, California 95814–2922, telephone area code (916) 557–6718.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

A DSEIS/SDEIR prepared by the Corps of Engineers, the State of California, The Reclamation Board and Department of Water Resources, and SAFCA (the Sacramento Area Flood Control Agency) will expand upon the ARWI feasibility report approved by the Board of Engineers for Rivers and Harbors in June 1992. This supplemental investigation will identify and assess new flood control measures

and reevaluate previously studied measures using new baseline conditions.

The Defense Appropriations Act of 1993 authorized the Natomas portion of the project, subject to certain conditions being complied with. Since that time, SAFCA has applied for, and received, a Department of the Army Permit pursuant to Section 404(b)(1) of the Clean Water Act to construct the levees described in the 1991 EIS/EIR. As part of the permit review process, SAFCA prepared and circulated a separate NEPA/CEQA (National Environmental Policy Act, and the California Environmental Quality Act) document describing the Natomas levee work. Work was initiated on the local project in 1994, and is expected to be completed in 1997. The Bureau of Reclamation and SAFCA have entered into an interim agreement to reoperate Folsom Reservoir to remove the Sacramento area from flooding from storm events having a one percent chance of occurring in any given year. This agreement is for a five year period, and may be extended an additional five year period, if mutually agreed upon.

The Defense Appropriations Act of 1993 also authorized this reevaluation of the ARWI. This reevaluation analyzes the American River watershed for its contribution to Sacramento area flooding. The DSEIS/SDEIR will fulfill requirements of NEPA and CEQA. The document will discuss alternatives and plan features and impacts on the American River watershed areas natural resources. The results of the investigations will be presented in a final SIR/EIS/EIR combined report submitted to Corps headquarters for approval and eventual submission for congressional consideration in mid 1996.

2. Alternatives

The SIR and accompanying DSEIS/SDEIR will reassess flood control plans that consider improvements within the American River watershed and the Deer Creek area to increase protection to the Sacramento area from flooding on the American River. In addition to the alternatives discussed in the 1991 Feasibility Report and a no action alternative, this DSEIS/SDEIR will analyze the following major alternatives:

Increase Folsom Reservoir Storage—This alternative includes modifying the outlets and spillway at Folsom Dam, and requiring that between 495,000 and 670,000 acre-feet of space be reserved in the reservoir each year, depending on the amount of water contained in the private reservoirs on the north and middle forks of the American River.

Folsom Storage/Step Release Alternative—This alternative includes modifying the spillway and outlets at Folsom Dam, requiring that between 400,000 and 670,000 acre-feet of space be reserved in the reservoir each year, modify the levees along the lower American River to accommodate an objective release of 145,000 cfs with a maximum step release of 180,000 cfs, and lengthen and modify the Sacramento Weir and bypass and modify the levees along Yolo Bypass to accommodate the increased flows.

Maximum Objective Release Alternative—This alternative includes modifying the spillway and outlets at Folsom Dam, requiring that between 425,000 and 670,000 acre-feet of space be reserved in the reservoir each year, modify the levees along the lower American River to accommodate an objective release of 180,000 cfs, and lengthen and modify the Sacramento Weir and bypass and modify the levees along Yolo Bypass to accommodate the increased flows.

Flood Detention Dam Alternative—This alternative consists of a 498-foot high concrete gravity dam constructed using roller compacted concrete. This dam would be constructed on the North Fork American River near Auburn, and would be able to temporarily detain approximately 894,000 acre-feet of water during a major storm event. The dam would have 20 operable gates and 2 ungated sluices to control the drawdown rate and minimize the affects of inundation during inundation events. The operation of Folsom Reservoir would be returned to a fixed space requirement of 400,000 acre-feet of storage. The objective releases from Folsom Dam would remain at 115,000 cfs.

The DSEIS/SDEIR will analyze impacts and mitigation requirements, which them becomes part of the project's mitigation commitment in compliance with Federal and State statutes.

3. Public Involvement

a. A notice outlining the ARWI and tentatively proposed alternatives was sent to public agencies, organizations, and individuals in the study area prior to the first public forum conducted in November 1993. Additional public forums, meetings, and workshops were conducted during the remainder of 1993, and throughout 1994. The initial notice and subsequent public meetings provided the public an opportunity to identify their concerns on area flooding and on significant natural resources in the area. Responses to the notice and public hearings helped develop an environmental inventory for use in preparing the DSEIS/SDEIR.

b. The feasibility report was completed in December 1991. Prior to its completion, comments were received from the public concerning the flood control alternatives and environmental impacts of those alternatives. Numerous public workshops and coordinating meetings were held to assist the State and SAFCA to determine a preferred flood control plan. For the restudy of the ARWI this process will continue with a final SEIS/EIR and SIR scheduled for December 1995. Coordination has been maintained with Federal, State and local agencies, concerned individuals and organizations. Through this Notice of Intent, all segments of the affected public and agencies are invited to participate in this reevaluation.

c. Significant issues discussed in the public meetings include the degree of protection offered by the alternatives, hydrology of the area, planning objectives, alternatives analysis, impacts on fish and wildlife resources, recreation, endangered species, vegetation, esthetics, cumulative impacts, cultural resources and, hazardous and toxic waste; and the mitigation requirements to compensate for impacts to significant resources.

d. Other agency review and consultation for this DSEIS/SDEIR will occur with the U.S. Fish and Wildlife Service who will provide a Fish and Wildlife Coordination Act Report under authority of the Fish and Wildlife Coordination Act. The National Marine Fisheries Service will provide information on the anadromous fishery of both the American and Sacramento rivers under the Anadromous Fish Conservation Act. In addition, both agencies will provide information and opinions on how best to avoid impacts to species protected under the Endangered Species Act under their jurisdictions. Coordination on cultural resources will be accomplished through the State Historic Preservation Office in accordance with the National Historic Preservation Act. Water quality issues will be addressed by an updated evaluation conducted pursuant to Section 404(b)(1) of the Clean Water Act, and will include coordination with the California Regional Water Quality Control Board and the United States Environmental Protection Agency. All resource agency input, including recommendations on avoiding or minimizing impacts to natural resources, becomes part of the final ARWI SEIS/EIR.

4. Availability

The DSEIS/SDEIR is scheduled to be distributed for public review and comment in August 1995. All interested persons are encouraged to respond to this notice and provide a current address if you wish to be contacted about the DSEIS/SDEIR public involvement process.

Dated: March 24, 1995.

Michael P. Stuhr,

LTC, EN, Colonel, Corps of Engineers Deputy District Engineer.

[FR Doc. 95–8241 Filed 4–4–95; 8:45 am]

BILLING CODE 5000–BF–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.165A]

Magnet Schools Assistance Program

AGENCY: Department of Education.

ACTION: Correction.

SUMMARY: On March 20, 1995, the Department of Education published in the **Federal Register** a notice inviting applications under the Magnet Schools Assistance Program. On page 14869, in the first column, next to the last paragraph, the date applicants must submit proof to the Department of Education of approval of all modifications to their plans should be changed from April 17, 1995 to June 9, 1995.

FOR FURTHER INFORMATION CONTACT: Steven L. Brockhouse, U.S. Department of Education, 600 Independence Avenue SW., Portals Room 4509, Washington, D.C. 20202–6140. Telephone (202) 260–2476. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 3021–3032.

Dated: March 30, 1995.

Thomas W. Payzant,

Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 95–8255 Filed 4–4–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of the acceptance of claims and the availability of funds for reimbursements in fiscal year 1995.

SUMMARY: This Notice announces the Department of Energy's acceptance of claims for reimbursement and the availability of approximately $41.7 million in funds for fiscal year 1995 for reimbursements of certain costs of remedial action at eligible active uranium and thorium processing sites pursuant to Title X of the Energy Policy Act of 1992. The Department of Energy anticipates that claims submitted by licensees in fiscal year 1995 together with outstanding approved claims from fiscal year 1994 will exceed $41.7 million and would therefore be subject to prorated payment. In addition, the Department of Energy is announcing an adjustment for inflation to the statutory per dry short ton limit on reimbursement to uranium licensees and the aggregate limit on reimbursement to uranium and thorium licensees. Lastly, the Department of Energy is announcing changes in the quantity of Federal-related or total dry short tons of byproduct material and Federal reimbursement ratio for the Western Nuclear Incorporated, Split Rock mill site, in Jeffrey City, Wyoming, and the American Nuclear Corporation, Gas Hills mill site, in Gas Hills, Wyoming, and the preliminary per dry short ton limit on reimbursement to uranium licensees.

DATES: The closing date for the submission of claims for reimbursement in fiscal year 1995 is June 16, 1995.

ADDRESSES: Claims may be mailed to the Environmental Restoration Division, U.S. Department of Energy, 2155 Louisiana NE., Suite 10000, Albuquerque, NM 87110. All claims should be addressed to the attention of James B. Coffey and sent by registered or certified mail, return receipt requested.

FOR FURTHER INFORMATION CONTACT: James Coffey, Environmental Restoration Division, U.S. Department of Energy, (505) 845–4628.

SUPPLEMENTARY INFORMATION: The Department of Energy published a final rule under 10 CFR part 765 in the **Federal Register** on May 23, 1994 (59 FR 26714) to implement the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. Title X requires the Department of Energy to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a state pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement of costs of remedial action must be supported by reasonable documentation as determined by the Department of Energy in accordance with 10 CFR part 765. Section 1001(b)(2) of the Energy Policy Act of 1992 limits the amount of reimbursement paid to any one licensee of an active uranium site to an amount not to exceed $5.50, as adjusted annually for inflation, multiplied by the dry short tons of byproduct material located at the site on October 24, 1992, and generated as an incident of sales to the United States. Total reimbursement, in the aggregate, for work performed at the active uranium processing sites shall not exceed $270 million, as adjusted annually for inflation. Total reimbursement for work performed at the active thorium processing site shall not exceed $40 million, as adjusted annually for inflation, and is limited to costs incurred for offsite disposal. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

To make the inflation adjustments indicated above, the Department of Energy is required by 10 CFR 765.12 to apply the Consumer Price Index-Urban (CPI-U) annually, beginning in 1994, using the CPI-U as published by the Bureau of Labor Statistics within the Department of Commerce for the preceding calendar year. The CPI-U for 1993 was 1.030. Therefore, the adjusted values of the $5.50 per dry short ton, $270 million, and $40 million statutory ceilings in 1994 were $5.67 per dry short ton, $278.1 million, and $41.2 million, respectively (i.e., $5.50, $270 million, and $40 million multiplied by 1.030 equals $5.67, $278.1 million, and

$41.2 million, respectively). In 1994, the Department of Energy issued the first reimbursements to uranium and thorium licensees totaling $33,368,448.46 and $7,000,351.53, respectively. Subsequently, the total remaining reimbursement ceiling for uranium and thorium licensees in 1994 was $244,731,551.54 and $34,199,648.47. The CPI-U for 1994 was 1.027. Therefore, the adjusted values of the per dry short ton ceiling and the total remaining reimbursement ceiling for uranium and thorium licensees for 1995 are $5.82, $251,339,303.43, and $35,123,038.98. These amounts were determined by multiplying the ceiling values for 1994 by 1.027.

The Department of Energy published its determination on the Federal-related and total dry short tons of byproduct material and Federal reimbursement ratio for each eligible active uranium processing site in the May 23, 1994, **Federal Register** (59 FR 26714). Since then, additional records were made available to the Department of Energy on the quantities of dry short tons of byproduct material at the Western Nuclear Incorporated, Split Rock mill site in Jeffrey City, Wyoming, and the American Nuclear Corporation, Gas Hills mill site, in Gas Hills, Wyoming. After reviewing these records, the Department of Energy is revising the quantity of Federal-related or total dry short tons of byproduct material and Federal reimbursement ratio for these two uranium processing sites. The Department of Energy has determined that the quantity of Federal-related and total dry short tons of byproduct material at the Western Nuclear Incorporated site as of October 24, 1992, is 3.626 million dry short tons and 8.2 million dry short tons, respectively; and the quantity of Federal-related dry short tons of byproduct material at the American Nuclear Corporation site as of October 24, 1992, is 2.202 million dry short tons. The total quantity of dry short tons of byproduct material for the American Nuclear Corporation site, however, remains at 6.0 million dry short tons. Because of these quantity increases, the Federal reimbursement ratio for the Western Nuclear Incorporated and American Nuclear Corporation sites is also being revised to 0.442 and 0.367, respectively (i.e., 3.626 million dry short tons divided by 8.2 million dry short tons equals 0.442 and 2.202 million dry short tons divided by 6.0 million dry short tons equals 0.367). The Department of Energy's reports on these revisions are available upon written request to the Environmental Restoration Division, U.S. Department of Energy, 2155 Louisiana NE., Suite 10000, Albuquerque, NM 87110. Because of these quantity increases, the total amount of Federal-related dry short tons of byproduct material at all eligible active uranium processing sites is 56.521 million dry short tons.

In the May 23, 1994, **Federal Register** (59 FR 26714), the Department of Energy announced that it was establishing a preliminary per dry short ton limit of $4.80 on reimbursement to licensees of eligible uranium processing sites. This was necessary because the $270 million statutory ceiling would not support the maximum allowable reimbursement of $5.50 per dry short ton, as established by Title X, if remedial action costs at all of the eligible uranium processing sites reach or approach this per dry short ton limit. Because of the above quantity revisions to the Western Nuclear Incorporated and American Nuclear Corporation sites, the preliminary per dry short ton limit on reimbursement is $4.78 (i.e., $270 million divided by the total amount of Federal-related dry short tons of byproduct material present at all eligible active uranium processing sites, 56.521 million dry short tons, equals $4.78). The Department of Energy is adjusting the $4.78 preliminary per dry short ton limit to account for inflation using the CPI-U values discussed above. The adjusted per dry short ton limit in 1994 was $4.92 (i.e., $4.78 multiplied by 1.030 equals $4.92). The adjusted per dry short ton limit in 1995 is $5.05 (i.e., $4.92 multiplied by 1.027 equals $5.05). The Department of Energy will further adjust the preliminary per dry short ton limit on reimbursement annually for inflation or if other circumstances, as determined by the Department of Energy, require an adjustment.

Authority: Section 1001–1004 of Pub. L. 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*)

Issued in Washington D.C. on this 29th of March, 1995.

David E. Mathes,

Director, Offsite Program Division, Office of Southwestern Area Programs, Environmental Restoration.

[FR Doc. 95–8360 Filed 4–4–95; 8:45 am]

BILLING CODE 6450–01–P

Long-Term Storage and Disposition of Weapons-Usable Fissile Materials

AGENCY: Department of Energy.

ACTION: Notice of Intent.

SUMMARY: On June 21, 1994, the Department of Energy (DOE) published a Notice of Intent to prepare a PEIS for the Long-Term Storage and Disposition of Weapons-Usable Fissile Materials (59 FR 31985). By this notice of an amendment, DOE is amending the scope of the PEIS by removing the disposition of all surplus HEU from the PEIS. Instead, DOE will address the disposition of surplus HEU in a separate EIS. This action is based on the need to move forward on a rapid path for neutralizing the proliferation threat of surplus HEU and to demonstrate to other nations the United States' nonproliferation commitment. The disposition of HEU will involve different time frames, technologies, facilities and personnel than those required for the disposition of plutonium. Therefore, the decisions on surplus HEU disposition do not affect or preclude other decisions to be made on the long-term storage and disposition of other weapons-usable fissile materials, can proceed regardless of decisions pursuant to the PEIS, and are independently justified. The scope of the PEIS will continue to include the long-term storage of non-surplus weapons-usable fissile materials, including HEU, and the disposition of plutonium and other fissile materials. The EIS on the disposition of surplus HEU is scheduled for completion in early 1996. To ensure consideration of comments in the Draft EIS, written comments must be postmarked by May 1, 1995. Late comments will be considered to the extent practical.

ADDRESSES: Written requests for the Implementation Plan, the Draft EIS, and Final EIS on the disposition of surplus HEU should be sent to: Office of Fissile Materials Disposition (MD–1), Attention: HEUEIS, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585.

Written requests for the Implementation Plan, the Draft PEIS, and Final PEIS on the long-term storage and disposition of weapons-usable fissile materials should be sent to: Office of Fissile Materials Disposition (MD–1), Attention: PEIS, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE National Environmental Policy Act (NEPA) process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Ms. Borgstrom can be reached at (202) 586–4600. Comments and questions about the NEPA process can also be left on the DOE NEPA hotline, 1–800–472–2756.

SUPPLEMENTARY INFORMATION: In the aftermath of the Cold War, significant quantities of HEU, a material used in nuclear weapons, have become surplus to national defense needs in both the United States and Russia. This surplus material could pose a danger to national and international security. The dangers exist not only in the potential proliferation of nuclear weapons but in the potential for environment, safety, and health consequences if these materials are not properly managed. For further background information on the storage and disposition of fissile materials, please refer to the original June 21, 1994, Notice of Intent (59 FR 31985).

In the course of the PEIS public scoping process, comments suggested that it would be more appropriate to analyze the impact of HEU disposition in a separate EIS. The Department held a public meeting on November 10, 1994, to obtain comments on preparing a separate environmental analysis for the disposition of surplus HEU. While many views were expressed at this meeting, there was substantial support for proceeding with a separate EIS. A separate action is the most rapid path for neutralizing the proliferation threat of surplus HEU, is consistent with the President's nonproliferation policy, would demonstrate the U.S. nonproliferation commitment to other nations, and is consistent with the course of action now underway in Russia to reduce Russian HEU stockpiles. In addition, the disposition of HEU could use existing technologies and facilities in the United States, in contrast to the disposition of plutonium.

The disposition of HEU will involve different time frames, technologies, facilities and personnel than those required for the disposition of plutonium. Further, the decisions on surplus HEU will not impact or preclude other decisions which may be made regarding the disposition of surplus plutonium and other weapons-usable fissile materials, can proceed regardless of decisions on these other issues pursuant to the PEIS, and are independently justified.

Three alternatives have been evaluated as reasonable for the disposition of surplus HEU: (1) Continued long-term storage (no action alternative), (2) blending down of HEU into low enriched uranium, and (3) blending down for disposal as waste. These alternatives are based upon technical studies, public input, and evaluation by a DOE Screening Committee.

The purpose of this amendment notice is to inform the public of DOE's intention to prepare a separate EIS for disposition of surplus HEU. Because the issues related to the disposition of surplus HEU were included in the Long-Term Storage and Disposition of Weapons-Usable Fissile Materials Notice of Intent and the public scoping process for the PEIS, no additional scoping activities are anticipated. The Department will prepare an Implementation Plan, a Draft EIS, and a Final EIS. The Implementation Plan will briefly describe the scope of the EIS, public input and comments received on the scope and alternatives, the alternatives that will be analyzed, the schedule for completing the EIS, and the EIS work plan. The results of the environmental analysis in the Final EIS, along with information from technical and economic evaluations and national policy objectives, will form the basis for the Record of Decision on the disposition of surplus HEU.

The Department is planning to issue the EIS Implementation Plan in June 1995, to issue the Draft EIS in late Summer 1995 with public meetings in that same time period, and to issue the Final EIS in late 1995 or early 1996.

Note: Some of the technical terms used in this document are defined in a section at the end of the notice.

Classified Material

DOE plans to prepare the HEU EIS in an unclassified form; however, DOE may review classified material while preparing the document. In the event that any classified material is included in the EIS, such material will be placed in a classified appendix which will not be available for general public review. This material will be considered by DOE in reaching a decision on the disposition of surplus HEU. DOE will provide as much information as possible in unclassified form to assist public understanding of the proposed action and environmental impacts.

Other DOE NEPA Documents

There are several other NEPA documents in preparation by the DOE that will analyze proposals that are related to the proposed action described above. These are:

The Oak Ridge Interim Storage of Enriched Uranium Environmental Assessment (EA)

This document addresses the expansion of interim storage capacity for enriched uranium at Oak Ridge. This interim storage will involve materials, quantities, and forms for which long-term storage and disposition will be implemented.

The Environmental Management PEIS

This document addresses the programmatic level decisions for treatment, storage, and disposal of waste within the DOE complex. If any action to dispose of HEU results in a waste form, these waste forms will be treated, stored, and disposed of in accordance with the decisions resulting from the Environmental Management PEIS.

Other EISs and EAs

Other environmental documents involving weapons-usable fissile materials are being, or will be, prepared as required, for the purpose of establishing the interim storage conditions for HEU. These other environmental documents include site-wide EISs and an EA on the disposition of HEU from the Republic of Kazahkstan.

Definitions

As used in this Notice of an Amendment, the following definitions apply:

Disposition is a process of use or disposal of material that results in the remaining material being converted to a form that is substantially and inherently more proliferation-resistant than the original form.

Highly Enriched Uranium (HEU) is uranium which has an isotopic content of uranium-235 of 20 percent or more.

Low Enriched Uranium is uranium which has an isotopic content of uranium-235 of less than 20 percent. Most commercial reactor fuel is enriched to about 4 to 5 percent uranium-235.

Weapons-Usable Fissile Materials refers to a specific set of nuclear materials that may be utilized in making a nuclear explosive or weapon. Weapons-usable fissile materials include uranium with uranium-235 isotopic content of 20 percent or more, plutonium of any isotopic composition, and other isotopes such as uranium-233, and americium-241, which have been separated from spent nuclear fuel or irradiated targets. The term weapons-usable fissile materials does not include the fissile materials present in spent nuclear fuel or irradiated targets from reactors.

Invitation to Comment

The DOE invites comments on the intention to prepare an EIS for the disposition of surplus HEU, including suggestions on significant environmental issues, from all interested parties, including affected Federal, State, and local agencies and Indian tribes. To ensure consideration of comments in the Draft EIS, written

comments must be postmarked by May 1, 1995. Late comments will be considered to the extent practical. Written comments should be sent to the Office of Fissile Materials Disposition at the address given above. Comments can also be provided via the Office of Fissile Materials Disposition's Electronic Bulletin Board. The bulletin board can be accessed via modem by dialing (800)–783–3349. Access to the bulletin board is also available via the Internet. The telnet address is telnet fedix.fie.com; the gopher space address is gopher to gopher.fie.com; the world wide web address is url=http://web.fie.com/.

Signed in Washington, DC, this 29th day of March 1995, for the United States Department of Energy.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 95–8361 Filed 4–4–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Fernald Site

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) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Fernald Site.

DATES: Saturday, April 8, 1995: 8:30 a.m.–12:30 p.m. (public comment session, 11:30 p.m.–11:45 p.m.)

ADDRESSES: The Joint Information Center, 6025 Dixie Highway, Route 4, Fairfield, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens Task Force message line (513) 648–6478.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda

Saturday, April 8, 1995

8:30 a.m.—Task Force Administration (Call to order; Approval of Minutes; Chair's Remarks)
8:50 a.m.—Review of Past Resolutions; Review of New Information
9:45 a.m.—Break
10:00 a.m.—Presentation of Options
10:15 a.m.—Discussion and Draft Resolutions
11:30 p.m.—Public Comment
11:45 p.m.—Vote on Resolutions
12:00 p.m.—Review Table of Contents for Final Report
12:15 p.m.—Wrap Up
12:30 p.m.—Adjourn

A final agenda will be available at the meeting, Saturday, April 8, 1995.

Public Participation: The meeting is open to the public. Written statements may be filed with the Task Force chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Task Force chair 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 in the agenda. The Designated Federal Official, Kenneth Morgan, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

Minutes: The 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, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC on March 30, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–8358 Filed 4–4–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Environmental Management; Proposed Site Treatment Plans

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability.

SUMMARY: Today's notice announces the availability of the Department of Energy's (DOE) Proposed Site Treatment Plans (Proposed Plans) for treating its mixed radioactive and hazardous waste (mixed waste). As required by the Federal Facility Compliance Act of 1992 (FFCAct or the Act), DOE prepared Proposed Plans for 40 sites in 20 States where DOE stores or generates mixed waste. The Proposed Plans identify the proposed treatment option and related schedule for development of the option for each type of mixed waste. Each DOE site is submitting its Proposed Plan to either its State regulators, or as appropriate, the U.S. Environmental Protection Agency (U.S. EPA). DOE faces increasingly tight funding in the near-term, and anticipates that funding will continue to be constrained in the future. The schedules in the Proposed Plans reflect those constraints. DOE expects, that for some sites, further discussion with the State or Federal regulators concerning priorities will result in modified schedules in the approved Plans. The Proposed Plans are available at each site for review by the public. Public comments on the Proposed Plans will be considered by the appropriate regulatory agency in reviewing the plan. Additional opportunities for public involvement in the FFCAct process will be offered at many sites by the DOE and State or Federal regulators.

DATES: Written comments on the Proposed Plans should be sent to the recipients identified in Table 1 by July 6, 1995. Written comments received on or before July 6, 1995, will be considered by the State/Federal regulators in reviewing the Proposed Plans.

ADDRESSES: Table 1 lists the recipient to which written comments should be sent on each of the Proposed Plans. Section V of Supplementary Information lists the Reading Rooms where the Proposed Plans may be reviewed.

FOR FURTHER INFORMATION CONTACT: To obtain general information on a site's Proposed Plan or for the address of a Reading Room where Proposed Plans may be viewed, contact the Center for Environmental Management Information at 1–800–7EM-DATA (1–800–736–3282).

SUPPLEMENTARY INFORMATION:

I. Background

Section 3021(b) of the Resource Conservation and Recovery Act (RCRA), as amended by the Federal Facility Compliance Act of 1992 (FFCAct or the Act), requires the DOE to prepare Site Treatment Plans for developing treatment capacities and technologies for mixed waste at each site where the DOE stores or generates mixed waste. Mixed waste is defined by the FFCAct as waste containing both hazardous

waste subject to RCRA, and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954. DOE must submit the Site Treatment Plans to the State or U.S. EPA, as appropriate, for approval, disapproval, or approval with modification.

The FFCAct allows for a six month period during which the regulatory agency reviews the Proposed Plan, makes it available to the public, and approves, disapproves, or modifies the Proposed Plan. Upon approval, the regulatory agency is to issue an Order requiring compliance with the Proposed Plan. Sites that are in compliance with approved Plans and Orders by October 6, 1995, are not subject to fines and penalties related to the storage prohibition of section 3004(j) of RCRA as long as they continue to comply with their Plan and Order.

After consultation with State and Federal regulators, the DOE published a **Federal Register** Notice on April 6, 1993 (58 FR 17875), which announced the DOE's plan to submit the Site Treatment Plans in three stages. In the first stage, Conceptual Site Treatment Plans describing a wide range of possible treatment alternatives for each mixed waste at each site were submitted in October 1993. Draft Site Treatment Plans (Draft Plans) narrowing the list of options to one or two identified by each site, with input from the State and Federal regulators, were submitted and announced in the **Federal Register** on August 31, 1994, (59 FR 44979). The DOE planned to submit Proposed Site Treatment Plans containing the DOE's preferred option for treatment of each mixed waste to the appropriate regulatory agency in February 1995. However, after consultation with the States and U.S. EPA, DOE announced in the **Federal Register** on February 28, 1995 (60 FR 10840) that the date for submitting the Proposed Plans was revised to no later than April 6, 1995, to allow additional time for further discussions on schedules for developing treatment capacity in light of anticipated funding limitations.

II. Proposed Site Treatment Plans

After submission of the Draft Plans in August 1994, the DOE, with input from the State and Federal regulators, evaluated the treatment options listed in the Draft Plans for the mixed waste at each site. The goal of this evaluation was to gain a better understanding of the appropriate configuration of treatment systems across the DOE complex, and to eliminate redundancies and inefficiencies among the Draft Plans. Discussions with the regulators led to further refinement of the treatment configuration. The Proposed Plans reflect the results of this evaluation and present the DOE's proposed option for treating each site's mixed waste. The Proposed Plans follow a common format, consisting of a Background Volume and a Compliance Plan Volume. The Background Volume describes the site's treatment options, including the associated technical uncertainties and funding constraints, to the extent they are known. The Compliance Plan Volume identifies the preferred treatment option(s) and associated schedules, and broadly describes provisions for implementing and updating the Proposed Plan once it is approved. The Compliance Plan Volume is intended to contain requirements that will ultimately be enforced through a Consent or Compliance Order. In addition to identifying treatment options, DOE is also evaluating options for disposal of treatment residuals at the request of the States. The Background Volume of each Proposed Plan contains a description of the process for evaluating disposal options.

DOE will prepare a National Summary of the Proposed Site Treatment Plans that compiles the information contained in the individual site Proposed Plans and discusses the complex-wide treatment configuration. The National Summary Report will describe the process used to develop the Proposed Plans, the treatment options for each mixed waste, technology development activities, and other related topics. The National Summary Report is expected to be available to the public by the end of June 1995.

III. Activities Occurring Between Submission of the Draft Plans and Preparation of the Proposed Plans

In February 1995, between submission of the Draft Plans and preparation of the Proposed Plans, the DOE, the State and Federal regulators, and Tribal representatives met to discuss future funding of DOE's Environmental Management Program, its Site Treatment Plans, and strategies for working cooperatively to address anticipated funding limitations.

Because of recent changes in funding projections, the schedules in the Proposed Plans have not yet been fully integrated with those of other DOE sites from a complex-wide perspective. Based on discussions concerning its Fiscal Year 1997 Budget, the DOE anticipates that funding will continue to be constrained. Accordingly, DOE anticipates that after submission of the Proposed Plans and before Proposed Plans and schedules are approved discussions will continue with regulatory agencies and the public concerning the priority of mixed waste treatment and other activities.

IV. Sites No Longer Preparing Proposed Site Treatment Plans

DOE has prepared Proposed Plans for 40 sites in 20 States. However, because two of the Proposed Plans each address more than one site, only 37 Proposed Plans have been submitted for approval. The Idaho National Engineering Laboratory and the Argonne Laboratory-West are located on a single federally-owned reservation near Idaho Falls, Idaho, and both are addressed within the Proposed Plan submitted by the U.S. DOE Idaho Operations Office. The Oak Ridge National Laboratory, K–25 Site, and Y–12 Plant are all located within the federally-owned Oak Ridge Reservation near Oak Ridge, Tennessee, and are addressed within the Proposed Plan submitted by the U.S. DOE Oak Ridge Operations Office. Additionally, eight sites that initially developed Conceptual or Draft Site Treatment Plans have not submitted Proposed Plans for approval. These sites are: (1) General Electric, Vallecitos Nuclear Center, Vallecitos, California; (2) Sandia National Laboratory, Livermore, California; (3) Pinellas Plant, Largo, Florida; (4) Site A/Plot M Palos Forest Preserve, Cook County, Illinois; (5) Kansas City Plant, Kansas City, Missouri; (6) Middlesex Sampling Plant, Middlesex, New Jersey; (7) Princeton Plasma Physics Laboratory, Princeton, New Jersey; and (8) the Inhalation Toxicology Research Institute, Albuquerque, New Mexico. These sites are not submitting Proposed Plans for one or more of the following reasons: (1) The site is not generating or storing mixed waste at this time; (2) the site no longer has mixed waste because the waste has been consolidated at another site or has been treated; (3) the site can already treat the waste it generates on a routine basis in compliance with RCRA; or (4) it has not yet been determined through the environmental restoration process whether mixed waste subject to RCRA land disposal restrictions will be generated.

