

Federal Register

Briefings on How To Use the Federal Register

For information on briefings in Washington, DC and Boston, MA see announcement on the inside cover of this issue.



FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is \$375. Six-month subscriptions are available for \$200 and one month of access can be purchased for \$35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to swais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial-in users should use communications software and modem to call (202) 512-1661 and login as swais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512-1262, or by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is \$494, or \$544 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is \$433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is \$8.00 for each issue, or \$8.00 for each group of pages as actually bound; or \$1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche **202-512-1800**
Assistance with public subscriptions **512-1806**

Online:

Telnet swais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512-1661, login as swais, no password <enter>, at the second login as newuser <enter>, no password <enter>.

Assistance with online subscriptions **202-512-1530**

Single copies/back copies:

Paper or fiche **512-1800**
Assistance with public single copies **512-1803**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche **523-5243**
Assistance with Federal agency subscriptions **523-5243**

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

- WHEN:** June 28 at 9:00 am
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202-523-4538

BOSTON, MA

- WHEN:** June 20 at 9:00 am
WHERE: Room 419, Barnes Federal Building 495 Summer Street, Boston, MA
RESERVATIONS: Call the Federal Information Center 1-800-347-1997



Contents

Federal Register

Vol. 60, No. 113

Tuesday, June 13, 1995

Agriculture Department

See Animal and Plant Health Inspection Service

See Food and Consumer Service

See Forest Service

Animal and Plant Health Inspection Service

NOTICES

Environmental statements; availability, etc.:

- Nonregulated status determinations—
Monsanto Co.; genetically engineered tomato line,
31139–31140

Army Department

NOTICES

Environmental statements; availability, etc.:

- Realignment and closure—
Fort Benjamin Harrison, IN, 31147

Centers for Disease Control and Prevention

NOTICES

Meetings:

- Disease, Disability, and Injury Prevention and Control
Special Emphasis Panel, 31157–31158

Commerce Department

See Export Administration Bureau

See Foreign-Trade Zones Board

See International Trade Administration

See National Oceanic and Atmospheric Administration

NOTICES

Agency information collection activities under OMB
review, 31140

Committee for the Implementation of Textile Agreements

NOTICES

Textile consultation; review of trade:
Yugoslav Republic of Macedonia, 31146

Consumer Product Safety Commission

NOTICES

Meetings; Sunshine Act, 31183

Customs Service

NOTICES

Water resistant jackets with non-water resistant hoods; tariff
classification, 31181–31182

Defense Department

See Army Department

Drug Enforcement Administration

NOTICES

Applications, hearings, determinations, etc.:
Matzkin, Richard C., M.D., 31166–31167

Education Department

NOTICES

Grants and cooperative agreements; availability, etc.:
Bilingual education and minority languages affairs—

Limited English proficient students education program;
evaluation and improvement, 31224–31225

Limited English proficient youth and children
instruction programs; evaluation and improvement,
31225–31226

Employment and Training Administration

NOTICES

Meetings:

- National Skill Standards Board, 31169

Energy Department

See Federal Energy Regulatory Commission

NOTICES

Grant and cooperative agreement awards:

- Alaska, 31147
- Black Clawson Co., Inc., 31147–31148

Environmental Protection Agency

RULES

Air programs:

- Stratospheric ozone protection—
Significant new alternatives policy program, 31092–
31107

Air quality implementation plans; approval and
promulgation; various States:

- California, 31081–31086
- Iowa, 31090–31092
- Kentucky, 31087–31088
- Minnesota, 31088–31090
- Pennsylvania, 31081

Hazardous waste:

- Identification and listing
Exclusions, 31107–31120

PROPOSED RULES

Air programs:

- Outer Continental Shelf regulations—
California, 31128–31132

Air quality implementation plans; approval and
promulgation; various States:

- California, 31127
- Iowa, 31128
- Kentucky, 31128
- Minnesota, 31127

NOTICES

Agency information collection activities under OMB
review, 31153–31154

Meetings:

- Gulf of Mexico Program Management Committee, 31154

Toxic and hazardous substances control:

- Testing consent agreement development—
Alkyl glycidyl ethers; interested parties solicitation and
meeting, 31154–31155

Executive Office of the President

See Presidential Documents

See Trade Representative, Office of United States

Export Administration Bureau

NOTICES

Export privileges, actions affecting:

- Abelairas, Amancio J., et al., 31140–31142

Federal Aviation Administration**RULES**

Airworthiness directives:

Aerospatiale, 31065-31067

Airbus, 31067-31075

de Havilland, 31063-31065

Teledyne Continental Motors, 31075-31077

PROPOSED RULES

Airworthiness directives:

Boeing et al., 31122-31124

McDonnell Douglas, 31124-31126

Federal Communications Commission**NOTICES**

Meetings; Sunshine Act, 31185

Federal Deposit Insurance Corporation**NOTICES**

Agency information collection activities under OMB review, 31155-31156

Federal Energy Regulatory Commission**NOTICES**

Electric rate and corporate regulation filings:

Commonwealth Edison Co. et al., 31150-31153

Meetings; Sunshine Act, 31183-31184

Applications, hearings, determinations, etc.:

CNG Transmission Corp., 31148-31149

Columbia Gas Transmission Corp., 31148

Northwest Pipeline Corp., 31149

Selkirk Cogen Partners, L.P., et al., 31149

South Georgia Natural Gas Co., 31149-31150

Tennessee Gas Pipeline Co., 31150

Texas Gas Transmission Corp. et al., 31150

Williston Basin Interstate Pipeline Co., 31150

Federal Reserve System**RULES**

Loans to executive officers, directors, and principal shareholders of member banks (Regulation O):

Unimpaired capital and unimpaired surplus; definitions, 31053-31054

NOTICES

Meetings; Sunshine Act, 31185

Applications, hearings, determinations, etc.:

AmeriGroup, Inc., 31156-31157

Hathorn, William E., 31157

Societe Generale; correction, 31157

Federal Trade Commission**RULES**

Appliances, consumer; energy costs and consumption information in labeling and advertising:

Comparability ranges—

General service incandescent lamps, etc., 31077-31081

Fish and Wildlife Service**PROPOSED RULES**

Endangered and threatened species:

Findings on petitions, etc.—

Comal Springs salamander, 31137-31138

Food and Consumer Service**RULES**

Child nutrition programs:

National school lunch and school breakfast programs—

School meal initiatives for healthy children, 31188-31222

Foreign-Trade Zones Board**NOTICES**

Applications, hearings, determinations, etc.:

Ohio

Ben Venue Laboratories, Inc.; pharmaceutical manufacturing facility, 31142

Forest Service**NOTICES**

Environmental statements; availability, etc.:

Custer National Forest, ND, 31140

Health and Human Services Department

See Centers for Disease Control and Prevention

See Health Care Financing Administration

See Health Resources and Services Administration

Health Care Financing Administration**NOTICES**

Grants and cooperative agreements; availability, etc.:

Demonstration project proposals, new and pending, 31158-31161

Health Resources and Services Administration**NOTICES**

Meetings; advisory committees:

June, 31161

Immigration and Naturalization Service**NOTICES**

Nicaraguan nationals subject to final deportation orders; discontinuation of review process, 31167-31168

Interior Department

See Fish and Wildlife Service

See Minerals Management Service

See National Park Service

International Trade Administration**NOTICES**

Antidumping:

Antifriction bearings (other than tapered roller bearings) and other parts from—

Germany et al., 31142-31143

Applications, hearings, determinations, etc.:

University of—

California et al., 31144

Illinois et al., 31143-31144

International Trade Commission**NOTICES**

Agency information collection activities under OMB review, 31164

Import investigations:

Audible alarm systems for divers, 31164-31165

Justice Department

See Drug Enforcement Administration

See Immigration and Naturalization Service

NOTICES

Pollution control; consent judgments:

Grand Trunk Western Railroad Co., 31165

Valentine, Dale, et al., 31165-31166

Labor Department

See Employment and Training Administration

NOTICES

Meetings:

Family and Medical Leave Commission, 31168-31169

Minerals Management Service**PROPOSED RULES**

Royalty management:

Federal Gas Valuation Negotiated Rulemaking Committee Meetings, 31126-31127

NOTICES

Environmental statements; availability, etc.:

Central and Western Gulf of Mexico OCS—
Lease sales, 31161-31163**National Aeronautics and Space Administration****NOTICES**

Inventions, Government-owned; availability for licensing, 31169

National Highway Traffic Safety Administration**PROPOSED RULES**

Motor vehicle safety standards:

Air brake systems—

Air compressor cut-in pressure, 31135-31137

Occupant crash protection—

Safety belt systems designed to transport prisoners in rear seats of law enforcement vehicles, 31132-31135

National Oceanic and Atmospheric Administration**NOTICES**

Meetings:

Mid-Atlantic Fishery Management Council, 31144-31145
Pacific Fishery Management Council, 31145-31146**National Park Service****NOTICES**

National Register of Historic Places:

Pending nominations, 31163-31164

Nuclear Regulatory Commission**NOTICES**

Environmental statements; availability, etc.:

Entergy Operations, Inc., 31169-31170

Meetings; Sunshine Act, 31185-31186

Applications, hearings, determinations, etc.:

Entergy Operations, Inc., 31171-31172

Southern Nuclear Operating Co. et al., 31170-31171

Office of United States Trade Representative

See Trade Representative, Office of United States

Presidential Documents**ADMINISTRATIVE ORDERS**

Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, continuation of waiver of Trade Act of 1974 (Presidential Determination No. 95-24 of June 2, 1995), 31049

China, continuation of waiver of Trade Act of 1974 restrictions (Presidential Determination No. 95-23 of June 2, 1995), 31047

Soviet Union, Independent States of the Former; certification of continuation of withdrawal of troops from Latvia and Estonia (Presidential Determination No. 95-25 of June 5, 1995), 31051

Public Health Service

See Centers for Disease Control and Prevention

See Health Resources and Services Administration

Securities and Exchange Commission**NOTICES**

Meetings; Sunshine Act, 31186

Self-regulatory organizations; proposed rule changes:

National Securities Clearing Corp., 31177-31179

Applications, hearings, determinations, etc.:

Creditanstalt-Bankverein, 31172-31173

Dean Witter Select Equity Trust, 31173-31175

Maxim Series Fund, Inc., 31175-31177

Small Business Administration**RULES**

Small business development center program; operation, 31054-31063

PROPOSED RULES

Disaster-physical disaster and economic injury loans:

Agricultural enterprises; assistance restrictions, 31121-31122

NOTICES

Applications, hearings, determinations, etc.:

Blue Ridge Investors L.P., 31179

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States**NOTICES**

North American Free Trade Agreement (NAFTA):

Value threshold for coverage of government procurement contracts by Federal government entities; increase, 31182

Transportation Department

See Federal Aviation Administration

See National Highway Traffic Safety Administration

NOTICES

National Transportation System Initiative:

Development process refinements, 31180-31181

Treasury Department

See Customs Service

Separate Parts In This Issue**Part II**

Department of Agriculture, Food and Consumer Service, 31188-31222

Part III

Department of Education, 31224-31226

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin BoardFree **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202-275-1538 or 275-0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR**Administrative Orders:**

Presidential Determinations:

No. 95-23 of June 2, 1995	31047
No. 95-24 of June 2, 1995	31049
No. 95-25 of June 5, 1995	31051

7 CFR

210	31188
220	31188

12 CFR

215	31053
-----------	-------

13 CFR

130	31054
-----------	-------

Proposed Rules:

123	31121
-----------	-------

14 CFR

39 (7 documents)	31063, 31065, 31067, 31069, 31071, 31073, 31075
------------------------	---

Proposed Rules:

39 (2 documents)	31122, 31124
------------------------	-----------------

16 CFR

305	31077
-----------	-------

30 CFR**Proposed Rules:**

Ch. II	31126
--------------	-------

40 CFR

52 (7 documents)	31081, 31084, 31086, 31087, 31088, 31090
62	31090
82	31092
261 (2 documents)	31107, 31115

Proposed Rules:

52 (4 documents)	31127, 31128
55	31128
62	31128

49 CFR**Proposed Rules:**

571 (2 documents)	31132, 31135
-------------------------	-----------------

50 CFR**Proposed Rules:**

17	31137
----------	-------

Presidential Documents

Presidential Determination No. 95-24 of June 2, 1995

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to subsection 402(d)(1) of the Trade Act of 1974, as amended (the "Act"), I determine that the further extension of the waiver authority granted by subsection 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waivers applicable to Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 2, 1995.

Presidential Documents

Presidential Determination No. 95-24 of June 2, 1995

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to subsection 402(d)(1) of the Trade Act of 1974, as amended (the "Act"), I determine that the further extension of the waiver authority granted by subsection 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waivers applicable to Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 2, 1995.

Presidential Documents

Presidential Determination No. 95-25 of June 5, 1995

Assistance Program for New Independent States of the Former Soviet Union

Memorandum for the Secretary of State

Pursuant to section 577 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994 (Titles I-V of Public Law 103-87), I hereby certify that Russia and the Commonwealth of Independent States continue to make substantial progress toward the withdrawal of their armed forces from Latvia and Estonia.

You are authorized and directed to notify the Congress of this certification and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 5, 1995.

[FR Doc. 95-14591

Filed 6-9-95; 3:28 pm]

Billing code 4710-10-M

Rules and Regulations

Federal Register

Vol. 60, No. 113

Tuesday, June 13, 1995

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

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

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R-0875]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting an amendment to Regulation O to conform the definition of unimpaired capital and unimpaired surplus used in calculating a bank's Regulation O lending limit to the definition of capital and surplus recently adopted by the Office of the Comptroller of the Currency in calculating the limit on loans by a national bank to a single borrower. The final rule will reduce the regulatory burden for member banks monitoring lending to their insiders.

EFFECTIVE DATE: Effective July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Gregory Baer, Managing Senior Counsel (202/452-3236), or Gordon Miller, Attorney (202/452-2534), Legal Division; or William G. Spaniel, Assistant to the Director (202/452-3469), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

The Board's Regulation O (12 CFR Part 215) implements the insider lending prohibitions of section 22(h) of the Federal Reserve Act. Section 215.2(i) of the regulation (12 CFR 215.2(i)) defines the limit for loans to any insider

of a member bank and insider of the bank's affiliates as an amount equal to the limit on loans to a single borrower established by the National Bank Act (12 U.S.C. 84). That amount is 15 percent of the bank's unimpaired capital and unimpaired surplus for loans that are not fully secured, and an additional 10 percent of the bank's unimpaired capital and unimpaired surplus for loans that are fully secured by certain readily marketable collateral.¹

Although Regulation O adopts the percentage limits used in the National Bank Act, Regulation O provides its own definition of what constitutes unimpaired capital and unimpaired surplus. Unimpaired capital and unimpaired surplus have been defined as the sum of (i) "total equity capital" as reported on the bank's most recent consolidated report of condition, (ii) any subordinated notes and debentures that comply with requirements of the bank's primary regulator for inclusion in the bank's capital structure and are reported on the bank's most recent consolidated report of condition, and (iii) any valuation reserves created by charges to the bank's income and reported on the bank's most recent consolidated report of condition. 12 CFR 215.2(i).

The Office of the Comptroller of the Currency (OCC) has recently revised its regulatory definition of unimpaired capital and unimpaired surplus for purposes of implementing the single borrower limit of the National Bank Act. See 60 FR 8,533, February 15, 1995. Under that revised definition, a national bank's "capital and surplus" are equal to Tier 1 and Tier 2 capital included in the calculation of the bank's risk-based capital together with the amount of the bank's allowance for loan and lease losses not included in this calculation. 12 CFR 32.2(b).

On April 20, 1995 (60 FR 19,689), the Board proposed to amend Regulation O to conform its definition of unimpaired capital and unimpaired surplus to the OCC's revised definition of capital and surplus. As stated in the notice of proposed rulemaking, the Board believes that in substantially all cases calculating the insider lending limits of Regulation O using the revised

definition would not significantly increase or decrease a bank's insider lending limit. The elimination of the separate definition of unimpaired capital and unimpaired surplus in Regulation O therefore is expected to create minimal disruption in lending by member banks to their insiders and to insiders of their affiliates, while eliminating confusion and duplication of effort caused by requiring banks to calculate capital two different ways for two regulations.

The Board received 24 written comments, including comments from 11 banks, 3 bank holding companies, 6 Federal Reserve Banks, and 4 trade associations. Twenty-three commenters supported the Board's amendment. All commenters in support felt that the amendment would make recordkeeping simpler and more consistent, and several also noted that the amendment would not significantly change their lending level. Two commenters noted that the amendment would both greatly reduce its recordkeeping burden and help its compliance.

One commenter opposed the amendment and expressed concern that a bank's Tier 1 and Tier 2 capital did not include certain intangible assets, and that eliminating these assets could harm some community banks by effectively reducing their lending limits. One bank holding company supporting the amendment also noted that some of its affiliated banks would have their lending limits reduced because of the goodwill on their books. The Board believes, however, that few small community banks have a sufficient amount of intangible assets, such as goodwill or purchased mortgage servicing rights, on their books to cause a significant reduction of their insider lending limits from their current levels. Accordingly, after reviewing the public comments, the Board is adopting the amendment as proposed.

Determination of Effective Date

Because the final rule adjusts a requirement on insured depository institutions, the final rule will become effective July 1, 1995, the first day of the calendar quarter after the date of the final rule's publication. See 12 U.S.C. 4802(b). For the foregoing reason, the final rule will become effective without regard for the 30-day period provided for in 5 U.S.C. 553(d).

¹ The lending limit also includes any higher amounts that are permitted by the exceptions included in 12 U.S.C. 84. Where state law establishes a lower lending limit for a state member bank, that lower lending limit is the lending limit for the state member bank.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to publish a final regulatory flexibility analysis when the agency publishes a final rule. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 604(b))—a succinct statement of the need for, and the objectives of, the rule, and a summary of the issues raised by the public comments received, the agency assessment thereof, and any changes made in response thereto—are contained in the supplementary information above. No significant alternatives to the final rule were considered by the agency.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the amendment to Regulation O will not have a significant economic impact on a substantial number of small entities, and that any impact on those entities should be positive. The amendment will reduce the regulatory burden for most banks by simplifying the calculation of lending limits without significantly changing the amount of the limit, and will have no effect in other cases.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the Board reviewed the information collection requirements of its amendment to Regulation O under authority delegated to the Board by the Office of Management and Budget (5 CFR Part 1320, Appendix A) after considering comments received during the public comment period.

The recordkeeping requirements are authorized by 12 U.S.C. 375a(6) and (10), 375b(7), and 1972(2)(G). This information is required to prevent preferential lending by a member bank to its executive officers, directors, principal shareholders, and their related interests. The amendment is not estimated to change the annual burden of recordkeeping associated with Regulation O for state member banks, which is estimated to be 6,255 hours.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 215 as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

1. The authority citation for part 215 is revised to read as follows:

Authority: 12 U.S.C. 248(i), 375a(10), 375b(9) and (10), 1817(k)(3) and 1972(2)(G)(ii); Pub. L. 102-242, 105 Stat. 2236.

2. Section 215.2 is amended as follows:

- a. The last sentence of paragraph (i) introductory text is revised;
 - b. Paragraphs (i)(1) and (i)(2) are revised; and
 - c. Paragraph (i)(3) is removed.
- The revisions read as follows:

§215.2 Definitions.

* * * * *

(i) * * * A member bank's unimpaired capital and unimpaired surplus equals:

(1) The bank's Tier 1 and Tier 2 capital included in the bank's risk-based capital under the capital guidelines of the appropriate Federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 USC 1817(a)(3); and

(2) The balance of the bank's allowance for loan and lease losses not included in the bank's Tier 2 capital for purposes of the calculation of risk-based capital by the appropriate Federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3).

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 7, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-14413 Filed 6-12-95; 8:45 am]

BILLING CODE 6210-01-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 130

Small Business Development Centers

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is promulgating regulations governing the Small Business Development Center (SBDC) Program. Since enactment of Pub. L. 96-302 establishing the SBDC Program in 1980, the Program has been operating under direct statutory authority, without regulations. This rule will establish a framework for more efficient operation.

EFFECTIVE DATE: This rule is effective on June 13, 1995.

FOR FURTHER INFORMATION CONTACT: Hardy Patten, Program Manager, (202) 205-6766.

SUPPLEMENTARY INFORMATION: On November 28, 1994, SBA proposed a rule (59 FR 60723) to establish a regulatory framework for the SBDC Program, which is administered pursuant to Section 21 of the Small Business Act, 15 U.S.C. § 648 (the "Act"). In this Program, SBA and the SBDC networks provide managerial advice and technical assistance to enhance the growth, innovation, and productivity of small businesses. The issuance of regulations will clarify Program procedures.

During a 30-day public comment period on the proposed rule, SBA received four comment letters raising 24 individual concerns. After analyzing these comments, SBA has decided to make appropriate changes to the rule.

In addition, in accordance with its policy to streamline existing and proposed regulations, SBA scrutinized its proposed rule for duplication and excess verbiage, eliminating more than 25% of the body of the rule, without altering its substance. The following summary of issues raised does not discuss streamlining revisions, unless a comment pertained to a portion of the proposed rule which has been deleted or otherwise revised.

Summary of Issues Raised by Public Comment

Section 130.100(b) of the proposed rule, providing an overview of the Program, has been merged into section 130.100(a). The portion of the section which referred to SBA consultation with SBDC Directors and recognized organizations representing SBDCs in the formulation of the annual Program Announcement and the development of Program guidelines was duplicated in section 130.350(a) and was deleted from section 130.100.

Several comments were received regarding the consultation provision. One comment correctly pointed out that section 21(a)(3)(A) of the Act only requires SBA to recognize and consult with the organization of which more than a majority of SBDCs are members. SBA has revised the proposed rule to refer in section 130.350(a) to "the Recognized Organization", instead of recognized organizations, and to add a definition of Recognized Organization at new section 130.110(y).

Two other comments suggested that the regulation describe the timing and means of obtaining the consultation.

SBA rejected these suggestion, finding no reason why consultation with SBDC Directors or the Recognized Organization should be limited or restricted in any manner. Another comment proposed that Program guidelines not be developed outside of the regulations. SBA disagrees and has deleted the reference to Program guidelines from this final rule. SBA will continue to provide guidance and interpretive materials, consistent with these regulations, for use by SBDCs and SBA field offices.

Section 130.110 defines terms used in the regulation. Section 130.100(e) states that Cash Match must be non-Federal funds equal to no less than fifty percent of the Federal funds. Section 130.450(e)(4) (previously misnumbered as section 130.450(6)(iv)) provides that Matching Funds may not be from any other Federal source. With respect to both sections, a comment suggested that funds from other Federal sources be allowed as Cash Match if the source of the fund specifically authorized such use. SBA disagrees, since section 21(a)(4) of the Act clearly requires matching funds to be provided from sources other than the Federal government.

One comment warned that the proposed definitions of "Conflict" and "Dispute" created potential for misunderstanding. SBA has eliminated the definition of "Conflict", distinguishing in section 130.630 between financial and non-financial Disputes by the different procedures provided for resolution.

The same commenter viewed the definition of "Key SBDC Employee" in section 130.110(q) as vague and unnecessary. Agreeing with the comment, SBA has deleted the section.

SBA has not adopted another comment requesting that the definition of the Grants and Cooperative Agreement Appeals Committee in section 130.110(l) be revised so that the President of the Recognized Organization (or a designee) serve as an ex officio member of the Committee. The Committee can still obtain the benefit of the Recognized Organization's views and comments whenever required or appropriate.

Comments alerted SBA to several sections where language in the proposed rule referred only to States instead of "States, Territories or the District of Columbia". SBA has added a definition of "Area of Service" as section 130.110(c) and revised sections 130.310(a), 130.310(b) and 130.410(b) as required.

One comment suggested that section 130.360(a) require representation of

States or territories on State advisory boards. SBA notes that the statutory provision establishing a National SBDC Advisory Board designated the number and general composition of the board, while the provision establishing the State and regional boards was silent as to these matters. Accordingly, SBA has concluded that Congress intended that SBDCs have maximum flexibility in composing State boards.

Section 130.340(b) of the proposed rule prohibited SBDCs from making loans, servicing loans, making credit decisions regarding the award of loans, or making credit recommendations (unless authorized to do so by the Administrator). One commenter objected that SBDCs have not been making credit recommendations, since they are beyond the responsibility of an SBDC. SBA agreed and deleted the reference to credit recommendations.

Under section 130.410, an application for initial funding must include a letter from the Governor, or his or her designee, of the State or Territory in which the SBDC will operate. A comment suggested that such a letter be required to accompany each renewal application as well. Since such a requirement would impose a condition upon renewal beyond what is required by the statute, SBA rejected the suggested change.

Section 130.430, describing factors to be considered in reviewing applications, generated no comments. To implement section 404 of P.L. 103-403, amending section 21(k) of the Act, SBA has added two factors: the results of any examination conducted under § 130.810(b) and the pertinent results of any certification process conducted pursuant to any certification program developed by the Recognized Organization.

Section 130.450 delineates the requirements concerning Matching Funds. A comment objected that the phrase "any Cooperative Agreement" implied that there could be more than one between an SBDC and the SBA. The sentence was deleted in its entirety as part of the streamlining effort.

Section 130.460 lists the information to be included in the budget justification portion of a proposal. Under section 130.460(g) (formerly section 130.460(b)(2)(iii)(D)), unplanned out-of-State travel which exceeds the approved budgeted amount must be approved by the Project Officer. The proposed rule required a written budget revision and a written narrative explaining the need for such travel. A commenter objected to the paperwork, since approval still rests in the Project

Officer's discretion. SBA agrees and has deleted the paperwork requirement.

Section 130.470 describes the activities and services for which an SBDC may charge a fee. The proposed rule allowed SBDCs to charge a fee to cover costs in connection with training activities or specialized services. A comment correctly pointed out that specialized services were not defined in the proposed rule and that SBDCs often pass through to clients the costs of services from third parties. SBA has revised the section to include costs of third parties passed through to clients and has added a definition of specialized services at § 130.110(cc).

Proposed sections 130.630 and 130.640, respectively, set forth Dispute and Conflict resolution procedures (now consolidated as section 130.630). One comment objected that the proposed procedures did not offer neutral decision-making and separation of functions, suggesting that the Dispute resolution procedures include a hearing conducted pursuant to Section 554 of the Administrative Procedure Act. Since neither financial Disputes nor programmatic (non-financial) Disputes involve suspension, termination or failure to renew or extend, SBA considered the procedures to be consistent with the statutory provisions, reflecting reasonable exercise of administrative discretion without adding undue administrative complexity. Therefore, no changes were made to either section.

Section 130.700 generally explains the grounds and procedures for suspending, terminating or failing to renew a recipient organization. SBA relocated proposed section 130.650 (dealing with procedures for not renewing an SBDC) as section 130.700(c) in the final rule. SBA also has deleted the reference in section 130.700(a) to former § 130.630 and § 130.640 (regarding Dispute and Conflict resolutions), finding it to be misleading because Disputes do not involve the suspension, termination or failure to renew a Cooperative Agreement.

Section 130.700(b) sets forth the causes which might lead to suspension, termination or failure to renew, including the failure to suspend or terminate an SBDC Director, subcenter Director or key SBDC employee promptly upon learning that such individual has a criminal conviction for a felony, a criminal conviction for a misdemeanor involving a variety of listed offenses, or a civil judgment which reflects adversely upon his or her business integrity. A comment objected that the provisions were so broad that

nearly any conviction or judgment might trigger the cause. SBA agrees and has revised the guidelines.

SBA made one revision in section 130.700(c)(7) (proposed section 130.650(g)), changing from 60 days to 120 days the time permitted an SBDC to conclude operations and submit close-out documents when its application for renewal has been denied.

Section 130.810 sets forth mechanisms that SBA may use to oversee and monitor the SBDC program, including site visits, on-site examinations and audits. In order to comply with section 404 of P.L. 103-403, SBA has made the following changes to the section: (a) § 130.810(b) in the proposed rule, providing for required on-site reviews, has been deleted in its entirety and has been replaced by a new section 130.810(b), requiring SBA examiners to perform biannual programmatic and financial examinations of each SBDC; (b) § 130.810(d)(1) in the proposed rule, providing for limited scope reviews, has been deleted; and (c) a new section 130.810(c) has been added permitting SBA to provide financial support to the Recognized Organization to develop and implement an SBDC certification program.

Section 130.830 describes audit procedures. In response to a comment, SBA has revised the language to clarify that pre-award audits will be conducted by or coordinated with the SBA Office of Inspector General according to *Government Auditing Standards*.

Compliance With Executive Orders 12612, 12778 and 12866; Regulatory Flexibility Act, 5 U.S.C. 601 et seq.; and the Paperwork Reduction Act, 44 U.S.C. ch. 35.

SBA certifies that this rule is not a significant rule within the meaning of Executive Order 12866 because it does not have an annual economic effect in excess of \$100 million, result in a major increase in costs for individuals or governments, or have a significant adverse effect on competition. The rule conforms to existing parameters under which the Program is functioning.

For purposes of Executive Order 12612, SBA certifies that this rule has federalism implications. As such, SBA offers the following Federalism Assessment.

This rule is designed to allow the States participating in the Program maximum policy-making and administrative discretion within the requirements of the law and sound Program management. In formulating and implementing the policies set forth in this rule, SBA has encouraged State

participants to develop their own methods of achieving program objectives and has limited the number of uniform national requirements.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted in accordance with the standards set forth in section 2 of that Order.

For purposes of the Regulatory Flexibility Act, SBA certifies that this rule does not have a significant economic effect on a substantial number of small entities because it does not impose material changes on the existing program.

For purposes of the Paperwork Reduction Act, SBA certifies that this rule imposes no new reporting or recordkeeping requirements. The rule does, however, codify, at sections 130.800 through 130.830, paperwork requirements previously cleared by the Office of Management and Budget.

List of Subjects in 13 CFR Part 130

Business development, small businesses, Small Business Development Center (SBDC), technical assistance.

Title 13 of Code of Federal Regulations, Chapter 1 shall be amended by adding a new Part 130 as follows:

PART 130—SMALL BUSINESS DEVELOPMENT CENTERS

- Sec.
- 130.100 Introduction.
 - 130.110 Definitions.
 - 130.200 Eligible entities.
 - 130.300 Small Business Development Centers (SBDCs). [Reserved]
 - 130.310 Area of service.
 - 130.320 Location of lead centers and SBDC service providers.
 - 130.330 Operating requirements.
 - 130.340 SBDC services and restrictions on service.
 - 130.350 Specific program responsibilities.
 - 130.360 SBDC advisory boards.
 - 130.400 Application procedure. [Reserved]
 - 130.410 New applications.
 - 130.420 Renewal applications.
 - 130.430 Application decisions.
 - 130.440 Maximum grant.
 - 130.450 Matching funds.
 - 130.460 Budget justification.
 - 130.470 Fees.
 - 130.480 Program income.
 - 130.500 Funding.
 - 130.600 Cooperative agreement. [Reserved]
 - 130.610 General terms.
 - 130.620 Revisions and amendments to cooperative agreement.
 - 130.630 Dispute resolution procedures.
 - 130.700 Suspension, termination and non-renewal.
 - 130.800 Oversight of the SBDC program.
 - 130.810 SBA review authority.
 - 130.820 Reports and recordkeeping.
 - 130.830 Audits and investigations.

Authority: Sections 5(b)(6) and 21 of the Small Business Act, as amended, 15 U.S.C.

634(b)(6) and 648; Pub. L. 101-515, 101 Stat. 2101; Pub. L. 101-574, 104 Stat. 2814; Pub. L. 102-366, 106 Stat. 986; and Pub. L. 102-395, 106 Stat. 1828.

§ 130.100 Introduction.

(a) *Objective.* The SBDC Program creates a broad-based system of assistance for the small business community by linking the resources of Federal, State and local governments with the resources of the educational community and the private sector. Although SBA is responsible for the general management and oversight of the SBDC Program, a partnership exists between SBA and the recipient organization for the delivery of assistance to the small business community.

(b) *Incorporation of amended references.* All references in these regulations to OMB Circulars, other SBA regulations, Standard Operating Procedures, and other sources of SBA policy guidance incorporate all ensuing changes or amendments to such sources.

§ 130.110 Definitions.

Application. The written submission by a new applicant organization or an existing recipient organization explaining its projected SBDC activities for the upcoming budget period and requesting SBA funding for use in its operations.

Applicant organization. An entity, described in § 130.200(a), which applies to establish and operate an SBDC network.

Area of Service. The State or territory, or portion of a State or territory (when there is more than one SBDC in a State or territory), or the District of Columbia, in which an applicant organization proposes to provide services or in which a recipient organization provides services.

Budget period. The 12-month period in which expenditure obligations are incurred by an SBDC network, coinciding with either the calendar year or the Federal fiscal year.

Cash Match. Non-Federal funds allocated specifically to the operation of the SBDC network equalling no less than fifty percent of the Federal funds. Cash Match includes direct costs committed by the applicant or recipient organization and sponsoring SBDC organizations, to the extent that such costs are committed as part of the verified, specific, line item direct costs prior to funding. Cash Match does not include indirect costs, overhead costs or in-kind contributions.

Cognizant Agency. The Federal agency, other than SBA, from which a recipient organization or sponsoring

SBDC organization receives its largest grant or greatest amount of Federal funding, and from which it obtains an indirect cost rate for budgetary and funding purposes, applicable throughout the Federal government.

Cooperative Agreement. The written contract between SBA and a recipient organization, describing the conditions under which SBA awards Federal funds and recipient organizations provide services to the small business community.

Cosponsorship. A "Cosponsorship" as defined in and governed by § 8(b)(1)(A) of the Act and SBA's Standard Operating Procedures.

Counseling. Individual advice, guidance or instruction given to a small business person or entity.

Direct costs: "Direct costs" as defined in Office of Management and Budget (OMB) Circulars A-21, A-87 and A-122. Recipient organizations must allocate at least 80 percent of the Federal funds provided through the Cooperative Agreement to the direct costs of program delivery.

Dispute. Dispute means a program or financial disagreement which the recipient organization requests be handled with SBA in a formal manner.

Grants and Cooperative Agreement Appeals Committee. The SBA committee, appointed by the SBA Administrator, which resolves appeals arising from financial Disputes between a recipient organization and SBA.

Grants Management Specialist. An SBA employee designated by the AA/SBDCs who is responsible for the financial review, award, and administration of one or more SBDC Cooperative Agreements.

Indirect costs. "Indirect costs" as defined in Office of Management and Budget (OMB) Circular A-21, A-87 or A-122.

In-kind contributions. Property, facilities, services or other non-monetary contributions from non-federal sources. See OMB Circular A-87, A-102, or A-110, as appropriate.

Lead Center. The entity which administers and operates the SBDC network.

Lobbying. Lobbying as described in OMB Circulars A-21, A-87 and A-122, and Pub. L. 101-121, section 319.

Overmatched Amount. Non-Federal Contributions to SBDC project costs, including cash, in-kind contributions and indirect costs, in excess of the statutorily required amount.

Program Announcement. SBA's annual publication of requirements which an applicant or recipient organization must address in its initial or renewal application.

Program income. Income earned or received by the SBDC network from any SBDC supported activity as defined in Attachment D of OMB Circular A-110 and Attachment E of OMB Circular A-102.

Program manager. An SBA employee responsible for overseeing the operations of one or more SBDCs.

Project officer. An SBA employee who negotiates the annual Cooperative Agreement and monitors the ongoing operations of an SBDC.

Project period. The period of time, usually in twelve (12) month increments, during which the SBDC network operates, beginning on the day of award and continuing over a number of budget periods.

Recipient organization. The name given to an applicant organization after funding is approved and the applicant organization enters into a Cooperative Agreement. The recipient organization receives the Federal funds and is responsible for establishing the Lead Center.

Recognized Organization. The organization whose members include a majority of SBDCs and which is recognized as an SBDC representative by SBA in accordance with § 21(a)(3)(A) of the Small Business Act, 15 U.S.C. 648(a)(3)(A).

SBDC Director. The full-time senior manager designated by each recipient organization and approved by SBA.

SBDC network. The Lead Center and SBDC service providers.

SBDC service providers. SBDC network participants, including the Lead Center, subcenters (at times referred to as regional centers), satellite locations, and any other entity authorized by the recipient organization to perform SBDC services.

Specialized Services. SBDC services other than Counseling and Training.

Sponsoring SBDC organizations. Organizations or entities which establish one or more SBDC service providers as part of the SBDC network under a contract or agreement with the recipient organization.

Training. The provision of advice, guidance and instruction to groups of prospective and existing small business persons and entities, whether by in-person group sessions or by such communication modes as teleconferences, videos, publications and electronic media.

§ 130.200 Eligible entities.

(a) **Recipient Organization.** The following entities are eligible to operate an SBDC network:

(1) A public or private institution of higher education;

(2) A land-grant college or university;

(3) A college or school of business, engineering, commerce or agriculture;

(4) A community or junior college;

(5) An entity formed by two or more of the above entities; or

(6) Any entity which was operating as a recipient organization as of December 31, 1990.

(b) **SBDC Service Providers.** SBDC service providers are not required to meet the eligibility requirements of a recipient organization.

§ 130.300 Small Business Development Centers (SBDCs). [Reserved]

§ 130.310 Area of service.

The AA/SBDC shall designate in writing the Area of Service of each recipient organization, consistent with the State plan. More than one recipient organization may be located in a State or Territory if the AA/SBDC determines it is necessary or beneficial to implement the Program effectively and to provide services to all interested small businesses.

§ 130.320 Location of lead centers and SBDC service providers.

(a) The recipient organization must locate its Lead Center and SBDC service providers so that services are readily accessible to small businesses in the Area of Service.

(b) The locations of the Lead Center and the SBDC service providers will be reviewed by SBA as part of the application review process for each budget period.

§ 130.330 Operating requirements.

(a) The Lead Center must be an independent entity within the recipient organization, having its own staff, including a full-time SBDC Director.

(b) A Lead Center must provide administrative services and coordination for the SBDC network, including program development, program management, financial management, reports management, promotion and public relations, program assessment and evaluation, and internal quality control.

(c) The Lead Center shall be open to the public throughout the year during the normal business hours of the recipient organization. Anticipated closures shall be included in the annual renewal application. Emergency closures shall be reported to the SBA Project Officer as soon as is feasible. Other SBDC service providers shall be open during the normal business hours of their sponsoring SBDC organizations.

(d) The Lead Center and other SBDC service providers must have a conflict of interest policy applicable to their SBDC

consultants, employees, instructors and volunteers.

(e) The SBDC network shall comply with 13 CFR parts 112, 113 and 117, which require that no person shall be excluded on the grounds of age, color, handicap, marital status, national origin, race, religion or sex from participation in, be denied that benefits of, or otherwise be subjected to discrimination under, any program or activity for which the recipient organization received Federal financial assistance from SBA.

§ 130.340 SBDC services and restrictions on service.

(a) *Services.* The SBDC network must provide prospective and existing small business persons and entities with Counseling, Training and Specialized Services, concerning the formation, financing, management and operation of small business enterprises, reflecting local needs. The recipient organization shall primarily utilize institutions of higher education to provide services to the small business community. To the extent possible, SBDCs shall use other Federal, State, and local government programs that assist small business. Services periodically should be assessed and improved to keep pace with changing small business needs.

(b) *Access to Capital.* (1) SBDCs are encouraged to provide counseling services that increase a small business concern's access to capital, such as business plan development, financial statement preparation and analysis, and cash flow preparation and analysis.

(2) SBDCs should help prepare their clients to represent themselves to lending institutions. While SBDCs may attend meetings with lenders to assist clients in preparing financial packages, the SBDCs may not take a direct role in representing clients in loan negotiations.

(3) SBDCs should inform their clients that financial packaging assistance does not guarantee receipt of a loan.

(4) SBDCs may not make loans, service loans or make credit decisions regarding the award of loans.

(5) With respect to SBA guaranty programs, SBDCs may assist clients to formulate a business plan, prepare financial statements, complete forms which are part of a loan application, and accompany an applicant appearing before SBA. Unless authorized by the SBA Administrator with respect to a specific program, an SBDC may not advocate, recommend approval or otherwise attempt in any manner to influence SBA to provide financial assistance to any of its clients. An SBDC cannot collect fees for helping a client

to prepare an application for SBA financial assistance.

(c) *Special emphasis initiatives.* From time to time, SBA may identify portions of the general population to be targeted for assistance by SBDCs. Support of SBA special emphasis initiatives will be negotiated each year as part of the application process and included in the Cooperative Agreement when appropriate.

§ 130.350 Specific program responsibilities.

(a) *Policy development.* SBA will establish Program policies and procedures to improve the delivery of services by SBDCs to the small business community, and to enhance compliance with applicable laws, regulations, OMB Circulars and Executive Orders. In doing so, SBA should consult, to the extent practicable, with the Recognized Organization.

(b) *Responsibilities of SBDC Directors.* The SBDC Director shall direct and monitor program activities and financial affairs of the SBDC network to deliver effective services to the small business community, comply with applicable laws, regulations, OMB Circulars and Executive Orders, and implement the Cooperative Agreement. The SBDC Director has authority to control expenditures under the Lead Center's budget. SBDC Directors may manage other programs in addition to the SBDC Program if the programs serve small businesses and do not duplicate the services provided by the SBDC network. However, SBDC Directors may not receive additional compensation for managing these programs. The SBDC Director shall serve as the principal contact point for all matters involving the SBDC network.

§ 130.360 SBDC advisory boards.

(a) *State/Regional Advisory Boards.* (1) The Lead Center must establish an advisory board to advise, counsel, and confer with the SBDC Director on matters pertaining to the operation of the SBDC network.

(2) The advisory board shall be referred to as a State SBDC Advisory Board in an Area of Service having only one recipient organization, and a Regional SBDC Advisory Board in an Area of Service having more than one recipient organization.

(3) These advisory boards must include small business owners and other representatives from the entire Area of Service.

(4) New Lead Centers must establish a State or Regional SBDC Advisory Board no later than the second budget period.

(5) A State or Regional SBDC Advisory Board member may also be a member of the National SBDC Advisory Board.

(6) The reasonable cost of travel of any Board member for official Board activities may be paid out of the SBDC's budgeted funds.

(b) *National SBDC Advisory Board.* (1) SBA shall establish a National SBDC Advisory Board consisting of nine members who are not Federal employees, appointed by the SBA Administrator. The Board shall elect a Chair. Three members of the Board shall be from universities or their affiliates and six shall be from small businesses or associations representing small businesses. Board members shall serve staggered three year terms, with three Board members appointed each year. The SBA Administrator may appoint successors to fill unexpired terms.

(2) The National SBDC Advisory Board shall advise and confer with SBA's AA/SBDCs on policy matters pertaining to the operation of the SBDC program. The Board shall meet with the AA/SBDCs at least semiannually.

§ 130.400 Application procedure. [Reserved]

§ 130.410 New applications.

(a) If SBA declines to renew an existing recipient organization or the recipient organization declines to reapply, SBA may accept applications from other organizations interested in becoming a recipient organization. An eligible entity may apply by submitting an application to the SBA District Office in the Area of Service in which the applicant proposes to provide services.

(b) An application for initial funding of a new SBDC network must include a letter by the Governor, or his or her designee, of the Area of Service in which the SBDC will operate, or other evidence, confirming that the applicant's designation as an SBDC would be consistent with the plan adopted by the State government and approved by SBA. No such requirement is imposed on subsequent applications from existing recipient organizations.

(c) The application must set forth the eligible entity or entities proposing to operate the SBDC network; a list of the Lead Center and other SBDC service providers by name, address and telephone number; the geographic areas to be serviced; the resources to be used; the services that will be provided; the method for delivering the services, including a description of how and to what extent academic, private and public resources will be used; a budget; a listing of the proposed members of the

State or Regional Advisory Board and other relevant information set forth in the Program Announcement.

(d) SBA officials may request supplemental information or documentation to revise or complete an application.

(e) Upon written recommendation for approval by the SBA District Director, the proposal shall be submitted to the AA/SBDCs for review.

§ 130.420 Renewal applications.

(a) SBDCs shall comply with the requirements in the annual Program Announcement, including format and due dates, to receive consideration of their renewal applications. The SBA Project Officer, with the concurrence of the Program Manager, may grant an extension. The recipient organization shall submit the renewal application to the SBA office in the District in which the recipient organization is located. The annual Program Announcement will include a timetable for SBA review.

(b) After review by the SBA Project Officer and written recommendation for approval by the District Director, the Program Manager and Grants Management Specialist shall review the renewal application for conformity with the Program Announcement, OMB Circulars and all other statutory, financial and regulatory requirements. SBA officials may request supplemental information and documentation prior to issuing the Cooperative Agreement.

§ 130.430 Application decisions.

(a) The AA/SBDCs may approve, conditionally approve, or reject any application. In the event of a rejection, the AA/SBDCs shall communicate the reasons for rejection to the applicant and the appropriate SBA field office. If the approval is conditional, the conditions and applicable remedies shall be specified as special terms and conditions in the Cooperative Agreement. Upon approval or conditional approval, the Grants Management specialist may issue a Cooperative Agreement.

(b) In considering the application, significant factors shall include:

- (1) The applicant's ability to contribute Matching Funds;
- (2) For renewal Proposals, the quality of prior performance;
- (3) The results of any examination conducted pursuant to § 130.810(b) of these regulations; and
- (4) Any certification resulting from any certification program developed by the Recognized Organization.

(c) In the event of a conditional approval, SBA may conditionally fund a recipient organization for one or more

specified periods of time up to a maximum of one budget period. If the recipient organization fails to resolve the specified matters to the AA/SBDCs' satisfaction within the allotted time period, SBA has the right to discontinue funding the SBDC, subject to the provisions of § 130.700.

§ 130.440 Maximum grant.

No recipient shall receive an SBDC grant exceeding the greater of the minimum statutory amount, or its pro rata share of all SBDC grants as determined by the statutory formula set forth in section 21(a)(4) of the Act.

§ 130.450 Matching funds.

(a) The recipient organization must provide total Matching Funds equal to the total amount of SBA funding. At least 50% of the Matching Funds must be Cash Match. The remaining 50% may be provided through any allowable combination of additional cash, in-kind contributions, or indirect costs.

(b) All sources of Matching Funds must be identified as specifically as possible in the budget proposal. Cash sources shall be identified by name and account. All applicants must submit a Certification of Cash Match and Program Income executed by an authorized official of the recipient organization or any sponsoring SBDC organization providing Cash Match through a subcontract agreement. The account containing such cash must be under the direct management of the SBDC Director, or, if provided by a sponsoring SBDC organization, its subcenter Director. If a political entity is providing such cash and the funds have not been appropriated prior to issuance of the Cooperative Agreement, the recipient organization must certify that sufficient funds will be available from the political entity prior to the use of Federal dollars.

(c) The Grants Management Specialist is responsible for determining whether Matching Funds or Cash Match meet the requirements of the Act and appropriate OMB circulars.

(d) *Overmatched Amounts.* (1) SBDC are encouraged to furnish Overmatched Amounts.

(2) An Overmatched Amount can be applied to additional Matching Funds requirements necessitated by any supplemental funding increase received by the SBDC during the budget period, as long as the total Cash Match provided by the SBDC is 50% or more of the total SBA funds provided during the budget period.

(3) If used in the manner described in paragraph (d)(2) of this section, such

Overmatched Amount is reclassified as committed Matching Funds.

(4) Allowable Overmatched Amounts which have not been used in the manner described in paragraph (d)(2) of this section may, with the approval of the AA/SBDCs, be used as a credit to offset any confirmed audit disallowances applicable only to the budget period in which the Overmatched Amount exists and the two previous budget periods. Such offsetting funds shall be considered Matching Funds.

(e) *Impermissible sources of Matching Funds.* Under no circumstances may the following be used as sources of the Matching Funds of the recipient organization:

- (1) Uncompensated student labor;
- (2) SCORE, ACE, or SBI volunteers;
- (3) Program income or fees collected from small businesses receiving assistance;
- (4) Funds or indirect or in-kind contributions from any other Federal source.

§ 130.460 Budget justification.

The SBDC Director, as a part of the renewal application, or the applicant organization's authorized representative in the case of a new SBDC application, shall prepare and submit to the SBA Project Officer the budget justification for the upcoming budget period. The budget shall be reviewed annually upon submission of a renewal application.

(a) *Direct costs.* Unless otherwise provided in applicable OMB circulars, at least eighty percent (80%) of SBA funding must be allocated to direct costs of Program delivery.

(b) *Indirect costs.* If the applicant organization waives all indirect costs to meet the Matching Funds requirement, one hundred percent (100%) of SBA funding must be allocated to program delivery. If some, but not all, indirect costs are waived to meet the Matching Funds requirement, the lesser of the following may be allocated as indirect costs of the Program and charged against the Federal contribution:

- (1) Twenty percent (20%) of Federal contribution, or
- (2) The amount remaining after the waived portion of indirect costs is subtracted from the total indirect costs.

(c) *Separate SBDC service provider budgets.*

(1) The applicant organization shall include separate budgets for all subcontracted SBDC service providers in conformity with OMB requirements. Applicable direct cost categories and indirect cost base/rate agreements shall be included for the Lead Center and all SBDC service providers, using a rate

equal to or less than the negotiated predetermined rate. If no such rate exists, the sponsoring SBDC organization or SBDC service provider shall negotiate a rate with its Cognizant Agency. In the event the sponsoring SBDC organization or SBDC service provider does not have a Cognizant Agency, the rate shall be negotiated with the SBA Project Officer in accordance with OMB guidelines (see OMB Circular A-21).

(2) The amount of cash, in-kind contributions and indirect costs for the Lead Center and all sub-contracted SBDC service providers shall be indicated in accordance with OMB requirements.

(d) *Cost principles.* Principles for determining allowable costs are contained in OMB Circulars A-21 (cost principles for grants, contracts, and other agreements with educational institutions), A-87 (cost principles for programs administered by State and local governments), and A-122 (cost principles for nonprofit organizations).

(e) *Costs associated with lobbying.* No portion of the Federal contribution received by an SBDC may be used for lobbying activities, either directly by the SBDC or indirectly through outside organizations, except those activities permitted by OMB. Restrictions on and reports of lobbying activities by the SBDC shall be in accordance with OMB requirements, Section 319 of Public Law No. 101-121, and the annual Program Announcement.

(f) *Salaries.* (1) If a recipient organization is an educational institution, the salaries of the SBDC Director and the subcenter Directors must approximate the average annualized salary of a full professor and an assistant professor, respectively, in the school or department in which the SBDC is located. If a recipient organization is not an educational institution, the salaries of the SBDC Director and the subcenter Directors must approximate the average salaries of parallel positions within the recipient organization. In both cases, the recipient organization should consider the Director's longevity in the Program, the number of subcenters and the individual's experience and background.

(2) Salaries for all other positions within the SBDC should be based upon level of responsibility, and be comparable to salaries for similar positions in the area served by the SBDC.

(3) Recruitment and salary increases for SBDC Directors, subcenter Directors and staff members should conform to

the administrative policy of the recipient organization.

(g) *Travel.* All travel must be separately identified in the proposed budget as planned in-State, planned out-of-State, unplanned in-State or unplanned out-of-State. All proposed travel must use coach class, apply directly to specific work of the SBDC or be incurred in the normal course of Program administration, and conform to the written travel policies of the recipient organization or the sponsoring SBDC organization. (Per diem rates, including lodging, shall not exceed those authorized by the recipient organization.) Transportation costs must be justified in writing, including the estimated cost, number of persons traveling, and the benefit to be derived by the small business community from the proposed travel. A specific projected amount, based on the SBDC's past experience, where appropriate, must also be included in the budget for unplanned travel. A more detailed justification must be given for unplanned out-of-State travel. Any proposed unplanned out-of-State travel exceeding the approved budgeted amount for travel must be submitted to the Project Officer for approval on a case-by-case basis. Travel outside the United States must have prior approval by the AA/SBDCs on a case-by-case basis.

(h) *Dues.* Costs of memberships in business, technical, and professional organizations shall be allowable expenses. The use of Federal funds to pay dues for business, technical and professional organizations shall be permitted, provided that the payments are included in the budget proposal, are approved by the SBA and comply with § 130.460(e).

§ 130.470 Fees.

An SBDC may charge clients a reasonable fee to cover the costs of Training sponsored or cosponsored by the SBDC, costs of services provided by or obtained from third parties, or the costs of providing Specialized Services. Fees may not be imposed for Counseling.

§ 130.480 Program income.

(a) Program income for recipient organizations or SBDC service providers based in universities or nonprofit organizations shall be subject to OMB requirements (see OMB Circular A-110). Program income for recipient organizations or SBDC service providers based in State or local governments shall be subject to OMB requirements (see the provisions of § 7.e and

Attachment E of OMB Circular A-102) and 13 CFR 143.25.

(b) Program income, including any interest earned on Program income, must be used to expand the quantity or quality of services, resources or outreach provided by the SBDC network. It cannot be used to satisfy the requirements for Matching Funds. The Project Officer shall monitor the use of Program income. Any unused Program income will be carried over to a subsequent budget period.

(c) SBDCs must report in detail on standard SBA forms receipts and expenditures of program income, including any income received through cosponsored activities. A narrative description of how Program income was used to accomplish Program objectives shall be included.

§ 130.500 Funding.

The SBA funds Cooperative Agreements through its internal Letter of Credit Replacement System (LORS), using SBA standard forms to establish and modify letters of credit. SBDCs must use SBA standard forms to draw down funds required to meet their estimated or actual expenses and to submit quarterly cash transactions reports used by SBA to monitor the frequency of drawdowns and the cash-on-hand balance. Repeated drawdowns in excess of immediate cash needs may result in the cancellation of the letter of credit. If interest results from the deposit of any drawdowns in an interest-bearing account, SBDCs, other than State government sponsored SBDCs, must report and return such interest annually to SBA.

§ 130.600 Cooperative agreement. [Reserved]

§ 130.610 General terms.

Upon approval of the initial or renewal application, SBA will enter into a Cooperative Agreement with the recipient organization, setting forth the programmatic and fiscal responsibilities of the recipient organization and SBA, the scope of the project to be funded, and the budget of the program year covered by the Cooperative Agreement. Administrative requirements are contained in 13 CFR 143 and applicable OMB Circulars.

§ 130.620 Revisions and amendments to cooperative agreement.

(a) *Requests for revisions.* The recipient organization may request at any time one or more revisions to the Cooperative Agreement on an appropriate SBA form signed by the recipient organization's authorized representative (including a revised

budget and budget narrative, if applicable). Revisions will normally relate to changes in scope, work or funding during the specified budget year.

(b) *Revisions which require amendment to Cooperative Agreement.* The Cooperative Agreement shall list the revisions which require Project Officer concurrence, review by the Program Manager and the Grants Management Specialist, approval of the AA/SBDCs and amendment of the Cooperative Agreement. No application for an amendment shall be effective until it is approved and incorporated into the Cooperative Agreement. Revisions which require amendments shall include:

- (1) any change in project scope or objectives;
- (2) the addition or deletion of any subgrants or contracts;
- (3) the addition of any new budget line items;
- (4) Budget revisions and fund reallocations exceeding the limit established by applicable administrative regulations or OMB Circulars, either individually or in the aggregate (see paragraphs (c)(1) and (c)(2) of this section);
- (5) any proposed sole-source or one-bid contracts exceeding the limits established by applicable regulations or OMB Circulars; and
- (6) the carryover from one budget period to the next budget period of unobligated, unexpended SBA funds allocable under the Cooperative Agreement to nonrecurring, nonseverable bona fide needs of the SBDC network as provided in applicable OMB Circulars and the annual Program Announcement.

(c) *Revisions which do not require amendments to the Cooperative Agreement—(1) Budget revisions.* Any budget revision, except those which are covered by paragraph (b)(4) of this section. Budget revisions require approval of the SBA Project Officer and the AA/SBDCs as prescribed by applicable OMB Circulars or 13 CFR 143.30.

(2) *Reallocation of funds.* Reallocation of funds must be conducted in accordance with applicable OMB Circulars or 13 CFR 143.30. Additional guidance on this matter may be included in the annual Program Announcement.

§ 130.630 Dispute resolution procedures.

(a) *Financial Disputes.* (1) A recipient organization wishing to resolve a financial Dispute formally must submit a written statement describing the subject of the Dispute, together with any

relevant documents or other evidence bearing on the Dispute, to the Grants Management Specialist, with copies to the Project Officer. The Grants Management Specialist shall respond in writing to the recipient organization within 30 calendar days of receipt of the descriptive statement.

(2) If the recipient organization receives an unfavorable decision from the Grants Management Specialist, it may file an appeal with the AA/SBDCs within 30 calendar days of issuance of the unfavorable decision. The AA/SBDCs shall respond in writing to the recipient organization within 15 calendar days of receipt of the appeal.

(3) If the recipient organization receives an unfavorable decision from the AA/SBDCs, it may make a final appeal to the SBA Grants and Cooperative Agreements Appeals Committee (the "Committee") within 30 calendar days of the date of issuance of the AA/SBDCs' written decision. Copies of the appeal shall also be sent to the Grants Management Specialist and the Project Officer.

(4) Appeals must be in writing. Formal briefs and other technical forms of pleading are not required. Requests for a hearing will not be granted unless there are material facts substantially in dispute. Appeals must contain at least the following:

- (i) Name and address of the recipient organization;
- (ii) The SBA field office;
- (iii) The Cooperative Agreement;
- (iv) A statement of the grounds for appeal, with reasons why the appeal should be sustained;
- (v) The specific relief desired on appeal; and
- (vi) If a hearing is requested, a statement of the material facts which are substantially in dispute.

(5) The AA/SBDCs or the Committee may request from the SBDC or the District Office additional information or documentation at any stage in the proceedings.

(6) If a request for a hearing is granted, the Committee will provide the recipient organization with written instructions, and will afford the parties an opportunity to present their positions to the Committee.

(7) The Committee will reach a decision on the merits of the appeal within 30 days of the hearing date.

(8) The Chairperson, with advice from the Office of General Counsel, shall prepare and transmit a written final decision to the recipient organization with copies to the Grants Management Specialist and the Project Officer.

(9) *Expedited Dispute appeal process.* By an affirmative vote constituting a

majority of its total membership, the Committee may shorten response times to attain final resolution of a Dispute before the issuance date of a new Cooperative Agreement. At any time within 120 days of the end of the budget period, the recipient organization may submit a written request to use an expedited process. If a Dispute affects refunding, the Committee must meet to consider the matter prior to the end of the budget period, provided that the recipient organization has supplied the Committee with all requested documentation.

(b) *Programmatic (non-financial) Disputes.* (1) If a programmatic Dispute is not resolved at the SBA District Office level, the recipient organization may request its submission to the next SBA administrative level having authority to review such matter. The Project Officer shall refer the Dispute in writing, including comments of the SBDC Director, within 15 calendar days of receipt of the request.

(2) If the programmatic Dispute is not resolved at an intermediate SBA administrative level within 15 calendar days of receipt thereof, it shall be forwarded, in writing, to the AA/SBDCs for final resolution. All comments of the SBDC Director must be included in any package forwarded to the AA/SBDCs.

(3) The AA/SBDCs shall transmit a final, written decision to the recipient organization, the SBDC Director, the SBA Project Officer and other appropriate SBA field office personnel within 30 calendar days of receipt of such documentation, unless an extension of time is mutually agreed upon by the recipient organization and the AA/SBDCs.

§ 130.700 Suspension, termination and non-renewal.

(a) *General.* After SBA has entered into a Cooperative Agreement with a recipient organization, it shall not suspend, terminate or fail to renew the agreement unless SBA gives the recipient organization written notice setting forth the reasons and affording the recipient organization an opportunity for a hearing. Subject to this requirement and the provisions of § 130.700(c) regarding non-renewal procedures for non-performance, the applicable general procedures for suspension and termination are contained in 13 CFR 143.43 and 143.44, and in OMB Circular A-110, Attachment L.

(b) *Causes.* Causes which may lead to suspension, termination, or failure to renew include non-performance, poor performance, unwillingness to implement changes to improve

performance, or any of the following reasons:

(1) Disregard or material violation of these regulations;

(2) A willful or material failure to perform under the Cooperative Agreement or under these regulations;

(3) Conduct reflecting a lack of business integrity or honesty;

(4) A conflict of interest causing real or perceived detriment to a small business concern, a contractor, the SBDC or SBA;

(5) Improper use of Federal funds;

(6) Failure of a Lead Center or its subcenters to consent to audits or examination or to maintain required documents or records;

(7) Failure of the SBDC Director to work at the SBDC Lead Center on a full-time basis;

(8) Failure promptly to suspend or terminate the employment of an SBDC Director, subcenter Director or other key employee upon receipt of knowledge by the recipient organization and/or SBA that such individual is engaging in or has engaged in conduct resulting in a criminal conviction or civil judgment which would cause the public to question the SBDC's business integrity, taking into consideration such factors as the magnitude, repetitiveness, harm caused and remoteness in time of the activity or activities underlying the conviction or judgment.

(9) Violation of the SBDC's standards of conduct as specified in these rules and as established by the SBDC pursuant to these rules; or

(10) Any other cause not otherwise specified which materially and adversely affects the operation or integrity of an SBDC or the SBDC program.

(c) *Non-Renewal Procedure.* (1) Subject to § 130.700(a), when an SBA District Director believes there is sufficient evidence of SBDC nonperformance, poor performance or unwillingness to implement changes to improve performance, under the terms of the Cooperative Agreement or these regulations, the District Director shall notify the SBDC Director and any other appropriate official of the recipient organization of an intention not to approve its renewal application.

(2) Notice can be submitted at any time during the budget period, but normally should be sent no later than 3 months prior to the due date for renewal applications at the District Office.

(3) The notice shall specifically cite the reasons for the intention not to renew. It must allow the recipient organization 60 days within which to change its operations to correct the problems cited in the notice, and to

report to the Project Officer, in writing, regarding the results of such changes.

(4) If the recipient organization is unwilling or unable to address the specific problem areas to the satisfaction of the SBA District Office within the 60-day period, the SBA Project Officer shall have ten (10) calendar days after expiration of the 60 days to submit to the AA/SBDCs a written description of the unresolved issues, a summary of the positions of the District Office on the issues, and any supportive documentation.

(5) The AA/SBDCs shall transmit a written, final decision to the recipient organization, the SBDC Director, the SBA Project Officer and other appropriate SBA field office personnel within 30 calendar days of receipt of such documentation, unless an extension of time is mutually agreed upon by the recipient organization and the AA/SBDCs.

(6) The AA/SBDCs shall consider written documentation of the issues to be resolved, including all relevant correspondence between the Project Officer, District Director and any other SBA personnel and the affected recipient organization. At a minimum, such documentation shall commence with the first written notice of issues invoking the non-renewal procedure. In addition, the AA/SBDCs also may communicate with the recipient organization and appropriate SBA personnel.

(7) If the AA/SBDCs determines that the evidence submitted establishes nonperformance, ineffective performance or an unwillingness to implement suggested changes to improve performance, the AA/SBDCs shall have full discretion to order non-renewal of the SBDC. The SBA District Office shall then pursue proposals from other organizations interested in applying for SBDC designation. The incumbent SBDC shall have until the end of the budget period or 120 days, whichever is longer, to conclude operations and to submit close-out documents to the SBA District Office. Close-out procedures shall conform with applicable OMB Circulars.

(d) *Effect of action on subcenter.* If competing applications are being accepted, a subcenter of the previously funded recipient organization may apply for designation as the recipient organization, so long as the subcenter was not involved in the conduct leading to non-renewal or termination of the former recipient organization.

§ 130.800 Oversight of the SBDC program.

SBA shall monitor and oversee the Cooperative Agreement and ongoing

operations of the SBDC network to ensure the effective and efficient use of Federal funds for the benefit of the small business community.

§ 130.810 SBA review authority.

(a) *Site visits.* The AA/SBDCs, or a representative, on notice to the SBDC Director, is authorized to make programmatic and financial review visits to SBDC service providers to inspect records and client files, and to analyze and assess SBDC activities.

(b) *SBA examinations.* SBA examiners shall perform a biannual programmatic and financial examination of each SBDC.

(c) *Certification program.* SBA may provide financial support to the Recognized Organization to develop and implement an SBDC certification program.

(d) *Audits.* The examinations by SBA examiners shall not substitute for audits required of Federal grantees under the Single Audit Act of 1984 or applicable OMB guidelines (see Circulars A-110, A-128 and A-133), nor shall such internal review substitute for audits to be conducted by the SBA Office of Inspector General under authority of the Inspector General Act of 1978, as amended (see § 130.830(b)).

§ 130.820 Reports and recordkeeping.

(a) *Records.* The recipient organization shall maintain the records required for a Lead Center audit and SBA reports. Lead Centers and other SBDC service providers shall maintain detailed, complete and accurate client activity files, specifying counseling, training and other assistance provided.

(b) *Reports.* The recipient organization shall submit client service evaluations and performance and financial reports for SBA review to determine the quality of services provided by the SBDC, the completeness and accuracy of SBDC records, and actual SBDC network accomplishments compared to performance objectives.

(1) *Performance reports.* For recipient organizations in the Program for more than three years, interim reports shall be due 30 days after completion of six months of operation each year; for those recipient organizations in the Program three years or less, reports shall be due 30 days after completion of each of the first three quarters. The annual report shall include the second semiannual or the fourth quarter report and shall be due December 30 for fiscal year and March 30 for calendar year SBDCs. These reports shall reflect accurately the activities, accomplishments and deficiencies of the SBDC network.

(d) *Financial reports.* The recipient organization shall provide three quarterly and one annual financial report to the SBA Project Officer as set forth in the Program Announcement and the Cooperative Agreement, in compliance with OMB Circulars.

(e) *Availability of records.* As required by OMB (see Circular A-133), all SBDC service provider records shall be made available to SBA for review upon request.

§ 130.830 Audits and investigations.

(a) *Access to records.* Applicable OMB Circulars set forth the requirements concerning record access and retention.

(b) *Audits.* (1) *Pre-award audit.* Applicant organizations that propose to enter the Program for the first time may be subject to a pre-award audit conducted by or coordinated with the SBA Office of Inspector General. The purpose of a pre-award audit is to verify the adequacy of the accounting system, the suitability of posed costs and the nature and source of proposed Matching Funds.

(2) *Interim or final audits.* The recipient organization or SBA may conduct SBDC network audits. All audits will be conducted according to *Government Auditing Standards*, promulgated by the Comptroller General of the United States.

(i) The recipient organization will conduct its audits as a single audit of a recipient organization pursuant to OMB Circulars A-102, A-110, A-128, and A-133, as applicable.

(ii) The SBA Office of Inspector General or its agents will conduct, supervise, or coordinate SBA's audits, which may, at SBA's discretion, be audits of the SBDC network, even though single audits may have been performed. In such instances, SBA will conduct such audits in compliance with *Government Auditing Standards* and all applicable OMB Circulars.

(c) *Investigations.* SBA may conduct investigations as it deems necessary to determine whether any person or entity has engaged in acts or practices constituting a violation of the Act, any rule, regulation or order issued under that Act, or any other applicable Federal law.

Dated: May 9, 1995.

Philip Lader,

Administrator.

[FR Doc. 95-14371 Filed 6-12-95; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-NM-104-AD; Amendment 39-9262; AD 95-12-12]

Airworthiness Directives; de Havilland Model DHC-8-102, -103, and -106 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC-8-102, -103, and -106 series airplanes. This action requires repetitive operational testing of the stall warning computers to ensure activation of the associated stick shakers, and replacement of non-operational stall warning computers with new or serviceable units. This action also provides an optional terminating action for the repetitive operational tests. This amendment is prompted by a report that, during a routine test, the stick shakers of the stall warning system did not activate, due to contamination of the weight-on-wheels contacts in the stall warning computer. The actions specified in this AD are intended to ensure that such contamination is detected. Contamination of the stall warning computers could lead to incorrect logic detection of the weight-on-wheels signal, and subsequent loss of the stick shaker function.

DATES: Effective on June 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-104-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office,

Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Peter Cuneo, Aerospace Engineer, Systems and Equipment Branch, ANE-172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256-7506; fax (516) 568-2716.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC-8-102, -103, and -106 series airplanes equipped with Safe Flight stall warning computers having part number (P/N) 3605-4, -5, or -6, and on which Modification 8/2072 has not been installed. Transport Canada Aviation advises that, during a routine "air mode" test of the stall warning system, the stick shakers did not activate. Investigation revealed that the weight-on-wheels relay contacts within the stall warning computer had become contaminated. This condition, if not corrected, could lead to incorrect logic detection of the weight-on-wheels signal, and subsequent loss of the stick shaker function.

Bombardier has issued Alert Service Bulletin S.B. A8-27-73, dated November 25, 1993, which describes procedures for repetitive operational testing to ensure activation of the stick shakers of the No. 1 and No. 2 stall warning computers, and replacement of non-operational stall warning computers with new or serviceable units. Transport Canada Aviation classified the alert service bulletin as mandatory and issued Canadian airworthiness directive CF-95-06, dated April 10, 1995, in order to assure the continued airworthiness of these airplanes in Canada.

Bombardier has also issued Service Bulletin S.B. 8-27-76, dated October 31, 1994, which describes procedures for replacing Safe Flight stall warning computers having P/N 3506-5, -6, or -7 with new stall warning computers having P/N 3506-8 (Modification 8/2072). The new stall warning computers have additional internal monitoring; installation of the new computers will increase reliability. Accomplishment of this replacement would eliminate the need for the repetitive operational tests.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the

provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect contamination of the weight-on-wheels relay contacts in the stall warning computer; such contamination could lead to incorrect logic detection of the weight-on-wheels signal, and subsequent loss of the stick shaker function. This AD requires repetitive operational testing of the No. 1 and No. 2 stall warning computers to ensure activation of the associated stick shaker, and replacement of non-operational stall warning computers with new units. This AD also provides an optional terminating action for the repetitive operational test requirements. The actions are required to be accomplished in accordance with the service bulletins described previously.

The FAA is considering further rulemaking action to require the replacement of Safe Flight stall warning computers with units having P/N 3506-8. However, the proposed compliance time (6 months) for this replacement is sufficiently long so that notice and time for public comment would be practicable.

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

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-104-AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to

correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95-12-12 de Havilland, Inc.: Amendment 39-9262. Docket 95-NM-104-AD.

Applicability: Model DHC-8-102, -103, and -106 series airplanes, serial numbers 003 and subsequent; equipped with Safe Flight stall warning computers having part number (P/N) 3605-4, -5, or -6; and on which Modification 8/2072 has not been installed; certificated in any category.

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

case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent incorrect logic detection of the weight-on-wheels signal, and subsequent loss of the stick shaker function, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, unless previously accomplished within the last 400 hours time-in-service: Perform an operational test to determine activation of the stick shakers of the No. 1 and No. 2 stall warning computers, in accordance with Bombardier Alert Service Bulletin S.B. A8-27-73, dated November 25, 1993. Thereafter, repeat the operational test at intervals not to exceed 450 hours time-in-service. If any stick shaker does not activate, prior to further flight, replace the non-operational stall warning computer with a new or serviceable unit in accordance with the alert service bulletin.

(b) Replacement of stall warning computers having part number (P/N) 3605-5, -6, or -7 with new stall warning computers having P/N 3605-8, in accordance with Bombardier Service Bulletin S.B. 8-27-76, dated October 31, 1994, constitutes terminating action for the repetitive operational test requirements of this AD.

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

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

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

(e) The operational test and replacement shall be done in accordance with Bombardier Alert Service Bulletin S.B. A8-27-73, dated November 25, 1993, and Bombardier Service Bulletin 8-27-76, dated October 31, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 28, 1995.

Issued in Renton, Washington, on June 2, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-14050 Filed 6-12-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 95-NM-60-AD; Amendment 39-9258; AD 95-12-08]

Airworthiness Directives; Aerospatiale Model ATR72-101, -102, and -202 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR72 series airplanes. This action requires repetitive inspections to detect displacement of the rear hinge bush, and to detect cracking or rupture of the rear hinge pin on the main landing gear (MLG) leg; and the correction of any discrepancies. This amendment is prompted by a report of the failure of this hinge pin on an in-service airplane. The actions specified in this AD are intended to prevent failure of the hinge pin, which can lead to failure of the MLG leg or MLG attachment assembly.

DATES: Effective June 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-65-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate,

1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1187; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR72-101, -102, and -202 series airplanes. The DGAC advises that there has been a report of the failure (rupture) of the rear hinge pin on the main landing gear (MLG) leg of one in-service airplane. The cause of the failure is associated with a quality problem during the manufacture of these hinge pins, which apparently causes the pin to be susceptible to cracking. The suspect pins have part number (P/N) D 61000. Failure of the hinge pin could lead to the failure of the MLG leg or the MLG attachment assembly.

Avions de Transport Regional (ATR) has issued Service Bulletin ATR72-32-1028, dated September 1, 1994, which describes procedures for performing the following actions:

1. repetitive visual inspections of the MLG rear hinge pin bush to ensure that the bush has not moved and that the sealant at the level of the bush does not show any cracks, and correction of discrepancies; and

2. repetitive boroscope inspections to detect cracks of the MLG leg-to-aircraft rear hinge pin, and replacement of the pin, if necessary (This ATR service bulletin references Messier-Eram Service Bulletin 631-32-110, dated August 31, 1994, for additional inspection instructions.)

ATR has also issued Service Bulletin ATR72-32-1029, dated November 4, 1994, which describes procedures for performing an ultrasonic inspection of the MLG aft hinge pins to ensure that the pin is free of material defects, and replacement of the pin with new pin, if necessary. (This service bulletin references Messier-Eram Service Bulletin 631-32-111, dated October 14, 1994, for additional inspection instructions.)

The DGAC classified these service bulletins as mandatory and issued French Airworthiness Directive (CN) 94-197-023(B), dated August 31, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to

this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent failure of the rear hinge pin on the MLG leg, which could lead to failure of the MLG leg or the MLG attachment assembly. This AD requires, initially, repetitive visual inspections off the MLG rear hinge pin bush to ensure that the bush has not moved and that the sealant at the level of the bush does not show any cracks, and correction of discrepancies. It also requires repetitive boroscope inspections to detect cracks of the MLG leg-to-aircraft rear hinge pin, and replacement of the pin, if necessary. As terminating action for those inspections, this AD requires an ultrasonic inspection of the MLG aft hinge pins to ensure that the pin is free of material defects, and replacement of the pin with new pin, if necessary. These actions are required to be accomplished in accordance with the service bulletins described previously.

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

There currently are no affected Model ATR72-101, -102, or -202 series airplanes on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are

imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, the following costs would apply:

Accomplishment of a required repetitive visual inspections would require approximately .5 work hour per bush, at an average labor charge of \$60 per work hour. Based on these figures, the total cost impact of this requirement would be \$30 per bush per inspection.

Accomplishment of a required repetitive boroscope inspections would require approximately 3 work hours per pin, at an average labor charge of \$60 per work hour. Based on these figures, the total cost impact of this requirement would be \$180 per pin per inspection.

Accomplishment of a required one-time ultrasonic inspection would require approximately 11 work hours per pin, at an average labor charge of \$60 per work hour. Based on these figures, the total cost impact of this requirement would be \$180 per pin.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that

summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-60-AD." The postcard will be date stamped and returned to the commenter.

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

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95-12-08 Aerospace: Amendment 39-9258 Docket 95-NM-60-AD.

Applicability: Model AT472-101, -102, and -202 series airplanes, as listed in ATR Service Bulletin ATR72-32-1028, dated September 1, 1994; equipped with main landing gear hinge pins having part number (P/N) D 61000 with serial numbers MN 76 through MN 86 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the rear hinge pin on the main landing gear (MLG) leg, which can lead to failure of the MLG leg or attachment assembly, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a detailed visual inspection of the MLG rear hinge pin bush to determine if the bush has moved or if the sealant at the level of the bush shows any cracks, in accordance with ATR Service Bulletin ATR72-32-1028, dated September 1, 1994.

Note 2: ATR Service Bulletin ATR72-32-1028 references Messier-Eram Service Bulletin 631-32-110, dated August 31, 1994, for additional inspection instructions.

(1) If no discrepancies are detected, repeat this inspection at intervals not to exceed 7 days.

(2) If any discrepancies are detected, prior to further flight, correct them in accordance with the service bulletin.

(b) Within 300 hours time-in-service after the effective date of this AD, perform a boroscope (endoscope) inspection to detect cracks of the MLG leg-to-aircraft rear hinge pin, in accordance with ATR Service Bulletin ATR72-32-1028, dated September 1, 1994.

Note 3: ATR Service Bulletin ATR72-32-1028 references Messier-Eram Service Bulletin 631-32-110, dated August 31, 1994, for additional inspection instructions.

(1) If no crack is detected, repeat this inspection at intervals not to exceed 300 hours time-in-service.

(2) If any crack is detected, prior to further flight, replace the hinge pin in accordance with the service bulletin.

(c) Within 6 months after the effective date of this AD, perform a one-time ultrasonic inspection of the MLG aft hinge pins to determine if the pin is free of material defects, in accordance with ATR Service

Bulletin ATR72-32-1029, dated November 4, 1994.

Note 4: ATR Service Bulletin ATR72-32-1029 references Messier-Eram Service Bulletin 631-32-111, dated October 14, 1994, for additional inspection instructions.

(1) If the results of the inspection (echo percentage) are within the limits specified in the service bulletin, no further action is required by this AD, and the inspections required by paragraph (a) and (b) of this AD may be terminated.

(2) If the results of the inspection are outside the limits specified in the service bulletin, prior to further flight, replace the pin with a new pin in accordance with the service bulletin. After such replacement, no further action is required by this AD, and the inspections required by paragraph (a) and (b) of this AD may be terminated.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

(f) The inspections and replacement shall be done in accordance with ATR Service Bulletin ATR72-32-1028, dated September 1, 1994; and ATR Service Bulletin ATR72-32-1029, dated November 4, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 28, 1995.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-13891 Filed 6-12-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 95-NM-65-AD; Amendment 39-9261; AD 95-12-11]

Airworthiness Directives; Airbus Model A340-211 and -311 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A340 series airplanes. This action requires a one-time inspection of the fuel flow from the main fuel supply hose/tube assembly, and repair, if necessary. This amendment is prompted by a report of a low pressure fuel valve found with the internal thermal relief valve assembled in the wrong position on one airplane. The actions specified in this AD are intended to prevent overpressurization of the fuel supply line due to the incorrect positioning of the internal thermal relief valve. Such overpressurization could cause the fuel pipe coupling to separate and allow fuel to leak into the engine pylon, thus posing a fire hazard.

DATES: Effective June 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-65-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness

authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A340-211 and -311 series airplanes. The DGAC advises that there has been a report indicating that a low pressure (LP) fuel valve, part number HTE 900212, has been found on one test airplane with the internal thermal relief valve assembled in the wrong position. Additionally, an internal seal associated with this valve assembly was found to be installed in the wrong position.

The LP fuel valve is installed in the LP fuel supply line for each engine. Each LP fuel valve isolates its respective engine from the fuel supply at the front spar. The internal thermal relief valve is installed in the LP fuel valve to give protection against overpressurization of the supply line. This relief valve is set to release fuel from the engine side of the fuel supply line whenever overpressurization occurs and the LP fuel valve is in the closed position.

If the thermal relief valve and/or the internal seal is not installed in the correct position, overpressurization can occur when the engine is shut down. In the worst case, an overpressurization condition can lead to separation of a fuel pipe coupling and a subsequent leakage of fuel in the engine pylon. This situation would pose a fire hazard.

Investigation has revealed that the incorrect installation of the thermal relief valve and associate sealant occurred during production of certain airplanes. Production procedures have now been changed to ensure that all future LP valve assemblies are correctly installed.

Airbus Industrie has issued Service Bulletin A340-28-4029, Revision 1, dated September 14, 1994, which describes procedures for a one-time inspection to determine if the internal thermal relief valve is installed correctly. The inspection consists of a detailed visual inspection of the flow of fuel from the main fuel supply hose/tube assembly. If the flow of fuel is continuous, the LP fuel valve and/or the internal seal must be replaced, and additional repairs performed if fuel pipes have been damaged. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive (CN) 94-210-011(B), dated September 14, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral

airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent overpressurization of the fuel supply line due to the incorrect positioning of the internal thermal relief valve. Such overpressurization could cause the fuel pipe coupling to separate and allow fuel to leak into the engine pylon, thus posing a fire hazard.

This AD requires a detailed visual inspection of the flow of fuel from the main fuel supply hose/tube assembly and, if necessary, replacement of the LP fuel valve and/or the internal seal and additional repairs. The actions are required to be accomplished in accordance with the service bulletin described previously.

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

There currently are no Model A340 series airplanes on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 6 work hours to

accomplish the required inspection, at an average labor charge of \$60 per work hour. Based on these figures, the total cost impact of this AD would be \$360 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-65-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95-12-11 Airbus: Amendment 39-9261, Docket 95-NM-65-AD.

Applicability: Model A340-211 and -311 series airplanes; having manufacturer's serial number (MSN) 005 through 019 inclusive; certificated in any category.

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

alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent overpressurization of the fuel supply line due to the incorrect positioning of the internal thermal relief valve, which could cause the fuel pipe coupling to separate and allow fuel to leak into the engine pylon, thus posing a fire hazard, accomplish the following:

(a) Within 450 hours time-in-service after the effective date of this AD, perform a detailed visual inspection of the flow of fuel from the main fuel supply hose/tube assembly, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340-28-4029, Revision 1, dated September 14, 1994.

(b) If the flow of fuel is not continuous, no further action is required by this AD.

Note 2: Single drops of fuel are acceptable.

(c) If the flow of fuel is continuous, prior to further flight, perform the applicable replacement and repair procedures specified in Paragraph 2.C., "Repair," of the Accomplishment Instructions of Airbus Service Bulletin A340-28-4029, Revision 1, dated September 14, 1994.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

(f) The inspection, replacement, and repair procedures shall be done in accordance with Airbus Service Bulletin A340-28-4029, Revision 1, dated September 14, 1994, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1-5, 7-11, 40-45, 47-50.	1	September 14, 1994.
6, 12-39, 46, 51-54.	Original	August 12, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind

Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 28, 1995.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-13888 Filed 6-12-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 95-NM-64-AD; Amendment 39-9260; AD 95-12-10]

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes. This action requires a one-time inspection to ensure the proper installation of the electrical cable wiring of the evacuation slide system on the passenger and crew doors. This amendment is prompted by a report of incorrect installation of this wiring on two airplanes. The actions specified in this AD are intended to ensure that the electrical cable wiring is installed correctly so that it will not restrain the slide pack and prevent proper deployment of the slide. This condition, if not corrected, could impede the successful egress of passengers from the airplane during an emergency evacuation.

DATES: Effective June 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-64-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane

Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that, during a test of the evacuation slide/raft system on a Model A340 series airplane, one operator noticed that the slide/raft emergency lights were inoperative. Examination revealed that the electrical wiring connecting the slide/raft to the door was holding the full weight of the slide pack. This resulted in the deformation of the electrical connector. Additionally, further investigation revealed that the electrical cable wiring was incorrectly routed through the transportation handles of the slide/raft pack. This same operator found a similar incorrect installation during a maintenance check of another airplane.

During the slide deployment process, the slide pack has to release fully from the airplane in order to allow the gas reservoir to be actuated. If the electrical cable wiring is incorrectly routed through the transportation handles of the slide/raft pack, it can restrain the slide pack and prevent proper deployment of the slide. This condition, if not corrected, could impede the successful egress of passengers from the airplane during an emergency evacuation.

Since the evacuation slide systems on both the Model A330 and the Model A340 are similar, both airplane models are subject to the identified unsafe condition.

Airbus Industrie has issued All Operators Telex (AOT) 25-08, dated April 25, 1994, which describes procedures for performing a one-time inspection to ensure the correct installation of the evacuation slide/raft electrical cable wiring on the passenger/crew doors. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directives (CN) 94-141-002(B) (applicable to Model A330's) and 94-142-008(B) (applicable to Model A340's), both dated June 22, 1994, in order to assure

the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to ensure the correct installation of the slide/raft electrical wiring on the passenger/crew doors. This AD requires a one-time inspection to determine if this wiring is correctly installed, and correction of any discrepancies identified. The actions are required to be accomplished in accordance with the Airbus AOT described previously.

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

There currently are no affected Model A330 or A340 series airplanes on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require

approximately 2 work hours to accomplish the required actions, at an average labor charge of \$60 per work hour. Based on these figures, the total cost impact of this AD would be \$120 per airplane. Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-64-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does

not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95-12-10 Airbus Industrie: Amendment 39-9260. Docket 95-NM-64-AD.

Applicability: Model A330 series airplanes having manufacturer's serial number (MSN) 030, 037, and 045; and Model A340 series airplanes having MSN 005 through 031 inclusive, and 038; certificated in any category.

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

effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent the electrical cables in the crew/passenger door from restraining the evacuation slide/raft pack and preventing proper deployment of the slide/raft, accomplish the following:

(a) Within 450 hours time-in-service after the effective date of this AD, conduct a one-time inspection to determine the correct installation of the electrical cable wiring on the right- and left-hand escape slide rafts, in accordance with Airbus All Operators Telex (AOT) 25-08, dated April 25, 1994. Prior to further flight, correct any discrepancies identified in the electrical cable wiring installation in accordance with the Airbus AOT.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

(d) The inspection and correction of discrepancies shall be done in accordance with Airbus All Operators Telex (AOT) 25-08, dated April 25, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 28, 1995.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 95-13887 Filed 6-12-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 94-NM-142-AD; Amendment 39-9257; AD 95-12-07]

Airworthiness Directives; Airbus Model A340-211 and -311 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A340-211 and -311 airplanes. This action requires replacement of the inboard and outboard aileron servo controls associated with hydraulic systems with new units that contain an improved seal installation. This amendment is prompted by reports of external leakage of hydraulic fluid on the inboard and/or outboard aileron servo controls on in-service airplanes. The actions specified in this AD are intended to prevent loss of hydraulic fluid, which may lead to the loss of the corresponding hydraulic system and its associated functions, and reduced controllability of the airplane.

DATES: Effective on June 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-142-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified

the FAA that an unsafe condition may exist on certain Airbus Model A340-211 and -311 airplanes. The DGAC advises that it has received reports of external leakage of hydraulic fluid on the inboard and/or outboard aileron servo controls on several in-service airplanes. Investigation has revealed that the cause of this leakage is attributed to a partly extruded static seal located between the tailstock and the barrel of the aileron servo control. This condition, if not corrected, could result in loss of hydraulic fluid, which may lead to the loss of the corresponding hydraulic system and its associated functions, and reduced controllability of the airplane.

Airbus has issued Service Bulletin A340-27-4013, dated October 27, 1993, which describes procedures for replacement of the left- and right-hand inboard and outboard aileron servo controls associated with the green, yellow, and blue hydraulic systems with new units that contain an improved seal installation. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 94-010-005(B), dated January 19, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent loss of hydraulic fluid, which may lead to the loss of the corresponding hydraulic system and its associated functions, and reduced controllability of the airplane. This AD requires replacement of the left- and right-hand inboard and outboard aileron servo controls associated with the green, yellow, and blue hydraulic systems with new units that contain an improved seal installation. The actions are required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may

misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

There currently are no Model A340-211 and -311 airplanes on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 33 work hours to accomplish the required actions, at an average labor charge of \$60 per work hour. Based on these figures, the total cost impact of this AD would be \$1,980 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in

evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-142-AD." The postcard will be date stamped and returned to the commenter.

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

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95-12-07 Airbus Industrie: Amendment 39-9257. Docket 94-NM-142-AD.

Applicability: Model A340-211 and -311 airplanes on which Airbus Modification 42247 has not been installed (reference Airbus Service Bulletin A340-27-4013, dated October 27, 1993), certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of hydraulic fluid, which may lead to the loss of the corresponding hydraulic system and its associated functions, and reduced controllability of the airplane, accomplish the following:

(a) Within 3 months after the effective date of this AD, replace the left- and right-hand inboard and outboard aileron servo controls associated with the green hydraulic system with new units that contain an improved seal installation, in accordance with Airbus Service Bulletin A340-27-4013, dated October 27, 1993.

(b) Within 6 months after the effective date of this AD, replace the left- and right-hand inboard and outboard aileron servo controls associated with the yellow and blue hydraulic systems with new units that contain an improved seal installation, in accordance with Airbus Service Bulletin A340-27-4013, dated October 27, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then

send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

(e) The replacements shall be done in accordance with Airbus Service Bulletin A340-27-4013, dated October 27, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 28, 1995.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-13889 Filed 6-12-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 95-NM-45-AD; Amendment 39-9259; AD 95-12-09]

Airworthiness Directives; Airbus Model A300 B4-1C, B4-2C, B4-203 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes. This action requires repetitive inspections to detect cracking in the hinge fittings of the nose landing gear (NLG) aft doors, and replacement of cracked fittings. This amendment is prompted by several reports of loss of an NLG aft door during landing, due to failure of the door's hinge fittings. The actions specified in this AD are intended to prevent the loss of an NLG aft door due to the failure of the hinge fittings; such loss of a door can result in damage to the surrounding aircraft structure or injury to persons on the ground.

DATES: Effective on June 28, 1995.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of June 28, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-45-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B4-1C, B4-2C, and B4-203 series airplanes. The DGAC advises that there have been four incidents in which an aft (secondary) door of the nose landing gear (NLG) on in-service airplanes was lost during landing. The doors separated from the airplanes due to rupture of the doors' forward hinge fitting. The cause of the fitting failures has been attributed to fatigue cracking. Such cracking, if not detected and corrected in a timely manner, can lead to separation of the NLG aft door from the airplane. Loss of a door can result in damage to the surrounding aircraft structure or injury to persons on the ground.

Airbus Industrie has issued Service Bulletin A300-52-0161, dated October 3, 1994, which describes procedures for performing repetitive eddy current inspections of the NLG aft door hinge fittings. This service bulletin also describes procedures for replacing cracked fittings. The DGAC approved this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the

Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent the loss of an NLG aft door due to the failure of the door's hinge fittings. This AD requires repetitive eddy current inspections to detect cracking of the hinge fittings, and replacement of any hinge fitting found to be cracked. Inspections continue after replacement of a hinge fitting is accomplished. The actions are required to be accomplished in accordance with the service bulletin described previously.

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

There currently are no affected Model A300 B4-C, B4-2C, or B4-203 series airplanes on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 3 work hours to accomplish the required actions, at an average labor charge of \$60 per work

hour. Based on these figures, the total cost impact of this AD would be \$180 per airplane per inspection cycle.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-45-AD." The postcard will be date stamped and returned to the commenter.

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

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95-12-09 Airbus Industrie: Amendment 39-9259. Docket 95-NM-45-AD.

Applicability: Model A300 B4-1C, B4-2C and B4-203 series airplanes; having serial numbers 002 through 019, inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of a nose landing gear (NLG) aft door due to the failure of the door's hinge fittings, which can result in damage to the surrounding aircraft structure or injury to persons on the ground, accomplish the following:

(a) Prior to the accumulation of 8,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks in the hinge fitting of the NLG left- and right-hand aft doors, in accordance with Airbus Service Bulletin A300-52-0161, dated October 3, 1994.

(b) If no crack(s) is found during the inspection required by paragraph (a) of this AD, repeat the eddy current inspection thereafter at intervals not to exceed 700 flight cycles.

(c) If any crack is found during the inspection required by paragraph (a) of this AD, prior to further flight, replace the hinge fittings in accordance with Airbus Service Bulletin A300-52-0161, dated October 3, 1994. Within 8,000 flight cycles after this replacement, and thereafter at intervals not to exceed 700 flight cycles, perform an eddy current inspection to detect cracking of the hinge fittings, in accordance with the service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

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

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

(f) The inspection and replacement actions shall be done in accordance with Airbus Service Bulletin A300-52-0161, dated October 3, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 28, 1995.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-13890 Filed 6-12-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 93-ANE-44; Amendment 39-9271; AD 94-01-03 R2]

Airworthiness Directives; Teledyne Continental Motors (Formerly Bendix) S-20, S-200, S-600, and S-1200 Series Magnetos

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Teledyne Continental Motors (TCM) (formerly Bendix) S-20, S-200, S-600, and S-1200 series magnetos, that currently requires replacing Bendix ignition coils and rotating magnets, regardless of total time in service (TIS), with improved TCM ignition coils, rotating magnets and marking magnetos to indicate compliance, except for the S-1200 series magnetos on which the AD requires replacing only the ignition coils as that series magneto already incorporates rotating magnets with the improved TCM design. This amendment removes several notes after the applicability paragraph and inserts these as paragraphs into the applicability itself and into the compliance section to clarify that these actions are mandatory. In addition, this amendment allows installation of replacement serviceable Parts Manufacturer Approval (PMA) parts in addition to TCM parts. Also, this amendment clarifies that Bendix magnetos replaced with Slick magnetos satisfy the requirements of the AD, and that operators must perform the requirements of the AD on magnetos with Bendix magneto data plates that have been replaced with an overhaul facility's data plate. This amendment is prompted by comments that request clarification of the compliance notes and by the request to install replacement serviceable PMA parts. The actions specified by this AD are intended to prevent magneto failure and subsequent engine failure.

DATES: Effective on June 28, 1995.

The incorporation by reference of certain publications listed in the regulations was previously approved by

the Director of the Federal Register as of September 6, 1994 (59 FR 43029, August 22, 1994).

Comments for inclusion in the Rules Docket must be received on or before August 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-ANE-44, 12 New England Executive Park, Burlington, MA 01803-5299.

The service information referenced in this AD may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438-3411. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. **FOR FURTHER INFORMATION CONTACT:** Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Campus Building, 1701 Columbia Ave., Suite S-160, College Park, GA 30337-2748; telephone (404) 305-7371; fax (404) 305-7348.

SUPPLEMENTARY INFORMATION: On December 29, 1993, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 94-01-03, Amendment 39-8785 (59 FR 4555, February 1, 1994), to require replacing certain Bendix ignition coils and rotating magnets, regardless of time in service (TIS), with improved serviceable Teledyne Continental Motors (TCM) ignition coils and rotating magnets at either the next 100-hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours TIS after the effective date of the AD, whichever occurs first. For S-1200 series magnetos, the AD requires replacing only the ignition coils as the rotating magnets on that series magneto already incorporates the improved TCM design. Additionally, the AD requires re-marking magnetos to indicate compliance. That action was prompted by reports of accidents caused by failures of magnetos incorporating older Bendix components that had not been replaced in accordance with superseded AD 73-07-04, Amendment 39-1731 (38 FR 27600, October 5, 1973). That condition, if not corrected, could result in magneto failure and subsequent engine failure.

On August 11, 1994, the FAA issued AD 94-17-11, Amendment 39-9006 (59 FR 43029, August 22, 1994), that revises AD 94-01-03, and notes that an error in

the serial number listing in TCM Service Bulletin (SB) No. 637, dated December 1992, resulted in too many affected magnetos requiring AD compliance. The AD applies only to certain magnetos manufactured by Bendix in Sidney, New York, and not to any Bendix magnetos built in either Jacksonville, Florida, or Atlanta, Georgia. In addition, the S-600 series magnetos require replacement of only the rotating magnets and not the ignition coils. Finally, the FAA received reports that there is some confusion as to how the S-20, S-200, S-600, and S-1200 series magnetos are referenced in the TCM SB and the AD and clarified the applicability paragraph by adding additional identification information.

On November 3, 1994, the FAA issued a correction to Docket No. 93-ANE-44, Amendment 39-9006 (59 FR 55955, November 10, 1994), which changes the AD number to AD 94-01-03 R1, as it was a revision to the previous AD and should not have been assigned a new AD number.

Since the issuance of that AD, the FAA received comments requesting clarification of the compliance notes and the option of installing replacement serviceable Parts Manufacturer Approval (PMA) parts.

The FAA has reviewed and approved the technical contents of TCM Mandatory Service Bulletin (MSB) No. MSB644, dated April 4, 1994, that describes procedures for replacing certain Bendix ignition coils and rotating magnets with improved serviceable TCM ignition coils and rotating magnets and marking magnetos to indicate compliance with this MSB.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this AD revises AD 94-01-03 R1 to insert the text of several notes appearing after the applicability paragraph as compliance paragraphs to clarify that these actions are mandatory. In addition, this amendment allows installation of replacement serviceable PMA parts in addition to TCM parts. Also, this amendment clarifies that Bendix magnetos replaced with Slick magnetos satisfy the requirements of this AD, and that operators must perform the requirements of this AD on magnetos with Bendix magneto data plates that have been replaced with an overhaul facility's data plate. The actions are required to be accomplished in accordance with the MSB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment

hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-ANE-44." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this

action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-9006 (59 FR 43029, August 22, 1994), corrected (59 FR 55955, November 10, 1994), and by adding a new airworthiness directive, Amendment 39-9271, to read as follows:

94-01-03 R2 Teledyne Continental Motors:
Amendment 39-9271. Docket 93-ANE-44. Revises AD 94-01-03 R1, Amendment 39-9006.

Applicability: Teledyne Continental Motors (TCM), formerly Bendix magnetos: S-20, S-200, and S-600 series magnetos with red or black Bendix (not TCM) data plates having serial numbers (S/N's): lower than 2000000 without any letter prefix; or S/N's lower than A16058 having the letter "A" prefix.

S-20, S-200, and S-600 series magnetos with blue Bendix (not TCM) data plates marked "REMANUFACTURED" having S/N's lower than 901001.

S-1200 series magnetos with red Bendix (not TCM) data plates having S/N's: lower than 2000000 without any letter prefix; or S/N's lower than A132844 having the letter "A" prefix.

S-1200 series magnetos with blue Bendix (not TCM) data plates marked "REMANUFACTURED" having S/N's lower than 901001.

These magnetos are installed on but not limited to reciprocating engine powered aircraft manufactured by Beech, Cessna, Maule, Mooney, and Piper.

Note 1: The FAA has received reports of some confusion as to what is meant by S-20, S-200, S-600, and S-1200 series magnetos as referenced in TCM Mandatory Service Bulletin (MSB) No. MSB644, dated April 4, 1994, and this AD. A typical example is S6RN-25, where the S designates single type ignition unit, the 6 designates the number of engine cylinders, the R designates right hand rotation, the N is the manufacturer designator (this did not change when TCM purchased the Bendix magneto product line), and the number after the dash indicates the series (a -25 is a S-20 series magneto, while a -1225 is a S-1200 series magneto).

Note 2: This AD applies to each magneto identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For magnetos that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (k) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any magneto from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent magneto failure and subsequent engine failure, accomplish the following:

(a) No action is required for those magnetos in compliance with AD 94-01-03 or 94-01-03 R1.

(b) An optional method of compliance with this AD is to replace the Bendix magnetos with Slick magnetos where FAA approval has been granted for that application.

(c) If a Bendix magneto data plate has been replaced with an overhaul facility's data plate, this AD is still applicable to that magneto since the magneto is a Bendix magneto.

(d) Yellow Bendix or TCM service spare data plates may have been installed during a field overhaul; use model and S/N to determine applicability.

(e) Magnetos built by Bendix in Jacksonville, Florida, and Magnetos built by TCM in Atlanta, Georgia, as indicated on the data plate, are not affected by this AD.

(f) The paint on some early data plates may have been obliterated and the data plate will appear silver in color; use model and serial number to determine applicability.

(g) For Bendix S-20 and S-200 series magnetos, replace Bendix ignition coils and rotating magnets identified in the Detailed Instructions of TCM MSB No. MSB644, dated April 4, 1994, with serviceable TCM or Parts Manufacturer Approval (PMA) ignition coils and rotating magnets at the next 100 hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours time in service (TIS) after the effective date of this AD, whichever occurs first.

(h) For the Bendix S-600 series magnetos, replace Bendix rotating magnets identified in

the Detailed Instructions of TCM MSB No. MSB644, dated April 4, 1994, with serviceable TCM or PMA rotating magnets at the next 100 hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours TIS after the effective date of this AD, whichever occurs first.

Note: The ignition coils on the S-600 series magnetos already incorporate the improved design.

(i) For the Bendix S-1200 series magneto, replace Bendix ignition coils identified in the Detailed Instructions of TCM MSB No. MSB644, dated April 4, 1994, with serviceable TCM or PMA ignition coils at the next 100 hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours TIS after the effective date of this AD, whichever occurs first.

Note: The rotating magnets on the S-1200 series magnetos already incorporate the improved design.

(j) After compliance with paragraphs (d), (e), or (f) of this AD, as applicable, and prior to further flight, mark the magneto in accordance with the Identification Instructions of TCM MSB No. MSB644, dated April 4, 1994.

(k) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

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

(m) The actions required by this AD shall be done in accordance with the following service document:

Document No.	Pages	Revision date
TCM SB No. MSB644.	1-3	April 4, 1994.
Total pages: 3.		

This incorporation by reference was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of September 6, 1994 (59 FR 43029, August 22, 1994). Copies may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438-3411. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(n) This amendment becomes effective on June 28, 1995.

Issued in Burlington, Massachusetts, on June 5, 1995.

Ronald L. Vavruska,

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

[FR Doc. 95-14496 Filed 6-9-95; 2:50 pm]

BILLING CODE 4910-13-U

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") issues final amendments to the Appliance Labeling Rule ("Rule") to allow manufacturers of general service incandescent lamps (including incandescent reflector lamps) with a design voltage other than 120 volts an option as to where on product labels specific disclosures must be made, to clarify the light output measure that manufacturers of incandescent reflector lamps must disclose on lamp labels, to delete the requirement that the lumen disclosure for incandescent reflector lamps be followed by the term "at beam spread," and to allow manufacturers of incandescent reflector lamps the option of adding a reference to "beam spread" to the Advisory Statement about saving energy costs.

EFFECTIVE DATE: June 13, 1995.

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, Attorney, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Room S-4302, Washington, D.C. 20580, telephone 202/326-3013 (voice), 202/326-3259 (fax).

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission issues final amendments to the lamp labeling requirements of the Appliance Labeling Rule ("Rule"), 16 CFR part 305. The Commission proposed these amendments and solicited comments on them in a notice published on March 22, 1995, 60 FR 15200 (1995), in response to a petition dated January 31, 1995 ("Petition") and a letter dated January 30, 1995 ("January 30 letter") from the

Lamp Section of The National Electrical Manufacturers Association ("NEMA").¹

The Petition requested that the Commission allow manufacturers of incandescent lamp products with a design voltage other than 120 volts an option as to where on product labels the required disclosures must be made under the lamp labeling requirements of the Appliance Labeling Rule ("lamp labeling rules").² The January 30 letter requested clarification of the light output disclosure required for incandescent reflector lamp products (spot lights and flood lights) and acceptance of minor changes to the disclosures required for incandescent reflector lamps.

In response to the Petition and the January 30 letter, the Commission proposed amending the Rule to: (a) Allow manufacturers of incandescent lamps that have a design voltage of other than 120 volts the option of making required disclosures at 120 volts on a label panel other than the primary display panel under specific conditions; (b) clarify the measure of light output that must be disclosed for incandescent reflector lamps; (c) eliminate a required reference to "at beam spread" in connection with the disclosure of light output for incandescent reflector lamps; and (d) allow manufacturers of incandescent reflector lamps the option of adding a reference to selecting an incandescent reflector lamp with the "beam spread" the purchaser needs to a required Advisory Statement that explains how purchasers can save energy costs.

II. Background

On May 13, 1994 the Commission published final labeling rules ("lamp labeling rules") for various types of lamp products ("light bulbs"), including general service fluorescent lamps, general service incandescent lamps (including reflector incandescent

lamps), and medium base compact fluorescent lamps,³ as mandated by Energy Policy Act of 1992 ("EPA 92")⁴ amendments to the Energy Policy and Conservation Act of 1975 ("EPCA").⁵ The Commission issued the lamp labeling rules as amendments to the Appliance Labeling Rule, 16 CFR part 305. The lamp labeling rules became effective on May 15, 1995.⁶

These rules require disclosures on the primary display panel of package labels of light output (in lumens), energy used (in watts), and life (in hours), plus an Advisory Statement that explains how purchasers can save energy costs. For incandescent reflector lamps (used to focus or spread light on a particular object or objects), the rules additionally require that the disclosure of light output (in lumens) be for the lamp's "beam spread," and that the disclosure of lumens be followed clearly and conspicuously by the phrase "at beam spread." Based on the statutory directive that the Commission promulgate these labeling rules and that labeling information for incandescent lamps be based on performance at 120 volts,⁷ the lamp labeling rules require that the disclosures of light output, energy used, and life for general service incandescent lamps (including incandescent reflector lamps) appear on the primary display panel of the package label based on operation at 120 volts, regardless of the lamp's design voltage. The lamp labeling rules, however, allow manufacturers the option of adding disclosures based on operation at a different design voltage, either on the primary display panel or on a separate panel on the package.

The lamp labeling rules in the Appliance Labeling Rule overlap certain disclosures already required on

packages of non-reflector general service incandescent bulbs by the Commission's Light Bulb Rule.⁸ The Light Bulb Rule, unlike the lamp labeling rules in the Appliance Labeling Rule, requires that package labels clearly and conspicuously disclose average initial wattage, light output expressed in average initial lumens, and average laboratory life expressed in hours, based on operation at the bulb's "stated design voltage."⁹ Under the Light Bulb Rule, the disclosures must appear on at least two panels of the outer sleeve or container in which bulbs are displayed and additionally on all panels of the inner and the outer sleeve that contain any reference to wattage, lumens, life, or voltage.¹⁰

The Commission published a request for comments on the Light Bulb Rule as part of its regulatory review program on April 6, 1995, 60 FR 17491 (1995). This notice specifically solicits comments on whether the rule should be amended to reduce or eliminate any overlap it may have with the lamp labeling rules under the Appliance Labeling Rule. In addition, it seeks comments on several other questions, including whether the Light Bulb Rule is still needed, the benefits and costs of the Rule to consumers, the burdens and benefits to manufacturers, any proposed changes to the Rule, and the effect of any recent changes in technology or economic conditions. The comment period ends June 6, 1995.

III. Proposed Amendments

A. Disclosures at Design Voltage Other Than 120 Volts

In response to NEMA's Petition, the Commission proposed amending the lamp labeling rules in the Appliance Labeling Rule, as NEMA requested, to approve an optional labeling scheme for manufacturers of incandescent lamp products with a design voltage other than 120 volts. Under the proposed amendments, manufacturers could choose to limit disclosures of light output, energy used, and life on the primary display panel of the package to operation of the lamp at the lamp's design voltage if:

⁸ 16 CFR part 409. The Light Bulb Rule, issued in 1970, was intended to prevent deceptive or unfair practices in the sale of incandescent light bulbs. Other types of lamps covered by the Appliance Labeling Rule amendments (including incandescent reflector lamps) are not covered by the Light Bulb Rule. In this notice, references to "lamp labeling rules" refer to the lamp labeling requirements of the Appliance Labeling Rule, 16 CFR part 305, and references to the "Light Bulb Rule" refer to the Light Bulb Rule, 16 CFR part 409.

⁹ *Id.* at 409.1 n. 1.

¹⁰ *Id.* at n. 4.

¹ NEMA is a trade association representing the nation's largest manufacturers of lamp products. Its members produce more than 90 percent of the lamp products subject to the lamp labeling requirements of the Appliance Labeling Rule.

² The Petition also requested that the Commission stay, through November 30, 1995, "compliance against manufacturers who, in good faith and despite the exercise of due diligence, are unable to change all of their lamp packages prior to the May 15, 1995 effective date of the Lamp Labeling Rule." In response to the Petition, the Commission, on March 22, 1995, exercised its prosecutorial discretion and issued an Enforcement Policy Statement ("Statement"), 60 FR 15198 (1995). The Statement explained that the Commission had determined to avoid taking law enforcement actions until December 1, 1995 against manufacturers of general service incandescent lamp products for labeling not in compliance with the disclosure requirements of the Appliance Labeling Rule. The Statement remains in effect until December 1, 1995.

³ Final rule (including Statement of Basis and Purpose ("SBP")), 59 FR 25176 (1994). On December 29, 1994, the Commission published minor, technical amendments to resolve certain inconsistencies in paragraph numbering and language that had arisen during the course of four separate proceedings amending the Rule's requirements concerning other products. 59 FR 67524 (1994). The specific lamp products covered by the lamp labeling rules are described in § 305.3(k)-(m) of the Appliance Labeling Rule, 16 CFR 305.3(k)-(m) (1995).

⁴ Pub. L. No. 102-486, 106 Stat. 2776, 2817-2832 (Oct. 24, 1992).

⁵ 42 U.S.C. 6201, 6291-6309.

⁶ The EPA amendments to EPCA required that the lamp labeling rules become effective 12 months after the rules' publication in the **Federal Register**. Because May 13, 1995, was a Saturday, the effective date was Monday, May 15. 42 U.S.C. 6294(a)(2)(C)(i). *But see* note 2, *supra*.

⁷ Under section 324(a)(2)(C)(i) of EPCA, as amended by EPA 92: "Labeling information for incandescent lamps shall be based on performance when operated at 120 volts input, regardless of the rated lamp voltage." 42 U.S.C. 6294(a)(2)(C)(i).

- The disclosures of light output, energy used, and life when operated at 120 volts appeared elsewhere on the package.

- The following explanatory statement appeared clearly and conspicuously on the primary display panel:

This product is designed for (125/130) volts. When used on the normal line voltage of 120 volts, the light output and efficiency are noticeably reduced. See (side/back) panel for 120 volt ratings.¹¹

- All panels of the package that contained a claim about light output, energy used, or life clearly and conspicuously identified the lamp as "(125 volt/130 volt)."

B. Light Output Disclosures for Reflector Lamps

In response to NEMA's January 30 letter, the Commission proposed amending the Appliance Labeling Rule to clarify that the required light output disclosure for incandescent reflector lamps is of "total forward lumens" instead of lumens "at beam spread."¹² The Commission also proposed amending the Rule to delete the requirement that the lumen light output disclosure be followed by the phrase "at beam spread." Lastly, the Commission proposed amending the Rule to allow manufacturers, at their option, to insert in the required Advisory Statement a reference to selecting a lamp with the "beam spread," as well as the light output, purchasers need.

IV. Comments and Final Amendments

A. Comments Received

The Commission received eight comments in response to the notice soliciting comments on the proposed amendments.¹³ Four comments

¹¹ NEMA proposed the use of a shorter explanatory statement: "(125/130) volt design. At 120 v., light output and efficiency are noticeably reduced. See (side/back) panel for data at 120 v." Petition at 6. NEMA stated that it would accept a more detailed version of the explanatory statement. *Id.* at note 6. The Commission proposed requiring the more detailed explanatory statement that NEMA suggested.

¹² The proposed amendments would clarify that the lumen disclosure for incandescent reflector lamps is consistent with the light output measurement used by the Department of Energy ("DOE") in determining the efficiency of these products under the minimum efficiency standards set by the EPA 92 amendments to EPCA. See Interim final rule, 59 FR 49468 (1994). DOE published its interim final rule for testing to comply with the minimum efficiency standards on September 28, 1994, after the Commission published the lamp labeling rule amendments to the Appliance Labeling Rule.

¹³ Arkalite Manufacturing Co., Inc. ("Arkalite"), General Electric Company ("GE"), Hytron Electric Products ("Hytron"), Lawrence Berkeley Laboratory ("LBL"), Maintenance Engineering ("ME"), Marvel

specifically support both sets of proposed amendments.¹⁴ None of the comments object to the proposed amendments. Six comments pertain to issues the Commission addressed in the original rulemaking proceeding and do not contain new evidence to support their positions.¹⁵ One comment requests that the Commission exempt small producers and suppliers from the labeling requirements.¹⁶ The Commission does not have the authority under EPCA to grant such relief. Two comments address the definition of incandescent reflector lamps "designed for rough or vibration service applications." These lamps are exempted by EPCA from the Commission's labeling rules and the minimum efficiency standards.¹⁷ DOE currently is addressing the issue of what lamps qualify for that exemption.¹⁸

Lastly, one comment requests that the Commission require the first annual report from lamp manufacturers no

Lighting Corporation ("Marvel"), the National Electrical Manufacturers Association ("NEMA"), and Rensselaer Polytechnic Institute ("Rensselaer").

¹⁴ LBL (agrees with proposed amendments for lamps with a design voltage other than 120 volts; concurs with proposed clarification of incandescent reflector lamp lumens and labeling changes); Marvel (supports greater flexibility in disclosures and any changes that would clarify labeling requirements proposed by NEMA); NEMA (supports proposed amendments); Rensselaer (supports NEMA's proposal for alternative disclosure format for lamps with a design voltage other than 120 volts and FTC's proposal to require the more detailed explanatory statement; agrees with use of total forward lumens for reflector lamps, consistent with light output definition in EPA 92).

¹⁵ Arkalite (comparison 120 volt/130 volt information on packages of 130 volt A-bulbs sold as long life is confusing and consumers do not know how many lumens to look for); Hytron (long-life lamps may be more efficient for fixtures not readily accessible when comparing lumen-per-watt cost to lamp replacement cost); LBL (preferable to use term "power" to describe wattage because term "energy used" is technically incorrect and misleading); Marvel (new labeling requirements will be confusing and meaningless to consumers); ME (laboratory-measured life ratings under ideal conditions are misleading because lab conditions have little correlation to actual use); Rensselaer (marketing "long life" 130 volt lamps for use on 120 volt circuits will mislead consumers if long-life claims are on package with data at 130 volts).

¹⁶ Marvel (exempt small producers and suppliers from labeling requirements to alleviate tremendous cost imposed and allow them to survive financially; cumulative sales of small distributors and manufacturers with probably less than 2% of total lamp sales will not have much effect on energy consumption for country as a whole).

¹⁷ Hytron (multiple support filament, long-life incandescent lamps should be considered to be rough/vibration service lamps); ME (lamps with multiple supports designed for rough service last much longer under actual operating conditions than those with no filament supports; exclude lamps with four or more filament supports from labeling requirements to keep consumers from comparing lab life ratings of lamps that may have different actual ratings).

¹⁸ Notice of Proposed Rule and Public Hearing, 59 FR 49478 (1994).

earlier than March 1, 1997 because imposing a new reporting requirement immediately after changing the substantial number of labels affected would be unfair and unduly burdensome.¹⁹ This reporting requirement is mandated directly by EPCA, although the Commission has authority to specify the date on which the annual reports are required. The Commission has stayed this reporting requirement under the lamp labeling rules until DOE adopts final test procedures for lamp products under the EPA 92 amendments to EPCA.²⁰ Although DOE has published interim final testing rules, DOE has not yet issued its final rules. The Commission will address the issue of when the first annual report will be due under the Rule after DOE takes final action on its testing rules.

B. Final Amendments

Based on NEMA's Petition, NEMA's January 30 letter, and the comments the Commission received in response to the March 22 notice, the Commission has determined to adopt the amendments to the Appliance Labeling Rule it proposed in the notice.²¹ The amended Rule will give manufacturers of incandescent lamp products with a design voltage other than 120 volts greater flexibility in designing packages to make the required labeling disclosures and will clarify that the light output disclosure for incandescent reflector lamps is total forward lumens, which is the lumen measurement used to determine whether those lamps meet EPCA's minimum efficiency standards. The amended Rule thus will reduce the regulatory burden imposed by the Rule. At the same time, the amended Rule will ensure that purchasers are provided with accurate information they need to select the most energy efficient lamps that meet their requirements, and it will meet the statutory standard that required disclosures for incandescent lamps be based on operation at 120 volts.

1. Disclosures at Design Voltage Other Than 120 Volts

The EPA 92 amendments to EPCA and its legislative history are silent about the specific purpose and meaning of the mandate that labeling information shall be based on operation at 120 volts. The Commission, therefore, has analyzed the record evidence

¹⁹ GE.

²⁰ 59 FR at 25176, 25201-02.

²¹ Although the amendments are effective today, the Commission's Enforcement Policy Statement published on March 22, 1995, applies to the amendments. See note 2, *supra*.

concerning the methods of sales distribution and the uses of these lamp products, as well as the manner in which purchasers could best be provided with accurate and important information to enable them "to select the most energy efficient lamps which meet their requirements."

According to the original rulemaking record, the majority of the electric service voltage supplied by local utilities in the United States for lighting is 120 volts. The rest is supplied at 125 volts, primarily in the Pacific Northwest and the Tennessee Valley. No evidence was presented that any local utility supplies electricity at 130 volts, or at service voltage other than 120 or 125 volts. The lamp manufacturers who participated in the proceeding stated that they distribute incandescent lamps with a design voltage of 120 volts for sale in 120 voltage service regions. They also stated, however, that they cannot guarantee that lamps with a design voltage of 125 volts are only offered for sale in 125 voltage service regions. Manufacturers that distribute incandescent lamps with a design voltage of 130 volts stated that they distribute these lamps, which are marketed as long-life lamps, in both 120 and 125 voltage service regions.

In light of the statutory standard and the rulemaking record, the Commission originally determined to require the disclosure on the primary display panel of specific lamp performance information based on operation of lamps at 120 volts. Otherwise, purchasers in most parts of the country who purchase lamps with a design voltage of 125 or 130 volts might be misled by exaggerated light output claims. Although the EPA 92 amendments to EPCA state that labeling information for incandescent lamps shall be based on operation at 120 volts, regardless of the rated (or design) lamp voltage, the statute does not prohibit the Commission from allowing additional disclosures based on operation of the lamp at a different design voltage. EPCA also leaves to the Commission's discretion both the specific disclosures that should be required and the manner and format in which the disclosures should be made. Thus, in order to ensure that purchasers in 125-volt service regions are provided accurate performance information, and to allow manufacturers flexibility in marketing longer-life, 130-volt design voltage lamps, the Commission determined to allow manufacturers, at their option, to disclose performance information at an additional design voltage. This information could be included on the

primary display panel, or on a different panel on the package.

NEMA, however, asserted in its Petition that marketing considerations may lead manufacturers to put design voltage information on the primary display panel (along with the required data at 120 volts). A review of sample labels with dual 120 volt and 125 volt/130 volt disclosures on the primary display panel indicates that this disclosure format may be confusing to consumers. The Commission, therefore, is amending the Rule to allow manufacturers the option of limiting disclosures of light output, energy used, and life on the primary display panel of the package to operation of the lamp at its design voltage if: (a) The disclosures of light output, energy used, and life when operated at 120 volts appear elsewhere on the package; (b) a specific explanatory statement about the effect of the lamp's design voltage on light output and efficiency when the lamp is operated at 120 volts and the location of performance information for operation at 120 volts appears clearly and conspicuously on the primary display panel; and (c) all panels of the package that contain a claim about light output, energy used, or life clearly and conspicuously identify the lamp as "(125 volt/130 volt)."

The amendments adopted today comply with the statutory mandate because they require clear and conspicuous disclosures on labels of specific performance information for the lamps when they are operated at 120 volts. In addition, the amendments ensure that purchasers are provided with accurate information they need when they make purchase decisions.

2. Light Output Disclosures for Reflector Lamps

Not all light produced by an incandescent reflector lamp is reflected forward as useable light.²² Some light output may escape around the base of the lamp and be lost into the lamp fixture. Some light may be reflected back and forth inside the cone of the lamp and not be emitted as useable light output. Thus, in an attempt to ensure that only useable light output would be disclosed, the original lamp labeling amendments to the Appliance Labeling Rule required that the labeled light

²²Incandescent reflector lamps (also known as reflectorized incandescent lamps) are cone-shaped with a reflectorized coating applied to the cone-shaped part of the bulb. Incandescent reflector lamps thus allow light output to be directed and focused forward through the face of the lamp. They may be used, for example, to provide lighting from recessed ceiling fixtures or as spotlights or floodlights.

output for incandescent reflector lamps be for the lamp's "beam spread," and be followed clearly and conspicuously by the phrase "at beam spread."

The Commission now concludes that there has been confusion about the use of terms such as "beam spread," "beam angle," "total lumens," and "total forward lumens" for incandescent reflector lamps. Accordingly, the Commission amends the Appliance Labeling Rule to state that the required light output disclosure for incandescent reflector lamps is of "total forward lumens," instead of lumens "at beam spread." With this amendment, the Commission believes the Rule will state more clearly that the light output disclosure required by the Appliance Labeling Rule is for the useable light output reflected forward, and not merely of forward light focused within the more narrow "beam spread" of the particular lamp. By use of the term "total forward lumens," the amended Rule also will more clearly state that the light output disclosure required by the Appliance Labeling Rule for incandescent reflector lamps is the same as the light output measurement used by DOE in determining whether these products meet the minimum efficiency standards under EPCA.²³

Because of the confusion that has resulted from the reference to "beam spread," the Commission also amends the Rule to delete the requirement that the lumen disclosure for incandescent reflector lamps be followed by the phrase "at beam spread." Further, because the amended Rule clarifies that the measurement method for determining light output for all reflector lamps is the same, regardless of the particular lamp's beam spread or beam angle, it is unnecessary for the Rule to require a disclosure that the measurement is of "total forward lumens."

Lastly, the Commission amends the Rule to allow manufacturers of incandescent reflector lamps, at their option, to insert in the Advisory Statement the reference to selecting a lamp with the "beam spread," as well as the light output, that purchasers need. The amended Advisory Statement thus will better assist purchasers in selecting the most efficient lamp that meets their needs, after they first select the type of reflector lamp (e.g., spotlight or floodlight) that they desire.

List of Subjects in 16 CFR Part 305

Advertising, Consumer protection, Energy conservation, Household appliances, Labeling, Lamp products,

²³See note 12, supra.

Penalties, Reporting and recordkeeping requirements.

V. Text of Final Amendments

Accordingly, the Commission amends 16 CFR part 305 as follows:

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT (“APPLIANCE LABELING RULE”)

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Section 305.11 is amended by revising paragraphs (e)(1)(iii), (e)(1)(iv), and (e)(1)(vi) to read as follows:

§ 305.11 Labeling for covered products.

* * * * *

(e) Lamps—

(1)(i) * * *

(iii) The light output, energy usage and life ratings of any covered product that is a medium base compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp), shall be measured at 120 volts, regardless of the lamp’s design voltage. If a lamp’s design voltage is 125 volts or 130 volts, the disclosures of the wattage, light output and life ratings shall in each instance be:

(A) At 120 volts and followed by the phrase “at 120 volts.” In such case, the labels for such lamps also may disclose the lamp’s wattage, light output and life at the design voltage (e.g., “Light Output 1710 Lumens at 125 volts”); or

(B) At the design voltage and followed by the phrase “at (125 volts/130 volts)” if the ratings at 120 volts are disclosed clearly and conspicuously on another panel of the package, and if all panels of the package that contain a claimed light output, wattage or life clearly and conspicuously identify the lamp as “(125 volt/130 volt),” and if the principal display panel clearly and conspicuously discloses the following statement:

This product is designed for (125/130) volts. When used on the normal line voltage of 120 volts, the light output and energy efficiency are noticeably reduced. See (side/back) panel for 120 volt ratings.

(iv) For any covered product that is an incandescent reflector lamp, the required disclosure of light output shall be given for the lamp’s total forward lumens.

* * * * *

(vi) For any covered product that is a compact fluorescent lamp or a general service incandescent lamp (including an incandescent reflector lamp), there shall be clearly and conspicuously disclosed on the principal display panel the following statement:

To save energy costs, find the bulbs with the (beam spread and) light output you need, then choose the one with the lowest watts.”

* * * * *

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95-14440 Filed 6-12-95; 8:45 am]

BILLING CODE 6750-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA63-1-7032a; FRL-5220-4]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania: Withdrawal of Determination of Attainment of Ozone Standard by the Pittsburgh-Beaver Valley and Reading Ozone Nonattainment Areas and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On May 26, 1995, EPA published a final rule determining the applicability of certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title I of the Clean Air Act (CAA) for the Pittsburgh/Beaver Valley and Reading ozone nonattainment areas. This action was published without prior proposal. Because EPA received adverse comments on this action, EPA is withdrawing the May 26, 1995, final rulemaking action pertaining to the Pittsburgh/Beaver Valley and Reading nonattainment areas.

EFFECTIVE DATE: June 13, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Henry, (215) 597-0545.

SUPPLEMENTARY INFORMATION: On May 26, 1995, EPA published a final rule determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title I of the Clean Air Act (CAA) for the Pittsburgh/Beaver Valley and Reading ozone nonattainment areas

no longer apply. This determination was based on these areas having attained the National Ambient Air Quality Standard (NAAQS) for ozone based on three years of air quality monitoring data (60 FR 27893). The final rule was published, without prior proposal, in the **Federal Register** with a provision for a 30 day comment period. At the same time, EPA published a proposed rule which announced that this final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the **Federal Register** (60 FR 27945). By publishing a notice announcing withdrawal of the final rulemaking action, this action would be withdrawn. EPA received adverse comment within the prescribed comment period. Therefore, EPA is withdrawing the May 26, 1995, final rulemaking action pertaining to the Pittsburgh/Beaver Valley and Reading nonattainment areas. All public comments received will be addressed in a subsequent rulemaking action based on the proposed rule.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: June 5, 1995.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 95-14388 Filed 6-12-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[CA-140-2-6993a; FRL-5211-9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the following districts: Mojave Desert Air Quality Management District (MDAQMD) and South Coast Air Quality Management District (SCAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic

compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on these rules serves as a final determination that the deficiencies in these rules have been corrected and that on the effective date of this action, any sanction or Federal Implementation Plan (FIP) clock is stopped. The revised rules control VOC emissions from metal container, closure, and coil coating operations, magnet wire coating operations, and automotive coating operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on August 14, 1995 unless adverse or critical comments are received by July 13, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

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

Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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

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

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

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT:

Nikole Reaksecker, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1187.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: SCAQMD Rule 1151, Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations; SCAQMD Rule 1125, Metal Container, Closure, and Coil Coating

Operations; SCAQMD Rule 1126, Magnet Wire Coating Operations; and MDAQMD Rule 1116, Automotive Refinishing Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on January 24, 1995, February 24, 1995 (Rules 1125 and 1126), and March 31, 1995, respectively.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Los Angeles-South Coast Air Basin (South Coast) and the Southeast Desert Area.¹ 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172 (a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. (40 CFR 52.222). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.² EPA's SIP-Call used that

¹The Mojave Desert Air Quality Management District (MDAQMD) was created by Assembly Bill AB 2522 signed into law by the Governor of California on September 12, 1992. It includes all of the County of San Bernardino which is not included within the boundaries of the South Coast Air Quality Management District, and may include contiguous areas situated in the Southeast Desert Air Basin upon request for inclusion. The Mojave Desert District commenced operations on July 1, 1993, and on that date assumed the authority, duties and employees of the San Bernardino County Air Pollution Control District, which ceased to exist as of that date.

²Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that

guidance to indicate the necessary corrections for specific nonattainment areas. The Southeast Desert Area is classified as severe and South Coast is classified as extreme;³ therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on January 24, 1995, February 24, 1995, and March 31, 1995, including the rules being acted on in this document. This document addresses EPA's direct-final action for SCAQMD Rule 1125, Metal Container, Closure, and Coil Coating Operations; SCAQMD Rule 1126, Magnet Wire Coating Operations; SCAQMD Rule 1151, Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations; and MDAQMD Rule 1116, Automotive Refinishing Operations. SCAQMD adopted Rules 1125 and 1126 on January 13, 1995, and Rule 1151 on December 9, 1994. MDAQMD adopted Rule 1116 on February 22, 1995. These submitted rules were found to be complete on February 24, 1995, March 10, 1995, and May 2, 1995, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 appendix V⁴ and are being finalized for approval into the SIP.

SCAQMD Rule 1125 controls volatile organic compound (VOC) emissions from metal container, closure, and coil coating operations. SCAQMD Rule 1126 limits the VOC content of magnet wire coatings. SCAQMD Rule 1151 and MDAQMD Rule 1116 limit the emissions of VOCs from the finishing or refinishing of motor vehicles, mobile equipment, and their parts and components. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of the SCAQMD's and the MDAQMD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The

concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

³The South Coast and Southeast Desert Areas retained their designations of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

⁴EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

following is EPA's evaluation and final action for these rules.

EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 2. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to SCAQMD Rule 1125 is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks", EPA-450/2-77-032. The CTG applicable to SCAQMD Rule 1126 is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume IV: Surface Coating of Magnet Wire", EPA-450/2-77-033. SCAQMD Rule 1151 and MDAQMD Rule 1116 control emissions from a source category for which EPA has not yet issued a CTG. However, EPA has issued a guidance document called an Alternative Control Techniques (ACT). The ACT applicable to SCAQMD Rule 1151 and MDAQMD Rule 1116 is entitled, "Alternative Control Techniques Document: Automobile Refinishing", EPA-453/R-94-031. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 2. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD submitted Rule 1125, Metal Container, Closure, and Coil Coating, includes the following significant changes from the current SIP:

- adds applicability section,
 - clarifies and/or updates several definitions,
 - removes reference to unspecified test methods,
 - specifies collection and destruction efficiencies for emission control systems and includes an equation for determining control device equivalency,
 - removes language allowing Executive Officer discretion,
 - includes test methods for determining VOC content, exempt compound content, collection and control device efficiencies, and transfer efficiency,
 - states what constitutes a violation of the rule,
 - requires the most recently approved version of a test method to be used to determine compliance, and
 - exempts aerosol coating products.
- SCAQMD submitted Rule 1126, Magnet Wire Coating Operations, includes the following significant changes from the current SIP:
- adds applicability section,
 - clarifies and/or updates several definitions,
 - allows use of an emission control system as an alternative means of complying,
 - specifies an overall capture and control efficiency of 90 percent,
 - includes test methods for determining collection and control efficiencies,
 - provides an equation for determining equivalency,
 - states what constitutes a violation of the rule,
 - requires the most recently approved version of a test method to be used to determine compliance, and
 - exempts aerosol coating products.
- SCAQMD submitted Rule 1151, Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations, includes the following significant changes from the current SIP:
- expands applicability section,
 - revises list of exempt compounds and adds their phase-out dates,
 - increases maximum solid content of pretreatment coatings,
 - deletes precoat and extreme performance topcoat categories,
 - adds multi-color coating category,
 - revises VOC limits and compliance dates for Group I and Group II single-stage metallic topcoats, Group II single-stage solid and multistage topcoats, and Group II primer sealer,
 - deletes 5% usage limitation for specialty coatings,
 - prohibits use of coatings containing hexavalent chromium and cadmium,
 - revises transfer efficiency requirements,

- provides an equation for determining equivalency,
 - adds prohibition of sales clause,
 - clarifies and/or updates several definitions,
 - adds recordkeeping requirements for add-on control systems,
 - revises test method section and clarifies language to improve rule enforceability and effectiveness, and
 - adds a de minimis exemption for coatings used at training centers.
- MDAQMD Rule 1116, Automotive Refinishing Operations, includes the following significant changes from the current SIP:
- revises VOC limits and compliance dates to represent currently achievable technology,
 - establishes more stringent VOC limits which will take effect on July 1, 1997,
 - changes the effective date of the "prohibition of sale" clause,
 - exempts facilities emitting less than 3 lbs. of VOC per hour or 15 lbs. of VOC per day, or which have a theoretical potential to emit less than 10 tons of VOC per year,
 - deletes the precoat category, and
 - adds a definition for multistage topcoats.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 1125, Metal Container, Closure, and Coil Coating Operations; SCAQMD Rule 1126, Magnet Wire Coating Operations; SCAQMD Rule 1151, Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations; and MDAQMD Rule 1116, Automotive Refinishing Operations, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D. The final action on these rules serves as a final determination that the deficiencies in these rules have been corrected. Therefore, if this direct final action is not withdrawn, on August 14, 1995, any sanction or FIP clock is stopped. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this notice 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 states its intention to convert the direct final to a proposal should adverse or critical comments be filed. Thus, this direct final action will be effective August 14, 1995, unless, by July 13, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent 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 the direct final action will be effective August 14, 1995.

Regulatory Process

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 population of less than 50,000.

SIP approvals under sections 110 and 301(a) 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 OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

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

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

Dated: May 19, 1995.

Alexis Strauss,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(214), (215), and (216) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(214) New and amended regulations for the following APCDs were submitted on January 24, 1995, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(1) Rule 1151, adopted on December 9, 1994.

(215) New and amended regulations for the following APCDs were submitted on February 24, 1995, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(1) Rules 1125 and 1126, adopted on January 13, 1995.

(216) New and amended regulations for the following APCDs were submitted on March 31, 1995, by the Governor's designee.

(i) Incorporation by reference.

(A) Mojave Desert Air Quality Management District.

(1) Rule 1116, adopted on February 22, 1995.

[FR Doc. 95-14391 Filed 6-12-95; 8:45 am]

BILLING CODE 6560-50-W

40 CFR Part 52

[CA-140-2-6993c; FRL 5212-2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Interim Final Determination that State has Corrected the Deficiency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA is publishing a direct final rulemaking fully approving revisions to the California State Implementation Plan. The revisions concern rules from South Coast Air Quality Management District (SCAQMD) and Mojave Desert Air Quality Management District (MDAQMD): SCAQMD Rules 1125, 1126, and 1151, and MDAQMD Rule 1116. EPA is also publishing in today's **Federal Register** a proposed rulemaking to provide the public with an opportunity to comment on EPA's action. If a person submits adverse comments on EPA's proposed action within 30 days of publication of the proposed and direct final actions, EPA will withdraw its direct final action and will consider any comments received before taking final action on the State's submittal. Based on the proposed full approval, EPA is making an interim final determination by this action that the State has corrected the deficiencies for which sanctions clocks began on December 20, 1993 and April 14, 1994. This action will defer the application of the offset sanctions and defer the application of the highway sanctions. Although this action is effective upon publication, EPA will take comment. If no comments are received on EPA's proposed approval of the State's submittal, the direct final action published in this **Federal Register** will also finalize EPA's determination that the State has corrected the deficiencies that started the sanctions clocks. If comments are received on EPA's proposed approval and this interim final action, EPA will publish a final notice taking into consideration any comments received.

DATES: This interim final determination is effective June 13, 1995. Comments must be received by July 13, 1995.

ADDRESSES: Comments should be sent to: Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

The state submittal and EPA's analysis for that submittal, which are the basis for this action, are available for public review at the above address and at the following locations:

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

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

Mojave Desert Air Quality Management District, 15428 Civic Drive, Victorville, CA 92392
 South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Nikole Reaksecker, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1187.

SUPPLEMENTARY INFORMATION:

I. Background

On June 19, 1992, September 14, 1992, and May 13, 1993, the State submitted MDAQMD Rule 1116, SCAQMD Rule 1126, and SCAQMD Rule 1151 for which EPA published limited disapprovals in the **Federal Register** on December 20, 1993. 58 FR 66285, 58 FR 66283. On May 13, 1993, the State submitted SCAQMD Rule 1125 for which EPA published a limited disapproval in the **Federal Register** on April 14, 1994. 59 FR 17697. EPA's disapproval actions started 18-month clocks for the application of one sanction (followed by a second sanction 6 months later) under section 179 of the Clean Air Act (Act), and 24-month clocks for promulgation of a Federal Implementation Plan (FIP) under section 110(c) of the Act. The State subsequently submitted revised rules on January 24, 1995, February 24, 1995, and March 31, 1995. EPA has taken direct final action on these submittals pursuant to its modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules section of this **Federal Register** EPA is issuing a direct final full approval of the State of California's submittal of SCAQMD Rule 1125, Metal Container, Closure, and Coil Coating Operations; SCAQMD Rule 1126, Magnet Wire Coating Operations; SCAQMD Rule 1151, Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations; and MDAQMD Rule 1116, Automotive Refinishing Operations. In addition, in the Proposed Rules section of this **Federal Register** EPA is proposing full approval of the State's submittals.

Based on the proposed and direct final approval, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on

this action and any comments on EPA's proposed full approval of the State's submittals, EPA determines that the State's submittals are not fully approvable and this final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiencies have not been corrected. Until EPA takes such an action, the application of sanctions will continue to be deferred and/or stayed.

This action does not stop the sanctions clocks that started for these areas on December 20, 1993 and April 14, 1994. However, this action will defer the application of the offsets sanctions and will defer the application of the highway sanctions. 59 FR 39832 (Aug. 4, 1994). If EPA's direct final action fully approving the State's submittals becomes effective, such action will permanently stop the sanctions clocks and will permanently lift any applied, stayed or deferred sanctions. If EPA must withdraw the direct final action based on adverse comments and EPA subsequently determines that the State, in fact, did not correct the disapproval deficiencies, EPA will also determine that the State did not correct the deficiencies and the sanctions consequences described in the sanctions rule will apply. 59 FR 39832, to be codified at 40 CFR 52.31.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clocks. Based on this action, application of the offset sanctions will be deferred and application of the highway sanctions will be deferred until EPA's direct final action fully approving the State's submittals becomes effective or until EPA takes action proposing or finally disapproving in whole or part the State submittals. If EPA's direct final action fully approving the State submittals becomes effective, at that time any sanctions clocks will be permanently stopped and any applied, stayed or deferred sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for

comment before this action takes effect.¹ 5 U.S.C. 553(b)(B). EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittals and, through its proposed and direct final action is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all that it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice and comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittals. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to temporarily stay or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittals. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

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

Under the Regulatory Flexibility Act, 5 U.S.C. Section 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 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.

This action temporarily relieves sources of an additional burden potentially placed on them by the sanctions provisions of the Act. Therefore, I certify that it does not have an impact on any small entities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping

¹ As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

requirements, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: May 19, 1995.

Alexis Strauss,

Acting Regional Administrator.

[FR Doc. 95-14392 Filed 6-12-95; 8:45 am]

BILLING CODE 6560-50-W

40 CFR Part 52

[CA 95-4-6981; FRL-5209-2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on January 9, 1995. The revisions concern rules from the following district: San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from polystyrene foam, polyethylene, and polypropylene manufacturing and polyester resin operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on July 13, 1995.

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

Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.
San Joaquin Valley Unified Air Pollution Control District 1999 Tuolumne Street, Fresno, CA 93721.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1197.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 1995 in 60 FR 2367, EPA proposed to approve the following rules into the California SIP: SJVUAPCD's Rule 4682, Polystyrene Foam, Polyethylene, and Polypropylene Manufacturing; and SJVUAPCD's Rule 4684, Polyester Resin Operations. Rule 4682 was adopted by SJVUAPCD on June 16, 1994 and Rule 4684 was adopted by SJVUAPCD on May 19, 1994. Both rules were submitted by the California Air Resources Board (CARB) to EPA on July 13, 1994. These rules were submitted in response to EPA's 1988 SIP-Call and the CAA sections 182(b)(2) (B) and (C) requirements that nonattainment areas submit reasonably available control technology (RACT) rules for all major sources of VOCs by November 15, 1992 (the RACT catch-up requirements). A detailed discussion of the background for each of the above rules and nonattainment area is provided in the NPRM cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 60 FR 2367 and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated August 8, 1994—Rule 4682 and August 3, 1994—Rule 4684).

Response to Public Comments

A 30-day public comment period was provided in 60 FR 2367. No comments were received.

EPA Action

EPA is finalizing action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as

meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

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

Regulatory Process

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

List of Subjects in 40 CFR Part 52

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

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

Dated: May 10, 1995.

David P. Howekamp,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c) (198)(i)(C)(2) to read as follows:

§ 52.220 Identification of plan.

* * * * *

- (c) * * *
- (198) * * *
- (i) * * *
- (C) * * *

(2) Rule 4682 adopted on June 16, 1994 and Rule 4684 adopted on May 19, 1994.

* * * * *

[FR Doc. 95-14452 Filed 6-12-95; 8:45 am]

BILLING CODE 6560-50-W

40 CFR Part 52

[KY-88-6956a; FRL-5207-9]

Approval and Promulgation of Implementation Plans State: Approval of Revisions to Kentucky**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: On January 27, 1995, the Commonwealth of Kentucky, through the Natural Resources and Environmental Protection Cabinet (Cabinet), submitted revisions to the State Implementation Plan (SIP) correcting deficiencies in the definition of volatile organic compounds (VOCs). These revisions ensue from a commitment made by the Cabinet to the EPA to revise the definition of VOCs. The commitment was made in order for EPA to conditionally approve revisions to the VOC definition in a document dated June 23, 1994.

DATES: This final rule will be effective on July 28, 1995 unless adverse or critical comments are received by July 13, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below.

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

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

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

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

FOR FURTHER INFORMATION CONTACT: Scott Southwick, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347-3555, x4207. Reference file KY-88-6956a.

SUPPLEMENTARY INFORMATION: On October 20, 1992, the Cabinet submitted a SIP revision which included the definition of a VOC. The VOC definition is found in rules 50:010, 51:001, 59:001, 61:001, and 63:001. The VOC definition met all federal guidelines except for a provision that stated, “* * * VOCs shall be measured by test methods that have been approved by the cabinet. Approval by the cabinet shall not constitute or imply approval by the USEPA. The cabinet will not approve a test method that has been disapproved for use by the USEPA.” EPA stated that the VOC definition was not approvable until the above language was revised to state that all test methods used must be approved by the EPA. On March 25, 1994, Kentucky committed to correct this deficiency. EPA then conditionally approved the VOC definition in the October 20, 1992, SIP revision on June 23, 1994 (59 FR 32343).

On January 27, 1995, Kentucky submitted a revision to the SIP that corrected the deficiency outlined above by revising the VOC definition to state that test methods must be approved by the EPA. The submittal also included minor revisions to rules 50:010, 51:001, 59:001, 61:001, and 63:001 which both clarify the intent of the rule and change the address of a Division for Air Quality regional office. This submittal also revised the SIP to include rule 65:001—Definitions and abbreviations of terms used in 401 KAR Chapter 65. This rule is identical to the rules 50:010 through 63:001.

Final Action

EPA is approving this Kentucky SIP submittal because the revisions are consistent with EPA guidelines. 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 on July 28, 1995 unless, by July 13, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the separate 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 July 28, 1995.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2).)

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

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any 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 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) and 7410(k)(3).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this State implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 8, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401-7671q.

Subpart S—Kentucky

2. Section 52.920, is amended by adding paragraph (c)(79) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(79) Revisions to the Commonwealth of Kentucky State Implementation Plan

(SIP) regarding the definition of volatile organic compound (VOC) submitted on January 27, 1995.

(i) Incorporation by reference.

(A) 401 KAR 50:010. Definitions and abbreviations of terms used in 401 KAR Chapters 50, 51, 53, 55, 57, 59, 61, 63, and 65, effective April 6, 1995.

(B) 401 KAR 51:001. Definitions and abbreviations of terms used in 401 KAR Chapter 51, effective April 6, 1995.

(C) 401 KAR 59:001. Definitions and abbreviations of terms used in 401 KAR Chapter 59, effective April 6, 1995.

(D) 401 KAR 61:001. Definitions and abbreviations of terms used in 401 KAR Chapter 61, effective April 6, 1995.

(E) 401 KAR 63:001. Definitions and abbreviations of terms used in 401 KAR Chapter 63, effective April 6, 1995.

(F) 401 KAR 65:001. Definitions and abbreviations of terms used in 401 KAR Chapter 65, effective April 6, 1995.

(ii) Other material.

(A) May 4, 1995, letter from Phillip J. Shepherd, Secretary, Natural Resources and Environmental Protection Cabinet to John H. Hankinson, Regional Administrator, U.S. EPA, Region IV.

[FR Doc. 95-14447 Filed 6-12-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[MN37-1-6901a; FRL-5212-6]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: Minnesota requested minor amendments to several previously approved administrative orders addressing emissions of particulate matter and sulfur. The amendments included deleting an order for a facility that no longer has significant emissions, eliminating reporting requirements for unscheduled startups and shutdowns, clarifying and enhancing dust control practices at one facility, and changing facility names. USEPA is approving this request. USEPA is also correcting the codification for a previous approval action.

DATES: This action will be effective on August 14, 1995 unless adverse or critical comments are received by July 13, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE-17J),

United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request and USEPA's analysis are available for public inspection during normal business hours at the following addresses: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE-17J), Chicago, Illinois 60604; and Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), Room M1500, United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Air Enforcement Branch, Regulation Development Section (AE-17J), United States Environmental Protection, Region 5, Chicago, Illinois 60604, (312) 886-6067.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On February 15, 1994, USEPA approved State Implementation Plan (SIP) revisions for particulate matter for the Saint Paul and Rochester, Minnesota, areas. On April 14, 1994, and September 9, 1994, USEPA approved SIP revisions for sulfur dioxide (SO₂) for much of the Minneapolis-Saint Paul area. The regulatory portion of these revisions consisted of administrative orders limiting emissions from affected facilities. On December 22, 1994, Minnesota submitted amendments to the administrative orders for 12 of these facilities. For six administrative orders in the particulate matter SIP for Saint Paul, namely for Ashbach Construction, Commercial Asphalt, Great Lakes Coal and Dock, Harvest States Cooperatives, Lafarge, and North Star Steel, the administrative orders were amended to (1) revise the statement of air quality standards to reflect revisions in the underlying State rules, (2) reduce opacity reading requirements typically to an as requested basis, and (3) eliminate the requirement to report scheduled startups and shutdowns. Administrative orders for J.L. Shiely and the Metropolitan Council were revised the same way except that the order for J.L. Shiely was also revised to incorporate more frequent and more effective road treatment, and the order for the Metropolitan Council was revised to delete reference to the Metropolitan Waste Control Commission. The order for PM Ag Products was revoked because the relevant sources have shut down. For the one administrative order in the

particulate matter SIP for Rochester, i.e. for Rochester Public Utilities, the administrative order was amended to (1) revise the statement of air quality standards to reflect revisions in the underlying State rules, (2) reduce opacity reading requirements to an as requested basis, and (3) to require reporting of startups and shutdowns only if they are unscheduled and cause exceedances of the applicable limitations. (The company is required to operate continuous opacity monitors to identify periods of excessive emissions.) For SO₂ in the Twin Cities area, the administrative order for Northern States Power was amended to authorize the company to burn natural gas at six oil-fired gas turbines, and the administrative order for FMC Corporation was amended to show ownership now by United Defense, LP.

II. Analysis of State Submittal

USEPA reviewed each of the various amendments submitted by Minnesota. The revision of the statement of air quality standards is an administrative improvement that makes the orders better reflect new air quality standards in the underlying State rules. The elimination of the requirement for opacity testing according to preset schedules is a reasonable revision because these sources now have compliance histories to indicate the needed frequency of compliance testing. In any case, the orders provide that MPCA or USEPA can require opacity readings at any time, which is sufficient to assure enforceability of these limits. The elimination of requirements to report scheduled startups and shutdowns to MPCA does not eliminate the requirement that the sources record this information, and thus does not reduce MPCA's or USEPA's ability to obtain this information when necessary. For the special case of Rochester Public Utilities, because this facility uses electrostatic precipitators that routinely have unscheduled startups and shutdowns, and because this facility is required to operate continuous opacity monitors, it is reasonable to require this company to report only those startups and shutdowns that are unscheduled and cause exceedances of applicable limits. The name revisions obviously have no environmental impact. The enhancement of the road cleaning requirements for J.L. Shiely clearly will have beneficial environmental impacts. The order for the nonexistent equipment at the PM Ag Products facility is superfluous and may therefore be revoked without impact. The allowance for Northern States Power to burn natural gas at six gas turbines at its Inver

Hills Station has no effect on legally allowable emissions but allows an operational alternative that in practice will reduce emissions. In summary, all of the amendments requested by Minnesota are approvable.