These eight sites have submitted and will update information on their mixed waste compliance to the regulatory agencies as needed. In the future, if any of these sites generate mixed waste that cannot be treated in compliance with RCRA, the site will propose a Plan for approval that meets the requirements of the Act. In addition, the Hanford Site in Richland, Washington, has signed an agreement with the State of Washington that addresses mixed waste treatment as

specified in the FFCAct. Therefore, the Hanford site is not required to prepare a Site Treatment Plan; however, the Hanford Site and its State regulators are actively participating in the FFCAct discussions.

V. Availability of Proposed Site Treatment Plans and Opportunity for Comment

The Proposed Site Treatment Plans for all DOE sites subject to the FFCAct will be available for review at the site's public reading room or at nearby locations by mid-April 1995. To review or request information on a specific Proposed Plan, contact the Center for Environmental Management Information at 1–800–7EM–DATA (1–800–736–3282). Full sets of the Proposed Plans from the 40 sites will also be available for review by mid-April 1995 at the following locations:

U.S. Department of Energy Headquarters Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, D.C. 20585, 202/586–6025

Center for Environmental Management Information, 470 L'Enfant Plaza East, SW., Suite 7110, Washington, D.C. 20024, 800/736–3282

Albuquerque Operations Office, National Atomic Museum, P.O. Box 5400, Kirtland Air Force Base, Albuquerque, NM 87185–5400, 505/845–6670

Hanford Site, U.S. DOE Reading Room, Washington State University, Tri-Cities, 100 Sprout Road, Room 130, Richland, WA 99352, 509/376–8583

Idaho National Engineering Laboratory, INEL Technical Library, 1776 Science Center Drive, P.O. Box 1625, Idaho Falls, ID 83415–2300, 208/526–1185

Lawrence Livermore National Laboratory, DOE Reading Room, 1301 Clay Street, Oakland, CA 94612, 510/637–1762

Mound Plant, Miamisburg Senior Adult Center Public Reading Room, 305 Central Ave., Miamisburg, OH 45343, 513/866–8999

Nevada Test Site, Nevada Test Site Reading Room, 3084 South Highland Drive, Las Vegas, NV 89109, 702/295–3521

Oak Ridge Reservation, DOE Public Reading Room, 55 Jefferson Circle, Oak Ridge, TN 37831, 615/576–1216

Rocky Flats Plant, Rocky Flats Environmental Technology Site Reading Room, Front Range Community College Library, 3645 West 112th Ave., Westminster, CO 80030, 303/469–4453

Savannah River Site, Gregg-Graniteville Library, University of South Carolina-Aiken, 171 University Parkway, Aiken, SC 29801, 803/641–3465

Opportunities for public involvement in the FFCAct process will be offered at many sites. To obtain information about these opportunities contact the Center for Environmental Management Information at 1–800–7EM–DATA (1–800–736–3282). Persons interested in receiving the National Summary of the Proposed Site Treatment Plans when available, or other information on the development of the Site Treatment Plans and related activities, should contact the Center for Environmental Management Information. Information about the FFCAct may also be obtained electronically through the FFCAct Bulletin Board on the Internet at http://eagle.haz.ornl.gov/ffcabb/ffcamain.html.

Issued in Washington, DC on March 30, 1995.

Stephen Cowan,

Acting Deputy Assistant Secretary for Waste Management, Environmental Management.

TABLE 1.—SITES PREPARING SITE TREATMENT PLANS AND COMMENT RECIPIENTS

State	Facility/location	Reviewing agency recipient of comments
California	Energy Technology Engineering Center; Canoga Park.	Chet Kawashige, California Department of Toxic Substances Control, P.O. Box 806, Mail Code HQ–10, Sacramento, CA 95812–0806.
	General Atomics; San Diego	
	Lawrence Livermore National Laboratory; Livermore.	
	Lawrence Berkeley Laboratory; Berkeley	
	Laboratory for Energy-Related Health Research; Davis.	
	Mare Island Naval Shipyard; Vallejo	
Colorado	Grand Junction Project Office; Grand Junction.	Jacqueline Hernandez-Berardini, Director, Environmental Integration Group. Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, OE-EIG-B2, Denver, CO 80222–1530.
	Rocky Flats Environmental Technology Site; Golden	
Connecticut	Knolls Atomic Power Laboratory; Windsor.	Fred Scheuritzel, Air Monitoring and Radiation, Department of Environmental Protection, 79 Elm Street, 6th Floor, Hartford, CT 06106–5127.
Hawaii	Pearl Harbor Naval Shipyard; Honolulu	Tony Terrell, U.S. EPA (H41), Region 9, 75 Hawthorne Street, San Francisco, CA 94105.
Idaho	Argonne National Laboratory-West; Idaho Falls.	Brian Monson, Bureau Chief, DEQ, 1410 North Hilton Street, Boise, ID 83706–1290.
	Idaho National Engineering Laboratory; Idaho Falls	
Illinois	Argonne National Laboratory-East; Argonne.	Richard Allen, Manager, Office of Environmental Safety, Department of Nuclear Safety, 1034 Outer Park Drive, 5th floor, Springfield, IL 62704.
Iowa	Ames Laboratory; Ames	Ken Herstowki, U.S. EPA (Iowa Section), Region 7, 726 Minnesota Avenue, Kansas City, KS 66101.
Kentucky	Paducah Gaseous Diffusion Plant; Paducah.	Caroline P. Haight, Director of Division of Waste Management, 14 Rally Road—OMEGA Bldg., Frankfort, KY 40601.
Maine	Portsmouth Naval Shipyard; Kittery	Joan Serra, U.S. EPA (HRR–CNN3), Region 1, JFK Federal Building, Boston, MA 02203.
Missouri	Weldon Spring Site Remedial Action Project; St. Charles County.	Dan Tschirgi, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102–0176.
	University of Missouri; Columbia	
Nevada	Nevada Test Site; Mercury	Paul Liebendorfer, Bureau Chief, Bureau of Federal Facilities, Division of Environmental Protection, 123 W. Nye Lane, Carson City, NV 89710.
New Mexico	Los Alamos National Laboratory; Los Alamos.	Jim Seubert, Environmental Specialist 525 Camino, De Los Marquez, Santa Fe, NM 87502.
	Sandia National Laboratory—New Mexico; Albuquerque	

TABLE 1.—SITES PREPARING SITE TREATMENT PLANS AND COMMENT RECIPIENTS—Continued

State	Facility/location	Reviewing agency recipient of comments
New York	Brookhaven National Laboratory; Upton	Norm Drapeau, Environmental Engineer III, 50 Wolf Road, Albany, NY 12233.
	Colonie Interim Storage Site; Colonie	
	Knolls Atomic Power Laboratory—Kesselring; West Milton.	
	Knolls Atomic Power Laboratory—Schenectady; Niskayuna.	
	West Valley Demonstration Project; West Valley	
Ohio	Battelle Columbus Laboratories Decommissioning Project; Columbus.	Thomas Crepeau, Manager, Data Management Section, Division of Hazardous Waste Management, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216–1049.
	Fernald Environmental Management Project; Fernald.	
	Mound Plant; Miamisburg	
	Portsmouth Gaseous Diffusion Plant; Portsmouth.	
	RMI Titanium Inc.; Ashtabula	
Pennsylvania	Bettis Atomic Power Laboratory; West Mifflin.	David Friedman, U.S. EPA, Region 3, 841 Chestnut Building, Philadelphia, PA 19107.
South Carolina	Charleston Naval Shipyard; Charleston	David Wilson, Jr., Assistant Bureau Chief, 8901 Farrow Road, Columbia, SC 29223.
	Savannah River Site; Aiken	
Tennessee	K–25 Site, Y–12 Plant and Oak Ridge National Laboratory; Oak Ridge Reservation; Oak Ridge.	Earl Leming, Tennessee Department of Environment and Conservation, DOE Oversight Office, 761 Emory Road, Oak Ridge, TN 37830.
Texas	Pantex Plant; Amarillo	Dan Pearson, Executive Director, Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711–3087.
Virginia	Norfolk Naval Shipyard; Norfolk	David Friedman, U.S. EPA, Region 3, 841 Chestnut Building, Philadelphia, PA 19107.
Washington	Puget Sound Naval Shipyard; Bremerton	Jeff Breckel, Washington-Oregon Interstate Liaison, Nuclear and Mixed Waste Management Program, Washington Department of Ecology, P.O. Box 47600, 300 Desmond Drive SE, Lacey, WA 98503.

[FR Doc. 95–8359 Filed 4–4–95; 8:45 am]
BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP95–261–000, et al.]

Questar Pipeline Company, et al.; Natural Gas Certificate Filings

March 29, 1995.

Take notice that the following filings have been made with the Commission:

1. Questar Pipeline Company

[Docket No. CP95–261–000]

Take notice that on March 13, 1995, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP95–261–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by removal a 3-inch meter run and appurtenant facilities located in Sweetwater County, Wyoming, all as more fully set forth in the application on file with the Commission and open to public inspection.

Questar states that the meter run was installed by Questar's predecessor, Mountain Fuel Resources, Inc. (Mountain Fuel), at the Steamboat Mountain Meter & Regulating Station to receive natural gas from NGC Energy Resources, L.P. (NGC), for transportation on Mountain Fuel's system, which was subsequently acquired by Questar. It is stated that the facilities were installed under the automatic authorization provisions of Mountain Fuel's blanket certificate in Docket No. CP82–491–000. Questar states that the meter run is obsolete because it can no longer measure the increasing volumes flowing from the Steamboat Mountain producing area. It is asserted that there is an existing 6-inch meter run adjacent to the 3-inch meter run which can accurately measure the increasing volumes. It is further asserted that the proposed abandonment would have no impact on Questar's transportation for NGC and no impact on the average daily design capacity or operation of Questar's system.

Comment date: April 19, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP95–274–000]

Take notice that on March 20, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–274–000 a request pursuant to Sections 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.212) for authorization to upgrade its existing Olympia Meter Station and to install looping facilities under Northwest's blanket certificate issued in Docket No. CP82–433–000 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.

Northwest proposes to partially abandon and upgrade its Olympia Meter Station and to construct and operate approximately 3.73 miles of 12-inch pipeline loop, valves and a loop tie-in on its existing Olympia lateral at the existing Rainier Meter Station, all in Thurston County, Washington. Northwest states that the upgraded station would consist of two 6-inch turbine meters, two 4-inch regulators, valves and appurtenances. Northwest explains that the loop would parallel the existing Olympia Lateral, beginning at the Ignacio-to-Sumas gas transmission mainline and terminating about 2,700 feet southeast of the Fort Lewis Military Reservation boundary. Northwest states that these proposed facilities would increase Northwest's delivery capacity to Washington Natural Gas Company (Washington Natural) at various meter stations on the Olympia and Shelton laterals by approximately 13,370 Dth

per day and would allow increased contractual delivery pressures at the Olympia Meter Station under existing transportation agreements with Washington Natural, a local distribution company.

Northwest states that the expanded facilities at the Olympia Meter Station would provide for a design capacity of 34,541 Dth per day of service (at a delivery pressure of 400 psig). Northwest also states that the proposed lateral loop line would increase the capacity of the Olympia lateral from approximately 64,540 to approximately 77,910 Dth per day at 637 psig inlet pressure from Northwest's mainline. Northwest explains that the increased volumes and delivery pressure would be utilized to enhance service to Washington Natural under an existing firm Rate Schedule TF–1 transportation agreement dated August 15, 1994, or under any other duly authorized firm transportation agreement. Northwest states that the total costs to remove the undersized metering facilities and to construct the proposed upgraded metering facilities, lateral loop line, valves and loop tie-in are estimated at approximately $2,559,300. Northwest further states that the costs would be reimbursed by Washington Natural in the form of a Facility Cost-of-Service Charge over 9 years.

Comment date: May 15, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Interstate Utilities Company, a Division of Gasco Distribution Systems

[Docket No. CP95–278–000]

Take notice that on March 22, 1995, Interstate Utilities Company, a division of Gasco Distribution Systems, Inc. (IUC), 4435 East Pike, Zanesville, Ohio 43701, filed in Docket No. CP95–278–000 an application requesting a service area determination pursuant to Section 7(f) of the Natural Gas Act (NGA), all as more fully set forth in the application on file with the Commission and open to public inspection.

IUC states that it is a small local distribution company (LDC) serving 450 customers in Mason County, West Virginia. It is stated that IUC receives natural gas service from Columbia Gas Transmission Corporation in Meigs County, Ohio, and transports the gas a distance of 1.5 miles across the Ohio River. It is further stated that IUC then distributes the gas to its retail customers in West Virginia and provides no service to customers in Ohio. It is asserted that IUC makes no sales for resale. It is explained that IUC's operations are regulated by the Public Service Commission of West Virginia.

IUC requests that the service area determination consist of Mason County, West Virginia, and Meigs County, Ohio, and IUC's rights-of-way interconnecting the two counties. IUC requests a declaration that it qualifies as an LDC in the service area to be determined for purposes of Section 311 of the Natural Gas Policy Act (NGPA). IUC also requests a waiver of the regulatory requirements, including reporting and accounting requirements, ordinarily applicable to a natural gas company under the NGA and the NGPA.

Comment date: April 19, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

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 Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8273 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–266–000, et al.]

Texas Eastern Transmission Corporation, et al.; Natural Gas Certificate Filings

March 28, 1995.

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corporation

[Docket No. CP95–266–000]

Take notice that on March 17, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–266–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct a delivery point to Chevron U.S.A. Inc. (Chevron) in Perth Amboy, New Jersey, under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 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.

Texas Eastern proposes to install a 4-inch check valve on its line in Middlesex County, New Jersey to make deliveries of up to 10,000 Dth/d to Chevron's Perth Amboy Refinery. Chevron would reimburse Texas Eastern for the $28,000 cost of such tap.

Comment date: May 12, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Koch Gateway Pipeline Company

[Docket No. CP95–281–000]

Take notice that on March 24, 1995, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP95–281–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and remove a 550 horsepower compressor unit located at its Jackson Storage Compressor Station, Rankin County, Mississippi, all as more fully set forth in the application on file with the Commission and open to public inspection.

Koch Gateway proposes to remove its Unit No. 5 compressor from service at the Jackson Storage Compressor Station site. Koch Gateway states that the Unit No. 5 compressor has not been used in the past two years and Koch Gateway does not anticipate needing the compressor unit at its present location for the foreseeable future. Koch Gateway states that it proposes to place the skid-mounted unit in warehouse inventory until such time the unit is returned to service.

Koch Gateway states that the proposed abandonment is in the public interest and will have no effect on its existing customers.

Comment date: April 18, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP95–283–000]

Take notice that on March 24, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP95–283–000 a request pursuant to Section 157.205 of the Commission's Regulations to construct and operate facilities for a new point of delivery to Orwell Natural Gas (Orwell) located in Trumbull County, Ohio under Columbia's blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia proposes to construct and operate a 2-inch tap and gas sampler on Columbia's Line FV–354 to provide a new point of delivery in order to provide firm transportation service for up to 250 dekatherms (dth) per day and up to 35,000 dth annually, for residential use, for Orwell in Trumbull County, Ohio under Columbia's Rate Schedule GTS or from capacity released by other shippers within certificated entitlements. Columbia states that there is no impact on Columbia's existing peak day obligations to its other customers as a result of the construction and operation of these facilities. Columbia states that Orwell would reimburse Columbia for the cost of these facilities estimated to be $35,415.

Comment date: May 12, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

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 Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8272 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11422–001 Idaho]

Dike Hydroelectric Partners, Inc.; Notice of Surrender of Preliminary Permit

March 30, 1995.

Take notice that Dike Hydroelectric Partners, Inc., permittee for the Dike Project No. 11422, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11422 was issued January 10, 1994, and would have expired December 31, 1996. The project would have been located on the Snake River, Elmore County, Idaho.

The Permittee filed the request on March 16, 1995, and the preliminary permit for Project No. 11422 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8267 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11415–001 Washington]

Rock Creek Hydroelectric Co.; Notice of Surrender of Preliminary Permit

March 30, 1995.

Take notice that Rock Creek Hydroelectric Company, permittee for the Rock Creek Project No. 11415, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11415 was issued July 30, 1993, and would have expired June 30, 1996. The project would have been located on Rock Creek, Cowlitz County, Washington.

The Permittee filed the request on March 14, 1995, and the preliminary permit for Project No. 11415 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8266 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11399–001 Oregon]

Tumalo Irrigation District; Notice of Surrender of Preliminary Permit

March 30, 1995.

Take notice that Tumalo Irrigation District, permittee for the Bend Canal Project No. 11399, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11399 was issued December 28, 1993, and would have expired November 30, 1996. The project would have been located on the Deschutes River, Deschutes County, Oregon.

The Permittee filed the request on March 17, 1995, and the preliminary permit for Project No. 11399 shall remain in effect through the thirtieth day after issuance of this notice unless that day is on a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois Cashell,

Secretary.

[FR Doc. 95–8265 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–213–000]

Mississippi River Transmission Corp.; Notice of Proposed Change in FERC Gas Tariff

March 30, 1995.

Take notice that on March 28, 1995, Mississippi River Transmission Corporation (MRT) submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 9, proposed to be effective April 1, 1995.

MRT states that the purpose of the filing is to retire Substitute First Revised Sheet No. 9 which provided for the disposition of Account Nos. 191 and 858 costs, and reserve Sheet No. 9 for future use.

MRT states that a copy of the filing has been mailed to all of its former jurisdictional sales customers and the State Commissions of Arkansas, Illinois and Missouri.

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 Capital Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8270 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–206–004]

Northern Natural Gas Co., Notice of Proposed Changes in FERC Gas Tariff

March 30, 1995.

Take notice that on March 27, 1995, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, effective March 11, 1995:

Substitute First Revised Sheet No. 263A

Northern states that such tariff sheet is being submitted in compliance with the Commission's Order issued March 10, 1995, in Docket No. RP93–206–003, to revise the termination date of the Carlton Resolution to October 31, 1995.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C, 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed on or before April 6, 1995. Protests will be considered by the Commission in determining the appropriate proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8268 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–325–000]

Panhandle Eastern Pipe Line Co.; Notice of Informal Settlement Conference

March 30, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, April 6, 1995, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 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, please contact Carmen Gastilo at (202) 208–2182 or Kathleen Dias at (202) 208–0524.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8269 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–280–000]

Williams Natural Gas Co.; Notice of Request Under Blanket Authorization

March 30, 1995.

Take notice that on March 23, 1995, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP95–280–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon pipeline, construct pipeline, relocate domestic customers, and uprate the pressure of pipeline under William's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 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.

Williams states that it proposes (1) to abandon approximately 15.8 miles of 10-inch pipeline and construct approximately 15.8 miles of 8-inch replacement pipeline, (2) to relocate 11 domestic customers, and (3) to uprate 2.2 miles of existing 8-inch pipeline, located in Labette and Montgomery Counties, Kansas.

Williams states further that the construction cost is estimated to be $2,270,810, the reclaim cost is estimated to be $171,470, and the salvage value is estimated to be $43,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8261 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–644–000, et al.]

Oklahoma Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

March 28, 1995.

Take notice that the following filings have been made with the Commission:

1. Oklahoma Gas and Electric Company

[Docket No. ER95–644–000]

Take notice that on March 21, 1995, Oklahoma Gas and Electric Company (OG&E), tendered for filing amendments to its February 24, 1995, filing to the Supplemental Power Purchase Agreement with the Oklahoma Municipal Power Authority (OMPA). OG&E also file a Notice of Cancellation effective September 30, 1995, as to the Supplemental Power Purchase Agreement.

Copies of this filing have been sent to OMPA, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Coastal Technology Dominicana, S.A.

[Docket No. EG95–37–000]

On March 21, 1995, Coastal Technology Dominicana, S.A. (''Applicant''), c/o Messina & Messina, Calle Fantino Falco No. 55, Santa Domingo, Dominican Republic, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant, a Dominican Republic corporation intends to operate and maintain all or part of certain generating facilities in Dominican Republic. These facilities will consist of two diesel electric generating facilities located in Puerto Plata, Dominican Republic.

Comment date: April 11, 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.

3. El Paso Electric Company

[Docket No. ER95–423–000]

Take notice that on March 3, 1995, El Paso Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Enron Power Marketing Inc.

[Docket No. ER95–609–000]

Take notice that on March 13, 1995, Enron Power Marketing, Inc. tendered for filing a Certificate of Concurrence in the above-referenced docket.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. San Diego Gas & Electric Company

[Docket No. ER95–647–000]

Take notice that on March 6, 1995, San Diego Gas & Electric Company (SDG&E) tendered for filing and acceptance, an Interchange Agreement (Agreement) between SDG&E and LG&E Power Marketing Inc. (LPM).

SDG&E requests that the Commission allow the Agreement to become effective on the 1st day of May, 1995 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and LPM.

Comment date: April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Citizens Utilities Company

[Docket No. ES95–26–000]

Take notice that on March 20, 1995, Citizens Utilities Company (Citizens), filed an application requesting an order from the Commission:

(1) Disclaiming jurisdiction, under § 204 of the Federal Power Act, over Citizens' periodic stock dividend program, or

(2) Alternatively, authorizing Citizens' quarterly stock dividend program without limitation of time.

Comment date: April 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Dianna L. Green

[Docket No. ID–2873–000]

Take notice that on March 21, 1995, Dianna L. Green (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Officer—Duquesne Light Company
Outside Director—PNC Bank Corp.

Comment date: April 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Stuart Heydt

[Docket No. ID–2874–000]

Take notice that on March 21, 1995, Stuart Heydt (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Director—Pennsylvania Power & Light Company
Director—PNC Bank, N.A.

Comment date: April 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–8271 Filed 4–4–95; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30384; FRL–4944–9]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by May 5, 1995.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30384] and the file symbol to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Rita Kumar, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8709; e-mail: kumar.rita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications to register the pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 68230–E. Applicant: Biospherics Incorporation, 12051 Indian Creek Court, Beltsville, MD 20705. Product name: Wingdinger H_2O. Biochemical Insecticide. Active ingredient: Xylitol at 40 percent. Proposed classification/Use: None. For control of houseflies indoors.

2. File Symbol: 68230–R. Applicant: Biospherics Inc. Product name: Wingdinger Gel. Biochemical Insecticide. Active ingredient: Xylitol at 40 percent. Proposed classification/Use: None. For control of houseflies indoors.

3. File Symbol: 4822–URO. Applicant: S. C. Johnson, Incorporation, 1525 Howe St., Racine, WI 53403. Product name: Off! Moth Proofer 1. Insecticide/Miticide. Active ingredient: Cedarleaf oil at 85 percent. Proposed classification/Use: None. For moth repellency and control.

4. File Symbol: 4822–URI. Applicant: S. C. Johnson, Inc. Product name: Off! Moth Proofer 2. Insecticide/Miticide. Active ingredient: Cedarleaf oil at 90 percent. Proposed classification/Use: None. For moth repellency and control.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: March 24, 1995.

Flora Chow,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 95–8085 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–64026; FRL 4943–8]

Methomyl; Request to Delete Certain Outdoor and All Indoor Non-Food Uses, DuPont Agricultural Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, 7 U.S.C. 136 d(f)(1), EPA is issuing this notice of receipt of request by DuPont to delete certain outdoor and all indoor non-food uses, including but not limited to, fur-bearing animal units, poultry houses, commercial, industrial and institutional areas (outdoor), meat and poultry processing plants, and garbage areas from their manufacturing use registrations for methomyl. The public is invited to submit comments within 30 days of this notice regarding the appropriateness of EPA granting this request.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be cancelled or amended to terminate one or more uses (7 U.S.C. 136 d (f)(1)). The Act further provides that, before acting on the request, EPA must publish in the **Federal Register** a notice of the receipt of the request and allow 30 days (or 90

days for minor agricultural uses) for public comment. Thereafter, the Administrator may approve such a request. EPA may waive the comment period if requested to do so by the registrant, or if continued use would pose an unreasonable adverse effect on the environment.

II. Intent to Delete Uses

This notice announces receipt by the Agency of an application by DuPont Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880–0038, to delete certain outdoor and all indoor non-food uses for the two methomyl registrations listed below in Table 1. These registrations are identified by registration number, product names, active ingredient, and the specific uses deleted. Users of these products who desire the continuation of the subject uses may wish to contact the registrant within 30 days after the publication of this notice, to discuss withdrawal of the applications for deletions or possible transfer of the registrations.

The registrant is requesting, and EPA is providing a 30–day comment period because the Agency, has been informed by the registrant that it contacted all registrants of methomyl fly baits last year of its decision not to support that use, and has not been selling the product to fly bait formulators since December 31, 1993. Also, because the deletions are being requested in accord with an EPA request that the registrant propose risk mitigation measures to address the Agency's methomyl worker safety concerns, the Agency considers a 30-day comment period to be appropriate in length.

TABLE 1. — REGISTRATIONS SUBJECT TO DELETION REQUESTS

EPA Registration No.	Product Name	Active Ingredient(s)	Delete From Label
352–366	DuPont Methomyl Technical	Methomyl	All indoor non-food uses such as dog kennels, fur-bearing animal units, farm buildings, poultry houses, commercial, industrial and institutional areas (outdoor), eating establishments (outdoor), food processing, handling and storage plants/areas (outdoor), garbage areas, garbage cans, trash bins, meat processing plants (nonfood areas), poultry processing plants (nonfood areas).
352–361	DuPont Composition	Methomyl	All indoor non-food uses such as dog kennels, fur-bearing animal units, farm buildings, poultry houses, commercial, industrial and institutional areas (outdoor), eating establishments (outdoor), food processing, handling and storage plants/areas (outdoor), garbage areas, garbage cans, trash bins, meat processing plants (nonfood areas), poultry processing plants (nonfood areas).

III. Existing Stocks Provisions

The Agency intends to authorize registrants to sell or distribute existing stocks of product under the previously approved labeling for a period of 18 months after approval of the deletion requests, subject to the imposition of other restrictions resulting from, e.g. special review actions.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: March 21, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 95–7958 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–F

[PF–623; FRL–4945–1]

Miles, Inc.; Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from Miles, Inc., petitions to establish pesticide tolerances for phostebupirim and cyfluthrin in or on various corn commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Forrest, Product Manager (PM 14), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6600; e-mail: Forrest.Robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from Miles, Inc., P.O. Box 4913, Kansas City, MO 64120, notices of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for the the following pesticide petitions to amend 40 CFR part 180 to establish tolerances for certain pesticide in or on various corn commodities.

1. *PP 1F4025.* Miles, Inc., has proposed amending 40 CFR part 180 to establish tolerances for phostebupirim, *O*-[2-(1,1-dimethylethyl-5-pyrimidinyl] *O*-ethyl *O*-(1-methylethyl) phosphorothioate, in or on the following raw agricultural commodities: corn, fresh at 0.01 part per million (ppm);

corn, grain, field and pop at 0.01 ppm; and corn forage and fodder, field, pop, and sweet at 0.01 ppm. The proposed analytical method for determining residues is gas-liquid chromatography.

2. *PP 1F4026.* Miles, Inc., has proposed amending 40 CFR 180.436 to establish tolerances for cyfluthrin, cyano (4-fluoro-2-phenoxyphenyl)methyl-3-(2,2-dichloroethyl)-2,2-dimethylcyclopropanecarboxylate, in or on the following raw agricultural commodities: corn, fresh at 0.01 part per million (ppm); corn, grain, field and pop at 0.01 ppm; and corn forage and fodder, field, pop, and sweet at 0.01 ppm. The proposed analytical method for determining residues is gas-liquid chromatography.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Authority: 21 U.S.C. 346a and 348.

Dated: March 21, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–8084 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30329A; FRL–4940–8]

Rohm and Haas Co.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Rohm and Haas Company, to conditionally register the pesticide products Enable 2F, RH-7592 Technical, and Indar WSP containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–5540).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 5, 1992 (57 FR 4450), which announced that Rohm and Haas Co., 100 Independence Mall West, Philadelphia, PA 19106, had submitted applications to conditionally register the pesticide products Indar 2F (now known as Enable 2F) and RH-7592 Technical (EPA File Symbols 707–EGR and 707–EGN), containing the active ingredient fenbuconazole alpha-[2-(4-chlorophenyl)ethyl]-alpha-phenyl-1*H*-1,2,4-triazole-1-propanenitrile at 22.8 and 98.3 percent respectively, an active ingredient not included in any previously registered products.

EPA later received an application from the company to register the product Indar 75WSP (EPA File Symbol 707–EGO), containing the active ingredient fenbuconazole at 75 percent. However, since the notice of receipt of application was not published in **Federal Register**, as required by FIFRA, as amended, interested parties may submit written comments within 30 days from the date of publication of this notice for this product only.

The applications were approved on February 15, 1995, for one technical and two end-use products listed below:

1. RH-7592 Technical for formulation and manufacture of fungicides only (EPA Registration Number 707–230).

2. Enable 2F for disease control on pecans (EPA Registration Number 707–231).

3. Indar 75WSP for use to to control diseases on apricots, cherries, nectarines, and peaches (EPA Registration Number 707–239).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of fenbuconazole, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of fenbuconazole during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

These products are conditionally registered in accordance with FIFRA section 3(c)(7)(C). If the conditions are not complied with the registrations will be subject to cancellation in accordance with FIFRA section 6(e). The terms of the conditional registrations will require Rohm and Haas Company to submit the following studies:

1. Fish Life Cycle (Guideline Reference Number 72–5).

2. Growth and Reproduction of Aquatic Plants - Tier 2 (123–2).

3. Droplet Size Spectrum (201–1).

4. Drift Field Evaluation (202–1).

5. Storage Stability of Fenbuconazole Reflecting a 49-month Storage Period (171–4(e]).

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in an EPA Pesticide Fact Sheet on fenbuconazole.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: March 22, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–7959 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–F

[PF–624; FRL–4948–2]

Rohm & Haas Co.; Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Rohm & Haas Co. petitions to establish pesticide tolerances for benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide, in or on apples and walnuts.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Rick Keigwin, Product Manager (PM-10), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-7618; e-mail: keigwin.rick@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from the Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, notices of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petitions (PP) 4E4375 and 4F4280 to amend 40 CFR part 180 to establish tolerances for benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide, in or on the raw agricultural commodities apples at 1.0 part per million (ppm) (PP 4E4375) and walnuts at 0.1 ppm (PP 4F4280). The proposed analytical method for determining residues is HPLC separation with UV detection.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Authority: 21 U.S.C. 346a and 348.

Dated: March 30, 1995.

Susan Lewis,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–8345 Filed 3–31–95; 1:06 pm]

BILLING CODE 6560–50–F

[OPP–66209; FRL–4943–4]

Mevinphos; Amendment to Cancellation Order and FIFRA Section 6(g) Notification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of amended cancellation order.

SUMMARY: On June 30, 1994, Amvac Chemical Corporation (Amvac) of Los Angeles, California, requested voluntary cancellation of all registrations containing mevinphos (2-carbomethoxy-1-methylvinyl dimethyl phosphate, alpha and beta isomers, trade name Phosdrin). Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA canceled all mevinphos registrations on July 1, 1994. The Cancellation Order contained certain limitations upon the distribution, sale, and use of existing stocks of canceled pesticide products containing mevinphos. EPA has modified the existing stocks provision of the Cancellation Order to extend the period for sale, distribution, and use of existing stocks of certain canceled products containing mevinphos through November 30, 1995. At the end of this period, all product in the channels-of-trade, including product in the hands of growers, will be subject to a recall which has some provisions for reimbursement. Product sold after February 27, 1995, will be labelled with additional protective requirements. This notice also amends the timeframe for reporting the possession of canceled mevinphos products as required under section 6(g) of FIFRA.