III. Rulemaking Action

USEPA is approving the amendments to 12 administrative orders as requested by the State. All of these amendments were adopted and effective at the State on December 21, 1994. Specifically, for particulate matter in Saint Paul, USEPA is approving amendments to the administrative orders for the following facilities: (1) The Ashbach Construction Company facility at University Avenue and Omstead Street, (2) the Commercial Asphalt, Inc., facility at Red Rock Road, (3) the Great Lakes Coal & Dock Company facility at 1031 Childs Road, (4) the Harvest States Cooperatives facility at 935 Childs Road, (5) the LaFarge Corporation facility at 2145 Childs Road, (6) the Metropolitan Council facility at 2400 Childs Road, (7) the North Star Steel Company facility at 1678 Red Rock Road, and (8) the J.L. Shiely Company facility at 1177 Childs Road. USEPA is revoking the previously approved administrative order for the PM Ag Products, Inc., facility at 2225 Childs Road. For particulate matter in Rochester, USEPA is approving amendments to the administrative order for the Rochester Public Utilities facility at 425 Silver Lake Drive. For sulfur dioxide in the Minneapolis-Saint Paul area, USEPA is approving amendments to the administrative orders for the Northern States Power Inver Hills Station, and the United Defense, LP facility (formerly the FMC/U.S. Navy facility) in Fridley.

For convenience, USEPA is also using this rulemaking to correct the codification of its prior approval of Minnesota's offset rule. Rule 7005.3050 was included as an approved rule, and yet Minnesota had repealed this rule. Therefore, USEPA is amending the codification of approved Minnesota submittals to delete reference to this rule.

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a "proposed approval" of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The "direct final" approval shall be effective on August 14, 1995,

unless USEPA receives adverse or critical comments by July 13, 1995.

If USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw this approval. All public comments received will then be addressed in a subsequent rulemaking notice. Any parties interested in commenting on this action should do so at this time.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP 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 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. The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

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 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 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 any small entities affected. 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 USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or

final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of the State implementation plan or plan revisions approved in this action, the State has elected to adopt the program provided for under section 110 of the Clean Air Act. The rules and commitments being approved in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. The USEPA has also determined that this action does not include a mandate that may result in estimated costs or \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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 August 14, 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: May 15, 1995.
Valdas V. Adamkus,
Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, subpart Y, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401-7671q.

2. Section 52.1220 is amended by revising paragraph (c)(33)(i)(A) and by adding paragraph (c)(41) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(33) * * *

(i) * * *

(A) Rules 7005.3020, 7005.3030, and 7005.3040, with amendments effective August 24, 1992.

* * * * *

(41) On December 22, 1994, Minnesota submitted miscellaneous amendments to 11 previously approved administrative orders. In addition, the previously approved administrative order for PM Ag Products (dated August 25, 1992) is revoked.

(i) Incorporation by reference.

(A) Amendments, all effective December 21, 1994, to administrative orders approved in paragraph (c)(29) of this section for: Ashbach Construction Company; Commercial Asphalt, Inc.; Great Lakes Coal & Dock Company; Harvest States Cooperatives; LaFarge Corporation; Metropolitan Council; North Star Steel Company; Rochester Public Utilities; and J.L. Shiely Company.

(B) Amendments, effective December 21, 1994, to the administrative order approved in paragraph (c)(30) of this section for United Defense, LP (formerly FMC/U.S. Navy).

(C) Amendments, effective December 21, 1994, to the administrative order approved in paragraph (c)(35) of this section for Northern States Power-Inver Hills Station.

[FR Doc. 95-14450 Filed 6-12-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Parts 52 and 62

[IA-13-1-6572a; FRL-5210-7]

Approval and Promulgation of Implementation Plans and Section 111(d) Plans; State of Iowa, Polk County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This final action approves the State Implementation Plan (SIP) revision submitted by the state of Iowa on behalf of Polk County, and approves the addition of an emissions limit for sulfuric acid mist from sulfuric acid manufacturing to Iowa's section 111(d) plan.

The state's revision involves modifications to the Polk County air pollution control rules. Polk County is an attainment area for all criteria pollutants. The Polk County air rules were revised to make them consistent with the state of Iowa's rules contained in the Iowa Administrative Code (IAC), which have been previously approved by EPA as meeting the requirements of the Clean Air Act.

DATES: This final rule is effective August 14, 1995 unless by July 13, 1995 adverse or critical comments are received.

ADDRESSES: Copies of the state submittal and the EPA-prepared technical support document (TSD) are available for public inspection during normal business hours at the Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air and Radiation Docket and Information Center, 401 M Street, S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551-7213.

SUPPLEMENTARY INFORMATION: Beginning with its initial submission in 1972, the state of Iowa has operated a Federally approved SIP pursuant to the requirements of the Clean Air Act (CAA). During the past two decades, numerous revisions and updates have been made to the SIP in response to new Federal requirements.

The state of Iowa's section 111(d) plan for the control of sulfuric acid mist emissions from existing sulfuric acid production plants and for the control of fluoride emissions from existing phosphate fertilizer plants was approved by EPA in a **Federal Register** notice, under the Code of Federal Regulations Part 62 (50 FR 52920), published December 27, 1985.

REVIEW OF STATE SUBMITTAL: On May 5, 1994, the state of Iowa submitted to EPA Polk County Ordinance No. 132, which

modifies the Polk County Board of Health regulation Chapter 5, Air Pollution. Polk County Ordinance No. 132, which was adopted by the Polk County Board of Supervisors on October 26, 1993, and became effective December 2, 1993, made a number of revisions to the Polk County air pollution control regulations. The state has provided evidence of control regulations. The state has provided evidence of the lawful adoption of regulations, public notice, and public hearing requirements.

The state has requested that these revisions be approved as a modification of the SIP, with the exception of the following articles and sections: Chapter V, Article VI, Section 5-16 (n) and (p) (Specific Emissions Standards); Chapter V, Article VIII (Emission of Odors; Slaughterhouses; Reduction of Animal Matter); and Chapter V, Article XIII (Variances). The revisions include air pollution control definitions that parallel those in the IAC and in various Federal requirements for state programs; for example, definitions relating to new source permitting.

Other revisions that were made in the Polk County air pollution control regulations include the following items.

1. Visible Emission Measurement. In Chapter V, Articles III and IV, Sections 5-6, 5-8, and 5-9, references to the Ringelmann Chart as a measure of visible emissions were deleted, leaving opacity as the standard by which visible emissions are measured. The opacity standard by which visible emissions are measured has not been modified from that in the approved SIP. The deletion of the Ringelmann Chart as a measure of visible emissions makes the requirements consistent with the EPA-approved, state rules, in chapter 23, sections 3(d) and 4(12).

2. Stack Testing. In Chapter V, Article VII, Section 5-18, the conditions that must be satisfied when stack emission tests are required were revised to include earlier notification of stack testing by equipment owners. The revisions make the requirements consistent with the state rule in chapter 25, section 1(7).

3. Fuel-Burning Permit Exemptions. In Chapter V, Article X, Sections 5-33 and 5-39, the capacity of fuel-burning equipment that is exempt from needing a permit was reduced from equipment with a capacity of less than 50 million Btu per hour input (in the previously approved SIP) to equipment with a capacity of less than 10 million Btu per hour input.

Additionally, the exemption from needing a permit for fuel-burning equipment for indirect heating with a

capacity less than one million Btu per hour input when burning No. 1 or No. 2 fuel, exclusively, was deleted. These revisions expand the coverage of emission-control requirements for fuel-burning sources. In addition, the revisions make these local requirements consistent with the state rule in chapter 22, section 1(2).

4. Sulfuric Acid Emissions Limits. Polk County Ordinance No. 132 also sets emissions limits for sulfuric acid mist from sulfuric acid manufacturing. The sulfuric acid mist emissions limit, as set in the ordinance, is 0.5 pounds of sulfuric acid mist per ton of acid produced. This is identical to the limit contained in EPA's "Final Guideline Document: Control of Sulfuric Acid Mist Emissions from Existing Sulfuric Acid Production Units" (EPA-450/2-77-019).

For additional information on revisions made in the Polk County air pollution control regulations, the reader may refer to EPA's TSD prepared for this Iowa SIP revision.

EPA Action: EPA is taking final action to approve the revisions to the SIP and 111(d) plan submitted on May 5, 1994, for the state of Iowa, Polk County. As discussed previously, this does not include the rules contained in Chapter V, Article VI, Section 5-16(n) and (p); Chapter V, Article VIII; and Chapter V, Article XIII.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP or 111(d) plan. Each request for a revision to the SIP or 111(d) plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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

SIP approvals under section 110 and subchapter I, part D of the CAA, and 111(d) plan approvals under section 111 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 and 111(d) plan approval do not impose any new requirements, EPA certifies that they do

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 Office of Management and Budget has exempted these actions from review under Executive Order 12866.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 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)).

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 the **Federal Register** publication, the EPA is proposing to approve the SIP revisions and 111(d) plan revision should adverse or critical comments be filed.

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 then be addressed in a subsequent 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.

List of Subjects in 40 CFR Parts 52 and 62

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 2, 1995.

Dennis Grams,
Regional Administrator.

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 Q—Iowa

2. Section 52.820 is amended by adding paragraph (c)(60) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(60) On May 5, 1994, the Director of the Iowa Department of Natural Resources submitted revisions to the State Implementation Plan (SIP) to update the state's incorporation by reference and conformity to various Federally approved regulations.

(i) Incorporation by reference.

(A) Revised rules, "Polk County Ordinance No. 132—Polk County Board of Health Rules and Regulations," effective December 2, 1993. This revision approves all articles in Chapter V, except for Article VI, Section 5-16(n) and (p), Article VIII, and Article XIII.

(ii) Additional material.

(A) None.

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart Q—Iowa

2. Section 62.3850 is amended by adding paragraph (b)(3) to read as follows:

§ 62.3850 Identification of plan.

* * * * *

(b) * * *

(3) Control of sulfur dioxide and sulfuric acid mist from sulfuric acid manufacturing plants in Polk County were adopted on October 26, 1993, and submitted on March 23, 1994.

* * * * *

[FR Doc. 95-14389 Filed 6-12-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 82

[FRL-5219-1]

RIN 2060-AF99

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule restricts or prohibits substitutes for ozone depleting substances (ODSs) under the U.S. Environmental Protection Agency (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the amended Clean Air Act of 1990 which requires EPA to evaluate and regulate substitutes for the ODSs to reduce overall risk to human health and the environment. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors. The intended effect of the SNAP program is to expedite movement away from ozone depleting compounds while avoiding a shift into high-risk substitutes posing other environmental problems.

In this final rule, EPA is issuing decisions on the acceptability of certain substitutes proposed by the Agency on September 26, 1994 (59 FR 49108). To arrive at determinations on the acceptability of substitutes, the Agency completed a cross-media evaluation of risks to human health and the environment by sector end-use.

Public comments received regarding this rulemaking have been fully summarized and responded to in the relevant sector sections of this rule. Therefore, no separate comment response document has been developed to accompany this rulemaking. Copies of the eleven public comments received on the NPRM are available in the public docket supporting this final rule.

EFFECTIVE DATE: This rule is effective on July 13, 1995.

ADDRESSES: Materials relevant to the rulemaking are contained in Air Docket A-91-42, Central Docket Section, South Conference Room 4, U.S. Environmental Agency, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 5:30 p.m. weekdays. Telephone (202) 260-7549. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Information Hotline at 1-800-296-1996 between 10 a.m. and 4 p.m. Eastern Time or Sally Rand at (202) 233-9739 or fax (202) 233-9577, Substitutes Analysis and

Review Branch, Stratospheric Protection Division, 401 M Street, SW (6205J), Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Section 612 Program
 - A. Statutory Requirements
 - B. Regulatory History
- III. Listing of Substitutes
- IV. Administrative Requirements
- V. Administrative Information

I. Background

On March 18, 1994, EPA promulgated a final rulemaking setting forth its plan for administering the SNAP program (59 FR 13044), and issued its initial list of decisions on the acceptability and unacceptability of a number of substitutes. Since the March 1994 rulemaking, EPA has continued to evaluate and approve substitutes as they are submitted to the program.

II. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA is referring to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- **Rulemaking**—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

- **Listing of Unacceptable/Acceptable Substitutes**—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

- **Petition Process**—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional 6 months.

- **90-day Notification**—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

• *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the Final Rulemaking (FRM) (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consume large volumes of ozone-depleting compounds.

The Agency defines a "substitute" as any chemical, product, substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators or end-users when they are responsible for introducing a substitute into commerce.

III. Listing of Substitutes

To develop the lists of unacceptable and acceptable substitutes, EPA conducts screens of health and environmental risks posed by various substitutes for ozone-depleting compounds in each use sector. The outcome of these risks screens can be found in the public docket, as described above in the **ADDRESSES** portion of this FRM.

Under section 612, the Agency has considerable discretion in the risk management decisions it can make in SNAP. The Agency has identified five possible decision categories: acceptable, acceptable subject to use conditions; acceptable subject to narrowed use limits; unacceptable; and pending. Acceptable substitutes can be used with no limits for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ODS with a

substitute listed by SNAP as unacceptable. A pending listing includes substitutes for which the Agency has not received complete data or has not completed its review of the data.

After reviewing a substitute, the Agency may determine that a substitute is acceptable only if conditions of use are met to minimize risks to human health and the environment. Use of such substitutes in ways that are inconsistent with such use conditions renders these substitutes unacceptable.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, e.g., performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes in applications and end-uses which are not specified as acceptable in the narrowed use limit renders these substitutes unacceptable.

As described in the final rule for the SNAP program (59 FR 13044), EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes.

EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable and pending lists are published as separate notices in the **Federal Register**.

Parts A. through C. below present a detailed discussion of the substitute listing determinations by major use sector. Tables summarizing listing

decisions in this final rule are in the Appendix A. The comments contained in the Appendix A provide additional information on a substitute. Since comments are not part of the regulatory decision, they are not mandatory for use of a substitute. Nor should the comments be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of acceptable substitutes to apply all comments in their use of these substitutes. In many instances, the comments simply describe sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

A. Refrigeration and Air Conditioning

1. Overview

The refrigeration and air conditioning sector includes all uses of class I and class II substances to produce cooling, including mechanical refrigeration, air conditioning, and heat transfer. Please refer to the final SNAP rule (59 FR 13044) for a more detailed description of this sector.

The refrigeration and air conditioning sector is divided into the following end-uses:

- Commercial comfort air conditioning;
- Industrial process refrigeration systems;
- Industrial process air conditioning;
- Ice skating rinks;
- Uranium isotope separation processing;
- Cold storage warehouses;
- Refrigerated transport;
- Retail food refrigeration;
- Vending machines;
- Water coolers;
- Commercial ice machines;
- Household refrigerators;
- Household freezers;
- Residential dehumidifiers;
- Motor vehicle air conditioning;
- Residential air conditioning and heat pumps;
- Heat transfer;
- and
- Very low temperature refrigeration.

In addition, each end-use is divided into retrofit and new equipment applications. EPA has not necessarily reviewed substitutes in every end-use for this FRM.

EPA has modified the list of end-uses for this sector for this SNAP update. EPA added a new end-use, very low temperature refrigeration. Substitutes

for this end-use had been reviewed since the final rule, and therefore were added to the August 26, 1994 Notice. Please refer to the final SNAP rule (59 FR 13044) for a detailed description of end-uses other than these. EPA may continue to add other end-uses in future SNAP updates.

a. Heat Transfer

As discussed above, this end-use includes all cooling systems that rely on a fluid to remove heat from a heat source to a cooler area, rather than relying on mechanical refrigeration to move heat from a cool area to a warm one. Generally, there are two types of systems: systems with fluid pumps, referred to as recirculating coolers, and those that rely on natural convection currents, known as thermosyphons.

b. Very Low Temperature Refrigeration

Medical freezers, freeze-dryers, and other small appliances require extremely reliable refrigeration cycles. These systems must meet stringent technical standards that do not normally apply to refrigeration systems. They usually have very small charges. Because they operate at very high vapor pressures, and because performance is critically affected by any charge loss, standard maintenance for these systems tends to reduce leakage to a level considerably below that for other types of refrigeration and air conditioning equipment.

c. CFC-13, R-13B1, and R-503 Industrial Process Refrigeration

This end-use differs from other types of industrial refrigeration only in that extremely low temperature regimes are required. Although some substitutes may work in both these extremely low temperatures and in systems designed to use R-502, they may be acceptable only for this end-use because of global warming and atmospheric lifetime concerns. These concerns are discussed more fully below.

2. Response to Comments

a. Use conditions for automotive refrigerants. Two commenters requested changes in the information proposed for labels to be placed on automobiles retrofitted to use alternative refrigerants. They explained that label space is constrained and requested that the statements related to the ozone-depleting nature of automotive refrigerants be deleted. EPA agrees that the proposed statements were too cumbersome. This FRM shortens the relevant phrase for ozone-depleting refrigerants and eliminates the phrase for non-ozone-depleting refrigerants.

One commenter stated that EPA does not have the authority to require unique fittings and labels for automotive retrofits. In fact, EPA believes its broad mandate under SNAP does provide the authority. One important goal of the SNAP program is to ease the transition away from ozone-depleting substances. As the number of acceptable alternatives increases, the likelihood of contaminating the supply of recycled CFC-12 increases. EPA believes the fitting and label requirements will help protect consumers and the environment by preserving the purity of recycled CFC-12. The requirements will also help ensure that clear information exists about the contents of motor vehicle air conditioning systems. In addition, EPA has received a petition requesting a requirement for fittings and labels. Several commenters strongly supported EPA's efforts to reduce the risks of cross-contamination of various alternatives. Therefore, this FRM retains the fitting and label provisions from the NPRM.

Several commenters expressed concern that listing a refrigerant acceptable or acceptable subject to use conditions implies that it is effective in all systems, that it is compatible with existing equipment, and that it will not affect system life. EPA believes the purpose of the SNAP program is to review the human health and environmental implications of alternatives and not to ensure the effectiveness of new refrigerants or the long-term viability of equipment. Certainly the SNAP lists should serve as a useful reference to the user community. However, one of the guiding principles of the SNAP program is to let the market decide whether there exists a "best" alternative.

Several commenters asked EPA to require a label for flammable non-automotive refrigerants. EPA will consider this idea when reviewing future submissions.

b. HCFC Blend Beta and R-401C. Several commenters expressed concern that these blends contain flammable substances. As discussed in the NPRM, testing has shown that HCFC Blend Beta and R-401C are not flammable and do not become flammable through fractionation. Several other acceptable refrigerants contain hydrocarbons and other flammable components, which can add to a blend's effectiveness. If these components are present in small enough amounts, the blends are nonflammable.

Several commenters raised the issue of selective absorption of flammable components by the lubricant. They are concerned that over time, the oil will

concentrate the flammable hydrocarbon, possibly yielding a flammable mixture in the system. EPA is not aware of any data validating this claim. However, should information become available, EPA invites a petition to review its decision on HCFC Blend Beta.

Several commenters expressed concern that HCFC Blend Beta and R-401C contain class II compounds, HCFC-22 and HCFC-124, respectively. While these compounds do contribute to ozone depletion, EPA controls their production under the accelerated phaseout. As in the stationary end-uses, EPA believes the HCFCs have a role as transitional refrigerants. Until the end of production, HCFCs can help ease the switch away from the CFCs by providing additional alternatives.

Several commenters suggest that using blend refrigerants will not reduce the cost of retrofitting existing cars to use HFC-134a. Using other refrigerants may help reduce these costs for some range of models. However, even if it were possible to devise a reliable measure of cost reductions for individual cars, EPA's primary interest is the human health and environmental issues associated with a refrigerant. The market will determine any substitute's success based on cost.

c. R-403B and R-405A. Several commenters requested that EPA consider other factors besides global warming potential (GWP) and lifetime and approve R-403B and R-405A, which contain high concentrations of perfluorocarbons (PFCs), as substitutes for R-502 and CFC-12, respectively. EPA considers energy savings, flammability, and toxicity, in addition to ozone depletion potential and global warming potential, in its SNAP review. The PFCs as a class have extremely long lifetimes and very high GWPs. In addition to potential global warming caused by PFCs, their lifetimes mean that any unanticipated effects would be irreversible. These factors are significantly higher than those of any other class of refrigerants. Although the average GWP of a blend may be lower than that of the individual components, when released to the atmosphere the components act independently. Thus, the PFCs' high GWP and long lifetime will have the same impact as if they had been released as pure substances. In accordance with the SNAP guiding principles, EPA does not intend to make fine distinctions. However, the lifetime and GWP of PFCs pose higher overall risk than the other available substitutes.

Several commenters point out that because R-403B contains HCFC-22, intentional venting is already prohibited under section 608, and therefore

emissions would be minimal. This claim ignores the substantial leakage emissions from nearly all refrigeration equipment, and especially retail food and industrial refrigeration systems.

One commenter expressed concern that EPA was forcing industry to use R-402A, another refrigerant deemed acceptable under SNAP. EPA disagrees, as it has already listed several other alternatives for R-502, including R-404A, R-407A, R-407B, R-408A, and R-507. The commenter also stated that using refrigerants other than R-403B would result in the production of an untenable amount of contaminated oil requiring special handling under RCRA. Exemptions exist for CFC-contaminated oil, and the volumes involved would be absorbed easily into the existing used oil infrastructure.

One commenter stated that EPA had departed from its usual listing of PFCs as acceptable subject to narrowed use limits, and requested that EPA include R-403B in the same category. However, EPA has only found PFCs acceptable where no other alternative is feasible from a technical or safety perspective. A large number of other acceptable substitutes exist for R-502 that contain substances with much lower GWPs and shorter lifetimes. Thus, this FRM promulgates the unacceptability determinations for R-403B and R-405A.

However, two commenters requested that EPA consider grandfathering existing uses of R-403B. In two specific cases, EPA determined that grandfathering is appropriate: Industrial process refrigeration and refrigerated transport. These cases are explained in detail in the section discussing R-403B.

d. Perfluorocarbons (PFCs). One commenter requests that EPA not impose a narrowed use limit on PFCs used in heat transfer applications. The commenter further suggests that this designation is inconsistent with previous narrowed use limits imposed in other sectors. The commenter also indicated that EPA has already received ample proof of several applications where PFCs are the only viable alternatives.

EPA believes the PFCs may be the only viable substitutes for specific types of existing heat transfer equipment. For example, as listed in the SNAP FRM, uranium enrichment plants are already an acceptable use for PFCs. This user has already demonstrated that no other substitute would work. EPA agrees with the commenter that for existing equipment, sufficient evidence exists that no substitutes other than PFCs exist. Thus, EPA is allowing the use of PFCs in retrofit and existing system designs only.

For new equipment designs, however, EPA believes other alternatives may well exist. Therefore, for new equipment designs, users must conduct a study to determine that no other alternative is feasible. Note that users need only retain the analysis for their own records; no submission of information to EPA is required.

If EPA were to grant unconditional acceptability, there would be no requirement for users to examine other substitutes before adopting PFCs. EPA has articulated the view that, because of their high GWPs and very long lifetimes, PFCs must remain alternatives of last resort; in other words, their use should be limited to those areas where no other means exist to replace ODS. While the niche market for PFCs in heat transfer applications may be small, EPA has a strong interest in restricting its growth. As discussed above, PFCs have extremely long lifetimes and high GWPs. EPA strongly encourages manufacturers to devise other means of replacing the ODS used in heat transfer.

The commenter also objects to EPA's description of PFCs as agents of last resort. EPA maintains that for new heat transfer equipment, systems should use PFCs only where no other alternatives will work. For the reasons described in the paragraph above, this FRM retains the original language.

However, EPA agrees with the commenter's request to provide additional guidance about the types of systems that may require PFCs. EPA has included specific examples in the listing for PFCs.

The commenter also objected to EPA's reference to future rulemakings under section 608 of the Clean Air Act. EPA agrees and has removed the reference.

The commenter further believes EPA should grant acceptance to the use of PFCs in several specific end-uses, rather than issuing a narrowed use limit determination for heat transfer as a whole. The commenter cites as an example the listing of PFCs as acceptable for use in uranium enrichment plants. EPA believes that heat transfer systems bear enough similarity to be included under one end-use. The substitutes list should not be complicated by too many subcategories which would result in significant redundancy. The distinction between retrofit and new use will allow existing equipment to use non-ODS substitutes while still restricting the design of new systems that would use PFCs. For the reasons stated above, EPA believes it is important to place such a restriction on the design of new systems. However, even within new use, the narrowed use limit is intended to allow the use of an

otherwise unacceptable substitute in cases where nothing else is feasible from a safety or technical perspective.

The commenter also expresses a belief that EPA should not include heat transfer systems within the refrigeration and air conditioning sector. EPA disagrees and has already issued a final applicability determination that Vaportran transformers are appliances that fall under regulations issued under section 608 of the Clean Air Act. While heat transfer is not refrigeration in the thermodynamic sense of moving heat from a cool area to a warm one, it is a process aimed at temperature control.

The commenter further notes that EPA indicated that the refrigeration and air conditioning sector includes all mechanical and non-mechanical refrigeration, air conditioning, and heat transfer. The commenter believes this statement causes confusion by neglecting to define "non-mechanical refrigeration." EPA's intention was to include alternative processes that do not use a refrigerant in the strictest sense, such as evaporative cooling or absorption cycle machinery. The term "mechanical" is intended to refer to compressor-drive vapor compression cycle systems. However, EPA agrees that the statement in the NPRM was confusing and has removed the reference to non-mechanical refrigeration in this FRM.

e. Hydrocarbon Blend B. One commenter requested that EPA find Hydrocarbon Blend B acceptable based on several reports. EPA had previously reviewed the bulk of these reports and found them insufficient to demonstrate the safety of this substitute. In addition, the statement that Hydrocarbon Blend B has a high ignition point is misleading. This blend readily ignites at room temperature in the presence of a spark or a flame. No report has supported the notion that this blend must be heated to very high temperatures before it will propagate a flame. As stated in the SNAP FRM on March 18, 1994, EPA requires a comprehensive, scientifically valid risk assessment if a refrigerant is flammable, and no such study has been performed. EPA therefore maintains its position that Hydrocarbon Blend B is unacceptable as a substitute for CFC-12 in automobiles and several other end-uses.

3. Substitutes for Refrigerants

Substitutes fall into eight broad categories. Seven of these categories are chemical substitutes used in the same vapor compression cycle as the ozone-depleting substances being replaced. They include hydrochlorofluorocarbons (HCFCs), hydrofluorocarbons (HFCs),

hydrocarbons, refrigerant blends, ammonia, perfluorocarbons (PFCs), and chlorine systems. The eighth category includes alternative technologies that generally do not rely on vapor compression cycles. Please refer to the final SNAP rule (59 FR 13044) for more discussion of these broad categories.

4. Listing Decisions

a. Acceptable. CFC-11, CFC-12, CFC-113, CFC-114, CFC-115 Heat Transfer, Retrofit and Existing Equipment Designs.

(a) Perfluorocarbons.

Perfluorocarbons are acceptable as substitutes for CFC-11, CFC-12, CFC-113, CFC-114, and CFC-115 in retrofitted heat transfer systems and in existing designs. Although EPA normally discusses acceptable substitutes in its Notices, this decision is the result of comments received on the proposal. PFCs covered by this determination are C₃F₈, C₄F₁₀, C₅F₁₂, C₅F₁₁NO, C₆F₁₄, C₆F₁₃NO, C₇F₁₆, C₇F₁₅NO, C₈F₁₈, C₈F₁₆O, and C₉F₂₁N. PFCs offer high dielectric resistance, noncorrosivity, thermal stability, materials compatibility, chemical inertness, low toxicity, and nonflammability. In addition, they do not contribute to ground-level ozone formation or stratospheric ozone depletion. The principal characteristic of concern for PFCs is that they have long atmospheric lifetimes and have the potential to contribute to global climate change. For instance, C₅F₁₂ has a lifetime of 4,100 years and a 100-year GWP of 5,600. PFCs are also included in the Climate Change Action Plan, which broadly instructs EPA to use section 612 of the CAA, as well as voluntary programs, to control emissions. Despite these concerns, EPA is listing PFCs as acceptable in heat transfer applications because they may be the only substitutes that can satisfy safety or performance requirements. For example, a transformer may require very high dielectric strength, or a heat transfer system for a chlorine manufacturing process could require compatibility with the process stream.

In cases where users must adopt PFCs, they should make every effort to:

- Recover and recycle these fluids during servicing;
- Adopt maintenance practices that reduce leakage as much as is technically feasible;
- Recover these fluids after the end of the equipment's useful life and either recycle them or destroy them; and
- Continue to search for other long-term alternatives.

Users of PFCs should note that if other alternatives become available,

EPA could be petitioned to list PFCs as unacceptable due to the availability of other suitable substitutes. If such a petition were granted, EPA may grandfather existing uses upon consideration of cost and timing of testing and implementation of new substitutes. EPA urges industry to develop new alternatives for this end-use that do not contain substances with such high GWPs and long lifetimes.

b. Acceptable Subject to Use Conditions. (1) CFC-12 Automobile and Non-automobile Motor Vehicle Air Conditioners, Retrofit and New.

EPA is concerned that the existence of several substitutes in this end-use may increase the likelihood of significant refrigerant cross-contamination and potential failure of both air conditioning systems and recovery/recycling equipment. In addition, a smooth transition to the use of substitutes strongly depends on the continued purity of the recycled CFC-12 supply. In order to prevent cross-contamination and preserve the purity of recycled refrigerants, EPA is imposing several conditions on the use of all motor vehicle air conditioning refrigerants. For the purposes of this rule, no distinction is made between "retrofit" and "drop-in" refrigerants; retrofitting a car to use a new refrigerant includes all procedures that result in the air conditioning system using a new refrigerant. It should be noted that EPA primarily reviews refrigerants based on environmental and health factors. Issues related to performance and durability fall outside the scope of SNAP review.

To meet the requirements under section 612, when retrofitting a CFC-12 system to use any substitute refrigerant, the following conditions must be met:

- Each refrigerant may only be used with a set of fittings that is unique to that refrigerant. These fittings (male or female, as appropriate) must be used with all containers of the refrigerant, on can taps, on recovery, recycling, and charging equipment, and on all air conditioning system service ports. These fittings must be designed to mechanically prevent cross-charging with another refrigerant. A refrigerant may only be used with the fittings and can taps specifically intended for that refrigerant. Using an adapter or deliberately modifying a fitting to use a different refrigerant will be a violation of this use condition. In addition, fittings shall meet the following criteria, derived from Society of Automotive Engineers (SAE) standards and recommended practices:

—When existing CFC-12 service ports are to be retrofitted, conversion

assemblies shall attach to the CFC-12 fitting with a thread lock adhesive and/or a separate mechanical latching mechanism in a manner that permanently prevents the assembly from being removed.

- All conversion assemblies and new service ports must satisfy the vibration testing requirements of sections 3.2.1 or 3.2.2 of SAE J1660, as applicable, excluding references to SAE J639 and SAE J2064, which are specific to HFC-134a.
- In order to prevent discharge of refrigerant to the atmosphere, systems shall have a device to limit compressor operation before the pressure relief device will vent refrigerant. This requirement is waived for systems that do not feature such a pressure relief device.
- All CFC-12 service ports shall be retrofitted with conversion assemblies or shall be rendered permanently incompatible for use with CFC-12 related service equipment by fitting with a device attached with a thread lock adhesive and/or a separate mechanical latching mechanism in a manner that prevents the device from being removed.
 - When a retrofit is performed, a label must be used as follows:
 - The person conducting the retrofit must apply a label to the air conditioning system in the engine compartment that contains the following information:
 - * The name and address of the technician and the company performing the retrofit;
 - * The date of the retrofit;
 - * The trade name, charge amount, and, when applicable, the ASHRAE numerical designation of the refrigerant;
 - * The type, manufacturer, and amount of lubricant used;
 - * If the refrigerant is or contains an ozone-depleting substance, the phrase "ozone depleter"; and
 - * If the refrigerant displays flammability limits as blended, measured according to ASTM E681, the statement "This refrigerant is FLAMMABLE. Take appropriate precautions."
 - This label must be large enough to be easily read and must be permanent.
 - The background color must be unique to the refrigerant.
 - The label must be affixed to the system over information related to the previous refrigerant, in a location not normally replaced during vehicle repair.
 - Information on the previous refrigerant that cannot be covered by the new label must be permanently rendered unreadable.

• No substitute refrigerant may be used to “top-off” a system that uses another refrigerant. The original refrigerant must be recovered in accordance with regulations issued under section 609 of the CAA prior to charging with a substitute.

Since these use conditions necessitate unique fittings and labels, it will be necessary for developers of automotive refrigerants to consult with EPA about the existence of other alternatives. Such discussions will lower the risk of duplicating fittings already in use.

No SNAP determination guarantees satisfactory performance from a refrigerant. Consult the original equipment manufacturer or service personnel for further information on using a refrigerant in a particular system.

(a) HFC-134a. *HFC-134a is acceptable as a substitute for CFC-12 in retrofitted and new motor vehicle air conditioners, subject to the use conditions applicable to motor vehicle air conditioning described above.* HFC-134a does not contribute to ozone depletion. HFC-134a's GWP and atmospheric lifetime are close to those of other alternatives which have been determined to be acceptable for this end-use. However, HFC-134a's contribution to global warming could be significant in leaky end-uses such as motor vehicle air conditioning systems (MVACS). EPA has determined that the use of HFC-134a in these applications is acceptable because industry continues to develop technology to limit emissions. In addition, the number of substitutes available for use in MVACS is currently limited. HFC-134a is not flammable and its toxicity is low. While HFC-134a is compatible with most existing refrigeration and air conditioning equipment parts, it is not compatible with the mineral oils currently used in such systems. An appropriate ester-based, polyalkylene glycol-based, or other type of lubricant should be used. Consult the original equipment manufacturer or the retrofit kit manufacturer for further information.

(b) R-401C.

R-401C, which consists of HCFC-22, HFC-152a, and HCFC-124, is acceptable as a substitute for CFC-12 in retrofitted and new motor vehicle air conditioners, subject to the use conditions applicable to motor vehicle air conditioning described above. HCFC-22 and HCFC-124 contribute to ozone depletion, but to a much lesser degree than CFC-12. The production of HCFC-22 will be phased out according to the accelerated phaseout schedule (published 12/10/93, 58 FR 65018). The GWP of HCFC-22 is somewhat higher

than other alternatives for this end-use. Experimental data indicate that HCFC-22 may leak through flexible hosing in mobile air conditioners at a high rate. In order to preserve the blend's composition and to reduce its contribution to global warming, EPA strongly recommends using barrier hoses when hose assemblies need to be replaced during a retrofit procedure. The GWPs of the other components are low. Although this blend does contain one flammable constituent, the blend itself is not flammable. Leak testing demonstrated that the blend never becomes flammable.

(c) HCFC Blend Beta. *HCFC Blend Beta, which consists of HCFC-124, HFC-134a, and isobutane, is acceptable as a substitute for CFC-12 in retrofitted and new motor vehicle air conditioners, subject to the use conditions applicable to motor vehicle air conditioning described above.* The composition of this blend has been claimed confidential by the manufacturer. This blend contains at least one HCFC, and therefore contributes to ozone depletion, but to a much lesser degree than CFC-12. Regulations regarding recycling and reclamation issued under section 609 of the Clean Air Act apply to this blend. Its production will be phased out according to the accelerated schedule (published 12/10/93, 58 FR 65018). The GWPs of the components are moderate to low. This blend is nonflammable, and leak testing has demonstrated that the blend never becomes flammable.

c. Acceptable Subject to Narrowed Use Limits

(1) CFC-11, CFC-12, CFC-113, CFC-114, CFC-115 Heat Transfer, New. (a) *Perfluorocarbons. Perfluorocarbons are acceptable as substitutes for CFC-11, CFC-12, CFC-113, CFC-114, and CFC-115 in heat transfer systems only where no other alternatives are technically feasible due to safety or performance requirements.* PFCs covered by this determination are C₃F₈, C₄F₁₀, C₅F₁₂, C₅F₁₁NO, C₆F₁₄, C₆F₁₃NO, C₇F₁₆, C₇F₁₅NO, C₈F₁₈, C₈F₁₆O, and C₉F₂₁N. The principal characteristic of concern for PFCs is that they have very long atmospheric lifetimes and have the potential to contribute to global climate change. For instance, C₅F₁₂ has a lifetime of 4,100 years and a 100-year GWP of 5,600.

Despite concerns about high global warming potential, EPA is listing PFCs as acceptable in certain limited applications because a PFC may be the only substitute that can satisfy safety or performance requirements. These requirements might include very high dielectric strength, noncorrosivity,

thermal stability, materials compatibility, and chemical inertness. In addition, PFCs do not contribute to stratospheric ozone depletion. Examples of applications where PFCs may represent the only alternative to ODS include uranium isotope separation, chemical processing, electrical inverters, ozone generation for water purification, space simulators, air purification, and integrated chip manufacturing.

Users should note, however, that use of a PFC should be an ODS substitute of last resort. As the determination states, PFCs should be used “only where no other alternatives are technically feasible due to safety or performance requirements.” Potential users are required to conduct a thorough review of other more environmentally acceptable substitutes. Although EPA does not require users to submit the results of their substitute evaluation, companies must keep the results on file for future reference.

In cases where users must adopt PFCs, they should make every effort to:

- Recover and recycle these fluids during servicing;
- Adopt maintenance practices that reduce leakage as much as is technically feasible;
- Recover these fluids after the end of the equipment's useful life and either recycle them or destroy them; and
- Continue to search for other long-term alternatives.

Users of PFCs should note that if other alternatives become available, EPA could be petitioned to list PFCs as unacceptable due to the availability of other suitable substitutes. If such a petition were granted, EPA would determine whether to grandfather existing uses based upon consideration of cost and timing of testing and implementation of new substitutes.

d. *Unacceptable Substitutes. (1) R-403B. R-403B, which consists of HCFC-22, R-218, and propane, is unacceptable as a substitute for R-502 in the following new and retrofitted end-uses:*

- Industrial process refrigeration;
- Cold storage warehouses;
- Refrigerated transport;
- Retail food refrigeration;
- Commercial ice machines; and
- Household freezers.

R-218, perfluoropropane, has an extremely high GWP and lifetime, which pose additional risk beyond that of other acceptable substitutes for these end-uses. In particular, the lifetime of R-218 is over 2000 years, which means that global warming effects would be essentially irreversible. While other substitutes may have high GWPs, they do not exhibit such long lifetimes.

In addition to direct global warming effects, EPA considers indirect impacts associated with changes in energy efficiency. Many manufacturers, including that of R-403B, claim energy efficiency gains associated with their products. Such gains are highly dependent on equipment type, ambient conditions, optimization of the system, and other factors. No data demonstrate, however, that R-403B would produce such large indirect benefits as to overcome the direct impact of its use as compared to the use of other already acceptable substitutes. Thus, EPA performed no detailed analysis of the indirect global warming impacts of R-403B.

As discussed in the SNAP FRM, the Agency is authorized to grandfather existing uses from a prohibition where appropriate under the four-part test established in *Sierra Club v. EPA*, 719 F.2d 436 (D.C. Cir. 1983). As requested by two commenters, the Agency has conducted the four analyses required under this test, and has concluded that the balance of equities favors the grandfathering of two current uses of R-403B. Within industrial process refrigeration, use of R-403B is permitted until supplies purchased prior to September 26, 1994, the date EPA proposed to list R-403B as unacceptable, are exhausted. Within refrigerated transport, R-403B may be used in systems converted to its use as of September 26, 1994 for the lifetime of that particular equipment. No use outside these two specific cases is allowed.

Under the first prong of the *Sierra Club* analysis, the prohibition set forth in this action clearly represents a departure from previously established practice, as use of this substitute was not previously restricted. However, through the proposed action on September 26, 1994 EPA provided notice that it was considering a change to this previous practice. Therefore, existing users of R-403B who, prior to September 26, 1994, switched from class I substances and invested in this substitute on the assumption that it would be a sufficient improvement over the class I used, relied on the fact that use of R-403B was unrestricted. Prohibiting their use of the substitute immediately would impose a severe economic burden on these users. Although there is a substantial interest in applying this requirement immediately, this interest is balanced by the fact that the restriction will apply immediately to new equipment using R-403B. Therefore, the requirement will apply immediately to a substantial number of systems and there will be no

incentive for future investment in R-403B equipment. These factors taken together outweigh any statutory interest in applying the new rule immediately to existing users who had invested in R-403 prior to September 26, 1994.

(2) R-405A. *R-405A, which is composed of HCFC-22, HFC-152a, HCFC-142b, and R-c318, is unacceptable as a substitute for CFC-12, R-500, and R-502 in the following new and retrofitted end-uses:*

- Commercial comfort air conditioning;
- Industrial process refrigeration;
- Ice skating rinks;
- Cold storage warehouses;
- Refrigerated transport;
- Retail food refrigeration;
- Vending machines;
- Water coolers;
- Commercial ice machines;
- Household refrigerators;
- Household freezers;
- Residential dehumidifiers; and
- Motor vehicle air conditioning.

R-405A was listed as HCFC/HFC/fluoroalkane Blend A in previous notices. R-405A contains a high proportion of R-c318, cycloperfluorobutane, which has an extremely high GWP and lifetime. In particular, the lifetime of R-c318 is over 3000 years, which means that global warming effects would be essentially irreversible. While other substitutes may have high GWPs, they do not exhibit such long lifetimes.

In addition to direct global warming effects, EPA considers indirect impacts associated with changes in energy efficiency. Many refrigerant manufacturers claim energy efficiency gains associated with their products. Such gains are highly dependent on equipment type, ambient conditions, optimization of the system, and other factors. No data demonstrate, however, that R-405A would produce such large indirect benefits as to overcome the direct impact of its use as compared to the use of other already acceptable substitutes. Thus, EPA performed no detailed analysis of the indirect global warming impacts of R-405A.

(3) Hydrocarbon Blend B.—*Hydrocarbon Blend B is unacceptable as a substitute for CFC-12 in the following new and retrofitted end-uses:*

- Commercial comfort air conditioning;
- Ice skating rinks;
- Cold storage warehouses;
- Refrigerated transport;
- Retail food refrigeration;
- Vending machines;
- Water coolers;
- Commercial ice machines;

- Household refrigerators;
- Household freezers;
- Residential dehumidifiers; and
- Motor vehicle air conditioning.

Flammability is the primary concern. Use of this substitute in very leaky end-uses like motor vehicle air conditioning may pose a high risk of fire. EPA requires that a risk assessment be conducted to demonstrate this blend may be safely used in any CFC-12 end-uses. The manufacturer of this blend has not submitted such a risk assessment, and EPA therefore finds it unacceptable.

(4) Flammable Substitutes.—*Flammable substitutes, defined as having flammability limits as measured according to ASTM E-681 with modifications included in Society of Automotive Engineers Recommended Practice J1657, including blends which become flammable during fractionation, are unacceptable as substitutes for CFC-12 in retrofitted motor vehicle air conditioning systems.*

Flammable refrigerants differ from traditional substances in several ways: Potential gains in energy efficiency, reductions in direct contribution to global warming, and additional risks from fire. Flammable refrigerants may be good substitutes in systems designed with fire risks in mind. In addition, in certain circumstances, they may serve well as substitutes in retrofit uses. EPA encourages research into the use of flammable refrigerants, but remains concerned about the dangers. Because of these concerns, EPA has established the requirement that manufacturers of flammable refrigerants conduct detailed risk assessments in all end-uses. The risks from flammability are extremely sensitive to the end-use and charge size.

In motor vehicle air conditioning systems (MVACS), flammable refrigerants pose risks not found in stationary equipment, including the potential for explosions in collisions, potential punctures of the condenser because of its placement directly behind the grille, potential punctures of flexible hoses, the hazard to technicians who are not expecting to handle flammable fluids, the danger to passengers from evaporator leaks, and the dangers to personnel involved in disposal of old automobiles. Due to the length of SNAP review, certain substitutes have been marketed which may pose risk to users. The intent of the 90-day review process was not to allow manufacturers to market risky substitutes, but rather to ensure a thorough review. Because of potential risks to users and service personnel, EPA finds it necessary to find all flammable substitutes unacceptable in retrofitted automotive air conditioning to prevent hazardous

substitutes from being sold without a thorough risk assessment.

EPA continues to encourage investigation of all substitute refrigerants, including flammable substances. This unacceptable determination only applies to retrofitted MVACS. If a manufacturer wishes an acceptable determination for a flammable substitute in MVACS, this risk assessment must be conducted in a scientifically valid manner. EPA will consider such a risk assessment in any determination on the substitute.

B. Solvents

1. Acceptable Subject to Use Conditions

a. Electronics Cleaning. (1) HCFC-225 ca/cb. *HCFC-225 is an acceptable substitute for CFC-113 and MCF in electronics cleaning subject to a 25 ppm occupational exposure level for the ca-isomer.* The use condition is based on the toxicity of this chemical. The Agency's analysis of this substitute found that the exposure limit indicated is sufficient to protect worker health and that this limit can be met with exposure controls. The exposure limit of the HCFC-225 cb isomer is 250 ppm. The new limit for the ca-isomer should be readily achievable since HCFC-225 is only sold commercially as a (45%/55%) blend of ca- and cb-isomers. In addition, the cleaning equipment where HCFC-225 is used is characterized by low emissions, and the manufacturer of HCFC-225 is currently conducting personal monitoring to corroborate the projected emission levels.

These workplace standards are designed to protect worker safety until the Occupational Safety and Health Administration (OSHA) sets its own standards under P.L. 91-596. The existence of the EPA standards in no way bars OSHA from standard-setting under OSHA authorities as defined in P.L. 91-596.

b. Precision Cleaning. (1) HCFC-225 ca/cb. *HCFC-225 is an acceptable substitute for CFC-113 and MCF in precision cleaning subject to a 25 ppm occupational exposure level for the ca-isomer.* The reasons for this decision are described in the preceding section.

2. Unacceptable Substitutes

a. Metals Cleaning. (1) Dibromomethane. *Dibromomethane (DBM) is an unacceptable substitute for CFC-113 and MCF in metals cleaning.* Dibromomethane has a comparatively high ODP (.17), and EPA's analysis of use of this chemical in cleaning processes revealed correspondingly high ozone depletion effects. In the case of DBM, the Agency's concern for high

ODP is compounded by the fact that DBM can in some cases be used as a drop-in replacement, which could result in greater probability of uncontrolled venting to the atmosphere. Since other alternatives with lower overall environmental impacts exist for the cleaning processes in question, EPA elected to ban use of DBM as a cleaning substitute.

b. Electronics Cleaning. (2) Dibromomethane. *Dibromomethane is an unacceptable substitute for CFC-113 and MCF in electronics cleaning.* Reasons for this decision are described in the preceding section.

c. Precision Cleaning. (3) Dibromomethane. *Dibromomethane is an unacceptable substitute for CFC-113 and MCF in precision cleaning.* Reasons for this decision are described in the preceding section.

c. Fire Suppression and Explosion Protection

1. Response to Comments

One commenter believes that CF₃I should not be acceptable for use in any fire protection applications until two-year chronic testing is done, and should be treated as a suspect carcinogen as defined by OSHA regulations, along with appropriate warnings for handlers.

The commenter bases his belief on two points. First, the commenter suggests that the cardiotoxicity test resulting in death of a test animal is not like the results from Halon 1211, CFC-11 or HCFC-123, which resulted in heart arrhythmias followed by recovery when the test animal was removed from exposure.

Second, the commenter states that the results of the genotoxicity tests give positive indications that CF₃I is potentially a carcinogen. The commenter states that the structural relationship of CF₃I to CH₃I, which the commenter states is a known skin carcinogen, increases the likelihood that CF₃I is a carcinogen.

The cardiotoxicity protocol incorporates simulation of a worse-case response by injecting the test animal with epinephrine prior to administering the test agent. The standard protocol interpretation requires observation of at least five life-threatening ventricular arrhythmias in order to conclude that the LOAEL has been attained. This response is a precursor to the imminent death of the animal.

In addition, the response of an animal to a cardiotoxicizing agent is somewhat random. Whereas one animal may experience heart arrhythmias, another animal might experience immediate death by the same dose. Thus, the

observations of ventricular arrhythmias are considered to be the same as observations of death and both are considered valid indicators of the LOAEL value.

Regarding the commenters' concern that CF₃I is a carcinogen, EPA conducts a risk assessment of an agent by initially asking qualitative questions such as: "Is the structure of the compound likely to be carcinogenic, and does the agent test positive in a mutagenesis assay? If so, how potent is the reaction, in other words, what dosage level gives a positive reaction?"

CF₃I is not a known carcinogen, although it tested positive in a mutagenicity screening assay to determine which are potential candidates for further testing. The Ames mutagenicity test used as a predictor of carcinogenicity is accurate as a predictor approximately 50 per cent of the time. The ability of this assay to predict for carcinogenicity, even given the positive finding, is questionable in the case of halogenated compounds.

Even should it be determined in a two-year carcinogenicity bioassay that the agent is a carcinogen, its use under the particular conditions representative of fire suppression applications in which could be expected only one or a few exposures in a life time, is likely not to constitute a cancer risk. A cancer risk usually requires long term exposure to the agent.

If the agent is a very good fire agent, on balance, the risk to protect lives overrides the remote concern of carcinogenicity from the agent. In such a case, for those situations where a manufacturing or service worker or fire fighter would be repeatedly exposed, appropriate precautions would be taken. A firefighter is not training in an environment where he is not already protected. And in industrial settings, the acceptable exposure limits are set using the subchronic and chronic data that is available and due precautions are taken, as in any other industrial chemical use.

One commenter requested that the use restrictions on SF₆ be altered to allow its use as a discharge test agent for all civilian as well as military aircraft fire suppression systems. The commenter reported that research efforts by private companies, the U.S. Navy, and the National Institute for Standards and Technology have identified SF₆ as the preferred test agent for simulating halon 1301 in aircraft fire suppression systems. The commenter indicated that the amount of SF₆ released in developing and certifying new commercial aircraft will be approximately 1,000 pounds per year or less.

EPA concurs with the commenter's request. EPA is aware that the airline industry is conducting a strategic research effort to identify new agents for use in new aircraft. Meanwhile, airlines and aircraft manufacturers are maintaining banks of recycled halon to service existing aircraft as well as new aircraft being built before the new systems and aircraft design can be developed and implemented. To preserve the stock of recycled halon for critical onboard use, and to minimize emission of halon during testing, EPA is broadening the language in this final rulemaking to allow the use of SF₆ as a discharge test agent in commercial as well as military aircraft fire suppression systems.

One commenter took issue with the use of the EPA's statement that PFCs are agents of "last resort" and that "in most total flooding applications, the Agency believes that alternatives to C₃F₈ exist." The commenter cited cases where confusion resulted in no action being taken by the user to move into an alternative. The commenter took no issue with the use conditions or the narrowed use limits imposed on PFCs in previous SNAP rulemakings. The commenter requested that EPA issue guidance on the 'narrowed use limits' evaluation.

EPA's use of the term 'agent of last resort' is intended to further explain, in simple terms, EPA's intention to the end-user. Further, EPA cannot agree to eliminate the statement "in most total flooding applications, the Agency believes that alternatives to C₃F₈ exist." This same language was used in the original SNAP rulemaking (59 FR 13109, 13110), and conveys to the user that most applications can be served by non-PFC technology and should be evaluated as such.

The narrowed use restriction imposed on PFCs was developed with the input of users and industry. EPA was requested to leave the technical evaluations to end-users and fire protection engineers, as each use scenario presented its own challenges and requirements. It was felt that specific guidance by EPA would limit the ability of the fire protection community to select and design the most appropriate system for each application. Thus, EPA requires that end-users conduct an evaluation of the alternatives, and maintain documentation in the event a PFC is selected. EPA regrets there is some confusion in the market concerning the determination that other alternatives are not technically feasible, but to be more specific may inadvertently limit a user's choices. EPA is expressly leaving

technical evaluations to the user community.

2. Listing Decisions

a. Acceptable Subject to Use Conditions

(1) Total Flooding Agents. (a) C₃F₈. *C₃F₈ is acceptable as a Halon 1301 substitute where other alternatives are not technically feasible due to performance or safety requirements: (a) Due to their physical or chemical properties or (b) where human exposure to the agents may approach cardiosensitization levels or result in other unacceptable health effects under normal operating conditions.* This agent is subject to the same use conditions stipulated for all total flooding agents, that is:

- Where egress from an area cannot be accomplished within one minute, the employer shall not use this agent in concentrations exceeding its NOAEL.
- Where egress takes longer than 30 seconds but less than one minute, the employer shall not use the agent in a concentration greater than its LOAEL.
- Agent concentrations greater than the LOAEL are only permitted in areas not normally occupied by employees provided that any employee in the area can escape within 30 seconds. The employer shall assure that no unprotected employees enter the area during agent discharge.

Cup burner tests in heptane indicate that C₃F₈ can extinguish fires in a total flood application at concentrations of 7.30 per cent and therefore has a design concentration of 8.8 per cent. The cardiotoxic NOAEL of 30 per cent for this agent is well above its extinguishment concentration and therefore this agent is safe for use in occupied areas. This agent can replace Halon 1301 by a ratio of 2 to 1 by weight.

Using agents in high concentrations poses a risk of asphyxiation by displacing oxygen. With an ambient oxygen level of 21 per cent, a design concentration of 22.6 per cent may reduce oxygen levels to approximately 16 per cent, the minimum level considered to be required to prevent impaired judgement or other physiological effects. Thus, the oxygen level resulting from discharge of this agent must be at least 16 per cent.

C₃F₈ has no ozone depletion potential, and is nonflammable, essentially non-toxic, and is not a VOC. However, this agent has an atmospheric lifetime of 3,200 years and a 100-year GWP of 6100. Due to the long atmospheric lifetime of C₃F₈, the Agency is finding this chemical acceptable only in those limited instances where no other

alternative is technically feasible due to performance or safety requirements. In most total flooding applications, the Agency believes that alternatives to C₃F₈ exist. EPA intends that users select C₃F₈ out of need and that this agent be used as the agent of last resort. Thus, a user must determine that the requirements of the specific end-use preclude use of other available alternatives.

Users must observe the limitations on C₃F₈ acceptability by undertaking the following measures: (i) Conduct an evaluation of foreseeable conditions of end use; (ii) determine that human exposure to the other alternative extinguishing agents may approach or result in cardiosensitization or other unacceptable toxicity effects under normal operating conditions; and (iii) determine that the physical or chemical properties or other technical constraints of the other available agents preclude their use.

EPA recommends that users minimize unnecessary emissions of this agent by limiting testing of C₃F₈ to that which is essential to meet safety or performance requirements; recovering C₃F₈ from the fire protection system in conjunction with testing or servicing; and destroying or recycling C₃F₈ for later use. EPA encourages manufacturers to develop aggressive product stewardship programs to help users avoid such unnecessary emissions.

(b) CF₃I *CF₃I is acceptable as a Halon 1301 substitute in normally unoccupied areas.* Any employee that could possibly be in the area must be able to escape within 30 seconds. The employer shall assure that no unprotected employees enter the area during agent discharge.

CF₃I (Halon 13001) is a fluoriodocarbon with an atmospheric lifetime of only 1.15 days due to its rapid photolysis in the presence of light. The resulting GWP of this agent is less than one, and its ODP when released at ground level is likely to be extremely low, with current conservative estimates ranging from .008 to .01. Complete analysis of the ozone depleting potential of this agent will be available in the near future.

Anticipating EPA's concern about releases of CF₃I from aircraft, and the associated likelihood of increased ozone-depleting effectiveness when released at higher altitudes, the military has conducted an analysis of historical releases of Halon 1301 from both military and commercial aircraft. Initial assessment indicates that emissions from U.S. military aircraft appear to have averaged about 56 pounds annually, of which 2 pounds were emitted above 30,000 feet. Commercial

aircraft worldwide released an estimated average of 933 pounds of Halon 1301 annually, of which 158 pounds was released above 30,000 feet. While EPA is awaiting the results of the ODP calculations of CF_3I , it is unlikely that such low emissions at high altitude will pose a significant threat to the ozone layer.

Interest in this agent is very high because it may constitute a drop-in replacement to Halon 1301 on a weight and volume basis. Initial tests have shown its weight equivalence for fire extinguishment to be 1.36, and its volume equivalence to be 1.0, while for explosion inertion it is 1.42 and 1.04 respectively. The research community is continuing to qualify the properties of this agent, including its materials compatibility, its storage stability and its effectiveness. While the manufacturer's SNAP submission only requests listing in normally unoccupied areas, preliminary cardiotoxicity data received by the Agency indicate that CF_3I has a NOAEL of 0.2 per cent and a LOAEL of 0.4 per cent, and thus this agent would not be suited for use in normally occupied areas.

(c) Gelled Halocarbon/Dry Chemical Suspension. *Gelled Halocarbon/Dry Chemical Suspension is acceptable as a Halon 1301 substitute in normally unoccupied areas.* Any employee who could possibly be in the area must be able to escape within 30 seconds. The employer shall assure that no unprotected employees enter the area during agent discharge.

The manufacturer is proposing to blend either of two halocarbons (HFC-125 or HFC-134a) with either ammonium polyphosphate (which is not corrosive) or monoammonium phosphate (which is corrosive on hard surfaces). An initial assessment of inhalation toxicology of fine particulates indicates that some risk exists of inhalation exposure when the particles are below a certain size compared to the mass per cubic meter in air. Particle sizes less than 10 to 15 microns and a mass above the ACGIH nuisance dust levels raise concerns which need to be further studied. In a total flooding application, the exposure levels may be of concern. In addition, because the discharge of powders obscures vision, evacuation could be impeded. EPA is asking manufacturers of total flooding systems using powdered aerosols to submit to the Agency a review of the medical implications of inhaling atmospheres flooded with fine powder particulates. While the manufacturer requested a SNAP listing for unoccupied areas only, EPA would not consider its use in occupied areas until

the requested peer review is complete. Meanwhile, EPA is finding this technology acceptable for use in normally unoccupied areas.

For further discussion of this agent, including a review of particle size distributions, see the listing under "Streaming Agents—Acceptable."

(d) Inert Gas/Powdered Aerosol Blend. *Inert Gas/Powdered Aerosol Blend is acceptable as a Halon 1301 substitute in normally unoccupied areas.* In areas where personnel could possibly be present, as in a cargo area, the employer shall provide a pre-discharge employee alarm capable of being perceived above ambient light or noise levels for alerting employees before system discharge. The pre-discharge alarm shall provide employees time to safely exit the discharge area prior to system discharge.

This alternative agent is formulated from a mixture of dry powders pressed together into pill form. Upon exposure to heat from a fire, a pyrotechnic charge initiates a series of exothermic, gas-producing reactions composed mainly of a mixture of nitrogen, carbon dioxide and water vapor, with small amounts of carbon monoxide, nitrous oxide, nitrogen dioxide, and solid residues. The oxygen level in the room is largely depleted, thus extinguishing the fire.

The manufacturer has proposed this technology for use in normally unoccupied areas only, such as engine nacelles and engine compartments, aircraft dry bay areas and unoccupied cargo areas. Comparing agents alone, deployment of 2.0 pounds of this agent at 400°F has an equivalent fire suppression effectiveness to 1.0 pound of Halon 1301 at 70°F.

This agent has no ODP. The carbon dioxide generated in the combustion of this agent has a GWP of 1.

b. Acceptable Subject to Narrowed Use Limits

(1) Total Flooding Agents. (a) C_3F_8 . *C_3F_8 is acceptable as a Halon 1301 substitute where other alternatives are not technically feasible due to performance or safety requirements: a) due to their physical or chemical properties or b) where human exposure to the agents may approach cardiotoxicity levels or result in other unacceptable health effects under normal operating conditions.* This agent is subject to the use conditions stipulated for all total flooding agents, that is:

- Where egress from an area cannot be accomplished within one minute, the employer shall not use this agent in concentrations exceeding its NOAEL.

- Where egress takes longer than 30 seconds but less than one minute, the employer shall not use the agent in a concentration greater than its LOAEL.

- Agent concentrations greater than the LOAEL are only permitted in areas not normally occupied by employees provided that any employee in the area can escape within 30 seconds. The employer shall assure that no unprotected employees enter the area during agent discharge.

Cup burner tests in heptane indicate that C_3F_8 can extinguish fires in a total flood application at concentrations of 7.30 per cent and therefore has a design concentration of 8.8 per cent. The cardiotoxic NOAEL of 30 per cent for this agent is well above its extinguishment concentration; therefore, it is safe for use in occupied areas. This agent has a weight equivalence of two-to-one by weight compared to Halon 1301.

Using agents in high concentrations poses a risk of asphyxiation by displacing oxygen. With an ambient oxygen level of 21 per cent, a design concentration of 22.6 per cent may reduce oxygen levels to approximately 16 per cent, the minimum level considered to be required to prevent impaired judgment or other physiological effects. Thus, the oxygen level resulting from discharge of this agent must be at least 16 per cent.

This agent has an atmospheric lifetime of 3,200 years and a 100-year GWP of 6,100. Due to the long atmospheric lifetime of C_3F_8 , the Agency is finding this chemical acceptable only in those limited instances where no other alternative is technically feasible due to performance or safety requirements. In most total flooding applications, the Agency believes that alternatives to C_3F_8 exist. EPA intends that users select C_3F_8 out of need and that this agent be used as the agent of last resort. Thus, a user must determine that the requirements of the specific end-use preclude use of other available alternatives.

Users must observe the limitations on C_3F_8 acceptability by undertaking the following measures: (i) Conduct an evaluation of foreseeable conditions of end use; (ii) determine that human exposure to the other alternative extinguishing agents may approach or result in cardiotoxicity or other unacceptable toxicity effects under normal operating conditions; and (iii) determine that the physical or chemical properties or other technical constraints of the other available agents preclude their use.

EPA recommends that users minimize unnecessary emissions of this agent by

limiting testing of C₃F₈ to that which is essential to meet safety or performance requirements; recovering C₃F₈ from the fire protection system in conjunction with testing or servicing; and destroying or recycling C₃F₈ for later use. EPA encourages manufacturers to develop aggressive product stewardship programs to help users avoid such unnecessary emissions.

(b) Sulfur Hexafluoride (SF₆). SF₆ is acceptable for use as a discharge test agent in military uses and civilian aircraft uses only. Sulfur Hexafluoride is a nonflammable, nontoxic gas which is colorless and odorless. With a density of approximately five times that of air, it is one of the heaviest known gases. SF₆ is relatively inert, and has an atmospheric lifetime of 3,200 years, with a 100-year, 500-year, and 1,000-year GWP of 16,500, 24,900 and 36,500 respectively.

This agent has been developed by the U.S. Navy as a test gas simulant in place of halon in new halon total flooding systems on ships which have been under construction prior to identification and qualification of substitute agents. Halon systems are no longer included in designs for new ships. The Navy estimates its annual usage to be less than 10,000 pounds annually, decreasing over time. Similarly, the airline industry has an interest in using SF₆ as a discharge test agent simulating Halon 1301 in aircraft system certification testing to ensure aircraft inflight fire safety. During the period of development, FAA certification, and implementation of suitable substitutes for aircraft, the airlines will continue to build new aircraft with halon systems. The amount of SF₆ released in developing and certifying these critical systems for commercial aircraft will be approximately 1,000 pounds per year or less. EPA believes that the quantities involved in these two use sectors are moderate, and avoiding the discharge of halon to test new halon systems is an immediate priority.

While SF₆ is not currently used in other commercial sector testing regimes, EPA is imposing a narrowed use limit to ensure that emissions of this agent remain minimal. The NFPA 12a and NFPA 2001 standards recommend that halon or other total flooding gases not be used in discharge testing, but that alternative methods of ensuring enclosure and piping integrity and system functioning be used. Alternative methods can often be used, such as the "door fan" test for enclosure integrity, UL 1058 testing to ensure system functioning, pneumatic test of installed piping, and a "puff" test to ensure

against internal blockages in the piping network. These stringent design and testing requirements have largely obviated the need to perform a discharge test for total flood systems containing either Halon 1301 or a substitute agent.

c. Unacceptable

(1) Total Flooding. (a) HFC-32. HFC-32 is unacceptable as a total flooding agent. HFC-32 has been determined to be flammable, with a large flammability range, and is therefore inappropriate as a halon substitute when used as a pure agent. This agent was proposed acceptable in the first SNAP proposed rulemaking (58 FR 28093, May 12, 1993) but public comment received indicated agreement about the flammability characteristics of this agent. EPA is not aware of any interest in commercializing this agent as a fire suppression agent.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the "Executive Order."

Pursuant to the terms of Executive Order 12866, OMB notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order and EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations have been documented in the public record.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires EPA to prepare a budgetary impact

statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing any small governments that may be significantly or uniquely affected by the rule. Section 205 requires that regulatory alternatives be considered before promulgating a rule for which a budgetary impact statement is prepared. The Agency must select the least costly, most cost-effective, or least burdensome alternative that achieves the rule's objectives, unless there is an explanation why this alternative is not selected or this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than \$100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. However, the rule has the net effect of reducing burden from part 82, Stratospheric Protection regulations, on regulated entities.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 604(a), applies to any rulemaking that is subject to public notice and comment requirements. The Act requires that a regulatory flexibility analysis be performed or the head of the Agency certifies that a rule will not have a significant economic effect on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Agency believes that this final rule will not have a significant effect on a substantial number of small entities and has therefore concluded that a formal RFA is unnecessary. Because costs of the SNAP requirements as a whole are expected to be minor, the rule is unlikely to adversely affect businesses, particularly as the rule exempts small sectors and end-uses from reporting requirements and formal agency review. In fact, to the extent that information gathering is more expensive and time-consuming for small companies, this rule may well provide benefits for small businesses anxious to examine potential substitutes to any ozone-depleting class I and class II substances they may be using, by

requiring manufacturers to make information on such substitutes available.

D. Paperwork Reduction Act

The EPA has determined that this final rule contains no information requirements subject to the Paperwork Reduction Act 44 S.S.C. 3501 et seq.

V. Additional Information

For copies of the comprehensive SNAP lists or additional information on SNAP contact the Stratospheric Protection Hotline at 1-800-296-1996, Monday-Friday, between the hours of 10:00 a.m. and 4:00 p.m. (EST).

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). **Federal Register** notices can be ordered from the Government Printing Office Order Desk (202) 783-3238; the citation is the date of publication.

Notices and rulemaking under the SNAP program can also be retrieved electronically from EPA's Protection of Stratospheric Ozone Technology Transfer Network (TTN), Clean Air Act Amendment Bulletin Board. The access number for users with a 1200 or 2400

bps modem is (919) 541-5742. For users with a 9600 bps modem the access number is (919) 541-1447. For assistance in accessing this service, call (919) 541-5384 during normal business hours (EST).

List of Subjects in 40 CFR Part 82

Environmental protection, administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: June 2, 1995.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671-7671q.

2. Section 82.180 is amended by revising paragraph (a)(8)(ii) to read as follows:

§ 82.180 Agency review of SNAP submissions.

(a) * * *

(8) * * *

(ii) *Communication of Decision to the Public.* The Agency will publish in the **Federal Register** on a quarterly basis a complete list of the acceptable and unacceptable alternatives that have been reviewed to date. In the case of substitutes proposed as acceptable with use restrictions, proposed as unacceptable or proposed for removal from either list, a rulemaking process will ensue. Upon completion of such rulemaking, EPA will publish revised lists of substitutes acceptable subject to use conditions or narrowed use limits and unacceptable substitutes to be incorporated into the Code of Federal Regulations. (See Appendices to this subpart.)

* * * * *

4. Subpart G is amended by adding appendix B to read as follows:

Subpart G—Significant New Alternatives Policy Program

* * * * *

Appendix B to Subpart G—Substitutes Subject to Use Restrictions and Unacceptable Substitutes

Listed in the June 13, 1995 final rule, effective July 13, 1995.

REFRIGERANTS—ACCEPTABLE SUBJECT TO USE CONDITIONS

Application	Substitute	Decision	Conditions	Comments
CFC-12 Automobile Motor Vehicle Air Conditioning (Retrofit and New Equipment/NIKS).	HFC-134a, R-401C, HCFC Blend Beta.	Acceptable	—must be used with unique fittings. —must be used with detailed labels. —all CFC-12 must be removed from the system prior to retrofitting. Refer to the text for a full description.	EPA is concerned that the existence of several substitutes in this end-use may increase the likelihood of significant refrigerant cross-contamination and potential failure of both air conditioning systems and recovery/recycling equipment. For the purposes of this rule, no distinction is made between "retrofit" and "drop-in" refrigerants; retrofitting a car to use a new refrigerant includes all procedures that result in the air conditioning system using a new refrigerant.

REFRIGERANTS—ACCEPTABLE SUBJECT TO NARROWED USE LIMITS

End-use	Substitute	Decision	Comments
CFC-11, CFC-12, CFC-113, CFC-114, CFC-115 Non-Mechanical Heat Transfer, New.	C ₃ F ₈ , C ₄ F ₁₀ , C ₅ F ₁₂ , C ₅ F ₁₁ NO, C ₆ F ₁₄ , C ₆ F ₁₃ NO, C ₇ F ₁₆ , C ₇ F ₁₅ NO, C ₈ F ₁₈ , C ₈ F ₁₆ O, and C ₉ F ₂₁ N.	Acceptable only where no other alternatives are technically feasible due to safety or performance requirements.	Users must observe the limitations on PFC acceptability by determining that the physical or chemical properties or other technical constraints of the other available agents preclude their use. Documentation of such measures must be available for review upon request. The principal environmental characteristic of concern for PFCs is that they have high GWPs and long atmospheric lifetimes. EPA strongly recommends recovery and recycling of these substitutes.

REFRIGERANTS—UNACCEPTABLE SUBSTITUTES

End-use	Substitute	Decision	Comments
CFC-11, CFC-12, CFC-113, CFC-114, R-500 Centrifugal Chillers (Retrofit and New Equipment/NIKs).	R-405A	Unacceptable	R-405A contains R-c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC-12 Reciprocating Chillers (Retrofit and New Equipment/NIKs).	R-405A	Unacceptable	R-405A contains R-c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC-11, CFC-12, R-502 Industrial Process Refrigeration (Retrofit and New Equipment/NIKs).	R-403B	Unacceptable	R-403B contains R-218, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	R-405A	Unacceptable	R-405A contains R-c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
CFC-12, R-502 Ice Skating Rinks (Retrofit and New Equipment/NIKs).	R-405A	Unacceptable	R-405A contains R-c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC-12, R-502 Cold Storage Warehouses (Retrofit and New Equipment/NIKs).	R-403B	Unacceptable	R-403B contains R-218, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	R-405A	Unacceptable	R-405A contains R-c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC-12, R-500, R-502 Refrigerated Transport (Retrofit and New Equipment/NIKs).	R-403B	Unacceptable	R-403B contains R-218, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	R-405A	Unacceptable	R-405A contains R-c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC-12, R-502 Retail Food Refrigeration (Retrofit and New Equipment/NIKs).	R-403B	Unacceptable	R-403B contains R-218, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	R-405A	Unacceptable	R-405A contains R-c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC-12, R-502 Commercial Ice Machines (Retrofit and New Equipment/NIKs).	R-403B	Unacceptable	R-403B contains R-218, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	R-405A	Unacceptable	R-405A contains R-c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC-12 Vending Machines (Retrofit and New Equipment/NIKs).	R-405A	Unacceptable	R-405A contains R-c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC-12 Water Coolers (Retrofit and New Equipment/NIKs).	R-405A	Unacceptable	R-405A contains R-c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.

REFRIGERANTS—UNACCEPTABLE SUBSTITUTES—Continued

End-use	Substitute	Decision	Comments
CFC-12 Household Refrigerators (Retrofit and New Equipment/NIKs).	R-405A	Unacceptable	R-405A contains R-c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC-12, R-502 Household Freezers (Retrofit and New Equipment/NIKs).	R-403B	Unacceptable	R-403B contains R-218, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	R-405A	Unacceptable	R-405A contains R-c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC-12, R-500 Residential Dehumidifiers (Retrofit and New Equipment/NIKs).	R-405A	Unacceptable	R-405A contains R-c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
CFC-12 Motor Vehicle Air Conditioners (Retrofit and New Equipment/NIKs).	R-405A	Unacceptable	R-405A contains R-c318, a PFC, which has an extremely high GWP and lifetime. Other substitutes exist which do not contain PFCs.
	Hydrocarbon Blend B	Unacceptable	Flammability is a serious concern. Data have not been submitted to demonstrate it can be used safely in this end-use.
	Flammable Substitutes ..	Unacceptable	The risks associated with using flammable substitutes in this end-use have not been addressed by a risk assessment.

SOLVENT CLEANING SECTOR—ACCEPTABLE SUBJECT TO USE CONDITIONS SUBSTITUTES

Application	Substitute	Decision	Conditions	Comments
Electronics Cleaning w/CFC-113, MCF.	HCFC-225 ca/cb	Acceptable	Subject to the company set exposure limit of 25 ppm of the -ca isomer.	HCFC-225 ca/cb blend is offered as a 45%-ca/55%-cb blend. The company set exposure limit of the -ca isomer is 25 ppm. The company set exposure limit of the -cb isomer is 250 ppm. It is the Agency's opinion that with the low emission cold cleaning and vapor degreasing equipment designed for this use, the 25 ppm limit of the HCFC-225 ca isomer can be met. The company is submitting further exposure monitoring data.
Precision Cleaning w/CFC-113, MCF.	HCFC-225 ca/cb	Acceptable	Subject to the company set exposure limit of 25 ppm of the -ca isomer.	HCFC-225 ca/cb blend is offered as a 45%-ca/55%-cb blend. The company set exposure limit of the -ca isomer is 25 ppm. The company set exposure limit of the -cb isomer is 250 ppm. It is the Agency's opinion that with the low emission cold cleaning and vapor degreasing equipment designed for this use, the 25 ppm limit of the HCFC-225 ca isomer can be met. The company is submitting further exposure monitoring data.

SOLVENT CLEANING SECTOR—UNACCEPTABLE SUBSTITUTES

End use	Substitute	Decision	Comments
Metals cleaning w/CFC-113	Dibromomethane	Unacceptable	High ODP; other alternatives exist.
Metals cleaning w/MCF	Dibromomethane	Unacceptable	High ODP; other alternatives exist.
Electronics cleaning w/CFC-113	Dibromomethane	Unacceptable	High ODP; other alternatives exist.
Electronics cleaning w/MCF	Dibromomethane	Unacceptable	High ODP; other alternatives exist.

SOLVENT CLEANING SECTOR—UNACCEPTABLE SUBSTITUTES—Continued

End use	Substitute	Decision	Comments
Precision cleaning w/CFC-113	Dibromomethane	Unacceptable	High ODP; other alternatives exist.
Precision cleaning w/MCF	Dibromomethane	Unacceptable	High ODP; other alternatives exist.

FIRE SUPPRESSION AND EXPLOSION PROTECTION—ACCEPTABLE SUBJECT TO USE CONDITIONS: TOTAL FLOODING AGENTS

Application	Substitute	Decision	Conditions	Comments
Halon 1301 Total Flooding Agents.	C ₃ F ₈	Acceptable where other alternatives are not technically feasible due to performance or safety requirements: a. due to their physical or chemical properties, or b. where human exposure to the extinguishing agents may approach cardiosensitization levels or result in other unacceptable health effects under normal operating conditions.	Until OSHA establishes applicable workplace requirements: For occupied areas from which personnel cannot be evacuated in one minute, use is permitted only up to concentrations not exceeding the cardiotoxicity NOEL of 30%. Although no LOAEL has been established for this product, standard OSHA requirements apply, i.e. for occupied areas from which personnel can be evacuated or egress can occur between 30 and 60 seconds, use is permitted up to a concentration not exceeding the LOAEL. All personnel must be evacuated before concentration of C ₃ F ₈ exceeds 30%. Design concentration must result in oxygen levels of at least 16%.	The comparative design concentration based on cup burner values is approximately 8.8%. Users must observe the limitations on PFC acceptability by making reasonable efforts to undertake the following measures: (i) conduct an evaluation of foreseeable conditions of end use; (ii) determine that human exposure to the other alternative extinguishing agents may approach or result in cardiosensitization or other unacceptable toxicity effects under normal operating conditions; and (iii) determine that the physical or chemical properties or other technical constraints of the other available agents preclude their use; Documentation of such measures must be available for review upon request. The principal environmental characteristic of concern for PFCs is that they have high GWPs and long atmospheric lifetimes. Actual contributions to global warming depend upon the quantities of PFCs emitted. For additional guidance regarding applications in which PFCs may be appropriate, users should consult the description of potential uses which is included in the March 18, 1994 Rulemaking (59 FR 13043). See additional comments 1, 2, 3, 4.
	CF ₃ I	Acceptable in normally unoccupied areas.	EPA requires that any employee who could possibly be in the area must be able to escape within 30 seconds. The employer shall assure that no unprotected employees enter the area during agent discharge.	Manufacturer has not applied for listing for use in normally occupied areas. Preliminary cardiosensitization data indicates that this agent would not be suitable for use in normally occupied areas. EPA is awaiting results of ODP calculations. See additional comments 1, 2, 3, 4.
	Gelled Halocarbon/Dry Chemical Suspension.	Acceptable in normally unoccupied areas.	EPA requires that any employee who could possibly be in the area must be able to escape within 30 seconds. The employer shall assure that no unprotected employees enter the area during agent discharge.	The manufacturer's SNAP application requested listing for use in unoccupied areas only. See additional comment 2.
	Inert Gas/Powdered Aerosol Blend.	Acceptable as a Halon 1301 substitute in normally unoccupied areas.	In areas where personnel could possibly be present, as in a cargo area, EPA requires that the employer shall provide a pre-discharge employee alarm capable of being perceived above ambient light or noise levels for alerting employees before system discharge. The pre-discharge alarm shall provide employees time to safely exit the discharge area prior to system discharge.	The manufacturer's SNAP application requested listing for use in unoccupied areas only. See additional comment 2.

Additional Comments

- 1—Must conform with OSHA 29 CFR 1910 Subpart L Section 1910.160 of the U.S. Code.
- 2—Per OSHA requirements, protective gear (SCBA) must be available in the event personnel must enter/reenter the area.
- 3—Discharge testing should be strictly limited only to that which is essential to meet safety or performance requirements.

4—The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

FIRE SUPPRESSION AND EXPLOSION PROTECTION—ACCEPTABLE SUBJECT TO NARROWED USE LIMITS: TOTAL FLOODING AGENTS

Application	Substitute	Decision	Conditions	Comments
Halon 1301, Total Flooding Agents.	C ₃ F ₈	Acceptable where other alternatives are not technically feasible due to performance or safety requirements: a. due to their physical or chemical properties, or b. where human exposure to the extinguishing agents may approach cardiotoxicity levels or result in other unacceptable health effects under normal operating conditions.	Until OSHA establishes applicable workplace requirements: For occupied areas from which personnel cannot be evacuated in one minute, use is permitted only up to concentrations not exceeding the cardiotoxicity NOAEL of 30%. Although no LOAEL has been established for this product, standard OSHA requirements apply, i.e. for occupied areas from which personnel can be evacuated or egress can occur between 30 and 60 seconds, use is permitted up to a concentration not exceeding the LOAEL. All personnel must be evacuated before concentration of C ₃ F ₈ exceeds 30%. Design concentration must result in oxygen levels of at least 16%.	The comparative design concentration based on cup burner values is approximately 8.8%. Users must observe the limitations on PFC acceptability by making reasonable efforts to undertake the following measures: (i) conduct an evaluation of foreseeable conditions of end use; (ii) determine that human exposure to the other alternative extinguishing agents may approach or result in cardiotoxicity or other unacceptable toxicity effects under normal operating conditions; and (iii) determine that the physical or chemical properties or other technical constraints of the other available agents preclude their use; Documentation of such measures must be available for review upon request. The principal environmental characteristic of concern for PFCs is that they have high GWPs and long atmospheric lifetimes. Actual contributions to global warming depend upon the quantities of PFCs emitted. For additional guidance regarding applications in which PFCs may be appropriate, users should consult the description of potential uses which is included in the March 18, 1994 Final Rulemaking (58 FR 13043).
	Sulfurhexa-fluoride (SF ₆).	Acceptable as a discharge test agent in military uses and in civilian aircraft uses only.	This agent has an atmospheric lifetime greater than 1,000 years, with an estimated 100-year, 500-year, and 1,000-year GWP of 16,100, 26,110 and 32,803 respectively. Users should limit testing only to that which is essential to meet safety or performance requirements. This agent is only used to test new Halon 1301 systems.

FIRE SUPPRESSION AND EXPLOSION PROTECTION—UNACCEPTABLE SUBSTITUTES

Application	Substitute	Decision	Comments
Halon 1301 Total Flooding Agents.	HFC-32	Unacceptable	Data indicate that HFC-32 is flammable and therefore is not suitable as a halon substitute.

[FR Doc. 95-14337 Filed 6-12-95; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 261

[SW-FRL-5219-5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a petition submitted by Conversion Systems, Inc. ("CSI") to exclude from hazardous waste control (or "delist") certain solid wastes. The wastes being delisted consist of electric arc furnace dust ("EAFD") that has been treated by a specific chemical stabilization process. This action responds to CSI's petition to delist these treated wastes on a "generator-specific" basis from the hazardous waste lists. After careful analysis, the Agency has concluded that the petitioned waste is not hazardous waste when disposed of

in Subtitle D landfills. This exclusion applies to chemically stabilized EAFD generated at CSI's Sterling, Illinois facility as well as to similar wastes that CSI may generate at future facilities. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in Subtitle D landfills, but imposes testing conditions to ensure that the future-generated waste remains qualified for delisting.

EFFECTIVE DATE: June 13, 1995.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, and is available for viewing [Room M2616] from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260-9327 for appointments. The reference number for this docket is "F-95-CSEF-FFFFF." The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of \$0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (703) 412-9810. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260-7392.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of title 40 of the Code of Federal Regulations; and § 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Petitioners must provide sufficient information to EPA to allow the Agency to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

B. History of This Rulemaking

Conversion Systems, Inc., (CSI), Horsham, Pennsylvania, petitioned the Agency to exclude from hazardous waste control its stabilized waste generated at electric arc furnace dust (EAFD) treatment facilities across the nation. After evaluating the petition, EPA proposed, on November 2, 1993 to

exclude CSI's waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 58 FR 58521). Subsequently, in response to a commenter's request, the Agency published a notice extending the comment period until January 3, 1994 (see 58 FR 67389, December 21, 1993).

This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to grant CSI's petition.

II. Disposition of Petition

Conversion Systems, Inc., Horsham, Pennsylvania

A. Proposed Exclusion

CSI petitioned the Agency for a multiple-site exclusion for chemically stabilized electric arc furnace dust (CSEAFD) resulting from the Super Detox™ treatment process as modified by CSI. (The original Super Detox™ treatment process was developed by Bethlehem Steel Corporation and used at its Johnstown and Steelton, Pennsylvania facilities.) Specifically, CSI requested that the Agency grant a multiple-site exclusion for CSEAFD generated by CSI using its modified Super Detox™ process at the existing Sterling, Illinois facility at Northwestern Steel and future facilities to be constructed (CSI initially is planning to construct 12 other facilities nationwide). The resulting CSEAFD is classified as a K061 hazardous waste by virtue of the "derived from" rule (§ 261.3(c)(2)(i)), because it is generated from the treatment of a hazardous waste (electric arc furnace dust) which is currently listed as EPA Hazardous Waste No. K061—"Emission control dust/sludge from the primary production of steel in electric furnaces." The listed constituents of concern for EPA Hazardous Waste No. K061 are cadmium, hexavalent chromium, and lead. CSI petitioned to exclude Super Detox™ treatment residues because it does not believe that the CSEAFD meets the criteria for which K061 was listed. CSI also believes that the Super Detox™ process, as modified by CSI, generates a non-hazardous waste because the constituents of concern, although present in the waste, are in an essentially immobile form. CSI further believes that the waste is not hazardous for any other reason (i.e., there are no additional constituents or factors that could cause the waste to be hazardous). Lastly, CSI believes that a multiple-site delisting will save both EPA and CSI the cost and administrative burden of multiple petitions each providing essentially the same, duplicative information of a process already well

known and accepted by the Agency as effective in treating EAFD wastes (see final exclusions for Bethlehem Steel Corporation's Johnstown and Steelton, Pennsylvania facilities in 54 FR 21941, May 22, 1989). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)-(4).

In support of its petition, CSI submitted: (1) Detailed descriptions and schematics of the Super Detox™ treatment process for both wet and dry electric arc furnace dust¹; (2) total constituent analyses results for the eight Toxicity Characteristic (TC) metals listed in § 261.24 and six other metals from representative samples of the untreated (non-stabilized) EAFD; (3) Toxicity Characteristic Leaching Procedure (TCLP, SW-846 Method 1311) results for the eight TC metals from a representative sample of untreated EAFD; (4) TCLP results for the eight TC metals and six other metals from representative samples of the uncured CSEAFD; (5) Multiple Extraction Procedure (MEP, SW-846 Method 1320) results for the TC metals and six other metals from representative samples of the uncured CSEAFD; (6) total oil and grease (TOG), total cyanide, and total sulfide results from representative samples of the untreated EAFD; (7) information and test results regarding the hazardous waste characteristics of ignitability, corrosivity, and reactivity for the CSEAFD; and (8) ground-water monitoring data from the landfill containing the CSEAFD generated from CSI's Sterling, Illinois Super Detox™ facility.

B. Request for Public Hearing

During the comment period, Horsehead Resource Development Company, Inc. ("HRD") and one Congressman requested a formal public hearing to allow interested parties a sufficient opportunity to comment on the November 2, 1993 proposed rulemaking. HRD also indicated its desire to cross-examine EPA and CSI witnesses. Following review of the issues raised by the commenters, the Agency found no compelling need for a public hearing and, therefore, notified the commenters of its decision not to

¹ CSI has claimed some treatment process descriptions, including information on how they improved the original Super Detox™ treatment process, as confidential business information (CBI). This information, therefore, is not available in the RCRA public docket for today's notice.

hold a hearing. See the docket for proposed notice for the related correspondences. In its comments on the proposed rule, HRD claimed that EPA's denial of its hearing request violates the Administrative Procedure Act.

The Agency notes that the applicable regulations (40 CFR § 260.20(d) and § 25.5) specify only that EPA hold an informal hearing at its discretion. The Agency believes that given the highly technical nature of the proposal, written documentation is a more appropriate medium for the issues raised. In addition, even if a hearing were held, such process would not encompass the formal testimony of EPA staff and expert witnesses HRD was seeking; the Agency would merely use this procedure to gather oral comments for the record. The Agency believes a hearing was unnecessary, and that the Agency's procedures were consistent with the Administrative Procedure Act. In any event, the Agency has met with HRD, the primary commenter opposing this delisting, a number of times since the time of the proposal to hear its views in person.

C. Summary of Responses to Public Comments

The Agency received public comments on the November 2, 1993 proposal from 18 interested parties. Eight of these commenters, consisting chiefly of steelmaking concerns, clearly supported the Agency's proposed decision to grant CSI's petition. One commenter had questions about the RCRA permit requirements for CSI's future facilities, and about the effective date of the proposed delisting in a State not authorized to administer the Federal delisting program. Of the nine remaining commenters, one commenter (HRD) strongly opposed the Agency's proposed decision, and presented discussions on a variety of issues. The remaining eight out of these nine commenters consisted of Congressmen and Senators reiterating concerns about the proposed delisting. Detailed Agency responses to all significant comments are provided in a "Response to Comments" document, which is in the public docket for today's rule. The following discussion is a summary of both the most significant issues raised by HRD and EPA's responses.

Impact of This Delisting Upon Recycling of K061

Comment: A number of commenters, including HRD, claimed that the proposed delisting would inappropriately and illegally allow for the landfilling of chemically stabilized

K061 that is currently being recycled by high-temperature metals recovery ("HTMR") facilities. The commenters' assertions on this issue can be summarized as follows: (1) Both RCRA and the Pollution Prevention Act of 1990 express a general preference for resource recovery and reclamation over conventional waste treatment and disposal. Accordingly, EPA is required by law to promulgate regulations that encourage recycling over treatment and disposal whenever possible. The CSI delisting violates these statutory requirements because it encourages the landfilling of otherwise recoverable materials. (2) EPA's delisting regulations require compliance with these RCRA and PPA mandates. Specifically, the regulations require EPA to consider factors in addition to those for which the waste was originally listed as a hazardous waste if such factors could cause the waste to be listed as a hazardous waste (40 CFR 260.22(a)(2) and 261.11(a)(3)(xi)). EPA must consider, as one of these factors, the impact of the CSI delisting on the overarching mandates of RCRA and the PPA, and must conclude that the CSI delisting is inconsistent with these statutes. (3) The delisting would violate EPA's own regulatory strategy and prior policies and rulemaking precedents favoring resource conservation and recovery over stabilization. These policies and precedents appear in the Agency's RCRA implementation strategy, land disposal regulations and waste minimization guidance. (4) The CSI delisting would also violate the Administration's stated policy to encourage recycling technologies and a "green" economy.

On the other hand, one commenter supporting the proposed delisting stated that the delisting must be granted as a matter of law because EPA has determined that the chemically stabilized EAFD residues do not "pose a substantial hazard to human health or the environment" and therefore are not "hazardous wastes" subject to RCRA regulation, citing RCRA section 1004(5) and 40 CFR 260.22 (a), (b) and 261.11(a). This commenter claimed that the delisting is consistent with the waste management objectives of RCRA and the PPA, which encourage EPA to promote various alternatives to the untreated land disposal of hazardous waste.

Response: After careful evaluation of the characteristics and nature of the K061 residues produced by CSI's stabilization process, EPA is today finalizing a determination that these residues do not constitute RCRA hazardous waste. Specifically, EPA has found that these chemically stabilized

K061 wastes do not meet any of the criteria for which K061 wastes were listed as hazardous and that there is no reason to believe that any factors other than those for which K061 wastes were listed (including additional constituents) could cause these CSI wastes to be hazardous. See 40 CFR 260.22(a) and RCRA section 3001(f).

In light of EPA's determination that CSI's treated K061 waste is not hazardous, the Agency has no authority to retain this waste as a listed hazardous waste simply because doing so would effectively promote HTMR recycling and reclamation of K061 wastes over the treatment and disposal of CSI's chemically stabilized, non-hazardous waste. RCRA's general statements of Congressional findings, objectives and national policy addressing the subject of minimizing hazardous waste generation and disposal do not supersede the specific hazardous waste listing and delisting scheme established under RCRA. Here, under that scheme, EPA has determined that CSI's treated waste does not meet the criteria for being considered hazardous waste. Nothing in the general objectives and policy provisions of RCRA generally favoring resource recovery over conventional waste treatment and disposal requires, or indeed authorizes, EPA to forego or reverse this determination. See *Hazardous Waste Treatment Council v. EPA*, 861 F.2d 270, 276-77 (D.C. Cir. 1988).

Similarly, EPA cannot agree with the commenter's conclusion that this delisting conflicts with the mandates of the Pollution Prevention Act of 1990 ("PPA"). Section 6602(b) of the PPA (42 U.S.C. 13101(b)) declares it to be the national policy that pollution control should follow a hierarchy which prefers pollution prevention at the source over recycling and prefers recycling over treatment and disposal in an environmentally safe manner. EPA fully supports this hierarchy and believes it sets forth a desirable general order of preferences for pollution control. Again, however, this policy is not a statutory or regulatory mandate. Nothing in the PPA requires or even contemplates that EPA must retain on the list of hazardous wastes materials that the Agency finds to be non-hazardous simply because there exists an ability to perform resource recovery on these materials.

EPA also disagrees with the commenter's claim that the delisting regulations require this delisting to be denied. 40 CFR 260.22(a)(2) focuses on factors that "could cause the waste to be a hazardous waste". The factor cited by the commenter does not fit this description. In addition, EPA finds that

today's delisting decision is fully consistent with the Agency's and the Administration's own regulatory strategy and policies, as explained in the Response to Comments document.

In any event, EPA believes that today's delisting decision does harmonize with the overall intent and purposes of RCRA and the PPA. While these two statutes generally encourage resource recovery where appropriate, they do not require it in every conceivable case, regardless of the nature of the waste. Indeed, the commenter's interpretation would have the effect of contravening Congressional intent to allow for delistings where appropriate.

EPA also notes that the effect of this delisting on K061 recycling practices is speculative in any event. As explained in the Response to Comments document, the extent to which steelmakers may stop using recycling technologies upon today's delisting in favor of managing EAFD through CSI's Super Detox™ process is unclear.

EPA's response on these issues is further explained in the Response to Comments document for this rulemaking.

Multiple Site Nature of the Delisting

Comment: One commenter (HRD) stated that the multiple-site nature of the delisting for CSI is precedent-setting but the Agency has offered no legal justification for it. The commenter believed that 40 CFR 260.22 and RCRA section 3001(f) limit the scope of delisting petitions to wastes generated at a single facility. This commenter also claimed that this delisting violates the notice and comment requirements of the Administrative Procedure Act because there will be no opportunity for comment on any of the CSEAFD delistings at future CSI sites.

Another commenter, however, believed that the multiple-site nature of the delisting would avoid duplicative delisting petitions and save the steel industry the unnecessary costs and administrative burdens of multiple petitions.

Response: The statute and regulations do not limit the availability of delisting decisions to wastes generated at a single facility. The commenter has misinterpreted the language of section 3001(f) of RCRA and 40 CFR 260.22, which both provide that parties may seek delistings for wastes generated at a "particular facility." The term "particular facility" refers to a specific qualifying facility and there is no bar to a delisting covering more than one particular, and qualifying, facility. The language limits delistings to an

identified and qualifying facility or facilities; it does not limit them to a "single" facility. The intent of this language is to indicate that, because delistings are granted only to specific qualifying facilities, a facility may not manage its waste as non-hazardous based solely on a delisting granted to another facility for the same listed waste.

Today's multiple-site delisting is fully consistent with the purposes of RCRA's listing and delisting scheme. If CSI has more than one facility treating the same wastes with the same process, and EPA is assured (through verification testing) that these wastes meet the requirements for being nonhazardous, the statute, its legislative history and the regulations support their removal from the list of hazardous wastes. No part of the statute or regulations purports to limit the number of facilities that a delisting may cover. As to the "up-front" nature of this delisting, the Agency in fact has a long-standing policy and practice of granting delistings to facilities not yet constructed, provided that their waste, once produced, meets specified criteria.

In any event, today's delisting decision appears to be consistent even with the commenter's incorrect interpretation of the statute and regulations. Today's action does not automatically grant a delisting to a multiple number of CSI's facilities. Instead, although EPA has reviewed the Super Detox™ treatment process itself on a generic basis, EPA is requiring verification testing at each specific facility before the Agency grants a delisting. Thus, the Agency is, in fact, considering each CSEAFD facility separately. The focus of the commenter's criticism would seem to be that EPA is not requiring the company to submit a separate delisting petition for each new facility. It would make no sense to require a company to submit multiple individual petitions for similar wastes generated from similar process and feed materials when the only difference between petitions is the name and location of the specific facility; to do so would be an unnecessary administrative burden and waste of resources for both EPA and the petitioner.

The commenter also alleged an inconsistency with EPA's 1993 publication, "Petitions to Delist Hazardous Wastes: A Guidance Manual" (second edition). The Manual states that "separate petitions must be submitted for wastes generated at different facility locations, even if the contributing processes and raw materials are similar. This requirement is necessary because an amendment to

40 CFR part 261 for an exclusion only applies to a waste produced at a particular facility." This provision was originally included in the draft of the Manual at a point before EPA contemplated the type of multiple-site delisting requested by CSI, and it has been inadvertently carried over in later revisions of the guidance document. EPA has accepted CSI's petition for a multiple-site delisting because of the efficiencies created and in light of the protections afforded by future verification testing. To the extent this provision in the guidance document is viewed as inconsistent with today's delisting, the guidance document should be considered superseded by the notice of proposed rulemaking and this final rulemaking for the CSI delisting to permit appropriate multiple-site petitions here and in the future. In any event, EPA's practice has evolved beyond the provision originally included in this non-binding guidance document and today's action is fully consistent with that practice.

EPA also disagrees with the commenter's claim that today's delisting violates the notice and comment requirements of the Administrative Procedure Act ("APA") since there will be no opportunity for comment on additional CSI facilities producing CSEAFD that may be added to the scope of this delisting in the future. There has been sufficient opportunity for meaningful comment on the current and potential future delistings of CSI facilities producing CSEAFD since all issues the Agency will possibly consider in granting the future delistings have already been aired for comment.

EPA's response on these issues is further explained in the Response to Comments document for this rulemaking.

Executive Order 12866

Comment: One commenter (HRD) alleged that EPA did not conduct the complete regulatory review required by Executive Order 12866 for significant regulatory actions having an annual effect on the economy of \$100 million or more. By HRD's account, the economic impact of this delisting would exceed \$100 million/year because electric arc furnace ("EAF") steelmakers will choose to abandon the existing high temperature metals recovery (HTMR) operations and give all K061 waste treatment business to CSI. The commenter also alleged that EPA failed to consider the other principles of regulatory development stipulated in the Executive Order.

Response: The Agency determined that the effect of the proposed rule,

unlike regulations imposing tighter control requirements, would be to *reduce* the overall costs and economic impact of the RCRA regulations. Therefore, this rule is unlikely to have an adverse annual effect on the economy of \$100 million or more. The extent to which EAF steelmakers may change from one waste management alternative such as recycling to other methods after today's delisting is speculative in any event.

In addition, the Agency did not fail to consider the other principles of regulatory development stipulated in the Executive Order. See the Response to Comments document for a further discussion of these issues.

Waste Management

Comment: One commenter (HRD) noted that CSI may develop products from CSEAFD, that the delisted waste may be delivered to a facility that beneficially uses or reuses the material and that the waste may be disposed of in any acceptable manner under Federal or State law. As such, this commenter believed that the assumption of disposal in a Subtitle D landfill is not the reasonable worst-case disposal scenario for CSI's petitioned waste. In support of its argument, the commenter submitted an excerpt of a paper presented by a CSI employee at a trade meeting held in February 1995. This excerpt reflects two alternative concepts that are being developed" for recycling EAFD, including use of stabilized EAFD as ingredients in the production of Portland cement.

Response: CSI indicated in its petition that the CSEAFD will be disposed of at non-hazardous waste landfills. EPA does not have any specific information that CSI has developed its CSEAFD into any viable product that would allow for use or reuse of this material instead of disposal. Therefore, it is unclear if, when, or how potential CSEAFD-derived products may be used in the future. EPA's assumption that CSI's petitioned waste, if delisted, will be disposed of in a Subtitle D landfill is conservative and represents a reasonable worst-case management scenario for this delisting for the decision that CSI's CSEAFD may safely be disposed of as a non-hazardous "waste".

Nevertheless, as the commenter pointed out and as the petition also indicates, CSI is working on different ways to reuse the CSEAFD as a feedstock or product (see Page 17 of CSI's petition). It is unclear if the effectiveness of CSI's stabilization process could be somewhat compromised as a result of certain

product-use applications; or if the levels of total constituents in the CSEAFD could become a concern due to certain exposure scenarios not considered in the delisting evaluation. Because EPA was not provided with any detailed information and data from CSI on how its waste might be used in products, EPA believes it is appropriate to limit the scope of today's final rule to exclude CSI's CSEAFD only where it is disposed of in Subtitle D landfills. EPA does not reach a decision today on whether CSI's CSEAFD that is not disposed of in Subtitle D landfills qualifies for exclusion from the list of hazardous wastes. In the future, if CSI has successfully developed uses for CSEAFD and seeks an exclusion for such uses, it must submit pertinent information in a petition to EPA and await further decision by the Agency on that matter.

Potential Deterioration of CSI's Stabilized K061

Comment: One commenter (HRD) stated that the petition relied on the TCLP and MEP chemical testing procedures to determine the efficacy of CSI's stabilization process, but largely failed to address the long-term physical durability (or structural integrity) of the stabilized EAFD. The commenter believed that the stabilized EAFD will deteriorate over time once disposed of in landfills or elsewhere, which could result in airborne or waterborne exposure which was not evaluated. The commenter presented a list of applicable physical test methods, and suggested that at a minimum, freeze-thaw and wet-dry durability tests be performed, and that EPA should apply "deterioration models."

Response: This rulemaking adequately addresses the potential deterioration of CSI's CSEAFD and the resulting leachability of the material. The MEP was developed to predict the long-term leachability of stabilized wastes, consisting of ten sequential extractions that simulate approximately 1,000 years of acid rainfall. This method requires that the sample of stabilized material be first crushed and ground so that the sample material can pass through a 9.5-mm sieve (as part of the TCLP extraction incorporated in the MEP). The use of particles less than 9.5 mm is comparable to a worst-case assumption of degradation of the stabilized material. EPA also conservatively assumed that the total constituents in the waste would be readily available for release into air (ignoring that they are contained in the solidified waste matrix). Therefore, this evaluation also addressed the potential

deterioration and airborne transmission of the waste.

Use of EPA's Composite Model for Landfills (EPACML)

Comment: One commenter (HRD) claimed that the EPACML model was not adequate for evaluating CSI's petitioned waste for several reasons. First, more accurate models, such as MINTEQ, must be used to quantify the migration and mobility of metals from land disposal units. Second, the Monte Carlo simulation mode implemented in the model is inappropriate for multiple site delistings because it does not account for site-specific variability. The commenter felt that only numerical models can account for such variability. Third, the model does not check for unrealistic combinations of input parameters, thereby resulting in inaccurate dilution and attenuation factors (DAFs). The commenter felt that the combination of input parameters should have been made public to allow for review and comment. Lastly, the commenter stated that the Agency did not clearly identify and justify the specific options used in the EPACML model for the delisting evaluation.

Response: The Agency disagrees with the commenter's contention that the EPACML model is inadequate for evaluating CSI's petitioned waste. First, the EPACML fate and transport model consists of an unsaturated zone module and a saturated zone module, both of which were reviewed and endorsed by EPA's Science Advisory Board for use for regulatory purposes. See 56 FR 32993 (July 18, 1991) and the EPACML Background Document² for a complete discussion of the EPACML model, assumptions and input parameters, and their use in delisting decision-making. EPA believes that the EPACML reasonably estimates the subsurface fate and transport of metals from land disposal units.

For prior cases, the MINTEQ model has not been found appropriate for use for delisting evaluations. To use it would require a large amount of additional information regarding the speciation of the metals present in the waste and the disposal site. EPA has discussed its finding that the EPACML model is adequate and conservative for delistings. Indeed, incorporation of results of MINTEQ in the EPACML model would only be *less* conservative if anything—*i.e.*, it would likely serve only to increase the output DAFs

² "Background Document for EPA's Composite Model for Landfills (EPACML)", available in the RCRA public docket for the November 2, 1993 proposed rule.

because speciation reactions between metallic ions in the leachate and the soil particles may cause further attenuation of metal concentrations in the subsurface. These higher DAFs would result in even higher allowable leachable levels of metals in CSI's waste.

In addition, the Agency disagrees with the commenter's claim that the Monte Carlo simulation mode implemented in the EPACML is inappropriate for multiple site delistings and disagrees with the commenter's remaining contentions regarding the use of the EPACML model. See the Response to Comment document for a further discussion of all of these issues.

Verification Testing Conditions

Comment: One commenter (HRD) stated that the proposed initial and subsequent testing conditions are insufficient. The commenter believed that these testing conditions will result in over-compositing of the samples collected from each batch, as they require only a minimum of four composite samples during the 20-day initial verification testing period and thereafter a minimum of one monthly composite sample.

Response: Although the concentrations of metals in the CSEAFD are expected to be somewhat variable over time (e.g., as the source and type of scrap charged to the EAF changes over time), EPA does not expect these variations to be significant on a day-to-day basis (i.e., most steel mills procure large volumes of scrap and their EAF operations do not vary widely on a daily basis). Also, at any given facility, the daily variations in EAFD metals concentrations are dampened where the EAFD is mixed together within the pneumatic EAFD transport system, baghouse, electrostatic precipitator, and/or storage silos. The Agency, therefore, believes that the proposed initial verification testing requirement is sufficient.

In addition, the data demonstrate that CSI's Super Detox™ process can effectively immobilize the constituents of concern, and justify the Agency's proposal to require less frequent, but long-term, verification testing (monthly or more frequently at CSI's discretion) subsequent to the initial verification testing.

Delisting Levels

In the proposed rule EPA solicited comments on the proposed maximum allowable leachable concentrations for a specific set of inorganic constituents (the "delisting levels") that CSI would need to meet during verification testing.

In this respect, the Agency also requested comments on the option of applying the generic exclusion levels for K061 HTMR nonwastewater residues set under § 261.3(c)(2)(ii)(C) to CSI's CSEAFD for the sake of national consistency. No comments were received on which of these two approaches should be chosen. The Agency has now concluded that the delisting levels applying to CSI's CSEAFD should be at least as stringent as the K061 HTMR generic exclusion levels. Therefore, the Agency is finalizing the delisting levels by using the lesser of the proposed levels for CSI's CSEAFD and the respective generic exclusion levels for HTMR residues, as shown below (in ppm): Antimony—0.06; arsenic—0.50; barium—7.6; beryllium—0.010; cadmium—0.050; chromium—0.33; lead—0.15; mercury—0.009; nickel—1; selenium—0.16; silver—0.30; thallium—0.020; vanadium—2; and zinc—70.

Economics and Related Issues

Comment: A number of commenters raised issues concerning the economic and related implications of this delisting. First, the Steel Manufacturers Association ("SMA") claimed that this delisting is necessary in order to increase the number of cost-effective alternatives for managing K061 waste. Because of the high cost of HTMR, SMA stated, steelmakers ultimately may be forced to substitute greater tonnages of direct reduced iron as feedstock instead of using scrap metal. Direct reduced iron contains only pure iron, so any EAFD generated from it would not contain hazardous metals (obviating the need to use HTMR processes). By granting the delisting, EPA will be promoting the continued resource recovery of iron and other valuable metals from scrap metal (of which, SMA claimed, about 40 million tons per year are currently used as EAF steelmaking feedstock).

Another commenter (HRD) disagreed with the above claims. It pointed out that the cost of managing EAFD by either HTMR or chemical stabilization and disposal is less than one percent of the steel production cost, and that the savings from switching to chemical stabilization would amount to only cents per ton of production. HRD claimed that direct reduced iron is much more expensive than scrap metal, affecting the cost of steelmaking 10 times as much as the cost of EAF dust management. Hence, HRD disputed the claim that steel makers might discontinue the use of scrap feedstock if this delisting is not granted. HRD also

stated that the steel industry in fact has a number of EAFD management options, including HTMR processing by HRD and other firms, treatment and disposal as a hazardous waste, use as a fertilizer ingredient, and export for processing.

Response: The focus of today's delisting decision is on whether or not CSI's stabilized EAFD should continue to be listed as hazardous waste in light of the relevant statutory and regulatory criteria. As explained above, EPA has found that CSI's chemically stabilized K061 wastes do not meet any of the criteria for which K061 wastes were listed as hazardous and there is no reason to believe that any factors other than those for which K061 wastes were listed (including additional constituents) could cause these wastes to be hazardous. Therefore, today's rule finalizes EPA's determination to exclude these residues from the RCRA Subtitle C regulatory regime. See 40 CFR § 260.22(a) and RCRA Section 3001(f).

EPA explained above that the effect of today's delisting decision on K061 recycling (i.e., whether granting this delisting effectively promotes treatment and disposal of K061 wastes over HTMR recycling of these wastes) is irrelevant to the delisting determination. Similarly, the economic and related issues that have been raised by the commenters are not relevant to today's delisting decision because they bear no nexus to the issue of whether the stabilized K061 wastes remain hazardous. See the Response to Comments document for a further discussion of these issues.

D. Final Agency Decision

For the reasons stated in both the proposal and this notice, the Agency believes that CSI's chemically stabilized electric arc furnace dust, upon meeting certain verification testing requirements, should be excluded from hazardous waste control. The Agency, therefore, is granting a final conditional exclusion to Conversion Systems, Inc., Horsham, Pennsylvania, for its treatment residue (CSEAFD) generated at its Sterling, Illinois facility and other facilities yet to be constructed nationwide, described in its petition as EPA Hazardous Waste No. K061.

This exclusion applies initially to only CSI's Super Detox™ treatment facility located at Northwestern Steel in Sterling, Illinois. As stated in Condition (5), CSI must notify EPA at least one month prior to operation of a new Super Detox™ treatment facility in order to provide EPA with sufficient time to initiate the process to amend CSI's exclusion. CSEAFD generated from a new Super Detox™ treatment facility will not be excluded until the Agency

publishes a notice amending CSI's exclusion as specified in Condition (1)(B). CSI will require a new exclusion if the treatment process specified for any Super Detox™ treatment facility is significantly altered beyond the changes in operating conditions described in Condition (4). Accordingly, the facility would need to file a new petition for a changed process. The facility must manage wastes generated from a changed process as hazardous until a new exclusion is granted.

Although the CSEAFD wastes covered by this petition are excluded from regulation as listed hazardous wastes under Subtitle C upon today's final exclusion, this exclusion applies only where these wastes are disposed of in Subtitle D landfills.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact State regulatory authority to determine the current status of their wastes under State law.

Furthermore, some States (*e.g.*, Georgia, Illinois) are authorized to administer a delisting program in lieu of the Federal program, *i.e.*, to make their own delisting decisions. Therefore, this exclusion does not apply in those authorized States. If the petitioned CSEAFD will be transported to and managed in any State with delisting authorization, CSI must obtain delisting authorization from that State before the CSEAFD may be managed as non-hazardous in the State.

IV. Effective Date

This rule is effective on June 13, 1995. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date of six

months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this rule should be effective immediately upon publication. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. The effect of this rule is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. The reduction is achieved by excluding waste from EPA's lists of hazardous wastes, thereby enabling a facility to treat its waste as non-hazardous. As discussed in the Agency response to public comments, this rule is unlikely to have an adverse annual effect on the economy of \$100 million or more. Therefore, this rule does not represent a significant regulatory action under the Executive Order, and no assessment of costs and benefits is necessary. The Office of Management and Budget (OMB) has exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This regulation will not have an adverse impact on any small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved

by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2050-0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Pub. L. 104-4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, today's delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

Lists of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, Reporting and recordkeeping requirements.

Dated: May 30, 1995.
Michael H. Shapiro,
 Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of Appendix IX, Part 261 add the following wastestream in alphabetical order by facility to read as follows: Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* Conversion Systems, Inc.	* Horsham, Pennsylvania.	* Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) that is generated by Conversion Systems, Inc. (CSI) (using the Super Detox™ treatment process as modified by CSI to treat EAFD (EPA Hazardous Waste No. K061)) at the following sites and that is disposed of in Subtitle D landfills: Northwestern Steel, Sterling, Illinois after June 13, 1995. CSI must implement a testing program for each site that meets the following conditions for the exclusion to be valid: (1) <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures, must be performed according to SW-846 methodologies. (A) <i>Initial Verification Testing:</i> During the first 20 operating days of full-scale operation of a newly constructed Super Detox™ treatment facility, CSI must analyze a minimum of four (4) composite samples of CSEAFD representative of the full 20-day period. Composites must be comprised of representative samples collected from every batch generated. The CSEAFD samples must be analyzed for the constituents listed in Condition (3). CSI must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 60 days after the generation of the first batch of CSEAFD. (B) <i>Addition of New Super Detox™ Treatment Facilities to Exclusion:</i> If the Agency's review of the data obtained during initial verification testing indicates that the CSEAFD generated by a specific Super Detox™ treatment facility consistently meets the delisting levels specified in Condition (3), the Agency will publish a notice adding to this exclusion the location of the new Super Detox™ treatment facility and the name of the steel mill contracting CSI's services. If the Agency's review of the data obtained during initial verification testing indicates that the CSEAFD generated by a specific Super Detox™ treatment facility fails to consistently meet the conditions of the exclusion, the Agency will not publish the notice adding the new facility. (C) <i>Subsequent Verification Testing:</i> For the Sterling, Illinois facility and any new facility subsequently added to CSI's conditional multiple-site exclusion, CSI must collect and analyze at least one composite sample of CSEAFD each month. The composite samples must be composed of representative samples collected from all batches treated in each month. These monthly representative samples must be analyzed, prior to the disposal of the CSEAFD, for the constituents listed in Condition (3). CSI may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous. (2) <i>Waste Holding and Handling:</i> CSI must store as hazardous all CSEAFD generated until verification testing as specified in Conditions (1)(A) and (1)(C), as appropriate, is completed and valid analyses demonstrate that Condition (3) is satisfied. If the levels of constituents measured in the samples of CSEAFD do not exceed the levels set forth in Condition (3), then the CSEAFD is non-hazardous and may be disposed of in Subtitle D landfills. If constituent levels in a sample exceed any of the delisting levels set in Condition (3), the CSEAFD generated during the time period corresponding to this sample must be retreated until it meets these levels, or managed and disposed of in accordance with Subtitle C of RCRA. CSEAFD generated by a new CSI treatment facility must be managed as a hazardous waste prior to the addition of the name and location of the facility to the exclusion. After addition of the new facility to the exclusion, CSEAFD generated during the verification testing in Condition (1)(A) is also non-hazardous, if the delisting levels in Condition (3) are satisfied. (3) <i>Delisting Levels:</i> All leachable concentrations for those metals must not exceed the following levels (ppm): Antimony—0.06; arsenic—0.50; barium—7.6; beryllium—0.010; cadmium—0.050; chromium—0.33; lead—0.15; mercury—0.009; nickel—1; selenium—0.16; silver—0.30; thallium—0.020; vanadium—2; and zinc—70. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24. (4) <i>Changes in Operating Conditions:</i> After initiating subsequent testing as described in Condition (1)(C), if CSI significantly changes the stabilization process established under Condition (1) (e.g., use of new stabilization reagents), CSI must notify the Agency in writing. After written approval by EPA, CSI may handle CSEAFD wastes generated from the new process as non-hazardous, if the wastes meet the delisting levels set in Condition (3).

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
*	*	<p>(5) <i>Data Submittals:</i> At least one month prior to operation of a new Super Detox™ treatment facility, CSI must notify, in writing, the Chief of the Waste Identification Branch (see address below) when the Super Detox™ treatment facility is scheduled to be on-line. The data obtained through Condition (1)(A) must be submitted to the Branch Chief of the Waste Identification Branch, OSW (Mail Code 5304), U.S. EPA, 401 M Street, SW, Washington, DC 20460 within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State in which the CSI facility is located, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:</p> <p>Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.</p> <p>As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.</p> <p>In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.</p>
*	*	*
*	*	*
*	*	*

[FR Doc. 95-14338 Filed 6-12-95; 8:45 am]
 BILLING CODE 6560-50-P

40 CFR Part 261

[SW-FRL-5220-5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a petition submitted by the U.S. Department of Energy (DOE), Richland, Washington, to exclude certain wastes to be generated by a treatment process at its Hanford facility from being listed as hazardous wastes. This action responds to DOE's petition to exclude these treated wastes on a "generator-specific" basis from the hazardous waste lists.

Based on careful analyses, the Agency has concluded that the disposal of these wastes, after treatment, will not adversely affect human health and the environment. This final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA), but imposes testing conditions to ensure

that the future-generated waste remains qualified for delisting.

This final rule will also allow DOE to proceed with critical cleanup at the Hanford site. The primary goal of cleanup is to protect human health and the environment by reducing risks from unintended releases of hazardous wastes that are currently stored at the site.

EFFECTIVE DATE: June 13, 1995.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for viewing (room M2616) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260-9327 for appointments. The reference number for this docket is "F-95-HNEF-FFFFF". The public may copy material from any regulatory docket at no cost for the first 100 pages, and at \$0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (703) 412-9810. For technical information concerning this notice, contact Shen-yi Yang, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 260-1436.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under §§ 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the administrator must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

B. History of This Rulemaking

DOE's Hanford site, located in Richland, Washington, petitioned the Agency to exclude from hazardous waste control the effluents to be generated from its proposed 200 Area Effluent Treatment Facility (ETF). The effluents are presently listed as EPA Hazardous Waste Nos. F001 through F005, and F039 derived from F001 through F005. After evaluating the petition, EPA proposed, on February 1,

1995, to exclude Hanford's waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 60 FR 6054).

This rulemaking addresses public comments received on the proposal and finalizes the Agency's proposed decision to grant DOE's petition.

II. Disposition of Delisting Petition

U.S. Department of Energy's Hanford Facility, Richland, Washington

A. Proposed Exclusion

On October 30, 1992, DOE petitioned the Agency to exclude from hazardous waste control its treated wastes to be generated from the proposed 200 Area Effluent Treatment Facility (ETF). The ETF is designed to treat process condensate (PC) from the 242-A Evaporator. The untreated PC is a low-level radioactive waste as defined in DOE Order 5820.2A and a RCRA listed hazardous waste (EPA Hazardous Waste Nos. F001 through F005 and F039 derived from F001 through F005) as defined in 40 CFR § 261.31(a).

While the constituents of concern in listed wastes F001 through F005 wastes include a variety of solvents (see Part 261, Appendix VII), the constituents (based on PC sampling data and process knowledge) that serve as the basis for characterizing DOE's petitioned wastes as hazardous were limited to 1,1,1-trichloroethane (F001), methylene chloride (F002), acetone and methyl isobutyl ketone (F003), cresylic acid (F004), and methyl ethyl ketone (F005).

In support of its petition, DOE submitted:

- (1) Detailed descriptions of the waste generation and waste management history at the Hanford site;
- (2) An inventory of chemicals used in Hanford's production plants and supporting operations;
- (3) Detailed descriptions of various waste streams to be fed into the 242-A Evaporator;
- (4) Detailed descriptions and schematic drawings of the generation of untreated PC from the 242-A Evaporator;
- (5) Information quantifying concentrations of hazardous constituents of untreated 242-A Evaporator PC, including metals and other inorganic constituents, organic constituents, and radioactive constituents;
- (6) Detailed descriptions and schematic drawings of its proposed Effluent Treatment Facility and primary steps of its treatment processes;
- (7) Results from the analysis of liquid wastes generated by pilot-scale treatability studies, showing concentrations of inorganic and organic

compounds in samples of untreated and treated surrogate test solutions and percent removal; and

(8) Information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity.

The Agency evaluated the information and analytical data provided by DOE in support of the petition and determined that the disposal of the DOE effluents, after treatment, would not adversely affect human health or the environment. Specifically, the Agency used the modified EPA Composite Model for Landfills (EPACML) to predict the potential mobility of the hazardous constituents found in the petitioned waste. The Agency also evaluated additional modeling information, submitted by DOE, concerning transport of hazardous constituents in ground water. Based on these modeling evaluations, the Agency determined that the concentrations of constituents in groundwater from DOE's petitioned waste would not exceed delisting levels of concern. See 60 FR 6054, February 1, 1995, for a detailed explanation of why EPA proposed to grant DOE's petition for its treated effluents generated from the ETF located at the Hanford site.

B. Response to Public Comments

The Agency received public comments on the February 1, 1995 proposal from three interested parties. These three commenters either expressed support or did not have any negative comments on the Agency's proposed decision to grant DOE's petition. One commenter, the U.S. Nuclear Regulatory Commission, believed that the Agency's consideration of the unique circumstances surrounding the management of the mixed waste generated at the Hanford facility was appropriate and the concepts the Agency used in formulating the proposed rule should be incorporated in developing management strategies for other commercial mixed wastes. The two remaining commenters wanted clarification and expansion of the language contained in the proposed rule. The following sections address their specific comments.

Comment: One commenter requested that zinc be removed as a "hazardous constituent" from the proposed rule. The commenter stated that zinc is not listed as a hazardous constituent of F001 through F005 wastes, nor is zinc listed as a hazardous constituent in 40 CFR Part 261, Appendix VIII. The commenter also stated that the Agency recently noted that zinc was not an "underlying hazardous constituent" under the new land disposal restrictions, 40 CFR 268.2(i) (see 59 FR

48106, September 19, 1994). Therefore, the commenter does not believe that zinc can be listed as a "hazardous constituent" in the proposed addition to Appendix IX of Part 261 as set forth in the proposal.

Response: The Agency agrees that zinc is not listed as a hazardous constituent of F001 through F005 wastes, nor is zinc listed as a hazardous constituent in 40 CFR 261, Appendix VIII. However, the statute (§ 3001(f)) requires the Agency, as part of its delisting evaluation, to consider any factors (including additional constituents) other than those for which the waste was listed if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

Accordingly, in addition to addressing the criteria for which the wastes were listed, a petitioner must demonstrate that the wastes do not exhibit any of the hazardous waste characteristics and must present sufficient information for the Agency to determine whether the wastes contain any other toxicants at hazardous levels. See 42 USC § 6921(f) and 40 CFR 260.22(a). Because zinc was detected in DOE's petitioned waste and is a constituent with an established health-based level (10 ppm), it is a constituent of regulatory concern for DOE's petitioned waste for delisting purposes (see Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR 260.20 and 260.22, December 1994). As such, zinc will remain on the list of constituents for verification testing. However, consistent with the commenter's request, EPA acknowledges that zinc remains on the list as an additional constituent of concern for delisting purposes and not as a designated "hazardous constituent". In the proposal, EPA did not intend to indicate otherwise. Also, the September 19, 1994 rulemaking cited by the commenter states that zinc is not an "underlying hazardous constituent" in characteristic wastes, according to the definition at 268.2(i). (See § 268.48 Table UTS, note 5, 59 FR 48107). As above, that issue is not determinative of the issue here concerning EPA's decision to retain zinc on the list of constituents for verification testing as an additional constituent of concern for delisting purposes.

Comment: One commenter felt that if the Agency believes the ETF can provide adequate treatment to delist F039 leachates derived from sources other than F001 through F005 wastes, then EPA should add language to the

first sentence of Hanford's waste description found in Table 2 of 40 CFR 261 Appendix IX to reflect that. The commenter believed that the additional language would provide the maximum operational flexibility to DOE in their mixed waste disposal planning and would not require regulatory changes to 40 CFR 261 if and when DOE disposes of non-F001-F005 wastes in Hanford's landfills. The commenter also wanted this comment withdrawn if it would result in the delay of the final delisting.

Response: The Agency proposed to exclude the liquid wastes covered by DOE's petition, which consist of F001 through F005 wastes and F039 wastes derived from F001 through F005. The commenter believes it would be useful to expand the scope of this delisting because the ETF is capable of treating a wider variety of wastes. The Agency acknowledges, as noted in the proposal, that the treatment data show the ETF to be extremely effective for all classes of inorganic species, and the data also demonstrate that organic constituents can be effectively treated by the UV/OX process (see 60 FR 6060). However, obtaining a request to expand this delisting decision to cover other waste codes and evaluating specific data and information accompanying that request, which would be likely to require an opportunity for public notice and comment, would result in delays in the promulgation of this delisting. Therefore, consistent with the commenter's request not to delay this delisting, today's final exclusion has not been expanded to include non-F001 through F005 wastes.

C. Final Agency Decision

For the reasons stated in the proposal and in this final rule, the Agency is granting a final exclusion to DOE-RL, located in Richland, Washington for the liquid wastes, described in its petition as EPA Hazardous Waste No. F001, F002, F003, F004, F005, and F039 derived from F001 through F005.

This exclusion only applies to the treatment processes and waste volume (a maximum of 19 million gallons generated annually) covered by the original demonstration. The facility would need to petition for a new or amended exclusion if there is a change in composition of the treated waste such that the levels of hazardous constituents increase significantly (e.g., from changes to the waste streams or treatment processes). (Note, however, that changes in operating conditions are allowed as described in Condition (4).) Until a new or amended exclusion is granted, the facility must treat as hazardous all such wastes as well as effluents generated in

excess of 19 million gallons per year. As to the wastes covered by today's exclusion, continued evaluation for levels of hazardous constituents will be achieved by the verification testing specified in Condition (1).

Although management of the wastes covered by this petition is relieved from Subtitle C jurisdiction by this final exclusion, the generator of a delisted waste must either treat, store or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under both Federal and State programs, petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

IV. Effective Date

This rule is effective June 13, 1995. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date of six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon publication. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. This

rule to grant an exclusion is not significant, since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional economic impact due to today's rule. Therefore, this rule is not a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This amendment will not have any adverse economic impact on any small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and it is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 USC § 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

VIII. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a written statement to accompany any rules that have "Federal mandates" that may result in the expenditure by the private sector of \$100 million or more in any one year.

Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of such a rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly and uniquely affected by the rule.

Unfunded Mandates Act defines a "Federal private sector mandate" for regulatory purposes as one that "would impose an enforceable duty upon the private sector." EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duties upon the private sector. Therefore, today's rulemaking is

not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Act. As to Section 203 of this Act, EPA finds that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Dated: June 2, 1995.

Michael Shapiro,
Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C 6905, 6912(a), 6921, 6922, and 6938.

2. In Part 261, table 2 of Appendix IX add the following wastestream in alphabetical order by facility to read as follows: Appendix IX—Wastes Excluded Under § 260.20 and § 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* DOE—RL	* Richland, Washington	* Effluents (EPA Hazardous Waste Nos. F001, F002, F003, F004, F005, and F039 derived from F001 through F005) generated from the 200 Area Effluent Treatment Facility (ETF) located at the Hanford site (at a maximum generation rate of 19 million gallons per year) after June 13, 1995. To ensure that hazardous constituents are not present in the wastes at levels of regulatory concern while the treatment facility is in operation, DOE must implement a testing program. This testing program must meet the following conditions for the exclusion to be valid: (1) <i>Testing:</i> Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW-846 (or other EPA-approved) methodologies. If EPA judges the treatment process to be effective under the operating conditions used during the initial verification testing, DOE may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). DOE must continue to test as specified in Condition (1)(A) until notified by EPA in writing that testing in Condition (1) (A) may be replaced by Condition (1)(B). (A) <i>Initial Verification Testing:</i> During the period required to fill the first three verification tanks (each designed to hold approximately 650,000 gallons) with effluents generated from an on-line, full-scale Effluent Treatment Facility (ETF), DOE must monitor the range of typical operating conditions for the ETF. DOE must collect a representative sample from each of the first three verification tanks filled with ETF effluents. The samples must be analyzed, prior to disposal of ETF effluents, for all constituents listed in Condition (3). DOE must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 90 days after the first verification tank is filled with ETF effluents. (B) <i>Subsequent Verification Testing:</i> Following notification by EPA, DOE may substitute the testing conditions in this condition for (1)(A). DOE must continue to monitor operating conditions, and collect and analyze representative samples from every tenth verification tank filled with ETF effluents. These representative samples must be analyzed, prior to disposal of ETF effluents, for all constituents listed in Condition (3). If all constituent levels in a sample do not meet the delisting levels specified in Condition (3), DOE must analyze representative samples from the following two verification tanks generated prior to disposal. DOE may also collect and analyze representative samples more frequently. (2) <i>Waste Holding and Handling:</i> DOE must store as hazardous all ETF effluents generated during verification testing (as specified in Conditions (1)(A) and (1)(B)), that is until valid analyses demonstrate that Condition (3) is satisfied. If the levels of hazardous constituents in the samples of ETF effluents are equal to or below all of the levels set forth in Condition (3), then the ETF effluents are not hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any representative sample collected from a verification tank exceed any of the delisting levels set in Condition (3), the ETF effluents in that verification tank must be re-treated until the ETF effluents meet these levels. Following re-treatment, DOE must repeat analyses in Condition (3) prior to disposal. (3) <i>Delisting Levels:</i> All total constituent concentrations in the waste samples must be measured using the appropriate methods specified in "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Publication SW-846 (or other EPA-approved methods). All total constituent concentrations must be equal to or less than the following levels (ppm): <i>Inorganic Constituents</i> Ammonium—10.0 Antimony—0.06 Arsenic—0.5

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Barium—20.0
		Beryllium—0.04
		Cadmium—0.05
		Chromium—1.0
		Cyanide—2.0
		Fluoride—40.0
		Lead—0.15
		Mercury—0.02
		Nickel—1.0
		Selenium—0.5
		Silver—2.0
		Vanadium—2.0
		Zinc—100.0
		<i>Organic Constituents</i>
		Acetone—40.0
		Benzene—0.05
		Benzyl alcohol—100.0
		1-Butyl alcohol—40.0
		Carbon tetrachloride—0.05
		Chlorobenzene—1.0
		Chloroform—0.1
		Cresol—20.0
		1,4-Dichlorobenzene—0.75
		1,2-Dichloroethane—0.05
		1,1-Dichloroethylene—0.07
		Di-n-octyl phthalate—7.0
		Hexachloroethane—0.06
		Methyl ethyl ketone—200.0
		Methyl isobutyl ketone—30.0
		Naphthalene—10.0
		Tetrachloroethylene—0.05
		Toluene—10.0
		Tributyl phosphate—0.2
		1,1,1-Trichloroethane—2.0
		1,1,2-Trichloroethane—0.05
		Trichloroethylene—0.05
		Vinyl Chloride—0.02
		(4) <i>Changes in Operating Conditions:</i> After completing the initial verification testing in Condition (1)(A), if DOE significantly changes the operating conditions established in Condition (1), DOE must notify the Agency in writing. After written approval by EPA, DOE must re-institute the testing required in Condition (1)(A). DOE must report the operations and test data, required by Condition (1)(A), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by EPA, DOE may replace testing Condition (1)(A) with (1)(B). DOE must fulfill all other requirements in Condition (1), as appropriate.
		(5) <i>Data Submittals:</i> At least two weeks prior to system start-up, DOE must notify, in writing, the Chief of the Waste Identification Branch (see address below) when the Effluent Treatment Process will be on-line and waste treatment will begin. The data obtained through Condition (1)(A) must be submitted to the Branch Chief, Waste Identification Branch, OSW (Mail Code 5304), U.S. EPA, 401 M Street, S.W., Washington, DC 20460 within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of three years. These records and data must be furnished upon request by EPA or the State of Washington and made available for inspection. Failure to submit the required data within the specified time period or to maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 USC 1001 and 42 USC 6928), I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
*	*	*
*	*	*
*		

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to DOE, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the DOE will be liable for any actions taken in contravention of its RCRA and CERCLA obligations premised upon DOE's reliance on the void exclusion.

[FR Doc. 95-14428 Filed 6-12-95; 8:45 am]
 BILLING CODE 6560-50-P

Proposed Rules

Federal Register

Vol. 60, No. 113

Tuesday, June 13, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Disaster—Physical Disaster and Economic Injury Loans

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to amend its regulations governing both physical and economic injury disaster assistance to make clear that businesses primarily engaged in agriculture are not eligible for such assistance and that such assistance may not be used to further the alleviation of physical or economic injury to property associated with agricultural enterprise caused by a disaster.

DATES: SBA will accept public comments on this proposal through July 13, 1995.

ADDRESSES: Comments should be submitted to Bernard Kulik, Associate Administrator for Disaster Assistance, Small Business Administration, 409 Third Street, SW., 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Office of Disaster Assistance, (202) 205-6734.

SUPPLEMENTARY INFORMATION: In 1986 section 7(b) of the Small Business Act (Act) (15 U.S.C. 636(b)) was amended to provide that physical and economic injury disaster loan assistance provided by the Small Business Administration (SBA) under that section should not be available to agricultural enterprises. The term agricultural enterprise is defined elsewhere in the Act to mean a business engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries. See section 18(b)(1) of the Act, 15 U.S.C. 647(b)(1). SBA has historically interpreted this provision in a manner that contemplates that this definition is intended to cover small businesses primarily engaged in the prescribed

activities. This position is consistent with SBA's size standards related definition of a small business for purpose of eligibility for disaster assistance. (See 13 CFR 121.802). However, the word "primarily" is absent from the present regulatory definition of agricultural enterprise in the SBA regulations governing disaster assistance. (See 13 CFR 123.17). This proposed rule, if adopted, would conform the definition of agricultural enterprise with existing policy and with regulations governing size standards by requiring that a concern be primarily engaged in the prescribed activities in order to be construed as an agricultural enterprise.

The effect of this change would be to make clear that a small business which is engaged in multiple activities, including those relevant to agricultural enterprise would be ineligible for disaster assistance under section 7(b) of the Act if its primary activity as judged under the criteria imposed by 13 CFR 123, *et seq.*, is agricultural enterprise. If its primary activity as judged under this standard is an eligible activity and is not agricultural activity, a business would be eligible for disaster assistance.

This proposed regulation, if adopted, would also amend 13 CFR §§ 123.3 and 123.41 to make clear that it is SBA's position that the proceeds of disaster assistance made to eligible small businesses may not be used in conjunction with repair or replacement or alleviation of economic injury relevant to real or personal property used in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agricultural related industries. This change would literally prohibit proceeds of SBA disaster assistance made to otherwise eligible businesses from being used for purposes associated with agricultural enterprise with which it might be secondarily engaged. Thus a business eligible for disaster assistance which is primarily engaged in eligible activity and secondarily engaged in agricultural enterprise would be prohibited under this regulation, if adopted, from using the proceeds of such assistance for purposes relevant to the agricultural enterprise.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act and the Paperwork Reduction Act

For purposes of Executive Order 12866, SBA certifies that this rule will not have an annual economic effect in excess of \$100 million, result in a major increase in costs for individuals or governments, or have a significant adverse effect on competition and, therefore, would not constitute a major or significant rule.

For purposes of Executive Order 12612, SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

For purposes of the Regulatory Flexibility Act, SBA certifies that this rule will not have a significant economic effect on a substantial number of small entities for the same reason that it is not a major or significant rule.

For purposes of the Paperwork Reduction Act, SBA certifies that this rule will not impose a new recordkeeping or reporting requirement. (Catalogue of Federal Domestic Assistance Programs, Nos. 59.002, 59.008)

Lists of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs—business, Small businesses.

For the reasons set out above, pursuant to sections 5(b)(6), 7(b)(1), and 7(c)(6) of the Small Business Act, Title 13, Part 123 of the Code of Federal Regulations, is amended to read as follows:

1. The authority citation for Part 123 would continue to read as follows:

Authority: Sections 5(b)(6), 7(b), (c), (f) of the Small Business Act; Pub. L. 102-395, 106 Stat. 1828, 1864; and Pub. L. 103-75, 107 Stat. 739 (15 U.S.C. 634(b)(6), 636(b), (c), (f)).

2. Section 123.17 would be amended by inserting the term "primarily" before the term "engaged" in the first sentence.

3. Section 123.3 would be amended by adding a new paragraph (b)(8) in the definition of "eligible physical loss" to read as follows:

§ 123.3 Definitions.

* * * * *

Eligible Physical Loss:

* * * * *

(b) * * *

(8) If the property damaged is property used in the production of food and fiber, ranching and raising livestock, aquaculture and all other farming and agricultural related industries.

* * * * *

4. Section 123.41 would be amended by adding the following sentence at the end of paragraph (g)(1) to read as follows:

§ 123.41 General provisions.

* * * * *

(g) **Use of Proceeds.** (1) * * *

Proceeds of loans under this subpart shall not be used for the purpose of alleviating economic injury or providing working capital in conjunction with real or personal property used in the production of food and fiber, ranching and raising livestock, aquaculture and all other farming and agricultural related industries.

* * * * *

Dated: May 2, 1995.

Philip Lader,*Administrator.*

[FR Doc. 95-14372 Filed 6-12-95; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 95-NM-55-AD]

Airworthiness Directives; Boeing Models 727, 737, and 747 Series Airplanes; McDonnell Douglas Model DC-8 and DC-9 Series Airplanes, Model MD-88 Airplanes, and Models MD-11 and MD-90-30 Series Airplanes; Lockheed Models L-1011-385 Series Airplanes; Fokker Models F28 Mark 1000, 2000, 3000, 4000, and 0100 Series Airplanes; and British Aerospace Model Avro 146-RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of two existing airworthiness directives (AD), that are applicable to certain transport category airplanes equipped with certain Honeywell Standard Windshear Detection Systems (WSS). Those AD's currently require a revision to the FAA-

approved Airplane Flight Manual (AFM) to alert the flight crew of the potential for significant delays in the WSS detecting windshear when the flaps of the airplane are in transition. Those AD's were prompted by a report of an accident during which an airplane encountered severe windshear during a missed approach. This action would require that the currently-installed line replaceable unit (LRU) be replaced with a modified LRU having new software that eliminates delays in the WSS detecting windshear when the flaps of the airplane are in transition. The actions specified by the proposed AD are intended to prevent significant delays in the WSS detecting hazardous windshear, which could lead to the loss of flight path control.

DATES: Comments must be received by August 8, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-55-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712.

FOR FURTHER INFORMATION CONTACT: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627-5345; fax (310) 627-5210.

SUPPLEMENTARY INFORMATION:**Comments Invited**

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

Comments are specifically invited on the overall regulatory, economic,

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-55-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-55-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On February 14, 1995, the FAA issued AD 95-04-01, amendment 39-9153 (60 FR 9619, February 2, 1995), which is applicable to various transport category airplanes equipped with certain Honeywell Standard Windshear Detection and Recovery Guidance Systems (WSS). Additionally, on April 21, 1995, the FAA issued AD 95-09-05, amendment 39-9208 (60 FR 20887, April 28, 1995), which is applicable to British Aerospace Model Avro 146-RJ70A, -RJ85A, and -RJ100A airplanes, equipped with a similar Honeywell WSS. [A correction of AD 95-09-05 was published in the **Federal Register** on May 19, 1995 (60 FR 26824).]

Those AD's require a revision to the FAA-approved airplane flight manual (AFM) to alert the flightcrew of the potential for significant delays in the WSS detecting windshear when the flaps of the airplane are in transition. Those actions were prompted by a report of an accident during which an airplane encountered severe windshear during a missed approach. The requirements of those AD's are intended to ensure that the flightcrew is aware that there may be significant delays in the WSS detecting windshear when the flaps of the airplane are in transition.

In the preambles to those AD's, the FAA stated that the requirements of each of the AD's were considered to be interim action, and that additional rulemaking action was being considered to permit removal of the AFM limitation.

The FAA now has determined that replacement of the currently-installed line replaceable unit (LRU) with a modified LRU, having new software that eliminates delays in the WSS detecting windshear when the flaps of the airplane are in transition, will positively address the unsafe condition. The unsafe condition has been identified as significant delays in the WSS detecting windshear, which could lead to the loss of flight path control. Based on this determination, the FAA finds that additional rulemaking action is indeed necessary, and this proposed rule follows from that determination.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95-04-01 and AD 95-09-05. The proposed AD would require replacement of the currently-installed LRU with a modified LRU having new software that eliminates delays in the WSS detecting windshear when the flaps of the airplane are in transition. Replacement would be required to be accomplished in accordance with a method approved by the FAA.

The proposed compliance time of 24 months for replacement is based on the time estimated to be necessary to obtain a modified LRU, plus the time necessary to install that modified LRU on the airplane. Consequently, the FAA has determined that it is appropriate to permit the installation of unmodified LRU's for up to 12 months after the effective date of the rule, provided that the AFM limitation required by the existing AD's continues to remain in effect. This will allow operators to use unmodified LRU's, that may be held as spares, as replacement items is necessary during the 12-month period.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the

area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 2,320 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,618 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Honeywell would incur the costs for the software upgrade for the LRU's. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$970,800, or \$600 per airplane.

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

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-9153 (60 FR 9619, February 21, 1995) and amendment 39-9208 (60 FR 20887, April 28, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Boeing; McDonnell Douglas; Lockheed; Fokker; and British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft, Limited): Docket 95-NM-55-AD. Supersedes AD 95-04-01, Amendment 39-9153; and AD 95-09-05, Amendment 39-9208.

Applicability: The following models and series of airplanes, certificated in any category, equipped with Honeywell Standard Windshear Detection Systems (WSS):

Manufacturer and model of airplane	Type of computer	Part numbers
Boeing 727-100 and -200	Standard Windshear (Honeywell STC)	4061048-902, -903, and -904, 4068054-901, 4068060-901.
Boeing 737-100 and -200	Standard Windshear (Honeywell STC)	4061048-903, -904, and -905, 4068058-903.
Boeing 737-200	Performance Management (Honeywell STC)	4050730-904 through -911, 4051819-906.
Boeing 737-300	Standard Windshear (Honeywell STC)	4068060-901.
Boeing 747-100 and -200	Standard Windshear (Honeywell STC)	4061048-904.
McDonnell Douglas DC-8-50, -60, and -70	Standard Windshear (Honeywell STC)	4068046-903.

Manufacturer and model of airplane	Type of computer	Part numbers
McDonnell Douglas DC-9-10, -21, -31 -41, and -51	Standard Windshear (Honeywell STC)	4068046-901, -902, 4068048-901, -902.
McDonnell Douglas DC-9-80 and MD-88	Windshear (OEM TC)	4059845-902.
McDonnell Douglas MD-90-30	Windshear (OEM TC)	4059845-910.
McDonnell Douglas MD-11	Flight Control (OEM TC)	4059001-901 through -905 (with windshear option selected).
Lockheed L-1011-385-1, -385-1-14, -385-1-15, and -385-3.	Standard Windshear (OEM TC)	4068044-901.
Fokker F28 Mark 1000, 2000, 3000, and 4000	Standard Windshear (Honeywell STC)	4068052-901.
Fokker F28 Mark 0100	Flight Management (OEM TC)	4052502-951 (with windshear option selected).
British Aerospace Avro 146-RJ70A, -RJ85A, and -RJ100A.	Flight Control (OEM TC)	4068300-902.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent significant delays in the Honeywell Standard Windshear Detection Systems (WSS) detecting hazardous windshear, which could lead to the loss of flight path control, accomplish the following:

(a) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement, at the time specified in either paragraph (a)(1) or (a)(2) of this AD, as applicable. This may be accomplished by inserting a copy of this AD in the AFM.

"During sustained banks of greater than 15 degrees or during flap configuration changes, the Honeywell Windshear Detection and Recovery Guidance System (WSS) is desensitized and alerts resulting from encountering windshear conditions will be delayed."

(1) For all Boeing, McDonnell Douglas, Lockheed, and Fokker airplanes specified in the applicability statement of this AD: Within 14 days after March 8, 1995 (the effective date of AD 95-04-01, amendment 39-9153).

(2) For British Aerospace Model Avro airplanes specified in the applicability statement of this AD: Within 14 days after May 15, 1995 (the effective date of AD 95-09-05, amendment 39-9208).

(b) Within 24 months after the effective date of this AD, replace the currently-installed line replaceable unit (LRU) with a modified LRU having new software that eliminates delays in the WSS detecting windshear when the flaps of the airplane are in transition, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Accomplishment of this replacement constitutes terminating action for the requirements of paragraph (a) of this AD; after the replacement has been accomplished, the AFM limitation required by paragraph (a) of this AD may be removed.

(c) As of 12 months after the effective date of this AD, no person shall install on any airplane an LRU that has not been modified in accordance with paragraph (b) of this AD. An unmodified LRU may be installed up to 12 months after the effective date of this AD, provided that, during that time, the AFM limitation required by paragraph (a) of this AD remains in effect.

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

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

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

Issued in Renton, Washington, on June 7, 1995.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 95-14402 Filed 6-12-95; 8:45 am]
BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 95-NM-49-AD]

Airworthiness Directives; McDonnell Douglas Model DC-10-10, -30, and -40 Series Airplanes, and KC-10 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-10, -30, and -40 series airplanes, and KC-10 (military) airplanes. This proposal would require inspections to detect corrosion or cracking of the lower front spar cap and the skin panel of the horizontal stabilizer, and repair of corroded or cracked parts. This proposal would also require eventual modification of the horizontal stabilizer, which would terminate the inspection requirements. This proposal is prompted by reports indicating that corrosion, caused by water entrapment, was found on the horizontal stabilizer. The actions specified by the proposed AD are intended to prevent water entrapment and subsequent damage to the horizontal stabilizer, which could result in reduced controllability of the airplane.

DATES: Comments must be received by August 8, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-49-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00

p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2-60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (310) 627-5322; fax (310) 627-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-49-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate,

ANM-103, Attention: Rules Docket No. 95-NM-49-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The FAA has received several reports indicating that corrosion was found on the aft tang of the lower front spar cap of the horizontal stabilizer on McDonnell Douglas Model DC-10 series airplanes. Additionally, the FAA has received several reports indicating that corrosion was found on the lower skin panel of the horizontal stabilizer on these airplanes. Investigation has revealed that the corrosion was caused by water entrapment in the horizontal stabilizer. Such corrosion, if not detected and corrected in a timely manner, could result in damage to the spar cap and/or lower skin panel of the horizontal stabilizer, which could lead to reduced controllability of the airplane.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 55-14, Revision 6, dated January 11, 1993, which describes procedures for repetitive visual inspections for corrosion of the lower front spar cap and skin panel of the horizontal stabilizer, and repair of corroded or cracked parts. The service bulletin also describes procedures for modifications of the lower front spar cap and the lower front skin panel of the horizontal stabilizer, which, if accomplished, would eliminate the need for repetitive inspections. The modification involves drilling a drain hole in the horizontal stabilizer to allow drainage of entrapped water, which will minimize the possibility of corrosion.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive visual inspections to detect corrosion or cracking of the lower front spar cap and the skin panel of the horizontal stabilizer, and repair of corroded or cracked parts. This proposed AD would also require the eventual modification of the lower front spar cap and the lower front skin panel of the horizontal stabilizer, which would terminate the repetitive inspection requirements. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the

area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 286 Model DC-10-10, DC-10-30, and DC-10-40 airplanes, and KC-10 (military) airplanes of the affected design in the worldwide fleet. Approximately 142 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 26 work hours per airplane to accomplish the proposed inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be \$221,520, or \$1,560 per airplane, per inspection cycle.

The FAA estimates that it would take approximately 241 work hours per airplane to accomplish the proposed terminating modification, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$124,906 per airplane. Based on these figures, the total cost impact of the proposed terminating modification is estimated to be \$19,789,972, or \$139,366 per airplane.

Based on these figures, the estimated total cost impact of the proposed requirements of this AD would be \$20,011,492, or \$140,926 per airplane.

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

Additionally, the FAA recognizes that the proposed modification would require a large number of work hours to accomplish. However, the 5-year compliance time specified in paragraph (b) of this proposed AD should allow ample time for the terminating modification to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 95-NM-49-AD.