DATES: The amended cancellation order became effective January 13, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Dumas, Special Review Branch, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, 3rd floor, 2800 Crystal Drive, Arlington, VA, (703) 308–8015.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

On June 30, 1994, Amvac requested voluntary cancellation of all pesticide product registrations containing mevinphos as an active ingredient. On July 1, 1994, EPA issued a Cancellation Order for all mevinphos registrations pursuant to FIFRA section 6(f)(1). In the **Federal Register** of August 1, 1994 (59 FR 38973), EPA issued a Notice announcing receipt of the request for cancellation, the Cancellation Order, and the FIFRA section 6(g) notification requirements. The Cancellation Order prohibited the distribution and sale of existing stocks of canceled pesticide products containing mevinphos after December 31, 1994, and prohibited the use of existing stocks after February 28, 1995. Existing stocks refer to those stocks of previously-registered mevinphos products which were in the United States and were packaged, labeled, and released for shipment prior to the cancellation on July 1, 1994. Also, the Order required Amvac to develop and implement an acceptable Recall Plan for the recall of mevinphos products that were in the hands of dealers and distributors after December 31, 1994.

On December 28, 1994, EPA amended the Cancellation Order by extending distribution and sale of existing stocks of canceled mevinphos products through January 14, 1995, to facilitate work on a pending agreement between EPA and Amvac. On January 13, 1995, EPA entered into an agreement with Amvac and issued a new amendment to the Cancellation Order which changed the existing stocks provisions in the amended Cancellation Order by extending the period for distribution, sale, and use of mevinphos, established new use restrictions, and ordered the recall of mevinphos products.

The EPA registration numbers canceled by the Cancellation Order are: 5481–113, 5481–114, 5481–161, 5481–248, 5481–411, 5481–412, 5481–425, CA80001800, CA81000300, CA86006300, CA86007300 and any supplemental registrations of the registrations listed above.

B. Restrictions on Distribution, Sale, and Use

The Cancellation Order, as amended on December 28, 1994, provided that no person may distribute or sell mevinphos products after January 14, 1995, and that no person may use mevinphos products after February 28, 1995. The Amended Cancellation Order and Recall Order, issued January 13, 1995, prohibits all distribution, sale, and use of mevinphos products after November 30, 1995. The extension of the date for use, sale, and distribution does not affect the registration of mevinphos products in any way. All mevinphos registrations remain canceled, and will not be considered for registration. Moreover, all production of mevinphos products for use in the United States ceased July 1, 1994.

C. Relabeling Requirements and Additional Restrictions on Use of Mevinphos Products

Because of the risks that mevinphos poses to workers, the Cancellation Order as amended requires Amvac to relabel mevinphos products in the hands of dealers and distributors to reflect additional use restrictions. The additional required use restrictions are as follows: (1) Use of hand-held application equipment and air blast sprayers is prohibited; (2) applicators and other handlers must wear a respirator with either an organic vapor removing (O/V) cartridge with a prefilter approved for pesticides (MSHA/NIOSH) approval number prefix (TC-230), or a canister with a prefilter approved for pesticides (MSHA/NIOSH) approval number prefix (TC-14G); (3) applicators and other handlers must use protective eyewear; (4) applicators and other handlers must wear: coverall over long shirt and long pants; chemical-resistant apron (for mixing/loading and cleaning equipment); chemical-resistant gloves, such as Barrier Laminate, Butyl Rubber, Nitrile, Neoprene Rubber, Polyvinyl Chloride, or Viton; chemical-resistant footwear plus socks; and chemical-resistant headgear for overhead exposure; (5) use of protective measures described in 2, 3, and 4 apply even when a closed loading system is used; and (6) all applications in greenhouses and on grapes are prohibited.

New labelling also must contain information on the recall and last legal date for distribution, sale, and use. The specific language required on new labelling is as follows:

This product may not be sold, distributed, or used after November 30, l995. Any product remaining after that date may be returned to Amvac Chemical Corporation which will arrange for storage and transportation. You may obtain reimbursement for the purchase price of any unopened containers in accordance with the terms of the Recall Plan. To obtain information on storage, return, and the reimbursement process, call 1–800–205–5330. If you dispose of this product, you must comply with applicable requirements for hazardous waste under federal and state law.

The additional use restrictions, recall information, and the November 30, 1995 deadline for legal distribution, sale, and use are contained in a Notice that will become a part of labelling for all mevinphos product sold or distributed after February 27, 1995. All mevinphos products sold and distributed after February 27, 1995, must have a one-inch-by-two-inch sticker affixed to each container directing users to read the Notice containing new labelling requirements. The Notice must accompany each container sold after February 27, 1995. Amvac is relabeling at its own cost. Amvac reports that it initiated the restickering program immediately after reaching agreement with the Agency and that the program is now completed.

D. Recall

When the Agency reached its agreement with Amvac on June 30, 1994, Amvac agreed to develop and implement an acceptable recall plan covering existing stocks of mevinphos in the hands of dealers and distributors. As part of the agreement between Amvac and EPA reached on January 13, 1995, Amvac submitted to EPA a proposed recall plan for the recall of existing stocks of mevinphos product. EPA has accepted Amvac's proposed plan and has ordered Amvac to begin implementing the recall plan on December 1, 1995. Amvac's recall plan, which is exemplary, includes provisions for recall of all mevinphos products down through the end-user, including opened and partially filled containers. Additionally, holders of unopened containers of Amvac product or those products that are supplemental registrations of Amvac products will be reimbursed for the purchase price. Reimbursement will go through the distribution chain, where dealers reimburse end-users, distributors reimburse dealers, and Amvac reimburses distributors. Reimbursement to all holders provides a strong incentive to return mevinphos products. Finally, Amvac is assuming all costs associated with transportation, collection, and storage of mevinphos products that are being recalled.

The mevinphos registrations subject to the recall and reimbursement are: 5481–113, 5481–114, 5481–161, 5481–248, 5481–411, 5481–412, 5481–425, CA80001800, CA81000300, CA86006300, CA86007300, and supplemental registrations 5481–161–34704, 5481–114–34704, and 5481-412-34704. Mevinphos products that are not Amvac products or its supplemental registrations are subject to this recall, but they are not eligible for reimbursement. For example, products produced by Shell, Dupont, and Helena may not be eligible for reimbursement, but are subject to the recall.

E. Modified Reporting Schedule Under Section 6(g)

In the July 1, 1994 Cancellation Order, any person holding canceled mevinphos product was required to report holdings under section 6(g) of FIFRA. Producers, exporters, applicants for a registration, applicants or holders of an experimental use permit, dealers, distributors, and retailers were to report by January 31, 1995. Commercial applicators were to report by March 28, 1995. All persons must now report by December 31, 1995.

II. Agency Rationale for Amendment

On July 1, 1994, when the Agency accepted the voluntary cancellation and allowed the use of existing stocks through February 28, 1995, there were many reasons to accept the voluntary cancellation rather than issuing a notice of intent to suspend notice as the Agency was prepared to do to resolve the risks posed by mevinphos. Had the Agency issued the suspension and Amvac contested the suspension and requested an administrative hearing, production and distribution could have continued throughout the legal proceedings. This outcome could have resulted in significantly greater use and almost certainly a larger volume of potential hazardous waste at all levels of the channels-of-trade (particularly, at the grower level) than would have occurred had the Agency not agreed to a voluntary cancellation that allowed existing stocks. Mevinphos would have become a hazardous waste only when it was intended for disposal and not when it would be returned under the recall program. Moreover, even if the Agency had prevailed in an administrative hearing, Amvac could have appealed

the decision and further production and use might have been allowed during the appeal process. In addition, Amvac had agreed to conduct a recall of mevinphos products in the hands of dealers and distributors. If the Agency had to mandate a recall rather than utilize a voluntary recall, it would have had to do so through a rulemaking process which can take more time to implement than the voluntary program agreed to by Amvac. Finally, the Agency anticipated that a safer alternative, NTN, would be registered by end of 1994 that would have mitigated the economic impact on growers from the loss of mevinphos. Weighing the risk and benefit outlined above, the Agency believed that it was in the public's interest to enter into the agreement with Amvac that is reflected in the July 1, 1994 Cancellation Order.

On June 29, 1994, California imposed some additional restrictions on mevinphos use. The specific restrictions were not known to the Agency at the time it came to agreement with Amvac. It is now the Agency's understanding that these restrictions possibly along with other factors such as low pest pressure lead to significantly less use of mevinphos during the rest of 1994. Consequently, there was significantly more mevinphos product in the hands of growers, dealers, and distributors than originally anticipated by the Agency on July 1, 1994. Because of the quantity of existing stocks in the channels-of-trade, Amvac indicated there were substantial difficulties and costs associated with the recall program and it expressed reluctance to undertake such an extensive recall. If the product was not recalled in a timely manner pursuant to a voluntary recall, then the potential for illegal use and risk associated with possession of a potential hazardous waste would be greater than expected. In addition, the safer alternative that the Agency expected to be available by the end of 1994 has yet to be registered. Consequently, the economic impact of enforcing the existing stocks provisions of the July 1, 1994 Cancellation Order would have been greater than originally anticipated. The potential for greater existing stocks at all levels in the channels-of-trade for a longer time and greater potential economic impacts than originally anticipated were considerations for the Agency extending the last date for distribution, sale, and use of existing stocks on January 13, 1995.

In addition to extending the use of existing stocks, the Agency also required that additional protective measures for the use of mevinphos, a relabelling program, and an expanded recall of mevinphos products be carried out by Amvac. The protective measures are intended to reduce exposure during the extended use period. Product in the hands of dealers and distributors will be relabelled to include the new protective measures, information on the recall, including an 800 number, and the last legal use date. Amvac has agreed to recall and reimburse any person possessing any unopened mevinphos product produced by Amvac or by supplemental registrants, even stocks held by growers, to accept mevinphos products produced by other companies including Dupont, Shell, and Helena and to accept opened containers of mevinphos product. A voluntary recall that includes opened and partially filled containers and goes down through the end-user is unprecedented. Because of the recall which includes reimbursement provisions, growers are less likely to have a potential hazardous waste for an extended period. This plan reduces potential accidental poisonings and the opportunity for illegal use in the future. The minimization of the holding of hazardous waste, accidental poisonings, and illegal use along with the imposition of additional protective measures for workers were important benefits contributing to the Agency's decision.

The Agency believes that the amount of mevinphos product used by November 30, 1995, will likely be no more than the amount originally anticipated when the Agency entered into the agreement with Amvac on July 1, 1994. This level of use combined with the requirement for additional protective measures for those using the product during the extended use period leads the Agency to believe that exposure to agricultural workers from the continued use of mevinphos will be no greater, and likely less, than the Agency anticipated in July of 1994.

An additional benefit associated with the new arrangement is that it allows the Agency to avoid the uncertainty associated with litigation over the cancellation and recall.

The Agency has considered the risks and benefits of extending the distribution, sale, and use of existing stocks of products containing mevinphos. When the risk of continued use through November 30, 1995, is weighed against the benefits, both economic and in terms of risk reduction, the Agency believes that the agreement signed on January 13, 1995, was in the best interest of the public.

Dated: March 27, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 95–8344 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1046–DR]

(California); Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California, (FEMA–1046–DR), dated March 12, 1995, and related determinations.

EFFECTIVE DATE: March 24, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of California dated March 12, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 12, 1995:

Alameda, Alpine, Calaveras, Contra Costa, Merced, San Francisco, San Joaquin, and San Mateo Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–8248 Filed 4–4–95; 8:45 am]

BILLING CODE 6718–02–M

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: May 5, 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, DC 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: March 28, 1995.

John P. Carey,

General Counsel.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MARCH 20, 1995 UPDATE

Index property name	PO Box/Rt No. street address	City	State/Zip	Telephone
Additions				
Arizona:				
AR0081 Motel 6	1105 Hwy. 65 N	Conway	AR 72032	(501)327–6623
AR0083 Motel 6	6001 Rogers Ave	Ft. Smith	AR 72903	(501)484–0576
AR0082 Motel 6	2300 S. Caraway Rd	Jonesboro	AR 72401	(501)932–1050
AR0077 Amevi Suites	10920 Financial Center Pkwy	Little Rock	AR 72211	(501)225–1075
AR0076 Comfort Inn Airport	3200 Bankhead	Little Rock	AR 72206	(501)490–2010
AR0084 Motel 6	9525 I–30	Little Rock	AR 72209	(501)565–1388
AR0080 Motel 6	215 S. W. Birch St	Russellville	AR 72801	(501)968–3666
AR0079 Motel 6	900 Realtor Ave	Texarkana	AR 75502	(501)772–0678
AR0078 Motel 6	2501 S. Service Rd	West Memphis	AR 72301	(501)735–0100
Iowa:				
IA0149 Hampton Inn Cedar Rapids	3265 6th Street SW	Cedar Rapids	IA 52404	(319)364–8144
IA0150 Council Bluffs Fairfield	520 30th Avenue	Council Bluffs	IA 51501	(712)366–1330
IA0148 Wellington Bed & Breakfast	800 W. 4th Street	Waterloo	IA 507022149	(319)234–2993
Maryland:				
MD0283 Super 8 Motel	1008 Beard Hill Rd	Aberdeen	MD 21001	(410)272–5420
MD0284 Super 8 Motel	9290 Three Notch Rd	California	MD 20619	(301)862–9822
MD0285 Super 8 Motel College Park.	9150 Baltimore Ave	College Park	MD 20740	(301)474–0894
MD0286 Super 8 Motel	98 Stemmers Run Rd	Essex	MD 21221	(410)780–0030
MD0282 The Aspen Institute	2010 Carmichael Rd	Queenstown	MD 21658	(410)820–5341
MD0287 Super 8 Motel	300 Tippin Dr	Thurmont	MD 21788	(301)271–7888
MD0288 Super 8 Motel	3550 Crain Hwy	Waldorf	MD 20602	(301)932–8957
Minneapolis:				
MN0294 Bloomington Fairfield Inn	2401 East 80th Street	Bloomington	MN 55420	(612)858–8780
MN0293 Duluth Fairfield Inn	901 Joshua Avenue	Duluth	MN 55811	(218)723–8607
North Carolina:				
NC0358 Radisson Prince Charles Hotel and Suites.	450 Hay Street	Fayetteville	NC 28301	(910)433–4444
NC0359 Best Western Mountainbrook Inn.	1021 Soco Road	Maggie Valley	NC 28751	(704)926–3962
North Dakota:				
ND0079 Wagon Wheel Inn	455 Winter Show Rd	Valley City	ND 58072	(701)845–5333
South Carolina:				
SC0218 Sheraton Hotel and Conference Center.	2100 Bush River Rd	Columbia	SC 29210	(803)731–0300

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MARCH 20, 1995 UPDATE—Continued

Index property name	PO Box/Rt No. street address	City	State/Zip	Telephone
South Dakota:				
SD0090 Circle H Motel	South Hi-Way 18	Lake Andes	SD 57356	(605)487–7652
Tennessee:				
TN0269 Budget Host Inn	395 Main Street	Kimball	TN 37347	(615)837–7185
TN0268 Clubhouse Inn and Conference Center.	920 Broadway	Nashville	TN 37203	(615)244–0150
Texas:				
TX0632 Quality Inn Airport	909 E. Koenig Lane	Austin	TX 78751	(512)452–4200
TX0634 Corpus Christi Fairfield Inn	5217 Blanche Moore Drive	Corpus Christi	TX 78411	(512)485–8393
TX0635 Days Inn/NASA	2020 NASA Rd 1	Houston	TX 77058	(713)333–0308
TX0633 Quality Inn North	10811 IH 35 N	San Antonio	TX 78233	(512)590–4646
Virginia:				
VA0616 Ramada Inn	4641 Kenmore Ave	Alexandria	VA 22304	(703)751–4510
VA0612 Super 8 Motel—Appomattox.	Rt 4, Box 100	Appamattox	VA 24522	(804)352–2339
VA0614 Super 8 Motel—Bristol	2139 Lee Hwy	Bristol	VA 24201	(703)466–8800
VA0628 Super 8 Motel—Churchland	3216 Churchland Blvd	Chesapeake	VA 23321	(804)686–8888
VA0604 Super 8 Motel, Inc.—Christiansburg.	55 Laurel St	Christiansburg	VA 24073	(703)382–5813
VA0609 Super 8 Motel—Culpeper	889 Willis Ln	Culpeper	VA 22701	(703)825–8088
VA0605 Super 8 Motel—Danville	2385 Riverside Dr	Danville	VA 24541	(804)799–5845
VA0618 Holiday Inn—Fair Oaks	11787 Lee Jackson Mem Hwy	Fairfax	VA 22033	(703)352–2525
VA0613 Super 8 Motel—Farmville	6 Box 1755, Hwy. 15 S	Farmville	VA 23901	(804)392–8196
VA0620 Super 8 Motel—Franklin	1599 Armory Dr	Franklin	VA 23851	(804)562–2888
VA0611 Super 8 Motel—Fredericksburg.	3002 Mall Ct	Fredericksburg	VA 22401	(703)786–8881
VA0621 Super 8 Motel—Hampton	1330 Thomas St	Hampton	VA 23669	(703)723–2888
VA0606 Super 8 Motel—Martinsville	960 N Memorial Blvd	Martinsville	VA 24114	(703)666–8888
VA0622 Super 8 Motel—Clyde Morris.	945 J. Clyde Morris Blvd	Newport News	VA 23601	(804)595–8888
VA0623 Super 8 Motel—Jefferson	6105 Jefferson Ave	Newport News	VA 23605	(804)825–1422
VA0624 Super 8 Motel—Portsmouth	925 London Blvd	Portsmouth	VA 23704	(804)398–0612
VA0607 Super 8 Motel—Radford	1600 Tyler Ave	Radford	VA 24141	(703)731–9355
VA0625 Super 8 Motel—Airport	5110 Williamsburg Rd	Richmond	VA 23231	(804)222–8008
VA0627 Super 8 Motel—Chamberlayne.	5615 Chamberlayne Rd	Richmond	VA 23227	(804)262–8880
VA0626 Super 8 Motel—Midlothian	8260 Midlothian Turnpike	Richmond	VA 23235	(804)320–2823
VA0608 Super 8 Motel—South Boston.	1040 Bill Tuck Hwy	South Boston	VA 24592	(804)572–8868
VA0629 Super 8 Motel—Suffolk	633 N. Main St	Suffolk	VA 23434	(804)925–0992
VA0610 Super 8 Motel—Tappahannock.	PO Box 1748	Tappahannock	VA 22560	(804)443–3888
West Virginia:				
WV0203 Morgantown USR Center	RR9 Box 228, 300th Chemical Company.	Morgantown	WV 265059809	(304)292–1608
Changes/Corrections				
California:				
CA0795 Wyndahm Garden Hotel—Culver City.	5990 Green Valley Circle	Culver City	CA 90230	(310)641–7740
Kansas City:				
KS0075 Holiday Inn Express	1401 West Hwy 54	Pratt	KS 67124	(316)672–9433
Maryland:				
MD0022 Wyndham Garden Hotel Annapolis.	173 Jennifer Rd	Annapolis	MD 21401	(410)266–3131
MD0160 Doubletree Guest Suites at BWI.	1300 Concourse Dr	Linthicum	MD 21090	(410)850–0747
Pennsylvania:				
PA0217 Doubletree Club Hotel—Harrisburg.	815 Eisenhower Blvd	Middletown	PA 17057	(717)939–1600
South Dakota:				
SD0042 Sioux Falls Thriftlodge	809 W. Ave. N	Sioux Falls	SD 571045719	(605)336–0230
Texas:				
TX0033 Wyndham Austin at Southpark.	4140 Governor's Row	Austin	TX 78744	(512)448–2222
Deletions				
District of Columbia:				
DC0037 Comfort Inn Downtown	500 H St. NW	Washington	DC 20001	(202)289–5959
Texas				
TX0001 Sheraton Hotel Corpus Christi.	707 N. Shoreline Blvd	Corpus Christi	TX 78401	(512)882–1700

[FR Doc. 95–8247 Filed 4–4–95; 8:45 am]

BILLING CODE 6718–26–P

FEDERAL RESERVE SYSTEM

American State Bank ESOP, 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 April 28, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. American State Bank ESOP, Broken Bow, Oklahoma; to become a bank holding company by acquiring 37.04 percent of the voting shares of American State Bancshares, Inc., Broken Bow, Oklahoma, and thereby indirectly acquire American State Bank, Broken Bow, Oklahoma.

2. Mountain Parks Financial Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Financial Holdings, Inc., Louisville, Colorado, and thereby indirectly acquire Boulder Valley Bank and Trust, Boulder, Colorado, and The Bank of Louisville, Louisville, Colorado.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. InterWest Bancorp., Inc., Oak Harbor, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of InterWest Savings Bank, Oak Harbor, Washington.

Board of Governors of the Federal Reserve System, March 30, 1995.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 95–8258 Filed 4–4–95; 8:45 am]

BILLING CODE 6210–01–F

Union National Financial Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 19, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Union National Financial Corporation, Mount Joy, Pennsylvania; to engage *de novo* through its subsidiary Nissley Chocolate Factory Apartments Limited Partnership, Mount Joy, Pennsylvania, in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. P&W Bancshares, Inc., Little Rock, Arkansas; to engage *de novo* through its subsidiary Central Bank & Trust, Little Rock, Arkansas, in acquiring single family first real estate mortgage loans, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 30, 1995.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 95–8257 Filed 4–4–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Review of proposed protocol for the study: ''Epidemiologic Evaluation of Back Belts for Prevention of Low Back Injury in Material Handling Workers.''

Time and Date: 1 p.m.–5 p.m., April 25, 1995.

Place: NIOSH, CDC, Suncrest Facility, Large Conference Room, 3040 University Avenue, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available. The room accommodates approximately 100 people.

Purpose: The purpose of this meeting is to obtain guidance regarding the technical and scientific merits of the study ''Epidemiology Evaluation of Back Belts for Prevention of Low Back Injury in Material Handling Workers'' (workers whose jobs require lifting), being conducted by NIOSH. The proposed research will determine whether back belts are effective in reducing first-time or recurring injury among workers who wear them.

Participants will review the proposed study protocol, provide individual recommendations for scientific changes, and provide individual advice to NIOSH on the conduct of the study. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited. Written comments will be part of the review and should be received by the

contact person listed below no later than Tuesday, April 18, 1995, to ensure consideration.

Contact Person for Additional Information: Lytt I. Gardner, Ph.D., NIOSH, CDC, 1095 Willowdale Road, Mailstop P04/1133, Morgantown, West Virginia 26505, telephone 304/285–5913.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–8317 Filed 4–4–95; 8:45 am]

BILLING CODE 4163–19–M

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5 p.m., April 26, 1995; 8:30 a.m.–1 p.m., April 27, 1995.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 11, Room 1413, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Discussed: Tuberculosis in foreign-born persons; ACET Strategic Plan to Eliminate Tuberculosis Progress Report; future priorities and direction for ACET; Tuberculosis Morbidity Update; funding issues and block grants; respiratory protection for tuberculosis infection control; and an update on issues related to surveillance for tuberculosis and HIV.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Samuel W. Dooley, Jr., M.D., Acting Associate Director for Science, National Center for Prevention Services, CDC, and Acting Executive Secretary, ACET, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, Georgia 30333, telephone 404/639–8006.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–8318 Filed 4–4–95; 8:45 am]

BILLING CODE 4163–18–M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Disability and Long-Term Care Statistics: Meeting

Pursuant to Pub. L. 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: NCVHS Subcommittee on Disability and Long-Term Care Statistics.

Time and date: 9 a.m.–5 p.m., April 25, 1995.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will discuss current uses and data issues in two surveys: Medicare Current Beneficiary Survey and National Nursing Home Survey.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–8316 Filed 4–4–95; 8:45 am]

BILLING CODE 4163–18–N

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month April 1995:

Name: Council on Graduate Medical Education

Time: April 26, 1995, 1:00 p.m.–5:00 p.m.; April 27, 1995, 8:30 a.m.–4:00 p.m.

Place: Ramada Plaza Hotel, 10 Thomas Circle & Massachusetts, & Vermont Avenues NW.,Washington, DC 20005.

Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: The agenda will include a panel of congressional staff to discuss physician workforce activities in the Congress; a discussion of an options paper on GME workforce financing policy, discussion and action on the draft COGME report, ''Managed Care Impact on the Physician Workforce and Medical Education,'' and an update on current COGME activities.

Anyone requiring information regarding the subject Council should contact Marc L. Rivo, M.D., M.P.H., Executive Secretary, telephone (301) 443–6190; or F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, telephone (301) 443–6326, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda Items are subject to change as priorities dictate.

Dated: March 31, 1995.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 95–8384 Filed 4–4–95; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–4210–05; NMNM93535]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; R&PP Act Classification.

SUMMARY: The following public land in Otero County, New Mexico has been examined and found suitable for classification for lease or conveyance to the Alamogordo Public School District under the provision of the R&PP Act, as amended (43 U.S.C. 869 et seq.). The Alamogordo Public School District proposes to use the land for a school site.

T. 16 S., R. 10 E., NMPM
Sec. 5, lot 23.

Containing 39.54 acres, more or less.

DATES: Comments regarding the proposed lease/conveyance or classification must be submitted on or before May 8, 1995.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Las

Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Lorraine J. Salas at the address above or at (505) 525–4388.

SUPPLEMENTARY INFORMATION: Lease or conveyance will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States.
3. Reserving those rights for water pipeline purposes granted to the City of Alamogordo by Right-of-Way NMNM030504.
4. Reserving those rights for water pipeline purposes granted to the City of Alamogordo by Right-of-Way NMNM32667.
5. Reserving those rights for flood control purposes granted to the City of Alamogordo by Right-of-Way NMNM90667.
6. Those rights for a Buried Fiber Optic Cable granted to U.S. West Communications by Right-of-Way NMNM61210.
7. All valid existing rights documented on the official public land records at the time of lease/patent issuance.
8. Upon determination by the authorized officer that the project has successfully been completed in accordance with the approved plan of development and management, the subject parcel will be conveyed. The mineral estate will be conveyed simultaneously pursuant to Section 209 of the Act of October 21, 1976 (43 U.S.C. 1719).
9. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Cruces District, 1800 Marquess, Las Cruces, New Mexico, 88005.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. Interested persons may submit comments on or before May 8, 1995 regarding the proposed lease/conveyance or classification of the lands to the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a school site. 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 proposed administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a school site.

Dated: March 24, 1995.

Richard T. Watts,

Acting District Manager.

[FR Doc. 95–8319 Filed 4–4–95; 8:45 am]

BILLING CODE 4310–FB–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–800460

Applicant: International Crane Foundation, Baraboo, WI.

The applicant requests a permit to import up to 25 blood and serum samples from each of three species of cranes: Siberian crane (*Grus leucogeranus*), red-crowned crane (*Grus japonensis*), and white-naped crane (*Grus vipio*) for enhancement of the species through scientific research.

PRT–698170

Applicant: Field Museum of Natural History, Chicago, IL.

The applicant requests renewal of their permit to export and reimport endangered and threatened specimens already accessioned into the permittee's collection for scientific research. Permittee also requests authorization to salvage dead endangered and threatened specimens found in the field.

PRT–800403

Applicant: Joanne Dixon, Oroville, WA.

The applicant requests a permit to import one male sport-hunted bontebok (*Damaliscus dorcas dorcas*) culled from the captive, pure-bred herd maintained by the Shamwari Game Reserve for enhancement of the species.

PRT–800654

Applicant: African Lion Safari, Cambridge, Ontario, Canada.

The applicant requests a permit to import and reexport two female Asian elephants (*Elephas maximus*) in and out of the United States for the purpose of enhancement of the species through conservation education.

PRT–800714

Applicant: Milwakee County Zoological Gardens, Milwaukee, WI.

The applicant requests a permit to import two female captive-born brush-tailed rat-kangaroo (bettong) (*Bettongia penicillata*) from Metro Toronto Zoo for the purpose of enhancement of the species through conservation education and propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 31, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–8351 Filed 4–4–95; 8:45 am]

BILLING CODE 4310–55–P

Availability of Draft Recovery Plan Revision for the Florida Manatee for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to extend the

public comment period for a technical/agency draft recovery plan: the second revision of the Florida manatee (*Trichechus manatus latirostris*) Recovery Plan.

The Service solicits additional review and comment from the public on this plan. During the previous comment period (December 27, 1994–February 27, 1995), there was some concern expressed that certain individuals and/or groups were not adequately informed of the availability of the draft for public review.

DATES: Comments on the draft recovery plan revision must be received on or before June 5, 1995 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 South Point Dr., South, Suite 310, Jacksonville, Florida 32216 (Telephone: 904–232–2580). Written comments and materials regarding the plan should be addressed to David J. Wesley, Field Supervisor, at the above Jacksonville, Florida address. Comments and materials received are available upon request for public inspection, by appointment, and during normal business hours at the above Jacksonville, Florida address.

FOR FURTHER INFORMATION CONTACT: Robert O. Turner, Manatee Coordinator, at the Jacksonville, Florida, address (Telephone: 904–232–2580).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery Plans describe actions necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice, and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The Florida Manatee, a subspecies of the West Indian manatee, was originally listed under the Endangered Species Act on March 11, 1967. The Service developed an initial recovery plan for manatees in 1980. The 1980 plan focused primarily, but not exclusively, on manatees in Florida. In 1986 the Service adopted a separate Recovery Plan for manatees in Puerto Rico. To reflect new information and planning needs for manatees in Florida, the Service revised the original plan in 1989 focusing exclusively on Florida's manatees. The revised plan covered a five-year planning period ending in Fiscal Year 1994. In view of progress since 1989 and planning needs beyond 1994, the Service is once again updating and revising the plan.

Public Comments Solicited

The Service solicits written comments on the revised recovery plan described. All comments received by the date specified will be considered prior to the approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 27, 1995.

David J. Wesley,

Field Supervisor.

[FR Doc. 95–8245 Filed 4–4–95; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Conservation Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of draft decision of evaluation of water conservation plans.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA), the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans (Criteria) dated April 30, 1993. Using this Criteria, Reclamation evaluated the adequacy of all water conservation plans developed by project contractors, including those required by the Reclamation Reform Act of 1982. The Criteria was developed and the plans evaluated for the purpose of promoting the most efficient water use reasonably achievable by Central Valley Project (CVP) contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination on the adequacy of each CVP contractor's water conservation plan in the **Federal Register** and to allow the public a minimum of 30 days to comment on its preliminary determinations. This program is on-going; an updated list will be published to recognize districts as plans are revised to meet the Criteria.

DATES: All public comments must be received by Reclamation by May 5, 1995.

ADDRESSES: Please mail comments to the address provided below.

FOR FURTHER INFORMATION CONTACT: Betsy Reifsnider, Bureau of Reclamation, 2800 Cottage Way, MP–402, Sacramento, CA 95825. To be placed on a mailing list for any subsequent information, please write Betsy Reifsnider or telephone at (916) 979–2397.