Applicability: Model DC-10-10, -30, and -40 airplanes, and KC-10 (military) airplanes; as listed in McDonnell Douglas Service Bulletin 55-14, Revision 6, dated January 11, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe

condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, due to a damaged horizontal stabilizer, accomplish the following:

(a) Within one year after the effective date of this AD, perform a visual inspection to detect corrosion or cracking of the lower front spar cap and skin panel of the horizontal stabilizer, in accordance with McDonnell Douglas DC-10 Service Bulletin 55-14, Revision 5, dated August 24, 1990, or Revision 6, dated January 11, 1993.

(1) If no corrosion or cracking is found during this inspection, repeat this inspection thereafter at intervals not to exceed one year, until the modification required by paragraph (b) of this AD is accomplished.

(2) If any corrosion or cracking is found during this inspection, prior to further flight, repair the corrosion and/or cracking, and add drain holes, in accordance with Table 1 of the service bulletin. Accomplishment of these repairs and modification constitutes terminating action for the repetitive inspection requirements of this AD.

(b) Perform the modification of the lower front spar cap and the skin panel of the horizontal stabilizer in accordance with McDonnell Douglas Service Bulletin 55-14, Revision 5, dated August 24, 1990, or Revision 6, dated January 11, 1993, at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

(1) For Model DC-10-10 airplanes: Prior to the accumulation of 42,000 total landings, or within five years after the effective date of the AD, whichever occurs later.

(2) For Model DC-10-30 and DC-10-40 airplanes: Prior to the accumulation of 30,000 total landings, or within five years after the effective date of this AD, whichever occurs later.

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

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

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

Issued in Renton, Washington, on June 7, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-14399 Filed 6-12-95; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Meetings of the Federal Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The Federal Gas Valuation Negotiated Rulemaking Committee (Committee) was established by the Secretary of the Department of the Interior (Department) to develop specific recommendations regarding Federal gas valuation pursuant to the Department's responsibilities imposed by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* (FOGRMA). The Committee completed its deliberations and final report in March 1995.

DATES: The Committee will meet to review the draft proposed rulemaking on Wednesday and Thursday, June 28 and 29, 1995, 8:00 a.m. to 5:00 p.m. each day.

ADDRESSES: The meetings will be held at the Golden Hill Office Complex, 12600 West Colfax Avenue, Suite B-200, Lakewood, CO 80215-3735.

Written statements may be submitted to Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS-3150, Denver, CO 80225-0165.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS-3920, Denver, CO 80225-0165, telephone number (303) 275-7200, fax number (303) 275-7227.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register**.

The meetings will be open to the public without advanced registration and public attendance will be limited to the space available. Participation by the public will be limited to written statements for the Committee's consideration. The public will have an

opportunity to comment on the proposed rulemaking during the public comment period.

Written statements should be submitted to the address listed above or at the meeting. Minutes of Committee meetings will be available for public inspection and copying 10 days following the meetings at the same address. In addition, the materials received to date during the input sessions are available for inspection and copying at the same address.

Dated: June 6, 1995.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 95-14443 Filed 6-12-95; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA-140-2-6993b; FRL-5212-1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from automobile refinishing operations, magnet wire coating, and metal container, closure, and coil coating operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not

institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by July 13, 1995.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board,
Stationary Source Division, Rule
Evaluation Section, 2020 "L" Street,
Sacramento, CA 95812.
Mojave Desert Air Quality Management
District, 15428 Civic Drive,
Victorville, CA 92392.
South Coast Air Quality Management
District, 21865 E. Copley, Diamond
Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Nikole Reaksecker, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1187.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District (SCAQMD) Rules 1125, 1126, and 1151, and Mojave Desert Air Quality Management District (MDAQMD) Rule 1116, submitted by the California Air Resources Board to EPA on February 24, 1995 (Rules 1125 and 1126), January 24, 1995, and March 31, 1995, respectively. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401-7671q.

Dated: May 19, 1995.

Alexis Strauss,

Acting Regional Administrator.

[FR Doc. 95-14393 Filed 6-12-95; 8:45 am]

BILLING CODE 6560-50-W

40 CFR Part 52

[MN37-1-6901b; FRL-5212-7]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA proposes to approve miscellaneous amendments to previously approved administrative orders that are part of Minnesota's particulate matter and sulfur dioxide SIPs. These amendments make minor modifications such as reducing requirements for reporting operating information, updating certain rule citations, changing owner names, revoking an administrative order for a facility that no longer has significant emissions, and approving two revisions that will somewhat reduce emissions. USEPA also proposes to correct the codification of Minnesota's approved offset rules.

In the final rules section of this **Federal Register**, the USEPA is approving these revisions as a direct final rule without prior proposal, because USEPA views the action as noncontroversial 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 proposal of that action. If USEPA receives adverse public 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. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this action must be received by July 13, 1995.

ADDRESSES: Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE-17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Air Enforcement Branch, Regulation Development Section (AE-17J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-6067.

SUPPLEMENTARY INFORMATION: Supplementary information is provided in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401-7671q.

Dated: May 15, 1995.

Valdas Adamkus,

Regional Administrator.

[FR Doc. 95-14451 Filed 6-12-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[KY-88-6956b; FRL-5208-1]

Approval and Promulgation of Implementation Plans; State Approval of Revisions to Kentucky**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky for the purpose of correcting deficiencies in the definition of volatile organic compounds (VOCs). In the final rules section of this **Federal Register**, the EPA is approving the Kentucky'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 proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by July 13, 1995.**ADDRESSES:** Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below.

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

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

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

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

FOR FURTHER INFORMATION CONTACT: Scott Southwick, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4, Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347-3555, x4207. Reference file KY-88-6956a.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: May 8, 1995.

Patrick M. Tobin,*Acting Regional Administrator.*

[FR Doc. 95-14448 Filed 6-12-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Parts 52 and 62

[IA-13-1-6572b; FRL-5210-8]

Approval and Promulgation of Implementation Plans and Section 111(d) Plans; State of Iowa, Polk County**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the state of Iowa on behalf of Polk County. The state's request for a revision to the SIP includes provisions to make Polk County's rules consistent with the state's Iowa Administrative Code. This revision also includes provisions to fulfill the requirements of section 111(d) of the Act, standards of performance for existing sources. These revisions fulfill federal regulations which strengthen maintenance of established air quality standards.

In the Final Rules Section of the **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 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. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments must be received on or before July 13, 1995.

ADDRESSES: Comments may be mailed to Christopher D. Hess, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551-7213.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final notice which is located in the rules section of the **Federal Register**.

Dated: May 2, 1995.

Dennis Grams,*Regional Administrator.*

[FR Doc. 95-14390 Filed 6-12-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 55

[FRL-5221-1]

Outer Continental Shelf Air Regulations; Consistency Update for California**AGENCY:** Environmental Protection Agency ("EPA").**ACTION:** Notice of proposed rulemaking; consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act ("the Act"), the Clean Air Act Amendments of 1990. The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the South Coast Air Quality Management District (South Coast AQMD) and the Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The OCS requirements for the above Districts, contained in the Technical Support Document, are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations. Proposed changes to the existing requirements are discussed below.

DATES: Comments on the proposed update must be received on or before July 13, 1995.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (A-5), Attn: Docket No. A-93-16 Section IX, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the proposed notice and

copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A-93-16 (Section IX). This docket is available for public inspection and copying Monday-Friday during regular business hours at the following locations:

EPA Air Docket (A-5), Attn: Docket No. A-93-16 Section IX, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE-131), Attn: Air Docket No. A-93-16 Section IX, Environmental Protection Agency, 401 M Street SW, Room M-1500, Washington, DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air and Toxics Division (A-5-3), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744-1197.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1992, EPA promulgated 40 CFR part 55,¹ which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This notice of proposed rulemaking is being promulgated in response to the submittal of rules by two local air pollution control agencies. Public comments received in writing within 30

days of publication of this notice will be considered by EPA before publishing a notice of final rulemaking.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

EPA Evaluation and Proposed Action

In updating 40 CFR part 55, EPA reviewed the state and local rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules,² and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

A. After review of the rules submitted by South Coast AQMD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which the South Coast AQMD is designated as the COA. The

following rules were submitted as revisions to existing requirements:

- Rule 1106 Marine Coating Operations (Adopted 1/13/95)
- Rule 1110.2 Emissions From Gaseous and Liquid-Fueled Internal Combustion Engines (Adopted 12/9/94)

The following rules were submitted but will not be included:

- Rule 1102.1 Perchloroethylene Dry Cleaning Systems (Adopted 12/9/94)
- Rule 1124 Aerospace Assembly and Component Manufacturing Operations (Adopted 1/13/95)
- Rule 1126 Magnet Wire Coating Operations (Adopted 1/13/95)
- Rule 1151 Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations (Adopted 12/9/94)
- Rule 1153 Commercial Bakery Ovens (Adopted 1/13/95)
- Rule 1164 Semiconductor Manufacturing (Adopted 1/13/95)
- Rule 1421 Control of Perchloroethylene Emissions from Dry Cleaning Operations (Adopted 12/9/94)

B. After review of the rules submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which Ventura County APCD is designated as the COA. None of the existing OCS requirements was deleted.

The following rules were submitted as revisions to existing requirements:

- Rule 23 Exemptions from Permit (Adopted 12/13/94)
- Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
- Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 12/13/94)
- Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 11/8/94)

The following rules were submitted to be added as new requirements:

- Rule 34 Acid Deposition Control (Adopted 3/14/95)
- Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
- Rule 74.23 Stationary Gas Turbines (Adopted 3/14/95)
- Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
- Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)

The following rule was submitted but will not be included:

- Rule 3 Advisory Committee (Adopted 3/14/95)

Executive Order 12291 (Regulatory Impact Analysis)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. This exemption continues

¹ The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

² After delegation, each COA will use its administrative and procedural rules as onshore. In those instances where EPA does not delegate authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Small entities include small businesses, organizations, and governmental jurisdictions.

As was stated in the final regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 2, 1995.

David P. Howekamp,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101-549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii)(G) and (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by state.

* * * * *

- (e) * * *
- (3) * * *
- (ii) * * *

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources.*

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

3. Appendix A to 40 CFR Part 55 is amended by revising paragraph (b) (7) and (8) under the heading "California" to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) * * *

* * * * *

(7) The following requirements are contained in *South Coast Air Quality Management District Requirements Applicable to OCS Sources:*

- Rule 102 Definition of Terms (Adopted 11/4/88)
- Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
- Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
- Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
- Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 3/6/92)
- Rule 201 Permit to Construct (Adopted 1/5/90)
- Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
- Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
- Rule 203 Permit to Operate (Adopted 1/5/90)
- Rule 204 Permit Conditions (Adopted 3/6/92)
- Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
- Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
- Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
- Rule 208 Permit for Open Burning (Adopted 1/5/90)
- Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
- Rule 210 Applications (Adopted 1/5/90)
- Rule 212 Standards for Approving Permits (8/12/94) except (c)(3) and (e)
- Rule 214 Denial of Permits (Adopted 1/5/90)
- Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
- Rule 218 Stack Monitoring (Adopted 8/7/81)
- Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 8/12/94)
- Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
- Rule 221 Plans (Adopted 1/4/85)
- Rule 301 Permit Fees (Adopted 6/10/94) except (e)(3) and Table IV
- Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 6/10/94)

- Rule 304.1 Analyses Fees (Adopted 6/10/94)
- Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
- Rule 306 Plan Fees (Adopted 6/10/94)
- Rule 309 Fees for Regulation XVI (Adopted 6/10/94)
- Rule 401 Visible Emissions (Adopted 4/7/89)
- Rule 403 Fugitive Dust (Adopted 7/9/93)
- Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
- Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
- Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
- Rule 408 Circumvention (Adopted 5/7/76)
- Rule 409 Combustion Contaminants (Adopted 8/7/81)
- Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
- Rule 430 Breakdown Provisions, (a) and (e) only. (Adopted 5/5/78)
- Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 10/2/92)
- Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)
- Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
- Rule 441 Research Operations (Adopted 5/7/76)
- Rule 442 Usage of Solvents (Adopted 3/5/82)
- Rule 444 Open Fires (Adopted 10/2/87)
- Rule 463 Storage of Organic Liquids (Adopted 3/11/94)
- Rule 465 Vacuum Producing Devices or Systems (Adopted 11/1/91)
- Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
- Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
- Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
- Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
- Rule 476 Steam Generating Equipment (Adopted 10/8/76)
- Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77)
- Addendum to Regulation IV (Effective 1977)
- Rule 701 General (Adopted 7/9/82)
- Rule 702 Definitions (Adopted 7/11/80)
- Rule 704 Episode Declaration (Adopted 7/9/82)
- Rule 707 Radio—Communication System (Adopted 7/11/80)
- Rule 708 Plans (Adopted 7/9/82)
- Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/4/80)
- Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
- Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)
- Rule 709 First Stage Episode Actions (Adopted 7/11/80)
- Rule 710 Second Stage Episode Actions (Adopted 7/11/80)
- Rule 711 Third Stage Episode Actions (Adopted 7/11/80)
- Rule 712 Sulfate Episode Actions (Adopted 7/11/80)
- Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)

- Regulation IX—New Source Performance Standards (Adopted 4/8/94)
- Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
- Rule 1107 Coating of Metal Parts and Products (Adopted 8/2/91)
- Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
- Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/6/81)
- Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
- Rule 1110.2 Emissions from Gaseous and Liquid-Fueled Internal Combustion Engines (Adopted 12/9/94)
- Rule 1113 Architectural Coatings (Adopted 9/6/91)
- Rule 1116.1 Lightering Vessel Operations—Sulfur Content of Bunker Fuel (Adopted 10/20/78)
- Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/1/78)
- Rule 1122 Solvent Cleaners (Degreasers) (Adopted 4/5/91)
- Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
- Rule 1129 Aerosol Coatings (Adopted 11/2/90)
- Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/4/89)
- Rule 1136 Wood Products Coatings (Adopted 8/12/94)
- Rule 1140 Abrasive Blasting (Adopted 8/2/85)
- Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
- Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
- Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
- Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
- Rule 1149 Storage Tank Degassing (Adopted 4/1/88)
- Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Application (Adopted 12/10/93)
- Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 5/13/94)
- Rule 1176 Sumps and Wastewater Separators (Adopted 5/13/94)
- Rule 1301 General (Adopted 6/28/90)
- Rule 1302 Definitions (Adopted 5/3/91)
- Rule 1303 Requirements (Adopted 5/3/91)
- Rule 1304 Exemptions (Adopted 9/11/92)
- Rule 1306 Emission Calculations (Adopted 5/3/91)
- Rule 1313 Permits to Operate (Adopted 6/28/90)
- Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
- Rule 1610 Old-Vehicle Scrapping (Adopted 1/14/94)
- Rule 1701 General (Adopted 1/6/89)
- Rule 1702 Definitions (Adopted 1/6/89)
- Rule 1703 PSD Analysis (Adopted 10/7/88)
- Rule 1704 Exemptions (Adopted 1/6/89)
- Rule 1706 Emission Calculations (Adopted 1/6/89)
- Rule 1713 Source Obligation (Adopted 10/7/88)
- Regulation XVII—Appendix (effective 1977)
- Rule 1901 General Conformity (Adopted 9/9/94)
- Rule 2000 General (Adopted 10/15/93)
- Rule 2001 Applicability (Adopted 10/15/93)
- Rule 2002 Allocations for oxides of nitrogen (NO_x) and oxides of sulfur (SO_x) (Adopted 10/15/93)
- Rule 2004 Requirements (Adopted 10/15/93) except (l) (2 and 3)
- Rule 2005 New Source Review for RECLAIM (Adopted 10/15/93) except (i)
- Rule 2006 Permits (Adopted 10/15/93)
- Rule 2007 Trading Requirements (Adopted 10/15/93)
- Rule 2008 Mobiles Source Credits (Adopted 10/15/93)
- Rule 2010 Administrative Remedies and Sanctions (Adopted 10/15/93)
- Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_x) Emissions (Adopted 9/9/94)
- Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 10/93)
- Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_x) Emissions (Adopted 9/9/94)
- Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 10/93)
- Rule 2015 Backstop Provisions (Adopted 10/15/93) except (b)(1)(G) and (b)(3)(B)
- (8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*:
- Rule 2 Definitions (Adopted 12/15/92)
- Rule 5 Effective Date (Adopted 5/23/72)
- Rule 6 Severability (Adopted 11/21/78)
- Rule 7 Zone Boundaries (Adopted 6/14/77)
- Rule 10 Permits Required (Adopted 7/5/83)
- Rule 11 Application Contents (Adopted 8/15/78)
- Rule 12 Statement by Application Preparer (Adopted 6/16/87)
- Rule 13 Statement by Applicant (Adopted 11/21/78)
- Rule 14 Trial Test Runs (Adopted 5/23/72)
- Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
- Rule 16 Permit Contents (Adopted 12/2/80)
- Rule 18 Permit to Operate Application (Adopted 8/17/76)
- Rule 19 Posting of Permits (Adopted 5/23/72)
- Rule 20 Transfer of Permit (Adopted 5/23/72)
- Rule 21 Expiration of Applications and Permits (Adopted 6/23/81)
- Rule 23 Exemptions from Permits (Adopted 12/13/94)
- Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
- Rule 26 New Source Review (Adopted 10/22/91)
- Rule 26.1 New Source Review—Definitions (Adopted 10/22/91)
- Rule 26.2 New Source Review—Requirements (Adopted 10/22/91)
- Rule 26.3 New Source Review—Exemptions (Adopted 10/22/91)
- Rule 26.6 New Source Review—Calculations (Adopted 10/22/91)
- Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
- Rule 26.10 New Source Review—PSD (Adopted 10/22/91)
- Rule 28 Revocation of Permits (Adopted 7/18/72)
- Rule 29 Conditions on Permits (Adopted 10/22/91)
- Rule 30 Permit Renewal (Adopted 5/30/89)
- Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
- Rule 33 Part 70 Permits—General (Adopted 10/12/93)
- Rule 33.1 Part 70 Permits—Definitions (Adopted 10/12/93)
- Rule 33.2 Part 70 Permits—Application Contents (Adopted 10/12/93)
- Rule 33.3 Part 70 Permits—Permit Content (Adopted 10/12/93)
- Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 10/12/93)
- Rule 33.5 Part 70 Permits—Timeframes for Applications, Review and Issuance (Adopted 10/12/93)
- Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
- Rule 33.7 Part 70 Permits—Notification (Adopted 10/12/93)
- Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
- Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 10/12/93)
- Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
- Rule 34 Acid Deposition Control (Adopted 3/14/95)
- Appendix II—A Information Required for Applications to the Air Pollution Control District (Adopted 12/86)
- Appendix II—B Best Available Control Technology (BACT) Tables (Adopted 12/86)
- Rule 42 Permit Fees (Adopted 7/12/94)
- Rule 44 Exemption Evaluation Fee (Adopted 1/8/91)
- Rule 45 Plan Fees (Adopted 6/19/90)
- Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
- Rule 50 Opacity (Adopted 2/20/79)
- Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
- Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
- Rule 54 Sulfur Compounds (Adopted 6/14/94)
- Rule 56 Open Fires (Adopted 3/29/94)
- Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
- Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
- Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
- Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
- Rule 64 Sulfur Content of Fuels (Adopted 6/14/94)

Rule 66 Organic Solvents (Adopted 11/24/87)

Rule 67 Vacuum Producing Devices (Adopted 7/5/83)

Rule 68 Carbon Monoxide (Adopted 6/14/77)

Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)

Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)

Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)

Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)

Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)

Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)

Rule 72 New Source Performance Standards (NSPS) (Adopted 6/28/94)

Rule 74 Specific Source Standards (Adopted 7/6/76)

Rule 74.1 Abrasive Blasting (Adopted 11/12/91)

Rule 74.2 Architectural Coatings (Adopted 08/11/92)

Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)

Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)

Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)

Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)

Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)

Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)

Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)

Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_x (Adopted 4/9/85)

Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 12/13/94)

Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 11/8/94)

Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1-5MM BTUs) (Adopted 5/11/93)

Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)

Rule 74.20 Adhesives and Sealants (Adopted 6/8/93)

Rule 74.23 Stationary Gas Turbines (Adopted 3/14/95)

Rule 74.24 Marine Coating Operations (Adopted 3/8/94)

Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)

Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)

Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)

Rule 74.30 Wood Products Coatings (Adopted 5/17/94)

Rule 75 Circumvention (Adopted 11/27/78)

Appendix IV-A Soap Bubble Tests (Adopted 12/86)

Rule 100 Analytical Methods (Adopted 7/18/72)

Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)

Rule 102 Source Tests (Adopted 11/21/78)

Rule 103 Stack Monitoring (Adopted 6/4/91)

Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)

Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)

Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)

Rule 158 Source Abatement Plans (Adopted 9/17/91)

Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)

* * * * *

[FR Doc. 95-14421 Filed 6-12-95; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 95]

RIN 2127-AF66

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the agency's safety belt requirements for forward-facing rear outboard seating positions of police cars and other law enforcement vehicles. This action was initiated in response to a petition for rulemaking submitted by Laguna Manufacturing, Inc. Believing that the considerations governing the design of safety belts for use by prisoners are different from those applicable to safety belts for the general public, Laguna requested that Standard No. 208 be amended to provide greater flexibility to design safety belt systems that are better suited for restraining prisoners being transported in the rear seats of law enforcement vehicles.

DATES: Comment Date: Comments must be received by August 14, 1995.

Effective Date: If adopted, the proposed amendments would become effective 30 days following publication of the final rule.

ADDRESSES: Comments 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: Ms. Linda McCray, Frontal Crash Protection Division, Office of Vehicle Safety Standards, NPS-12, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-4793.

SUPPLEMENTARY INFORMATION: Standard No. 208, *Occupant Crash Protection*, requires an integral Type 2 (lap and shoulder) safety belt assembly at all forward-facing rear outboard seating positions in passenger cars and other light vehicles. The standard also requires that each of these safety belt assemblies be equipped with an emergency locking retractor. The emergency locking retractor allows the belt webbing to unwind from the spool when the belt user leans forward or to the side and rewinds it when the user leans back against the seat. However, in the event of a sudden stop or crash, the retractor locks up. This type of retractor serves several purposes. By providing a comfortable belt fit and allowing the belt user some freedom of movement, this type of retractor makes it more likely that the typical vehicle occupant will use safety belts. It also reduces the likelihood of excessive slack in safety belts during use.

Believing that the considerations governing the design of safety belts for use by prisoners being transported in police cars and other law enforcement vehicles are different from those applicable to safety belts for the general public, Laguna Manufacturing, Inc. submitted to NHTSA a petition for rulemaking requesting that Standard No. 208 be amended. Laguna sought an amendment that would provide greater flexibility to design safety belt systems that are better suited for restraining prisoners being transported in forward-facing rear outboard seating positions in these vehicles. That company argued that the requirement for an emergency locking retractor is inappropriate for safety belt systems used by prisoners, since it allows too much slack in non-emergency situations. This is because these retractors spool out webbing and thus allow safety-belted prisoners too much range of movement. Laguna stated that some police departments refrain altogether from safety belting a prisoner and instead use a "hog tie restraint" and lay the prisoner down on the rear seat. In these situations, the prisoner does not have any safety belt protection.

More specifically, Laguna requested that Standard No. 208 be amended to permit the use of a manual tightening system instead of an emergency locking retractor for safety belts intended for use by prisoners. That company stated that

such a system would afford the occupant all of the crash protection provided by the standard and only exclude a feature intended to provide comfort and convenience. Laguna argued that a prisoner who's handcuffed behind his/her back would be unable to fasten the safety belts. Therefore, in such a situation, a feature intended to provide comfort and convenience would not make the occupant more likely to fasten the safety belt.

In support of its petition, Laguna provided information about a special rear seat and safety belt system it has designed for police cars. The design includes two outboard integral lap and shoulder belt systems which use the same anchor point locations as conventional belt systems in the forward-facing rear outboard seats in current cars.

However, there are two significant differences between the Laguna belt system and a conventional safety belt system. First, the Laguna system includes a manual belt tightening system instead of an emergency locking retractor. Second, the Laguna system uses two buckles instead of one and buckles in a different location than a conventional safety belt system. The ends of the lap and shoulder belt portions of the conventional safety belt system are permanently attached to the outboard anchorages. The end of the lap belt portion is attached to the lower anchorage and the end of shoulder belt portion is attached to the upper anchorage. The buckle is mounted at the anchorage near the center of the vehicle. The permanent attachment points and buckling points are reversed for the Laguna system. The middle of the Laguna belt system is permanently anchored at the anchorage near the center of the vehicle. The end of the lap belt portion buckles at the lower anchorage and the end of the shoulder belt buckles at the upper anchorage.

Laguna stated that its design eliminates the need for police officers to lean over a prisoner in the rear seat of the police car. This is partly attributable to the fact that both the lap belt and shoulder belt portions buckle at the outboard anchorages. Therefore, an officer need not lean over a prisoner to buckle the belt at an anchorage in the center of the vehicle, as would be the case with conventional belt systems. In addition, a large magnet is mounted on a floating sleeve that slides along the lap and shoulder belt portions. When the belts are not in use, the magnet attaches the belts to the metal cage partition that typically separates the front and rear portions of police cars. When the magnet is released from the metal cage

partition, the sleeve falls to the center mounting position which allows the belt to properly separate into the lap/shoulder portions. When a prisoner is placed in the rear seat, the officer can use his or her forearm to remove the magnetically attached belts from the metal cage partition and buckle the belts around the prisoner, without at any time leaning over the prisoner.

After considering the issues raised by Laguna, NHTSA has tentatively concluded that Standard No. 208 should be amended to provide more flexibility with respect to the design and performance of safety belts installed at forward-facing rear outboard seating positions of law enforcement vehicles. The agency recognizes that the use of vehicles by law enforcement officers to transport prisoners creates special problems.

As requested by Laguna, NHTSA is proposing to permit the use of a manual tightening system instead of an emergency locking retractor in law enforcement vehicles. The agency believes that there is the need to limit the movement of a safety belted prisoner. Further, as noted by the petitioner, while the comfort and convenience benefits of an emergency locking retractor normally have the effect of helping to induce belt use, they do not have that effect on handcuffed or otherwise bound prisoners who are being involuntarily transported in law enforcement vehicles. The agency notes that a safety belt system incorporating a manual tightening system may result in an increase in the number of prisoners who are safety belted while being transported.

NHTSA is also proposing to exclude safety belts installed at forward-facing rear outboard seating positions of law enforcement vehicles from a requirement in Standard No. 208 which specifies that lap and shoulder belts must release at a single point. That requirement provides increased convenience and quicker release. The Laguna design, however, would not meet the requirement since it has two buckles. As discussed above, the Laguna system incorporates two buckles so that the belt system can be operated from the outboard side of the prisoner. This design feature eliminates the need for police officers to lean over the prisoner to either buckle or unbuckle a prisoner's belt. The agency believes that the special need for police officers to avoid leaning over a prisoner to operate the prisoner's safety belt buckle outweighs the benefits of having only a single buckle.

NHTSA recognizes that forward-facing rear outboard seating positions of

law enforcement vehicles may be used by non-prisoners as well as prisoners. In addition, law enforcement vehicles are typically sold to the general public after their use as law enforcement vehicles. The agency notes, however, that under the proposal, occupants of the seats would continue to have the same three-point belt protection as occupants of non-law enforcement vehicles. The only differences would relate to comfort, convenience and quickness of release. The agency believes that these differences do not outweigh the special needs of law enforcement officers. However, NHTSA does request comments on whether a label should be required to advise rear seat passengers to adjust the safety belt for a snug fit. Commenters are asked to address the wording of such a label and its potential effectiveness. Depending on the comments, the agency may, or may not, include a requirement for such a label in a final rule.

While NHTSA would not have the authority to require law enforcement agencies to replace the special rear seat safety belt systems with conventional Type 2 safety belts when a vehicle was subsequently sold to the public, the agency would strongly recommend that law enforcement agencies do so. Installation of conventional Type 2 safety belt systems, with an emergency locking retractor and a single point of release, would afford subsequent owners all of the crash protection provided by the agency's crash protection standards. In addition, these safety belt systems would meet the comfort and convenience requirements of those standards, increasing the likelihood that the safety belts would be used.

While the special Laguna design is for "police cars," that company requested that its recommended exclusion be provided for "police and/or public safety vehicles used, exclusively or not, for the transport of persons handcuffed or restrained and in the custody, care, and control of a law enforcement officer." NHTSA believes that the proposed exclusions should apply to law enforcement vehicles generally, rather than to police "cars," since the rationale is not dependent on vehicle type, i.e., passenger car or multipurpose passenger vehicle.

The proposed regulatory text defines "law enforcement vehicle" as any vehicle manufactured primarily for use by the United States or by a State or local government for police or other law enforcement purposes. This definition is derived from the definition of "emergency vehicle," set forth at 49 U.S.C. 32902(e), for purposes of the

corporate average fuel economy program. The agency notes that vehicles which are manufactured for police or other law enforcement purposes can ordinarily be identified by special features such as sirens, decals, a metal cage partition, removed interior rear-door release handles, or special handling features. The agency requests comments concerning whether all law enforcement vehicles include at least some of these (or other) special features, and on whether a more detailed definition, identifying vehicle attributes, can be developed that would be appropriate for all law enforcement vehicles.

NHTSA is proposing to make the proposed amendments effective 30 days after publication of a final rule. NHTSA believes that there would be good cause for such an effective date since the amendments would not impose any new requirements but instead relieve a restriction.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "non-significant" under the Department of Transportation's regulatory policies and procedures. The proposed amendments would not impose any new requirements but simply remove a restriction. Therefore, the impacts of the proposed amendments would be so minor that a full regulatory evaluation is not required. There would be slight cost savings, on the order of \$5.00 or less per belt system, associated with not being required to provide an emergency locking retractor. For the Laguna system, these cost savings would be offset by the costs associated with some of the special features of its belt system, i.e., the extra buckle and the magnets. NHTSA notes, however, that these special features would not be required by the standard.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. As explained above, the rule would not impose any new requirements but would instead relieve a restriction for

law enforcement vehicles. Any economic impact would be in the nature of slight cost savings for small government organizations which purchase law enforcement vehicles. For these reasons, small businesses, small organizations and small governmental units which purchase motor vehicles would not be significantly affected by the proposed requirements.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), there are no requirements for information collection associated with this proposed rule.

D. National Environmental Policy Act

NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would not have a significant impact on the human environment.

E. Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposed rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

F. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage

commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 of title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 would be amended by revising sections S7, S7.1.1.2, S7.1.1.3 and S7.2 to read as follows:

§ 571.208 Standard No. 208, Occupant Crash Protection.

* * * * *

S7. Seat belt assembly requirements. As used in this section, a law enforcement vehicle means any vehicle manufactured primarily for use by the United States or by a State or local government for police or other law enforcement purposes.

* * * * *

S7.1.1.2(a) A seat belt assembly installed in a motor vehicle other than a forward control vehicle at any designated seating position other than the outboard positions of the front and second seats shall adjust either by a retractor as specified in S7.1.1 or by a manual adjusting device that conforms to § 571.209.

(b) A seat belt assembly installed in a forward control vehicle at any designated seating position other than the front outboard seating positions shall adjust either by a retractor as specified in S7.1.1 or by a manual adjusting device that conforms to § 571.209.

(c) A seat belt assembly installed in a forward-facing rear outboard seating position in a law enforcement vehicle shall adjust either by a retractor as specified in S7.1.1 or by a manual adjusting device that conforms to § 571.209.

S7.1.1.3 A Type 1 lap belt or the lap belt portion of any Type 2 seat belt assembly installed at any forward-facing outboard designated seating position of a vehicle with a gross vehicle weight rating of 10,000 pounds or less to comply with a requirement of this standard, except walk-in van-type vehicles and school buses, and except in rear seating positions in law enforcement vehicles, shall meet the requirements of S7.1 by means of an emergency locking retractor that conforms to Standard No. 209 (49 CFR 571.209).

* * * * *

S7.2 Latch mechanism. Except as provided in S7.2(e), each seat belt assembly installed in any vehicle shall have a latch mechanism that complies with the requirements specified in S7.2(a) through (d).

(a) The components of the latch mechanism shall be accessible to a seated occupant in both the stowed and operational positions;

(b) The latch mechanism shall release both the upper torso restraint and the lap belt simultaneously, if the assembly has a lap belt and an upper torso restraint that require unlatching for release of the occupant;

(c) The latch mechanism shall release at a single point; and;

(d) The latch mechanism shall release by a pushbutton action.

(e) The requirements of S7.2 do not apply to any automatic belt assembly. The requirements specified in S7.2(a) through (c) do not apply to any safety belt assembly installed at a forward-facing rear outboard seating position in a law enforcement vehicle.

Issued on June 7, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95-14401 Filed 6-12-95; 8:45 am]

BILLING CODE 4910-59-P

49 CFR Part 571

[Docket No. 90-3; Notice 5]

RIN 2127-AF63

Federal Motor Vehicle Safety Standards; Air Brake Systems Air Compressor Cut-In

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In response to a petition for rulemaking submitted by the Truck Trailer Manufacturers Association (TTMA), this notice proposes to amend the requirement for the minimum air compressor cut-in pressure in Standard No. 121, *Air Brake Systems*, to require the automatic activation of the air compressor whenever the pressure in the air brake system drops below 100 psi. The agency has tentatively concluded that the proposed amendment would ensure that new truck tractors provide trailers with sufficient air pressure for release of the trailer parking brakes and provide adequate service braking.

DATES: *Comments.* Comments must be received on or before August 14, 1995.

Proposed Effective Date. The proposed amendment in this notice would become effective 30 days after publication of a final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh

Street SW., Washington, DC 20590. (202-366-5274).

SUPPLEMENTARY INFORMATION:**I. Background**

Standard No. 121, *Air Brake Systems*, specifies performance and equipment requirements for braking systems on vehicles equipped with air brakes, including a requirement specifying the minimum air pressure at which a towing vehicle's air compressor governor must automatically activate. The governor maintains reservoir air pressure between predetermined minimum and maximum pressures. Under the current requirement in S5.1.1.1, the governor must automatically activate the air compressor when air pressure in the reservoir falls to 85 psi. Currently manufactured air brake systems typically operate between 100 psi and 120 psi.

NHTSA adopted the air compressor governor minimum cut-in requirement in S5.1.1.1 on October 8, 1991. (56 FR 50666) The agency explained that, under this requirement, the air compressor on a tractor will be activated to restore or maintain pressure in the brake supply system until the air leak is detected and corrected. The agency further stated that since most vehicles already comply with this requirement, it would not result in an undue burden for manufacturers.

The October 1991 final rule also simplified requirements applicable to air brake systems by amending Standard No. 121 to delete the requirement for each trailer to have a separate protected reservoir for the purpose of releasing the parking brake. Under the rule, air pressure from the tractor supply lines may be used to release the trailer parking brakes rather than air from a separate reservoir. The final rule also specified requirements for a minimum air pressure of 70 p.s.i. in the trailer's supply line in the event of pneumatic failure and for prevention of the automatic application of the trailer parking brakes while the minimum trailer supply line air pressure is maintained.

II. Rulemaking Petition

On August 2, 1994, the Truck Trailer Manufacturers Association (TTMA) submitted a petition for rulemaking to amend Standard No. 121 to increase the minimum air pressure governor cut-in requirement in S5.1.1.1 from 85 psi to 100 psi. The petitioner stated that its requested amendment is necessary to assure that new truck tractors provide air braked trailers with sufficient

pressure for release of the trailer parking brakes and to provide adequate service braking. TTMA said that the current 85 psi air pressure governor cut-in requirement may not supply adequate pressure to a trailer being towed by a tractor. TTMA also stated that higher truck or tractor air pressures increase the speed at which trucks or tractors can resupply trailers with air and these higher pressures will store more air for use by the braking systems. It further stated that "all tractor manufacturers are now building tractors whose nominal compressor cut-in pressure is at least 100 psi."

III. NHTSA Proposal

After reviewing TTMA's petition, NHTSA has decided to propose increasing the minimum air compressor cut-in pressure requirement from 85 psi to 100 psi. There are several reasons for increasing the cut-in air pressure above the current 85 psi level. First, the agency has tentatively determined that the proposed amendment would enhance safety by better ensuring that new truck tractors are capable of providing trailers with sufficient pressure for release of the trailer parking brakes and provide adequate service braking. Specifically, by raising the cut-in pressure, this amendment would allow the storage of an additional volume of compressed air that would be available for an air brake system. This is important since the 1991 final rule eliminated the requirement for a separate protected reservoir with a stored volume of air used for releasing the trailer parking brakes. Second, the proposal to maintain an overall higher system air pressure would allow a better "match up" of protection valve settings between the tractors and trailers. Third, long stroke brake chambers, which need more compressed air, would have available an additional volume of air at higher pressure. This would provide a greater margin of safety.

NHTSA has tentatively concluded that increasing the air pressure to a 100 psi minimum would not result in any safety problems. The agency invites comments about the effect of this proposed amendment on safety.

NHTSA's analysis of current manufacturing practices confirms TTMA's statement that tractor manufacturers are now building tractors with a cut-in pressure of at least 100 psi. The docket includes a memorandum summarizing the agency's discussions with vehicle manufacturers and the American Trucking Associations in which they indicate that new truck tractors are typically equipped with governors that activate the air

compressor when air pressure drops to 100 psi. In addition, NHTSA has discussed the issue of air pressure cut-in with Midland-Grau and AlliedSignal, which together produce over 95 percent of the air compressors and governors in the United States. Midland-Grau sets their air compressors and governors at 105 psi, while AlliedSignal sets their air compressors and governors at 100 psi. NHTSA knows of no company that manufactures these devices with a cut-on pressure between 85 and 100 psi nor of any purchaser that requests a cut-on pressure in this lower range. Accordingly, NHTSA believes the proposed amendment would codify existing industry practice, since equipment on new vehicles are being built with the proposed settings.

The statute requires that each order shall take effect no sooner than 180 days from the date the order is issued unless good cause is shown that an earlier effective date is in the public interest. NHTSA has tentatively concluded that there would be good cause not to provide the 180 day lead-in period given that this amendment will have no adverse effect on manufacturers since all manufacturers currently comply with the proposed requirements. Based on the above, the agency has tentatively concluded that there is good cause for an effective date 30 days after publication of the final rule. NHTSA requests comments about whether a 30 day effective date is appropriate or whether more lead time is necessary.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This proposal was not reviewed under E.O. 12866. NHTSA has analyzed this proposal and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule, if adopted, would have a minimal effect on costs or benefits of the existing requirements. In large part, today's proposed amendment merely codifies an existing industry practice.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. Vehicle and brake manufacturers typically would not qualify as small entities. Vehicle

manufacturers, small businesses, small organizations, and small governmental units which purchase motor vehicles would not be significantly affected by the proposed requirements. Accordingly, no regulatory flexibility analysis has been prepared.

3. 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 proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

4. National Environmental Policy Act

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

5. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30111), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (49 U.S.C. 30161) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street

address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend Standard No. 121, *Air Brake Systems*, in Title 49 of the Code of Federal Regulations at Part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would be revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. In § 571.121, S5.1.1.1 would be revised to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5.1.1.1 Air compressor cut-in pressure. The air compressor governor cut-in pressure shall be greater than 100 p.s.i.

* * * * *

Issued on: June 8, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95-14461 Filed 6-12-95; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding for a Petition To List the Comal Springs Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the Comal Springs salamander (*Eurycea* sp.) under the Endangered Species Act of 1973, as amended. The Service finds that the petition did not present substantial information indicating that listing this species may be warranted. The Service is continuing its status review of the species.

DATES: The finding announced in this document was made on June 6, 1995.

ADDRESSES: Data, information, comments, or questions concerning this petition finding should be submitted to the Field supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758. The petition finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lisa O'Donnell, Biologist, at the above address (512/490-0057).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and notice of the finding is to be published promptly in the **Federal Register**. If the finding is that

substantial information was presented, the Service is also required to promptly commence a status review of the species.

The Service has made a negative 90-day finding on the petition to list the Comal Springs salamander (*Eurycea* sp.). The Service finds that the petitioner has not presented substantial information indicating that the requested action for this species may be warranted, as required under section 4(b)(3)(A) of the Act. The Service has been assessing the status of this taxon since its designation as a category 2 candidate. The Comal Springs salamander is currently included in the *Eurycea neotenes* species group, which has been a category 2 candidate species in the Service's candidate notices of review since December 30, 1982 (47 FR 58454). No new information was presented in the petition beyond that used by the Service to assign *Eurycea neotenes* to category 2. Thus, the Service has determined that the Comal Springs salamander shall retain the Category 2 classification currently assigned to the *Eurycea neotenes* species group. Category 2 means that information now in possession of the Service indicates a proposal to determine endangered or threatened status is possibly appropriate, but conclusive data on biological vulnerability and threats are not currently available to support such a proposal.

On June 6, 1994, the Service received a petition from Mr. David Whatley, Director of Parks and Recreation for the City of New Braunfels, Texas, to add the Comal Springs salamander to the list of Threatened and Endangered Wildlife. The letter, dated June 3, 1994, was clearly identified as a petition and contained the name, signature, institutional affiliation, and address of the petitioner. The petition stated that the Comal Springs salamander is generally found in the Comal Springs in Landa Park and Landa Lake, and is among the several unique species in the Comal Springs ecosystem faced with the loss of its habitat due to groundwater withdrawal from the Edwards Aquifer. Although the Service concurs that the Comal Springs ecosystem, as well as other spring ecosystems of the Edwards Aquifer, faces threats from increased groundwater withdrawals and groundwater contamination, many uncertainties still exist regarding the taxonomic status of the Comal Springs salamander (including whether or not it represents a distinct population segment) and its distribution. Until these uncertainties are resolved, the Service believes the Comal Springs

salamander should remain a category 2 candidate.

If additional data become available in the future, the Service will reassess the need for listing the Comal Springs salamander. As part of our continuing review of species on the Notice of Review, the Service would appreciate any additional data, information, or comments from the public, government agencies, the scientific community, industry, or any other interested party concerning the status of the Comal Springs salamander. In particular, the Service needs additional information to determine the Comal Springs salamander's taxonomic status and relationship to other *Eurycea* populations (for example, whether or not the Comal Springs salamander represents a distinct species or a distinct population segment) and if it is restricted to the Comal Springs ecosystem.

References Cited

- Chippindale, P., D. Hillis, and A. Price. 1990. Central Texas Salamander Studies. Section 6 report submitted by Texas Parks and Wildlife Department to U.S. Fish and Wildlife Service. Federal Aid Project No: E-1-2, Job No. 3.4.
- Chippindale, P., D. Hillis, and A. Price. 1992. Central Texas Salamander Studies. Section 6 report submitted by Texas Parks and Wildlife Department to U.S. Fish and Wildlife Service. Federal Aid Project No: E-1-3, Job No. 3.4.
- Chippindale, P., D. Hillis, and A. Price. 1993. Central Texas Salamander Studies. Draft Section 6 report submitted by Texas Parks and Wildlife Department to U.S. Fish and Wildlife Service. Federal Aid Project No: E-1-4, Job No. 3.4.
- Chippindale, P., D. Hillis, and A. Price. 1994. Central Texas Salamander Studies. Draft Section 6 report, Part I, submitted by Texas Parks and Wildlife Department to U.S. Fish and Wildlife Service. Federal Aid Project No: E-1-4, Job No. 3.4.

Sweet, S. 1978. The Evolutionary Development of the Texas *Eurycea*. Unpublished Ph.D. Diss. Univ. of California Berkeley. 450 pp.

Sweet, S. 1982. A Distributional Analysis of Epigeal Populations of *Eurycea neotenes* in central Texas, with comments on the origin of troglomorphic populations. *Herpetologica* 38: 430-444.

Author. The primary author of this document is Lisa O'Donnell, Austin Ecological Services Field Office (See **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. *et seq.*).

Dated: June 6, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95-14394 Filed 6-12-95; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 60, No. 113

Tuesday, June 13, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95-042-1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Tomato Line

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Monsanto Company seeking a determination of nonregulated status for a tomato line designated as 8338 that has been genetically engineered for delayed ripening. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this tomato line presents a plant pest risk.

DATES: Written comments must be received on or before August 14, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95-042-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1237. Please state that your comments refer to Docket No. 95-042-1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690-2817.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Koehler, Biotechnologist, Biotechnology Permits, BBEP, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737-1237; (301) 734-7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734-7601.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On February 22, 1995, APHIS received a petition (APHIS Petition No. 95-053-01p) from the Monsanto Company (Monsanto) of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for a tomato line designated as 8338 that has been genetically engineered for delayed ripening. The Monsanto petition states that the subject tomato line shall not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, tomato line 8338 has been genetically engineered to express the enzyme 1-aminocyclopropane-1-carboxylic acid deaminase (ACCd), which catalyzes deamination of ACC, an essential precursor for ethylene biosynthesis. Levels of ethylene control the rate of fruit ripening, and removal of ACC in the subject tomato line reduces ethylene production and delays ripening. The *accd* gene, which confers the delayed-ripening trait, was isolated from the soil bacterium *Pseudomonas chloroaphis*,

strain 6G5. Tomato line 8338 also contains the neomycin phosphotransferase (*nptII*) selectable marker gene which encodes the enzyme NPTII. The presence of the NPTII protein in the plant genome confers tolerance to the antibiotic kanamycin and allows selection of the transformed cells in the presence of kanamycin. Expression of the *accd* gene and the *nptII* gene is driven by constitutive 35S promoters derived from the plant pathogenic caulimoviruses figwort mosaic virus and cauliflower mosaic virus, respectively. The subject tomato line was transformed through the use of disarmed vectors from a common soil-borne bacterium, the plant pathogen *Agrobacterium tumefaciens*.

Tomato line 8338 is currently considered a regulated article under the regulations in 7 CFR part 340 because it contains the 35S promoters and 3' regulatory gene sequences derived from the plant pathogens mentioned above, and because *A. tumefaciens* was used as the plant transformation vector. Tomato line 8338 was evaluated in field trials conducted under APHIS permits or notifications since 1992. In the process of reviewing the applications for those field trials, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive confinement, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

Food or animal feed uses of the subject tomato line may be subject to

regulation by the Food and Drug Administration (FDA) under the authority of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 *et seq.*). The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984-23005). The FDA statement of policy includes a discussion of the FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. Monsanto has completed its consultation with the FDA on the food safety of the subject tomato line.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Monsanto's tomato line 8338 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa-150jj, 151-167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 5th day of June 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95-14382 Filed 6-12-95; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Bennett-Cottonwood Oil and Gas Development EIS; Custer National Forest, McKenzie County, ND

AGENCY: Forest Service, USDA.

ACTION: Notice; withdrawal of intent to prepare an environmental impact statement.

SUMMARY: A Notice of Intent was published in the **Federal Register** [60 FR 1765] on Thursday, January 5, 1995, indicating that an environmental impact statement (EIS) would be prepared on the proposal to develop thirteen additional oil wells in the Bennett-Cottonwood area by Meridian Oil, Inc. and Apache Corporation. That Notice of Intent is hereby withdrawn.

The development of the thirteen proposed wells was contingent upon the successful production of oil from approved wells approved and drilled since 1993. In March 1995, Meridian Oil, Inc. and Apache Corporation withdrew their proposals because of four unsuccessful wells drilled in the area the last two years and for other corporate reasons.

Originally the draft environmental impact statement was scheduled to be released to the public on May 1, 1995 with the final statement to be filed by July 1, 1995. A letter was mailed on March 24, 1995 to all who commented during the scoping period, as well as all other individuals or groups on the project scoping mailing list, notifying them of the withdrawal of this project.

DATES: This action is effective on June 13, 1995.

ADDRESSES: Lesley W. Thompson, District Ranger, McKenzie Ranger District, Little Missouri National Grassland, Custer National Forest, HC02 Box 8, Watford City, ND 58854.

FOR FURTHER INFORMATION CONTACT: Lesley W. Thompson, District Ranger, McKenzie Ranger District. Telephone number: (406) 657-6361.

Dated: June 2, 1995.

Lesley W. Thompson,

Acting Forest Supervisor.

[FR Doc. 95-14418 Filed 6-12-95; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey—October 1995 School Enrollment Supplement.

Agency Approval Number: 0607-0464.

Type of Request: Reinstatement, without change.

Burden: 7,200 hours.

Number of Respondents: 54,000.

Avg Hours Per Response: 8 minutes.

Needs and Uses: The School

Enrollment Supplement is the only source of data on enrollment in all schools by demographic, social, and economic characteristics. This annual supplement to the Current Population Survey provides school enrollment data for persons 3 years old or older who are enrolled in elementary school, high school, college, and vocational/technical schools, as well as for children enrolled in nursery schools and kindergarten. It also provides higher education data for adults and computer usage data for adults and children. The data are used by Federal agencies; state, county, and city governments; and private organizations responsible for education to formulate and implement education policy. They are also used by employers and analysts to anticipate the composition of the labor force in the future.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5312, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 8, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95-14455 Filed 6-12-95; 8:45 am]

BILLING CODE 3510-07-F

Bureau of Export Administration

[Docket Nos. 3108-01, 3108-02]

Amancio J. Abelairas, et al.; Decision and Order

In the Matter of: Amancio J. Abelairas, also known as Jesus Gonzalez, individually with an address at 6486 S.W. 9th Street, Miami, Florida 33144, and doing business as Estrella Del Caribe Import and Export Inc., with an address at 5529 S.W. 9th Street, Miami, Florida 33144, Respondents.

On May 17, 1995, the Administrative Law Judge (ALJ) entered his Recommended Decision and Order in

the above-referenced matter. The Recommended Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. After describing the facts of the case and his findings based on those facts, the ALJ found that the respondent had violated Sections 787.2 and 787.4(a) of the Export Administration Regulations by causing, aiding or abetting the export of U.S.-origin microelectronic and fingerprint equipment from the United States to Cuba without obtaining from the Department of Commerce the validated export license that the Respondent knew, or had reason to know, was required by Section 772.1(b) of the Regulations. The ALJ also found that the appropriate penalty for the violations should be that Respondent, Amancio J. Abelairas, also known as Jesus Gonzalez, individually and doing business as Estrella Del Caribe Import and Export, Inc., and all successors, assignees, officers, representatives, agents and employees be denied for a period of ten years from this date all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving commodities or technical data exported or to be exported from the United States and subject to the Export Administration Regulations.

Based on my review of the entire record, I affirm the Recommended Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Dated: June 5, 1995.

William A. Reinsch,
Under Secretary for Export Administration.

Recommended Decision and Order

On September 21, 1993, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), issued a charging letter against Amancio J. Abelairas, also known as Jesus Gonzalez, individually, and doing business as Esrella del Caribe Import and Export, Inc. (hereinafter collectively referred to as Abelairas). The charging letter alleged that Belairas committed two violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768-799 (1994)) (the Regulations),¹ issued

¹ The alleged violations occurred during 1988. The Regulations governing the violations are found in the 1988 version of the Code of Federal Regulations, codified at 15 CFR Parts 368-399 (1988). Effective October 1, 1988, the Export Administration Regulations were redesignated as 15

pursuant to the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401-2420 (1991, Supp. 1993, and Pub. L. No. 103-277, July 5, 1994)) (the Act).²

The charging letter alleged that, on September 30, 1988, Abelairas caused, aided or abetted the export of U.S.-origin microelectronic and fingerprint identification equipment from the United States to Cuba without obtaining from the Department the validated export license Abelairas knew or had reason to know was required by Section 772.1(b) of the Regulations. Accordingly, the Department charged that Abelairas violated Section 787.2 and Section 787.4(a) of the Regulations, for a total of two violations.

Upon receiving the Department's charging letter, Abelairas sent a letter indicating why he believed that he had not violated the Regulations. However, that letter did not constitute an "answer" to the charging letter in accordance with the requirements of Section 788.7 of the Regulations governing answers to charging letters. After Abelairas failed to perfect his filing, the Department, on May 3, 1995, filed supporting evidence for a default judgment against Abelairas.

On the basis of the Department's submission and all of the supporting evidence presented, I have determined that Abelairas violated Sections 787.2 and 787.4(a) of the Export Administration Regulations by causing, aiding or abetting the export of U.S.-origin microelectronic and fingerprint equipment from the United States to Cuba without obtaining from the Department the validated export license Abelairas knew or had reason to know was required by Section 772.1(b) of the Regulations.

For those violations, the Department urged as a sanction that Abelairas's export privileges be denied for 10 years. In light of the nature of the violations, I concur in the Department's recommendation.

Accordingly, it is therefore ordered,

First, that all outstanding individual validated licenses in which Amancio Abelairas, also known as Jesus Gonzalez, individually with an address at 6486 S.W. 9th Street, Miami, Florida 33144, and doing business as Estrella

CFR Parts 768-799 (53 FR 37751, September 28, 1988). The transfer merely changed the first number of each Part from "3" to "7". To the degree to which the 1988 version of the Regulations pertains to this matter, it is substantially the same as the 1994 version.

² The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991)).

del Caribe Import and Export, Inc., with an address at 5529 S.W. 8th Street, Miami, Florida 33144, appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Exporter Services for cancellation. Further, all of Abelairas's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

Second, that Amancio Abelairas, also known as Jesus Gonzales, individually with an address at 6486 S.W. 9th Street, Miami, Florida 33144, and doing business as Estrella del Caribe Import and Export, Inc., with an address at 5529 S.W. 8th Street, Miami, Florida 33144 (collectively referred to as Abelairas), and all successors, assigns, officers, representatives, agents, and employees, shall, for a period of 10 years from the date of final agency action, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, and subject to the Regulations.

A. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

B. After notice and opportunity for comment as provided in Section 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to Abelairas by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

C. As provided by Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Exporter Services, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Third, that a copy of this Order shall be served on Abelairas and on the Department.

Fourth, that this Order, as affirmed or modified, shall become effective upon entry of the final action by the Under Secretary for Export Administration, in accordance with the Act (50 U.S.C.A. app. § 2412(c)(1)) and the Regulations (15 CFR 788.23).

Edward J. Kuhlmann,
Administrative Law Judge.

Entered this 17th day of May, 1995.

To be considered in the 30 day statutory review process which is mandated by Section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th and Constitution Ave., N.W., Room 3898B, Washington, D.C., 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to Section 13 (c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 95-14396 Filed 6-12-95; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket 29-95]

Foreign-Trade Zone 40—Cleveland, OH, Application for Subzone, Ben Venue Laboratories (Pharmaceutical Products) Bedford, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Cleveland-Cuyahoga County Port Authority, grantee of FTZ 40, requesting special-purpose subzone status for the pharmaceutical manufacturing facility of Ben Venue Laboratories, Inc. (BVL), in Bedford, Ohio. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 31, 1995.

BVL is a privately-owned company whose primary business is the contract manufacture of sterile, injectable pharmaceutical products for major U.S. and foreign pharmaceutical companies. BVL also develops and manufactures products for many small, primarily biotechnology-based firms, and manufactures its own line of generic oncology products and injectable pharmaceuticals.

BVL's plant (7 bldgs. totalling 200,000 sq. ft. on 10 acres) is located at 300 Northfield Road, Bedford, Ohio, some 17 miles south of Cleveland. The facility is primarily used to produce sterile, injectable pharmaceutical products, such as antibiotics, antivirals, biologicals, cardiovasculars, diagnostics and oncologics. Bulk active ingredients for certain oncologic products are sourced abroad. The company may also purchase from abroad other bulk, active ingredients and materials in the following general categories: hydrocarbons and derivatives, alcohols and derivatives, phenols, ethers, acetals, aldehydes and derivatives, ketones, quinones, mono- and polycarboxylic acids and derivatives, amine-function compounds, oxygen function compounds, ammonium salts, carboxyimide-function compounds, nitrile-function compounds, hydrazine/hydroxylamine derivatives, nitrogen function compounds, organo-sulfur compounds, heterocyclic compounds, sulfonamides, vitamins, hormones, glycosides, vegetable alkaloids, sugars, antibiotics, and other organic compounds. Some 10 percent of production is exported.

Zone procedures would exempt BVL from Customs duty payments on foreign materials used in production for export. On domestic shipments, the company or its customers (in the case of sales to

plants operating under zone procedures) would be able to choose the duty rates that apply to the finished products (duty-free). The duty rates on foreign-sourced items range from duty-free to 18.6 percent. At the outset, zone savings would primarily involve choosing the finished product duty rate (duty-free) for a customer's product (HTSUS 3004.90.9015), instead of the rate (6.8%) otherwise applicable to the foreign active ingredient (HTSUS 2934.90.3000). The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 14, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 28, 1995).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Bank One Center, Suite 700, 600 Superior Avenue, Cleveland, Ohio 44114
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: June 5, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95-14460 Filed 6-12-95; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

[A-428-801, A-475-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany and Italy; Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative reviews.

SUMMARY: On February 28, 1995, the Department of Commerce (the Department) published the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from Germany and Italy (60 FR 10900, 10959). On May 10, 1995, the Court of International Trade (CIT) ordered the Department to correct four ministerial errors in the final results with respect to AFBs from Germany sold by FAG and one ministerial error in the final results with respect to AFBs from Italy sold by FAG. Accordingly, we are amending our final results of administrative review of the antidumping duty orders on AFBs from Germany and Italy with respect to FAG. The reviews cover the period May 1, 1992, through April 30, 1993. The "classes or kinds" of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs).

EFFECTIVE DATE: June 13, 1995.

FOR FURTHER INFORMATION CONTACT: Kris Campbell or Michael Rill, Office of Antidumping Compliance, Import Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-4733.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1995, the Department published the final results of antidumping duty administrative review, partial termination, and revocation in part of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, et al. (60 FR 10900), and from Italy (60 FR 10959). The review period is May 1, 1992, through April 30, 1993. The classes or kinds of merchandise covered by these reviews are BBs, CRBs, and SPBs. For a detailed description of the products covered under these classes or kinds of merchandise, including a compilation of all pertinent scope determinations, see the "Scope Appendix" of the final results referenced above.

One respondent, FAG, challenged the final results before the CIT, alleging ministerial errors in the final results for AFBs from Germany and Italy. On May 10, 1995, the CIT ordered the Department to correct the errors and publish the amended final results in the **Federal Register**.

Amended Final Results of Review

The CIT ordered the Department to make the following corrections to its analysis for FAG Germany: (1) Calculate the profit on home market sales to related parties, and, where the profit is not significantly less than the profit on sales to unrelated parties, use the profit for the class or kind as reported by FAG; (2) in the calculation of profit for constructed value, deduct certain home market expenses from the net unit price; (3) make an addition of other revenue to the unit price prior to applying the best information available (BIA) rate to unit price; and (4) with respect to both FAG Germany and FAG Italy, remove sales FAG made to one U.S. customer for whom rebates were correctly reported prior to applying the BIA rebate rate. We have corrected the ministerial errors in FAG's margin calculations for the amended final results of review for the period May 1, 1992, through April 30, 1993.

Based on the correction of the ministerial errors in our calculations for FAG, we have determined that the following percentage weighted-average margins exist for the period May 1, 1992, through April 30, 1993:

Manufacturer/exporter	Country	BBs	CRBs	SPBs
FAG	Germany	11.85	16.25	18.98
FAG	Italy	2.70	(*)

* No U.S. sales during the review period.

Based on these results, the Department will instruct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of these reviews. These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping occurred and the subsequent assessment of double antidumping duties.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d)) and 19 CFR 353.28(c).

Dated: June 6, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95-14459 Filed 6-12-95; 8:45 am]

BILLING CODE 3510-DS-P

University of Illinois et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 95-016. Applicant: Jersey City State College, Jersey City, NJ 07305. Instrument: Electron Microscope, Model JEM 1010. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 60 FR 16619, March 31, 1995. Order Date: September 22, 1994.

Docket Number: 95-022. Applicant: University of Illinois at Urbana-Champaign, Urbana, IL 61801. Instrument: Electron Microscope, Model CM200. Manufacturer: Philips, The Netherlands. Intended Use: See notice at 60 FR 20967, April 28, 1995. Order Date: November 29, 1994.

Docket Number: 95-023. Applicant: Department of Veteran Affairs, San Juan, PR 00927-5800. Instrument: Electron Microscope, Model CM100. Manufacturer: Philips, The Netherlands. Intended Use: See notice at 60 FR 20968, April 28, 1995. Order Date: September 14, 1994.

Docket Number: 95-025. Applicant: John L. McClellan Memorial Hospital, Little Rock, AR 72205. Instrument: Electron Microscope, Model JEM-1010. Manufacturer: JEOL Ltd., Japan.

Intended Use: See notice at 60 FR 20968, April 28, 1995. *Order Date:* September 9, 1994.

Docket Number: 95-027. *Applicant:* Samuel S. Stratton Department of Veterans Affairs Medical Center, Albany, NY 12208. *Instrument:* Electron Microscope, Model CM100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 60 FR 20968, April 28, 1995. *Order Date:* September 30, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.
[FR Doc. 95-14458 Filed 6-12-93; 8:45 am]
BILLING CODE 3510-DS-F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC.

Docket Number: 95-038. *Applicant:* University of California, Berkeley, Department of Integrative Biology, 3060 Valley Life Science Bldg., #3140, Berkeley, CA 94720-3140. *Instrument:* Mass Spectrometer. *Manufacturer:*

Europa Scientific Ltd., United Kingdom. *Intended Use:* The instrument will be used to measure the heavy isotopes ^{15}N and ^{13}C and therefore trace the source and sink for N and C containing compounds during the study of the cycling of nitrogen and carbon through the natural ecosystem. *Application Accepted by Commissioner of Customs:* April 26, 1995.

Docket Number: 95-040. *Applicant:* University of Kentucky, Department of Physics and Astronomy, Lexington, KY 40506-0055. *Instrument:* Electron-Electron Coincidence Apparatus. *Manufacturer:* University of Southampton, United Kingdom. *Intended Use:* The instrument will be used to study the electron-impact ionization of helium using the technique of electron-electron coincidence spectrometry. *Application Accepted by Commissioner of Customs:* May 5, 1995.

Docket Number: 95-041. *Applicant:* University of South Florida, Department of Marine Sciences, 140 Seventh Avenue, South, St. Petersburg, FL 33701. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used for studies of rare earth elements and transition metals. Experiments will consist of the study of the complexation behaviors of trivalent rare earth ions (e.g. La^{3+}) with carbonate ions (CO_3^{2-}) in solution and the study of precipitation of metals ions with phosphate (PO_4^{3-}) in seawater. In addition, the instrument will be used for educational purposes in an instrument methods course which will train students in the measurement of solute concentrations in seawater. *Application Accepted by Commissioner of Customs:* May 8, 1995.

Docket Number: 95-042. *Applicant:* University of California, Santa Cruz, Institute of Marine Sciences, 1156 High Street, Santa Cruz, CA 95064. *Instrument:* Mass Spectrometer System. *Manufacturer:* Europa Scientific, United Kingdom. *Intended Use:* The instrument will be used for studies of nitrogen and carbon cycling in seawater and sediments. These studies will involve measurements of the rates of nitrogen assimilation, nitrification and denitrification in various aquatic environments. The measurements involve addition of tracer and subsequent analysis of the C or N isotopic content of various nitrogen and carbon compounds in seawater. The instrument will also be used in support of graduate research in oceanography.

Application Accepted by Commissioner of Customs: May 8, 1995.

Frank W. Creel,

Director, Statutory Import Programs Staff.
[FR Doc. 95-14457 Filed 6-12-95; 8:45 am]
BILLING CODE 3510-DS-F

National Oceanic and Atmospheric Administration

[I.D. 060595C]

Mid-Atlantic Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council and its Habitat Committee, Large Pelagics/Sharks Committee, and Demersal Species Committee will hold public meetings.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director; telephone 302-674-2331.

DATES: The meetings will be held on June 27-29, 1995.

ADDRESSES: The meetings will be held at the Radisson Hotel Islandia, 3635 Express Drive North, Hauppauge, Long Island, NY 11788; telephone: 516-232-3000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901.

SUPPLEMENTARY INFORMATION: On June 27, the Habitat Committee will meet from 1:00 p.m. until 3:00 p.m. and the Large Pelagics/Sharks Committee will meet from 3:00 p.m. until 5:00 p.m. On June 28, the Council will meet from 8:00 a.m. until 12:00 p.m., followed by the Demersal Species Committee meeting from 1:30 p.m. until 4:30 p.m. On June 29, the Council will meet from 8:00 a.m. until approximately noon.

The following topics may be discussed:

- (1) Artificial Reef Policy.
- (2) Bluefin tuna management.
- (3) Review of public comments on Amendment 7 to the Summer Flounder Fishery Management Plan (FMP).
- (4) Review hearing material for Amendment 7 to the Summer Flounder FMP.
- (5) Possible adoption of Amendment 7 to the Summer Flounder FMP for Secretarial approval.
- (6) Other fishery management matters.

The Council meeting may be revised, lengthened or shortened based on the progress of the meeting. The Council

may go into closed session to discuss personnel or national security matters.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674-2331, at least 5 days prior to the meeting date.

Dated: June 7, 1995.

Richard W. Surdi,

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

[FR Doc. 95-14426 Filed 6-12-95; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 052695B]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings; request for comments.

SUMMARY: The Pacific Fishery Management Council (Council) will hold public meetings.

DATES: The meetings will be held on June 26-29, 1995.

ADDRESSES: The meetings will be held at the Monarch Hotel and Conference Center, 12566 SE 93rd Avenue, Clackamas, OR 97015; telephone: (503) 652-1515.

Submit comments to: Lawrence D. Six, Executive Director, Pacific Fishery Management Council; 2130 SW Fifth Avenue, Suite 224; Portland, OR 97201; telephone: (503) 326-6352.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six; telephone: (503) 326-6352.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to take a comprehensive look at the groundfish fishery, goals and objectives of the fishery management plan, and problems identified by the industry, other interested public, and management agencies. The Council is referring to this as a "scoping session" to identify issues that may or may not lead to preparation of a Federal environmental impact statement. The Council believes the public process of problem identification, open discussion, and consideration of alternative solutions is appropriate for this review of the groundfish management program.

The format of these meetings will be a departure from the typical Council meeting format.

June 26, 1995

The Council will convene at 1:30 p.m., to address some non-groundfish issues.

June 27, 1995

The Council will recess and three discussion groups (trawl, nontrawl and sport) will convene at 8:00 a.m., to address groundfish management issues. Each group will have an impartial, but knowledgeable, facilitator and a recorder. These sessions are open to the public.

June 28, 1995

The Council will reconvene at 8:00 a.m., to address non-groundfish issues while the facilitators and recorders prepare their reports.

June 29, 1995

Beginning at 8:00 a.m., the Council will address groundfish agenda items, including scoping, and the discussion group reports will be presented for Council consideration and action. The meetings may continue each day into the evening hours, if necessary, to complete business.

Pacific whiting allocation will not be considered at the June meeting. As the 3-year whiting agreement carries through the 1996 season, whiting allocation will be addressed in late 1995 and early 1996.

The following items are on the Council agenda:

A. Call to Order

1. Opening remarks, introductions, roll call;
2. Approve March and April 1995 minutes; and
3. Approve agenda.

B. Administrative and Other Matters

1. Report of the Budget Committee;
2. Status of legislation;
3. Appointments; and
4. Approve August 1995 agenda.

C. Salmon Management

1. Status of regulations and fisheries;
2. Salmon Methodology Review: Columbia River Chinook Abundance Predictor; and
3. Update on NMFS request for escapement goal review.

D. Pacific Halibut Management

1. Annual management schedule/process; and
2. Estimate of halibut bycatch.

E. Groundfish Management

1. Scoping process;
2. Status of Federal regulations implementing Council actions;

3. Status of fisheries and inseason adjustments;

4. Requirements for fish tickets on vessels, sorting of species and shrimp pot trip limits;

5. Status of the Oregon Trawl Fishery Data Collection Program;

6. Report of the Observer/Data Collection Program Steering Committee; and

7. Scoping session on groundfish management.

F. Coastal Pelagic Species Management

1. Anchovy spawning biomass and quotas for 1995-96 season; and

2. Final action on coastal pelagic species fishery management plan.

G. Dungeness Crab Management—Determining if a Federal Plan Should Be Developed

Oral public comments on action items on the agenda will be accepted prior to action on each item. Public comments on fishery issues not on the agenda will be accepted on June 28 at 4:00 p.m.

Other Meetings

The Groundfish Management Team will meet on June 26, at 8:00 a.m., to address groundfish management items on the Council agenda.

The Scientific and Statistical Committee will meet on June 26, at 10:00 a.m., to address scientific issues on the Council agenda.

The Budget Committee will meet on June 26, at 10:00 a.m., to review the status of the fiscal year 1995 budget and discuss funding priorities for fiscal year 1996.

The Groundfish Advisory Subpanel will meet on June 26, at 1:00 p.m., and on June 28, from 8:00 a.m. until noon, if necessary, to address groundfish management items on the Council agenda.

The Observer/Data Collection Program Steering Committee will meet on June 26, at 7:00 p.m., to review the proposed Oregon State Data Collection Program and related issues.

The Enforcement Consultants will meet on June 26, at 7:00 p.m., to address enforcement issues related to Council agenda items.

The Groundfish Permit Review Board will meet on June 28, at 2:00 p.m., to hear appeals.

Detailed agendas for the above advisory meetings will be available from the Council after June 16, 1995.

In addition, on June 28, at 7:00 p.m., NMFS scientists will discuss the results of the 1994 slope trawl survey.

The Scientific and Statistical Committee, which meets June 26, will accept public comments at 4:00 p.m.

Written public comments are accepted by the Council at any time (see **ADDRESSES**); however, the public is encouraged to submit written comments as far in advance of meetings as possible. Written comments received in the office by June 21, 1995, will be copied and distributed to Council members and advisory entities. After that date, individuals wishing to present written comments should bring 35 copies to the Council meeting.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Sailer at (503) 326-6352, at least 5 days prior to the meeting date.

Dated: June 7, 1995.

Richard W. Surdi,

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

[FR Doc. 95-14427 Filed 6-12-95; 8:45 am]

BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Textile Consultations With the Government of the Former Yugoslav Republic of Macedonia on Certain Wool Textile Products

June 6, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

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 categories for which consultations have been requested, call (202) 482-3740.

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).

On May 26, 1995, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of the Former Yugoslav Republic of Macedonia with respect to wool textile products in Category 434, produced or manufactured in the Former Yugoslav Republic of Macedonia.

The purpose of this notice is to advise the public that, if no solution is agreed

upon in consultations with the Government of the Former Yugoslav Republic of Macedonia, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 434, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period which began on May 26, 1995 and extends through May 25, 1996, at a level of not less than 8,226 dozen.

A statement of serious damage concerning Category 434 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 434, or to comment on domestic production or availability of products included in Category 434, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of the Former Yugoslav Republic of Macedonia.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 434. Should such a solution be reached in consultations with the Government of the Former Yugoslav Republic of Macedonia, further notice will be published in the **Federal Register**.

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).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Statement of Serious Damage

Macedonia

Men's and Boys' Wool Coats Other Than Suit Type—Category 434

May 1995

Import Situation and Conclusion

U.S. imports of men's and boys' wool coats other than suit type, Category 434, from the Former Yugoslav Republic of Macedonia reached 8,226 dozen for the year ending February 1995, 79 percent above the 4,602 dozen imported in the year ending February 1994. Imports from were 4.4 percent of total U.S. imports of Category 434 for the year ending February 1995, and were equivalent to 5.4 percent of U.S. production of Category 434 in calendar year 1994.

U.S. imports men's and boys' non-suit type wool coats, Category 434, from during 1994 entered the U.S. at an average landed duty-paid value of \$658.37 per dozen, 39 percent below U.S. producers' average price for men's and boys' wool coats other than suit type.

The sharp and substantial increase of low priced imports from the Former Yugoslav Republic of Macedonia is causing serious damage to the U.S. market for men's and boys' wool coats other than suit type.

U.S. Production, Import Penetration, and Market Share

U.S. production of men's and boys' wool coats other than suit type, Category 434, declined in 1994, falling to 151,000 dozen, 4 percent below the 1993 production level. In contrast imports of Category 434 surged to 190,000 dozen in 1994, 42 percent above the 134,000 dozen imported in 1993.

The ratio of imports to domestic production increased from 85 percent in 1993 to 125 percent in 1994. The share of this market held by domestic manufacturers fell from 54 percent in 1993, to 44 percent in 1994, a ten percentage point decline.

[FR Doc. 95-14364 Filed 6-12-95; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE**Department of the Army****Notice of Availability of the Record of Decision on the Final Environment Impact Statement for Disposal and Reuse of Fort Benjamin Harrison, Indiana**

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Record of Decision (ROD) documents the Army's decisions regarding the primary Army action of disposal of Fort Benjamin Harrison, Indiana. The ROD was developed in accordance with the Council of Environmental Quality Regulation and Army Regulation 200-2. The Final Environmental Impact Statement (FEIS) for Fort Benjamin Harrison Disposal and Reuse was filed with the U.S. Environmental Protection Agency on January 31, 1995, and its Notice of Availability was published in the **Federal Register** on February 10, 1995.

Based on the analysis contained in the FEIS for Fort Benjamin Harrison Disposal and Reuse, and all public and agency comments and ongoing coordination, the Army has determined that the FEIS adequately addresses the impacts of the Army's actions relating to the disposal of excess property at Fort Benjamin Harrison on the biological, physical and cultural environment. As a result of this ROD, the Army will proceed to dispose of excess property at Fort Benjamin Harrison.

Furthermore, the Army has determined that the Encumbered Disposal Alternative is the preferred Army action, and that the Army will begin the action of preparing for disposal: i.e. placing excess land in caretaker status; initiating interim leases and outgrants where appropriate; and proceeding with remediation of environmental contamination and disposal of excess property parcels as soon as they are available and all applicable environmental laws and regulations relating to the disposal process have been satisfied. Implementation of this action will result in disposal that achieves a responsible balance among the primary goals of disposing of property in a timely manner, supporting Army requirements, protecting the environment, and supporting the affected communities in their effort to develop productive uses of the property for economic recovery.

The Army will seek fair market value for property where appropriate. As required by the 1990 Base Closure Act, proceeds from this process are placed in

the base closure account to pay for the cost of closure, replacement facilities, and remediation of closing facilities.

The ROD has been distributed to interested agencies and the public prior to or simultaneously with filing of this Notice of Availability.

ADDRESSES: Questions regarding the ROD, or a request for copies of the document may be directed to Mr. William Ray Haynes, U.S. Army Corps of Engineers, Louisville District, P.O. Box 59, Louisville, Kentucky 40201-0059, or call (502) 582-6475.

Dated: June 7, 1995.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (IL&E).

[FR Doc. 95-14365 Filed 6-12-95; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY**Financial Assistance: State of Alaska**

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.7(b)(2)(i)(C) it plans to negotiate Grant DE-FC07-95ID13368 with the State of Alaska.

FOR FURTHER INFORMATION CONTACT: Marshall C. Garr, Contract Specialist, (208) 526-1536; U.S. Department of Energy, 850 Energy Drive, MS 1221, Idaho Falls, ID 893401-1563.

SUPPLEMENTARY INFORMATION: The proposed grant with the State of Alaska would provide funds for completing engineering design, construction, and construction project management activities for the Tazimina Hydroelectric Project near Iliamna, Alaska. This grant would augment the State's funds associated with the construction of a hydroelectric project by the Iliamna-Newhalen-Nondalton Electric Cooperative, which is to provide electrical service to Native Americans who reside near the project. The Office of Utility Technologies has provided \$3,370,000 to the DOE Idaho Operations Office for support of this project. The total estimated cost for this project is \$10,500,000 with the cooperative partners and the State of Alaska sharing the remaining \$7,100,000. The applicant represents a unit of government and the activity to be supported is related to the performance of a government function within the subject jurisdiction. The State of Alaska is the appropriate lead agency for this project. The statutory authority for the proposed award is

Section 2603 of the Energy Policy Act of 1992, Public Law 102-486, codified at 42 U.S.C. 13525. The Federal Domestic Catalog Number is 81.087.

Dated: May 25, 1995.

J.O. Lee,

Acting Director, Procurement Services Division.

[FR Doc. 95-14456 Filed 6-12-95; 8:45 am]

BILLING CODE 6450-01-M

Golden Field Office; Notice of Federal Assistance Award to Black Clawson Company, Inc.

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to an unsolicited financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14, is announcing its intention to enter into a cooperative agreement with Black Clawson Company, Inc. (BCC), to develop new equipment and processes to better liberate contaminants from waste paper fibers for more efficient separation. The BCC project represents an innovative, commercially viable technology that will result in waste reduction and decreased energy usage.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John Lewis, Contract Specialist. The telephone number is 303-275-4739.

SUPPLEMENTARY INFORMATION: The DOE has evaluated the unsolicited application according to paragraph 600.14 of the DOE Assistance Regulations, 10 CFR part 600, and the criteria for selection in paragraph 600.14(e)(1). Based on this evaluation, it is recommended that the unsolicited application for Federal Assistance entitled, "Improved Removal of Light and Sticky Contaminants From Waste Paper," submitted by BCC, be accepted for support. This award will not be made for at least 14 days, to allow for public comment.

Under this cooperative agreement, BCC will develop new equipment and processes to better liberate contaminants from waste paper fibers for more efficient separation. The project will be conducted through four simultaneous development efforts over a period of two years. The four developments, which are interdependent to various extents, include: An Improved Contaminant Liberation Unit (Development A), Vortex Separation Unit (Development

B), Develop High Air Rate Flotation to Separate Stickies and Light Contaminants (Development C), and Wax Removal by Washing (Development D).

The objective of Development A is to demonstrate the feasibility of a virtually dry initial dispersion step for the waste paper. Existing systems do not use dry dispersion and process waste paper in three steps. With this innovation, sticky contaminants will be peeled off from the paper, by paper-to-paper/fiber-to-fiber rubbing. Also, fines and ash particles from the paper are expected to cover the sticky particles effectively making them less sticky and, therefore, enhancing the effectiveness of the one-step process. Development B involves production and testing of three approaches. These are: (1) Small diameter cyclones, extra long, for multiple unit installations (CSL), (2) Large diameter cyclone, long unit, for single unit installation (CLL), and (3) Forced vortex unit, with external drive (FVE). The goals of this development are higher consistency operation and longer treatment times. The main focus of this development is the large cyclone separator that industry has not yet achieved. BCC's exploratory tests suggest this development can be undertaken and a highly efficient innovative CLL design is expected. Thirdly, Development C proposes a completely new separation approach similar to deinking flotation. The idea is high air rate flotation that provides much shorter retention time, 20 seconds as opposed to 10 minutes using existing technology, and smaller operation units. Lastly, Development D involves an efficiency improvement over current systems that remove 2-5% of wax contaminants. BCC proposes to wash wax out of the pulp by displacement hot water washing or intensity turbulence washing.

The proposal has been found to be meritorious, and it is recommended that the unsolicited application be accepted for support. The BCC program represents an innovative, commercially viable technology that will result in waste reduction and decreased energy usage. BCC has demonstrated capabilities in the technologies directly related to the proposed project and personnel that should provide a basis for a successful project. The proposed project is not eligible for financial assistance under a recent, current, or planned solicitation.

The project cost over two years is estimated to be \$2,170,000 total, with the DOE share being \$1,200,000.

Issued in Golden, Colorado, on May 31, 1995.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 95-14453 Filed 6-12-95; 8:45 am]

BILLING CODE 6350-01-P

Federal Energy Regulatory Commission

[Docket No. CP95-531-000]

Columbia Gas Transmission Corporation; Notice of Application

June 7, 1995.

Take notice that on May 31, 1995, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 26031, filed in an abbreviated application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Columbia to construct and operate certain natural gas facilities and permission to abandon the facilities being replaced.

Columbia proposes to construct and operate approximately 5.8 miles of 16-inch pipeline to replace approximately 0.5 mile of 12-inch and 5.2 miles of 16-inch pipeline in nine sections located in Ashland, Medina and Wayne Counties, Ohio. The replacement will result in an increase in capacity of 340 Dth/d which Columbia will retain for additional operating flexibility. Columbia states that the pipeline condition requires replacement in order to assure continued service to its customers and the integrity of the line. Columbia does not request authorization for any new or additional service. The estimated cost of the proposed construction is \$4,371,000 and will be financed with funds generated from internal sources.

Any person desiring to be heard or make any protest with reference to said application should on or before June 28, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. 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 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 is 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 Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95-14374 Filed 6-12-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-333-000]

CNG Transmission Corporation; Notice of Section 4 Filing

June 7, 1995.

Take notice that on May 25, 1995, CNG Transmission Corporation (CNG) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering service on Line No. LN-1662, its uncertificated gathering line in Jefferson County, Pennsylvania.

CNG claims that the uncertificated line is being sold, in part, and abandoned in place, in part, since it is uneconomic to repair or relocate. CNG states that although no contract for transportation service with CNG will be canceled or terminated, meter receipt points on Line No. LN-1662 will be eliminated under some or all of the related Pool Operating Agreements.

CNG indicates that copies of this filing were sent to the parties involved in either the transportation agreement or the pooling agreement at the time of filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 14, 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. 95-14379 Filed 6-12-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-335-000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 7, 1995.

Take notice that on June 5, 1995, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with a proposed effective date of July 6, 1995:

Fourth Revised Sheet No. 375
Third Revised Sheet No. 376
Fourth Revised Sheet No. 377
Second Revised Sheet No. 378
First Revised Sheet No. 380

Northwest states that the purpose of the filing is to update the Index of Shippers. Northwest notes that the substantive changes fall within one of the following five categories: (1) Shipper has undergone a name change; (2) shipper has permanently assigned contract demand ("CD") to another shipper; (3) a contract has terminated (in some instances, such capacity has been subsequently acquired by another shipper); (4) shipper has extended the term for a portion of its CD; or (5) shipper has transferred CD between agreements to allow for service to new delivery points.

Northwest states that a copy of this filing has been served upon all Northwest's jurisdictional customers and upon relevant state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95-14380 Filed 6-12-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-311-000]

Selkirk Cogen Partners, L.P. v. Tennessee Gas Pipeline Company; Notice of Complaint

June 7, 1995.

Take notice that on May 31, 1995, Selkirk Cogen Partners, L.P. (Selkirk) filed with the Commission a complaint against Tennessee Gas Pipeline Company (Tennessee).

Selkirk argues that Tennessee implemented a new "capacity path" tariff restriction, which it proposed as part of its December 30, 1994 general section 4 rate filing, during the Commission-imposed suspension period and before the Commission approved the change. Selkirk states that Tennessee has characterized this action as a clarification of its tariff, but Selkirk asserts Tennessee has illegally changed the priority provided in its currently effective tariff without Commission authority.

Selkirk also argues that it has attempted over the last four months to resolve the subject of this complaint on an informal basis with Tennessee officials. Tennessee refuses to acknowledge that it has changed the priorities established in its currently-effective tariff.

Selkirk requests that the Commission order Tennessee to apply the provisions of its currently effective tariff until such time as the Commission rules on Tennessee's capacity path proposal in its general rate case.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before July 7, 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. Answers to this complaint shall be due on or before July 7, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95-14378 Filed 6-12-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP95-540-000]

South Georgia Natural Gas Company; Notice of Application

June 7, 1995.

Take notice that on June 2, 1995, South Georgia Natural Gas Company, (South Georgia), P.O. 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP95-540-000 an application pursuant to the provisions of Section 7 of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the construction and operation of certain main line looping facilities and related appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

South Georgia requests authorization to construct, install and operate approximately 7.1 miles of 16-inch pipeline looping on its existing 12-inch main line located between mile post 27.858 in Russell County, Alabama, and mile post 34.917 in Stewart County, Georgia. These facilities will provide the necessary capacity to enable South Georgia to increase firm service. South Georgia estimates the cost of the proposed facilities to be \$2.9 million.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 28, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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 herein must file a motion to intervene in accordance with the Commission's Rules.

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.

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, and if the Commission on its own review of the matter finds that a grant of the petition is required by the public convenience and necessity.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appeal or be represented at the hearing.

Lous D. Cashell,

Secretary.

[FR Doc. 95-14376 Filed 6-12-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP95-538-000]

**Tennessee Gas Pipeline Company;
Notice of Request Under Blanket
Authorization**

June 7, 1995.

Take notice that on June 2, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95-538-000 a request pursuant to Section 157.205 of the Commission's Regulations to abandon by removal certain meter facilities located in Kanawha County, West Virginia under Tennessee's blanket certificate issued in Docket No. CP82-413-000, 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.

Tennessee proposes to abandon by removal the facilities at Charleston Sales Meter Station No. 2-0027 and the facilities at Frame Sales Meter Station No. 2-0043 located in Kanawha County, West Virginia. Tennessee states the sales meter stations were completed in early 1951 to deliver sales gas to United Fuel Gas Company which was part of the Columbia Gas System. These stations are inactive and the measurement equipment has deteriorated beyond repair, it is indicated. Tennessee states that Columbia Gas Transmission Corporation, the only customer served by the facilities prior to the meters becoming inactive, has consented to the abandonment.

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. 95-14375 Filed 6-12-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP94-423-000 and RP94-119-000, et al.]

**Texas Gas Transmission Corp.; Notice
of Informal Settlement Conferences**

June 7, 1995.

Take notice that an informal settlement conference will be convened in the above-captioned proceedings commencing at 10:00 am on June 14, 1995, continuing through June 15, 1995, 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 dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 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 Michael D. Cotleur, (202) 208-1076, or Russell B. Mamone (202) 208-0744.

Lois D. Cashell,

Secretary.

[FR Doc. 95-14377 Filed 6-12-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-1897-004]

**Williston Basin Interstate Pipeline
Company; Notice of Refund Report**

June 7, 1995.

Take notice that on May 19, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), filed its refund report made in compliance with the Commission's order issued March 30, 1992 in Docket No. CP91-1897-000

and Article V of Amendment No. 1 to the Rate Schedule X-13 Service Agreement between Williston Basin and Northern States Power Company (NSP).

Williston Basin stated that on May 19, 1995, a total refund of \$173,572.72 consisting of \$158,863.04 of principal and \$14,709.68 of interest was sent to NSP. Williston Basin states that the refund covers the period from November 1, 1992 through February 28, 1995, with interest through May 19, 1995.

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 should be filed on or before June 14, 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. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95-14373 Filed 6-12-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER95-1074-000, et al.]

**Commonwealth Edison Co., et al.;
Electric Rate and Corporate Regulation
Filings**

June 6, 1995.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER95-1074-000]

Take notice that on May 19, 1995, Commonwealth Edison Company (ComEd) submitted a Service Agreement, dated May 3, 1995, establishing PECO Energy Company (PECO) as a customer under the terms of ComEd's Power Sales Tariff FS-1 (FS-1 Tariff). The Commission has previously designated the PS-1 Tariff as FERC Electric Tariff, Original Volume No. 2.

ComEd requests an effective date of May 3, 1995, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon PECO and the Illinois Commerce Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Carolina Power & Light Company

[Docket No. ER95-1075-000]

Take notice that on May 19, 1995, Carolina Power & Light Company (Carolina), tendered for filing separate Service Agreements executed between Carolina and the following Eligible Entities; AES Power, Inc.; InterCoast Power Marketing Company; PECO Energy Company; Central Virginia Electric Cooperative; Old Dominion Electric Cooperative; Big Rivers Electric Corporation; Wisconsin Electric Power Company; and NorAm Energy Services, Inc. Service to each Eligible Entity will be in accordance with the term and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Arizona Public Service Company

[Docket No. ER95-1077-000]

Take notice that on May 22, 1995, Arizona Public Service Company (APS), tendered for filing Amendment No. 2 to the Transmission Service Agreement (Amendment) between Arizona Public Service Company and the Department of the Air Force. This Amendment provides for a change in delivery points of the preference power received from the Western Area Power Administration.

A copy of this filing has been served on the Department of the Air Force and the Arizona Corporation Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Illinois Power Company

[Docket No. ER95-1078-000]

Take notice that on May 22, 1995, Illinois Power Company (IP), tendered for filing a change to the Interconnection Agreement between Central Illinois Light Company (CIL) and Illinois Power Company. The change provides for a new point of interconnection between CIL and IP, CIL-IP Connection 8-St. Joseph to replace CIL-IP Connection 6-Homer. IP proposes an effective date of May 26, 1995, and, therefore, requests waiver of the Commission's notice requirement.

Copies of the filing have been served on CIL and the Illinois Commerce Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Consumers Power Company

[Docket No. ER95-1080-000]

Take notice that on May 22, 1995, Consumers Power Company (Consumers), tendered for filing a Wholesale for Resale Electric Service Agreement with Wolverine Power Supply Cooperative, Inc. (Wolverine). The filed Service Agreement makes available firm wholesale service to Wolverine in Resort Township in Emmet County, Michigan. A copy of the filing was served upon Wolverine and the Michigan Public Service Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Central Illinois Public Service Company

[Docket No. ER95-1081-000]

Take notice that on May 22, 1995, Central Illinois Public Service Company (CIPS), submitted two Service Agreements each, dated May 10, 1995, establishing Catex Vitol Electric, L.L.C. and Kimball Power Company as customers under the terms of CIPS' Coordination Sales Tariff CST-1 (CST-1 Tariff).

CIPS requests an effective date of May 10, 1995, for each service agreement, and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Catex Vitol Electric, L.L.C., Kimball Power Company, and the Illinois Commerce Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Tampa Electric Company

[Docket No. ER95-1082-000]

Take notice that on May 22, 1995, Tampa Electric Company (Tampa Electric), tendered for filing an agreement to provide non-firm transmission service for the Orlando Utilities Commission (Orlando).

Tampa Electric proposes that the agreement be made effective on the earlier of the date it is accepted for filing or July 22, 1995, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Orlando and the Florida Public Service Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER95-1083-000]

Take notice that on May 23, 1995, PacifiCorp, tendered for filing in

accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Power Sales Agreement dated December 28, 1994 (Agreement) between PacifiCorp and Public Utility District No. 1 of Clark County, Washington (Clark).

PacifiCorp requests that an effective date of August 1, 1995, be assigned to the Agreement. This date corresponds to the date service is scheduled to commence under the Agreement.

Copies of this filing were supplied to Clark, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER95-1084-000]

Take notice that on May 23, 1995, Wisconsin Electric Power Company, tendered for filing an unexecuted service agreement with The Wisconsin Public Power Inc. SYSTEM (WPPI) pursuant to which WPPI will take Network Contract Demand Transmission Service from the Company commencing June 1, 1995. Wisconsin Electric also has tendered for filing a tariff providing for comprehensive transmission service from Wisconsin Electric. Wisconsin Electric also requests that the docket be consolidated with Docket Nos. ER95-264-000 and ER94-1625-000.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Electric Power Company

[Docket No. ER95-1085-000]

Take notice that on May 23, 1995, Southwestern Electric Power Company (SWEPCO) submitted service agreements establishing twenty-nine new customers under SWEPCO's umbrella Coordination Sales Tariff (CST-1 Tariff).

SWEPCO requests an effective date of April 28, 1995, for the service agreement with Jonesboro Water & Light Plant and an effective date of May 16, 1995 for the other twenty-eight agreements.

Accordingly, SWEPCO seeks waiver of the Commission's notice requirements. Copies of this filing were served upon the twenty-nine customers, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Destec Power Services, Inc.

[Docket No. ER95-1087-000]

Take notice that on May 24, 1995, Destec Power Services, Inc. (DPS) tendered for filing confirmation from the Executive Committee of the Western Systems Power Pool (WSPP) acknowledging approval of DPS's application for membership in the WSPP. DPS requests that the Commission amend the WSPP Agreement to include it as a member.

DPS requests an effective date of one day after filing for the proposed amendment. Accordingly, DPS requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of Oklahoma

[Docket No. ER95-1088-000]

Take notice that on May 24, 1995, Public Service Company of Oklahoma (PSO) submitted service agreements establishing nineteen new customers under PSO's umbrella Coordination Sales Tariff CST-1 (CST-1 Tariff).

PSO requests an effective date of May 16, 1995, for the nineteen agreements. Accordingly, PSO seeks waiver of the Commission's notice requirements. Copies of this filing were served upon the nineteen customers and the Oklahoma Corporation Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Power and Light Company

[Docket No. ER95-1089-000]

Take notice that on May 25, 1995, Wisconsin Power and Light Company (WP&L) tendered for filing a signed Service Agreement under WP&L's Bulk Power Sales Tariff between itself and Howard Energy Company, Inc. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of May 15, 1995.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Power and Light Company

[Docket No. ER95-1090-000]

Take notice that on May 25, 1995, Wisconsin Power and Light Company (WP&L) tendered for filing a signed Service Agreement under WP&L's Bulk Power Sales Tariff between itself and Kimball Power Company. WP&L

respectfully requests a waiver of the Commission's notice requirements, and an effective date of May 15, 1995.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Power and Light Company

[Docket No. ER95-1091-000]

Take notice that on May 25, 1995, Wisconsin Power and Light Company (WP&L) tendered for filing a signed Service Agreement under WP&L's Bulk Power Sales Tariff between itself and Central Illinois Public Service Company. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of May 5, 1995.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Commonwealth Edison Company

[Docket No. ER95-1092-000]

Take notice that on May 25, 1995, Commonwealth Edison Company (ComEd) submitted Service Agreements, dated April 21, 1995, establishing AES Power, Inc. (AES), Enron Power Marketing, Inc. (Enron), Wisconsin Public Power Inc. System (WPPI), and Rainbow Energy Marketing Corporation (Rainbow) as customers under the terms of ComEd's Transmission Service Tariff FTS-1 (FTS-1 Tariff). The commission has previously designated the FTS-1 Tariff as FERC Electric Tariff, Original Volume No. 4.

ComEd requests an effective date of April 21, 1995, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon AES, Enron, WPPI, Rainbow, and the Illinois Commerce Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Central Hudson Gas & Electric Corporation

[Docket No. ER95-1093-000]

Take notice that on May 25, 1995, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing a Notice of Cancellation of Central Hudson's Rate Schedule Agreement between Central Hudson and the County of Orange, New York, Municipal Distribution Agency.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Entergy Services, Inc.

[Docket No. ER95-1094-000]

Take notice that on May 25, 1995, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., tendered for filing a Transmission Service Agreement (TSA) between Entergy Services and Enron Power Marketing, Inc. (Enron). Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies will provide Enron non-firm transmission service under their Transmission Service Tariff.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. New England Power Company

[Docket No. ER95-1100-000]

Take notice that on May 25, 1995, New England Power Company filed Service Agreements and Certificate of Concurrence with CMEX Energy, Inc. and Catex-Vitol Electric, L.L.C. under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. CINergy Services, Inc.

[Docket No. ER95-1101-000]

Take notice that on May 25, 1995, CINergy Services, Inc. (CIN), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated April 1, 1995, between CIN, CG&E, PSI and Stand Energy Corporation (STAND).

The Interchange Agreement provides for the following service between CIN and STAND.

1. Exhibit A—Power Sales by STAND
2. Exhibit B—Power Sales by CIN

CIN and STAND have requested an effective date of June 1, 1995.

Copies of the filing were served on Stand Energy Corporation, the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Northern States Power Company (Minnesota)

[Docket No. ER95-1103-000]

Take notice that on May 26, 1995, Northern States Power Company

(Minnesota) (NSP) tendered for filing a revised Service Schedule E to the Municipal Interconnection and Interchange Agreements between NSP and the City of Ada, City of Kasota and City of Kasson. Service Schedule E of each City's Agreement contains a Distribution Substation Facilities Charge Rider. The revised Service Schedule E modifies the monthly facilities charge to be paid by each city to reflect only the FERC accepted charges.

NSP requests that the Commission accept the revised Service Schedule E of the Municipal Interconnection and Interchange Agreement effective May 30, 1995, for each city and requests waiver of the Commission's notice requirements in order for the revisions to be accepted for filing on the date requested.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. CINergy Services, Inc.

[Docket No. ER95-1102-000]

Take notice that on May 25, 1995, CINergy Services, Inc. (CIN), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated April 1, 1995, between CIN, CG&E, PSI and InterCoast Power Marketing Company (COAST).

The Interchange Agreement provides for the following service between CIN and COAST.

1. Exhibit A—Power Sales by COAST
2. Exhibit B—Power Sales by CIN

CIN and COAST have requested an effective date of June 1, 1995.

Copies of the filing were served on InterCoast Power Marketing Company, the Iowa State Utilities Board, the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: June 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. The Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER95-1104-000]

Take notice that on May 25, 1995, The Cleveland Electric Illuminating Company (CEI) and The Toledo Edison Company (TE) tendered for filing the following non-discriminatory open-access transmission tariffs:

1. FERC Network Integration Service Transmission Tariff—Cleveland Area.
2. FERC Network Integration Service Transmission Tariff—Toledo Area.

3. FERC Point-to-Point Transmission Service Tariff—Toledo Area.

4. FERC Point-to-Point Transmission Service Tariff—Toledo Area.

CEI and TE state that these tariffs were submitted pursuant to this Commission's decision in *El Paso Electric Company and Central and South West Services, Inc.*, 68 FERC ¶ 61,181 (1994) and the deficiency letter issued in this proceeding on December 8, 1994, and have requested that these tariffs be permitted to become effective upon consummation of the merger of CEI and TE for which authorization is sought in the captioned proceeding. CEI and TE further state that these tariffs comply with the guidance provided by the Commission in *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities*, 70 FERC ¶ 61,357 (1995), and that the proposed rates for transmission service are "conforming" rates in accordance with the policy established in *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act*, FERC Regulations Preambles ¶ 31,1005 (1994).

Comment date: June 20, 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. 95-14425 Filed 6-12-95; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5220-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 13, 1995.

For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740, please refer to ICR #1158.05.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

TITLE: Reporting and Recordkeeping Requirements for the New Source Performance Standards (NSPS) for Rubber Tire Manufacturing Industry (ICR No. 1158.05; OMB No. 2060-0156).

ABSTRACT: This ICR is for an extension of an existing information collection in support of the Clean Air Act, as described under the general NSPS at 40 CFR Part 60.7-60.8 and the specific NSPS, for volatile organic compound (VOC) emissions from the rubber tire manufacturing industry, at 40 CFR Part 60.540-60.546. The information will be used by the EPA to direct monitoring, inspection, and enforcement efforts, thereby ensuring compliance with the NSPS.

Owners and operators of affected facilities must provide EPA with: (1) Notification of construction, reconstruction, or modification; (2) anticipated and actual dates of facility startup; (3) initial and, where appropriate, monthly performance test data and results; (4) physical and operational changes; (5) initial performance test results; (6) initial and annual formulation data or Method 24 results to verify VOC content of water-based sprays; and (7) a semiannual report of any monitored operating parameter or emission rate that falls outside a specified limit.

All affected facilities must maintain records on the facility operation that document: (1) The occurrence and duration of any startups, shutdowns,

and malfunctions; (2) VOC use and emission reduction system operating data; (3) monthly performance test results; (4) formulation data or results of Method 24 analysis of water-based sprays containing less than 1.0 percent of VOC; and (5) number of tires processed or the number of beads cemented if affected facility elects to comply with a g/tire or g/bead limitation. All subject facilities must maintain records related to compliance for two years.

BURDEN STATEMENT: Public reporting burden for facilities subject to this collection of information is estimated to average 31 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. Public recordkeeping burden is estimated to average 352 hours annually.

RESPONDENTS: Owners or operators of subject rubber tire manufacturing facilities which commenced construction, reconstruction, or modification after January 20, 1983.

Estimated Number of Respondents: 31.

Estimated Number of Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondents: 10,914 hours.

Frequency of Collection: One-time notifications for new facilities; annual and semiannual reporting, as appropriate, for subject facilities.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing burden, (please refer to EPA ICR #1158.05 and OMB #2060-0156) to:

Sandy Farmer, EPA ICR #1158.05, U.S. Environmental Protection Agency, Regulatory Information Division, 401 M Street, S.W., Washington, D.C. 20460.

and

Chris Wolz, OMB #2060-0156, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, N.W., Washington, D.C. 20530.

Dated: June 1, 1995.

Joseph Retzer,

Director, Regulatory Information Division.
[FR Doc. 95-14430 Filed 6-8-95; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5220-8]

Gulf of Mexico Program Management Committee Meeting

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Meeting of the Management Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program's Management Committee will hold a meeting at the Navy Building Conference Room, Building 1005, Stennis Space Center, Mississippi.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Lipka, Acting Director, Gulf of Mexico Program Office, Building 1003, Room 202, John C. Stennis Space Center, Stennis Space Center, MS 39529-6000, at (601) 688-3726.

SUPPLEMENTARY INFORMATION: A meeting of the Management Committee of the Gulf of Mexico Program will be held July 12, 1995, at the Navy Building Conference Room, Building 1005, Stennis Space Center, Mississippi. The Committee will meet from 8:30 a.m. to 4:30 p.m. Agenda items will include: Symposium Evaluation and Recommendations; Leadership Conference Action Items; Effects of the Federal Participation Agreement on the Program; and June 21-22, 1995 Joint Issue and Operating Committee Meetings' Action Items.

The meeting is open to the public.

Fred C. Kopfler,

Acting Director, Gulf of Mexico Program.

[FR Doc. 95-14422 Filed 6-12-95; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-42185; FRL-4960-3]

RIN 2070-033

Testing Consent Agreement Development for Alkyl Glycidyl Ethers; Solicitation of Interested Parties and Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting "interested parties" to monitor or participate in negotiations on an enforceable consent agreement (ECA) for alkyl glycidyl ethers. In addition, EPA invites all interested parties to attend a public meeting on the ECA for alkyl glycidyl ethers.

DATES: To be designated an "interested party" for alkyl glycidyl ethers, written notice must be received by EPA on or before July 13, 1995.

ADDRESSES: Submit a written request to be an interested party, in triplicate, to

TSCA Document Receipts Office (7407), Rm. East Tower G-99, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. All submissions should bear the document control number OPPTS-42185; FRL-4960-3. The public docket supporting this action, including comments, is available for public inspection at the TSCA Nonconfidential Information Center, Rm. NE-B607, USEPA, 401 M St. SW., Washington, DC 20460, from 12 noon to 4 p.m., Monday through Friday, except legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (OPPTS-42185; FRL-4960-3). No CBI should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in section IV of this document.

FOR FURTHER INFORMATION CONTACT:

Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. East Tower 543B, Office of Pollution Prevention and Toxics, USEPA, 401 M St. SW., Washington, DC 20460; telephone: (202) 554-1404, TDD: (202) 554-0551. For specific information regarding this action or related matters, contact Keith J. Cronin, Project Manager, Chemical Testing and Information Branch (7405), Rm. East Tower 201E, Office of Pollution Prevention and Toxics, USEPA, 401 M St. SW., Washington, DC 20460, telephone: (202) 260-8157.

SUPPLEMENTARY INFORMATION:

I. Background

On November 7, 1991, EPA published a proposed test rule for the category glycidol and its derivatives (56 FR 57144). The proposal contained testing requirements for, among others, the following six chemical substances: lauryl glycidyl ether (CAS No. 2461-18-9); hexadecyl glycidyl ether (CAS No. 15965-99-8); *n*-octadecyl glycidyl ether (CAS No. 16245-97-9); tetradecyl glycidyl ether (CAS No. 38954-75-5); alkyl (C₁₀-C₁₆) glycidyl ether (CAS No. 68081-84-5); and alkyl (C₁₂-C₁₄) glycidyl ether (CAS No. 68609-97-2). The proposal designated these six

chemical substances as subcategory II-A.

On July 17, 1992, EPA published a **Federal Register** notice (57 FR 31714) establishing an "open season." The open season was a period of time during which industry and other interested parties could submit to EPA proposals for enforceable consent agreements (ECAs) to test chemical substances for which the Agency had not issued final test rules. In the July 17, 1992 notice, EPA indicated that it would review these submissions and select candidates for negotiation of ECAs pursuant to 40 CFR 790.22. EPA also indicated that it would, at a future date, publish a **Federal Register** notice soliciting persons interested in participating in or monitoring negotiations for the development of ECAs on the chemical substances selected, to notify the Agency in writing.

On August 18, 1993, EPA published a **Federal Register** notice (58 FR 43893) that solicited all "interested parties" who wished to monitor or participate in ECA negotiations for testing the above-named six chemical substances contained in the proposed test rule (subcategory II-A) to identify themselves in writing to the Agency.

II. Testing Proposal

In response to the open season initiative, a testing proposal for alkyl glycidyl ethers was submitted. Alkyl ($C_{12}-C_{13}$) glycidyl ether (CAS No. 120547-52-6) was recommended as the test substance. This mixture, also known as oxirane, mono[($C_{12}-C_{13}$ -alkyloxy)methyl]-derivatives, is subsumed within alkyl ($C_{12}-C_{14}$) glycidyl ether (CAS No. 68609-97-2) and alkyl ($C_{10}-C_{16}$) glycidyl ether (CAS No. 68081-84-5), and, therefore, within subcategory II-A of the proposed test rule.

III. Identification of Interested Parties

Since alkyl ($C_{12}-C_{13}$) glycidyl ether (CAS No. 120547-52-6) is subsumed within subcategory II-A of the proposed test rule, EPA believes that the August 18, 1993 **Federal Register** notice provides sufficient notice to parties that may be interested in monitoring or participating in ECA negotiations to test the six chemical substances specifically named in subcategory II-A and alkyl ($C_{12}-C_{13}$) glycidyl ether. However, to ensure that all potentially interested parties have an opportunity to identify themselves to the Agency, EPA is soliciting interested parties to monitor or participate in ECA negotiations on the following substances: lauryl glycidyl ether (CAS No. 2461-18-9); hexadecyl glycidyl ether (CAS No. 15965-99-8); *n*-

octadecyl glycidyl ether (CAS No. 16245-97-9); tetradecyl glycidyl ether (CAS No. 38954-75-5); alkyl ($C_{10}-C_{16}$) glycidyl ether (CAS No. 68081-84-5); alkyl ($C_{12}-C_{14}$) glycidyl ether (CAS No. 68609-97-2); and alkyl ($C_{12}-C_{13}$) glycidyl ether (CAS No. 120547-52-6).

These negotiations will be conducted pursuant to the procedures described in 40 CFR 790.22. Submitters of testing proposals in response to the **Federal Register** notices of July 17, 1992, and August 13, 1993, are already considered interested parties and do not need to respond to this notice. Any persons who respond to this notice on or before July 13, 1995 will be given the status of interested parties and will be afforded an opportunity to monitor or participate in the negotiation process. Interested parties will not incur any obligations by being so designated.

Negotiations will be conducted in one or more meetings open to the public.

Interested parties will have an opportunity at the public meeting(s) to make comments concerning the possible inclusion of alkyl ($C_{12}-C_{13}$) glycidyl ether in the ECA, and any other relevant subject. If EPA and the interested parties are not able to agree upon the terms of an ECA, negotiations will be terminated and testing will be required under a test rule.

IV. Notice of Public Meeting

A public meeting is scheduled for July 26, 1995, to initiate negotiations on an ECA to test the seven chemical substances identified in section III., paragraph one of this notice, for which the Agency is soliciting interested parties. The public meeting will be held in Rm. East Tower 217 at USEPA Headquarters, 401 M St. SW., Washington, DC 20460, from 9 a.m. to 12 noon. EPA will use its best efforts to send copies of a draft ECA to interested parties prior to the public meeting.

Those persons who identify themselves as interested parties may submit written comments to EPA by July 13, 1995. Submit written comments in triplicate, to TSCA Document Receipts Office (7407), Rm. East Tower G-99, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. All submissions should bear the document control number OPPTS-42185; FRL-4960-3. EPA will address these comments at the public meeting. A transcript of the public meeting will be made available as part of the public docket.

EPA believes that generally under 40 CFR 790.22(b)(3), the Agency need only inform interested parties of a public meeting to negotiate an ECA and is not obligated to announce the meeting in

the **Federal Register**. The Agency is announcing this public meeting in the **Federal Register** to ensure that all parties interested in ECA negotiations on any of the seven chemical substances identified in section III., paragraph one of this notice, as opposed to the six specifically named in subcategory II-A of the proposed test rule, will have notice and the opportunity to be designated interested parties.

A record has been established for this notice under docket control number OPPTS-42185, FRL-4960-3 (including comments and data submitted electronically as described below). A public version of this docket, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public docket is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St. SW., Washington, DC 20460. Written requests for copies of documents contained in this docket may be sent to the above address or faxed to (202) 260-9555.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

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

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

Dated: June 6, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95-14431 Filed 6-12-95; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and

approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Application for Waiver of Prohibition on Receipt of Brokered Deposits by Adequately Capitalized Depository Institutions/Registration of Deposit Brokers.

Form Number: N/A.

OMB Number: 3064-0099.

Expiration Date of OMB Clearance: July 31, 1995.

Frequency of Response: On occasion.

Respondents: Insured depository institutions wishing to accept brokered deposits.

Number of Respondents: 175.

Annual Hours per Respondent: 2.2.

Total Annual Hours: 385.

OMB Reviewer: Milo Sunderhauf, (202) 395-7316, Office of Management and Budget, Paperwork Reduction Project (3064-0099), Washington, D.C. 20503.

FDIC Contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, Room F-400, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted before August 14, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Section 29 of the Federal Deposit Insurance Act prohibits undercapitalized institutions from accepting, renewing, or rolling over any brokered deposits. Adequately capitalized institutions may do so with a waiver from the FDIC, while well capitalized institutions may accept, renew, or roll over brokered deposits without restriction. Section 29A requires notification by deposit brokers of their activity and authorizes the imposition of certain recordkeeping and reporting requirements.

Dated: June 7, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95-14416 Filed 6-12-95; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Recordkeeping and Confirmation requirements for Securities Transactions.

Form Number: N/A.

OMB Number: 3064-0028.

Expiration Date of OMB Clearance: July 31, 1995.

Frequency of Response: On occasion.

Respondents: Insured state nonmember banks which effect securities transactions.

Number of Respondents: 6,087.

Annual Hours per Respondent: 19.36.

Total Annual Hours: 117,866.

OMB Reviewer: Milo Sunderhauf, (202) 395-7316, Office of Management and Budget, Paperwork Reduction Project (3064-0028), Washington, D.C. 20503.

FDIC Contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, Room F-400, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted before August 14, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC requires insured state nonmember banks to provide their securities customers with adequate information concerning their securities transactions. Banks are

also required to maintain adequate records and controls for securities transactions.

Dated: June 7, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95-14435 Filed 6-12-95; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

AmeriGroup, Incorporated; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice

President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *AmeriGroup, Incorporated*, Minnetonka, Minnesota; to engage *de novo* in purchasing loans in a participation arrangement from AmeriBank, a subsidiary, and in limited situations, directly originate loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-14411 Filed 6-12-95; 8:45 am]

BILLING CODE 6210-01-F

William E. Hathorn; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice 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 indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than June 27, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *William E. Hathorn*, Tylertown, Mississippi; to acquire an additional 1.2 percent, for a total of 25.3 percent of the voting shares of Walthall Capital Group, Ltd., Tylertown, Mississippi, and thereby indirectly acquire Walthall Citizens Bank, Tylertown, Mississippi.

Board of Governors of the Federal Reserve System, June 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-14412 Filed 6-12-95; 8:45 am]

BILLING CODE 6210-01-F

Societe Generale; Notice to Engage in Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 95-13212) published on page 28,412 of the issue for Wednesday, May 31, 1995.

The entry for Societe Generale, Paris, France (Notificant), is revised to include engaging in certain foreign exchange-related activities through FIMAT Futures USA, Inc., Chicago, Illinois (Company). In 1994, Company received authority to act as agent in executing and provide investment advice in connection with certain foreign exchange transactions. See *Societe Generale*, 80 Federal Reserve Bulletin 646 (1994). In approving that application the Board relied, in part, on Notificant's commitments that Company would not:

(1) engage in any foreign exchange activities for its own account,
 (2) charge its advisory customers a separate fee for executing transactions in foreign exchange, or
 (3) provide foreign exchange services to customers other than sophisticated institutional customers. In connection with its proposal that Company act as riskless principal in connection with certain foreign exchange transactions, Notificant proposes that Company be permitted to purchase foreign exchange for its own account to hedge financial statement translations of income for its French parent, Fimat International Bank, or as may be necessary for the payment of invoices denominated in foreign currencies. Notificant also proposes that Company be permitted to charge its advisory customers an execution fee (but not an advisory fee) for transactions in which Company acts as riskless principal, and to execute foreign currency transactions for noninstitutional commercial hedger customers to whom Company would provide futures commission merchant services. Notificant has stated that Company would not provide foreign exchange-related advisory services to noninstitutional commercial hedger customers and would observe the standards of care and conduct applicable to a fiduciary with respect to its foreign exchange advisory activities.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 7, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why 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.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, June 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-14410 Filed 6-12-95; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreement Program for Prevention Center for Occupational Safety and Health in the Construction Industry—Program Announcement 528: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Disease, Disability, and Injury Prevention and Control SEP: Cooperative Agreement Program for Prevention Center for Occupational Safety and Health in the Construction Industry—Program Announcement 528.

Time and Dates: 8:30 a.m.–5:30 p.m., July 13–14, 1995.

Place: Corporate Square, Building 11, Room 2320, Corporate Square Boulevard, Atlanta, Georgia 30329.

Status: Closed.

Matters to be discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 528.

The meeting will be closed to the public in accordance with provisions set forth in section 552(b)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92-463.

Contact Person For More Information: Marie Haring Sweeney, Assistant Chief, Special Projects, Industrywide Studies Branch, Division of Surveillance, Hazard Evaluations, and Field Studies, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841-4207.

Dated: June 6, 1995.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95-14398 Filed 6-12-95; 8:45 am]

BILLING CODE 4163-19-M

Health Care Financing Administration [ORD-075-N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: February and March 1995

AGENCY: Health Care Financing Administration (HCFA).

ACTION: Notice.

SUMMARY: This notice lists new proposals for demonstration projects submitted to the Department of Health and Human Services during the months of February and March 1995 under the authority of section 1115 of the Social Security Act. This notice also lists approved, disapproved, pending, and withdrawn proposals. (This notice can also be accessed on the Internet at [HTTP://WWW.SSA.GOV/HCFA/HCAHP2.HTML](http://WWW.SSA.GOV/HCFA/HCAHP2.HTML).)

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, 2230 Oak Meadows, 6325 Security Boulevard, Baltimore, MD 21207.

FOR FURTHER INFORMATION CONTACT: Susan Anderson (410) 966-3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27,

1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

II. Listing of New, Pending, Approved, and Withdrawn Proposals for the Months of February and March 1995

As part of our procedures, we publish a notice in the **Federal Register** with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process. We have added a new category in this notice entitled "Withdrawn Proposals" to identify project proposals that the States have withdrawn from consideration for approval under section 1115.

A. Comprehensive Health Reform Programs

1. New Proposals

Demonstration Title/State: Arizona Health Care Cost Containment System (AHCCCS)—Arizona.

Description: Arizona proposes to expand eligibility under its current section 1115 AHCCCS program to persons with incomes up to 100 percent of the Federal poverty level.

Date Received: March 17, 1995

State Contact: Mabel Chen, M.D., Director, Arizona Health Care Cost Containment System, 801 East Jefferson, Phoenix, Arizona 85034, (602) 271-4422.

Federal Project Officer: Ron Lambert, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Community Care of Kansas—Kansas.

Description: Kansas proposes to implement a "managed cooperation demonstration project" in four predominantly rural counties, and to assess the success of a non-competitive managed care model in rural areas. The demonstration would enroll recipients

currently eligible in the AFDC and AFDC-related eligibility categories, and expand Medicaid eligibility to children ages 5 and under with family incomes up to 200 percent of the Federal poverty level.

Date Received: March 23, 1995.

State Contact: Karl Hockenbarger, Kansas Department of Social and Rehabilitation Services, 915 SW Harrison Street, Topeka, Kansas 66612, (913) 296-4719.

Federal Project Officer: Jane Forman, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Health Access Plan Demonstration—Vermont.

Description: Vermont proposes to integrate Medicaid recipients into managed care plans and expand coverage to uninsured individuals up to 150 percent of the Federal poverty level. The State also proposes to provide pharmacy coverage to low income Medicare beneficiaries.

Date Received: February 24, 1995.

State Contact: Veronica Celani, Health Policy Director, Vermont Agency of Human Services, 103 State Street, Waterbury, Vermont 05671, (802) 828-2949.

Federal Project Officer: Sherrie Fried, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

2. Pending Proposals

Demonstration Title/State: The Diamond State Health Plan—Delaware.

Description: Delaware proposes to expand eligibility for Medicaid to persons with incomes up to 100 percent of the Federal poverty level and require that the Medicaid population enroll in managed care delivery systems. The State's current section 1115 demonstration project, the Delaware Health Care Partnership for Children, would be incorporated into the statewide program as an optional provider for eligible children.

Date Received: July 29, 1994.

State Contact: Kay Holmes, DSHP Coordinator, DHSS Medicaid Unit, Biggs Building, P.O. Box 906, New Castle, Delaware 19720, (302) 577-4900.

Federal Project Officer: Rosana Hernandez, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: MediPlan Plus—Illinois.

Description: Illinois seeks to develop a managed care delivery system using a

series of networks, either local or statewide, to tailor its Medicaid delivery system to the needs of local urban neighborhoods or large rural areas.

Date Received: September 15, 1994.

State Contact: Tom Toberman, Manager, Federal/State Monitoring, 201 South Grand Avenue East, Springfield, Illinois 62763, (217) 782-2570.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Louisiana Health Access—Louisiana.

Description: Louisiana proposes to implement a fully capitated statewide managed care program. A basic benefit package and a behavioral health and pharmacy wrap-around would be administered through the managed care plans. The State intends to expand eligibility of persons with incomes up to 250 percent of the Federal poverty level (FPL), with persons with incomes above 133 percent of the FPL paying all or a portion of premiums. To fund the demonstration, the State is seeking a waiver of Federal Medical Assistance Payments (FMAP) requirements, which would effectively create a block grant whereby the Federal share of the demonstration would be fixed over the course of the demonstration and the State would assume the cost of increases as they occurred.

Date Received: January 3, 1995.

State Contact: Carolyn Maggio, Executive Director, Bureau of Research and Development, Louisiana Department of Health and Hospitals, Post Office 2870, Baton Rouge, Louisiana 70821-2871, (504) 342-2964.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: MassHealth—Massachusetts.

Description: Massachusetts proposes a range of strategies that would extend Medicaid coverage to its low-income and uninsured citizens, including the employed, the short-term unemployed, and the long-term unemployed. The proposed program would employ direct provision of health services as well as indirect strategies that would promote market forces to address the needs of the uninsured, by providing subsidies to employers and low-income employees with incomes up to 200 percent of the Federal poverty level.

Date Received: April 15, 1994.

State Contact: Laurie Burgess, Director, Managed Care Program,

Development, Division of Medical Assistance, 600 Washington Street, Boston, Massachusetts 02111, (617) 348-5695.

Federal Project Officer: Ed Hutton, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: MinnesotaCare—Minnesota.

Description: Minnesota proposes to expand its use of managed care service delivery and to extend Medicaid eligibility to families and children with incomes up to 275 percent of the Federal poverty level. The State would also integrate Medicaid with other public entities that deliver health services.

Date Received: July 28, 1994.

State Contact: Maria Gomez, Commissioner, Health Care Services Delivery, Minnesota Department of Human Services, 444 Lafayette Road N, St. Paul, Minnesota 55155, (612) 297-4113.

Federal Project Officer: Penny Pine, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Missouri.

Description: Missouri proposes to require that beneficiaries enroll in managed care delivery systems, and extend Medicaid eligibility to persons with incomes below 200 percent of the Federal poverty level. As part of the program, Missouri would create a fully capitated managed care pilot program to serve non-institutionalized persons with permanent disabilities on a voluntary basis.

Date Received: June 30, 1994.

State Contact: Donna Checkett, Director, Division of Medical Services, Missouri Department of Social Services, PO Box 6500, Jefferson City, Missouri 65102-6500, (314) 751-6922.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: The Granite State Partnership for Access and Affordability in Health Care—New Hampshire.

Description: New Hampshire proposes to extend Medicaid eligibility to adults with incomes below the AFDC cash standard and to create a public insurance product for low income workers. The State also seeks to implement a number of pilot initiatives to help redesign its health care delivery system.

Date Received: June 14, 1994.

State Contact: Barry Bodell, New Hampshire Department of Health and Human Services, Office of the Commissioner, 6 Hazen Drive, Concord, New Hampshire 03301-6505, (603) 271-4332.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: SoonerCare—Oklahoma.

Description: Oklahoma proposes to implement a 5-year statewide managed care demonstration using both fully and partially capitated delivery systems. The emphasis of the program is to address access problems in rural areas by encouraging the development of rural-based managed care initiatives. The State will employ traditional fully capitated managed care delivery models for urban areas and will introduce a series of partial capitation models in the rural areas of the State. All currently eligible, non-institutionalized individuals will be enrolled during the first 2 years of the program.

Date Received: January 6, 1995.

State Contact: Dr. Garth Splinter, Oklahoma Health Care Authority, Lincoln Plaza, 4545 N. Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105, (405) 530-3439.

Federal Project Officer: Helaine I. Fingold, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

3. Approved Conceptual Proposals (Awards of Waivers Pending)

No conceptual proposals were approved during the months of February and March.

4. Approved Grant Proposals (Award of Waivers Pending)

No grant proposals were awarded during the months of February and March.

5. Approved Proposals

No comprehensive health reform proposals were approved during the months of February and March.

6. Disapproved Proposals

No comprehensive health reform proposals have been disapproved since January 1, 1993.

7. Withdrawn Proposals

No comprehensive health reform proposals were withdrawn during the months of February and March.

B. Other Section 1115 Demonstration Proposals

1. New Proposals

Demonstration Title/State: Family Planning Services Section 1115 Waiver Request—Michigan.

Description: Michigan seeks to extend Medicaid coverage for family planning services to all women of childbearing age living in families with incomes at or below 185 percent of the Federal poverty level, and provide an additional benefit package consisting of home visits, outreach services to identify eligibility, and reinforced support for utilization of services. The duration of the project is 5 years.

Date Received: March 27, 1995.

State Contact: Gerald Miller, Director, Department of Social Services, 235 South Grand Avenue, Lansing, Michigan 48909, (517) 335-5117.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

2. Pending Proposals

Demonstration Title/State: Georgia's Children's Benefit Plan—Georgia.

Description: The State of Georgia submitted a Section 1115 proposal entitled "Georgia Children's Benefit Plan" that provides preventive and primary care services for children 1 through 5 years of age who are between 133 and 185 percent of the Federal poverty level. The duration of the waiver is 5 years with proposed project dates of July 1, 1995 to June 30, 2000.

Date Received: December 12, 1994.

State Contact: Jacquelyn Foster-Rice, Georgia Department of Medical Assistance, 2 Peachtree Street NW., 201 South Grand Avenue East, Atlanta, Georgia 30303-3159, (404) 651-5785.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: High Cost User Initiative—Maryland.

Description: Maryland proposes to implement an integrated case management system for high-cost, high-risk Medicaid recipients.

Date Received: July 8, 1994.

State Contact: John Folkemer, Maryland Department of Health and Mental Hygiene, Office of Medical Assistance Policy, 201 West Preston Street, Baltimore, Maryland 21201, (410) 225-5206.

Federal Project Officer: Rosana Hernandez, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Minnesota Long-Term Care Options Project—Minnesota.

Description: The State proposes to integrate long-term care and acute care services under combined Medicare and Medicaid capitation payments for elderly dual eligibles.

Date Received: April 18, 1994.

State Contact: Pamela Parker, Minnesota Department of Human Services, Human Services Building, 444 Lafayette Road North, St. Paul, Minnesota 55155, (612) 296-2140.

Federal Project Officer: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Family Planning Proposal—New Mexico.

Description: New Mexico proposes to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level.

Date Received: November 1, 1994.

State Contact: Bruce Weydemeyer, Director, Division of Medical Assistance, PO Box 2348, Santa Fe, New Mexico 87504-2348, (505) 827-3106.

Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: CHOICES—Citizenship, Health, Opportunities, Interdependence, Choices and Supports—Rhode Island.

Description: Rhode Island proposes to consolidate all current State and Federal funding streams for adults with developmental disabilities under one program using managed care/managed competition.

Date Received: April 5, 1994.

State Contact: Susan Babin, Department of Mental Health, Retardation, and Hospitals, Division of Developmental Disabilities, 600 New London Avenue, Cranston, Rhode Island 02920, (401) 464-3234.

Federal Project Officer: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Virginia.

Description: Virginia proposes to expand Medicaid eligibility to children in the State-funded KIDS CARE program, and provide them with a limited Medicaid benefit restricted to ambulatory services.

Date Received: May 18, 1994.

State Contact: Janet Kennedy, Suite 1300, 600 East Broad Street, Richmond, Virginia 23219, (804) 371-8855.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Wisconsin.

Description: The State proposes to limit the amount of exempt funds that may be set aside as burial and related expenses for SSI-related Medicaid recipients.

Date Received: March 9, 1994.

State Contact: Jean Sheil, Division of Economic Support, Wisconsin Department of Health and Social Services, 1 West Wilson Street, Room 650, P.O. Box 7850, Madison, Wisconsin 53707, (608) 266-0613.

Federal Project Officer: J. Donald Sherwood, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

3. Approved Conceptual Proposals (Award of Waivers Pending)

No conceptual proposals were awarded during the months of February and March.

4. Approved Proposals

No proposals were approved during the months of February and March.

5. Disapproved Proposals

No proposals were disapproved during the months of February and March.

6. Withdrawn Proposals

The following proposals were withdrawn from consideration by their respective States.

Demonstration Title/State: Pay-in Spenddown Pilot—Ohio.

Description: Ohio proposed to implement a one-county pilot program to allow the medically needy to pay in spenddown amounts in order to qualify for Medicaid to simplify eligibility administration.

Date Received: April 28, 1994.

Date Withdrawn: February 15, 1995.
State Contact: Jeanne Carroll, Ohio Department of Human Services, 30 East Broad Street, Columbus, Ohio 43266, (614) 466-6024.

Federal Project Officer: David Walsh, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

Demonstration Title/State: Family Planning Demonstration—Washington.

Description: The State proposed to provide family planning services to low-income women for an additional 10 months postpartum, extending total coverage for such services to one year.

Date Received: April 21, 1994.

Date Withdrawn: January 20, 1995.

State Contact: Claudia Lewis, Medical Assistance Administration, Division of Client Services, P.O. Box 45530, Olympia, Washington 98504-5530, (206) 586-2751.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, 2302 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207.

III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments)

Dated: May 22, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95-14434 Filed 6-12-95; 8:45 am]

BILLING CODE 4120-01-P

Health Resources and Services Administration Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1995.

Name: National Advisory Council on the National Health Service Corps

Date and Time: June 23-26, 1995

Place: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Crystal City, Virginia, (703) 418-1234.

The meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The agenda will include updates on the Bureau of Primary Health Care,

National Health Service Corps and testimony on papers prepared for the June 24 and 25 conference entitled "NHSC: Creating a Road Map for the Future". The papers address the following: "Preparing Students to Become Student-Oriented Clinicians"; "Preparing Communities for Service-Oriented Clinicians"; "Matching Service-Oriented Clinicians and Communities"; and "Assuring Clinicians Positive Community Experiences". The Council will also participate in this conference at the Hyatt Regency.

The meetings will begin at 8:00 a.m. and adjourn at 5:00 p.m. on June 23-25. The Council will reconvene Monday June 26, at 8:00 a.m. to discuss further business and adjourn at 12:00 noon.

Anyone requiring information regarding the subject Council should contact Ms. Nada Schnabel, National Advisory Council on the National Health Service Corps, 8th floor, 4350 East West Highway, Rockville, Maryland 20857, Telephone (301) 594-4147.

Agenda Items are subject to change as priorities dictate.

Dated: June 8, 1995.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 95-14405 Filed 6-12-95; 8:45 am]

BILLING CODE 4160-15-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Central and Western Gulf of Mexico, Oil and Gas Lease Sales 166 and 168

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Call for Information and Nominations, and Notice of Intent (Call/NOI) to Prepare an Environmental Impact Statement (EIS).

1. *Authority.* This Call is published pursuant to the Outer Continental Shelf (OCS) Lands Act as amended (43 U. S. C. 1331-1356, (1988)) (OCSLA), and the regulations issued thereunder (30 CFR Part 256).

The NOI is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the National Environmental Policy Act of 1969 as amended (42 U. S. C. 4321 et seq. (1988))(NEPA)

2. *Purpose of Call.* The purpose of the Call is to gather information for Outer Continental Shelf (OCS) Lease Sale 166 in the Central Gulf of Mexico (CGOM) Planning Area, tentatively scheduled for March 1997, and OCS Lease Sale 168 in the Western Gulf of Mexico (WGOM) Planning Area, tentatively scheduled for August 1997.

Information and nominations on oil and gas leasing, exploration, and

development and production within the Central Gulf of Mexico and Western Gulf of Mexico Planning Areas are sought from all interested parties. This early planning and consultation step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCSLA, and regulations at 30 CFR 256. This Call does not indicate a preliminary decision to lease in the area described below. Final delineation of the area for possible leasing will be made at a later date and in compliance with applicable laws including all requirements of the NEPA and the OCSLA. Established departmental procedures will be employed.

3. *Description of Area.* The general area of this Call covers the entire central and western portions of the Gulf of Mexico between approximately 88 degrees W. longitude on the east and approximately 97 degrees W. longitude on the west and extends from the Federal-State boundaries seaward to the provisional maritime boundary between the United States and Mexico. The entire Call area is offshore the States of Texas, Louisiana, Mississippi, and Alabama and is divided into two planning areas.

The Central Gulf Planning Area is bounded on the east by approximately 88 degrees W. longitude. Its western boundary begins at the offshore boundary between Texas and Louisiana and proceeds southeasterly to approximately 28 degrees N. latitude, thence east to approximately 92 degrees W. longitude, thence south to the provisional maritime boundary with Mexico which constitutes the southern boundary of the area. The northern part of the area is bounded by the Federal-State boundary offshore Louisiana, Mississippi, and Alabama. The area available for nominations and comments at this time consists of approximately 47.8 million acres.

The Western Gulf Planning Area is bounded on the west and north by the Federal-State boundary and on the east by the Central Gulf Planning Area. It extends south to the provisional maritime boundary with Mexico. It is offshore Texas and, in deeper water, offshore Louisiana. The area available for nominations and comments consists of about 35.9 million acres.

A standard Call for Information Map depicting each planning area on a block-by-block basis is available without charge from: Minerals Management Service, Public Information Unit (MS 5034), 1201 Elmwood Park Boulevard,

New Orleans, Louisiana 70123-2394, Telephone: 1-800-200-GULF.

4. *Areas Deferred from this Call.* High Island Area, East Addition, South Extension, (Flower Gardens), Block A-375 and Block A-398 (WGOM).

Mustang Island Area, Blocks 793, 799 and 816 (offshore Corpus Christi) are excluded from this Call.

5. *Instructions on Call.* Indications of interest and comments must be received no later than 45 days following publication of this document in the **Federal Register** in envelopes labeled "Nominations for Proposed 1997 Lease Sales in the Gulf of Mexico" or "Comments on the Call for Information and Nominations for Proposed 1997 Lease Sales in the Gulf of Mexico." The standard Call for Information Map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the above address.

The standard Call for Information Map delineates the Call area, all of which has been identified by the MMS as having potential for the discovery of accumulations of oil and gas. Respondents are requested to indicate interest in and comment on any or all of the Federal acreage within the boundaries of the Call area that they wish to have included in proposed Sale 166 in the Central Gulf and proposed Sale 168 in the Western Gulf.

Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities indicating interest or submitting comments will be of public record. Those indicating such interest are required to do so on the standard Call for Information Map by outlining the areas of interest along block lines.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 [high], 2 [medium], or 3 [low]). Respondents are encouraged to be specific in indicating blocks by priority, as blanket nominations on large areas are not useful in the analysis of industry interest. Areas where interest has been indicated but on which respondents have not indicated priorities will be considered priority 3 [low].

Respondents may also submit a detailed list of blocks nominated (by Official Protraction Diagram and Leasing Map designations) to ensure correct interpretation of their nominations. Specific questions may be directed to the Chief, Leasing Activities Section at (504) 736-2761. Official

Protraction Diagrams and Leasing Maps can be purchased from the Public Information Unit referred to above.

Comments are sought from all interested parties about particular geological, environmental, biological, archaeological and socioeconomic conditions or conflicts, or other information that might bear upon the potential leasing and development of particular areas. Comments are also sought on possible conflicts between future OCS oil and gas activities that may result from the proposed sales and State Coastal Management Programs (CMP's). If possible, these comments should identify specific CMP policies of concern, the nature of the conflict foreseen, and steps that the MMS could take to avoid or mitigate the potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the standard Call for Information Map.

6. *Use of Information from Call.* Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. This information will be used to make a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. A third purpose for this Call is to use the comments collected to initiate the scoping process for the Environmental Impact Statement (EIS) and to develop a proposed action and alternatives. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore operations. And, fifth, comments may be used to assess potential conflicts between offshore gas and oil activities and a State CMP.

7. *Existing Information.* Prior to the Call, the sale planning process includes an Information Base Review (IBR), a documented MMS assessment of the status of information acquisition efforts and the quality of the information base for potential decisions on a specific leasing proposal.

The Information Transfer Meeting in November 1994 served as the initial forum for soliciting information enhancements for the IBR. In February-March 1995, an internal review of available data and planned studies was

conducted by the Gulf of Mexico Region to obtain a comprehensive assessment of the status of the information base. The information base, in part, is documented in the Long-Range Strategic Plan for Environmental Studies in the Gulf of Mexico, 1995-1999.

Appropriate study proposals and research plans will be incorporated into the environmental studies planning and evaluation process, the direction of the Technology Assessment, and Research Program, and other mechanisms in MMS (reviews and Industry Standards Committees). No comments were received from parties outside the MMS.

As a result, it has been determined that the status of the existing data available for planning, analysis, and decisionmaking is adequate and extensive. In accordance with the relevant statutes and regulations which govern OCS oil and gas leasing, no informational needs were identified which would provide a legal basis for the delay or cancellation of the leasing process. Therefore, the lease sale process should continue with the next step, a Call for Information and Nominations.

An extensive environmental studies program has been underway in this area since 1973. The emphasis, including continuing studies, has been on environmental characterization of biologically sensitive habitats, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports, and information for ordering copies, can be obtained from the Public Information Unit referenced above. The reports may also be ordered, for a fee, from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, or telephone (703) 487-4650. In addition, a program status report for continuing studies in this area can be obtained from the Chief, Environmental Studies Section, Gulf of Mexico OCS Region (see address under "Description of Area"), or telephone (504) 736-2896.

Summary Reports and Indices and technical and geological reports are available for review at the MMS, Gulf of Mexico OCS Region. Copies of the Gulf of Mexico OCS Regional Summary Reports may be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, at 381 Elden Street, Herndon, Virginia 22070.

8. *Tentative Schedule.* The following is a list of tentative milestone dates preceding Sale 166 and Sale 168:

	CGOM sale 166	WGOM sale 168
Comments due on Call and Notice Of Intent (Scoping)	July 1995	July 1995.
Area Identification	Aug. 1995	Aug. 1995.
Draft EIS published	Mar. 1996	Mar. 1996.
Proposed Notice Issued	Mar. 1996	Mar. 1996.
Public Hearings	May 1996	May 1996.
Governors' Comments Due on Proposed Notice	June 1996	June 1996.
Final EIS published	Nov. 1996	Nov. 1996.
Consistency Determination	Nov. 1996	Apr. 1996.
Final Notice of Sale	Feb. 1997	July 1997.
Sale Date	Mar. 1997	Aug. 1997.

9. Purpose of Notice of Intent.

Pursuant to the regulations implementing the procedural provisions of the NEPA, the MMS is announcing its intent to prepare an EIS on the oil and gas leasing proposals known as Sale 166 in the Central Gulf, and Sale 168 in the Western Gulf, off the States of Texas, Louisiana, Mississippi, and Alabama. The NOI also serves to announce the scoping process that will be followed for this EIS. Throughout the scoping process, Federal Agencies and State and local governments and other interested parties have the opportunity to aid the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the areas defined in the Area Identification procedure as the proposed areas of the Federal actions. Alternatives to the proposal which may be considered for each sale are to delay the sale, cancel the sale, or modify the sale.

10. Instructions on NOI to Prepare an EIS. Federal Agencies and State and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated under "Description of Area." Comments should be enclosed in an envelope labeled "Comments on the NOI to Prepare an EIS on the proposed 1997 Lease Sales in the Gulf of Mexico." Comments on the NOI should be submitted no later than 45 days from publication of this Notice. Scoping meetings will be held in appropriate locations to obtain additional comments and information regarding the scope of the EIS.

Approved: June 6, 1995.

Cynthia Quarterman,
Director, Minerals Management Service.

Sylvia V. Baca,
Deputy Assistant Secretary—Land and Minerals Management.
[FR Doc. 95-14441 Filed 6-12-95; 8:45 am]
BILLING CODE 4310-MR-P

National Park Service

**National Register of Historic Places;
Notification of Pending Nominations**

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 3, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127. Written comments should be submitted by June 28, 1995.
Carol D. Shull,
Keeper of the National Register.

ALABAMA

Mobile County

Lower Dauphin Street Commercial District (Boundary Increase), Roughly, Dauphin St. from Jefferson St. to Dearborn St. and St. Francis St. S side from Bayou St. to Lawrence St., Mobile, 95000779

ARKANSAS

Boone County

Haggard Ford Swinging Bridge (Historic Bridges of Arkansas MPS), Over Bear Cr. at Cottonwood Rd., 8 mi. N of Harrison, Harrison vicinity, 95000790

Logan County

First Christian Church, 120 E. Walnut St., Paris, 95000791

Miller County

Lightfoot, Dr. J. A., House, 422 Pecan St., Texarkana, 95000792

Ouachita County

Umsted, Sidney A., House, 404 Washington St., Camden, 95000789

CALIFORNIA

Napa County

Smith, Williams, House, 1929 First St., Napa, 95000786

Ventura County

St. Thomas Aquinas Chapel, 130 W. Ojai Ave., Ojai, 95000785

COLORADO

Douglas County

Daniels Park (Denver Mountain Parks MPS), Along Douglas Co. Rd. 67 NE of Sedalia, Sedalia vicinity, 95000795

Jefferson County

Craig, Katherine, Park (Denver Mountain Parks MPS), Along US 40/I-70 NW of Morrison, Morrison vicinity, 95000797
Starbuck Park (Denver Mountain Parks MPS), CO 74 through Bear Creek Canyon, S of Idledale, Idledale vicinity, 95000796

Rio Grande County

Monte Vista Library, 110 Jefferson St., Monte Vista, 95000782

Routt County

Perry—Mansfield School of Theatre and Dance, 40755 Routt Co. Rd. 36, Steamboat Springs vicinity, 95000794

MISSISSIPPI

Harrison County

Brielmaier House (Biloxi MRA), 710 Beach Blvd., Biloxi, 84002170

Marion County

Superintendent's Home at Columbia Training School, 1730 MS 44, Columbia, 95000787

Neshoba County

U.S. Post Office (Philadelphia), Old, 523 Main St., Philadelphia, 95000788

MISSOURI

Callaway County

Bell, M. Fred, Speculative Cottage, 304 E. Fifth St., Fulton, 95000780

Mercer County

Casteel, Herbert Cain and Corah Brantley, House, Address Restricted, Princeton, 95000781

NEBRASKA

Fillmore County

Stockholm Swedish Lutheran Church and Cemetery, 2.5 mi. W and 0.5 mi. S of Shickley, Shickley vicinity, 95000798

Lancaster County

Ehlers Round Barn, S of NE 2, NE of Roca, Roca vicinity, 95000799

Woods, Frank and Nelle Cochrane, House, 2501 Sheridan Blvd., Lincoln, 95000793

NORTH CAROLINA

Wake County

Crabtree Creek Recreational Demonstration Area (Wake County MPS), Roughly bounded by I-40, US 70 and the Raleigh-Durham Airport, Raleigh, 95000783

SOUTH DAKOTA

Brown County

Herron, Anna, Farm (Rural Resources of Brown County MPS), 1.5 mi. E of SD 18 on Co. Hwy. 21, West Hanson Township, Groton vicinity, 95000778

TEXAS

Navarro County

Mills Place Historic District (Corsicana MPS), Roughly bounded by W. 2nd Ave., Mills Place Dr. and W. Park Ave., Corsicana, 95000800

WASHINGTON

Clark County

Kiggins, John P. and Mary, House, 411 E. Evergreen Blvd., Vancouver, 95000804

Douglas County

Gallaher House, 600 12th St., Mansfield vicinity, 75001848

King County

Lyon Building, 607 Third Ave., Seattle, 95000806

Okanogan County

Okanogan County Courthouse, 149 N. Third Ave., Okanogan, 95000805

Snohomish County

Naval Auxiliary Air Station—Arlington, 18204 59th Dr. NE., Arlington Municipal Airport, Arlington, 95000802

Stevens County

Colville Flour Mill, 466 W. First St., Colville, 95000809

Meyers Falls Power Plant Historic District (Hydroelectric Power Plants in Washington State, 1890—1938 MPS), 0.5 mi. S of Kettle Falls at Colville R., on either side of Juniper St., Kettle Falls vicinity, 95000808

Rickey Block, 230 S. Main St., Colville, 95000807

Thurston County

Chamber's Prairie—Ruddell Pioneer Cemetery, Jct. of Ruddell and Mullen Rds., NW corner, Lacey, 95000803

Schmidt, F. W., House (Olympia Residential Architecture MPS), 2831 Orange, Olympia, 95000801

[FR Doc. 95-14397 Filed 6-12-95; 8:45 am]

BILLING CODE 4310-70-P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a request for approval of a questionnaire to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION:

The forms are for use by the Commission in connection with investigation No. 332-361, Global Competitiveness of U.S. Environmental Technology Industries: Air Pollution Prevention and Control, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

SUMMARY OF PROPOSAL:

- (1) Number of forms submitted: one
- (2) Title of form: Global Competitiveness of U.S. Environmental Technology Industries: Air Pollution Prevention and Control
- (3) Type of request: new
- (4) Frequency of use: Producer questionnaire, single data gathering, scheduled for 1995.
- (5) Description of respondents: U.S. firms which produce equipment or provide services for air pollution prevention and control.
- (6) Estimated number of respondents: 300
- (7) Estimated total number of hours to complete the forms: 6,000
- (8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT:

Copies of the forms and supporting documents may be obtained from David Ingersoll (USITC, telephone no. (202) 205-2218). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503, Attention: Desk Officer for the U.S. International Trade Commission (telephone no. 202-395-7340). All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade

Commission, 500 E Street S.W., Washington, D.C. 20436.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202-205-1810).

List of Subjects: Environmental protection, environmental technology, export promotion, air pollution.

Issued: June 7, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95-14419 Filed 6-12-95; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337-TA-365]

Certain Audible Alarm Systems for Divers; Notice of Issuance of Limited Exclusion Order and Cease and Desist Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and a cease and desist order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Anjali K. Singh, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3117.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.58 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.58).

The Commission instituted this investigation on May 31, 1994, based upon a complaint filed on April 28, 1994, by David A. Hancock and Ideations Design Inc. ("complainants") alleging that IHK International Group of Torrance, California ("IHK") and Duton Industry Co., Ltd. of Taipei, Taiwan ("Duton") (collectively referred to as "respondents") had violated section 337 in the sale for importation, the importation, and the sale after importation of certain audible alarm devices for divers, by reason of infringement of claim 6 of U.S. Letters Patent 4,950,107 ('107 patent) and claim 1 of U.S. Letters Patent 5,106,236 ('236 patent) owned by Mr. Hancock. 59 FR 29615 (June 8, 1994).

On October 25, 1994, the presiding administrative law judge (ALJ) issued an

initial determination (ID) (Order No. 23) finding that respondent Duton was in default. The ALJ also issued evidentiary sanctions in the form of adverse findings against Duton. On November 21, 1994, the Commission determined not to review the ID. 59 FR 61342 (November 30, 1994).

On February 2, 1995, the ALJ issued her final ID finding that: (1) claim 6 of the '107 patent and claim 1 of the '236 patent are valid and enforceable; (2) there is a domestic industry manufacturing and selling products protected by those two patent claims; (3) respondent IHK has imported products that infringe claim 6 of the '107 patent and claim 1 of the '236 patent; and (4) respondent Duton has exported to the United States products that infringe claim 6 of the '107 patent and claim 1 of the '236 patent. No petitions for review or agency comments were filed. On March 13, 1995, the Commission determined not to review the ALJ's final ID, and requested written submissions on the issues of remedy, the public interest, and bonding. 60 FR 14960 (March 21, 1995).

Submissions on remedy, the public interest, and bonding were received from complainants and the Commission investigative attorney (IA), both of whom also filed reply submissions on those issues.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission made its determinations on the issues of remedy, the public interest, and bonding. The Commission determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry for consumption of infringing audible alarm devices manufactured and/or imported by or on behalf of IHK and Duton. In addition, the Commission issued a cease and desist order directed to IHK requiring IHK to cease and desist from the following activities in the United States: importing, selling, marketing, distributing, offering for sale, or otherwise transferring (except for exportation) in the United States infringing imported audible alarm devices.

The Commission also determined that the public interest factors enumerated in 19 U.S.C. 1337 (d) and (f) do not preclude the issuance of the limited exclusion order and the cease and desist orders, and that the bond during the Presidential review period shall be in the amount of 152 percent of the entered value of the articles in question.

Copies of the Commission orders, the Commission opinion in support thereof, 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 this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: June 6, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95-14420 Filed 6-12-95; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 1, 1995 a proposed Consent Decree in *United States v. Grand Trunk Western Railroad Co.*, Civil Action No. 1:94 CV 530 was lodged with the United States District Court for the Western District of Michigan. This consent decree represents a settlement of claims against Grand Trunk Western Railroad Co. for violations of the Clean Water Act.

Under this settlement between the United States and Grand Trunk Western Railroad Co., Grand Trunk will construct a re-routing and pretreatment system to re-route its process wastewater to the Battle Creek, Michigan, publicly owned treatment works. In addition, Grand Trunk will pay the United States a civil penalty of \$535,000. Stipulated penalties may be imposed in the event Grant Trunk does not comply with the requirements of the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Grand Trunk Western Railroad Co.*, D.J. Ref. 90-5-1-1-5037.

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, N.W., 4th Floor, Washington, D.C. 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, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of \$5.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environment and Natural Resources Division.

[FR Doc. 95-14368 Filed 6-12-95; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging a Joint Stipulation of Settlement Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 6973(d), notice is hereby given that on June 2, 1995, a proposed joint stipulation of settlement in *United States v. Dale Valentine, et al.*, Civil Action No. 93CV1005J, was lodged with the United States District Court for the District of Wyoming.

The complaint filed by the United States on February 19, 1993, seeks injunctive relief and civil penalties under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973. The complaint alleges that an abandoned oil reprocessing facility near Glenrock, Wyoming, commonly known as Powder River Crude processors or Big Muddy Oil Processors (the "Site"), may present an imminent and substantial endangerment to human health or the environment. The complaint seeks injunctive relief and civil penalties for violations of administrative orders issued by EPA under Section 7003 of RCRA for a cleanup of the Site.