SUPPLEMENTARY INFORMATION: Under provisions of Section 3405(e) of the CVPIA (Title 34 of Public Law 102–575), ''The Secretary [of the Interior] shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.'' Also, according to Section 3405(e)(1), these criteria will be developed '' * * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.''

The Criteria states that all parties (districts) that contract with Reclamation for water supplies (municipal and industrial contracts greater than 2,000 acre feet and agricultural contracts over 2,000 irrigable acres) will prepare water conservation plans which will be evaluated by Reclamation based on the following required information:

1. Coordinate with other agencies and the public
2. Describe the district
3. Inventory water resources
4. Review the past water conservation plan and activities
5. Identify best management practices to be implemented
6. Develop schedules, budgets and projected results
7. Review, evaluate, and adopt the water conservation plan

8. Implement, monitor and update the water conservation plan

The CVP contractors listed below have developed water conservation plans which Reclamation has evaluated and preliminarily determined meet the requirements of the Criteria.

- Arvin Edison Water Shortage District.
- Bella Vista Water District.
- Colusa County Water District.
- Corning Water District.
- Dunnigan Water District.
- Gravelly-Food Water District.
- Monterey County Water Resources Agency.
- Proberta Water District.
- San Juan Water District.
- Santa Barbara, City of.
- Santa Barbara, County of.
- Tea Pot Dome Water District.
- The West Side Irrigation District.
- Thomes Creek Water District.
- Westside Water District.

Public comment on Reclamation's preliminary (i.e., draft) determinations at this time is invited. Copies of the plans listed above will be available for review at Reclamation's Mid Pacific (MP) Region Office and MP's area offices. If you wish to review a copy of the plans, please contact Ms. Reifsnider to find the office nearest you.

Dated: March 28, 1995.

Franklin E. Dimick,

Assistant Regional Director.

[FR Doc. 95–8320 Filed 4–4–95; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–349]

Certain Diltiazem Hydrochloride and Diltiazem Preparations; Notice of Commission Decision to Review Portions of an Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review certain portions of the initial determination (ID) and Order No. 52 issued by the presiding administrative law judge (ALJ) on February 2, 1995, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3098.

SUPPLEMENTARY INFORMATION: On February 1, 1995, the presiding ALJ issued his final ID finding that there was no violation of section 337. He found that claim 1 of U.S. Letters Patent 4,438,035 (′035 patent) was not infringed by any of respondents' processes, that claim 1 was invalid as obvious under 35 U.S.C. 103, and that the ′035 patent was unenforceable because of complainants' inequitable conduct during reexamination proceedings before the U.S. Patent and Trademark Office. In a separate order (Order No. 52), issued on the same date, the ALJ granted respondents' motion for evidentiary sanctions. In that order, he stated that because there is a Commission preference for decisions on the merits based on all the evidence adduced, and because he believes that the same conclusions of law regarding infringement would be appropriate whether or not the sanctions of Order No. 52 are applied, he was imposing sanctions on complainants only as alternate relief, i.e., only if the Commission determines based on all the evidence of record that respondents have infringed claim 1 of the ′035 patent.

On February 21, 1995, complainants filed a petition for review of the ALJ's final ID. They also filed a separate petition for review of Order No. 52. On the same day, the Commission investigative attorneys (IAs) filed a petition for review of the ALJ's finding that a domestic industry exists.

On March 6, 1995, the IAs, the Fermion respondents, and the Profarmaco respondents filed oppositions to complainants' petition for review. Respondent Gyma Laboratories also filed an opposition to petition for review indicating that it principally relies on and concurs in the response filed by the Profarmaco respondents.

Having examined the record in this investigation, including the ID and Order No. 52, the Commission has determined to review the issues of (1) claim interpretation, (2) whether claim 1 of the ′035 patent is infringed by respondents' processes; (3) whether claim 1 of the ′035 patent is invalid as obvious under 35 U.S.C. § 103; (4) whether the ′035 patent is unenforceable; and (5) Order No. 52. The Commission has determined not to review the remainder of the ID. The Commission regards the ID as including Order No. 52. The Commission has also denied complainants' motion for leave to file the affidavit of James Gambrell, and denied complainants' request for an oral hearing. With regard to the Gambrell affidavit, the Commission believes that reopening the record to accept the affidavit at this late stage of the investigation would not be appropriate.

On review, the Commission is particularly interested in answers to the following questions:

(1) Is claim 1 of the ′035 patent entitled to any range of equivalents? If not, why not? If so, does the range of equivalents cover (1) use of methyl ethyl ketone, the next higher homolog of acetone, as a solvent when used with potassium hydroxide as a base, or (2) use of potassium carbonate and toluene as the base-solvent combination? Why?

(2) What is the status of the Abic group of respondents? Have they settled their differences with complainants? If so, will a motion to terminate the Abic group of respondents from the investigation be forthcoming?

(3) Is there any suggestion or motivation in the prior art references as a whole applied in the ID to combine those references so as to render obvious under 35 U.S.C. 103 the invention claimed in claim 1 of the '035 patent?

(4) Was there a sale in the United States of the product produced by the Tanabe trade secret KOH/DMSO process within the meaning of 35 U.S.C. 102(b)? Is there applicable case law relevant to complainants' contention that sales of a product for the sole purpose of FDA approval do not constitute an ''on sale'' bar within the meaning of 35 U.S.C. 102(b)? The Commission is interested in an analysis, based on the evidence of record, of whether sales made solely for purposes of FDA approval constitute an ''on sale'' bar, taking into account the analysis set forth by the Federal Circuit in considering whether a prior use or sale is a statutory bar in, *e.g.*, *Pennwalt Corp.* v. *Akzona Inc.* (and cases cited therein) 740 F.2d 1573 (Fed. Cir. 1984). The Commission is also interested in any evidence of record relevant to complainants' contention that the only sales in the United States of Tanabe's trade secret KOH/DMSO process were for purposes of FDA approval. If the Tanabe KOH/DMSO process is found to be prior art, what suggestion or motivation, if any, is there in the prior art that the use of DMSO as a solvent would have rendered the solvents of claim 1 of the '035 patent obvious under 35 U.S.C. 103? Finally, assuming that the Tanabe KOH/DMSO process is prior art, was it more pertinent than the references before the examiner during the reexamination proceedings?

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to

cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to specific exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainants and the Commission investigative attorneys are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on April 13, 1995. Reply submissions must be filed no later than the close of business on April 20, 1995. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 C.F.R. 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and sections 210.54-.55 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.54-.55).

Copies of the public version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: March 30, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–8356 Filed 4–4–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–290 (Sub-No. 169X)]

Norfolk and Western Railway Company—Abandonment Exemption—Between Ferguson Junction and Glen Echo, MO

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR Part 1152 subpart F—Exempt Abandonments to abandon its 2.56-mile line of railroad between milepost UD–9.94 at Glen Echo and milepost UD–12.50 at Ferguson Junction in St. Louis County, MO.

NW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 5, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1]

[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 prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the

Continued

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 April 17, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 25, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 10, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions[4] will be imposed, where appropriate, in a subsequent decision.

Decided: March 29, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–8315 Filed 4–4–95; 8:45 am]

BILLING CODE 7035–01–P

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.

[4] The Gateway Trailnet, Inc. seeks issuance of a notice of interim trail use/railbanking (NITU) under 16 U.S.C. 1247(d) and a 180-day public use condition under 49 U.S.C. 10906. A copy of the request does not appear to have been served on NW as required at 49 CFR 1104.12(a). Gateway is directed to serve a copy of the request on NW. Accordingly, the requests will be handled in a subsequent decision.

[Docket No. AB–443X]

Danbury Terminal Railroad Company—Discontinuance Exemption —Westchester, Putnam, and Dutchess Counties, NY

Danbury Terminal Railroad Company (DTRR) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to discontinue trackage rights over two segments of the rail line known as the Harlem Line. The first line segment is located between milepost 55.2, in Dykemans, and milepost 81.6, in Wassaic, a distance of approximately 26.4 miles in Dutchess and Putnam Counties, NY. The second line segment is located between milepost 22.0, in White Plains, and milepost 43.4, in Golden's Bridge, a distance of approximately 21.4 miles in Westchester County, NY.

The Harlem Line, except between mileposts 77.0 and 81.1, is owned by American Premier Underwriters, Inc., a noncarrier, and leased by the Metropolitan Transportation Authority (MTA). MTA's subsidiary, Metro North Commuter Railroad Company (MNCR) provides commuter passenger rail service over the entire Harlem Line, except between milepost 77.0 and milepost 81.1. That portion is owned by the New York and Harlem Railroad Company and is the subject of acquisition negotiations with MNCR, which, when completed, will enable MNCR to extend its commuter passenger service to Wassaic. In addition, Consolidated Rail Corporation (Conrail) provides freight service over the line under an unspecified operating arrangement with the owners and lessee. DTRR acquired the rights at issue here from Conrail.[1] Thus, freight and passenger service will still be provided after the discontinuance.

DTRR has certified that: (1) No local traffic has moved pursuant to the trackage rights operation over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 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 of this exemption, any employee adversely affected by the 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) to subsidize continued operations has been received, this exemption will be effective on May 5, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues[2] and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)[3] must be filed by April 17, 1995. Petitions to reopen must be filed by April 25, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert A. Wimbish, Suite 420, 1920 N Street, N.W., Washington, D.C. 20036.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Decided: March 31, 1995.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–8355 Filed 4–4–95; 8:45 am]

BILLING CODE 7035–01–P

[1] In *Danbury Terminal Railroad Company and Maybrook Properties, Inc.—Acquisition and Operation Exemption—Consolidated Rail Corporation,* Finance Docket No. 32180 (Sub-No. 1) (ICC served Dec. 29, 1992), DTRR obtained operating and freight rights over the Harlem Line, between milepost 22.0, in White Plains and milepost 81.6, in Wassaic. Following the proposed discontinuance, DTRR will continue to operate between mileposts 43.4 and 55.2.

[2] The Commission's Section of Environmental Analysis will not conduct an independent investigation because no environmental effects are expected in cases where service on the line will continue. A stay will be issued routinely by the Commission if an informed decision on environmental issues raised by a party cannot be made before the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *AND* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Application for Procurement Quota for Controlled Substances.

(2) DEA Form 250. Drug Enforcement Administration, United States Department of Justice.

(3) Primary = Business or other for-profit. Title 21, CFR 1303.12, requires registered dosage from manufactures who wish to purchase controlled substances in Schedule II to apply on DEA Form 250 for procurement quotas which purchase quantities. The information collected is used for establishing quotas and controlling procurement thereof.

(4) 493 annual respondents at 1 hour per response.

(5) 493 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 30, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–8277 Filed 4–4–95; 8:45 am]

BILLING CODE 4410–09–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, notice is hereby given that on March 16, 1995, a proposed Amendment to a previously-entered partial consent decree and judgment in *United States, et al.* v. *Thomas Solvent, et al.,* Civil Action No. K86–164 CA8 and K86–167 CA8, was lodged with the United States District Court for the Western District of Michigan. This Amendment is, among other things, a partial resolution of judgments previously entered against Thomas Solvent Company and Richard Thomas in connection with civil actions taken against them under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), in connection with costs incurred by the United States and the State of Michigan in responding to releases of hazardous substances at and about the Verona Well Field, located in Battle Creek, Michigan.

Under the Amendment, Thomas Solvent would cause several payments to be made out of the proceeds of its settlement with an insurance carrier. Among those payments would be one for $2.665 million to the United States and another for $0.585 million to the State of Michigan, in partial reimbursement of government response costs for which Thomas Solvent is liable under the previously-entered partial consent decree and judgment.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Amendment. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States et al.* v. *Thomas Solvent, et al.*, D.J. Ref. 90–11–2–140.

The proposed Amendment may be examined at the Office of the United States Attorney, Western District of Michigan, 399 Federal Building, 110 Michigan St., NW., Grand Rapids, Michigan, and at U.S. EPA Region 5, Office of Regional Counsel, 200 West Adams, Chicago, Illinois, and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $6.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environment and Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 95–8242 Filed 4–4–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ADBAC Joint Venture

Notice is hereby given that, on January 27, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Huntington Laboratories, Inc. has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of the parties to the ADBAC Joint Venture (''Joint Venture''). The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Ethyl Corporation spun-off its specialty chemicals group into a separate and independent publicly traded company know as Albermarle Corporation, Baton Rouge, LA. In addition, the ADBAC products of Mazer Chemical, a division of PPG, were acquired by Lonaz, Inc., Fair Lawn, NJ.

No other changes have been made in either the membership or planned activity of the Joint Venture. Membership in this group research project remains open, and ADBAC intend to file additional written

notification disclosing any changes in membership.

On September 6, 1986, the Huntington Laboratories, filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 7, 1986 [51 FR 35706].

The last notification was filed with the Department on June 28, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 16, 1993 [58 FR 43376].

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–8244 Filed 4–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PERF Project 93–20 Bench Scale Valve Research Forum

Notice is hereby given that, on December 8, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') Project 93–20, titled ''Bench Scale Valve Emission Study'' has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Exxon Research and Engineering Company, Florham Park, NJ; Texaco, Incorporated, Port Arthur, TX; Phillips Petroleum Company, Bartlesville, OK; Amoco Oil Company, Naperville, IL; Chevron Research & Technology, Richmond, CA; Mobil Research and Development Corporation, Pennington, NJ; Velan, Incorporated, Grandy, Quebec-CANADA; Kitz Corporation of America, Houston, TX; Grinnell Corporation, Cranston, RI; B.P. Research, Cleveland, OH; Garlock, Palmyra, NY; and Grove Valve & Regulatory Company, Oakland, CA.

The nature and objectives of the research program include the reduction of costs associated with the meeting of valve fugitive emissions regulations by optimizing valve mechanical specifications.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–8243 Filed 4–4–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than April 17, 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 April 17, 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, D.C. 20210.

Signed at Washington, D.C. this 27th day of March, 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
Arizona Public Service Corporation (Wkrs).	Phoenix, AZ	03/27/95	03/09/95	30,847	Electricity.
Halo Lighting/Div-Cooper Lighting (IBEW).	Elk Grove Village, IL.	03/27/95	03/07/95	30,848	Lighting fixtures.
Voyager Emblems, Inc. (USWA).	Sanborn, NY	03/27/95	03/06/95	30,849	Embroidered emblems and insignias.
Robstown Manufacturing Co. (Co).	Robstown, TX	03/27/95	03/16/95	30,850	Men's slacks.
Diamond Pacific Milling & Dry Kilns (Wkrs).	Salem, OR	03/27/95	02/20/95	30,851	Softwood dimensional lumber.
Hancock Lumber, Inc. (Wkrs)	Salem, OR	03/27/95	02/20/95	30,852	Softwood dimensional lumber.
C & L Supply Co. (Wkrs)	Kermit, TX	03/27/95	03/01/95	30,853	Oil field supply.
Reed Travel Group—Airline Div. (Wrks).	Oak Brook, IL	03/27/95	03/13/95	30,854	Airline guides.
Brown Group Inc. (Wrks)	Fredericktown, MO	03/27/95	03/13/95	30,855	Warehouse and dist.—footwear.
Reliance Electric (Wrks)	Ashtabula, OH	03/27/95	03/14/95	30,856	AC motors.
APC Corporation (SMWU)	Hawthorne, NJ	03/27/95	03/15/95	30,857	Fabricate skylights.
Teledyne Fluid Systems (CO&IAM).	Palisades Park, NJ	03/27/95	03/09/95	30,858	Safety relief valves.
Edgecomb Manufacturing Co (Co).	Tarboro, NC	03/27/95	03/13/95	30,859	Ladies and childrens apparel.
Wilson Apparel (Co)	Wilson, NC	03/27/95	03/13/95	30,860	Ladies and childrens apparel.

APPENDIX—Continued

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Chris-Craft Industrial Products (ACTWU).	Waterford, NY	03/27/95	03/17/95	30,861	Automotive padding, insulation.
Bourns, Inc.—Pressure Products (Wrks).	Riverside, CA	03/27/95	03/09/95	30,862	Pressure transducers.
Johnson Controls, Inc. (UAW).	Garland, TX	03/27/95	03/15/95	30,863	Automobile batteries.
Bridgestone/Firestone, Inc. (URW).	Decatur, IL	03/27/95	02/17/95	30,864	Tires—auto, light truck.
Ohio Coil Service (IUE)	Newcomerstown, OH.	03/27/95	03/15/95	30,865	High voltage formed coils.
BASF Corporation (UTWA) ..	Lowland, TN	03/27/95	03/14/95	30,866	Nylon staple fibers.
Butterick Co. (Wrks)	New York, NY	03/27/95	03/16/95	30,867	Patterns for home sewing.
Kodalux Processing Services (Co).	Findlay, OH	03/27/95	03/15/95	30,868	Photographic prints.
Ochoco Lumber Co. (IAMAW).	Prineville, OR	03/27/95	03/15/95	30,869	Pine dimensional lumber.
Philips Components (Co)	Saugerties, NY	03/27/95	03/20/95	30,870	Electronic components.

[FR Doc. 95–8326 Filed 4–4–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,820]

General Electric Capital Corporation, G.E. Electronic Rental and Repair, Erie, Pennsylvania; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 20, 1995 in response to a worker petition which was filed on behalf of workers and former workers at G.E. Electronic Rental and Repair, a subdivision of General Electric Capital Corporation, Erie, Pennsylvania (TA–W–30,820).

The Department of Labor has verified that the three petitioners were not employed by the above subject firm or its subdivision, and that each worker represented a separate firm. Consequently, this is not a valid petition and the Department of Labor cannot make a determination as to whether the workers are eligible for adjustment assistance benefits under the Trade Act of 1974.

Therefore, further investigation in this matter would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 27th day of March 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–8325 Filed 4–4–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,743]

IBM Corporation, Poughkeepsie, New York; Notice of Revised Determination on Reconsideration

On October 3, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the former workers of the subject firm. The notice was published in the **Federal Register** on October 14, 1994 (59 FR 52193).

The Department expanded its investigation to include the entire Large Scale Computing Division (LSCD) at Poughkeepsie, New York where mainframe computers are produced.

Investigation findings show that sales of computer hardware declined in FY 1993 compared to FY 1992 and in the year to date 3rd quarter of 1994 compared to the same period in 1993. The findings on reconsideration show substantial worker separations in 1993 and in 1994.

Other findings on reconsideration show that IBM lost market share of mainframe processors and processor subassemblies and components in 1994.

U.S. imports of automatic data processing equipment and parts increased in the latest 12 month period ending in February 1994 compared to the same period in 1993.

Other IBM certifications are for workers at Rochester, Minnesota (TA–W–29,026) computer storage equipment; (TA–W–30,176) computers; at Endicott, New York (TA–W–30,258) mainframe computer hardware and software and (TA–W–30,397) printed circuit boards and at Hopewell Junction, New York (TA–W–29,752) computer chips.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that workers at IBM Poughkeepsie, New York were adversely affected by increased imports of articles that are like or directly competitive with the LSCD mainframes produced at Poughkeepsie, New York. In accordance with the provisions of the Act, I make the following revised determination for workers of IBM Corporation, Poughkeepsie, New York.

All workers of IBM Corporation in Poughkeepsie, New York who became totally or partially separated from employment on or after March 31, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 23rd day of March, 1995.

Victor J. Trunzo,

Program Manger, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–8329 Filed 4–4–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30, 551 and TA–W–30, 552]

Notice of Negative Determination Regarding Application for Reconsideration

In the matter of Mac Tools, Inc., Washington Court House, Ohio; and Mac Tools, Inc., Sabina, Ohio.

By an application dated February 28, 1995, the petitioners with Congressional support requested administrative reconsideration of the subject petition for trade adjustment assistance, TAA. The denial notice was issued on February 9, 1995 and published in the **Federal Register** on March 1, 1995 (60 FR 11120).

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 the workers produce mechanics' hand tools.

The Department's denial was based on the fact that the ''contributed importantly'' test of the Group Eligibility Requirements of the Trade Act was not met. Both plants will close in April 1995 because of a corporate decision to consolidate operations at other domestic corporate facilities. A domestic transfer of production would not form a basis for a worker group certification. Further, the findings show increased sales and production of mechanics' hand tools at the subject plants in the first nine months of 1994 compared to the same period in 1993.

Other findings show that neither the subject plants nor its parent, Stanley Works in Connecticut, imported hand tools from China in the relevant period.

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, D.C., this 27th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–8328 Filed 4–4–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,592]

Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of Santa Fe Minerals, Inc., Dallas, Texas, and Santa Fe Minerals, Inc., operating in the Gulf of Mexico and at various locations in the following states: Arkansas, TA–W–30,592A, Louisiana, TA–W–30,592B, Oklahoma, TA–W–30,592C, California, TA–W–30,592D, Texas, exc. Dallas, TA–W–30,592E.

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 applicable to all workers of the subject firm.

The certification was issued on February 17, 1995 and published in the **Federal Register** on March 10, 1995 (60 FR 13177).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred at various locations in the states of California and 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 Santa Fe Minerals, Inc., Dallas, Texas and operating in the Gulf of Mexico and at various locations in Arkansas, Louisiana, Oklahoma, California and Texas who were adversely affected by increased imports of crude oil.

The amended notice applicable to TA–W–30,592 is hereby issued as follows:

All workers of Santa Fe Minerals, Inc., Dallas, Texas and operating in the Gulf of Mexico and at various locations in the states of Arkansas, Louisiana, Oklahoma, California and Texas, except Dallas who had become totally or partially separated from employment on or after December 13, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–8327 Filed 4–4–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,345 and TA–W–30, 345A]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of Tobin-Hamilton Company, Inc. Mansfield, Missouri, and Tobin-Hamilton Company, Inc. New Balance for kids Division West Bridgewater, Massachusetts.

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 November 30, 1994, applicable to all workers of the subject firm. The Notice was published in the **Federal Register** on December 16, 1994 (59 FR 65077).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show worker separations in 1994 at the subject firm's sales division in West Bridgewater, Massachusetts.

Accordingly, the Department is amending the certification to include the subject firm's workers at West Bridgewater, Massachusetts.

The amended notice applicable to TA–W–30,345 is hereby issued as follows:

All workers of Tobin-Hamilton Company, Inc., Mansfield, Missouri and New Balance for Kids Division, West Bridgewater, Massachusetts who became totally or partially separated from employment on or after September 20, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 23rd day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–8324 Filed 4–4–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,815]

Tobin-Hamilton Company, Inc., New Balance for Kids Division, West Bridgewater, Massachusetts; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 20, 1995 in response to a worker petition which was filed on behalf of workers at Tobin-Hamilton Company, Inc., New Balance for Kids Division, West Bridgewater, Massachusetts.

An active certification covering the petitioning group of workers remains in effect (TA–W–30,345). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 27th day of March, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–8330 Filed 4–4–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,740]

Wirekraft Industries, Incorporated, Marion, Ohio; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) as

amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated in response to a petition received on February 14, 1995 and filed on behalf of workers at Wirekraft Industries, Incorporated, Marion, Ohio. The workers produced wire harnesses.

The investigation revealed that a major customer of the subject firm increased their imports of electrical wire harnesses during the relevant period under investigation and is transferring production formerly supplied by the subject firm to foreign sources.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with wire harnesses produced at Wirekraft Industries, Incorporated, Marion, Ohio contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Wirekraft Industries, Incorporated, Marion, Ohio engaged in employment related to the production of wire harnesses who became totally or partially separated from employment on or after February 9, 1994 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 in Washington, D.C. this 17th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–8333 Filed 4–4–95; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

GPU Nuclear Corporation; Oyster Creek Nuclear Generating Station Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16, issued to GPU Nuclear Corporation (the licensee), for operation of the Oyster Creek Nuclear Generating Station (OCNGS), located in Ocean County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the Technical Specification (TS) to allow 2645 fuel assemblies to be stored in the fuel pool. This is an increase of 45 fuel assemblies from the current limit of 2600 contained in TS 5.3.1.E. The 45 additional storage locations exist in racks in the fuel pool.

The proposed action is in accordance with the licensee's application for amendment dated November 25, 1994, as supplemented by letter dated February 15, 1995.

Background

During the spent fuel pool expansion project in 1983, the licensee designed and installed 10 free standing high density spent fuel racks in the spent fuel pool to increase the spent fuel storage capacity from 1800 to 2645 spent fuel assemblies. However, the licensee elected to impose a TS limit of 2600 spent fuel assemblies (approved by the staff in License Amendment No. 76, dated September 17, 1984) to be stored in the spent fuel pool at the time. The increased capacity from 1800 to 2600 spent fuel assemblies would meet anticipated spent fuel storage requirements through 1992. An Environmental Assessment and Finding of No Significant Impact supporting this action was issued on September 13, 1984. The additional 45 fuel assembly storage locations were not licensed with License Amendment No. 76 because it was believed that they would not be needed for spent fuel storage. (It was anticipated that an off-site spent fuel storage facility would be available after 1992.) These additional storage locations were, therefore, used for the storage of miscellaneous equipment such as fuel channels.

As the result of the recent refueling (Cycle 15R) which took place in December 1994 and the present unavailability of an off-site spent fuel storage facility, OCNGS has lost the capability to completely offload the reactor core. The licensee is in the process of installing a dry storage facility on-site which is scheduled to be operational in 1996. This provision of a dry storage facility on-site will allow full core offload beyond the current operating cycle (Cycle 15) until such time as an off-site spent fuel storage facility is available. The OCNGS on-site spent fuel storage facility is presently under construction. Consequently, the licensee proposed to use the additional 45 fuel assembly storage locations for spent fuel storage.

The Need for the Proposed Action

The proposed action is required should a full core offload be necessary during Cycle 15 with the proposed dry spent fuel storage facility not yet in service. Without the ability to fully offload the core, any inspection or repair activity will most likely result in higher personnel exposure and schedular delays. Full core offload capability, in particular, would facilitate any in-vessel repair which requires draining of the vessel.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that based on its review, the licensee's proposal to increase the spent fuel pool capacity to 2645 fuel assemblies is acceptable. In addition, the staff has determined that the conclusions reached in the staff's SE dated September 17, 1984, supporting Amendment No. 76, and the Environmental Assessment and Finding of No Significant Impact—Spent Fuel Pool Expansion dated September 13, 1994 remains applicable.

Radiological Environmental Impacts

In the staff's Environmental Assessment dated September 13, 1984, regarding increasing the spent fuel pool capability from 1800 to 2600 spent fuel assemblies, the staff concluded that the potential radiological environmental impacts associated with the expansion of the spent fuel storage capacity were evaluated and determined to be environmentally insignificant. The basis for the staff's conclusions were determined by the staff's evaluation of (1) radioactive materials released to the atmosphere, (2) solid radioactive wastes, (3) liquid radioactive waste, and (4) the staff's radiological assessment.

Considering the small incremental addition to the licensed storage

capacity, the environmental radiological conclusions stated in the staff's Environmental Assessment dated September 13, 1984, are not altered by the storage of 45 additional spent fuel assemblies.

Nonradiological Assessment

In the staff's Environmental Assessment dated September 13, 1984, the staff also concluded that the nonradiological impacts of the OCNGS as designed, were considered in the Final Environmental Statement (FES) issued in December 1974 and that the OCNGS spent fuel pool expansion will not result in nonradiological environmental effects significantly greater or different from those already reviewed and analyzed in the FES.

Considering the smaller incremental addition to the licensed storage capacity, the environmental nonradiological conclusions stated in the staff's Environmental Assessment dated September 13, 1984, are not altered by the storage of 45 additional spent fuel assemblies.

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. The principal alternative to the action would be to deny the request. Such action would likely result in higher personnel exposure and schedular delays. As discussed previously the licensee is constructing an on-site spent fuel storage facility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Oyster Creek Nuclear Generating Station.

Agencies and Persons Consulted

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 licensee's letter dated November 25, 1994, as supplemented by letter dated February 15, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Ocean County Library, Toms River, NJ 08753.

Dated at Rockville, Maryland, this 29th day of March 1995.

For the Nuclear Regulatory Commission.

Phillip F. McKee,

Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–8311 Filed 4–4–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–410]

Niagara Mohawk Power Corporation; Nine Mile Point Nuclear Station—Unit 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from Facility Operating License No. NPF–69, issued to Niagara Mohawk Power Corporation (the licensee), for operation of the Nine Mile Point Nuclear Station, Unit 2 (NMP–2) located in Oswego County, New York.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application of March 9, 1995. The proposed action would exempt the licensee from: (1) The requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), to permit a one-time interval extension between the first and second Type A test (containment integrated leak rate test) for approximately 24 months from the 1995 refueling outage to the 1997 refueling outage.

The Need for the Proposed Action

The proposed action is needed to permit the licensee to defer the Type A test from the 1995 refueling outage to the 1997 refueling outage, thereby deferring the cost of performing the tests and eliminating the time required to perform the test from the critical path schedule during the upcoming spring 1995 refueling outage.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the one-time interval extension between the first and second Type A tests would not increase the probability or consequences of accidents previously analyzed and the proposed exemptions would not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the results of previous Type A tests performed at NMP–2 to show good containment performance and will continue to be required to conduct the Type B and C local leak rate tests which historically have been shown to be the principal means of detecting containment leakage paths with the Type A tests confirming the Type B and C test results. It is also noted that the licensee, as a condition of the proposed exemption, will perform the visual containment inspection although it is only required by Appendix J to be conducted in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. 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 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 NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Nine Mile Point Nuclear Station, Unit 2.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with the New York 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 licensee's letter dated March 9, 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 Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 29th day of March 1995.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–8312 Filed 4–4–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northeast Nuclear Energy Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (the licensee) to withdraw its June 23, 1994, application for proposed amendment to Facility Operating License No. DPR–21 for Millstone Nuclear Power Station, Unit 1, located in New London County, Connecticut.

The proposed amendment would have reworded Technical Specification 3.7, ''Containment Systems,'' to permit operation with one of the two circuits of the reactor building ventilation logic temporarily inoperable. In addition, Section 3.7.C.1.b would have been reworded to prohibit movement of irradiated fuel, or movement of any loads over irradiated fuel, without secondary containment integrity.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 31, 1994 (59 FR 45029). However, by letter dated March 15, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 23, 1994, and the licensee's letter dated March 15, 1995, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Dated at Rockville, Maryland, this 27th day of March 1995.

For the Nuclear Regulatory Commission.

James W. Andersen,

Project Manager, Project Directorate I–4 Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 95–8309 Filed 4–4–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35547; File No. SR–CHX–95–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc., Relating to Order Execution Guarantees

March 29, 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 March 2, 1995, the Chicago Stock Exchange, Incorporated (''CHX'' 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 Exchange proposes to amend Article XX, Rule 37 to add a new subsection (d) thereunder. The text of the proposed rule change is as follows [new text is italicized]:

Article XX

Rule 37*(d) Notwithstanding anything herein to the contrary, a specialist may voluntarily provide order execution guarantees more favorable than those required pursuant to this Rule 37 (i.e., greater size, better price, limitations on partial executions, etc.). At the request of a specialist, the Exchange may provide for automatic execution of orders in accordance with such guarantees upon such terms and conditions as the Exchange shall determine. In either event, failure of a specialist to honor a promised guarantee shall be deemed a violation of Exchange rules.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to give specialists on the Exchange the ability to provide order execution guarantees that are more favorable than those required under the BEST Rule [1] through the Exchange's automated execution system (''MAX'').[2]

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[1] *See Chicago Stock Exchange Guide*, Article XX, Rule 37(a), (CCH) ¶ 1714.

[2] The Exchange has indicated to the Commission that this proposed rule change will have the effect of an ''enabling rule'' whereby specialists may provide better guarantees than currently is required under the Rules through the Exchange's Midwest Automated Execution System (''MAX''). The Exchange expects modifications to the parameters of the automated execution system to be on a per stock basis and the specific execution programs that are necessary to implement these guarantees will be filed in the future under Section 19(b)(3)(A). Telephone conversation with Craig Long and David Rusoff, Foley & Lardner, and Julio Mojica, Susan Lee, and Jennifer Choi, SEC, on March 10, 1995. The Exchange has indicated that the number of parameters for the automated executions will be limited. The Exchange anticipates that the options would include: a system allowing thirty-second order exposure, the automated execution system within MAX in which a Specialist may voluntarily choose to participate on a stock by stock basis (''SuperMAX''), and the enhanced version of SuperMAX (''Enhanced SuperMAX''), which is

Continued

The automatic execution of these orders sent over the MAX System would only occur if a specialist requests it, and then, only on those terms and conditions set forth by the Exchange.[3]

The BEST Rule requires specialists to execute agency market orders of 2099 shares or less in Dual Trading System issues [4] or NASDAQ/NMS Securities at the national best bid or best offer (''NBBO'') [5] if certain conditions are satisfied. Orders greater than 2099 shares, however, are not subject to the rule. Under this proposed rule change, a specialist could, for example, increase the size of the guarantee, be more flexible in providing partial executions, or obligate itself to provide price improvement under certain circumstances.

Although nothing in the proposed rule change requires a specialist to give more favorable guarantees, if such guarantees are provided through the MAX System, the specialist must honor the more favorable guarantee. Failure of a specialist to honor the more favorable guarantee will be deemed to be a violation of Exchange Rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it find 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, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–95–08 and should be submitted by April 26, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8260 Filed 4–4–95; 8:45 am]

BILLING CODE 8010–01–M

available to CHX specialists as an addition or an alternative to SuperMAX. The Exchange also has stated that a specialist will be permitted to switch from one set of parameters to another once a month. Telephone conversation with David Rusoff, Foley & Lardner and Jennifer Choi, SEC, on March 20, 1995.

[3] The Exchange has indicated that the ''terms and conditions'' provision will provide the Exchange with veto power over a specialists's particular request. Telephone conversation with Craig Long and David Rusoff, Foley & Lardner, and Julio Mojica, Susan Lee, and Jennifer Choi, SEC, on March 10, 1995.

[4] The Dual Trading System of the Exchange allows the execution of both round-lot and odd-lot orders in certain issues assigned to specialists on the Exchange and listed on either the New York Stock Exchange or the American Stock Exchange.

[5] The term national best bid or best offer is defined under SEC Rule 11Ac1–2 as the highest bid or lowest offer for a reported security made available by any reporting market center pursuant to Rule 11Ac1–1 or the highest bid or lowest offer for a security other than a reported security disseminated by an over-the-counter market maker in Level 2 or 3 of NASDAQ.

[Release No. 34–35550; File No. SR–CHX–95–03]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposal Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to a Proposed Rule Change Relating to Reporting and Disclosure Requirements

March 30, 1995.

On February 6, 1995, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend various Exchange Rules regarding reporting and disclosure requirements. Specifically, the rule change proposed 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 the Exchange; (2) amend Article XI, Rule 4 to provide the Exchange with the authority to require any member or member organization to 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. On February 14, 1995 and March 30, 1995, the Exchange submitted to the Commission Amendments No. 1 and No. 2, respectively, to the proposed rule change.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 35394 (February 17, 1995), 60 FR 10620 (February 27, 1995). No comments were received on the proposal. This order approves the proposed rule changes.

I. Proposal

Currently, Article VI, Rule 5(c) requires each member organization that does business with the public to establish procedures, and a system for applying such procedures, to assure that its registered representatives and other

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] Amendments No. 1 and No. 2 made non-substantive, clarifying changes to the proposal. *See* Letters from Jay O. Wright, Esq., Foley & Lardner, to Elisa Metzger, Senior Counsel, SEC, dated February 14, 1995 and March 30, 1995.

employees are adequately and closely supervised. Rule 5(c) further states that a system will be deemed adequate only if it is reasonably designed to prevent and detect violations of the applicable securities laws, the rules and regulations thereunder, and the CHX Constitution and Rules. The CHX is proposing to amend Article VI, Rule 5 and add an interpretation thereto to require that such procedures and systems be in writing. The CHX believes that requiring written procedures allows the CHX to more easily verify the existence of such procedures and that such a requirement facilitates the CHX's verification of the content of the procedures. The CHX also believes that 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 CHX's rules, thus enhancing compliance.

The CHX is also proposing amendments to Article XI, Rule 4. Article XI, Rule 4 requires certain member organizations to have an audit as required by SEC Rule 17a–5 and any other additional audits that the Exchange may require for good cause.[4] The additional audits must be made by an independent public accountant, acceptable to the CHX and be conducted in accordance with the requirements of SEC Rule 17a–5. The CHX is amending the rule to provide the Exchange with the authority to require any member or member organization to have an accounting firm audit its books and have the member or member organization file a statement with the Exchange to the effect that such additional audits have been made. In addition, the CHX's purpose for amending Article XI, Rule 4(c) 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.

Finally, the CHX proposes to add a new rule, Article XI, Rule 9, which would require floor brokers who do not clear their own trades to procure a letter of guarantee prior to trading. 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.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[5] In particular, the Commission believes the proposal is consistent with the Section 6(b)(1) requirement that the exchange have the capacity to enforce compliance by its members and persons associated with its members, of the federal securities laws, rules and regulations thereunder and the rules of the exchange. The CHX proposal will permit the CHX to verify the existence and content of procedures and systems that require compliance with the federal securities laws, rules and regulations thereunder and the CHX rules. In addition, the Exchange's proposed amendments to Article XI, Rule 4, clarify that all members and member organizations are required to comply with the disclosure requirements of SEC Rule 17a–5.

The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public. Specifically, the proposed amendments to Article VI, Rule 5 which require written procedures that ensure compliance with applicable rules and laws, will prevent fraudulent acts and practices and protect investors and the public by enforcing compliance with the federal securities laws, SEC rules and CHX rules. Similarly, the Commission believes that the proposal to provide the Exchange with the authority to require any member or member organization to have an accounting firm audit its books and to clarify that all members and member organizations must comply with SEC Rule 17a–5, is consistent with the Section 6(b)(5) requirements. These proposals will enable the CHX to investigate any concerns it has with respect to potential financial problems of its members or member organizations. Accordingly, the Exchange's awareness of any financial problems in advance could limit the impact of that member's financial condition on the market.

The Commission also believes that the proposal to 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 is consistent with the Section 6(b)(5) requirements. The Commission agrees with the Exchange that the proposed rule will ensure the safety and soundness of the clearing system by ensuring that floor brokers have sufficient financial resources to stand behind their trades. The proposed rule will improve the reliability of the clearing system because fewer disruptions due to the financial distress of a floor broker are likely to occur.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 makes non-substantive, technical changes to the proposal. The Commission believes that these technical changes are not material changes that raise regulatory concerns not already addressed by the proposal. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 2 to the proposal on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2. 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 April 26, 1995.

IV. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act[6] that the

[4] Article XI, Rule 4 excepts out of the rule, member organizations that are self-clearing and member organizations that do a securities business only with other members of a national securities exchange.

[5] 15 U.S.C. 78f(b) (1988).

[6] 15 U.S.C. 78s(b)(2) (1988).

proposed rule change (SR–CHX–95–03), as amended is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8340 Filed 4–4–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35549; File No. SR–PCC–94–01]

Self-Regulatory Organizations; Pacific Clearing Corporation; Order Approving a Proposed Rule Change Making Corrections and Clarifications to Certain Provisions of the PCC's Rules, Participant Agreement, and Clearing Fund Agreement

March 30, 1995.

On November 28, 1994, the Pacific Clearing Corporation (''PCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change under Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') to correct certain typographical errors in PCC's rules and to clarify certain provisions regarding specialist post capital in PCC's participant agreement and clearing fund agreement.[1] Notice of the proposal was published in the **Federal Register** on February 7, 1995.[2] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change will correct typographical errors in certain provisions of PCC's rules and will clarify certain provisions of PCC's standard participant agreement and clearing fund agreement relating to specialist post capital. Specifically, PCC corrects typographical errors to the Table of Contents; PCC Rule 1.2(f), defining the term ''long position''; PCC Rules 2.1(c) and 2.1(d), addressing membership qualifications and approval; and PCC Rule 9.3(c)(iii) addressing specialist post termination procedures. In addition, PCC is amending PCC Rule 5.2 to clarify that any reductions to excess post capital or a member's clearing fund deposit cannot be made for amounts that would reduce the member's post capital or clearing fund deposit below the minimum requirement.

The proposal also amends certain paragraphs of PCC's participant agreement that relate to post capital. Paragraph 3.1(e)(iii) is amended to clarify that it refers to the monitoring of post capital rather than net capital. Paragraph 4.5 of the participant agreement is amended to distinguish post capital from net capital. Net capital, which is specified by PSE Rule 2.1 and Rule 15c3–1 of the Act, remains constant for a firm regardless of the number of specialist posts it operates. In contrast, post capital varies because it represents the amount of capital required to be maintained by a firm based on the number of specialist posts it operates. Paragraph 4.9 of the participant agreement is modified to clarify that reductions to excess post capital and to the clearing fund deposit cannot be made in amounts that would reduce these sums below their respective minimum requirements. Paragraph 4.9 of the participant agreement also is amended to clarify that losses on a trial balance are due on the fifteenth day of the month following the month for which the trial balance was issued.

Similarly, the clearing fund agreement is clarified such that the minimum contribution, as defined in paragraph 5 of the clearing fund agreement, made by a member firm backing a specialist post will be applied towards meeting the post capital requirement. Prior to this clarification, the clearing fund agreement stated that contributions were to be credited towards the net capital requirement.

II. Discussion

The Commission believes that the PCC's proposed rule change is consistent with the requirements of Section 17A of the Act[3] and in particular with Sections 17A(b)(3) (A) and (F) of the Act.[4] Sections 17A(b)(3) (A) and (F) require, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds within its possession or control or for which it is responsible. The clarifications regarding specialist post capital and net capital will assist PCC in safeguarding the securities and funds which are in PCC's custody or control or for which PCC is responsible. Furthermore, the technical corrections to PCC's rules will clarify these rules and thereby advance the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–PCC–94–01), be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–8339 Filed 4–4–95; 8:45 am]

BILLING CODE 8010–01–M

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[7] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 35313 (February 1, 1994), 59 FR 5644 [File No. SR–PCC–94–01].

[3] 15 U.S.C. 78q–1 (1988).

[4] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30–3(a)(12) (1994).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–030]

Chemical Transportation Advisory Committee, Subcommittee on Marine Vapor Control Systems

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee on Marine Vapor Control Systems of the Chemical Transportation Advisory Committee will meet to continue reviewing tank vessel cleaning facility operations and evaluate proposed recommendations for safety standards for use of a vapor control system at these facilities. The meeting will be open to the public.

DATES: The meeting will be held on Tuesday, May 9, 1995, from 9 a.m. to 5 p.m. Written material should be submitted no later than May 2, 1995.

ADDRESSES: The meeting will be held at the Wyndham Hotel, 12400 Greenspoint Drive, Houston, TX 77060. Personnel attending the meeting should report to the main floor reception area for direction to the conference room. Written material should be submitted to Lieutenant Commander Robert F. Corbin, Commandant (G–MTH–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert F. Corbin, Commandant (G–MTH–1), U.S.

Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, telephone (202) 267–1217.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 1 *et seq.*

One section of the 1990 Amendments to the Federal Clean Air Act (CAA) requires states to achieve and maintain a 15% reduction in their Volatile Organic Compound (VOC) emissions level below the 1990 base year level by 1996 in non-attainment areas within the individual states. States are presently developing methods to achieve required compliance levels. One state has recently passed state regulations that will require vessels that have carried certain VOC cargoes and are being gas-freed and/or cleaned to utilize a marine vapor control system or an alternate means of control approved by the state at the tank vessel cleaning facility. It is anticipated other states will develop similar regulations as a means of complying with the CAA Amendments for their states.

The Chemical Transportation Advisory Committee Subcommittee on Marine Vapor Control Systems has been conducting a detailed review of tank vessel cleaning facility gas-freeing and tank cleaning operations, and has been evaluating the hazards associated with the use of marine vapor control systems at these facilities.

At the last Subcommittee meeting in January 1995, a working group was formed to develop a draft set of recommendations for proposed safety standards for use of a vapor control system at tank vessel cleaning facilities. The purpose of this meeting will be to discuss the working group's draft recommendations and develop final proposed safety standards for submission to the Chemical Transportation Advisory Committee at their June 1995 meeting.

Dated: March 29, 1995.

Joseph J. Angelo,

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

[FR Doc. 95–8388 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[AC No. 145–XX]

Proposed Advisory Circular (AC) on Repair Station Internal Evaluation Programs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on proposed AC for Repair Station Internal Evaluation Programs.

SUMMARY: The proposed AC is intended to provide information and guidance material that may be used by repair station certificate holders to design and implement an Internal Evaluation Program operating under Federal Aviation Regulations Part 145.

DATES: Comments must be received on or before June 5, 1995.

ADDRESSES: Send all comments and requests for copies of the proposed AC to: Federal Aviation Administration, Aircraft Maintenance Division (Attention: AFS–350, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Glen Kinney, AFS–350, at the above address; telephone: (202) 267–3781 (8:30 a.m. to 5 p.m. EST).

SUPPLEMENTARY INFORMATION: The guidance material contained in this AC reflects the material that may be used by repair station certificate holders to design and implement an Internal Evaluation Program.

Issued in Washington, DC, on February 10, 1995.

William J. White,

Deputy Director, Flight Standards Service.

[FR Doc. 95–8366 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–13–M

Approval Noise Compatibility Program for McCarran International Airport, Las Vegas, Nevada

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on Revision No. 2 to the Approved Noise Compatibility Program submitted by Clark County, Nevada for McCarran International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non federal responsibilities in Senate Report No. 96–52 (1980). On February 15, 1995, the Associate Administrator for Airports approved the Noise Compatibility Program for McCarran International Airport.

EFFECTIVE DATE: The effective date of the FAA's approval of the Noise Compatibility Program is February 15, 1995.

FOR FURTHER INFORMATION CONTACT: Elisha Novak, Senior Airport Planner, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, CA 94010–1303, Telephone: (415) 876–2528.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval of the Noise Compatibility Program for McCarran International Airport, effective February 15, 1995.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non compatible land uses and prevention of additional non compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport Noise Compatibility Program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport sponsor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Aviation Safety and Noise Abatement Act of 1979, and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non compatible land uses around the airport and preventing the introduction of additional non compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of navigable airspace and air traffic control

responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an Airport Noise Compatibility Program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State or local law. Approval does not, by itself, constitute an FAA implementation action. A request for Federal action or approval to implement specific Noise Compatibility Measures may be required. An FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, as amended. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Burlingame, California.

Clark County, Nevada submitted to the FAA on March 9, 1994, the Noise Exposure Maps, descriptions, and other documentation produced during the Noise Compatibility Planning study conducted from January 1992 through December 1992. The Noise Exposure Maps were determined by the FAA to be in compliance with applicable requirements on August 19, 1994. Notice of this determination was published in the **Federal Register** on August 31, 1994.

The study contained a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to, or beyond, the year 1999. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in Section 104(b) of the Act. The FAA began its review of the program on August 19, 1994 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of flight procedures for noise control). The Noise Compatibility Program was approved by the FAA on February 15, 1995. Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such program.

The submitted revision to the approved program contained twenty two proposed actions for noise mitigation on and off the airport. The FAA completed its review and determination that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program was approved by the Assistant Administrator for Airports effective February 15, 1995.

Outright approval was granted for twenty (20) of the specific program measures. Two (2) measures were disapproved pending receipt of additional information. The approved measures included existing flight track policies, existing runway use programs, public information programs, acquisition of property or aviation easements in noise exposure areas of 65–75 dB DNL, establish soundproofing programs, and continue redevelopment programs with County, State and other Federal agencies. The two measures disapproved pending receipt of additional information consisted of (1) use of North Las Vegas Air Terminal for general aviation and (2) analyze revising the Oasis Standard Instrument Departure (SID) procedure.

This determination is set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on February 15, 1995. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Aviation Department, Clark County, Nevada.

Issued in Hawthorne, California on March 23, 1995.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 95–8365 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee; Subcommittee on Aircraft Safety

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–362; 5 U.S.C. App. I), notice is hereby given of a meeting of the Subcommittee on Aircraft Safety of the Federal Aviation Administration (FAA) Research, Engineering and Development (R,E&D) Advisory Committee to be held Tuesday, April 18, 10 a.m. to 5 p.m. The meeting will take place at the FAA/AANC NDI Validation Center, 3260 University SE, Access Road B, Albuquerque, New Mexico.

The agenda for this meeting will be to plan subcommittee objectives and activities for the upcoming year including a review of FAA and NASA research activities in the aircraft safety area.

Attendance is open to the interested public, but limited to space available. With the approval of the subcommittee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or attend the meeting should contact Mr. Dan Salvano, AIR–101, 800 Independence Avenue, SW, Washington, DC, at (202) 267–9554, the FAA Designated Federal Official to the subcommittee.

Members of the public may present a written statement to the subcommittee at any time.

Issued in Washington, DC, on March 30, 1995.

Andres G. Zellweger,

Director, Office of Aviation Research.

[FR Doc. 95–8369 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lebanon Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction.

SUMMARY: In Notice document 95–6517 beginning on page 14316, in the Thursday, March 16, 1995 issue, make the following correction: On page 14317 in the first column, under proposed charge expiration date, July 15, 1995, should read May 15, 1998.

FOR FURTHER INFORMATION ON THIS CORRECTION CONTACT: Priscilla Soldan, Airports Program Specialist, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614.

Bradley A. Davis,

Assistant Manager, Airports Division, New England Region.

[FR Doc. 95–8367 Filed 4–4–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collection Submitted to OMB for Review

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Extension of comment period for information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is extending the comment period on proposed revisions to the Country Exposure Report and the Country Exposure Information Report (FFIEC 009 and 009a) submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980.

DATES: Comments on this information collection are welcome and should be submitted by April 24, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the OCC contact.

SUPPLEMENTARY INFORMATION: On March 3, 1995, the OCC published a notice in the **Federal Register** (60 FR 12027) advising that it had sent to the Office of Management and Budget, for review under the Paperwork Reduction Act of 1980, proposed revisions to the Country Exposure Report and Country Exposure Information Report (FFIEC 009 and 009a). The notice requested public comment by March 23, 1995.

The Board of Governors of the Federal Reserve System (Board of Governors) also utilizes the FFIEC 009. An interested party has requested extension of the public comment period until April 24, 1995. The OCC believes that allowing additional time for public comment is warranted, and is extending the public comment period.

Additionally, the OCC expects to delay the implementation date of the proposed revisions to the reporting form until at least September 30, 1995, to provide national banks with sufficient time to modify their systems and to resolve conceptual issues related to the report.

Type of Review: Regular

Title: (MA)—Country Exposure Report and Disclosure (12 CFR 20)

Description: The Country Exposure Report and Country Exposure Information Report require national banks to report quarterly their exposure in foreign countries. This information is critical in determining and monitoring the soundness of banks

Form Number: FFIEC 009 and 009a

OMB Number: 1557–0100

Respondents: Businesses or other for-profit

Number of Respondents: 150

Frequency of Response: Quarterly

Total Annual Responses: 1,200

Average Hours Per Response: 27 hours, 30 minutes

Total Annual Burden Hours: 33,000

OMB Reviewer: Milo Sunderhauf, (202)395–7340, Paperwork Reduction Project 1557–0100, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

OCC Contact: John Ference or Jessie Gates, (202)874–5090, Legislative and Regulatory Activities Division (1557–0100), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Comments: Comments regarding the submission should be addressed to both the OMB reviewer and the OCC contact listed above.

Dated: March 30, 1995.

James F.E. Gillespie,

Director, Legislative & Regulatory Activities.

[FR Doc. 95–8352 Filed 4–4–95; 8:45 am]

BILLING CODE 4810–33–P

Internal Revenue Service

Nonconventional Source Fuel Credit; Publication of Inflation Adjustment Factor, Nonconventional Source Fuel Credit, and Reference Price for Calendar Year 1994

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factor, nonconventional source fuel credit, and reference price for calendar year 1994 as required by section 29 of the Internal Revenue Code (26 U.S.C. 29).

SUMMARY: The inflation adjustment factor, nonconventional source fuel credit, and reference price are used in determining the availability of the tax credit for production of fuel from nonconventional sources under section 29 of the Internal Revenue Code.

DATES: The 1994 inflation adjustment factor, nonconventional source fuel credit, and reference price apply to qualified fuels sold during calendar year 1994.

INFLATION FACTOR: The inflation adjustment factor for calendar year 1994 is 1.9207.

CREDIT: The nonconventional source fuel credit for calendar year 1994 is $5.76 per barrel-of-oil equivalent of qualified fuels.

PRICE: The reference price for calendar year 1994 is $13.19. Because the above reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 29(b)(1) of the Internal Revenue Code does not occur for any qualified fuel based on the above reference price.

FOR FURTHER INFORMATION CONTACT:

For the inflation factor and credit—Thomas Thompson, CP:R:R:AR:E, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, Telephone Number (202) 874-0585 (not a toll-free number).

For the reference price—David McMunn, CC:DOM:P&SI:6, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, Telephone Number (202) 622-3110 (not a toll-free number).

Judith C. Dunn,

Associate Chief Counsel (Domestic).

[FR Doc. 95–8373 Filed 4–4–95; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit, ''Drawings From The Albertina: Landscape in the Age of Rembrandt'' (see list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition of the objects at The Drawing Center, New York, NY, from on or about April 20, 1995, to on or about June 3, 1995, and at the Kimbell Art Museum, Fort Worth, TX, from on or about July 2, 1995, to on or about September 3, 1995, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: March 31, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–8350 Filed 4–4–95; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained in contacting Ms. Lorie Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619–6084, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

DEPARTMENT OF VETERANS AFFAIRS

Information Collections Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the type of information collection and the following: (1) the title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collections and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 10102, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: March 23, 1995.

By direction of the Secretary

Donald L. Neilson,

Director, Information Management Service.

Revision

1. Mortgage Loan Information, VA Form 26–8982
2. The form will be used to collect social security numbers as part of the accounting information required by credit reporting agencies on delinquent borrowers
3. Individuals or households—Federal Government
4. 250 hours
5. 5 minutes
6. On occasion
7. 3,000 respondents

Extension

1. Financial Counseling Statement, VA Form 26–8844
2. This form is completed by VA loan service representatives in counseling veteran-borrowers who are seriously delinquent on guaranteed VA home loans. The form solicits information necessary for the loan service representative to make recommendations to the veteran-borrower in an effort to help cure the default status of the loan
3. Individuals or households
4. 3,750 hours
5. 45 minutes
6. On occasion
7. 5,000 respondents

Extension

1. Application for Change of Permanent Plan—Medical, VA Form 29–1549
2. The form is used by the insured to apply for a change of insurance plan from a higher reserve value to one with a lower reserve value. The information is used to determine eligibility of the applicant for the purpose of the change
3. Individuals or households
4. 14 hours
5. 30 minutes
6. On occasion
7. 28 respondents

Extension

1. Application for Ordinary Life Insurance (Age 70), VA Form 29–8485a, and Information About Modified Life Insurance Reduction and Replacement Features (Age 70), VA Form 29–8701
2. The forms are used by the insured to apply for replacement insurance to replace the amount of Modified Life Insurance that was reduced at age 70
3. Individuals or households
4. 642 hours
5. 5 minutes
6. On occasion
7. 7,000 respondents

Extension

1. Veterans Mortgage Life Insurance Statement, VA Form 29–8636
2. The form is used by veterans who have received Specially Adapted Housing Grants to decline Veterans Mortgage Life Insurance or to provide information upon which the insurance premiums can be based
3. Individuals or households
4. 113 hours
5. 15 minutes
6. On-occasion
7. 450 respondents

Extension

1. Customer Service Survey, VA Form 26–0185, and Lender Survey, VA Form 26–0186
2. The surveys are used by VA to determine how effectively and efficiently the agency is delivering home loan guaranty benefits to eligible veterans. This information will further be used to assess areas of weakness and how best to improve VA home loan guaranty program
3. Individuals or households—Business or other for-profit
4. Estimated Total Annual Reporting Hours—1,054 hours
   a. VA Form 26–0185—642 hours
   b. VA Form 26–0186—412—hours
5. 19 minutes average (15 minutes for VA Form 26–0185 and 30 minutes for VA Form 26–0186)
6. On occasion
7. 2,803 respondents (2,568 for VA Form 26–0185 and 823 for VA Form 26–0186)

Reinstatement

1. Claim for One Sum Payment—Government Life Insurance, VA Form 29–4125, Claim for Government Life Insurance Policy, VA Form Letters 29–764, Claim for Monthly Payments—National Service Life Insurance, VA Form 29–4125A, and Claim for Monthly Payments—United States Government Life Insurance, VA Form 29–4125K
2. The forms are used by beneficiaries applying for the proceeds of Government Life Insurance policies
3. Individuals or households
4. 13,867 hours
5. 8 minutes
6. On occasion
7. 104,000 respondents

Reinstatement

1. Application for Reinstatement, VA Form 29–353
2. The form is used by veterans to reinstate their Government life insurance and/or the total disability income provision within six months from the date of lapse. The information is used to determine eligibility for the purpose of reinstatement
3. Individuals or households
4. 375 hours
5. 15 minutes
6. On occasion
7. 1,500 respondents

Reinstatement

1. Insurance Deduction Application, VA Form 29–888
2. The form is used by the insured to authorize VA to make deductions from benefit payments to pay premiums, loans and/or liens on his/her insurance. The information is used to process the insured's request
3. Individuals or households
4. 622 hours
5. 10 minutes

6. On occasion
7. 3,732 respondents

Reinstatement

1. Notice of Lapse, VA Forms 29–389 and 29–389–1
2. The forms are used by the policyholder to reinstate a lapsed life insurance policy. The information is used by VA to determine the insured's eligibility
3. Individuals or households
4. 3,892 hours
5. 10 minutes
6. On occasion
7. 23,352 respondents

[FR Doc. 95–8274 Filed 4–4–95; 8:45 am]

BILLING CODE 8320–01–P

Advisory Committee on Cemeteries and Memorials, Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 2401, will be held at the Westin Peachtree Plaza, Tower Room #14, Atlanta, GA, on May 3 and 4, 1995.

The meeting will convene at 8:30 a.m. (EST) on May 3 to conduct routine business and will adjourn at 1:00 p.m. (EST) May 4. The meeting will be open to the public up to the seating capacity which is about 15 persons. Those wishing to attend should contact Ms. Dina Wood, Special Assistant to the Director, National Cemetery System, (phone (202) 273–5235) not later than 12 noon, EST April 15, 1995.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Director, National Cemetery System (40) at 810 Vermont Avenue, NW., Washington, DC 20420. In any such letters, the writers must fully identify themselves and state the organization or association or person they represent. Also, to the extent practicable, letters should indicate the subject matter they want to discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver, them to the Director, National Cemetery System.

Letters and written statements as discussed above must be mailed or delivered in time to reach the Director, National Cemetery System, by 12 noon EST April 15, 1995. Oral statements will be heard only between 8:30 a.m. and 11:00 a.m. EST, May 4, 1995.

Dated: March 22, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–8276 Filed 4–4–95; 8:45 am]

BILLING CODE 8320–01–M

A Child Development Center at the VAMC Hampton, VA

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Designation.

SUMMARY: The Secretary of the Department of Veterans Affairs is designating the Hampton, VA, Department of Veterans Affairs Medical Center (VAMC) for an Enhanced-Use development. The Department intends to enter into a long-term lease of real property with the developer whose proposal will provide the best quality child development and care at the greatest economic advantage for children of VAMC employees. The developer will be responsible for all aspects of construction, ownership, maintenance, and operation of the Child Development Center.

FOR FURTHER INFORMATION CONTACT:

Jacob Gallun, Office of Asset and Enterprise Development (089), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420, (202) 233–3307.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.* specifically provides that the Secretary may enter into an Enhanced-Use lease, if the Secretary determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department and the lease will enhance the property. This project meets these requirements.

Approved: March 21, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 95–8275 Filed 4–4–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 65
Wednesday, April 5, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, April 27, 1995.

PLACE: 2033 K St., NW., Washington, DC 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Meeting.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–8464 Filed 4–3–95; 1:16 pm]

BILLING CODE 6351–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 60, No. 54, March 21, 1995.

PREVIOUSLY ANNOUNCED DATE OF MEETINGS: March 29–31, 1995.

PLACE: United States Court of Appeals for the Federal Circuit (''Federal Circuit''), Courtroom No. 1, 717 Madison Place, N.W., Washington, D.C.; and Room 6005, 1730 K Street, N.W., Washington, D.C. (''1730 K Street'').

STATUS: Open and Closed.

CHANGES: The Commission CANCELLED the oral argument in this proceeding previously scheduled to be held in open session on Thursday, March 30, 1995, at the Federal Circuit in *In Re: Contests of Respirable Dust Sample Alteration Citations*, and *Keystone Coal Mining Corp.*, Master Docket No. 91–1 and Docket Nos. PENN 91–451–R, etc. (''*Dust Cases*''). The Commission also changed the decisional meetings in the *Dust Cases*, originally scheduled for March 29–31, 1995, to March 30, 1995 at 10:00 a.m., held in closed session, as previously announced, at 1730 K Street.

It was determined by a unanimous vote of participating Commissioners that the meeting of March 30, 1995, be held in closed session pursuant to 5 U.S.C. § 552(b)(c)(10), and that no earlier announcement of the schedule changes was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629.

Dated: March 31, 1995.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 95–8504 Filed 4–3–95; 2:56 pm]

BILLING CODE 6735–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 10:00 a.m., Friday, April 7, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 205 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–8478 Filed 4–3–95; 2:56 pm]

BILLING CODE 7535–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in St. Louis, Missouri: Aviation Accident

In connection with its investigation of the runway incursion at Lambert St. Louis International Airport and collision between Trans World Airlines MD–82 and Superior Aviation Cessna 441, St. Louis, Missouri, November 22, 1994, the National Transportation Safety Board will convene a public hearing at 9:00 a.m. (edt.), on April 19, 1995, in the Plaza Ballroom at the Doubletree Hotel National Airport, located at 300 Army Navy Drive, Arlington, Virginia, 22202. For more information, contact Alan Pollock, Office of Public Affairs, Washington, D.C. 20594, telephone (202) 382–0660.