Under this stipulation, one of the ten defendants named in the action, Jim's Water Service, Inc., will pay a civil penalty of \$90,000 to the United States for violations of the administrative order issued by EPA to it on October 3, 1991. The stipulation provides that the penalty claim alleged in the Complaint will be dismissed with prejudice, and all other claims alleged in the Complaint, which include the claims for injunctive relief, will be dismissed without prejudice. This settlement is based in part on information provided to the United States by Defendant Jim's Water Service, Inc. indicating that its financial ability to pay a civil penalty is

limited. Five other defendants in this action are performing work pursuant to a consent decree entered by the Court on June 21, 1994, designed to address conditions at the Site which may present an imminent and substantial endangerment to health or the environment.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed stipulation of settlement. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States v. Dale Valentine, et al.*, DOJ Ref. #90-7-1-692. In accordance with Section 7003(d) of RCRA, commenters can also request a public meeting in the affected area.

The proposed stipulation may be examined at the Office of the United States Attorney for the District of Wyoming, 3rd Floor, Federal Building, 111 South Wolcott, Casper, Wyoming 82601; the United States Environmental Protection Agency, Region 8, 999 18th Street—Suite 500, Denver, Colo. 80202-2466; and at the Consent Decree Library, 1120 "G" Street NW., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed stipulation may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and number, and enclose a check in the amount of \$1.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95-14367 Filed 6-12-95; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 93-74]

Richard C. Matzkin, M.D. Grant of Continued Registration

On July 27, 1993, the Deputy Assistant Administrator (then-Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Richard C. Matzkin, M.D. of Bethesda, Maryland (Respondent), proposing to revoke his DEA Certificate of Registration, AM2532631, and deny any pending applications for such

registration. The statutory basis for the Order to Show Cause was that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Arlington, Virginia on March 14, 1994.

On November 3, 1994, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision, recommending that Respondent's DEA Certificate of Registration not be revoked subject to his compliance with several requirements. No exceptions to Judge Bittner's decision were filed by either party.

On December 6, 1994, the administrative law judge transmitted the record of the proceeding to the Deputy Administrator. After careful consideration of the record in its entirety, the Deputy Administrator enters his final order in this matter, in accordance with 21 CFR 1316.67, based on findings of fact and conclusions of law as set forth herein.

The administrative law judge found that Respondent obtained a license to practice medicine in Maryland in 1984 and maintained a practice in Bethesda. Respondent subsequently became licensed in Virginia and the District of Columbia. In the summer of 1989, Respondent began a general practice in Virginia, but continued to maintain a practice in Bethesda which, by Respondent's testimony, was limited to treating members of his immediate family and three close friends.

The administrative law judge found that, in 1986, a detective from the Pharmaceutical Unit of the Montgomery County, Maryland, Police Department was informed by several pharmacists that they had received prescriptions written by Respondent which they felt were not within a legitimate prescribing pattern, and that most of the prescriptions were for Percocet, a Schedule II controlled substance. The detective further testified that he found approximately 50 prescriptions for Percocet issued by Respondent at various area pharmacies, and that most of these prescriptions had been issued for five individuals, several of whom had been targets of prior investigations and/or had been arrested on drug charges.

The administrative law judge further found that a former investigator for the Virginia Department of Health (the Virginia investigator) investigated a complaint that Respondent was prescribing controlled substances to persons living outside of the state. The investigator found that most of these prescriptions were written for Percocet and that they had been written for Respondent's father, brother and then-wife, as well as two of the individuals identified by the Montgomery County, Maryland investigation.

The Virginia investigator testified that Respondent had prescribed controlled substances, primarily Percocet, to a number of individuals without a legitimate medical need and without conducting medical examinations prior to issuing controlled substances prescriptions. In one such instance, Respondent prescribed controlled substances to an individual who he knew to be drug and alcohol dependent.

The Virginia investigator further testified that several of the pharmacists who filled Respondent's prescriptions had complained that he often picked up the filled prescriptions for his out-of-state patients, and subsequently mailed the drugs to these patients. The Virginia investigator acknowledged that this practice was not unlawful.

The Virginia investigator also interviewed Respondent who informed her that he did not perform physical examinations on these patients prior to issuing prescriptions for them, and that his mother had disposed of the medical records that he had maintained on these patients. She further testified that, although Respondent had stated that all of the people who received the prescriptions at issue had complained of some type of pain or medical condition, Respondent's conduct was in violation of Virginia law because he did not maintain medical records for these patients, nor conduct physical examinations prior to prescribing controlled substances.

The administrative law judge found that on March 29, 1991, the Virginia Board of Medicine notified Respondent that it would conduct an informal conference on allegations that he had violated provisions of Virginia law pertaining to the practice of medicine. On June 21, 1991, Respondent entered into a consent order pursuant to which he voluntarily surrendered his Virginia license in lieu of further administrative proceedings.

The administrative law judge further found that, on January 20, 1992, the Montgomery County state's attorney office executed information charging Respondent with two counts of

unlawfully prescribing Schedule II drugs and that Respondent was arrested on these charges on January 30, 1992. The charges against Respondent eventually were nolle-prossed.

The administrative law judge found that the Maryland State Board of Physician Quality Assurance (the Board) initiated an investigation of Respondent in November 1991 after the Maryland Division on Drug Control notified the Board that Respondent had surrendered his Virginia license. In February 1992, the Board summarily suspended Respondent's medical license in Maryland based upon the surrender of his Virginia license, his January 1992 arrest and the charges that he had improperly prescribed controlled substances. As a result of the criminal case against Respondent being nolle-prossed, the Board executed a consent order on June 2, 1992, lifting the summary suspension and placing Respondent on a three year probationary period with conditions. Judge Bittner also noted testimony that, at the time of the hearing in this proceeding, Respondent remained in full compliance with the conditions of his probation.

The Government argued that Respondent's DEA Certificate of Registration should be revoked because Respondent: (1) violated 21 CFR 1306.04(b) by prescribing controlled substances to individuals without first conducting physical examinations; (2) had violated 21 U.S.C. 822(e) and 21 CFR 1301.23 by having prescriptions filled for controlled substances and mailing them to individuals; (3) prescribed controlled substances to an individual who was drug and alcohol dependent; and (4) voluntarily surrendered his Virginia medical license because of his inappropriate prescribing of controlled substances.

Respondent argued that: (1) he was never convicted of any criminal activity; (2) he voluntarily surrendered his Virginia license in lieu of further administrative proceedings; (3) his failure to maintain adequate medical records for certain patients was not his usual practice; (4) the patients to whom he mailed controlled substances were longtime friends or family and he acted with good intentions; (5) he has been in good standing with the Maryland State Board of Physician Quality Assurance since he signed the consent order; and (6) he continues to maintain a medical practice in the State of Maryland.

Pursuant to 21 U.S.C. 824(a)(4) the Deputy Administrator of the DEA may revoke the registration of a practitioner upon a finding that the registrant has committed such acts as would render

his registration inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). In determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The [registrant]'s experience in dispensing, or conducting research with respect to controlled substances.

(3) The [registrant]'s conviction record under Federal or State laws relating to the manufacture, distribution or dispensing of controlled substances.

(4) Compliance with applicable State, Federal or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

It is well established that these factors are to be considered in the disjunctive, i.e. the Deputy Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate in assessing the public interest. See *Mukand Lal Arora, M.D.*, 60 FR 4447 (1995); *Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989). The administrative law judge found that factors (1), (2), (4), and (5) were relevant in considering whether Respondent's DEA registration should be revoked.

The administrative law judge found that testimony by two patients that Respondent had used cocaine and traded other controlled substances for cocaine, were statements made by acknowledged drug abusers who, themselves, were under investigation at the time they raised their allegations against Respondent, and, therefore, their hearsay statements were not sufficiently reliable to warrant a finding that Respondent had engaged in the alleged conduct. Judge Bittner further found that it was not disputed that Respondent had picked up filled prescriptions and mailed the medication to patients, but that such conduct was not illegal in Virginia, the jurisdiction in which Respondent was practicing at that time, and that there was no evidence of any other state or Federal regulation of such practice. Judge Bittner found no merit to the Government's contention that Respondent's practice of retrieving filled prescriptions for certain patients violated 21 CFR 1306.04(b).

The administrative law judge additionally found that it was not disputed that Respondent had prescribed medication to certain patients without first performing a physical examination. It was further undisputed that Respondent did not keep charts on the patients he treated out of his Bethesda location after

December 1989, when, as Respondent contended, his mother disposed of his patient records. Judge Bittner found that Respondent's failure to maintain records on those patients constitutes grounds for revoking his DEA registration. However, the administrative law judge found that the evidence did not establish that revocation of Respondent's registration would be in the public interest and recommended that Respondent's DEA Certificate of Registration not be revoked subject to his compliance with the following conditions for two years from the effective date of the Deputy Administrator's final order: (1) Respondent shall not dispense directly or administer any controlled substances except in a hospital setting; (2) Respondent shall use triplicate forms for all controlled substance prescriptions and shall maintain at his registered location one copy of each form and arrange for another copy to be received by the Special Agent in Charge of DEA's Baltimore District Office or his designee; and (3) Respondent shall consent to inspections of his registered premises pursuant to notices of inspection as described in 21 U.S.C. 880.

The Deputy Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirety. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AM2432631, issued to Richard C. Matzkin, M.D., be, and it hereby is, continued subject to the conditions enumerated by the administrative law judge. This order is effective on July 13, 1995.

Dated: June 6, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95-14369 Filed 6-12-95; 8:45 am]

BILLING CODE 4410-09-M

Immigration and Naturalization Service

[INS No. 1722-95]

Discontinuation of the Nicaraguan Review Process

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: this notice announces the termination of the special review procedures under which the files of Nicaraguan nationals subject to final deportation orders were subject to

mandatory review by the Immigration and Naturalization Service (INS) and the Office of the Deputy Attorney General. Changes in country conditions in Nicaragua coupled with improvements in the asylum adjudications process have rendered these special procedures unnecessary. Cases of affected individuals will be handled individually under normal procedures to decide whether any factors permit them to remain in the United States.

EFFECTIVE DATE: June 13, 1995.

FOR FURTHER INFORMATION CONTACT: Robert A. Jacobson, Director, Policy Development and Special Programs Branch, Detention and Deportation Division, Immigration and Naturalization Service, 425 I Street NW., Room 3008, Washington, D.C. 20536, telephone (202) 514-2871.

SUPPLEMENTARY INFORMATION:

Background

In 1987, then Attorney General Meese initiated the Nicaraguan Review Program (NRP). Under these special procedures, the INS and Department of Justice (DOJ) reviewed the case of each Nicaraguan who had received a final deportation order to ensure that no Nicaraguan with a well founded fear of persecution was deported unless it was determined that the person had engaged in serious criminal activity or posed a danger to the national security.

The INS reviewed the country conditions in Nicaragua and considered the need for continued specialized review. The INS concluded that the political situation in Nicaragua and the United States government's asylum adjudications procedures had improved to such an extent that it was no longer necessary to have a special review of every final order of deportation involving a Nicaraguan national. Therefore, the INS requested that the Attorney General discontinue the NRP. Attorney General Janet Reno approved the termination of the NRP. Accordingly, all DOJ and INS implementing and procedural NRP memoranda and wires are hereby rescinded. The INS Headquarters is issuing a directive notifying its field offices that Nicaraguans are no longer subject to special review under the NRP.

Future Consideration of Cases

Cases of Nicaraguan nationals under deportation or exclusion proceedings will receive no further special review. Nicaraguan cases will be handled under normal procedures, on a case-by-case basis. Each case will receive all appropriate consideration consistent with applicable law and regulations.

Due regard will be given to any existing equities or immigration benefits which might accrue to the specific alien involved.

Nicaraguan nationals affected by the termination of the NRP may be eligible to apply for suspension of deportation pursuant to section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254 if they (1) have been present in the United States for at least 7 years (10 years in the case of certain criminal aliens), (2) are persons of good moral character, and (3) are persons whose deportation would pose an extreme hardship to themselves or to their spouse, parent, or child who is either a United States citizen or a lawful permanent resident. To apply for such relief, aliens with final orders must file a motion to reopen with the immigration judge pursuant to 8 CFR 3.23 and 242.22 or the Board of Immigration Appeals (BIA) pursuant to citations 8 CFR 3.2 and 3.8.

Nicaraguans have no need to fear immediate expulsion from the United States as a group. Discontinuation of the NRP will not cause Nicaraguans to be targeted as a group or treated as a special class for any enforcement activity.

Work Authorization

As the work authorization of individual Nicaraguans with final deportation orders expires, the INS will review requests for renewal on a case-by-case basis. Work authorization will not be extended automatically due to the termination of the NRP. Moreover, the regulatory authority under which many Nicaraguans whose cases were under review by the NRP received employment authorization, 8 CFR 274a.12(c)(13), was eliminated as a result of new asylum regulations which became effective on January 4, 1995.

Nicaraguans and other persons who now have work authorization and who filed asylum applications *before* January 4, 1995, may obtain extensions of this authorization while their applications are pending adjudication or review by the INS, an immigration judge, the BIA, or a Federal court. Those who file asylum applications after January 4, 1995, must wait 150 days after their applications are filed to apply for work authorization.

Transitional criteria, however, will apply for 1 year from the date of this notice to some employment authorization requests from Nicaraguans affected by termination of the NRP. Specifically, the INS will treat the filing of a motion to reopen deportation proceedings accompanied by an application for suspension of

deportation as a sufficient basis upon which such a person may apply for work authorization. In such cases, work authorization may be granted upon a finding that the alien has met the physical presence requirement for suspension of deportation.

Dated: June 6, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95-14386 Filed 6-8-95; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Office of the Secretary

Women's Bureau; Commission on Family and Medical Leave; Notice of Public Hearing

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of public hearing.

SUMMARY: Pursuant to Title III of the Family Medical Leave Act (FMLA) of 1993 (P.L. 103-3) this is to announce a hearing on the experience of family and temporary medical leave policies for the Commission which is to take place on Monday, June 26, 1995. The purpose of the Commission is to, among other things, study the effects of existing and proposed policies relating to family and medical leave. The Commission has the practical task of conducting a comprehensive study of: (a) Existing and proposed mandatory and voluntary policies relating to family and temporary medical leave, including policies provided by employers not covered under the Act; (b) the potential costs, benefits, and impact on productivity, job creation and business growth of such policies on employers and employees; (c) possible differences in costs, benefits, impact on productivity, job creation and business growth of such policies on employers based on business type and size; (d) the impact of family and medical leave policies on the availability of employee benefits provided by employers, including employers not covered under this Act; (e) alternative and equivalent State enforcement of Title I with respect to employees described in section 108(a); (f) methods used by employers to reduce administrative costs of implementing family and medical leave policies; (g) the ability of the employers to recover, under section 104(c)(2), the premiums described in such section; and (h) the impact on employers and employees of policies that provided temporary wage replacement during periods of family and medical leave.

TIME AND PLACE: The hearing will be held on Monday, June 26, 1995, from 9:00 am until 12:00 pm, at the St. Mary's Medical Center, 450 Stanyan Street, San Francisco, California 94117.

AGENDA: The agenda for the hearing is as follows: three panels of witnesses will give testimony on their experiences with family and temporary medical leave policies.

STATEMENTS: Interested persons may submit, in writing, data, information or views on employer or employee experiences with family and temporary medical leave policies prior to or at the hearing.

PUBLIC PARTICIPATION: The hearing will be open to the public. Seating will be available on a first-come, first-served basis. Seats will be reserved for the media. Persons with disabilities should contact the Commission no later than June 19, 1995, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT:

Susan King, Executive Director, Commission on Leave, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-3002, Washington, D.C. 20210, telephone: (202) 219-4526, Ext. 102.

Signed at Washington, D.C. this 5th day of June, 1995.

Susan King,

Executive Director, Commission on Leave.

[FR Doc. 95-14432 Filed 6-12-95; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

National Skill Standards Board; Notice of Open Meeting

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the Goals 2000: Educate America Act of 1994, Title V, Pub. L. 103-227. The 28-member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnerships which have the full and balanced participation of business, industry, labor, education, and other key groups.

TIME AND PLACE: The meeting will be held from 8:00 a.m. to 12:00 noon on Monday, June 26, 1995, at the Main Conference Room of the International Brotherhood of Electrical Workers

(IBEW), International Office, 1125 15th Street NW., Washington, D.C.

AGENDA: The agenda for the Board meeting will include presentations on existing skill standards efforts by industries and States.

PUBLIC PARTICIPATION: The meeting from 8:00 a.m. to 12:00 noon, is open to the public. Seating is limited and will be available on a first-come, first-served basis. Seats will be reserved for the media. Disabled individuals should contact Daniel Burkitt at 202/208-7018, no later than June 19, 1995, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Daniel Burkitt at 202/208-7018.

Signed at Washington, D.C. this 7th day of June, 1995.

Tim Barnicle,

Acting Assistant Secretary for Employment and Training, Department of Labor.

[FR Doc. 95-14423 Filed 6-12-95; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95-039]

Government-Owned Inventions; Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions below are owned by the U.S. Government and are available for domestic, and possibly, foreign licensing.

Copies of patent applications cited are available from the National Technical Information Service, Springfield, VA 22161. Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent applications sold to avoid premature disclosure.

DATES: June 13, 1995.

FOR FURTHER INFORMATION CONTACT: National Aeronautics and Space Administration, Harry Lupuloff, Director of Patent Licensing, Code GP, Washington, DC 20546, telephone (202) 358-2041, fax (202) 358-4341.

Patent Application 07/973,592:

Composite Flexible Blanket Insulation; filed November 9, 1992
Patent Application 08/014,584:

Aerodynamic Surface Distention System for High Angle of Attack Forebody Vortex Control; filed February 8, 1993

Patent Application 08/014,581: Lift Enhancing Tab for Airfoils; filed February 8, 1993

Patent Application 08/018,128: A Current Loop Measuring System; filed February 16, 1993

Patent Application 08/032,067: Aircraft Maneuver Envelope Warning System; filed March 1, 1993

Patent Application 08/024,133: Optical Potential Field Mapping System; filed March 1, 1993

Patent Application 08/031,972: Liquid Crystal Flow Direction Indicator; filed March 16, 1993.

Dated: June 6, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95-14433 Filed 6-12-95; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-382]

Entergy Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee) to withdraw its October 15, 1993, application for proposed amendment to Facility Operating License No. NPF-38 for the Waterford Steam Electric Station, Unit No. 3, located in St. Charles Parish, Louisiana.

The proposed amendment would have revised the Technical Specifications by removing the requirement to maintain operational and test the containment hydrogen recombiners.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 22, 1993, (58 FR 67845). However, by letter dated May 19, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 15, 1993, and the licensee's letter dated May 19, 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 University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Dated at Rockville, Maryland, this 5th day of June 1995.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

*Project Manager, Project Directorate IV-1,
Division of Reactor Projects III/IV, Office of
Nuclear Reactor Regulation.*

[FR Doc. 95-14406 Filed 6-12-95; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-348 and 50-364]

**Southern Nuclear Operating Company
and Alabama Power Company, Joseph
M. Farley Nuclear Plant Units 1 and 2;
Exemption**

I

The Southern Nuclear Operating Company, et al. (SNC or the licensee) is the holder of Facility Operating License Nos. NPF-2 and NPF-8 for the Joseph M. Farley Nuclear Plant, Units 1 and 2 (Farley). The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission in effect now and hereafter.

The facility consists of two pressurized water reactors at Farley, located in Houston County, Alabama.

II

Title 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage," paragraph (a), in part, states that "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

Section 73.55(d), "Access Requirements," paragraph (1), specifies that "The licensee shall control all points of personnel and vehicle access into a protected area." Section 73.55(d)(5) requires that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." Section 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *"

The licensee has proposed to implement an alternative unescorted access control system that would eliminate the need to issue and retrieve badges at each entrance/exit location

and would allow all individuals with unescorted access to keep their badges when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated April 3, 1995, SNC requested an exemption from the requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have "the same high assurance objective" and meet "the general performance requirements" of the regulation, and "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Currently, unescorted access into the protected areas at the SNC plants is controlled through the use of a photograph on a badge/keycard (hereafter, referred to as "badge"). The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The licensee's employees and contractor personnel who have been granted unescorted access are issued badges upon entrance at each entrance/exit location and are returned upon exit. The badges are stored and are retrievable at each entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractors are not allowed to take these badges offsite.

Under the proposed biometric system, each individual who is authorized unescorted entry into protected areas would have the physical characteristics of his/her hand (i.e., hand geometry) registered, along with his/her badge number, in the access control system. When a registered user enters his/her badge into the card reader and places his/her hand onto the measuring surface, the system detects that the hand is properly positioned, and records the image. The unique characteristics of the hand image are then compared with the previously stored template in the access

control computer system corresponding to the badge to verify authorization for entry.

Individuals, including SNC employees and contractors, would be allowed to keep their badges when they depart the site and, thus, eliminate the need to issue, retrieve, and store badges at the entrance stations to the plant. Badges do not carry any information other than a unique identification number.

All other access processes, including search function capability, would remain the same. This system would not be used for persons requiring escorted access (i.e., visitors).

Based on the Sandia report, "A Performance Evaluation of Biometrics Identification Devices," SAND91-0276•UC-906, Unlimited Release, June 1991, that concluded hand geometry equipment possesses strong performance and high detection characteristics, and on its own experience with the current photo-identification system SNC determined that the proposed hand geometry system would provide the same high level of assurance as the current system that access is only granted to authorized individuals. The biometric system has been in use for a number of years at several sensitive Department of Energy facilities and, recently, at nuclear power plants.

The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. When the changes are implemented, the respective Physical Security Plan will be revised to include implementation and testing of the hand geometry access control system and to allow SNC employees and contractors to take their badges offsite.

When implemented, SNC will control all points of personnel access into a protected area under the observation of security personnel through the use of a badge and a hand geometry verification system. The numbered picture badge identification system will continue to be used for all individuals who are authorized unescorted access to protected areas. Badges will continue to be displayed by all individuals while inside the protected areas.

Since both the badge and hand geometry would be necessary for access into the protected areas, the proposed system would provide a positive verification process. The potential loss of a badge by an individual as a result of taking the badge offsite would not enable an unauthorized entry into protected areas.

IV

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet "the same high assurance objective," and "the general performance requirements" of the regulation and that "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.55, this exemption is authorized by law and will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption from the requirements of 10 CFR 73.55(d)(5) to allow individuals not employed by SNC (i.e., contractors) to take their photo identification badges offsite in conjunction with the use of hand geometry biometrics system to control access into protected areas at the Farley Nuclear plant.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (60 FR 29718).

For further details with respect to this action, see the request for exemption dated April 3, 1995, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burnshaw Street, Post Office Box 1369 Dothan, Alabama.

This exemption is effective upon issuance and is expected to be implemented when modifications, procedures, and training are completed.

Dated at Rockville, Maryland, this 5th day of June 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

*Director, Division of Reactor Projects—I/II,
Office of Nuclear Reactor Regulation.*

[FR Doc. 95-14408 Filed 6-12-95; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-382]

**Entergy Operations Inc.; Waterford
Steam Electric Station, Unit 3
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. NPF-

38, issued to Entergy Operations, Inc., (the licensee), for operation of the Waterford Steam Electric Station, Unit 3, located in St. Charles Parish, Louisiana.

Environmental Assessment

Identification of the Proposed Action

The proposed action would change the technical specifications (TSs) to increase the maximum enrichment for the spent fuel pool and containment temporary storage rack from 4.1 to 4.9 weight percent U-235 when fuel assemblies contain fixed poisons.

The proposed action is in accordance with the licensee's application for amendment dated January 27, 1995.

The Need for the Proposed Action

The proposed action is needed so that the licensee can use higher fuel enrichment to meet cycle energy requirements and to permit future operation with longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TSs. The proposed revisions would permit storage of fuel enriched to a nominal 4.9 weight percent U-235. The safety considerations associated with storing new and spent fuel of a higher enrichment have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation (an enveloping case for Waterford Unit 3) were published and discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988, and published in the **Federal Register** (53 FR 30355) on August 11, 1988, as corrected on August 24, 1988 (53 FR 32322) in connection with Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged

or may, in fact, be reduced from those summarized in Table S-4 as set forth in 10 CFR 51.52(c). Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Waterford Unit 3.

Agencies and Persons Consulted

In accordance with its stated policy, on May 23, 1995, the staff consulted with the Louisiana State official, Prosanta Chowdhury of the Louisiana Radiation Protection Division, 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 January 27, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of New Orleans Library,

Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Dated at Rockville, Maryland, this 7th day of June 1995.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Project Directorate IV-1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95-14409 Filed 6-12-95; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-21112; International Series Release No. 818; File No. 812-9556]

Creditanstalt-Bankverein; Notice of Application

June 7, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Creditanstalt-Bankverein ("Creditanstalt").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from section 17(f) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order to permit Creditanstalt a.s., in Prague, the Czech Republic ("Creditanstalt (Czech Republic)"), Bank Creditanstalt S.A., in Warsaw, Poland ("Creditanstalt (Poland)"), Creditanstalt a.s., in Bratislava, Slovakia ("Creditanstalt (Slovakia)"), and Banka Creditanstalt d.d., in Ljubljana, Slovenia ("Creditanstalt Slovenia") (collectively, the "Foreign Subsidiaries") to act as custodians or subcustodians for investment company assets.

FILING DATE: The application was filed on March 28, 1995, and amended on May 11, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 3, 1995 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicant, Schottengasse 6, A-1010 Vienna, Austria; c/o Bruce E. Clubb, Esq., Baker & McKenzie, 815 Connecticut Avenue NW., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 942-0582, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Creditanstalt is an Austrian commercial bank that provides a broad range of banking and financial services, including custody services. Creditanstalt currently holds assets belonging to registered investment companies. It is regulated in Austria by the Banking Supervisory Authority, the government authority that regulates banks in Austria. As of December 31, 1993, Creditanstalt had shareholders' equity in excess of the equivalent of U.S. \$2 billion.

2. Creditanstalt (Czech Republic) was established in Prague in March 1991, having been granted a full banking license by the former State Bank of Czechoslovakia on February 5, 1991. It is a wholly-owned direct subsidiary of Creditanstalt. It is authorized to engage in the business of commercial banking and is supervised by the Czech National Bank.¹ It provides comprehensive banking services to its customers, including custody services.

3. Creditanstalt (Poland) was established in Warsaw in early 1991, following Decision No. 5 of the President of the National Bank of Poland dated January 17, 1991. It is a wholly-owned direct subsidiary of Creditanstalt. It is authorized to engage in the business of commercial banking and is supervised by the National Bank of Poland.² It is one of the few foreign-owned banks in Poland to offer a comprehensive range of banking services to its customers, including custody services.

4. Prior to the division of the former Czechoslovakia in 1993 into the Czech

Republic and Slovakia, Creditanstalt operated a number of branches in Bratislava, now the capital of the Slovak Republic. In 1994, Creditanstalt separately incorporated its Bratislava branch into Creditanstalt (Slovakia). Creditanstalt (Slovakia) is a wholly-owned direct subsidiary of Creditanstalt.

It is authorized to engage in the business of commercial banking and is supervised by the National Bank of Slovakia.³ It provides comprehensive banking services to its customers, including custody services.

5. Creditanstalt (Slovenia) was established in Ljubljana in early 1990. It is a wholly-owned direct subsidiary of Creditanstalt. It is authorized to engage in the business of commercial banking and is supervised by the Bank of Slovenia, the Republic Secretariat of Finance, and the bank-deposit insurance agency.⁴ It provides comprehensive banking services to its customers, including custody services. Slovenian law currently prohibits banks in that country from providing custody services for customers that are non-residents of that country. This prohibition is expected to be lifted, however, as the Government of Slovenia adopts measures to encourage foreign investment in that country.

6. Creditanstalt requests an order under section 6(c) to (a) permit Creditanstalt, as custodian or subcustodian for any management investment company registered under the Act, other than an investment company registered under section 7(d) of the Act (a "U.S. Investment Company"), to deposit, or cause or permit a U.S. Investment Company to deposit, its Foreign Securities, cash, and cash equivalents ("Assets") with the Foreign Subsidiaries as delegates for Creditanstalt, or (b) permit the Foreign Subsidiaries (as custodians or subcustodians) to receive the Assets of a U.S. Investment Company directly from the U.S. Investment Company or its custodian or subcustodian (other than Creditanstalt). As used herein, "Foreign Securities" includes: (a) securities issued and sold primarily outside the United States by a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country; and (b) securities issued or guaranteed by the government of the United States

¹ The Czech National Bank is the central bank of the Czech Republic and is an agency of the government of that country.

² The National Bank of Poland is the central bank of Poland and is an agency of the government of that country.

³ The National Bank of Slovakia is the central bank of Slovakia and is an agency of the government of that country.

⁴ All three of these entities are agencies of the government of Slovenia.

or by any state or any political subdivision thereof or by any agency thereof or by any entity organized under the laws of the United States or any state thereof which have been issued and sold primarily outside the United States.

7. The Foreign Subsidiaries will accept deposits of Assets pursuant to a written, three-party agreement between (a) a Foreign Subsidiary, (b) Creditanstalt, and (c) a U.S. Investment Company or its custodian. The agreement will provide that Creditanstalt will assume liability for any loss arising out of or in connection with the performance by the Foreign Subsidiary of its responsibilities under the agreement to the same extent as if Creditanstalt had itself been required to provide custody services under the agreement. There will be no difference in the nature or extent of Creditanstalt's liability based on whether such services are provided by the Foreign Subsidiaries directly or as Creditanstalt's delegates.

Applicant's Legal Analysis

1. Section 17(f) of the Act requires a registered investment company to maintain its securities and similar investments in the custody of a bank meeting the requirements of section 26(a) of the Act, a member firm of a national securities exchange, the investment company itself, or a system for the central handling of securities established by a national securities exchange. Section 2(a)(5) of the Act defines "bank" to include banking institutions organized under the laws of the United States, member banks of the Federal Reserve System, and certain banking institutions or trust companies doing business under the laws of any state or of the United States. The Foreign Subsidiaries do not fall within the definition of "bank" as defined in the Act and, under section 17(f), may not act as custodians for registered investment companies.

2. Rule 17f-5 under the Act permits certain entities located outside the United States to serve as custodians for investment company assets. One such entity is a banking institution or trust company that is incorporated or organized under the laws of a country other than the United States, that is regulated as such by that country's government or an agency thereof, and that has shareholders' equity in excess of U.S. \$200 million. Creditanstalt qualifies as an eligible foreign custodian under rule 17f-5. The Foreign Subsidiaries, however, do not qualify as eligible foreign custodians because they do not meet the minimum shareholders' equity requirement.

3. The purpose of section 17(f) of the Act is to insure that U.S. Investment Companies hold securities in a safe manner that protects the interests of their shareholders. The purpose of rule 17f-5 is to relieve U.S. Investment Companies of the expense and inconvenience of moving assets to a United States bank away from their primary trading market, while at the same time reducing to the extent practicable the risks inherent in maintaining assets outside the United States. The requested exemption is consistent with these purposes and with the protection of investors because, under the proposed custody arrangements, Creditanstalt will be liable for the performance of custody services by each Foreign Subsidiary.

Applicant's Conditions

Creditanstalt agrees that any order granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements proposed regarding each Foreign Subsidiary will satisfy the requirements of rule 17f-5 in all respects other than the Foreign Subsidiary's level of shareholders' equity.
2. Creditanstalt, any U.S. Investment Company, and any custodian for a U.S. Investment Company, will deposit Assets with a Foreign Subsidiary only in accordance with an agreement (the "Agreement") required to remain in effect at all times during which the Foreign Subsidiary fails to satisfy the requirements of rule 17f-5 (and during which such Assets remain deposited with the Foreign Subsidiary). Each Agreement will be a three-party agreement among Creditanstalt, the Foreign Subsidiary, and the U.S. Investment Company or the custodian for a U.S. Investment Company pursuant to which Creditanstalt or the Foreign Subsidiary, as the case may be, will undertake to provide specified custody services. If Creditanstalt is to provide such services, the Agreement will authorize Creditanstalt to delegate to the Foreign Subsidiary such of the duties and obligations of Creditanstalt as will be necessary to permit the Foreign Subsidiary to hold in custody the U.S. Investment Company's Assets. If the Foreign Subsidiary is to provide services directly, no such delegation will be necessary. However, in either case, the Agreement will provide that Creditanstalt will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by the Foreign Subsidiary of its responsibilities under the Agreement to the same extent as if Creditanstalt had itself been required to

provide custody services under the Agreement. Further, the Agreement will provide that, in the event of loss, a U.S. Investment Company may pursue a claim for recovery against Creditanstalt, regardless of whether the Foreign Subsidiary acted as Creditanstalt's delegate or as direct custodian or subcustodian.

3. Creditanstalt currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f-5(c)(2)(i).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-14437 Filed 6-12-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21111; 812-9584]

Dean Witter Select Equity Trust

June 6, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Dean Witter Select Equity Trust.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would exempt applicant from section 12(d)(3) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order on behalf of its series (the "Series") to permit each Series to invest up to twenty percent of its total assets in securities of issuers that derived more than fifteen percent of their gross revenues in their most recent fiscal year from securities related activities.

FILING DATE: The application was filed on May 2, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 3, 1995 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicant c/o Dean Witter Reynolds Inc., Unit Trust Department, Two World Trade Center, New York, NY 10048, Attn: Thomas Hines.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942-0573, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Each Series will be a series of applicant, a unit investment trust registered under the Act. Dean Witter Reynolds Inc. is applicant's depositor (the "Sponsor"). The Sponsor currently intends to offer a new Series four times a year at about the beginning of each calendar quarter.

2. Each Series will invest approximately 20%, but in no event more than 20.5%,¹ of the value of its total assets in each of the five lowest dollar price per share stocks of the ten common stocks in the Dow Jones Industrial Average ("DJIA") with the highest dividend yields either on or shortly before the initial date of deposit (the "Select Five"), and hold those stocks over the life of the Series (presently anticipated to be approximately one year).

3. The DJIA comprises 30 common stocks chosen by the editors of The Wall Street Journal. The DJIA is the property of Dow Jones & Company, Inc., which is not affiliated with any Series or the Sponsor and does not participate in any way in the creation of any Series or the selection of its stocks.

4. The portfolio securities deposited in each Series will be chosen solely according to the formula described above, and will not necessarily reflect the research opinions or buy or sell recommendations of the Sponsor. The Sponsor will have no discretion as to which securities are purchased.

¹ The Sponsor will attempt to purchase equal values of each of the five common stocks in a Series' portfolio and may choose to purchase the securities in odd lots in order to achieve this goal. However, it is more efficient if securities are purchased in 100 share lots and 50 share lots. As a result, the Sponsor may choose to purchase securities of a securities related issuer which represent over 20%, but in no event more than 20.5% percent, of a Series' assets on the initial date of deposit to the extent necessary to enable the Sponsor to meet its purchase requirements and to obtain the best price for the securities.

Securities deposited in a Series may include securities of issuers that derived more than fifteen percent of their gross revenues in their most recent fiscal year from securities related activities.

5. During the 90-day period following the initial date of deposit, the Sponsor may deposit additional securities while maintaining to the extent practicable the original proportionate relationship among the number of shares of each stock in the portfolio. Deposits made after this 90-day period generally must replicate exactly the proportionate relationship among the face amounts of the securities comprising the portfolio at the end of the initial 90-day period, whether or not a stock continues to be among the Select Five.

6. A Series' portfolio will not be actively managed. Sales of portfolio securities will be made in connection with redemptions of units issued by a Series and at termination of the Series. The Sponsor has no discretion as to when securities will be sold except that it is authorized to direct the trustee to sell securities in extremely limited circumstances, namely, upon failure of the issuer of a security in a Series to declare or pay anticipated cash dividends, institution of certain materially adverse legal proceedings, default under certain documents materially and adversely affecting future declaration or payment of dividends, or the occurrence of other market or credit factors that, in the opinion of the Sponsor, would make the retention of such securities in a Series detrimental to the interests of the unitholders. The adverse financial condition of an issuer will not necessarily require the sale of its securities from a Series' portfolio.

Applicant's Legal Analysis

1. Section 12(d)(3) of the Act, with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3-1(b) under the Act exempts the purchase of securities of an issuer that derived more than fifteen percent of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after such acquisition, the acquiring company has invested not more than five percent of the value of its total assets in securities of the issuer. Section 6(c) of the Act provides that the SEC may exempt a person from any provision of the Act or any rule thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the

purposes fairly intended by the policy and provisions of the Act.

2. Applicant requests an exemption under section 6(c) from section 12(d)(3) to permit any Series to invest up to approximately 20%, but in no event more than 20.5%, of the value of its total assets in securities of an issuer that derives more than fifteen percent of its gross revenues from securities related activities. Applicant and each Series will comply with all provisions of rule 12d3-1, except for the five percent limitation in paragraph (b)(3) of the rule.

3. Section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, to prevent potential conflicts of interest, and to eliminate certain reciprocal practices between investment companies and securities related business. One potential conflict could occur if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant believes that this concern does not arise in connection with its application because neither applicant nor the Sponsor has discretion in choosing the portfolio securities or percentage amount purchased. The security must first be included in the DJIA, which is unaffiliated with the Sponsor and applicant, and must also qualify as one of the five lowest dollar price per share stocks of the ten highest dividend yielding securities in the DJIA.

4. Applicant also believes that the effect of a Series' purchase on the stock of parents of broker-dealers would be *de minimis*. Applicant asserts that the common stocks of securities related issuers represented in the DJIA are widely held, have active markets, and that potential purchases by any Series would represent an insignificant amount of the outstanding common stock and the trading volume of any of these issues. Accordingly, applicant believes that it is highly unlikely that Series purchases of these securities would have any significant impact on the securities' market value.

5. Another potential conflict of interest could occur if an investment company brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. To preclude this type of conflict, applicant and each Series agree, as a condition of this application, that no company held in the portfolio of a Series nor any affiliate thereof will act as a broker for

any Series in the purchase or sale of any security for its portfolio. In light of the above, applicant believes that its proposal meets the section 6(c) standards.

Condition

The Applicant and each Series agree that any order granted under this Application may be conditioned upon no company held in the Series' portfolio nor any affiliate thereof acting as broker for any Series in the purchase or sale of any security for the Series' portfolio.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-14438 Filed 6-12-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21118; No. 812-9488]

Maxim Series Fund, Inc.

June 7, 1995.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Maxim Series Fund, Inc. ("Fund").

RELEVANT 1940 ACT SECTION: Order requested under Sections 6(c) and 17(b) for an exemption from Sections 17(a)(1) and 17(a)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order that would permit the exchange of shares between certain Fund portfolios.

FILING DATE: The application was filed on February 21, 1995, and amended on June 5, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 28, 1995, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street,

NW., Washington, DC 20549. Applicant, Maxim Series Fund, Inc., c/o Beverly A. Byrne, Esq., 8515 East Orchard Road, Englewood, Colorado 80111.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel, or Wendy Friedlander, Deputy Chief, at (202) 942-0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Fund is a Maryland corporation registered under the 1940 Act as an open-end, diversified management investment company. The Fund consists of twenty-one investment portfolios, three of which are the subject of this application: (a) Growth Index Portfolio; (b) Value Index Portfolio; and (c) Small-Cap Index Portfolio (collectively, "Portfolios"). Great West Life Assurance Company ("Adviser") serves as the investment adviser to the Fund.

2. Shares of the Portfolios currently are sold in connection with certain tax-qualified insurance contracts to: (a) Future Funds Series Account II, a separate account of Great-West Life & Annuity Insurance Corporation ("GWL&A"); and (b) TNE Series (K) Account, a separate account of The New England Life Insurance Company. Shares of the Portfolio may be offered in the future to other separate accounts of GWL&A or of other insurance companies.

3. The investment objectives of the Portfolios are related to corresponding indices of the Frank Russell Company ("Russell"). The investment objectives of the Value Index Portfolio, the Growth Index Portfolio and the Small-Cap Index Portfolio are to provide investment results, before fees, that correspond, respectively, to the total return of the Russell 1000 Value index, the Russell 1000 Growth Index, and the Russell 2000 Index. Under normal circumstances, a minimum of 65% of each of the Portfolio's net assets will be invested in securities included in the corresponding Russell Index.

4. On May 31, of each year, the Russell 1000 Index (of which the Russell 1000 Growth Index and Russell 1000 Value Index are subsets) and the Russell 2000 Index are reconstituted to reflect changes in the marketplace.¹ Consequently, some stocks previously

included in one Russell index, or its subset index, may thus become part of the other Russell index, or its subset. Following the reconstitution of the Russell indices, a corresponding reconstitution of the Portfolios occurs, on or about June 30 of each year, consistent with each Portfolio's respective investment objectives.

5. The Portfolios thus propose to directly purchase from and sell to each other their respective portfolio securities in private transactions ("Reconstitution Transactions"),² as follows:³

a. *Growth Index Portfolio:* As a direct result of the reconstitution of the Russell 1000 Growth Index, the Growth Index Portfolio proposes to sell specific portfolio securities, and the Value Index Portfolio or the Small-Cap Index Portfolio simultaneously propose to purchase those same securities, as a direct result of the reconstitution of the Russell 1000 Value Index or the Russell 2000 Index, respectively;

b. *Value Index Portfolio:* As a direct result of the reconstitution of the Russell 1000 Value Index, the Value Index Portfolio proposes to sell specific portfolio securities, and the Growth Index Portfolio or the Small-Cap Index Portfolio simultaneously propose to purchase those same portfolio securities as a direct result of the reconstitution of the Russell 1000 Growth Index or the Russell 2000 Index, respectively; and

c. *Small-Cap Index Portfolio:* As a direct result of the reconstitution of the Russell 2000 Index, the Small-Cap Index Portfolio proposes to sell specific portfolio securities, and the Value Index Portfolio or the Growth Index Portfolio simultaneously propose to purchase those same portfolio securities as a direct result of the reconstitution of the Russell 1000 Value Index or the Russell 1000 Growth Index, respectively.

6. Applicant proposes that cash consideration be paid by one Portfolio to another Portfolio only to the extent of the net difference in the aggregate purchase price of the securities bought or sold between two Portfolios. The remaining consideration will be paid

² Applicant represents that the Reconstitution transactions will not include any purchases or sales in which any of the Portfolios are both buyers and sellers of the same Portfolio securities.

³ Applicant states that the Portfolios also may purchase or sell Portfolio securities as a direct result of the reconstitution of the respective Russell indices that are not being simultaneously sold to or purchased by another Portfolio because either: (i) the newly reconstituted Russell Index contains different stocks than previously were included, or (ii) the Portfolios do not exactly match their corresponding Russell indices. Applicants represent that these sales and purchases are not deemed to be Reconstitution Transactions and, therefore, are not the subject of this application.

¹ The Russell 100 Index and the Russell 2000 Index are subsets of the Russell 3000 Index.

with the prompt delivery of securities valued at current market prices.⁴ Applicant states that the Reconstitution Transactions will avoid unnecessary brokerage commissions and other transaction costs of market transactions.

Applicant's Legal Analysis

1. Section 17(a) of the 1940 Act prohibits affiliates of a registered investment company, or affiliates of such affiliates acting as principal, from knowingly selling to or purchasing from the registered investment company any security or other property, except under certain circumstances. Applicant states that the Reconstitution Transactions may be prohibited by Section 17(a) because the Fund and each Fund Portfolio may be deemed to be an affiliate of a registered investment company, or an affiliate of such an affiliate, as defined in Section 2(a)(3) of the 1940 Act.

2. Section 17(b) of the 1940 Act provides exemptive relief from Section 17(a) if: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act. Rule 17a-7 under the 1940 Act also provides exemptive relief from Section 17(a), provided certain specified conditions are met.

3. Applicant submits that the terms of the proposed transactions satisfy Section 17(b). Applicant represents that the Reconstitution Transactions will be made at the respective portfolio securities' "Current Market Prices," as defined in Rule 17a-7 under the 1940 Act, with the consideration to be paid or received being cash and/or the

delivery of portfolio securities of an equivalent value (based upon those portfolio securities' Current Market Prices).

4. Applicant states that no brokerage commission, fee (except for customary transfer fees), or other remuneration will be paid in connection with any of the Reconstitution Transactions. Applicant further states that the purpose of the Reconstitution Transactions is to enable the Portfolios to avoid incurring unnecessary brokerage expenses and other transaction costs to the ultimate detriment of Contract owners. By effecting the Reconstitution Transactions through exchanges of securities between Portfolios (instead of market transactions through broker-dealers), the Portfolios will enjoy a net cost savings equal to: (a) the amount of brokerage commissions that otherwise would have been paid to such broker-dealers, and (b) any differences in the price paid or received on the purchase or sale of the portfolio securities through a broker-dealer (which would be based on bid and asked prices for reported securities) and the "Current Market Price" that Applicant would use in effecting the Reconstitution Transactions.

5. Applicant states that the amount of savings for 1994 (or any year thereafter) can not be estimated with any degree of certainty because the extent to which the Russell indices will be reconstituted on May 31, 1995 (or any year thereafter) is not yet known. Applicant represents, however, that brokerage commission savings to the Portfolios would be \$0.04 per share for each share transferred in the Reconstitution Transactions (as opposed through a broker-dealer).

6. Applicant represents that each purchase and sale comprising the Reconstitution Transactions will be consistent with the policy of each Portfolio, as recited in the Fund's registration statement and reports filed under the 1940 Act.

7. Applicant states that the Reconstitution Transactions will be effected only when the respective Portfolios independently determine which securities it will purchase and sell, and independently decide: (a) to purchase and sell the same portfolio securities; and (b) that it is more advantageous to that Portfolio to purchase or sell the Portfolio security from or to the other Portfolio, as compared with an open market purchase or sale.

8. Applicant states that the Reconstitution Transactions are consistent with the general purposes of the 1940 Act and do not present any of the issues or abuses that the Act is

designed to prevent. Moreover, Applicant submits that the Reconstitution Transactions will be effected in a manner consistent with the public interest and the protection of investors.

9. Applicant represents that the Reconstitution Transactions will be made in compliance with all of the requirements of Rule 17a-7, except for one element of subparagraph (a) of the Rule. Rule 17a-7(a) requires in connection with certain purchase and sale transactions that there be "no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available." In the Reconstitution Transactions, a portion of the consideration will be Portfolio securities rather than cash. Applicant proposes that cash consideration be paid to a Portfolio from another Portfolio only to the extent the aggregate price of the portfolio securities acquired by a Portfolio from another Portfolio exceeds the aggregate price of the portfolio securities sold by that Portfolio to such other Portfolio. The remaining consideration would be the prompt delivery of Portfolio securities, valued at Current Market Prices, to such other Portfolio.

10. Applicant states that the nature of the proposed transactions does not give rise to the type of potential abuse Rule 17a-7 was designed to guard against. Applicant submits that Rule 17a-7 was designed to permit investment companies to sell securities between themselves at Current Market Prices without necessary incurring costs, including brokerage costs, to the detriment of investors. Applicant states that the Reconstitution Transactions will be effected at Current Market Prices and thus will avoid unnecessary brokerage costs.

11. Applicant represents that the Fund's board of directors, including a majority of the directors who are not interested persons of the Fund, will (i) adopt procedures pursuant to which the Reconstitution Transactions may be effected, which are reasonably designed to provide that all the conditions in paragraphs (a) through (d) of Rule 17a-7 have been complied with, except the condition set forth in paragraph (a) that requires the transaction to be effected for no consideration other than cash, (ii) make and approve such changes as the board deems necessary, and (iii) determine no less frequently than quarterly that all such purchases or sales made during the preceding quarter were effected in compliance with such procedures. Additionally, the Fund will (i) maintain and preserve permanently,

⁴ For example, on June 30, 1995, the Growth Index Portfolio purchases portfolio securities from the Value Index Portfolio with an aggregate purchase price of \$1 million based on "Current Market Prices," as defined in Rule 17a-7. Simultaneously, the Value Index Portfolio purchases different portfolio securities from the Growth Index Portfolio with an aggregate purchase price of \$1.2 million based on Current Market Prices. Under these circumstances, Applicants propose that the transactions be settled by: (a) the prompt delivery by the Growth Index Portfolio to the Value Index Portfolio of portfolio securities with the aggregate Current Market Value of \$1.2 million, and (b) the prompt delivery by the Value Index Portfolio to the Growth Index Portfolio of the portfolio securities with the aggregate Current Market Value of \$1 million together with \$200,000 in cash.

in an easily accessible place, a written copy of the procedures (and any modifications thereto) described in paragraph (e) of Rule 17a-7, and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years, in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the person [portfolio] on the other side of the transaction, the terms of the purchase or sale transaction, and the information or materials upon which the determinations described in paragraph (e)(3) of Rule 17a-7 were made.

12. Applicant therefore submits that the Reconstitution Transactions are, in substance, the type of transactions ordinarily exempted by Rule 17a-7.

13. Applicant also requests relief pursuant to Section 6(c) of the 1940 Act, because the Commission has interpreted Section 17(b) of the 1940 Act as authorizing the granting of exemptive relief from Section 17(a) on a transaction-by-transaction basis only. Applicant requests relief pursuant to Section 6(c) exempting Applicant from Section 17(a) to the extent necessary to permit Applicant to engage in the Reconstitution Transactions each year.

14. Section 6(c) of the 1940 Act provides that the Commission "by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of [the Act] or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act]."

15. Applicant submits that the exemptions requested under Section 6(c) are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicant's Conditions

Applicant represents and agrees to the following conditions:

1. Each of the Reconstitution Transactions will be: (a) a purchase or sale, for no consideration other than the delivery of portfolios securities valued at the independent "Current Market Price" (as defined in Rule 17a-7 under the 1940 Act), or, (b) to the extent the aggregate price of the portfolio securities acquired by one Portfolio from another

Portfolio exceeds the aggregate price of the portfolio securities sold by that Portfolio to such other Portfolio, a cash payment for the difference, against prompt delivery of a security for which market quotations are readily available.

2. Each of the Reconstitution Transactions will be effected at the security's independent "Current Market Price," as defined in Rule 17a-7 under the 1940 Act.

3. Each of the Reconstitution Transactions will be consistent with the policy of each of the Portfolios participating in such transactions, as recited in the Fund's registration statement and reports filed under the 1940 Act.

4. No brokerage commission, fee (except for customary transfer fees), or other remuneration will be paid in connection with any of the Reconstitution Transactions.

5. The Fund's board of directors, including a majority of the directors who are not interested persons of the Fund, shall (a) review the terms of the Reconstitution Transactions, the composition of the investment portfolios of the affected Portfolios, and the value (and valuation method) of the investment securities comprising the purchase price in the Reconstitution Transactions; (b) adopt a resolution determining that each of the Reconstitution Transactions are reasonable and fair to the affected portfolios, that the Reconstitution Transactions would not subject any of the affected Portfolios to overreaching, and that each of the Reconstitution Transactions are consistent with the policy of each of the Portfolios participating in such transactions, as recited in the Fund's registration statement and reports filed under the 1940 Act; (c) make and approve such changes as the board deems necessary; and (d) determine at the board meeting next following any Reconstitution Transactions that such Reconstitution Transactions were effected in compliance with such procedures.

6. The Fund agrees that it will maintain and preserve (a) permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition "5", and (b) for a period not less than six years from the end of the fiscal year in which any Reconstitution transactions occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the securities purchased or sold in such transaction, and the information or materials upon which the determinations described in condition "5(d)" were made.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-14439 Filed 6-13-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35807; File No. SR-NSCC-95-03]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

June 5, 1995.

On March 1, 1995, National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR-NSCC-95-03) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").¹ On March 27, 1995, NSCC filed an amendment to the proposed rule change.² Notice of the proposal was published in the **Federal Register** on April 14, 1995, to solicit comments from interested persons.³ No comments were received. As discussed below, this order approves the proposed rule change.

I. Description

In October 1993, the Commission adopted Rule 15c6-1 under the Act which will become effective June 7, 1995.⁴ Rule 15c6-1 establishes three business days after the trade date ("T+3"), instead of five business days ("T+5"), as the standard settlement cycle for most securities transactions. The purpose of NSCC's proposed rule change is to amend NSCC's rules to be consistent with Rule 15c6-1 and with a T+3 settlement standard for most securities transactions.

In order to accommodate a T+3 settlement cycle, many of the time frames contained in NSCC's rules are being shortened. These changes include such things as all references to a five day settlement time frame being changed to reflect a three day settlement

¹ 15 U.S.C. § 78s(b) (1988).

² Letter from John P. Barry, Associate Counsel, NSCC, to Christine Sibille, Senior Counsel, Division of Market Regulation, Commission (March 27, 1995).

³ Securities Exchange Act Release No. 35577 (April 6, 1995), 60 FR 19104.

⁴ Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adopting Rule 15c6-1) and 34952 (November 9, 1994), 59 FR 59137 (changing effective date from June 1, 1995, to June 7, 1995).

time frame.⁵ Trades compared after such time as established on T+2 will not be included in the normal settlement cycle.⁶ All transactions entered into NSCC's balance order accounting operation or into the foreign security accounting on T+2 or thereafter will be processed on a trade-for-trade basis.⁷ The proposed rule change will amend NSCC Rules to provide dividend protection to an "as of" trade entered at least two business days prior to the payable date.⁸ Only trades in balance order securities executed on the New York Stock Exchange ("NYSE"), American Stock Exchange ("Amex"), and over-the-counter ("OTC") compared on T and T+1 will be netted, and the net balance orders will be issued on T+2.⁹ Continuous Net Settlement ("CNS") eligible items will be entered into the CNS accounting operation for transfers through NSCC's Automated Customer Account Transfer ("ACAT") Service on T+1.¹⁰ All time frames relating to voluntary corporate reorganizations processed through NSCC's CNS Reorganization Processing System will be shortened by two days.¹¹ NSCC's Procedures will require that the adjustment contract totals represent the combined input for T through T+2 that is compared.¹² Trades reported on the Consolidated Trade Summary will include trades compared through T+1.¹³ As-of-trades submitted two days prior to payable date will be included in the dividend activity report.¹⁴ A member will be informed of its potential liability from a short position on T+2.

The proposed rule change also makes a certain ancillary modifications to NSCC's Rules and Procedures in order to delete references to obsolete services, procedures, forms, and methods of communications. All references to the SCC Division of the NSCC are being eliminated.¹⁵ Cross-references to specific rules which contain timing provisions are being changed to refer to

the rules generally. Furthermore, the clauses beginning with "up to and including" in the definitions of "Comparison Operation", "Foreign Security Accounting Operation", and "Balance Order Accounting Operation" also are being eliminated.¹⁶

The definitions of "Basket Trade" and "Mini Basket" contained in Rule 1 are being deleted because NYSE no longer offers these types of products, and therefore, NSCC does not clear it. Accordingly, references to Basket Trades and Mini Baskets contained in NSCC's Procedures and fees for processing these trades are being deleted.¹⁷

References to nonmembers' ability to use NSCC's New York State Transfer Taxes service are being eliminated because no nonmember has requested the use of NSCC's facility to pay these taxes in over ten years.¹⁸ NSCC is limiting the number of banks which can hold securities pledged by members for the NSCC clearing fund by providing that these banks will be chosen by NSCC and not by the members.¹⁹

There are several places in NSCC's rules where changes are being made to reflect the continuing automation of systems and the elimination of paper intensive processes. These include the elimination of the use of certain forms, changing references to data received rather than tickets delivered, and the elimination of the requirement of acknowledging transactions through paper submission.²⁰

NSCC is amending rules to clarify that NSCC has the right to deny access to additional services to members that are not currently using the service if NSCC does not have adequate capability to perform that service.²¹ NSCC is amending its rules to reflect the current

practice of NSCC preparing all checks sent to members.²²

The exchanges and the NASD have rules concerning good delivery of physical securities.²³ NSCC is amending its rules to require that deliveries must meet such good delivery requirements.²⁴ NSCC's rules on good delivery are being deleted.²⁵

Pursuant to Addendum F, members who have failed to pay timely amounts due have been required to settle amounts greater than \$100,000 in Federal Funds. NSCC's settlement rule is being amended to reflect this longstanding practice.²⁶

NSCC is eliminating the ability of members to charge an amount to their account at NSCC.²⁷ Members may use NSCC's Funds Only Settlement Service to achieve the same objective. NSCC is deleting references to the Signature Distribution Service because the service was never implemented and has been made obsolete with the introduction of current Medallion Program.²⁸ NSCC will require that close outs be completed promptly when NSCC ceases to act for a member.²⁹

NSCC is amending its rules to provide that only the board of directors, the chairman of the board, the president, executive vice president, and certain designated officers of NSCC may suspend the rules when necessary or expedient.³⁰ NSCC will inform the Commission of any change in the officers designated to suspend the rules.³¹ Similarly, NSCC rules now will provide that except where action of the board of directors is specifically required, only the chairman, the president, any executive vice president, the secretary, and certain designated officers may take action on behalf of NSCC.³²

NSCC's Procedures now will include references to when-distributed transactions, which result from stock splits and are treated in the same manner as when-issued transactions.³³ NSCC's Procedures will state that the settlement date for corporate debt new

⁵ Procedures III.D, VII.B., VII.C., XIII, and Addendum K. In addition, the time frame for NSCC's guarantee of trades contained in Addendums K and M will begin on T+2. References to a five day settlement time frame contained in Procedures II.I.2 and 3 and III.C will be deleted.

⁶ Procedures II.B.1(c), II.C.2(f), II.D.2(i), and III.E.

⁷ Procedures V.B and VI.B.

⁸ Rule 11, Section 8(d).

⁹ Procedure V.C.

¹⁰ Rule 50, Section 10.

¹¹ Procedure VII.H.4(b).

¹² Procedure II.B.1(c).

¹³ Procedure VI.A.

¹⁴ Procedure VII.G.2.

¹⁵ The SCC was one of the predecessors of NSCC, and its rules were incorporated into NSCC's rules. To ease the transition at the time of NSCC's formation, NSCC retained the reference to the SCC by indicating that the rules were for the SCC Division.

¹⁶ Rule 1.

¹⁷ Procedures II.A and H and Addendum A, Section 1.E.

¹⁸ Rule 3, Section 2 and Rules 14 and 26.

¹⁹ Rule 4, Section 1.

²⁰ Such changes can be found in the following sections.

Rule 5, Section 1

Rule 7, Sections 3 (eliminates need of member to confirm to NSCC contract lists)

Rule 12, section 1

Rule 18, Sections 2 and 3 (eliminates return of tickets when NSCC ceases to act for a member)

Procedure VII.D.2(c)

Procedure VII.I

Procedures VIII.A and B (eliminates clearance/settlement statement)

Procedure X.B

Procedure XIV

Addendum A, Sections IV.S and V.B

Addendum C, Section 1

²¹ Rule 2, Section 3 and Procedure IV.D.

²² Rule 5, Section 2.

²³ See, e.g., NYSE Rules 175-226.

²⁴ Rule 9, Section 1.9 and Rule 44, Section 7.

²⁵ Rule 44, Sections 8-39.

²⁶ Rule 12, Section 1.

²⁷ Rule 13.

²⁸ Rule 17.

²⁹ Rule 18, Section 2.

³⁰ Rule 22.

³¹ Letter from John P. Barry, Associate Counsel, NSCC, to Jonathan Kallman, Associate Director, Division of Market Regulation, Commission (March 27 1995).

³² Rule 23.

³³ Procedures II.A and E.

issues now will be established by the appropriate regulatory authority.³⁴

NSCC's Reconfirmation and Pricing Service ("RECAPS") now will be run from time to time to provide flexibility in the event of operational necessities.³⁵ The CNS Accounting Operation will no longer use subaccounts for the settlement of option exercises.³⁶ NSCC is eliminating its Delivery to Clearing Service.³⁷

NSCC is amending its Procedures to conform to the practice that Net CNS Money Settlement Amounts calculated by members may be verified against the Settlement Activity Statement but are not required to be verified.³⁸ NSCC is eliminating the ability of members to select an alternate clearing corporation on an item-by-item basis.³⁹ NSCC is amending its procedures to provide that it may require members to submit certain securities to NSCC before those securities are deposited with DTC on behalf of such member.⁴⁰

NSCC is eliminating its P&S service for direct clearing.⁴¹ References to the New Jersey City office will be deleted because that office no longer exists.⁴² NSCC is amending its rules to delete fees for hard copy output.⁴³ NSCC is amending its Automated Stock Borrow Procedures to reflect that NSCC will no longer borrow physical securities for the settlement of non-DTC eligible items.⁴⁴

II. Discussion

The Commission believes the proposal is consistent with the requirements of Section 17A of the Act.⁴⁵ Specifically, Section 17A(b)(3)(F)⁴⁶ states that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the

clearing agency's custody or control or for which it is responsible, and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

Several of NSCC rules are based on the standard time frame for settlement of securities transactions. On June 7, 1995, as mandated by the Commission's Rule 15c6-1, the new settlement cycle of T+3 will be established. As a result, many of NSCC's current rules will be inconsistent with this rule. This proposal amends NSCC's rules to harmonize them with a T+3 settlement cycle. By enabling trades to settle in the shortened settlement cycle, the proposal should promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposal should ensure safeguarding of securities and funds by eliminating obsolete services and streamlining NSCC's processes. The proposed rule change also should foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions by conforming NSCC's rules on settlement time frames with the rules of other self-regulatory organizations.

III. Conclusion

For the reasons stated above, the Commission finds that NSCC's proposal is consistent with Section 17A of the Act.⁴⁷

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-95-03) be and hereby is approved for effectiveness on June 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-14436 Filed 6-12-95; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 99000160]

Blue Ridge Investors Limited Partnership; Notice of Filing of an Application for a License to Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1994)) by Blue Ridge

Investors Limited Partnership, 300 N. Greene Street, Suite 2100, Greensboro, North Carolina 27401, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.), and the rules and regulations promulgated thereunder. Blue Ridge Investors Limited Partnership is a limited partnership formed under North Carolina law. The applicant will be managed by its General Partner, Blue Ridge Investors Group, Inc., and Blue Ridge Management Co., Inc. (the "Management Company"). Edward K. Crawford, F. James Becher, Jr., Edward C. McCarthy and Russell R. Myers are the principals of the Management Company. No individual or entity owns more than 10 percent of the proposed SBIC.

The applicant will begin operations with capitalization in excess of \$3.5 million and will be a source of equity and debt financings for qualified small business concerns. The applicant will focus its investments in the Southeastern United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Greensboro, North Carolina.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: June 6, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95-14444 Filed 6-12-95; 8:45 am]

BILLING CODE 8025-01-M

³⁴ Procedure II.E.2.

³⁵ Procedure II.G. NSCC intends to run RECAPS on a quarterly basis.

³⁶ Procedure II.G.

³⁷ Procedures VII.C.5, G.3, and H.7. Members usually deliver securities to The Depository Trust Company ("DTC") to cover short positions instead of NSCC.

³⁸ Procedure VII.F.2.

³⁹ Procedure IX.A.

⁴⁰ Procedure IX.B.

⁴¹ Procedure IX.D. Conforming amendments will be reflected in Procedure IX.E, Addendum A, Section IV (to eliminate fees for Remote Trade Comparison Handling and Preparation of T+1 input), and Addendum B, Section V.B. (to eliminate fees for options cage processing and stock loan rebate payment service).

⁴² Addendum A, Section III.

⁴³ Addendum A, Section V.B.

⁴⁴ Addendum C.

⁴⁵ 15 U.S.C. § 78q-1 (1988).

⁴⁶ 15 U.S.C. § 78q-1(b)(3)(F) (1988).

⁴⁷ 15 U.S.C. § 78q-1 (1988).

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****National Transportation System (NTS) Initiative: Refinements to the Development Process**

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of refinements in the development of the NTS.

SUMMARY: The Department of Transportation is modifying the process through which the NTS initiative will be developed and the proposed products of that process. These refinements are in response to the Department's extensive public outreach and comments to the docket last fall.

DATES: Comments on the refinements are welcomed. To be most useful, comments on these issues should be submitted no later than July 31, 1995.

ADDRESSES: Three copies of comments for the public docket on the NTS should be sent to: Office of the Secretary, Documentary Services Division, C-55, Attn: NTS Public Docket #49617, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Questions on the NTS initiative also can be directed to the Departmental Offices designated as leads for the NTS outreach and planning initiatives:

Mr. Michael P. Huerta, Associate Deputy Secretary, Room 10200, 400 Seventh Street, SW., Washington, DC 20590, Phone: (202) 366-5781.

Mr. Frank Kruesi, Assistant Secretary for Transportation Policy, Room 10228, 400 Seventh Street, SW., Washington, DC 20590, Phone: (202) 366-4450.

Mr. Stephen Palmer, Assistant Secretary for Governmental Affairs, Room 10408, 400 Seventh Street, SW., Washington, DC 20590, Phone: (202) 366-4573.

SUPPLEMENTARY INFORMATION: On December 9, 1993, Secretary of Transportation Federico Peña invited Congress, other Federal agencies, state and local officials, private businesses and citizen groups to participate in the development of the National Transportation System initiative. Officials from the Department of Transportation spent the next several months meeting with individuals and groups noted above to discuss all aspects of the NTS.

The **Federal Register** Notice laying out the basic concept and framework for the NTS was published on June 23, 1994 (59 FR 32481). A supplemental Notice

on the proposed process and criteria for designating the NTS was published in the **Federal Register** on August 24, 1994 (59 FR 43610). The Department received over 350 comments to the docket. In addition to soliciting public comments on the NTS concept through **Federal Register** notices, the Department received input from meetings held in Washington, DC, and around the country, that were attended by representatives of transportation interest groups, state and local agencies, and the private sector.

The key purposes of the NTS initiative were to conduct a dialogue with our customers and partners on the future of Federal transportation policy, improve transportation investment decisions, make DOT policy and programs more outcome-oriented and less modally driven, and draw attention to the state of the national transportation system and its implications for other goals.

Interim Results of the NTS Outreach

A number of strong and recurrent themes emerged from the outreach process. Across the spectrum of users, operators and interest groups, there is strong support for the NTS concept of an integrated, multimodal transportation system. These groups and individuals recognize the need to shift from looking at single mode solutions toward an intermodal, customer-oriented approach that looks at results in terms of mobility, congestion, and a variety of economic, social and environmental impacts.

There was consensus that the focus of the NTS should be on developing a better understanding of transportation demands and constraints and their implications for attaining national social, economic and environmental goals which would help all levels of government identify impediments to the efficient functioning of the system. Many felt that the Federal Government—working closely with state and local governments, the transportation industry and interested members of the public—should set a strategic agenda for achieving progress on these various fronts. There was little support for identifying current, high volume facilities through a mapping process. Thus the Department does not plan to develop an NTS map.

The outreach discussions and comments to the docket indicated widespread support for the NTS concept but recommended changes in the NTS evaluative framework to consider work being done at the state and local level and by the private sector.

Recommended revisions to the initial

NTS approach included giving more emphasis to building upon the planning processes required by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), developing the analytical capability to evaluate the performance of the system and developing performance measures to facilitate outcome-oriented, multimodal decisionmaking.

Refinements to the NTS: Products

In response to these comments, the Department is refining the NTS to focus on the following three major products:

1. **Transportation Performance Measurement System:** A recurring theme in the Department's outreach efforts to date has been that existing performance measures for the transportation system are incomplete. Specifically, we heard that there is a need for performance measures that consider more than simply traffic flows or transportation efficiency; they should consider effects on the economic, environmental and social outcomes which we, as a Nation, are pursuing.

To respond, the Department will initiate a performance measurement effort. The purpose is to bring about a better understanding of how transportation performs as an integrated system in meeting national goals. We intend to develop specific examples of performance measures that consider the broader transportation impacts discussed above. These measures will be developed to illustrate cause and effect relationships between transportation decisions, the external demand factors that lead to them, and their broader impacts on the system overall.

Data needed for this effort will be derived, for the most part, from existing state, local and national data collection efforts. This is to minimize any additional burdens on state and local governments. Where appropriate, we will also draw upon the state and local planning processes established by ISTEA.

The emphasis of the Department's work will be on the national system. However, this effort also will provide an analytic base for future discussions with state and local officials about how national goals of the transportation system, performance objectives, and tools necessary for achieving these objectives are linked with state and local objectives.

2. **National and Regional Transportation Analytical Capability:** A strategic analysis capability will be developed, using a national intermodal GIS database and performance measures, which could be used to

identify how the existing transportation system is performing, identify problems, and analyze implications of alternative national transportation policies. As initial activities, the Department expects to have some capability to undertake problem identification, define issues, and conduct tradeoff analysis within a year. The next steps will be to relate the transportation system to broader goals and other considerations such as economic activity, population trends, mobility issues and environmental measures, and to tie forecasting capability to transportation resource management and investment. This will begin to provide a framework for undertaking prospective policy and program tradeoff analysis. While intermediate products will begin to be available within the year, this work will require a significant investment and several years to complete.

3. State of the Transportation System Report: A report will be completed early in 1996 that would summarize outreach findings and apply initial research, performance measurement, and system analytical capability to describe the functioning of the transportation system now and policy implications for the future. It will include a vision for the Nation's future transportation system, a discussion of the performance and evaluation process, a description of the condition of the national transportation system and its relationship to the national economy, and an analysis of the national transportation network.

In developing these three products, the Department will continue its consultation with representatives of the public and private sectors to assure that the NTS is customer driven.

Public Outreach and Comment

In its initial presentation of the NTS concept in the June 23, 1994, **Federal Register**, the Department expressed its commitment to an incremental and evolving evaluation and goal-setting process for national transportation. It continues to be the Department's intent that the products resulting from this process will incorporate—and be improved by—input from the public and private sectors. Throughout the development of the NTS, the Department will continue to consult with state and local officials, at relevant meetings and conferences, and draw upon the products resulting from the metropolitan and statewide planning processes and management systems required by ISTEPA.

To ensure that the NTS products are relevant to public and private sector transportation decision makers and users, the Department would find

advice and input on its revised course of action for the NTS useful.

Issued this 6th day of June, 1995, in Washington, DC.

Michael P. Huerta,

*Associate Deputy Secretary and Director,
Office of Intermodalism.*

[FR Doc. 95-14462 Filed 6-12-95; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF THE TREASURY

Customs Service

Tariff Classification of Water Resistant Garments With Non-Water Resistant Hoods

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Withdrawal of proposed change of practice.

SUMMARY: Pursuant to the Customs Regulations, on December 5, 1994, Customs published notice in the **Federal Register** advising the public that Customs proposed a change of practice in regard to the classification of certain imported merchandise consisting of water resistant jackets with non-water resistant hoods, under the Harmonized Tariff Schedule of the United States (HTSUS). In response to that notice Customs received comments which were unanimous in opposition to the proposed change in practice. This document advises the public that Customs, after analyzing those comments, has decided not to change the practice in regard to these garments.

EFFECTIVE DATE: Withdrawal effective June 13, 1995.

FOR FURTHER INFORMATION CALL:

Josephine Baiamonte, Commercial Rulings Division, U.S. Customs Service, (202) 482-7050.

SUPPLEMENTARY INFORMATION:

Background

Classification of merchandise under the Harmonized Tariff Schedule of the United States is in accordance with the General Rules of Interpretation (GRI 1). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

Heading 6201, HTSUS, provides for, among other things, men's or boys' anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets). In Additional U.S. Note 2 to chapter 62, HTSUS, wherein the term "water resistant" is defined, it states that the "water resistant" requirement refers to

the garment. Based on a review of that U.S. Note, Customs was of the opinion that Additional U.S. Note 2 had not been applied to its proper effect. Customs believed that the language of that Note did not suggest that only a portion of a garment be made water resistant in order for the entire garment to be classifiable as water resistant. Thus, the test as written, was interpreted to apply to the complete garment.

Accordingly, on December 5, 1994, Customs published a document in the **Federal Register** (59 FR 62452) proposing a change of practice pursuant to § 177.10(c)(1) of the Customs Regulations (19 CFR 177.10(c)(1)). Customs proposed that if the permanently attached hood of a water resistant garment is not similarly coated, the garment is precluded from classification as a water resistant garment.

Discussion of Comments

All of the comments received were in opposition to the change of practice. Consistently, the argument was made that the essential function of the water resistant garment is to provide protection from inclement weather, regardless of the presence of a hood. Furthermore, it was stated that Additional U.S. Note 2 is silent as to the "coverage issue", i.e., the portion of the garment which must be coated to render it properly classified as a water resistant garment, and that any restriction in that language was based solely on Customs interpretation.

Conclusion

Water resistant garments are specifically provided for in Chapter 62, HTSUS. Customs has consistently held that when the outer shell of a garment is coated, this has been sufficient to impart to the garment, per se, a water resistant classification. In addition to water resistance, many garments have characteristic features which distinguish them from other water resistant garments. For example, some may have rib knit cuffs and collars, and other decorative trim which are not water resistant. In other cases, as is the case with the garments at issue here, the garments feature hoods which may or may not be permanently attached to the garment, or may be "tuck away" hoods which fold into the collar. In most cases these hoods are not coated.

Regardless of these additional features, the garment itself remains water resistant. Thus, a water resistant garment with no hood is no less water resistant than a garment with a hood, particularly when one considers that

even on a garment with a permanently attached hood or "tuck away" hood, the wearer may decide not to exercise the hood option.

After a careful review of all the comments, it is our decision that the current practice in regard to these water resistant garments is correct. That is to say, water resistant garments with non-water resistant hoods (whether or not attached, or tuck-away) are properly classifiable within the appropriate provisions of Chapter 62, HTSUS, for water resistant garments.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: May 19, 1995.

Timothy G. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95-14385 Filed 6-12-95; 8:45 am]

BILLING CODE 4820-02-P

OFFICE OF THE UNITED STATES REPRESENTATIVE

Request for Public Comment Regarding Proposed Change to Threshold Under Chapter 10 of the North American Free Trade Agreement (NAFTA)

AGENCY: Office of the United States Trade Representative.