Dated: April 3, 1995.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 95–8461 Filed 4–3–95; 1:17 pm]

BILLING CODE 7533–01–P

Corrections

Federal Register

Vol. 60, No. 65

Wednesday, April 5, 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.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35511; File No. SR-Amex-95-06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Options on the Morgan Stanley REIT Index

Correction

In notice document 95–7136 beginning on page 15316 in the issue of Thursday, March 23, 1995, make the following correction:

On page 15318, in the third column, insert the following before the FR Doc. line:

Margaret McFarland,

Deputy Director.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35533; File No. SR-NASD-95-06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Interpretation of the Board of Governors-Forwarding of Proxy and Other Material Under Article III, Section 1 of the NASD Rules of Fair Practice

Correction

In notice document 95–7837 beginning on page 16521 in the issue of Thursday, March 30, 1995, make the following correction:

On page 16523, in the second column, insert the following before the FR Doc. line:

Margaret McFarland,

Deputy Director.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-NM-06-AD]

Airworthiness Directives; Boeing Model 747 SP, SR, -100, -200, and -300 Series Airplanes Equipped with Pratt & Whitney Model JT9D Series Engines (Excluding Model JT9D-70 Engines)

Correction

In proposed rule document 95–7781 beginning on page 16392 in the issue of Thursday, March 30, 1995 make the following correction:

On page 16395, in the first column, in the third full paragraph, ''May'' should read ''March''.

BILLING CODE 1505–01–D

federal register

Wednesday
April 5, 1995

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 215, et al.
Combined Income and Rent; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 215, 236, 813, 905, and 913

[Docket No. R–95–1713; FR–3324–I–01]

RIN 2501–AB61

Combined Income and Rent

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends HUD's current regulations governing public housing, Indian housing and assisted housing programs by adding nine exclusions to the definition of annual income. With regard to the first eight exclusions, the Department has concluded that, for policy reasons, these payments should not be considered when determining a family's income in the housing assistance programs involved. In contrast, the last exclusion is a statutorily required exclusion to the definition of annual income.

This interim rule also adds a statutory change to the definition of adjusted income for the Indian housing program, and makes two technical corrections to the existing regulations.

DATES: Effective Date: This interim rule is effective on May 5, 1995.

Sunset Provision: Sections 215.21(c)(2), (c)(6), (c)(8)(iv) through (v), and (c)(11) through (c)(15); §§ 236.3(c)(2), (c)(6), (c)(8)(iv) through (v), and (c)(11) through (c)(15); §§ 813.106(c)(2), (c)(6), (c)(8)(iv) through (v), (c)(11), (c)(12), (c)(14), and (c)(15); §§ 905.102(2)(ii), (2)(vi), (2)(viii)(D) through (E), (2)(xi), (2)(xii), (2)(xv), and (2)(xvi) of the definition of *Annual income*; and §§ 913.106(c)(2), (c)(6), (c)(8)(iv) through (v), (c)(11), (c)(12), (c)(15), and (c)(16) shall expire and shall not be in effect after May 6, 1996, unless prior to May 6, 1996, the Department publishes changes in this interim rule as a final rule or publishes a notice in the **Federal Register** to extend the effective date.

Comments due date: June 5, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) at the above address. Comments sent by FAX will not be accepted.

FOR FURTHER INFORMATION CONTACT: For Public Housing: Bruce Vincent, Room 4206, telephone number (202) 708–0744; For Native American Programs: Dominic A. Nessi, Room 4140, telephone number (202) 708–1015; For Housing: Barbara D. Hunter, Room 6180, telephone number (202) 708–3944; Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; (TDD: (202) 708–0850). Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule revises HUD's current regulations for public housing, Indian housing, Section 8 housing and other assisted housing programs by excluding from annual income the following: (1) Resident service stipends, (2) adoption assistance payments, (3) student financial assistance (4) earned income of full-time students, (5) adult foster care payments, (6) compensation from State or local job training programs and training of resident management staff, (7) property tax rebates, (8) homecare payments for developmentally disabled children or adult family members, and (9) deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum.

This interim rule also amends the definition of adjusted income for Indian Housing programs by allowing a deduction for both child care expenses and excessive travel expenses, as required by section 103(a)(2) of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1993; hereafter referred to as ''1992 HCD Act'').

Finally, this interim rule makes two technical corrections to existing regulations (see preamble discussion in section I(D).)

A. Discretionary Income Exclusions

By adding the first eight exclusions to the definition of income in the public housing, Indian housing, section 8 housing, and other assisted housing programs, the Secretary is merely exercising the discretion conferred upon him to define family income by section 3(b)(4) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(b)(4)), section 101(c)(2) of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s(c)(2)), and section 236(m) of the National Housing Act (12 U.S.C. 1715z–1(m)). The eight ''discretionary'' income exclusions will affect the approximately 1.3 million families currently residing in public and Indian housing developments, the approximately 1.5 million families participating in the Section 8 Rental Certificate and Voucher programs, and the approximately 2 million families in privately owned assisted housing projects under the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-aside and Property Disposition Set-aside programs, the Section 236 Interest Reduction and Rental Assistance Payments Program, and the Section 215 Rent Supplement Payments program.

The Department believes these exclusions are essential for achieving its goals of ensuring economic opportunity, empowering the poor and expanding affordable housing opportunities. Moreover, HUD believes that the costs of these additional exclusions will be offset by long–term future savings because the exclusions will increase the number of economically self-sufficient families residing in assisted housing. Finally, because this interim rule promotes long-term upward mobility, educational achievement and entrepreneurship, the number of families dependent on welfare and other social services programs may decline, thereby resulting in future cost savings for other Federal programs.

The eight ''discretionary'' exclusions to annual income are:

1. *Resident Service Stipends.* This exclusion exempts from annual income resident service stipends, but only if the resident service stipend does not exceed $200 per month. A resident service stipend is a modest amount (i.e. $200 or less per month) received by a resident for performing a service for the housing authority or owner, on a part-time basis, that enhances the quality of life in the assisted housing development. Such services include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and resident management.

The Department wants to emphasize that if a housing authority or owner pays a resident more than $200 per month, then the entire amount received as a ''stipend'' does not qualify as a resident service stipend under this interim rule. For example, suppose a housing authority pays a resident $150 per month for part-time services that enhance the quality of public housing. That $150 payment would not be counted in determining the annual income of the resident. Suppose, however, instead of $150 per month, the

housing authority pays the resident $400 per month. In this latter situation, the housing authority may not exclude up to $200 per month (the maximum stipend amount); rather, the entire amount of the payment (i.e. $400) is included in annual income.

If a resident receives more than $200 per month, even if the payment is characterized as a ''stipend'', the payment does not qualify as a resident service stipend under this interim rule. The Department wishes to point out that there is no limit to the number of stipends a family may receive. However, each family member may only exclude one stipend at a time.

On August 24, 1994 (59 FR 43622), the Department published a final rule which added a resident service stipend exclusion for resident council officers in the public and Indian Housing programs. The Department wants to emphasize that today's interim rule expands the resident service stipend exclusion to all assisted housing programs, and makes all residents eligible for the resident service stipend exclusion, regardless of whether the resident is an officer of the resident council.

2. *Adoption Assistance Payments.* This exclusion removes from annual income payments received for the care of adopted children to the extent that the payments exceed $480 per adopted child. Currently, payments for the care of foster children are excluded, but similar payments for the care of adopted children are not. (Although, when determining adjusted income, adopted children qualify for a $480 deduction, while foster children do not.)

3. *Full Amount of Student Financial Assistance.* This exclusion exempts from annual income all amounts received from student financial assistance. Student financial assistance is interpreted broadly to include various scholarships, educational entitlements, grants, work-study programs and financial aid packages. Currently, the portion of an educational scholarship available for general living expenses is included in annual income.

4. *Earned Income of Full-Time Students.* This exclusion exempts earnings in excess of $480 for each full-time student 18 years old or older (except the head of household and spouse). The exemption only applies to earnings in excess of $480 since the family already receives a $480 deduction from income for any full-time student.

5. *Adult Foster Care Payments.* This exclusion removes from the computation of annual income payments for the care of foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone). Currently, only payments for the care of foster children are excluded from annual income. In adding this exclusion, the Department is not requiring that housing authorities or owners permit foster adults in assisted housing. As before, each housing authority or owner will continue to adopt its own policies, subject to current HUD requirements.

6. *State or local employment training programs and training of resident management staff.* This exclusion exempts compensation received from qualifying employment training programs and training of resident management staff. To qualify under this exclusion, the compensation received must be a component of a state or local employment training program with clearly defined goals and objectives. Moreover, only the compensation received incident to the training program is excluded (i.e. any additional income received during the training program, such as welfare benefits, will continue to be counted as income).

In addition, this exclusion only covers compensation received while the resident participates in the employment training program, and the duration of participation must be for a limited period determined in advance. An example of compensation which falls under this exclusion is compensation received from on-the-job training and during apprenticeship programs.

7. *State tax rent credits and rebates.* This provision excludes state rent credits and rebates for property taxes paid on a dwelling unit. The Department is adding this exclusion because the Department believes that this exclusion will support state efforts to assist low income persons.

8. *Homecare payments.* This exclusion exempts amounts paid by a State agency to families that have developmentally disabled children or adult family members living at home. States that provide families with homecare payments do so to offset the cost of services and equipment needed to keep a developmentally disabled family member at home, rather than placing the family member in an institution. Since families that strive to avoid institutionalization should be encouraged, and not punished, the Department is adding this additional exclusion to income. The Department wishes to point out that today's interim rule does not define ''developmentally disabled'' since whether a family member qualifies as developmentally disabled, and is therefore eligible for homecare assistance, is determined by each individual State.

B. Exclusion of Deferred Periodic Payments of SSI and Social Security Received in Lump Sum

Section 103(a)(1) of the 1992 HCD Act amended section 3(b)(4) of the U.S. Housing Act of 1937 to exclude from annual income, ''any amounts which would be eligible for exclusion under section 1613(a)(7) of the Social Security Act (42 U.S.C. 1382b(a)(7).'' Section 1613(a)(7) of the Social Security Act covers deferred periodic payments received in a lump sum from supplemental security income (SSI) and social security benefits.

Section 103(a)(3) of the 1992 HCD Act, however, limits implementation of the lump sum exclusion unless appropriations are provided in advance to cover any additional costs resulting from implementation of the exclusion. The Department has determined that implementing section 103(a)(1) will not result in any additional costs to the Department. Accordingly, no additional appropriations are required to implement section 103(a)(1).

Section 2 of the 1992 HCD Act makes all provisions of that act effective on the date of enactment—October 28, 1992, unless another date is specifically provided. Because HUD determined that the exclusion of deferred periodic payments of SSI and social security benefits from annual income is effective as of October 28, 1992, and to limit the number of retroactive adjustments, the Department previously implemented this exclusion by HUD interim notice, PHA 93–11, issued March 16, 1993. That notice implemented section 103(a)(1) with respect to public and Indian Housing programs, and all section 8 programs.

Finally, while section 103(a)(1) does not apply to the Section 215 Rent Supplement Payments program, or the Section 236 Interest Reduction and Rental Assistance Payments Program, it is a long standing Departmental policy to use the same definition of annual income for all of the Department's subsidized housing programs. Accordingly, in today's interim rule, the Department is extending the exclusion of deferred periodic payments of SSI and social security benefits from annual income to the Section 215 Rent Supplement Payments program and the Section 236 Interest Reduction and Rental Assistance Payments Program. However, because the Department is adding this exclusion as a matter of agency discretion, the exclusion is effective as of the effective date of this interim rule.

C. Change in Definition of Adjusted Income for Indian Housing Authorities

Section 103(a)(2) of the 1992 HCD Act amended section 3(b)(5) of the U.S. Housing Act of 1937 to change the definition of adjusted income for families assisted by an IHA. As amended, section 3(b)(5) provides a deduction from adjusted income for both child care expenses (to the extent necessary to enable another member of the family to be employed or to further his or her education); *and* excessive travel expenses (not to exceed $25 per family per week for employment or education-related travel). (Prior to this amendment, a family was allowed a deduction from adjusted income for either child care expenses *or* excessive travel expenses.)

Section 103(a)(3) of the 1992 HCD Act requires that appropriations be provided in advance if section 103(a)(2) results in any additional costs to the Department. The Department has determined that there are no additional costs associated with the implementation of Section 103(a)(2).

Section 2 of the HCD Act of 1992 makes all provisions of that act effective on the date of enactment—October 28, 1992, unless another date is specifically provided. HUD has determined that the change to the definition of adjusted income is effective as of October 28, 1992.

Finally, to limit the number of retroactive adjustments, the Department previously implemented this exclusion by a HUD interim notice, PHA 93–23, issued May 19, 1993.

D. Technical Corrections

Finally, this interim rule contains two technical corrections. First, this interim rule removes the following parenthetical in § 913.106(c)(11): ''[t]his provision does not apply to residents participating in the Family Self-Sufficiency [FSS] Program who are utilizing the escrow account.'' When the Department implemented section 515(b) of the National Affordable Housing Act of 1990 (Pub.L. 101–625) (NAHA) in the final rule published on August 24, 1994 (59 FR 43622), it inadvertently added the above parenthetical to the rule text. Because section 515(b) of NAHA covers all public housing residents, without regard to whether a resident participates in the FSS program, this technical correction is necessary.

The second technical correction amends § 236.72. Currently, § 236.72 incorrectly references ''adjusted income'' rather than ''annual income.'' This interim rule changes the reference in § 236.72 to ''annual income.''

II. Other Matters

A. Executive Order 12866

This interim rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, Regulatory Planning and Review. Any changes made to the interim rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC.

B. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC 20410.

C. Executive Order 12612, Federalism

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this interim rule will not have federalism implications and, thus, are not subject to review under that Order. Specifically, the interim rule adds additional exclusions to the definition of income in the assisted housing programs. As such, the interim rule will not impinge upon the relationship between the Federal Government and State and local governments, and the interim rule is not subject to review under the order.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this interim rule has potential for significant impact on family formation, maintenance, and general well-being. Families will benefit from this interim rule by being allowed additional exclusions from annual income. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

E. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this interim rule, and in so doing certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. With regard to the lump sum exclusion, the number of lump sum exclusions in any one project will be minor, and will not significantly impact any HA. With regard to the remaining income exclusions, since HUD will supplement any lost rental income from the added exclusions, the exclusions will not have an economic impact on housing authorities.

F. Regulatory Agenda

This interim rule was listed as item number 1748 in the Department's Semiannual Agenda of Regulations published on November 14, 1994, (59 FR 57632, 57646) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

G. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number(s) are 14.146, 14.147, 14.850 and 15.141.

H. Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.'' (24 CFR 10.1)

The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment because the interim rule adds nine exclusions to the definition of annual income, which will benefit residents and tenants, without adversely affecting any other group. The first eight exclusions will affect approximately 1.3 million families currently residing in public and Indian housing developments, approximately 1.5 million families participating in the Section 8 Rental Certificate and Voucher programs, and approximately 2 million families in private-owned assisted housing projects under certain HUD programs.

As stated earlier in this preamble, the Department believes these exclusions are essential for achieving its goals of ensuring economic opportunity, empowering the poor and expanding affordable housing opportunities. Moreover, the Department believes that the costs of these additional exclusions will be offset by long term future savings because the exclusions will increase the number of economically

self-sufficient families residing in assisted housing. Finally, because this interim rule promotes long-term upward mobility, educational achievement and entrepreneurship, the number of families dependent on welfare and other social services programs may decline, thereby resulting in future cost savings for other Federal programs.

For these reasons, the Department believes that delaying implementation would be contrary to public interest.

I. Sunset of Interim Rule

In accordance with the Department's policy on interim rules, the amendments made by this interim rule shall expire on the twelve-month anniversary date of the effective date of this interim rule unless extended by notice published in the **Federal Register**, or adopted by a final rule published on or before the twelve-month anniversary date of the effective date of this interim rule.

List of Subjects

24 CFR Part 215

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 813

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Homeownership, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 913

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 215, 236, 813, 905, and 915 are amended as follows:

PART 215—RENT SUPPLEMENT PAYMENTS

1. The authority citation for 24 CFR part 215 continues to read as follows:

Authority: 12 U.S.C. 1701s; 42 U.S.C. 3535(d).

2. A new § 215.2 is added to subpart A to read as follows:

§ 215.2 Effective date of regulation.

Sections 215.21(c)(2), (c)(6), (c)(8)(iv) through (v), and (c)(11) through (c)(15) shall expire and shall not be in effect after May 6, 1996, unless prior to May 6, 1996, the Department publishes changes in this interim rule as a final rule or publishes a notice in the **Federal Register** to extend the effective date.

3. Section 215.21 is amended by revising paragraphs (b)(4), (b)(5), and (c) to read as follows:

§ 215.21 Annual income.

* * * * *

(b) * * *

(4) The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump sum payment for the delayed start of a periodic payment (but see paragraph (c)(13) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) of this section);

* * * * *

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the Family, that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a Live-in Aide, as defined in § 215.1;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a Family member serving in the Armed Forces who is exposed to hostile fire;

(8) (i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) A resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No Resident may receive more than one such stipend during the same period of time; or

(v) Compensation from State or local employment training programs and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for a limited period as determined in advance;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of $480 per adopted child;

(13) Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment;

(14) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;

(15) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and

equipment needed to keep the developmentally disabled family member at home; or

(16) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s). A notice will be published in the **Federal Register** and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

4. The authority citation for 24 CFR part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z-1; 42 U.S.C. 3535(d).

5. Section 236.3 is amended by revising the section heading, paragraphs (b)(4), (b)(5), and (c) to read as follows:

§ 236.3 Annual income.

* * * * *

(b) * * *

(4) The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump sum payment for the delayed start of a periodic payment (but see paragraph (c)(13) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) of this section);

* * * * *

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the Family, that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a Live-in Aide, as defined in § 236.2;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a Family member serving in the Armed Forces who is exposed to hostile fire;

(8) (i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) A resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No Resident may receive more than one such stipend during the same period of time; or

(v) Compensation from State or local employment training programs and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for a limited period as determined in advance;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of $480 per adopted child;

(13) Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment.

(14) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;

(15) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(16) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under section 236 of the National Housing Act. A notice will be published in the **Federal Register** and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

6. A new § 236.6 is added to subpart A to read as follows:

§ 236.6 Effective date.

Sections 236.3(c)(2), (c)(6), (c)(8)(iv) through (v), and (c)(11) through (c)(15) shall expire and shall not be in effect after May 6, 1996, unless prior to May 6, 1996, the Department publishes changes to this interim rule as a final rule or publishes a notice in the **Federal Register** to extend the effective date.

7. Section 236.72 is amended by revising paragraph (a) and the first sentence in paragraph (b) introductory text, to read as follows:

§ 236.72 Guidelines for assisted admission.

(a) *Maximum income.* The annual income of an applicant shall not exceed the maximum income limits established by the Secretary.

(b) *Ability to pay rent.* The project owner or the owner's managing agent may, in its discretion, admit an applicant for assisted admission whose annual income meets the requirement in paragraph (a) of this section if, in its discretion, the applicant has an adequate income to pay the basic monthly rental charge. * * *

* * * * *

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

8. The authority citation for 24 CFR part 813 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 1437n, and 3535(d).

9. A new § 813.1 is added to read as follows:

§ 813.1 Effective date.

Sections 813.106(c)(2), (c)(6), (c)(8)(iv) through (v), (c)(11), (c)(12), (c)(14), and (c)(15) shall expire and shall not be in effect after May 6, 1996, unless prior to May 6, 1996, the Department publishes changes to this interim rule as a final rule or publishes a notice in the **Federal Register** to extend the effective date.

10. Section 813.106 is amended by revising paragraphs (b)(4), (b)(5), and (c), to read as follows:

§ 813.106 Annual income.

* * * * *

(b) * * *

(4) The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump sum payment for the delayed start of a periodic payment (but see paragraph (c)(13) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) of this section);

* * * * *

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the Family, that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in Aide, as defined in § 813.102;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a Family member serving in the Armed Forces who is exposed to hostile fire;

(8) (i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) A resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No Resident may receive more than one such stipend during the same period of time; or

(v) Compensation from State or local employment training programs and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for a limited period as determined in advance;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of $480 per adopted child;

(13) Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment.

(14) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;

(15) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(16) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937. A notice will be published in the **Federal Register** and distributed to PHAs and owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

PART 905—INDIAN HOUSING PROGRAMS

11. The authority citation for 24 CFR part 905 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437a, 1437aa, 1437bb, 1437cc, 1437ee; and 3535(d).

12. In § 905.102, the definition for ''Adjusted income'' is amended by revising paragraph (5) and by adding a new paragraph (6) to the definition, and the definition for ''Annual income'' is amended by revising paragraphs (1)(iv), (1)(v), and (2) of the definition, to read as follows:

§ 905.102 Definitions.

* * * * *

Adjusted income. * * *

* * * * *

(5) Child care expenses, as defined in this definition; and

(6) Excessive travel expenses, not to exceed $25 per family per week, for employment or education-related travel.

* * * * *

Annual income. * * *

(1) * * *

(iv) The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump sum payment for the delayed start of a periodic payment (but see paragraph (2)(xiv) of this definition);

(v) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (2)(iii) of this definition);

* * * * *

(2) Annual income does not include the following:

(i) Income from employment of children (including foster children) under the age of 18 years;

(ii) Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone);

(iii) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under

health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (1)(v) of this definition);

(iv) Amounts received by the Family, that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(v) Income of a Live-in Aide;

(vi) The full amount of student financial assistance paid directly to the student or to the educational institution;

(vii) The special pay to a Family member serving in the Armed Forces who is exposed to hostile fire;

(viii)(A) Amounts received under training programs funded by HUD;

(B) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(C) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(D) A resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by an Indian housing resident for performing a service for the IHA, on a part-time basis, that enhances the quality of life in Indian housing. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No Resident may receive more than one such stipend during the same period of time; or

(E) Compensation from State or local employment training programs and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for a limited period as determined in advance by the IHA;

(ix) Temporary, nonrecurring or sporadic income (including gifts);

(x) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(xi) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(xii) Adoption assistance payments in excess of $480 per adopted child;

(xiii) The earnings and benefits to any resident resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the U.S. Housing Act of 1937 (42 U.S.C. 1437t), or any comparable Federal, State, Tribal or local law during the exclusion period. For purposes of this paragraph (2)(xiii) of this definition, the following definitions apply.

(A) *Comparable Federal, State, Tribal or local law* means a program providing employment training and supportive services that:

(*1*) Is authorized by a Federal, State, Tribal or local law;

(*2*) Is funded by the Federal, State, Tribal or local government;

(*3*) Is operated or administered by a public agency; and

(*4*) Has as its objective to assist participants in acquiring employment skills.

(B) *Exclusion period* means the period during which the resident participates in a program described in this definition, plus 18 months from the date the resident begins the first job acquired by the resident after completion of such program that is not funded by public housing assistance under the U.S. Housing Act of 1937. If the resident is terminated from employment without good cause, the exclusion period shall end.

(C) *Earnings and benefits* means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job;

(xiv) Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment.

(xv) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes on the dwelling unit;

(xvi) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(xvii) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937. A notice will be published in the **Federal Register** and distributed to IHAs identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

13. A new § 905.103 is added to subpart A to read as follows:

§ 905.103 Effective date.

In §§ 905.102, paragraphs (2)(ii), (2)(vi), (2)(viii) (D) through (E), (2)(xi), (2)(xii), (2)(xv), and (2)(xvi) of the definition of *Annual income* shall expire and shall not be in effect after May 6, 1996, unless prior to May 6, 1996, the Department publishes changes to this interim rule as a final rule or publishes a notice in the **Federal Register** to extend the effective date.

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING PROGRAM

14. The authority citation for 24 CFR part 913 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437d, 1437n and 3535(d).

15. A new § 913.1 is added to read as follows:

§ 913.1 Effective date.

Sections 913.106 (c)(2), (c)(6), (c)(8)(iv) through (v), (c)(11), (c)(12), (c)(15), and (c)(16) shall expire and shall not be in effect after May 6, 1996, unless prior to May 6, 1996, the Department publishes changes to this interim rule as a final rule or publishes a notice in the **Federal Register** to extend the effective date.

16. Section 913.106 is amended by revising paragraphs (b)(4), (b)(5), and (c) to read as follows:

§ 913.106 Annual income.

* * * * *

(b) * * *

(4) The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment (but see paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) of this section);

* * * * *

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts received by the Family, that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in Aide, as defined in § 913.102;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a Family member serving in the Armed Forces who is exposed to hostile fire;

(8) (i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) *A resident service stipend.* A resident service stipend is a modest amount (not to exceed $200 per month) received by a public housing resident for performing a service for the PHA, on a part-time basis, that enhances the quality of life in public housing. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No Resident may receive more than one such stipend during the same period of time; or

(v) Compensation from State or local employment training programs and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for a limited period as determined in advance by the PHA;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of $480 per adopted child;

(13) The earnings and benefits to any resident resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), or any comparable Federal, State, or local law during the exclusion period. For purposes of this paragraph, the following definitions apply.

(i) *Comparable Federal, State or local law* means a program providing employment training and supportive services that—

(A) Is authorized by a Federal, State or local law;

(B) Is funded by the Federal, State or local government;

(C) Is operated or administered by a public agency; and

(D) Has as its objective to assist participants in acquiring employment skills.

(ii) *Exclusion period* means the period during which the resident participates in a program described in this section, plus 18 months from the date the resident begins the first job acquired by the resident after completion of such program that is not funded by public housing assistance under the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*). If the resident is terminated from employment without good cause, the exclusion period shall end.

(iii) *Earnings and Benefits* means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job;

(14) Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment.

(15) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937. A notice will be published in the **Federal Register** and distributed to PHAs identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

Dated: January 26, 1995.

Henry G. Cisneros,

Secretary.

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Wednesday
April 5, 1995

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 173, 178, and 180

Cargo Tanks; Miscellaneous Requirements; Revisions and Response to Petitions for Reconsideration; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 173, 178 and 180

[Docket No. HM–183C; Amdt. Nos. 173–240, 178–105 and 180–7]

RIN 2137–AC37

Cargo Tanks; Miscellaneous Requirements; Revisions and Response to Petitions for Reconsideration

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

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document amends a final rule published on November 3, 1994, and concerns manufacture, qualification, and maintenance of DOT specification cargo tank motor vehicles. In response to petitions for reconsideration, RSPA is revising design loading requirements for MC 331 cargo tank motor vehicles and making other minor editorial and technical changes for clarity. The changes made in this document are intended to ease certain regulatory requirements where there will be no adverse effect on safety.

DATES: *Effective:* May 22, 1995.

Compliance date: Compliance with the regulations, as amended herein, is authorized as of April 5, 1995.

FOR FURTHER INFORMATION CONTACT: Ronald Kirkpatrick, telephone (202) 366–4545, Office of Hazardous Materials Technology, or Jennifer Karim, (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On November 3, 1994, RSPA published in the **Federal Register** a final rule, under Docket No. HM–183C (59 FR 55162), amending certain requirements for the manufacture, qualification and maintenance of cargo tank motor vehicles. Changes were made to relax the requirements for structural integrity, accident damage protection, welding and design quality control procedures, and pressure relief based on comments from industry. Changes were also made to require facilities repairing cargo tanks stamped as meeting the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) to have a Certificate of Authorization for use of an ''R'' stamp from the National Board of Boiler and Pressure Vessel Inspectors (National Board) Code .

RSPA received five petitions for reconsideration of certain aspects of the final rule. These petitions were submitted by the Cargo Tank Manufacturers Association (CTMA), Cargo Tank Concepts, Ltd. (CTCL), Truck Trailer Manufacturers Association (TTMA), National Propane Gas Association (NPGA), and the Compressed Gas Association, Inc. (CGA).

CTMA opposed several provisions adopted in the final rule. First, CTMA petitioned RSPA to reconsider its position on how the design stress calculations, in 49 CFR 178.345–3(c), should be applied to cargo tank loading conditions. Except for the loadings prescribed in paragraph (c)(i), CTMA stated:

> [T]he loads are extreme loads that will be experienced rarely if at all during the life of a cargo tank and [the] ASME Code allowable stresses should be based on the stress increase allowed for wind and seismic loads which are also experienced rarely if at all in the life of stationary vessels. Per UG–23 of the ASME Code, this increase is 20 percent. CTMA believes that the loads specified in building codes [are] applicable to pressure vessels in the same manner. Using ASME allowable stresses for these load conditions is too conservative since margins of safety are pyramided if rarely occurring extreme loads cannot be resisted by emergency stresses as recommended by CTMA.

As noted by RSPA in the preamble to the final rule (59 FR 55165), discussions have been ongoing for a number of years on how to combine the loadings in calculating the structural integrity requirements. The concept of separating structural loadings into two categories, *normal operating loading* and *extreme dynamic loading,* was proposed by several cargo tank motor vehicle designers at a public meeting in February 1994 and more fully developed later. In *normal* operations, a cargo tank can be expected to routinely experience relatively low dynamic forces; these forces are to be considered to occur simultaneously. Under *extreme dynamic* loadings, the cargo tank experiences relatively high forces which occur rarely, if at all, during the life of a cargo tank; these forces are considered to act independently, one at a time. This approach has received wide acceptance and is the foundation for new recommended practices under development by a TTMA engineering committee.

RSPA does not believe the calculations for ''stress increase'' referred to by CTMA necessarily apply to dynamic loads experienced either in normal operations or in extreme loading conditions experienced by cargo tank motor vehicles. Two provisions for increased allowable stresses are prescribed in the ASME Code, Section VIII, Division 1, UG–23. In paragraph (c) of UG–23, a factor of 1.5 is discussed for ''combined maximum primary membrane stress plus primary bending stress across the thickness.'' Evidently, the 20 percent factor referred to by CTMA is associated with the factor discussed in paragraph (d) for the ''combination of earthquake loading, or wind loading with other loadings in UG–22,'' with the stipulation that earthquake and wind loadings need not be considered to act simultaneously. RSPA believes the many years of experience accumulated by cargo tank motor vehicle manufacturers support the approach adopted in the final rule. The reference in the CTMA petition to other ''loads specified in building codes'' may or may not pertain to this matter. CTMA did not identify those codes and provided no information on whether or how they have any application to cargo tank structural integrity or accident damage protection. Therefore, CTMA's request is denied.

Second, CTMA opposed the 2 ''g'' design load for rollover damage protection devices specified in § 178.345–8(c)(1). CTMA stated that the loads on rollover devices, in the case of longitudinal sliding, would be limited by the coefficient of sliding friction of the metal rollover devices on the ground or pavement and, in the case of lateral rollover, would be limited even further by the lateral force leading to continued overturn of the tank. RSPA discussed commenters' requests to reduce the 2 ''g'' design load for rollover protection at length in the preamble of the final rule (59 FR 55166). RSPA recognizes that new designs may be necessary to gain significant benefits in safety.

RSPA also recognizes that the amount of force currently imposed in the horizontal plane is a simplification of many potential variables which can come into play during an overturn accident. Many scenarios are possible: the impact surface may be smooth or rough, horizontal or sloping, as hard as concrete or as soft as sand or damp earth; the vehicle may roll over an obstacle such as a guard rail; the cargo tank may receive an impact over its entire length or on only a small part of its exposed surface; etc. CTMA's comments on use of the coefficient of sliding friction might be appropriate for overturn on a smooth, hard highway surface, but would impose relatively moderate loads in comparison to other rollover scenarios. Accident scenarios where the rollover damage protection devices plow through earth or strike

roadside obstacles impose much greater loadings on the devices. Therefore, CTMA's petition for a reduction in the safety performance of rollover damage protection is denied.

Third, CTMA repeated its position that it is difficult to design rear-end protection devices in compliance with the loads prescribed in § 178.345–8(d), particularly devices which are offset from the load path. CTMA repeated its belief previously expressed in comments that the intent of the regulation is for the loads to be transmitted to the tank structure and absorbed without exceeding the permitted stresses anywhere along the load path. CTMA offered no new information to support this position. The revised requirements were discussed in the preamble of the final rule (59 FR 55167). RSPA believes that the revised requirements for the DOT 400-series cargo tanks allow engineers more freedom in the design of rear-end protection, including approaches involving energy dissipation and dampening. Therefore, CTMA's petition is denied.

Finally, CTMA commented on the suitability of applying ASME Code standards to the cargo tank industry while not recognizing other ''alternative quality control program(s).'' This issue was fully discussed in the preamble of the final rule (59 FR 55162). In addition, this subject was addressed in previous notices and public meetings under Docket HM–183 extending over a period of nearly ten years. CTMA provided no additional data or information to support changing the final rule. Therefore, RSPA's position remains unchanged and requirements for using procedures established under the ASME Code and the National Board of Boiler and Pressure Vessel Inspectors (National Board) Code are retained, and CTMA's petition is denied.

CTCL petitioned RSPA to reconsider amendments allowing a small release of certain types of ladings from the pressure relief system, in overturn accidents, before reclosing to a leak-tight position. CTCL stated that it has designed a vent which releases vapors instead of lading in an overturn accident situation, and that this information was not presented RSPA earlier because the technology had not yet been developed. RSPA welcomes the development by industry of improved valve designs. RSPA solicited information during the HM–183C rulemaking proceeding on the existence of reclosing pressure relief devices capable of reseating with no loss of lading and not subject to clogging and sticking during field service. However, RSPA believes CTCL has not provided sufficient information to support excluding the use of other valve designs at this time, and CTCL's petition is denied.

TTMA petitioned RSPA to continue allowing a cargo tank manufacturer holding an ASME ''U'' stamp to make repairs to ASME stamped cargo tanks. TTMA stated that an ASME ''U'' stamp holder should not be required to obtain an ''R'' stamp from the National Board and there is no reason why the National Board cannot continue to inspect repairs made by a ''U'' stamp holder. Furthermore, the National Board Inspection Code allows repairs to be made on ASME stamped cargo tanks by a facility holding an ''R'' stamp or by a facility working within an individual governmental jurisdiction where that jurisdiction has issued authorization for the facility to perform repairs.

RSPA explained in the preambles of the notice of proposed rulemaking (March 3, 1993; 58 FR 12316) and the final rule (59 FR 55170) that the National Board has control over the quality of work performed by an ''R'' stamp holder. Jurisdictional authorization is recognized only within the governmental boundaries where the repair facility is located. This type of authorization may be appropriate for work performed on stationary vessels, but not for mobile systems such as cargo tank motor vehicles. RSPA believes it is essential to apply a nationally recognized consensus standard in a uniform manner regardless of jurisdiction. Therefore, the requirement that repairs on DOT specification cargo tanks certified to the ASME Code must be performed only by a facility holding a valid ''R'' stamp is retained and TTMA's petition is denied.

CGA petitioned RSPA to remove the word ''internal'' in the first sentence in § 178.338–11(c) specifying that each filling and discharge line for liquids must be provided with a remotely controlled internal self-closing stop valve. CGA pointed out that the word ''internal'' did not appear in the provision in the notice of proposed rulemaking and that requiring internal valves would bring the cryogenic flammable lading industry to a standstill because of the inner tank/outer jacket configuration of these cargo tanks. RSPA agrees. It was not RSPA's intent to require an ''internal'' self-closing valve on these tanks, but to broaden the requirement to include all flammable ladings. Therefore, the word ''internal'' is removed.

NPGA asked RSPA to reconsider its decision in the final rule that a future rulemaking would address design loading requirements for MC 331 specification cargo tanks. The preamble to the final rule (59 FR 55163) noted NPGA's recommendation for uniformity in design loading requirements for all DOT specification cargo tanks. In its petitions, NPGA asked RSPA to extend, until March 1, 1997, the compliance date for construction of MC 331 cargo tank motor vehicles conforming to the structural integrity requirements contained in § 178.337–3. It also urged RSPA to make resolution of stress analysis a priority project.

RSPA has reviewed the report previously submitted by NPGA and found that NPGA's proposed loadings for the MC 331 cargo tank are very similar to the loadings adopted for the DOT 400-series cargo tanks. This supports NPGA's position that cargo tank motor vehicles encounter similar loadings regardless of whether the cargo tank is used to transport a liquid or gas lading. Therefore, for greater consistency, RSPA is amending the structural integrity requirements in § 178.337–3 by adopting the same loadings as specified for the DOT 400-series cargo tank specifications. In view of this change, a new paragraph (f) is added in § 178.23 to provide for a MC 331 specification cargo tank conforming to the structural integrity requirements contained in § 178.337–3 or to the corresponding requirements in effect at the time of manufacture. However, the material thickness may not be less than that required by the ASME Code.

Based on comments received from CGA that design loadings specified for MC 338 cargo tanks should not be revised for consistency with the MC 331 specification, RSPA is not making any change to § 178.338–3. CGA has advised it is developing a document to provide additional guidance to its members on the design and construction of MC 338 cargo tanks.

The amendment to § 178.337–3 eliminates any need for a delay in the compliance date for construction of MC 331 cargo tank motor vehicles conforming to the structural integrity requirements, and this part of NPGA's petition is denied.

Additionally, CGA petitioned RSPA to allow modifications on cryogenic cargo tanks originally authorized by exemption prior to introduction of the MC 338 specification. In accordance with § 180.405(d), such cargo tanks must be marked ''DOT MC 338–E'' followed by the exemption number. CGA contends that modifications such as adding a manhole may require removal of the outer jacket and installation of a new shell course to the inner vessel; only local reinforcement of the inner vessel was required

previously. After further consideration, RSPA agrees with CGA. In establishing the MC 338 specification, the final rule (June 16, 1983; 48 FR 27674) stated ''[T]his grandfathering of existing tanks is necessary to avoid potential severe economic consequences to some exemption holders and can be justified from a safety point of view because of the thorough technical review involved in the exemption process, notwithstanding the fact that certain aspects of certain exemptions may differ from this final rule.'' Nothing in subsequent rulemakings has changed this premise. Therefore, in this final rule, in § 180.413, in paragraph (d)(3), the introductory text is revised, and a new paragraph (v) is added to allow MC 338 cargo tanks authorized under § 180.405(d) to be structurally modified provided that no reduction in structural integrity is incurred and that any modification is in accordance with the ASME Code or with the MC 338 specification.

Finally, RSPA has made the following editorial revisions for clarity: In § 178.345–3, in paragraphs (c)(1)(iii)(B) and (c)(2)(iii)(B), in the second sentence, the wording ''horizontal pivot of the tractor'' is revised to read ''horizontal pivot of the truck tractor''. In § 178.345–14, in paragraph (b)(3), the wording ''Tank MAWP'' is revised to read ''Tank maximum allowable working pressure (MAWP)''. In § 180.403, a sentence is added to the definition of modification. In § 180.405, in paragraph (h)(2), reference to 40 CFR 60.601 is deleted. In § 180.407, in the table in paragraph (c), under the subheading ''Thickness Test'' in the first column, the wording ''in corrosive service, except'' is revised to read ''transporting lading corrosive to the tank, except''; and paragraphs (d)(1)(i) and (ii) are revised to remove duplicative language. In § 180.413, paragraphs (b)(6) and (d)(10) are revised to clarify that a repair or modification affecting the structural integrity of a pressure cargo tank, with respect to pressure, must be determined by testing required by the specification or by § 180.407(g)(1)(iv).

Rulemaking Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This amendment imposes no new requirements on affected persons. The final regulatory evaluation for the November 1994 final rule is available for review in the docket. Changes in this final rule did not warrant revision of the regulatory evaluation.

2. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not ''substantively the same'' as the Federal requirements. 49 U.S.C. 5125(b)(1). These covered subjects are:

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements respecting the number, contents, and placement of those documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(E) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container which is represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses the design, manufacturing, and certain other requirements for packages represented as qualified for use in the transportation of hazardous material. Therefore, this final rule preempts State, local, or Indian tribe requirements that are not ''substantively the same'' as Federal requirements on these subjects. Section 5125(b)(2) of Title 49 U.S.C. provides that when DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier that the 90th day following the date of issuance of the final rule and no later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption of this final rule will be July 5, 1995.

Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

3. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule applies to manufacturers, shippers, carriers, and owners of cargo tanks, some of which are small entities. There are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

4. Paperwork Reduction Act

This amendment imposes no changes to the information collection and recordkeeping requirements contained in the June 12, 1989 final rule, which were approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and assigned control number 2137–0014.

5. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicles safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, title 49, chapter I of the Code of Federal Regulations, is amended as set forth below:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 49 CFR 1.53.

2. In § 173.23, a new paragraph (f) is added to read as follows:

§ 173.23 Previously authorized packaging.

* * * * *

(f) An MC 331 cargo tank motor vehicle must conform to structural integrity requirements in § 178.337–3 or to corresponding requirements in effect at the time of manufacture.

PART 178—SPECIFICATIONS FOR PACKAGINGS

3. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 49 CFR 1.53.

4. In § 178.337–3, paragraph (c) is revised to read as follows:

§ 178.337–3 Structural integrity.

* * * * *

(c) *Shell design.* Shell stresses resulting from static or dynamic loadings, or combinations thereof, are not uniform throughout the cargo tank motor vehicle. The vertical, longitudinal, and lateral normal operating loadings can occur simultaneously and must be combined. The vertical, longitudinal and lateral extreme dynamic loadings occur separately and need not be combined.

(1) *Normal operating loadings.* The following procedure addresses stress in the tank shell resulting from normal operating loadings. The effective stress (the maximum principal stress at any point) must be determined by the following formula:

$$S = 0.5(S_y + S_x) \pm [0.25(S_y - S_x)^2 + S_s^2]^{0.5}$$

Where:

(i) S = effective stress at any given point under the combination of static and normal operating loadings that can occur at the same time, in psi.

(ii) S_y = circumferential stress generated by the MAWP and external pressure, when applicable, plus static head, in psi.

(iii) S_x = The following net longitudinal stress generated by the following static and normal operating loading conditions, in psi:

(A) The longitudinal stresses resulting from the MAWP and external pressure, when applicable, plus static head, in combination with the bending stress generated by the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(B) The tensile or compressive stress resulting from normal operating longitudinal acceleration or deceleration. In each case, the forces applied must be 0.35 times the vertical reaction at the suspension assembly, applied at the road surface, and as transmitted to the cargo tank wall through the suspension assembly of a trailer during deceleration; or the horizontal pivot of the truck tractor or converter dolly fifth wheel, or the drawbar hinge on the fixed dolly during acceleration; or anchoring and support members of a truck during acceleration and deceleration, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall. The following loadings must be included:

(*1*) The axial load generated by a decelerative force;

(*2*) The bending moment generated by a decelerative force;

(*3*) The axial load generated by an accelerative force; and

(*4*) The bending moment generated by an accelerative force; and

(C) The tensile or compressive stress generated by the bending moment resulting from normal operating vertical accelerative force equal to 0.35 times the vertical reaction at the suspension assembly of a trailer; or the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall.

(iv) S_s = The following shear stresses generated by the following static and normal operating loading conditions, in psi:

(A) The static shear stress resulting from the vertical reaction at the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(B) The vertical shear stress generated by a normal operating accelerative force equal to 0.35 times the vertical reaction at the suspension assembly of a trailer; or the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(C) The lateral shear stress generated by a normal operating lateral accelerative force equal to 0.2 times the vertical reaction at each suspension assembly of a trailer, applied at the road surface, and as transmitted to the cargo tank wall through the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall; and

(D) The torsional shear stress generated by the same lateral forces as described in paragraph (c)(1)(iv)(C) of this section.

(2) *Extreme dynamic loadings.* The following procedure addresses stress in the tank shell resulting from extreme dynamic loadings. The effective stress (the maximum principal stress at any point) must be determined by the following formula:

$$S = 0.5(S_y + S_x) \pm [0.25(S_y - S_x)^2 + S_s^2]^{0.5}$$

Where:

(i) S = effective stress at any given point under a combination of static and extreme dynamic loadings that can occur at the same time, in psi.

(ii) S_y = circumferential stress generated by MAWP and external pressure, when applicable, plus static head, in psi.

(iii) S_x = the following net longitudinal stress generated by the following static and extreme dynamic loading conditions, in psi:

(A) The longitudinal stresses resulting from the MAWP and external pressure, when applicable, plus static head, in combination with the bending stress generated by the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the tank wall;

(B) The tensile or compressive stress resulting from extreme longitudinal acceleration or deceleration. In each case the forces applied must be 0.7 times the vertical reaction at the suspension assembly, applied at the road surface, and as transmitted to the cargo tank wall through the suspension assembly of a trailer during deceleration; or the horizontal pivot of the truck tractor or converter dolly fifth wheel, or the drawbar hinge on the fixed dolly during acceleration; or the anchoring and support members of a truck during acceleration and deceleration, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall. The following loadings must be included:

(*1*) The axial load generated by a decelerative force;

(*2*) The bending moment generated by a decelerative force;

(*3*) The axial load generated by an accelerative force; and

(*4*) The bending moment generated by an accelerative force; and

(C) The tensile or compressive stress generated by the bending moment resulting from an extreme vertical accelerative force equal to 0.7 times the vertical reaction at the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or the anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall.

(iv) S_s = The following shear stresses generated by static and extreme dynamic loading conditions, in psi:

(A) The static shear stress resulting from the vertical reaction at the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(B) The vertical shear stress generated by an extreme vertical accelerative force equal to 0.7 times the vertical reaction at the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(C) The lateral shear stress generated by an extreme lateral accelerative force equal to 0.4 times the vertical reaction at the suspension assembly of a trailer, applied at the road surface, and as transmitted to the cargo tank wall through the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall; and

(D) The torsional shear stress generated by the same lateral forces as described in paragraph (c)(2)(iv)(C) of this section.

* * * * *

§ 178.338–11 [Amended]

5. In § 178.338–11, in paragraph (c) introductory text, in the first sentence, the wording ''remotely controlled internal self-closing stop valve'' is revised to read ''remotely controlled self-closing shut-off valve''.

§ 178.345–3 [Amended]

6. In § 178.345–3, in paragraphs (c)(1)(iii)(B) and (c)(2)(iii)(B), in the second sentence, the wording ''horizontal pivot of the tractor'' is revised to read ''horizontal pivot of the truck tractor''.

§ 178.345–14 [Amended]

7. In § 178.345–14, in paragraph (b)(3), the wording ''Tank (MAWP)'' is revised to read ''Tank maximum allowable working pressure (MAWP)''.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5127, 49 CFR 1.53.

9. In § 180.403, the introductory text in the definition for ''modification'' is revised to read as follows:

§ 180.403 Definitions.

* * * * *

Modification means any change to the original design and construction of a cargo tank or a cargo tank motor vehicle which affects its structural integrity or lading retention capability. Any modification which involves welding on the cargo tank wall also must meet all requirements for ''Repair'' as defined in this section. * * *

* * * * *

§ 180.405 [Amended]

10. In § 180.407, in paragraph (h)(2), in the second sentence, the reference ''40 CFR 60.501 and 60.601'' is revised to read ''40 CFR 60.501''.

11. In § 180.407, paragraphs (d)(1)(i) and (ii) are revised to read as follows:

§ 180.407 Requirements for test and inspection of specification cargo tanks.

* * * * *

(d) * * *

(1) * * *

(i) Visual inspection is precluded by internal lining or coating, or

(ii) The cargo tank is not equipped with a manhole or inspection opening.

* * * * *

§ 180.407 [Amended]

11a. In addition, in § 180.407, in the table in paragraph (c), under the subheading ''Thickness Test'' in the first column, the wording ''in corrosive service, except'' is revised to read ''transporting material corrosive to the tank, except''.

12. In § 180.413, paragraphs (b)(6), ((d)(3) introductory text and (d)(10) are revised, and a new paragraph (d)(3)(v) is added to read as follows:

§ 180.413 Repair, modification, stretching, or rebarrelling of cargo tanks.

* * * * *

(b) * * *

(6) The suitability of any repair affecting the structural integrity of the cargo tank must be determined by the testing required either in the applicable manufacturing specification, or in § 180.407(g)(1)(iv).

* * * * *

(d) * * *

(3) Except as provided in paragraph (d)(3)(v) in this section, all new material and equipment, and equipment affected by modification, stretching or rebarrelling must meet the requirements of the specification in effect at the time such work is performed, and must meet the applicable structural integrity requirements (§§ 178.337–3, 178.338–3, or 178.345–3 of this subchapter). The work must conform to the requirements of the applicable specification as follows:

* * * * *

(v) For Specification MC 338 cargo tanks, the provisions of specification MC 338. However, structural modifications to MC 338 cargo tanks authorized under § 180.405(d) may conform to applicable provisions of the ASME Code instead of specification MC 338, provided the structural integrity of the modified cargo tank is at least equivalent to that of the original cargo tank.

* * * * *

(10) The suitability of any modification affecting the structural integrity of the cargo tank, with respect to pressure, must be determined by the testing required either in the applicable manufacturing specification, or in § 180.407(g)(1)(iv).

* * * * *

§ 180.413 [Amended]

13. In addition, in § 180.413, the following changes are made:

a. In paragraph (d)(3)(iii), at the end of the paragraph, the word ''and'' is removed.

b. In paragraph (d)(3)(iv), at the end of the paragraph, the period is removed and ''; and'' is added in its place.

Issued in Washington, DC on March 30, 1995, under authority delegated in 49 CFR Part 1.

Ana Sol Gutiérrez,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 95–8349 Filed 4–4–95; 8:45 am]

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federal register

Wednesday
April 5, 1995

Part IV

Department of Education

Assessment Development and Evaluation Grants Program; Notice Inviting Applications for New Awards for Fiscal Year 1995; Notice

DEPARTMENT OF EDUCATION

CFDA No: 84.279–A

Assessment Development and Evaluation Grants Program; Notice Inviting Applications for New Awards for Fiscal Year 1995

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of the Program: To provide grants to help defray the cost of developing, testing, and evaluating State assessments, including assessments in languages other than English, and assessments for students with disabilities.

Eligible Applicants: State educational agencies, local educational agencies, and consortia of such agencies are eligible.

Deadline for Transmittal of Applications: June 5, 1995.

Deadline for Intergovernmental Review: August 5, 1995.

Available Funds: $5,000,000.

Estimated Range of Awards: $100,000 to $500,000 per year.

Estimated Average Size of Awards: $300,000.

Estimated Number of Awards: 16 awards.

Project Period: Up to 48 months.

Budget Period: 12 months.

Applicable Regulations:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 75 (Direct Grant Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in—

(1) 34 CFR Part 98 (Student Rights in Research, Experimental Programs, and Testing); and

(2) 34 CFR Part 99 (Family Educational Rights and Privacy).

Description of the Program: The Assessment Development and Evaluation Grants Program is authorized by section 220 of the Goals 2000: Educate America Act (Public Law 103–227). Under this program, the Secretary provides grants to help defray the cost of developing, field-testing, and evaluating State assessments aligned to State content standards certified by the National Education Standards and Improvement Council. The Secretary is required to reserve a portion of the available funds for purposes of developing such assessments in languages other than English and developing such assessments for students with disabilities. Therefore, the Secretary has established three absolute priorities for this competition as outlined below. Under priority (a), the Secretary will support the development of State assessments for all students that are aligned with State content standards. Under priorities (b) and (c), the Secretary will support the modification of State assessments for all students necessary to facilitate their use with students of limited-English proficiency or students with disabilities. The Secretary anticipates that assessments developed under this program will serve as models for other States and, therefore, expects that grantees will carefully document their efforts to develop and evaluate assessments.

Absolute Priorities: Under this competition, the Secretary will consider applications that address one or more of the following priorities:

(a) Projects to develop, field-test, and evaluate State assessments for all students that are aligned to State content standards.

(b) Projects to modify, field-test, and evaluate State assessments in languages other than English. The State assessments to be modified must be those developed under priority (a) or similar State assessments developed for all students and aligned to State content standards.

(c) Projects to modify, field-test, and evaluate State assessments for students with disabilities. The State assessments to be modified must be those developed under priority (a) or similar State assessments developed for all students and aligned to State content standards.

Purposes of the Assessments

Grants awarded under this competition may be used only for the development, field-testing, and evaluation of State assessments to be used for some or all of the following purposes:

(a) Informing students, parents, teachers, and related services personnel about the progress of all students toward the State's content standards;

(b) Improving classroom instruction and improving the learning outcomes for all students;

(c) Exemplifying for students, parents, and teachers the kinds and levels of achievement that should be expected of all students, including the identification of State student performance standards;

(d) Measuring and motivating individual students, schools, districts, States, and the Nation to improve educational performance; and

(e) Assisting education policymakers in making decisions about education programs.

Council Certification of Content Standards

This program supports the development and evaluation of State assessments that are aligned to State content standards certified by the National Education Standards and Improvement Council (NESIC). Because NESIC has not yet been established and States cannot yet seek certification of State content standards, an applicant for a grant under this competition must demonstrate in its application that the proposed project is designed to ensure the likelihood that the assessments to be developed and evaluated will be aligned to State content standards certified by NESIC. This demonstration must include an assurance by the State that it intends to seek NESIC certification of the State content standards to which the assessments will be aligned.

Other Requirements

The recipient of a grant awarded under this competition must:

(a) Examine the validity and reliability of the State assessment for the particular purposes for which such assessment was developed;

(b) Ensure that the State assessment is consistent with relevant, nationally recognized professional and technical standards for assessments; and

(c) Devote special attention to how a State assessment treats all students, especially with regard to the race, gender, ethnicity, disability, and language proficiency of such students.

Use of Assessments

A State assessment developed and evaluated with a grant awarded under this competition may not be used for decisions about individual students

relating to program placement, promotion or retention, graduation, or employment for a period of 5 years from the enactment of the Goals 2000: Educate America Act on March 31, 1994.

Selection Criteria: (a) (1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) The *criteria*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of the Assessment Development and Evaluation Grants Program, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the authorizing statute, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (15 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i)(A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i)(A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on June 10, 1994 (59 FR 30214).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.279–A, U.S. Department of Education, Room 6213, 600 Independence Avenue SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the dated indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.279–A, Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.279–A, Room 3633, Regional Office Building 3, 7th and D Streets SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 30 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form 524) and instructions.

Special Budget Instructions: The Department is participating in the Administration's Reinventing Government Initiative. As part of that initiative, the National Performance Review urged the Department to ''eliminate the continuation application process for budget years within the project period'' and replace it with ''yearly program progress reports focusing on program outcomes and problems related to program implementation and service delivery.'' The Department is implementing this recommendation for as many programs as possible beginning in fiscal year 1995. This will require all applicants for multi-year awards to provide detailed budget information for the total cooperative agreement period. The Department will negotiate at the time of the initial award the funding levels for each year of the cooperative agreement award. A new generic budget form, included in this package, requests the information needed to implement this initiative.

By requesting detailed budget information in the initial application for the total project period, the need for formal noncompeting continuation applications in the remaining years will be eliminated. An annual report will be used in place of the continuation application to determine progress, thereby relieving grantees of the burden to resubmit assurances, certifications, etc.

Part III: Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Dr. David Sweet, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, N.W., Washington, DC 20208–5573. Telephone 202–219–2079. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 5850.

Dated: March 31, 1995.

Sharon P. Robinson,

Assistant Secretary, Educational Research and Improvement.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, state, and zip code)*:

Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 7 9

TITLE: Assessment Development and Evaluation Grants Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION
BUDGET INFORMATION
NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/95

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the 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 this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):
For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):
Show the total budget request for each project year for which funding is requested.

Line 12, column (f):
Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

BILLING CODE 4000–01–C

Instructions for Part III—Application Narrative

In order to be considered for funding you must submit an *original* and two copies (and *in order to expedite the review and award process, it is strongly suggested that you voluntarily submit one additional copy*) of the following:

1. Federal Assistance Form (Standard Form 424)
2. Priority Identification Sheet
3. Project Summary (abstract)
4. Proposal Narrative
5. Budget Information—Non-Construction Programs (ED Form 524)
6. Resume(s) for the key personnel
7. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements; and Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions
8. Disclosure of Lobbying Activities

Specific Instructions for Application Items

Item 3. Project Summary (abstract). Applicants are required to provide a 250 word abstract. This summary serves an important function in the proposal review process, and so applicants are encouraged to be sure that the summary provides an accurate, intelligible and succinct description of the project.

Item 4. Proposal Narrative. Applicants must provide a proposal narrative addressing each of the selection criteria which serve as the sole basis for reviewers to evaluate the applications. For the *Budget and cost effectiveness* criterion applicants must include a budget narrative that explains the line item figures included in Section B of Form 424A. Applicants responding to more than one of the three absolute priorities must disaggregate costs associated with each priority area (to meet the congressional reporting requirements of the Department).

The applicant must limit the Proposal Narrative (including all attachments and appendices, but excluding a table of contents) to no more than 25 double spaced pages, typed on 8½″ x 11″ pages (on one side only) with at least one inch margins on all sides (including top and bottom of pages). Single spacing is only permitted for those attachments or appendices where single-spacing is the standard convention, e.g. letters of support and commitment, and the bibliographic reference section. The applicant must use no smaller than 12 point type. The instructions printed on this page are printed in the appropriate type size. *Note: proposal narratives that exceed this page limit, or narratives using a smaller print size or spacing that makes the narrative exceed this limit, will not be considered for funding.*

Item 6. Resume(s) for the key personnel. Each resume must be five pages or less in length.

Item 7. Certifications. An original signature is required on one copy of the application.

Item 8. Disclosure of Lobbying. An original signature is required on one copy of the application.

ASSESSMENT DEVELOPMENT AND EVALUATION GRANTS PROGRAM ABSOLUTE PRIORITY IDENTIFICATION SHEET

The Secretary has identified three absolute priorities for this competition. Please identify the priority(ies) to be addressed by marking the appropriate box(es).

Note that addressing at least one of the absolute priorities is a requirement for receiving a grant under this competition.

[ ] *Absolute Priority #1*

Projects to develop, field-test, and evaluate State assessments aligned to State content standards.

[ ] *Absolute Priority #2*

Projects to develop, field-test, and evaluate such State assessments in languages other than English.

[ ] *Absolute Priority #3*

Projects to develop, field-test, and evaluate such State assessments for students with disabilities.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850–0710, Washington, D.C. 20503.

(Information collection approved under OMB control number 1850–0710. Expiration date: September 31, 1998.)

BILLING CODE 4000–01–P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0346-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*: _____

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including 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 the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

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federal register

Wednesday
April 5, 1995

Part V

Department of Education

34 CFR Part 350, et al.
National Institute on Disability Reahabilitation Research; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 350, 351, 352, 353, and 356

RIN 1820–AB01

National Institute on Disability Rehabilitation Research

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends existing regulations for certain programs administered by the National Institute on Disability and Rehabilitation Research (NIDRR). These amendments result primarily from the Rehabilitation Act Amendments of 1992 (the Amendments). The regulations add new definitions and program activities consistent with the Amendments and reflect new statutory requirements.

EFFECTIVE DATE: These regulations take effect on May 5, 1995.

FOR FURTHER INFORMATION CONTACT: David Esquith, U.S. Department of Education, 600 Independence Avenue, SW., Mary E. Switzer Building, Room 3424, Washington, DC 20202–2601. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8133.

SUPPLEMENTARY INFORMATION: These regulations primarily implement statutory changes made by the Rehabilitation Act Amendments of 1992 (Pub. L. 102–569). Some of the changes conform terminology of the regulations with terminology in the Act, specifically in the use of ''individual with a disability,'' ''children with disabilities,'' ''individual with a mental disability,'' and similar phrases to replace phrases using the word ''handicapped,'' ''handicapped individual,'' or ''disabled individual.''

The regulation in § 350.1 has been revised to include improving the cost-effectiveness of services under the Act in the list of purposes of the activities supported by NIDRR.

The regulation in § 350.4 includes new statutory definitions for many of the terms used in section 7 of the Rehabilitation Act, as amended (the Act), including the definitions of such key terms as ''disability,'' ''individual with a disability,'' ''rehabilitation technology'' and ''rehabilitation engineering,'' and ''research utilization.'' The regulation further reflects new statements in the statute about the purpose of each of the programs and the activities authorized within them.

The regulation in § 350.20 describes the conditions under which applicants must send copies of their applications to the Vocational Rehabilitation agencies in their States, as required by statute. This provision clarifies Sections 204(c) and 306(i) of the current law and preexisting regulations by describing the context in which transmittal of these applications would be appropriate.

The regulation in § 350.21 implements section 21(b)(6) of the Act, which states that, where appropriate, applicants must demonstrate how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds. If the Secretary determines that this requirement is not appropriate for a particular grant competition, the Secretary will indicate this in a notice announcing a priority or in the notice inviting applications. If the Secretary does not make this determination, but an applicant believes that this determination is appropriate, the applicant will indicate this and set forth a justification in its application. In response to the many inquiries that NIDRR receives from applicants seeking suggestions for methods to meet this requirement, the regulation includes a list of methods that an applicant may choose to propose.

The regulation in § 350.41 implements section 20 of the Act, which requires all projects that provide services to individuals with disabilities to advise those individuals who are applicants for or recipients of services under the Act, or the parents, family members, guardians, advocates, or authorized representatives of the individuals, of the availability and purposes of the Client Assistance Program (CAP) funded under the Act, and to provide information on the means of seeking assistance under the CAP.

The regulations in §§ 352.33 and 353.33 include the new statutory standard 60-month grant periods for RRTCs in section 204(b)(2)(L) and RERCs in section 204(b)(3)(E), and specify conditions under which awards of lesser duration are appropriate under the law.

The regulation in § 353.41 states that certain RERCs must have an advisory board, of which the majority of the members must be individuals with disabilities, their parents, family members, guardians, advocates, or authorized representatives. This requirement is based on the new statutory requirement in section 204(b)(3)(D)(ii) of the Act.

The regulations support the National Education Goal that, by the year 2000, every adult American—including individuals with disabilities—will possess the skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

On August 10, 1994, the Secretary published a notice of proposed rulemaking in the **Federal Register** (59 FR 41176).

Analysis of Comments and Changes

In response to the Secretary's invitation in the Notice of Proposed Rulemaking (NPRM), 12 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject under appropriate sections of the regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Technical and other minor changes—and suggested changes that the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Additional Changes

The final regulations include changes from the proposed regulations that reflect the Department's recently developed Principles for Regulating. The Principles state that the Department will regulate only to improve the quality of services to our customers, only when absolutely necessary, and then in the most flexible, equitable, and least burdensome way possible.

The proposed regulations included new selection criteria addressing the requirement that applicants address the needs of individuals with disabilities from minority backgrounds. The final regulations do not include these new selection criteria.

The proposed regulations for part 352 included target audiences for dissemination activities in the selection criteria that were not included in the dissemination requirements of part 352. In the final regulations, the selection criteria for dissemination activities conform to the dissemination requirements of part 352.

The proposed regulations included a requirement that RRTCs disseminate information and provide technical assistance to administrators, policymakers, and representatives of public and private organizations whose activities affect the productivity, independence, and community integration of individuals with disabilities. The proposed regulations also included these groups in the selection criteria applicable to

dissemination and technical assistance. The final regulations encourage RRTCs to undertake these activities and do not include these groups in the selection criteria.

The proposed regulations included advisory committee requirements for all RRTCs and RERCs. The final regulations, reflecting the statute, include advisory committee requirements for certain RERCs. The proposed regulations included the RERC advisory committee requirements in § 353.40 in addition to two general requirements. Revising the advisory committee requirements to apply to certain RERCs necessitated separating the advisory committee requirements from the two general requirements that apply to all RERCs. In the final regulations, the two general requirements are contained in § 353.40, and the advisory committee requirements are contained in § 353.41.

The proposed regulations broadened the requirements for Institutional Review Boards. The final regulations maintain the current requirements. In addition, the regulations have been amended to incorporate by reference portions of 34 CFR part 97 that had been repeated in parts 350 and 356.

Part 350—Disability and Rehabilitation Research: General Provisions

Section 350.1 What are the purposes of activities supported under the disability and rehabilitation research program?

Comment: Two commenters recommended including improving cost-effectiveness of services under the Act in the list of purposes of activities supported by NIDRR.

Discussion: The Secretary agrees that improving the cost-effectiveness of services under the Act is an important purpose for activities supported by NIDRR.

Changes: Section 350.1 has been revised to include improving the cost-effectiveness of services under the Act in the list of purposes of the activities supported by NIDRR.

Comment: Two commenters recommended that the special emphasis placed on individuals with disabilities from minority backgrounds should be broadened to include all persons who do not have equitable access to rehabilitation.

Discussion: The special emphasis placed on individuals with disabilities from minority backgrounds is a statutory requirement contained in section 21 of the Act. The Secretary points out that applicants may propose to emphasize the needs of individuals with disabilities who have inequitable access to rehabilitation services. However, the Secretary declines to require all applicants to propose such an emphasis.

Changes: None.

Comment: Two commenters recommended that the special emphasis placed on individuals with disabilities from minority backgrounds should be broadened to include women with disabilities.

Discussion: As indicated above, the special emphasis placed on individuals with disabilities from minority backgrounds is based on a statutory requirement. The Secretary believes that women with disabilities have unique needs that should be addressed in NIDRR's research agenda. The Secretary believes that the appropriate approach to addressing the unique needs of women with disabilities in NIDRR's research agenda is through the issuance of absolute priorities on specific issues.

Changes: None.

Comment: One commenter recommended adding that one of the purposes of NIDRR's activities is to ensure that consumers are able to make informed choices regarding their employment outcomes.

Discussion: The Secretary points out that § 350.1(a)(1) states, in part, that one of the purposes of NIDRR's research is to address rehabilitation problems such as physical restoration, vocational rehabilitation, independent living, and community integration. The Secretary believes that research addressing the ability to make personal decisions related to employment is included in the purpose set forth in § 350.1(a)(1). The Secretary does not believe any further clarification is necessary.

Changes: None.

Comment: One commenter recommended requiring applicants to address one or more of the approaches that are set forth in § 350.21 as examples of what an applicant may do to meet this section's requirements to demonstrate how the project will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

Discussion: The Secretary does not intend for the approaches set forth in § 350.21 to be exhaustive. The Secretary recognizes that there are activities not included in this section that meet the requirements of the law. The Secretary believes that applicants should have the discretion to propose other activities that meet these requirements.

Changes: None.

Section 350.3 What regulations apply to these programs?

Comment: One commenter recommended revising the part of § 350.3(d)(2) that requires an IRB that regularly reviews another vulnerable category of subjects such as children who do not have disabilities, prisoners, pregnant women, or adults with disabilities to consider including one or more individuals who are knowledgeable about the experience in working with these subjects. The commenter recommended mandating the inclusion of such an individual.

Discussion: The IRB requirements that apply to many of the Department's programs are contained in 34 CFR part 97, which is incorporated by reference in part 350. These regulations are currently under review. If changes are made to the IRB requirements, the Secretary prefers to make them in part 97. The commenter's recommendation will be considered as part of the Department's review of the IRB requirements in part 97.

Changes: While no changes have been made to the IRB requirements as a result of the comment, as indicated previously, the regulations include a technical revision that incorporates by reference portions of part 97 that have been repeated in parts 350 and 356.

Part 351—Disability and Rehabilitation Research: Research and Demonstration Projects

Section 351.1 What is the research and demonstration projects program?

Comment: One commenter recommended adding ''respite'' to the term ''family support'' in this section.

Discussion: The Secretary recognizes that respite is an important part of family support. However, respite is one of many aspects of family support. The Secretary declines to list all of the aspects of this, or other terms, in this section.

Changes: None.

Section 351.10 What types of projects are authorized under this program?

Comment: One commenter recommended substituting a term such as ''homebased'' for ''homebound'' because the latter term has negative connotations.

Discussion: The Secretary recognizes the pejorative connotation of the term ''homebound.'' However, the term ''homebound'' appears in the 1992 amendments to the Rehabilitation Act.

Changes: None.

Part 352—Disability and Rehabilitation Research: Rehabilitation Research and Training Centers

Section 352.41 What is the advisory committee requirement for a grantee under this program?

Comment: One commenter recommended revising the regulations to encourage applicants to include persons with disabilities from minority backgrounds on advisory councils, where applicable.

Discussion: The Secretary believes that the regulations clearly encourage applicants to involve persons with disabilities from minority backgrounds in all phases of their activities. The Secretary does not believe any further encouragement is necessary.

Changes: None.

Part 353—Disability and Rehabilitation Research: Rehabilitation Engineering Research Centers

Section 353.10 What types of activities are authorized under this program?

Comment: One commenter pointed out that the word ''medical'' does not appear in this section and recommended including medical sciences research among the types of authorized activities.

Discussion: The Secretary points out that § 353.10 is taken directly from the 1992 amendments to the Rehabilitation Act. The Secretary recognizes that medical sciences research frequently is involved in the development of devices and services to improve functioning and independence. The Secretary does not believe that any revision is necessary.

Changes: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the regulations are those resulting from statutory requirements and those determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of the regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these final regulations are small public and private agencies applying for Federal funds under these programs. However, the regulations will not have a significant economic impact on the entities affected because the regulations will not impose excessive regulatory burdens or require unnecessary Federal supervision.

Assessment of Educational Impact

In the NPRM the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 350

Administrative practice and procedure, Education, Educational research, Grant program—education, Individuals with disabilities.

34 CFR Part 351

Education, Educational research, Grant program—education, Individuals with disabilities, Intergovernmental relations, Vocational rehabilitation.

34 CFR Part 352

Education, Educational research, Grant program—education, Individuals with disabilities, Manpower training programs, Vocational rehabilitation.

34 CFR Part 353

Education, Educational research, Grant program—education, Individuals with disabilities, Intergovernmental relations, Rehabilitation engineering research, Technical assistance, Vocational rehabilitation.

34 CFR Part 356

Education, Educational research, Grant program—education, Individuals with disabilities, Vocational rehabilitation.

Dated: March 30, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.133, National Institute on Disability and Rehabilitation Research)

The Secretary amends parts 350, 351, 352, 353, and 356 of Title 34 of the Code of Federal Regulations as follows:

PART 350—DISABILITY AND REHABILITATION RESEARCH: GENERAL PROVISIONS

1. The authority citation for part 350 continues to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

2. Section 350.1 is amended by revising the heading and paragraphs (a) and (b)(3) to read as follows:

§ 350.1 What are the purposes of activities supported under the disability and rehabilitation research program?

(a) The activities funded by the Institute—

(1) Support the conduct of research, demonstration projects, training, and related activities to maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities of all ages, with particular emphasis on improving the effectiveness, including the cost-effectiveness, of services authorized under the Act;

(2) Provide for a comprehensive and coordinated approach to the support and conduct of research, demonstration projects, training, and related activities, and to ensure that the approach is in accordance with the long-range plan for research developed by the Institute;

(3) Promote the transfer of rehabilitation technology to individuals with disabilities through research and demonstration projects relating to—

(i) The procurement process for the purchase of rehabilitation technology;

(ii) The utilization of rehabilitation technology on a national basis; and

(iii) Specific adaptations or customizations of products to enable individuals with disabilities to live more independently;

(4) Ensure the widespread distribution to rehabilitation professionals, individuals with disabilities, and other interested parties, in usable formats, of practical scientific and technological information that is generated by research, demonstration projects, training and related activities;

(5) Ensure the widespread dissemination to rehabilitation

professionals, individuals with disabilities, and other interested parties, in usable formats, of new knowledge about disabilities, including state-of-the-art practices and improvements in the services authorized under the Act;

(6) Identify effective strategies that enhance the opportunities for individuals with disabilities to engage in productive work; and

(7) Increase the opportunities for researchers who are individuals with disabilities or members of minority groups or other traditionally underserved populations.

(b) * * *

(3) Research grants for the establishment and operation of rehabilitation engineering research centers (34 CFR part 353).

* * * * *

3. Section 350.2 is amended by revising the undesignated introductory text to read as follows:

§ 350.2 Who is eligible for assistance under these programs?

The following agencies and organizations are eligible for grants or contracts as appropriate under these programs, except for programs described in 34 CFR Parts 352, 353, 356, and 360.

* * * * *

4. Section 350.3(d) is amended by revising paragraph (d) to read as follows:

§ 350.3 What regulations apply to these programs?

* * * * *

(d)(1) Subject to the additional requirement in paragraph (d)(2) of this section, 34 CFR part 97, PROTECTION OF HUMAN SUBJECTS.

(2) When an IRB reviews research that purposefully requires inclusion of children with disabilities or individuals with mental disabilities as research subjects, the IRB must include at least one person primarily concerned with the welfare of these research subjects.

5. Section 350.4 is amended by revising the definitions and authority citations in paragraph (b) for ''Individual with handicaps,'' ''Individual with severe handicaps,'' ''Rehabilitation engineering,'' ''Research utilization,'' and ''Supported employment,'' and adding new definitions of ''Assistive technology device,'' ''Assistive technology service,'' ''Disability,'' and ''Personal assistance services,'' to read as follows:

§ 350.4 What definitions apply to these programs?

* * * * *

(b) * * *

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(Authority: Sec. 7(23); 29 U.S.C. 706(23)

* * * * *

Assistive technology service means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—

(1) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) Training or technical assistance for an individual with disabilities, or, where appropriate, the family members, guardians, advocates, or authorized representatives of such an individual; and

(6) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to employ, or are otherwise substantially involved in the major life functions of individuals with disabilities.

(Authority: Sec. 7(24); 29 U.S.C. 706(24))

* * * * *

Disability means a physical or mental impairment that substantially limits one or more major life activities.

(Authority: Sec. 7(26)(B); 29 U.S.C. 706(26)(B))

* * * * *

Individual with a disability means any individual who:

(1) Has a physical or mental impairment that substantially limits one or more of such person's major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

(Authority: Sec.7(8)(B); 29 U.S.C. 706(8)(B))

* * * * *

Individual with a severe disability means an individual with a disability—

(1)(i) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord impairments, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment of rehabilitation needs to cause comparable substantial functional limitation; or

(2) An individual with a severe mental or physical impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move towards functioning independently in the family or community or to continue in employment, respectively.

(Authority: Sec. 7(15)(C); 29 U.S.C. 706(15)(C))

* * * * *

Personal assistance services means a range of services, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities, on or off the job, that the individual would typically perform if the individual did not have a disability. These services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

(Authority: Sec. 7(11); 29 U.S.C. 706(11))

* * * * *

Rehabilitation engineering means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with

disabilities in such functional areas as mobility, communications, hearing, vision, cognition and in activities associated with employment, independent living, education, and integration into the community.

(Authority: Sec. 12(c); 29 U.S.C. 711(c))

* * * * *

Rehabilitation technology means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in such areas as education, rehabilitation, employment, transportation, independent living, and recreation, and includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(Authority: Sec. 7(13); 29 U.S.C. 706(13))

* * * * *

Research utilization means activities seeking to link research findings to practical applications in planning, policymaking, program administration, and service practice in the delivery of services to individuals with disabilities.

(Authority: Sec. 12(c); 29 U.S.C. 711(c))

* * * * *

Supported employment means competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a severe disability, and who, because of the nature and severity of their disability, need intensive supported employment services and extended services after transition in order to perform that work. The term includes transitional employment for persons who are individuals with the most severe disabilities due to mental illness.

(Authority: Sec. 7(18); 29 U.S.C. 706(18))

* * * * *

6. Section 350.20 is revised to read as follows:

§ 350.20 What are the application procedures under these programs?

An applicant for assistance under 34 CFR parts 351, 352, 353, 354, 355, 357, 358, 359, or 360 whose application is to conduct research, demonstrations, or related activities that will either involve clients of the State vocational rehabilitation agency as research subjects or study vocational rehabilitation services or techniques, shall follow the requirements in EDGAR §§ 75.155–75.159, including—

(a) Submitting a copy of its application for comment to the State rehabilitation agency or agencies in the primary State or States to be affected by the proposed activities; and

(b) Including in its application copies of transmittal letters to the appropriate State agency or agencies indicating that the necessary copies were transmitted on or before the due date for transmittal of the application to the Department.

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Secs. 204(c) and 306(i); 29 U.S.C. 762(c) and 766(a))

7. A new § 350.21 is added to read as follows:

§ 350.21 What is required of each applicant relative to the needs of individuals with disabilities from minority backgrounds?

Unless the Secretary indicates otherwise, an applicant for assistance under 34 CFR parts 351, 352, 353, 354, 355, 357, 358, 359, or 360 must demonstrate how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds. The approaches an applicant may take to meet this requirement, in whole or in part, may include one or more of the following:

(a) Proposing project objectives concerning minorities with disabilities.

(b) Demonstrating that its application addresses a problem that is of particular significance to individuals with disabilities from minority backgrounds.

(c) Demonstrating that minority individuals will be included in study samples in sufficient numbers to generate information pertinent to minority individuals with disabilities.

(d) Drawing study samples and program participant rosters from populations or areas that include individuals from minority backgrounds.

(e) Providing rehabilitation services, clinical care, or training to minority individuals with disabilities.

(f) Disseminating materials to or otherwise increasing the access to disability information among minority populations.

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Secs. 12(c) and 21(b)(6); 29 U.S.C. 711(c) and 718b(b)(6))

8. Section 350.34 is amended by adding new paragraphs (b)(5) and (c)(14); removing the word ''and'' at the end of paragraphs (b)(3) and (c)(12); removing the period and adding, in its place,''; and'' at the end of paragraphs (b)(4) and (c)(13); and adding an OMB control number following the section to read as follows:

§ 350.34 What selection criteria does the Secretary use in reviewing applications under parts 351, 354, or 355?

* * * * *

(b) * * *

(5) There is likely to be widespread dissemination of the results, in a usable and effective manner, to all appropriate target populations, including individuals with disabilities and their family members.

(c) * * *

(14) The materials to be used in the project and the materials to be disseminated are likely to be in formats that are accessible to the appropriate populations.

* * * * *

(Approved by the Office of Management and Budget under control number 1820–0027)

9. Section 350.40 is amended by revising paragraph (b)(1)(iii) to read as follows:

§ 350.40 What are the matching requirements?

* * * * *

(b)(1) * * *

(iii) Research projects concerned with end-stage renal disease, telecommunications, rehabilitation of children with disabilities and older individuals with disabilities, (including American Indians), attracting and retaining rehabilitation professionals in rural areas, producing and distributing captioned video cassettes to individuals who are deaf, and innovative methods for providing services for children with disabilities and their parents.

* * * * *

10. A new § 350.41 is added to read as follows:

§ 350.41 What are the requirements of a grantee relative to the Client Assistance Program?

All projects that provide services to individuals with disabilities with funds awarded under these programs must advise those individuals who are applicants for or recipients of services under the Act, or the parents, family members, guardians, advocates, or authorized representatives of the individuals, of the availability and purposes of the Client Assistance Program (CAP) funded under the Act, and must provide information on the means of seeking assistance under the CAP.

(Authority: Sec. 20; 29 U.S.C. 718a)

PART 351—DISABILITY AND REHABILITATION RESEARCH: RESEARCH AND DEMONSTRATION PROJECTS

11. The authority citation for part 351 continues to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

12. Section 351.1 is revised to read as follows:

§ 351.1 What is the research and demonstration projects program?

This program is designed to support—

(a) Discrete research, demonstration, training, and related projects to develop methods, procedures, and technology that maximize the full inclusion and integration into society, independent living, employment, family support, and economic and social self-sufficiency of individuals with disabilities, especially those with the most severe disabilities; and

(b) Discrete research, demonstration, and training projects that specifically address the implementation of Titles I, III, VI, VII, and VIII of the Act, with emphasis on projects to improve the effectiveness of these programs and to meet the needs described in State Plans submitted to the Rehabilitation Services Administration by State vocational rehabilitation agencies.

(Authority: Sec. 204(a); 29 U.S.C. 761 and 762)

13. Section 351.10 is amended by revising paragraphs (a) and (b)(3) through (7) and (9); adding a new paragraph (b)(10); and revising the authority citation to read as follows:

§ 351.10 What types of projects are authorized under this program?

* * * * *

(a)(1) Studies and analyses of medical rehabilitation and restorative techniques, rehabilitation techniques or services, industrial, vocational, social, recreational, psychiatric, psychological, economic, and other factors affecting rehabilitation of individuals with disabilities;

(2) Studies and analyses of special problems of individuals who are homebound and individuals who are institutionalized;

(3) Studies, analyses, and demonstrations of architectural and engineering design—including universal design—adapted to meet the special needs of individuals with disabilities;

(4) Studies, analyses, and other activities related to supported employment; and

(5) Related activities that hold promise of increasing knowledge and improving the rehabilitation of individuals with disabilities, particularly those with the most severe disabilities and those who are members of populations that are unserved or underserved by programs under this Act.

(b) * * *

(3) International research, demonstration, training, and technical assistance projects, and exchange of experts;

(4) Joint projects with other Federal agencies and private industry in areas of joint interest involving rehabilitation;

(5) Research related to the rehabilitation of children or older individuals with disabilities, including older American Indian individuals with disabilities;

(6) Projects to develop and demonstrate innovative methods to attract and retain professionals to serve in rural areas in the rehabilitation of individuals with disabilities, including individuals with severe disabilities;

(7) Research and demonstration projects on the provision of services for children through the age of five with disabilities;

* * * * *

(9) Research concerning the use of existing telecommunication systems to improve services to individuals with disabilities; and

(10) Demonstration projects to provide incentives for the development, manufacture, and marketing of orphan technological devices to enable individuals with disabilities to achieve independence and access to gainful employment.

(Authority: Secs. 202(b)(8), 204(a), and 204(b)(4)–(10), (12), (15), and (16); 29 U.S.C. 761a(b)(8), 762(a), and 762(b)(4)–(10), (12), (15), and (16))

PART 352—DISABILITY AND REHABILITATION RESEARCH: REHABILITATION RESEARCH AND TRAINING CENTERS

14. The authority citation for Part 352 continues to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

15. Section 352.1 is revised to read as follows:

§ 352.1 What is the Rehabilitation Research and Training Centers program?

This program supports Rehabilitation Research and Training Centers for the purpose of—

(a) Conducting coordinated and advanced programs of research on disability and rehabilitation that will produce new knowledge that will improve rehabilitation methods and service delivery systems, alleviate or stabilize disabling conditions, and promote maximum social and economic independence for individuals with disabilities;

(b) Providing training to service providers at the preservice, inservice, undergraduate, and graduate levels, to improve the quality and effectiveness of rehabilitation services;

(c) Providing advanced research training to individuals, including individuals with disabilities and those from minority backgrounds, engaged in research on disability and rehabilitation; and

(d) Serving as national and regional technical assistance resources, and providing training for service providers, individuals with disabilities and their families and representatives, and rehabilitation researchers.

(Authority: Sec. 204(b)(2); 29 U.S.C. 762(b)(2))

16. Section 352.2 is revised to read as follows:

§ 352.2 Who is eligible for assistance under this program?

Under this program, awards may be made to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations, that—

(a) Are of sufficient size, scope and quality to carry out effectively the activities in an efficient manner consistent with appropriate State and Federal law;

(b) Demonstrate the ability to carry out the training activities, either directly or through another entity that can provide that training; and

(c) Demonstrate that the Center will be operated in collaboration with an institution of higher education or provider of rehabilitation or other appropriate services.

(Authority: Secs. 204(a) and 204(b)(2)(A)(i) and (K); 29 U.S.C. 762(a) and 762(b)(2)(A)(i) and (K))

17. Section 352.10 is revised to read as follows:

§ 352.10 What activities are authorized under this program?

(a) Rehabilitation Research and Training Centers shall conduct research activities, which must be accessible to and usable by individuals with disabilities, that may include the following:

(1) Basic or applied medical rehabilitation research.

(2) Research regarding the psychological and social aspects of rehabilitation.

(3) Research regarding disability policy.

(4) Research related to vocational rehabilitation.

(5) Research that promotes the social, emotional, functional, and educational growth of children who have disabilities.

(6) Research to develop and evaluate interventions, policies, and services that

support families of children and adults who have disabilities.

(7) Research that will support the improvement of services and policies to foster the productivity, independence, and social integration of individuals with disabilities of all types, to live in their communities.

(b) Rehabilitation Research and Training Centers shall conduct training activities, which must be accessible to and usable by individuals with disabilities, that may include the following:

(1) Training of students preparing to be rehabilitation personnel.

(2) Training at the preservice, inservice, and graduate levels to assist individuals to provide rehabilitation services more effectively.

(3) Training at graduate, preservice, and inservice levels for rehabilitation research personnel.

(4) In-service training for individuals with disabilities and their family members, guardians, advocates, or authorized representatives.

(5) Faculty support for teaching rehabilitation-related courses of study for credit and other courses offered by the Center.

(c) Rehabilitation Research and Training Centers shall disseminate information and provide technical assistance, which must be accessible to and usable by individuals with disabilities, through conferences, workshops, public education programs, inservice training programs, publications, and similar activities, to—

(1) Providers of rehabilitation and other relevant services to individuals with disabilities;

(2) Individuals with disabilities;

(3) Family members of individuals with disabilities; and

(4) Other authorized representatives, advocates, and organizations that provide information and support to individuals with disabilities and their families.

(d) Rehabilitation Research and Training Centers may use part of their funds to provide services connected with their research and training activities to individuals with disabilities.

(e) Rehabilitation Research and Training Centers are encouraged—

(1) To develop practical applications for the findings of their research; and

(2) To disseminate information and provide technical assistance to administrators, policymakers, and representatives of public and private organizations whose activities affect the productivity, independence, and community integration of individuals with disabilities.

(Authority: Sec. 204(b)(2)(A)(ii),(B)–(D), and (F)–(I); 29 U.S.C. 762(b)(2)(A)(ii), (B)–(D), and (F)–(I))

18. Section 352.31 revising paragraph (c)(2)(iii); adding (c)(2)(vi) and (vii); removing the word ''and'' at the end of paragraph (c)(2)(iv); removing the period, and adding in its place a semicolon at the end of paragraph (c)(2)(v); republishing the OMB control number; and revising the authority citation to read as follows:

§ 352.31 What selection criteria are used under this program?

* * * * *

(c) * * *

(2) * * *

(iii) Training packages that make research results available to service providers, researchers, educators, individuals with disabilities, parents, and others;

* * * * *

(vi) Widespread dissemination of findings and other appropriate materials to providers of rehabilitation and other relevant services to individuals with disabilities, individuals with disabilities, family members of individuals with disabilities, and other authorized representatives, advocates, and organizations that provide information and support to individuals with disabilities and their families; and

(vii) Dissemination of research findings and other materials in appropriate formats and accessible media for use by individuals with various disabilities.

* * * * *

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Secs. 202(e) and 204(b)(2); 29 U.S.C. 761a(e) and 762(b)(2))

19. Section 352.33 is revised to read as follows:

§ 352.33 What is the project period of a Rehabilitation Research and Training Center?

Awards are made under this program for a period of five years except that awards may be made for a lesser period if—

(a) The award is made to a new recipient; or

(b) The award supports a new research area or an innovative approach to a research area.

(Authority: Sec. 204(b)(2)(L); 29 U.S.C. 762(b)(2)(L))

20. A new § 352.34 is added to read as follows:

§ 352.34 What other factors does the Secretary consider in making an award under this program?

In making an award under this program, the Secretary takes into consideration the location of any proposed Center and the appropriate geographic and regional allocation of all Centers.

(Authority: Sec. 204(b)(2)(J); 29 U.S.C. 762(b)(2)(J))

21. The authority citation in § 352.40 is revised to read as follows:

(Authority: Section 204(b)(2); 29 U.S.C. 762(b)(2))

22. The heading of part 353 is revised to read as follows:

PART 353—DISABILITY AND REHABILITATION RESEARCH: REHABILITATION ENGINEERING RESEARCH CENTERS

23. The authority citation for part 353 is revised to read as follows:

Authority: 29 U.S.C. 762(b)(3), unless otherwise noted.

24. Section 353.1 is revised to read as follows:

§ 353.1 What is the Rehabilitation Engineering Research Centers program?

Rehabilitation Engineering Research Centers conduct research, demonstration, and training activities regarding rehabilitation technology—including rehabilitation engineering, assistive technology devices, and assistive technology services, in order to enhance the opportunities to better meet the needs of, and address the barriers confronted by, individuals with disabilities in all aspects of their lives.

(Authority: Sec. 204(b)(3)(A); 29 U.S.C. 762(b)(3)(A))

25. Section 353.2 is revised to read as follows:

§ 353.2 Who is eligible for assistance under this program?

A public or private entity, including an Indian tribe or tribal organization, is eligible to receive an award under this program if the entity demonstrates that the Center will be operated by, or in collaboration with, an institution of higher education or a nonprofit organization.

(Authority: Sec. 204(b)(3)(A); 29 U.S.C. 762(b)(3)(A))

26. Section 353.10 is revised to read as follows:

§ 353.10 What types of activities are authorized under this program?

(a) Rehabilitation Engineering Research Centers shall carry out

research and demonstration activities through—

(1) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to solve rehabilitation problems and remove environmental barriers through—

(i) Planning and conducting research, including cooperative research with public or private agencies and organizations, designed to produce new scientific knowledge and new or improved methods, equipment, or devices; and

(ii) Studying and evaluating the effectiveness and benefits of new or emerging technologies, products, or environments.

(2) Demonstrating and disseminating—

(i) Innovative models for the delivery to rural and urban areas of cost-effective rehabilitation technology services that will promote the use of assistive technology services; and

(ii) Other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or

(3) Conducting research and demonstration activities that facilitate service delivery systems change by demonstrating, evaluating, documenting, and disseminating—

(i) Consumer-responsive and individual and-family-centered innovative models for the delivery to both rural and urban areas of innovative, cost-effective rehabilitation technology services that promote utilization of rehabilitation devices; and

(ii) Other scientific research to assist in meeting the employment and independent living needs of, and addressing the barriers confronted by individuals with disabilities, including individuals with severe disabilities.

(b) To the extent consistent with the nature and type of research or demonstration activities described in paragraph (a) of this section, the Rehabilitation Engineering Research Centers shall carry out research, training, and information dissemination activities by—

(1) Cooperating with programs established under the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Pub. L. 100–407), and other regional and local programs, to provide information to individuals with disabilities and their parents, family members, guardians, advocates, or authorized representatives, to increase awareness and understanding of how rehabilitation technology can address their needs, and the range of options, programs, services, and resources available, including financing options for the technology and services covered by the area of focus of the Center;

(2) Providing training to individuals, including individuals with disabilities, to enable them to become rehabilitation technology researchers and practitioners of rehabilitation technology; and

(c) Responding, through research or demonstration activities, to the needs of individuals with all types of disabilities who may benefit from the application of technology within the area of focus of the Center.

(Authority: Secs. 204(b)(3); 29 U.S.C. 762(b)(3))

27. Section 353.31 is amended by adding a new paragraph (c)(4); replacing the colon at the end of paragraph (b)(2)(vi) with a period; removing the ''and'' at the end of paragraph (c)(2)(iv); removing the period at the end of paragraph (c)(3) and adding, in its place ''; and''; republishing the OMB control number; and revising the authority citation to read as follows:

§ 353.31 What selection criteria are used under this program?

* * * * *

(c) * * *

(4) The plan provides for effective cooperation with appropriate State, local, and regional organizations and projects to provide information to individuals with disabilities and their family members, advocates, and representatives, about the potential uses and benefits, and resources for obtaining, rehabilitation technology.

* * * * *

(Approved by the Office of Management and Budget under control number 1820–0027)

(Authority: Secs. 202(e) and 204(b)(3); 29 U.S.C. 761a(e) and 762(b)(3))

28. A new § 353.33 is added to read as follows:

§ 353.33 What is the project period of a Rehabilitation Engineering Research Center?

Awards are made under this program for a period of five years except that awards may be made for a lesser period if—

(a) The award is made to a new recipient; or

(b) The award supports a new research area or an innovative approach to a research area.

(Authority: Sec. 204(b)(3)(E); 29 U.S.C. 762(b)(3)(E))

29. A new § 353.40 is added to read as follows:

§ 353.40 What additional requirements must be met by a grantee under this program?

(a) A Rehabilitation Engineering Research Center shall cooperate with State rehabilitation agencies, and other local, State, regional, and national programs and organizations developing or delivering rehabilitation technology, including State programs funded under the Technology-Related Assistance for Individuals with Disabilities Act of 1988, as amended.

(b) A Rehabilitation Engineering Research Center funded under this program shall prepare and submit to the Secretary, either as part of an application for continuation of a grant or as part of a final report, a report that documents the short- and long-term impact of the center's program and program outcomes on the lives of individuals with disabilities, and such other information as the Secretary may request.

(Authority: Sec. 204(b)(3)(G); 29 U.S.C. 762(b)(3)(G))

30. A new § 353.41 is added to read as follows:

§ 353.41 What is the advisory committee requirement for a grantee under this program?

A Rehabilitation Engineering Research Center that conducts research or demonstration activities that facilitate service delivery systems change shall have an advisory committee of which the majority of the members are individuals with disabilities who are users of rehabilitation technology, or the parents, family members, guardians, advocates, or authorized representatives of users of assistive technology.

(Authority: Secs. 204(b)(3)(D)(ii); 29 U.S.C. 762(b)(3)(D)(ii))

PART 356—DISABILITY AND REHABILITATION RESEARCH: RESEARCH FELLOWSHIPS

31. Section 356.3(c) is amended by revising paragraph (c) to read as follows:

§ 356.3 What regulations apply to this program?

* * * * *

(c)(1) Subject to the additional requirement in paragraph (c)(2) of this section, 34 CFR part 97, PROTECTION OF HUMAN SUBJECTS.

(2) When an IRB reviews research that purposefully requires inclusion of children with disabilities or individuals with mental disabilities as research subjects, the IRB must include at least

one person primarily concerned with the welfare of these research subjects.

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