ACTION: The Trade Policy Staff Committee (TPSC) requests public comment regarding a proposed increase in threshold to \$100,000 for coverage of government procurement contracts by federal government entities under Chapter 10 of the NAFTA.

SUMMARY: NAFTA Chapter 10 sets forth obligations of the United States, Canada and Mexico on government procurement. The scope and coverage of

Chapter 10 is specified in Article 1001, which refers to entities and to goods, services and construction definitions, as set out in the annexes to the Chapter. Article 1001 also specifies value thresholds for determining coverage of individual contracts. Article 1001:1(c)(i) specifies that contracts for goods and services procured by federal government entities are covered if they exceed the threshold of \$50,000. The parties to the NAFTA have discussed increasing this threshold to \$100,000 to reduce the administrative burden associated with implementation of Chapter 10 and to allow for simplification of acquisition procedures for contracts between \$100,000.

DATES: Comments are requested by June 30, 1995.

FOR FURTHER INFORMATION: Contact Mark Linscott, Director, International Procurement Policy, Office of the U.S. Trade Representative, (202) 395-3063, or Bill Craft, Director, Multilateral Trade Affairs, Economic Bureau, State Department, (202) 647-3696.

SUPPLEMENTARY INFORMATION: The parties to the NAFTA expect to amend Article 1001:1(c)(i) to increase the threshold from \$50,000 to \$100,000 for coverage of goods and services (excluding construction services) procured by federal government entities. The threshold for construction services procured by federal entities will remain at \$6.5 million. Additionally, the thresholds specified in Article 1001:1(c)(ii) for government-owned enterprises would remain at \$250,000 for goods and services and \$8 million for construction services. NAFTA Chapter 10 does not yet apply to subcentral governments.

Application of the thresholds specified in Article 1001:1(c) are subject

to the considerations referred to in Article 1002, regarding valuation of contracts. Article 1002:5 applies to an individual requirement resulting in multiple contracts or contracts being awarded in separate parts and requires that the method for valuation be either the total actual value of similar recurring contracts over the previous 12 month period or the estimated value of recurring contracts in the fiscal year or 12-month period subsequent to the initial contract. Article 1002:6 applies to contracts that do not specify a total contract price, such as requirement contracts, and requires that the method for valuation be the total estimated value for the duration of fixed term contracts or the estimated monthly installment multiplied by 48 for contracts for an indefinite period.

Comments from interested parties regarding the proposed increase in threshold should be submitted by noon, Friday, June 30, 1995. Comments must be in English and provided in eight copies to Carolyn Frank, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 Seventeenth Street, NW, Washington, DC 20506. Comments will be available for public inspection by appointment with the staff of the USTR Reading Room (202-395-6186), except for information granted "business confidential" status pursuant to 15 CFR 2003.6. Any business confidential material must be clearly marked as such at the top of the cover page or letter and each succeeding page of each copy and must be accompanied by a nonconfidential summary.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 95-14403 Filed 6-12-95; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 113

Tuesday, June 13, 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).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 2:00 p.m., Wednesday, June 14, 1995.

LOCATION: Room 724, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

1. Directive on Clearance Procedures

The Commission will consider a revision to its internal clearance procedures for providing information to the public (CPSC Order 1450.2).

2. Enforcement Matter OS #3094

The Commission will consider issues related to enforcement matter OS #3094.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: June 8, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95-14481 Filed 6-9-95; 8:45 am]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, June 15, 1995, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Protocol Revisions

The Commission will consider issuance of a final rule revising the child-resistant packaging test protocols under the Poison Prevention Packaging Act.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: June 8, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95-14482 Filed 6-9-95; 8:45 am]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Friday, June 16, 1995, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Multiple Tube Mine and Shell Fireworks

The staff will brief the Commission on a Notice of Proposed Rulemaking (NPR) for multiple tube mine and shell fireworks.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: June 8, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95-14483 Filed 6-9-95; 8:45 am]

BILLING CODE 6355-01-M

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

DATE AND TIME: June 15, 1995, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone, (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 632nd Meeting—June 15, 1995; Regular Meeting (10:00 a.m.)

CAH-1.

Docket# P-5456-003, Nekoosa Packaging Corporation

CAH-2.

Docket# P-6879-017 Southeastern Hydro-Power, Inc.

CAH-3.

Omitted

CAH-4.

Docket# P-460-006 City of Tacoma, Washington

CAH-5.

Docket# P-1403-017 Pacific Gas and Electric Company

CAH-6.

Docket# P-2804-013 Goose River Hydro, Inc.

CAH-7.

Omitted

CAH-8.

Docket# P-4797-036 Cogeneration, Inc. Other#S P-4797-038 Cogeneration, Inc. P-4797-039 Cogeneration, Inc.

CAH-9.

Docket# P-11213-000 Thomas Hohman

Consent Agenda—Electric

CAE-1.

Docket# ER95-188-000 Midamerican Energy Company

CAE-2.

Docket# ER95-735-000 Central Maine Power Company

CAE-3.

Docket# EC95-4-000 Midwest Power Systems, Inc. and Iowa-Illinois Gas and Electric Company

CAE-4.

Docket# ER93-465-015 Florida Power & Light Company

Other#S EL93-28-006 Seminole Electric Cooperative, Inc.

EL93-40-006 Florida Municipal Power Agency v. Florida Power & Light Company

EL94-12-006 Florida Power & Light Company

EL94-28-004 Seminole Electric Cooperative, Inc.

EL94-47-004 Florida Municipal Power Agency v. Florida Power & Light Company

ER93-922-010 Florida Power & Light Company

CAE-5.

Docket# QF86-529-003 University Cogeneration, Inc.

Other#S EL94-76-000 University Cogeneration, Inc.

CAE-6.

Omitted

CAE-7.

Omitted

CAE-8.

Docket# EC93-6-003 Cincinnati Gas & Electric Company and PSI Energy, Inc.

Other#S ER94-1015-002 Cincinnati Gas & Electric Company and PSI Energy, Inc.
 CAE-9. Docket# EG95-49-000 Southern Electric Wholesale Generators, Inc.
 CAE-10. Docket# EG95-46-000 The Hub Power Company Limited
 CAE-11. Docket# EG95-47-000 Entergy Power Asia Ltd.
 CAE-12. Docket# EG95-48-000 Entergy Power Operations Corporation
 CAE-13. Docket# EG95-45-000 Burney Forest Products
 CAE-14. Docket# EG95-50-000 Southern Energy Marketing, Inc.
 CAE-15. Docket# EG95-51-000 CNG Power Services Corporation
 CAE-16. Docket# EG95-44-000 North American Energy Services Company
 CAE-17. Omitted
 CAE-18. Docket# ER94-1450-004 Coastal Electric Services Company
 CAE-19. Docket# ER94-1348-000 Southern Company Services, Inc.
 Other#S EL94-85-000 Southern Company Services, Inc.
 CAE-20. Docket# ER95-941-000 Florida Power Corporation

Consent Agenda—Gas and Oil

CAG-1. Docket# RP94-296-000 Williams Natural Gas Company
 Other#S RP94-296-001 Williams Natural Gas Company
 RP94-296-002 Williams Natural Gas Company
 RP94-296-003 Williams Natural Gas Company
 CAG-2. Docket# RP95-302-000 Young Gas Storage Company, Ltd.
 CAG-3. Docket# GP94-2-003 Columbia Gas Transmission Corporation
 Other#S CP94-720-001 Natural Gas Pipeline Company of America
 CP94-724-001 Trailblazer Pipeline Company
 CP95-173-001 Wyoming Interstate Company Ltd.
 RP90-107-024 Columbia Gas Transmission Corporation
 RP94-315-001 Columbia Gas Transmission Corporation
 RP94-316-001 Columbia Gas Transmission Corporation
 RP94-317-001 Columbia Gas Transmission Corporation
 RP95-204-000 Columbia Gas Transmission Corporation
 CAG-4. Docket# RP91-203-050 Tennessee Gas Pipeline Company

Other#S RP94-309-005 Tennessee Gas Pipeline Company
 CAG-5. Docket# RP93-192-007 Texas Eastern Transmission Corporation
 Other#S RP93-192-000 Texas Eastern Transmission Corporation
 RP93-192-001 Texas Eastern Transmission Corporation
 RP93-192-006 Texas Eastern Transmission Corporation
 CAG-6. Docket# RP95-90-000 Tennessee Gas Pipeline Company
 CAG-7. Docket# RP95-105-000 Florida Gas Transmission Company
 Other#S RP95-105-001 Florida Gas Transmission Company
 CAG-8. Omitted
 CAG-9. Docket# PR94-3-000 Kansok Partnership
 CAG-10. Omitted
 CAG-11. Docket# TM94-2-30-001 Trunkline Gas Company
 CAG-12. Docket# RP95-197-002 Transcontinental Gas Pipe Line Corporation
 CAG-13. Docket# RP95-141-001 Pacific Gas Transmission Company
 CAG-14. Docket# RP95-191-001 Williston Basin Interstate Pipeline Company
 CAG-15. Docket# RP95-193-002 Williston Basin Interstate Pipeline Company
 CAG-16. Docket# CP92-182-011 Florida Gas Transmission Company
 Other#S RP95-103-002 Florida Gas Transmission Company
 CAG-17. Omitted
 CAG-18. Omitted
 CAG-19. Docket# IS95-30-000 Williams Pipe Line Company
 Other#S IS92-26-000 Williams Pipe Line Company
 CAG-20. Docket# IS92-27-000 Lakehead Pipe Line Company, Limited Partnership
 Other#S IS93-4-000 Lakehead Pipe Line Company, Limited Partnership
 IS93-33-001 Lakehead Pipe Line Company, Limited Partnership
 CAG-21. Docket# RP94-72-004 Iroquois Gas Transmission System, L.P.
 Other#S FA92-59-004 Iroquois Gas Transmission System, L.P.
 RP94-72-005 Iroquois Gas Transmission System, L.P.
 CAG-22. Omitted
 CAG-23. Docket# CP93-613-003 Northwest Pipeline Corporation
 Other#S CP93-673-003 Northwest Pipeline Corporation
 CAG-24.

Docket# CP94-260-001 Algonquin Gas Transmission Company
 CAG-25. Docket# CP94-342-002 Crossroads Pipeline Company
 CAG-26. Docket# CP94-775-001 Tennessee Gas Pipeline Company
 CAG-27. Docket# CP89-1525-007 Northwest Pipeline Corporation
 CAG-28. Docket# CP95-116-002 Natural Gas Pipeline Company of America v. Northern Border Pipeline Company
 CAG-29. Docket# CP95-188-000 El Paso Natural Gas Company
 CAG-30. Docket# CP95-331-000 CMS Gas Transmission and Storage Company
 CAG-31. Docket# CP95-43-000 Northern Natural Gas Company
 CAG-32. Docket# CP95-152-000 Natural Gas Pipeline Company of America
 CAG-33. Docket# CP93-672-001 Natural Gas Pipeline Company of America
 CAG-34. Docket# CP95-206-000 Columbia Gas Transmission Corporation
 CAG-35. Docket# CP90-1050-004 Panhandle Eastern Pipe Line Company
 Other#S CP94-151-001 Panhandle Eastern Pipe Line Company
 CAG-36. Docket# CP95-304-000 Shell Western E&P Inc.
 CAG-37. Docket# MG88-2-008 Algonquin Gas Transmission Company
 Other#S MG88-26-007 Texas Eastern Transmission Corporation
 MG90-3-005 Trunkline LNG Company
 MG95-1-002 Algonquin LNG, Inc.
 CAG-38. Docket# CP95-168-000 Sea Robin Pipeline Company

Hydro Agenda

H-1. Reserved

Electric Agenda

E-1. Docket# RM94-14-000 Nuclear Plant Decommissioning Trust Fund Guidelines Final Rule.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1. Reserved

II. Pipeline Certificate Matters

PC-1. Reserved
 Dated: June 8, 1995.

Lois D. Cashell,

Secretary.
 [FR Doc. 95-14507 Filed 6-9-95; 11:06 am]
 BILLING CODE 6717-01-P

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Thursday June 15, 1995

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, June 15, 1994, which is

scheduled to commence at 1:30 p.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No. and Bureau	Subject
1. Mass Media	<p><i>Title:</i> Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service (MM Docket No. 94-131) and Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93-253).</p> <p><i>Summary:</i> The Commission will consider action concerning filing procedures and auction rules for licensing the remaining channels in the Multipoint Distribution Service.</p>
2. Mass Media	<p><i>Title:</i> Amendment of Parts 21, 43, 74, 78 and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational—Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service and Cable Television Relay Service (GEN Docket Nos. 90-54 and 80-113).</p> <p><i>Summary:</i> The Commission will consider three issues examined in the previous reconsideration order: (1) the definition of protected service areas for existing Multipoint Distribution Service (MDS) stations; (2) the deadlines for service of MDS applications on authorized Instructional Television Fixed Service (ITFS) stations and for ITFS petitions to deny of MDS applications; and (3) demonstrations required when MDS applications propose transmitter frequency offset.</p>
3. Mass Media	<p><i>Title:</i> Twenty-Two Items regarding 728 Applications for Authority to Construct and Operate Multipoint Distribution Service Stations.</p> <p><i>Summary:</i> The Commission will consider reconsideration petitions regarding 728 applications for new MDS stations.</p>
4. Mass Media	<p><i>Title:</i> Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates: 47 C.F.R. Section 73.658.</p> <p><i>Summary:</i> The Commission will consider initiating review of network rules relating to programming.</p>
5. Wireless Telecommunications	<p><i>Title:</i> Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services (PR Docket No. 92-235).</p> <p><i>Summary:</i> The Commission will consider ways to increase channel capacity in the frequency bands below 512 MHz allocated to the private land mobile radio services.</p>
6. International	<p><i>Title:</i> Preparation for International Telecommunication Union World Radiocommunication Conferences (IC Docket No. 94-31).</p> <p><i>Summary:</i> The Commission will consider a Report containing recommended U.S. Proposals for the 1995 World Radiocommunication Conference (WRC-95).</p>

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418-0500.

Dated: June 8, 1995.
Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95-14506 Filed 6-9-95; 11:05 am]
BILLING CODE 6712-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 19, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 9, 1995
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95-14607 Filed 6-9-95; 3:48 pm]
BILLING CODE 6210-01-P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 12, 19, 26, and July 3, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 12
Wednesday, June 14
11:30 a.m. Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 19—Tentative

Wednesday, June 21
9:00 a.m. Discussion of Management Issues (Closed—Ex. 2 and 6)
10:30 a.m. Briefing on NRC Use of Expert Elicitation in HLW Performance Assessments (Public Meeting) (Contact: Janet Kotra, 301-415-6674)

Thursday, June 22
9:00 a.m. Briefing on Results of Senior Management Review of Operating Reactors, Fuel Facilities, and Related Activities (Public Meeting) (Contact: Victor McCree, 301-415-1711)
10:30 a.m. Affirmation/Discussion and Vote (Public Meeting) *(Please Note: These items will be affirmed immediately following the conclusion of the preceding meeting.)
a. Final Rule on "Clarification of Decommissioning Funding Assurance Requirements" (Tentative)
b. Final Rule Revising 10 CFR Part 110, Import and Export of Radioactive Waste (Tentative)
c. Georgia Power Company's Motion for Order Preserving the Licensing Board's Jurisdiction (Docket Nos. 50-424-OLA-3, 50-425-OLA-3) (Tentative) (Contact: Andrew Bates, 301-415-1963)

Week of June 26—Tentative

Thursday, June 29
3:30 p.m. Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 3—Tentative

There are no meetings scheduled for the Week of July 3.

ADDITIONAL INFORMATION: By a vote of 4-0 on June 7, the Commission determined pursuant to U.S.C. 552b(e) and §9.107(a) of the Commission's rules that "Affirmation of Louisiana Energy Services (Claiborne Enrichment Center); Atomic Safety and Licensing Board March 3, 1995 Memorandum and Order (Docket No. 70-3070-ML)" (PUBLIC MEETING) be held on June 8, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

*The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415-1292. Contact person for more information: Bill Hill (301) 415-1661.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301-415-1963).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting

schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

* * * * *

Dated: June 9, 1995.

William M. Hill, Jr.,
SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95-14569 Filed 6-9-95; 2:45 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION
Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 12, 1995.

An open meeting will be held on Wednesday, June 14, 1995, at 10:00 a.m. Closed meetings will be held on Wednesday, June 14, 1995, following the 10:00 a.m. open meeting, and Thursday, June 15, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 56 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meetings in closed sessions.

The subject matter of the open meeting scheduled for Wednesday, June 14, 1995, at 10:00 a.m., will be:

The Commission will hear oral argument on appeals by Ivan D. Jones, Jr. and Roy P. Akers from an administrative law judge's initial decision.

The subject matter of the closed meeting scheduled for Wednesday, June 14, 1995, following the 10:00 open meeting, will be:

Post oral argument discussion.

The subject matter of the closed meeting scheduled for Thursday, June 15, 1995, at 2:00 p.m., will be:

- Institution of injunctive actions.
- Institution of administrative proceedings of an enforcement nature.
- Settlement of injunctive actions.
- Settlement of administrative proceedings of an enforcement nature.
- Opinions.

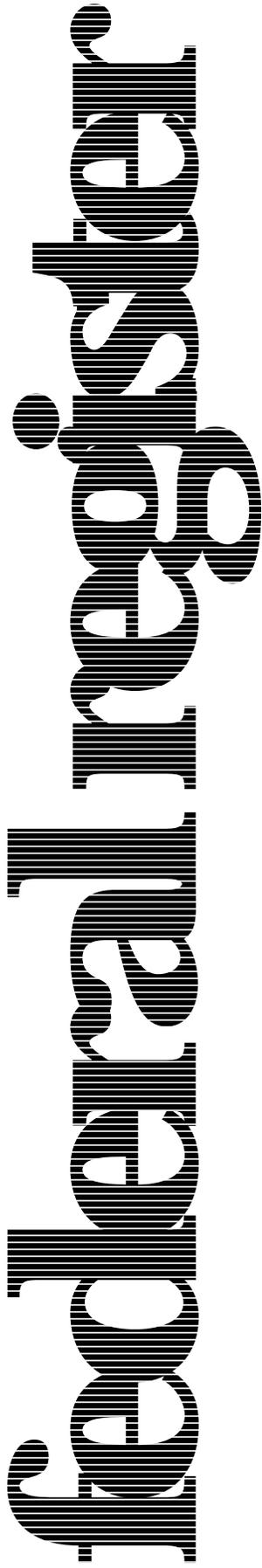
At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Office of the Secretary (202) 942-7070.

Dated: June 8, 1995.

Jonathan G. Katz,
Secretary.

[FR Doc. 95-14519 Filed 6-9-95; 12:07 pm]

BILLING CODE 8010-01-M



Tuesday
June 13, 1995

Part II

**Department of
Agriculture**

Food and Consumer Service

7 CFR Parts 210 and 220

**Child Nutrition Programs: School Meal
Initiatives for Healthy Children; Final Rule**

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 210 and 220

National School Lunch Program and School Breakfast Program: School Meals Initiative for Healthy Children

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule

SUMMARY: This final rule amends the regulations governing the nutrition standards for the National School Lunch and School Breakfast Programs. It is part of an integrated, comprehensive plan for promoting the health of the Nation's school children by updating the nutrition standards for school meals and by providing State agencies and local food service operators with the technical assistance and tools to meet these standards. On June 10, 1994, the Department proposed improvements, including a provision to incorporate the *Dietary Guidelines for Americans* into the program regulations. The *Dietary Guidelines for Americans* set forth medical and scientific consensus on proper nutrition as a vital element in disease prevention and long-term health promotion. That proposal would have also established a method of meal planning and preparation based on computerized nutrient analysis. On January 27, 1995, the Department published a supplemental proposal to provide local food authorities with an additional meal planning option—a food-based menu system. This final rule implements provisions of both proposals and reflects the Department's review of the comments received on those proposals. The foundation of this final rule is the requirement that, by School Year 1996/1997, school lunches and breakfasts comply with the recommendations of the *Dietary Guidelines for Americans*. This rule also establishes specific minimum standards for key nutrients and calories which school meals must meet. To facilitate implementation of the updated standards, the regulation provides schools with three meal planning options and streamlines some administrative requirements to enhance flexibility for schools and State agencies. This rule also incorporates some provisions of the Healthy Meals for Healthy Americans Act of 1994. The effect of this rule will be to provide

more healthful and nutritious meals to the Nation's school children.

EFFECTIVE DATE: July 13, 1995

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302; telephone: 703-305-2620.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Consumer Service (FCS) has certified that this rule will not have a significant economic impact on a substantial number of small entities. In the interest of furthering efforts to reinvent government, this rule reduces current State agency administrative burdens and makes a technical adjustment in the recordkeeping burdens. In addition, the Department of Agriculture (the Department or USDA) does not anticipate any adverse fiscal impact on local schools. Analyses by FCS and the Department's Economic Research Service found that the menu planning aspects can be met at the current cost of food in the National School Lunch and School Breakfast Programs. Further, these analyses indicate that the reimbursement structure of the Programs, along with student payments for meals served, provide sufficient subsidy.

Catalog of Federal Assistance

The National School Lunch Program and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.553, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and final rule-related notice at 48 **Federal Register** (FR) 29112, June 24, 1983.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil

Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This final rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this final rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program and School Breakfast Program, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) school food authority appeals of FCS findings as a result of an administrative review must follow FCS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FCS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

Information Collection

This final rule contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: National School Lunch Program and School Breakfast Program: School Meals Initiative for Healthy Children.

Description: Under this final rule, some existing recordkeeping activities contained in 7 CFR parts 210 and 220 would be affected. The OMB control numbers are 0584-0006 and 0584-0012, respectively.

Description of Respondents: State agencies, school food authorities and schools doing on-site preparation of meals.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

7 CFR 210.8 (a)(3)	Annual number of respondents	Annual frequency	Average burden per response (hours)	Annual burden hours
Existing	20,249	12	2	485,976
New	* 3,442	12	2	82,608
Difference				- 403,368

* These respondents represent the 17% of school food authorities which are found through administrative reviews conducted under § 210.18 to have counting and claiming deficiencies and therefore must continue using the current edit checks.

7 CFR 210.10/nutrient analysis menu planning	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Existing				
New	* 14,235	180	.333	853,246
Difference				+853,246

* This estimate uses approximately 20% of schools. Please note that the current OMB approved burden is based on 70,455 schools. However, for the purposes of a more accurate comparison, the current burden has been adjusted here to include the same number of schools used to determine the new burden.

7 CFR 210.10/ food-based menu planning	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Existing	* 71,176	180	.25	3,202,920
New	** 56,941	180	.25	2,562,345
Difference				- 640,575

* Please note that the current OMB approved burden is based on 70,455 schools. However, for the purposes of a more accurate comparison, the current burden has been adjusted here to include the same number of schools used to determine the new burden.

** This estimate uses approximately 80% of schools.

7 CFR 210.15(b)(4)	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Existing	20,249	12	52.333	12,716,291
New				
Difference				- 12,716,291

7 CFR 220.8/nutrient analysis	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Existing				
New	* 12,117	180	.117	255,184
Difference				+255,184

* This estimate uses approximately 20% of schools. Please note that the current OMB approved burden is based on 49,962 schools. However, for the purposes of a more accurate comparison, the current burden has been adjusted here to include the same number of schools used to determine the new burden.

7 CFR 220.8/food-based menu planning	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Existing	* 60,585	180	.083	905,140
New	** 48,468	180	.083	724,112
Difference				- 181,028

* Please note that the current OMB approved burden is based on 49,962 schools. However, for the purposes of a more accurate comparison, the current burden has been adjusted here to include the same number of schools used to determine the new burden.

** This estimate uses approximately 80% of schools.

7 CFR 220.13(i)	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Existing	5,658	12	34	2,308,464
New				
Difference				- 2,308,464

As required by section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), FCS has submitted a copy of this final rule to OMB for review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burdens, should direct them to the Policy and Program Development Branch, Child Nutrition Division, (address above) and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Laura Oliven, Desk Officer for FCS.

Background

The primary purpose of the National School Lunch Program (NSLP), as instituted by Congress in 1946, was "to safeguard the health and well-being of the Nation's children. * * *" (Section 2 of the National School Lunch Act (NSLA), 42 U.S.C. 1751). At that time, nutritional concerns in the United States centered on nutrient deficiencies and issues of underconsumption. Therefore, over time, meal requirements for the NSLP (7 CFR 210.10) were designed to provide foods sufficient to approximate one-third of the National Academy of Sciences' Recommended Dietary Allowances (RDA). Participating schools were required to offer meals that complied with general patterns established by the Department. These patterns were developed to provide balanced meals by focusing on minimum amounts of specific components (meat/meat alternate, bread/bread alternate, vegetables, fruits and milk) rather than on the nutrient content of the entire meal. Virtually no substantive changes have been made to these patterns since the program's inception.

Over the past 50 years, an array of scientific knowledge has been developed which documents that excesses in consumption are a major concern because of their relationship to the incidence of chronic disease. The typical diet in the United States is high in fat, saturated fat and sodium and low in complex carbohydrates and fiber. As a result of this accumulating body of scientific research, dietary recommendations for the population of the United States were developed in the late 1970's. These recommendations were followed in 1980 by the *Dietary Guidelines for Americans* (or Dietary Guidelines), issued jointly by the Department of Agriculture and the

Department of Health and Human Services. These Dietary Guidelines were subsequently updated in 1985 and again in 1990. Also in that year, Title III of the National Nutrition Monitoring and Related Research Act of 1990 (Public Law (Pub. L.) 101-445, 7 U.S.C. 5301, *et. seq.*) was enacted. This law requires that the Dietary Guidelines be reviewed by a panel of experts every five years to determine whether the existing standards need to be altered and, if so, to recommend changes. As a result of this process, the Dietary Guidelines are based on the best available scientific and medical knowledge. (Readers wishing a more detailed discussion of the development of the Dietary Guidelines should refer to the preamble of the June 10, 1994, proposal at 59 FR 30219.)

The current Dietary Guidelines recommend that people eat a variety of foods; maintain a healthy weight; choose a diet with plenty of vegetables, fruits, and grain products; and use sugar and sodium in moderation. The Dietary Guidelines also recommend diets that are low in fat, saturated fat, and cholesterol so that over time, fat comprises 30 percent or less of caloric intake and saturated fat less than 10 percent of total calories for persons two years of age and older.

Information available to the Department consistently shows that children's diets, including meals served in schools, do not conform to the recommendations of the Dietary Guidelines. Especially significant were the findings of a nationally representative USDA study entitled the *School Nutrition Dietary Assessment (SNDA)* study. Released in October, 1993, the SNDA study presented findings on the nutrients and foods provided in school meals and described the dietary intakes of students on a typical school day. The study compared nutrients provided in school meals with the recommendations of the Dietary Guidelines on fat and saturated fat, the National Research Council's (NRC) *Diet and Health* recommendations on sodium, cholesterol and carbohydrate intake, and the current objectives that the nutrients provided in the NSLP meet one-third of the RDA and that the School Breakfast Program (SBP) meet one-fourth of the RDA.

The findings from the SNDA study showed that school lunches meet the nutrition standards established at the start of the NSLP in the late 1940's, but the study also showed that school lunches exceed the recommended levels of fat and saturated fat established by the Dietary Guidelines. Specifically, the average percentage of calories from total

fat was 38 per cent compared with the recommended goal of 30 per cent or less; and the percentage from saturated fat was 15 per cent, compared with the recommended goal of less than 10 per cent. The study also found that children who ate the school lunch consumed a significantly higher amount of calories from fat than children who brought their lunch from home or obtained a lunch from vending machines or elsewhere at school. The SNDA study also showed that while school meals met the NRC recommendation on cholesterol, the meals did not meet the NRC recommendations on sodium or carbohydrate levels. In fact, the level for sodium, at 1,479 milligrams, was nearly two times the NRC lunch target of 800 milligrams. Even though the SBP did meet most of the recommendations in the Dietary Guidelines, the number of lunches served in schools far exceeds the number of breakfasts served. It is clear, therefore, that school meals do not conform overall to current scientific knowledge of what constitutes a healthful diet.

The SNDA study underscored the fact that the meal patterns have not kept up over the years with scientific knowledge about diet. This situation is cause for concern because it demonstrates the need for significant improvement if the school nutrition programs are to meet the objective of the NSLA to safeguard the health and well-being of the nation's children.

As the first step toward achieving meaningful improvement in children's diets and, thus, their health and future well being, the Department considers it necessary to update the regulations by setting specific nutrition criteria for reimbursable school meals including incorporating the RDA for key nutrients, energy allowances for calories, and the most current nutritional standards as outlined in the Dietary Guidelines as requirements for the NSLP and SBP. Before proceeding with a rulemaking, however, the Department recognized the importance of public input. To obtain this input, the Department solicited comments on nutrition objectives for school meals through public hearings and written comments. In a notice published in the **Federal Register** (58 FR 47853, September 13, 1993), the Department announced a series of four public hearings. Any person who was interested could register to speak at any of the hearings. Persons unable to testify in person were invited to submit written comments.

A total of 363 witnesses testified at the hearings, and an additional 2,013 written comments were received by the Department, representing medical

professionals, nutritionists or dietitians, public health, nutrition or food organizations (21%); the general public (21%); parents and students (21%); school food service personnel, school food service organizations and State education/child nutrition agencies (16%); teachers, school officials and school associations (11%); food industry (7%); and other State or Federal agencies or members of Congress.

In general, commenters voiced support for the goal of more nutritious meals which meet the current Dietary Guidelines. However, the comments also raised some concerns about paperwork burden, the quality of USDA donated commodities and the need for enhanced training and education. (Readers wishing a complete analysis of the themes and concerns raised by commenters should refer to the preamble of the June 10, 1994, proposal at 59 FR 30221-30225.)

From the testimony and written comments, the Department developed Guiding Principles and a Framework for Action to address the need for a comprehensive, integrated plan to improve school meals. The five Guiding Principles are:

Healthy children—Our goal is to provide our Nation's children with access to school meal programs that promote their health, prevent disease, and meet the *Dietary Guidelines for Americans*.

Customer appeal—We understand that if food doesn't look good or taste good, children will not eat it. We must involve students, parents, teachers and the food and agriculture community in any change through a national nutrition education campaign, using the media that children and parents understand and the language that they speak.

Flexibility—We have to reduce paperwork, streamline reporting systems, recognize regional and economic differences and offer schools different approaches to designing menus that meet the Dietary Guidelines. To do this, we must use technology more effectively.

Investing in people—We must provide schools and school food service directors with the training and technical assistance they need to bring about nutrition changes in the school meal programs and build the nutrition skills of our nation's children, and thereby improve their health.

Building partnerships—To meet our national health responsibility to American children and to increase cost effectiveness, we must forge partnerships throughout the public and private sectors. This includes continuing collaborative efforts with our

Federal partners at the Departments of Education and Health and Human Services and building bridges to consumer and industry groups.

Guided by these five principles, USDA constructed a comprehensive, integrated framework for action:

I. Eating for Health: Meeting the Dietary Guidelines. School meals' nutrition standards will be updated and expanded to include the *Dietary Guidelines for Americans* with standards for fat and saturated fat as well as required nutrients.

II. Making Food Choices: Nutrition Education, Training and Technical Assistance. It is not enough to change the food on the plate. We must also provide the knowledge and the skills that enable children to make choices that lead to a nutritious diet and improved health. It also is vital that local meal providers receive training on how to improve meal quality. This dual initiative to educate children and assist meal providers offers many opportunities to influence both what foods are offered by schools and what foods are eaten by children.

III. Maximizing Resources: Getting the Best Value. By marshalling all available resources and strengthening partnerships with our State and local cooperators, we will stretch food dollars and cut costs while improving the nutritional profile of commodities. We will enhance access to locally grown commodities and better use regional agricultural resources. And we will provide assistance, training and the power of Federal purchases to help school administrators manage school meal programs in a more cost-effective way.

IV. Managing for the Future: Streamlined Administration. It is necessary to reduce the paperwork and administrative burdens of local administrators. We will streamline procedures and emphasize administrative flexibility to free State and local food program managers to concentrate on nutrition.

June 10, 1994, Proposed Rulemaking

As an important part of this overall initiative, the Department published a proposed rule on June 10, 1994, to update and expand the nutrition standards for the school meal programs, to incorporate the Dietary Guidelines into the NSLP and SBP regulations and to require that school meals meet the applicable recommendations of the Dietary Guidelines, including the quantified standards established for fat and saturated fat. This proposal also sought to establish new menu planning systems that would facilitate

compliance with the proposed updated nutrition standards, and it included proposals to reduce paperwork and streamline program administration at both the State and local levels.

Under this proposal, school lunches would be required to provide, over a school week's menu cycle, one-third of the RDA for protein, vitamin A, vitamin C, iron and calcium as well as one-third of the energy allowances for calories for the appropriate age/grade group. Breakfasts would be required to provide one-fourth of the RDA for the same nutrients and for calories over a school week's menu cycle. In addition, under the June 10th proposal, by School Year 1998/1999, at the latest, both breakfasts and lunches would have been required to comply with the recommendations of the Dietary Guidelines, including the limitations on fat (30% of total calories) and saturated fat (less than 10% of total calories).

To provide local food service directors with flexibility to meet these nutrition goals, the Department proposed to replace the current rigid meal patterns with a method of menu planning and preparation called Nutrient Standard Menu Planning (NuMenus). Under NuMenus, a nutrient analysis is conducted on all foods offered as part of reimbursable meals over a school week, and appropriate adjustments are made to ensure that the meals meet the nutrition standards. In recognition of the fact that some school food authorities may not have the computer capability or the access to technical support necessary to conduct NuMenus independently, the proposal allowed school food authorities to use a modified form of NuMenus, called Assisted NuMenus, under which schools could arrange for menu development and nutrition analysis by other entities, such as State agencies, consortiums of school food authorities or consultants.

Since meals would no longer have had to conform to the traditional five-item meal pattern structure, the Department proposed that a reimbursable lunch must include a minimum of three menu items, one of which had to be an entree and another which had to be fluid milk. (Fluid milk is required by section 9(a)(2)(A) of the NSLA, 42 U.S.C. 1758(a)(2)(A).) Moreover, if a school participates in "offer-versus-serve" (defined in current regulations at 7 CFR 210.10(e) and 220.8(a)(3)), the child must select at least two menu items, one of which would be an entree. (The Department did not propose to extend the requirement concerning entrees to the breakfast program.) Under the proposed

rule, the nutrients in all menu items or other foods offered as part of the reimbursable meal would be analyzed to determine whether or not the nutrition standards were being met. However, the nutrient analysis would have to be weighted to reflect the nutrient and calorie levels that each menu item or food offered actually contributed to the meals. Weighting is necessary to indicate the proportion the menu items and foods actually represent in the meal service offered, rather than simply being an average of the nutrients in all of the items listed on the menu.

The Department also proposed to establish a nutrition monitoring system for State agencies which would be coordinated with other oversight activities. Under this system, State agency reviewers would assess the school's nutrient analysis for the last completed school week to determine if the school was applying the correct methodology and was properly conducting the analysis. If the State agency's review indicated that the school was not conducting NuMenus accurately or was not applying Assisted NuMenus properly, or if the meals, as offered, did not comply with nutrition standards, the school food authority would be required to take appropriate corrective action to achieve compliance. The State agency would monitor the school's corrective action efforts to ensure that progress was being made toward compliance. The State agency would be required to impose fiscal sanctions *only* if the school's violation was intentional or the school refused to comply with the corrective action plan.

Finally, the Department proposed three provisions to streamline program administration. The first of these would extend the Coordinated Review Effort (CRE) review cycle from four to five years, thereby providing State agencies with additional flexibility to undertake technical assistance and corrective action efforts. The second provision would eliminate the regulatory requirement for a specific type of edit check on daily meal counts if no meal counting or claiming problems were identified on the most recent CRE review. Instead, a school food authority could develop and implement its own system of internal controls to ensure the accuracy of claims. Lastly, the Department proposed removing the regulatory requirement that school food authorities maintain records specifically to document the nonprofit status of their food service. Rather, the records kept as a normal part of operating a business would suffice.

The Department established a 90-day comment period on this proposal,

which expired on September 8, 1994. During this period, the Department received over 14,000 comments. The following shows the number of commenters by class which were received on the June 10, 1994, proposed rule as well as those received on the January 27, 1995, proposal which is discussed in more detail below:

	June 10, 1994, proposed rule	January 27, 1995, proposed rule
General public/others	1,112	9
Parents/Grandparents/students	1,967	0
School food service	9,894	199
Medical/Registered dietitians/Public health/Food organizations	262	26
Teachers/Professors/School organizations	661	79
Food industry/Chefs	180	50
Federal agencies/Congress	16	0
Totals	14,092	363

All of these comments were considered, and a detailed discussion of the major issues and concerns raised by commenters occurs later in this preamble.

Public Law 103-448 and the January 27, 1995, Proposed Rulemaking

Before the Department could finalize the June 10, 1994, proposal, Pub. L. 103-448, the Healthy Meals for Healthy Americans Act of 1994, was enacted on November 2, 1994. This law essentially codified the major provisions of the June 10th proposed rule. However, the law did mandate compliance with the Dietary Guidelines by School Year 1996/1997—two years earlier than the Department had proposed—although State agencies are authorized to waive implementation on a case-by-case basis until School Year 1998/1999. Public Law 103-448 also provided that schools could elect to use a "food-based" system of menu planning and preparation in lieu of NuMenus or Assisted NuMenus. The law further directed the Department to hold a public meeting with affected parties within 45 days of publication of a proposed rule to implement the nutrition-related provisions of Pub. L. 103-448. Because of the need to expedite the rulemaking activity, the law (section 112(c) of Pub. L. 103-448, 42 U.S.C. 1760(k)(2)) specifically exempted this meeting from the procedures normally required under the Administrative Procedure Act.

On January 27, 1995, the Department published a rule (60 FR 5514) proposing to incorporate the statutory requirement of section 106(b) of Pub. L. 103-448 (42 U.S.C. 1758(f)(1)) that school meals conform to the Dietary Guidelines by School Year 1996/1997, unless a waiver of up to two years is authorized by the State agency. The rule also proposed revisions to the existing meal pattern to enable schools using a "food-based" menu planning system to comply with the updated nutrition standards including the recommendations of the Dietary Guidelines. Finally, the proposal included a provision for State agency monitoring of food-based menu planning systems to ensure compliance with the nutrition standards, similar to the monitoring provisions proposed for NuMenus and Assisted NuMenus.

In developing the proposed food-based menu planning system, the Department retained the component structure of the current meal patterns for lunches and breakfasts because their familiarity would facilitate implementation at the local level. However, the Department proposed revisions to the age/grade groups: Two mandatory age/grade groupings: kindergarten through grade 6, and grade 7 through grade 12, with an optional grouping for kindergarten through grade 3. These groups are designed to reflect the need to distinguish the nutrient and caloric needs of younger and older children while also accommodating the grade structures of the majority of schools.

Moreover, the Department did not propose any reductions to the current minimum quantity requirements for any components. The principal differences between the proposed food-based menu planning system and the current meal patterns reflect increases in the quantities of vegetables/fruits and breads/grains products for reimbursable lunches. This change was intended to maintain calories while reducing fat. For children in kindergarten through grade 6, the Department proposed that the serving of fruits/vegetables be three-quarters of a cup per lunch *plus* an additional one-half cup served over a *five-day period*. The proposal set the minimum quantity of vegetables/fruits to one cup per lunch for children in grades 7 through 12.

With respect to grains/breads, the proposal would require that the number of lunch period servings per week for children in kindergarten through grade 6 be increased from the current 8 to 12. For children in grades 7 through 12, the number of servings would be increased from 8 (10 recommended) to 15 per week. To provide schools with

flexibility in meeting this requirement, the proposal further allowed one serving per day to be in the form of a grain-based dessert, such as rice pudding.

The Department proposed no changes to the quantity and component requirements for breakfasts. However, the proposal encouraged school food authorities to offer children in grades 7 through 12 an additional serving of the grains/breads component each day. This optional increase was intended to provide sufficient calories to meet the needs of adolescent children, especially males, when the fat content was modified to conform to the Dietary Guidelines.

Finally, to provide sufficient State agency oversight of meal services employing a food-based menu planning system, the Department proposed to have State agencies conduct a nutrient analysis of one week's meals using the school's menus and supporting production records. Under the proposal, the State agency would be required to do the nutrient analysis once every five years and could combine the analysis with administrative review activity. As noted above, all school food authorities will be required, beginning with School Year 1996/1997, unless the requirement is temporarily waived, to comply with the Department's nutrition standards, including the Dietary Guidelines. Since schools using a food-based planning system will not generally be conducting routine analyses of their meals and, therefore, will have no records documenting compliance, it will be necessary for the State agency to determine whether or not the way the school is using the food-based menu planning system actually produces meals that meet the nutrition standards. In the interests of flexibility, however, the proposal also would have authorized the Department to approve alternative review methodologies proposed by a State agency if they provided the same degree of assurance that school meals are in compliance with all nutrition standards.

The Department allowed a 45-day comment period, during which 363 comment letters were received. (See chart earlier in this preamble for a detailed list of the number of commenters by type.) Moreover, on February 17, 1995, the Department conducted a public meeting and invited representatives of the health, nutrition, education, food service and food industry communities to participate. Members of the general public were also invited to attend and address the meeting. Twenty-six persons spoke at this meeting, and their comments were

also analyzed and considered in developing this final regulation.

Development of the Final Rule

This final rule incorporates provisions from both the June 10, 1994, and the January 27, 1995, proposed rules. In finalizing the two proposals, the Department established the same nutrition standards for all menu planning approaches, including the key nutrients that must be met. In essence, this rule provides an array of menu planning methods for school food authorities to choose from to meet the Dietary Guidelines. The remainder of this preamble addresses the key issues raised by commenters on both proposals.

Nutrition Standards: Dietary Guidelines, RDA and Calories

As mentioned earlier, both proposals would have incorporated the Dietary Guidelines as well as specific standards for RDA and calories into the NSLP and SBP regulations. Under the proposals, school lunches would be required to meet one-third of the RDA for protein, vitamin A, vitamin C, iron and calcium as well as one-third of the Recommended Energy Intake (calories). School breakfasts would be required to provide one-fourth of the RDA for the same nutrients and calories. Moreover, in the June 10, 1994, rulemaking, the Department proposed incorporation of the recommendations of the 1990 Dietary Guidelines appropriate for school meals and announced its intention to review modifications or additions in subsequent issues of the Dietary Guidelines for possible future inclusions in the applicable program regulations. The proposed rulemaking also would have required full implementation by School Year 1998/1999.

However, section 106(b) of Pub. L. 103-448, the Healthy Meals for Healthy Americans Act of 1994, amended section 9 of the NSLA, 42 U.S.C. 1758(f)(2)(C), to *require* that school meals meet the recommendations of the Dietary Guidelines in School Year 1996/97. The January 27, 1995, proposal, therefore, included this requirement along with the statutory authority for State agencies (provided by section 106(b) (42 U.S.C. 1758(f)(2)(B)) to waive implementation on a case-by-case basis until no later than School Year 1998/1999. Section 106(b) of Pub. L. 103-448 (42 U.S.C. 1758(f)(1)(B)) also requires compliance with the Dietary Guidelines as they evolve. That is, the Department will adjust the nutritional standards of the NSLP and SBP if and when changes are made to the Dietary Guidelines.

Over 2,000 of the more than 14,000 commenters on the June 10, 1994, proposal addressed the Dietary Guidelines; of these, nearly 1,800 supported their use as the basis for the nutrition standards for school meals. In addition, over 900 commenters from the school food service community felt that the Dietary Guidelines could be implemented faster if they had the option to plan and prepare meals using a food-based menu planning system. Also, these commenters felt that a food-based menu planning system would support the goal of the Dietary Guidelines to increase consumption of fruits and vegetables. The basis for this latter comment was a perception that nutrient analysis seemed to focus on the nutrient content of individual foods rather than emphasizing the food groups, especially as depicted by the Food Guide Pyramid, jointly issued by the Department of Health and Human Services and USDA. The Department wishes to note that both proposals, as well as this final rule, reflect the Dietary Guidelines which the Food Guide Pyramid presents visually. The Department fully intends to continue using the Pyramid to promote nutritionally sound diets for the American people, and the Department expects the Pyramid to continue making a major contribution to nutrition education in the school meal programs and among the general public.

In view of the support by commenters, the scientific consensus recommending the Dietary Guidelines and the subsequent statutory provisions, the Department is incorporating the appropriate recommendations of the Dietary Guidelines into this final rule at § 210.10(b) (3) and (b)(4) and § 220.8(a) (3) and (4), and is requiring compliance with these recommendations by School Year 1996/97 unless a waiver not to exceed two years (to School Year 1998/99 at the latest) is authorized by the State agency (§ 210.10(o) and § 220.8(m)). The law does provide the Department with the authority to establish a later date for compliance (42 U.S.C. 1758(f)(2)(B)), but the Department does not consider a general extension appropriate given the importance of implementing the Dietary Guidelines as expeditiously as possible. As noted above, the statute (42 U.S.C. 1758(f)(1)(B)) also requires compliance with the most recent Dietary Guidelines. Therefore, this final regulation specifies compliance with the 1990 Dietary Guidelines, the most recent version to date. The Department will revise the school nutrition standards as necessary in the future to incorporate any

appropriate updates to the Dietary Guidelines.

Over 1,700 commenters specifically addressed the proposed provisions to implement the Dietary Guidelines' recommendation on limiting the levels of calories from fat and saturated fat. The majority of these commenters were parents and students. Many parents were concerned that the levels established by the Dietary Guidelines were too low for children and that overemphasizing the need to limit fat would lead to eating disorders. Other commenters suggested that the level for fat be set at 32 per cent, not 30 per cent, because they believed that student participation might decline if fat is reduced too much. The Department notes, however, that approximately three-quarters of the comments received from the public health sector agreed with the proposed levels.

The final regulation includes the current recommendations of the Dietary Guidelines for fat and saturated fat as proposed because the Dietary Guidelines represent the best scientific knowledge on nutrition currently available for everyone above the age of two. Moreover, Congress mandated that school meals comply with the Dietary Guidelines in recognition of the fact that they represent scientific consensus. Given this statutory mandate, the Department has no authority to alter the current recommendations regarding limits on fat and saturated fat.

The Department recognizes the importance of encouraging children to accept meals with reduced fat content. Merely enacting policies will not accomplish change. That is why USDA established Team Nutrition to implement "Making Food Choices," our nutrition education, training and technical assistance effort. The mission of Team Nutrition is to improve the health of children by creating innovative public and private partnerships that promote healthy food choices through the media, schools, at home and the community.

As part of this overall effort, the Department has established the Children's Nutrition Campaign—a multi-faceted education program delivered through the media, in schools and at home that builds skills and motivates children to make healthy food choices. The campaign will bring proven, focused, science-based nutrition messages to children in a language that they understand while strengthening social support for children's healthy food choices among parents, educators and food service professionals. To accomplish this goal, the Department is building partnerships with public and

private sector organizations, such as the Walt Disney Company, Scholastic Inc. and the National PTA to name only a few.

The Department is also promoting a Training Plan for Healthy School Meals—a strategic plan for "change-driven" training to provide support to school food service personnel implementing the Dietary Guidelines. Through this plan, the Department will ensure that school nutrition and food service personnel have the education, motivation, training, and skills necessary to provide healthy meals that are appealing to the children and meet the nutrition standards established by this rule. As initial steps in this approach, the Department has developed improved recipes for schools and is working with the American Culinary Federation to share recipes and techniques in food preparation with the school food service community.

In Fiscal Year 1995, the Department is also awarding \$4.4 million in Team Nutrition Grants to enable States to start or expand training and technical assistance activities for local food service personnel. The Department expects these grants to result in more expeditious compliance with the Dietary Guidelines.

The Department considers that providing accurate information about nutrition through the Children's Nutrition Campaign, as well as assistance with meal planning and preparation offered through the Training Plan for Healthy School Meals, will go far toward maintaining, or even increasing, participation in more healthful school meal programs.

To comply with the Dietary Guidelines, schools will also need to decrease the levels of sodium and cholesterol and increase the amount of dietary fiber and total carbohydrates in school meals. The Department did not propose specific levels for these components because numeric targets are not established by the current Dietary Guidelines. However, progress in this area will be assessed in a variety of ways including gradual reductions in sodium, and if necessary, cholesterol levels, and increased use of vegetables, fruits and grain products.

In addition, the Department did not propose measuring sugar or carbohydrate levels or the school's success in offering a variety of foods. As stated in the June 10th proposal, specific levels are not established by the current Dietary Guidelines for these components. The Department believes, however, that the provisions of this final rule actively promote an increase in the

amount and variety of fruits, vegetables and grain products in school meals.

Approximately 2,600 comments addressed one or more of the above issues. The large majority of these were from school food service personnel, although more than 250 were from the public health community, with the majority of these agreeing with the Department's decision not to establish numeric levels. With respect to the recommendations on sodium, dietary fiber, and cholesterol, the number who supported including the recommendations without specific limits was about the same as the number who wanted a specific limit. For sugar and other carbohydrates, the majority suggested that the Department establish numeric levels. At this time, the Dietary Guidelines do not recommend quantitative levels of sodium, fiber, cholesterol, sugar or carbohydrates. Therefore, the final rule does not establish any numeric standards for any of these nutrients or dietary components. The provisions on the Dietary Guidelines are found at § 210.10(b) and § 220.8(a).

Additional RDA/Tolerances for RDA

Over 300 commenters, approximately half from the school food service community, addressed the minimum standards for RDA and calories. Some commenters recommended additional nutrients that should be measured such as: potassium, thiamine, riboflavin, copper, magnesium, zinc and B vitamins. Others asked that tolerance levels for meeting the required nutrients and calorie levels be established. As stated in the June 10th proposal, the included nutrients were chosen because they are the key nutrients that promote growth and development. Moreover, the presence of some of these nutrients is an indication that other important nutrients such as those suggested by commenters are present as well. Further, they are consistent with those required in the Nutrition Labeling and Education Act of 1990 (Pub. L. 101-535) and, thus, are clearly identified on labels or food specifications. The Department considers that measurement of nutrients would be too complex and burdensome if they are not included on labels. Therefore, the Department does not intend to add any other nutrients to those already proposed. Finally, with respect to tolerances, the Department does not consider it appropriate to include them as part of the regulatory standards, since those standards represent minimums which school food authorities should always strive to meet. The Department also notes that, as will be discussed later in this preamble,

schools which are making good faith efforts to comply will not be held fiscally accountable if they do not meet the standard precisely. The RDA requirements are found at § 210.10(b) and § 220.8(a).

Menu Planning Systems

As discussed above, the June 10, 1994, proposal would have required all school food authorities to plan and prepare meals using Nutrient Standard Menu Planning (NuMenus) or its corollary, Assisted Nutrient Standard Menu Planning (Assisted NuMenus). Over 8,600 commenters addressed the concept of NuMenus. The large majority were from school food service personnel. Many of these comments stated that the NuMenus concept was too complex and inflexible and that it, and Assisted NuMenus, should just be options for menu planning. Some commenters felt that the proposed system would have the effect of reducing choices for students and would lower the quality of meals served because of perceived increases in costs associated with implementation and training.

Further, over 2,500 commenters addressed the concept of Assisted NuMenus. Approximately half of these commenters were from the school food service area, while more than 700 were students or their families, over 250 were teachers or other school officials, and over 300 from other sources. Nearly 900 commenters believed Assisted NuMenus was inflexible, and about 450 found the system too complex. More than 200 commenters specifically recommended that schools without the resources for NuMenus be allowed to continue using a meal pattern. Other significant issues involved concerns about costs, possible outside control over menus and lack of responsiveness to local needs. Finally, a few commenters requested that the Department provide a set of menus, recipes, procurement specifications and preparation techniques.

In addition to the issues raised about menu choices and costs, the Department notes that many commenters were primarily concerned about being *required* to adopt NuMenus or Assisted NuMenus. The Department would like to point out that many commenters underestimated the flexibility of nutrient standard menu planning. In fact, this system is inherently flexible since meals would no longer be restricted to specific components and quantities. In addition, nutrient standard menu planning supports accommodation of ethnic, regional, and vegetarian choices. The concern about

limiting menu planning options was addressed by the January 27, 1995, proposal that allows schools to elect a food-based menu planning system in lieu of NuMenus or Assisted NuMenus. The Department is retaining NuMenus and Assisted NuMenus in this final regulation (at § 210.10 (i) and (j) and § 220.8 (e) and (f)) because it continues to believe that these two systems can be valuable menu planning options in that they allow maximum flexibility. In fact, these are the only systems that the Department has identified which allow menu planners to assess their actual compliance with the quantified recommendations of the Dietary Guidelines and the other nutrition standards. The Department also notes that section 9(f)(2)(C)(i)(II) of the NSLA, as amended by section 106(b) of Pub. L. 103-448, requires that these two systems be available to local school food authorities. The Department acknowledges that Assisted NuMenus may be less responsive to local conditions than NuMenus, but it still provides a viable option for schools which are unable to conduct nutrient analysis themselves, but do not wish to continue with a more rigid meal pattern approach. Furthermore, unlike the food-based system, Assisted NuMenus will provide schools with accurate analyses of the nutrient content of the meals they are serving so that schools will be better able to determine their level of compliance with the Dietary Guidelines and other nutrition standards, thus alerting schools to needed menu adjustments. A more detailed discussion of the proposed methodology occurs later in this preamble.

National Nutrient Database for the Child Nutrition Programs

Successful conduct of nutrient analysis requires accurate information about the nutrient content of foods. To meet this need, the Department has developed a centralized National Nutrient Database that provides standard reference information on the foods and recipes used in the NSLP and SBP. As described in the preamble to the June 10, 1994, proposal (59 FR at 30229-30), this database contains information on the nutritional composition of (1) commodities supplied by the Department, (2) standard reference food items used in the NSLP and SBP, (3) Quantity Recipes for School Food Service developed by the Department and (4) commercial products for which the manufacturer has submitted nutrient analysis. The proposal, at § 210.10(k)(1) and § 220.8(j)(1), required that this database be incorporated into all software

systems used to support NuMenus and Assisted NuMenus, and the Department gave assurance that the database would be made available free of charge to software companies and would be regularly updated to ensure that the database is as accurate and current as possible.

The Department received about 150 comments specifically on the database, primarily from school food service personnel. Most of the commenters were concerned that it might be too difficult to add local recipes to the database, while a few believed it would prove difficult to add locally available processed foods. Finally, there was some concern that food processors might be required to pay a fee to have their products included in the database.

The Department recognizes that the effectiveness of this database is partially dependent on the willingness of the food industry to submit data about their processed products. To ensure that processed foods are well represented in the database, the Department has met with food industry representatives to resolve issues related to the submission of processed food information. As a result of these meetings, the Department has taken a number of actions to improve the submission process. For example, the data submission disk has been revised to make data entry easier, and the Department is accepting unrounded data generated by the food industry and some provisional data. The Department has also reduced the details which must be reported for quality control purposes and has given industry greater flexibility in submitting samples of their laboratory results. The Department will continue to work with the food industry to improve the system for including processed foods in the database. The Department also wishes to emphasize that, while processors may pay to have their products analyzed, there is no fee for having the product included in the database. Finally, while the Department's database will not include local recipes and locally available processed foods, the software being developed for schools to use in nutrient analysis will have a feature allowing the incorporation of local recipes and products.

School Food Service Software Systems

The Department acknowledges that computer software is essential to NuMenus and Assisted NuMenus, since without effective software it would be nearly impossible for school food authorities to conduct the mathematical and analytical tasks associated with nutrient analysis. Therefore, the June 10, 1994, proposal required school food

authorities to use a software system that FCS had determined met a set of minimum requirements. The Department is undertaking software evaluation as a means of providing technical assistance to local schools seeking to implement NuMenus or Assisted NuMenus. While the determination would not constitute an endorsement by either FCS or the Department, it would ensure that the software used by local school food authorities has been proven to support the program requirements for NuMenus and Assisted NuMenus. All approved software will perform the following specific operations: (1) Compute a weighted nutritional analysis of meals, (2) weight and average the RDA to establish new nutrient standards, (3) convert the nutritional analysis information on any label to 100 grams, (4) create and analyze recipes and (5) print a calendar format. Also, the software will provide for a local database into which local recipes and locally available processed foods can be loaded for analysis. The Department intends to continue working with the computer software industry to develop and improve software applications for nutrient analysis. The Department is also currently working with the software industry to modify their packages to allow for a combined weighted breakfast/lunch analysis for those schools wishing to take advantage of this menu planning option. The database requirements are found at § 210.10(i)(4) and § 220.8(e)(4).

The Department received approximately 4,800 comments on the software requirements. Nearly 3,700 commenters, primarily from those in school food service, raised concerns about the cost of computers and software needed for NuMenus and Assisted NuMenus. Over 950 commenters believed the Department should provide or pay for the software, while over 2,700 maintained that the equipment and software would be too costly for local schools. The remainder raised concerns about the complexity of these systems and the need for adequate training.

The Department appreciates these concerns but does not believe it would be appropriate or practical for the Department to develop software because local schools must have flexibility to select the software that is best for their particular circumstances. If the Department were to provide a specific package, it would not be compatible with the variety of computer systems currently in use, and in many cases would not include additional applications which the local school

might want. The Department notes that the price of computer hardware and software will vary widely, depending on several factors, including the ability of the software to perform additional functions such as maintaining inventory. Nevertheless, some approved software is already available at nominal cost. The Department anticipates that, as competition in this field increases, market forces will make approved software even more affordable. It also must be recognized that, when averaged over the life of the software and the number of meals being served, the acquisition cost should be quite modest.

Finally, given the range of software which the Department anticipates being available for local schools to choose from, it would not be possible for the Department to provide uniform training. However, software companies routinely provide detailed training as part of the cost of software, so local schools should not experience any significant extra cost for training.

Weighted Averages

Sections 210.10(k)(2) and 220.8(j)(2) of the June 10, 1994, proposal would have required school food authorities to determine compliance with the nutrition standards by conducting a *weighted* analysis of all foods served to children as part of their reimbursable meals. Thus, if children are offered a choice of more than one entree (e.g., pizza and fish sticks) the analysis would give more weight to the nutrients in the more popular item and correspondingly less weight to those in the less popular item. For example, if 75 percent of the children select pizza and 25 percent select fish sticks, the nutrients, calories and other components of the pizza would count for three times as much as those in the fish sticks. The purpose of this procedure is to ensure that the menu planner receives an accurate picture of the entire food service's compliance with the nutrition standards and to avoid situations in which token items on a menu could make the meal service appear to be in compliance even though these items are rarely selected.

The Department received nearly 3,000 comments on this provision, over 2,700 from school food service personnel. While a few commenters agreed with the proposal, nearly 1,300 maintained that the procedure would be too complex, and nearly 100 specifically cited the difficulty of separating out the a la carte service of items that are also part of a reimbursable meal. Approximately 1,000 commenters raised concerns about potential increases in paperwork and meal costs as well as the possibility that schools would limit

choices, thereby reducing participation. Many commenters contended that school food authorities would be held accountable for children's food preferences, but that children frequently do not select foods that are best for them. Some commenters recommended alternatives to weighted analysis, such as averaging the nutrients in all of the menu items regardless of whether or not the items are routinely selected or averaging the nutrients in the most popular entrees (up to a maximum of three if more than three are offered), the method employed in a Nutrient Standard Menu Planning demonstration project in California.

The Department appreciates commenters concerns and recommendations. With respect to concerns about cost and complexity, the Department notes that the software designed to accommodate NuMenus and Assisted NuMenus will have the capacity to perform a weighted nutrient analysis just as it performs other calculations. Food service personnel, therefore, should experience much less difficulty with weighted nutrient analyses than they predicted in their comments. Moreover, while it may be necessary in some cases for schools to account for menu and a la carte items separately, in most cases school food service personnel will be able to make reliable *estimates* of the proportion of menu items that will be sold a la carte based on their experience. The Department does acknowledge that menu planners in centralized food services may experience some complexity in dealing with different preference patterns in different schools. The Department is confident, however, that school districts will be able to work out appropriate procedures that will not be overly burdensome to individual schools.

In addition, the Department stresses that the value of nutrient analysis is that it provides a tool for accurately measuring the degree to which the meals provided to children meet the nutrition standards. This measurement does not, in itself, penalize the schools. In fact, the Department believes that it is in the school's interest to have an accurate picture of its meal service. Without a weighted average, schools will be unable to track the relationship between what they offer and what is accepted, or the effects of introducing new foods or using modified cooking techniques. In the absence of the complete picture that weighted analysis provides, there is little incentive for the school to make changes in its menus or to know how best to undertake nutrition education.

Finally, the Department does not consider that the alternatives proposed by commenters would represent improvements over the proposed methodology. While a straight average of the nutrient values of all menu items would measure the nutrients in the foods available to the children, there would be little, if any, correlation between the nutrient analysis and the actual nutrition value of the meals consumed by the children. The Department's experience with the Nutrient Standard Menu Planning pilot project conducted during School Years 1983-1985 suggests that an unweighted analysis can, in fact, bias the results. Although that project did not track fat or saturated fat, certain foods with high iron content were sometimes offered but were rarely taken by students. Consequently, an unweighted analysis of menu items made it appear that children were receiving meals that met the standards for iron when, in fact, they were not.

These disadvantages apply equally to an analysis which averages the three most popular entrees. While on the surface, this method appears to provide a middle ground between weighting everything that is produced and averaging everything that is on the menu, in fact it does not provide accurate information about the overall meal service. For example, if a school served 100 helpings of pizza, 25 helpings of fish sticks and 5 chef salads, a simple averaging of the three items would not accurately reflect the actual meal service. Moreover, schools using this method would need to develop a way of accounting for the nutrients in side dishes and milk. Finally, it would not enable schools to track changes in children's food habits and would provide no incentive for introducing new foods or modifying cooking methods.

Nutrition analysis is significantly weakened without a weighting component. It is only through weighting that schools can develop more healthful and nutritious meals and track improvements in children's diets. The Department believes approved software packages will alleviate many of the concerns of local personnel, especially as they become more familiar with the software applications over time. Therefore, this final rule incorporates, at § 210.10(i)(5) for the NSLP and § 220.8(e)(5) for the SBP, the proposed requirements that NuMenus and Assisted NuMenus be based upon a weighted analysis of the foods produced.

Menu Adjustments Under Assisted NuMenus

The Department also wishes to address a proposed provision of Assisted NuMenus which was widely misunderstood. This provision (§ 210.10(l)(4) and § 220.8(k)(4) of the proposed rule) required a reanalysis of the Assisted NuMenus cycles when adjustments to menu offerings are needed to reflect changes in student preferences and participation or increased emphasis on meeting nutrition standards. It is important that the school food authority be alert to shifts in participation trends, as well as such factors as modifications to USDA commodities or food purchased in the market, since these changes can affect the degree to which menus continue to meet the nutrition standards. This information must be conveyed to whomever prepares the menus so that the recipes and menus can be reanalyzed and appropriate adjustments made. In accepting a set of menus from an outside source, the school food authority needs to confirm that there is a ready mechanism for making the necessary adjustments to the menu cycle and its accompanying segments. The Department emphasizes, however, that such adjustments do not have to be made routinely to reflect minor changes in participation or preference. On the contrary, the Department believes that adjustments would be necessary only when the school experiences significant fluctuations in student consumption patterns or as the school continues to improve meal quality by changing its menus. Therefore, this proposed provision is retained at § 210.10(j)(4) and § 220.8(f)(4).

Finally, the Department recognizes that Assisted NuMenus may not be suitable for all schools. However, for those schools whose circumstances lend themselves to this menu planning option, the Department will be providing technical assistance materials. In accordance with section 9(f)(2)(C)(i)(II) of the NSLA (as amended by section 106(b) of Pub. L. 103-448), the Department is developing a cycle menu with accompanying recipes, food product specifications and recommended food preparation methods. These guidance materials will enable local schools to prepare meals which meet the nutrition standards.

Combining Analysis of Breakfasts and Lunches

The June 10, 1994, proposal would have required school food authorities to conduct separate analyses of lunches and breakfasts. This requirement was

based on the fact that breakfasts, as documented by the SNDA study, are generally in compliance with the Dietary Guidelines. A combined analysis, therefore, might tend to disguise situations in which no significant improvements were being made to the nutritional quality of lunches. Moreover, since the number of children participating in the breakfast program is a fraction of the children eating school lunches, a straight average of the two meal services would not provide an accurate reflection of the food service for the majority of children.

The Department received nearly 900 comments on this proposed provision. Over two-thirds came from school food service professionals, although more than 130 of the comments were from the general public. All but three comments recommended combining the analyses of breakfast and lunch, generally on the grounds that the Dietary Guidelines are intended to apply to total consumption rather than to individual meals.

The Department agrees that it can be useful to measure the compliance of the entire food service. Therefore, the final rule is being revised to give schools *the option* of conducting a combined analysis provided the meal services are properly weighted for participation (§ 210.10(i)(5)(iii) and § 220.8(e)(5)(iii)). The Department notes, however, that even though the software will handle the additional calculations, menu planners may find that this method does not have any significant practical effect on their ability to achieve the required nutrition standards, since breakfast represents a relatively small portion of the overall meal service.

Reimbursable Meals Under NuMenus and Assisted NuMenus

Currently, school food authorities receive reimbursement for each meal served to children that meets the meal pattern requirements for lunch or breakfast. Basically, the minimum quantity of all the required components (meat/meat alternate, bread/bread alternate, two different fruits/vegetables and fluid milk) must be offered, and a minimum number of items (at least three if the school employs "offer-versus-serve" (OVS)) must be selected. In order to determine if the meal chosen by the child is reimbursable, the cashier observes, at the point of service, if the proper number of components has been taken.

Under NuMenus and Assisted NuMenus, however, schools will have the flexibility to vary the amounts and quantities of individual foods as needed to achieve compliance with the nutrition standards. Nevertheless, it will

still be important that each reimbursable meal include a minimum number of food items for the following reasons. First, there needs to be a reasonable standard for Federal reimbursement. Secondly, a reimbursable meal must be easily recognizable at the point of service so that it can be counted accurately. Finally, it is preferable that children receive a minimum amount of nutrients from every meal rather than experiencing large fluctuations from day to day.

Therefore, the Department proposed that under NuMenus and Assisted NuMenus, a lunch would be reimbursable if at least three menu items (one must be an entree and one fluid milk) were offered, and, if the school does not participate in OVS, all menu items are taken. If the school participates in OVS, a lunch would be reimbursable if at least three menu items were offered (again, one must be an entree and one must be fluid milk), and at least two menu items (including the entree) were selected. For the SBP, at least three menu items had to be offered and at least two taken under OVS. The entree requirement was not extended to the SBP. The proposal ensured that children would receive appropriate daily levels of nutrition and that cashiers would continue to be able to determine easily if the meal selected by the child was reimbursable.

The Department received nearly 1,300 comments stating that a minimum of two items for OVS was not adequate. About 700 of these commenters were concerned that allowing children to take as few as two items would not support nutrition education efforts or provide sufficient calories. Further, they felt that only two items under OVS would undermine efforts to have meals comply with the Dietary Guidelines.

The Department agrees that the number of items which children may decline should be limited. Therefore, this final rule revises the proposed definition of a reimbursable lunch when schools using NuMenus or Assisted NuMenus also participate in OVS. For lunches in these situations (at § 210.10(i)(2)(ii)), the child must select at least two items (the entree and one other) *and* may decline no more than two items. Thus, when a school offers a meal with five or more items, the student may decline only two items and must take three or more. Under the proposal, the student would have been required to accept only two items and could have declined three or four items in a five or six item meal. The entree, of course, could not have been declined. For the SBP, the current requirement that the child may decline only one item

is retained at § 220.8(e)(2)(ii). Consequently, the amount of food taken by the child under NuMenus and Assisted NuMenus will at least equal, and in many cases will exceed, the amount taken under the old meal pattern requirements.

The Department does wish to address what appears to be a misunderstanding on the part of some commenters regarding the term "menu item" as it is used in NuMenus and Assisted NuMenus. Under a meal pattern system, food items are generally viewed as satisfying one or more components. For example, a helping of spaghetti and meatballs will supply the meat/meat alternate and grain/bread components of the meal as well as one of the fruit/vegetable components. The same holds true for many popular foods, such as lasagna, pizza or chef salads. If schools use a meal pattern menu system and participate in OVS, the child would have to take the spaghetti and meatballs, since collectively that dish includes three components, but could decline the second vegetable/fruit item or the milk.

Under a system of nutrient analysis, however, spaghetti and meatballs is a single menu item (in this case, an entree) which contributes specific nutrients. If, therefore, the school offered this dish along with two other items (e.g., milk and fruit), the meal would actually provide more nutrients than under OVS in schools using a meal pattern, since the child would have to select the entree and at least one other item. If the school offered this dish along with three other items (e.g., green beans, fruit and milk), the child would also receive a more substantial meal than under the meal pattern since s/he could decline only two of the remaining three items.

The proposed requirement (at § 210.10(e)(4)(ii)) that the child select the entree stemmed from the Department's concern that the school lunches children consume provide an adequate amount of calories and other essential nutrients. Traditionally, the most significant nutrition contribution in a school lunch has come from the entree. Therefore, this provision was proposed as a way of ensuring that children participating in OVS receive the most nutritious lunch possible.

The Department recognized that the proposal deviated from current requirements which do not stipulate any particular item that the child must select. Therefore, the Department specifically solicited comments on this requirement. Only about 30 commenters supported the requirement, while 644 commenters expressed some objection. Some commenters were concerned that

requiring students to select an entree would lead to reduced participation since students would have less opportunity for personal choice. Others thought that fewer fruits and vegetables would be selected. Finally there was concern that requiring selection of the entree would increase meal service costs.

The Department appreciates the concerns expressed by the commenters but continues to believe that it is necessary to require that the entree be selected for lunch in order for the meal to be reimbursable. Because the meal is built around the entree, that dish will generally make the most significant calorie contribution to the meal and also will be likelier than other items to provide a variety of nutrients. The Department also notes that schools have considerable flexibility in determining what the entree will be. For example, a school could serve a chef's salad or a vegetable and fruit platter as an entree. The Department emphasizes that the final provisions on NuMenus and Assisted NuMenus require the child to take the entree *and* at least one other item. Therefore, the child may actually receive more food than would necessarily be the case under the former meal pattern. Finally, data from the SNDA study shows that children overwhelmingly select entrees under the current system. Therefore, the Department does not believe that requiring children to select the entree will result in greater plate waste. For these reasons, this final regulation, at § 210.10(i)(2)(ii), requires that one of the items selected by the child under OVS be an entree.

While the Department believes that the OVS requirement for an entree is necessary to ensure that children receive proper nutrition from school meals, it is concerned about the possibility of plate waste. Consequently, the Department requests that school food service personnel submit comments based on their operational experience with OVS under NuMenus and Assisted NuMenus. If operational experience with OVS as required by this rule indicates an increase in plate waste, the Department will consider future rulemaking, including issuance of a proposed rule, to change the regulatory requirement.

Complexity/Inflexibility of NuMenus/ Assisted NuMenus

Over 2,200 commenters maintained that NuMenus and Assisted NuMenus were too complex, and more than 3,400 believed these menu planning systems would be inflexible. The Department notes that, since NuMenus is not bound

by the component and quantity requirements of a food-based menu planning system, it gives schools more flexibility to vary their menus and to introduce different foods than they have under a meal pattern. The Department does agree that some additional effort will be necessary when NuMenus is initially implemented. As schools acquire more experience with the software and learn to take full advantage of NuMenus, this alternative can actually reduce the amount of time spent on menu planning.

Many commenters were specifically concerned about what they viewed as the inflexibility of Assisted NuMenus. Most of these commenters believed that Assisted NuMenus would impose outside controls over local menus, would be unresponsive to local preferences and would result in limited food choices which, in turn, would lead to reduced participation. The Department agrees that Assisted NuMenus is less flexible than NuMenus because the basic analysis is not performed on site, but that Assisted NuMenus still provides a better method to determine compliance with the Dietary Guidelines and other nutrition standards and provides more flexibility than the current meal pattern approach. This option was proposed in response to concerns that some schools may not have the resources to conduct NuMenus themselves. The Department notes, however, that schools electing to use Assisted NuMenus will still be able to control the kinds and variety of foods they serve. To account for local preferences or the purchase of local foods, schools will provide the appropriate information or specifications to whomever conducts the analysis. Subsequent modifications also would need to be referred to the analyst for adjustments. Thus, under Assisted NuMenus, local schools will continue to exercise latitude over the meals they serve and will not be subject to the analyst's decisions unless they choose to be.

Food-Based Menu Systems

A total of 363 commenters addressed one or more aspects of the January 27, 1995, proposed rule, either at the public hearing or in writing. About 200 comments were submitted by State and local food service professionals, and 79 were from other school personnel not connected with the food service. Fifty representatives of the food industry commented as did 26 nutritionists and food advocates or groups. Of these, 95 commenters generally approved of the proposed food-based system, while 78 generally disagreed. The remainder

tended to approve of some aspects of the rule and disapprove of others. The chief areas addressed by commenters were the quantities specified for each of the four components, the age/grade groupings, and the monitoring requirements.

Before discussing these issues, however, the Department wishes to address a widespread misperception that the State agency would decide which menu planning alternative (food-based or nutrient analysis) would be used by local schools. Section 9(f)(2)(D) of the NSLA, as amended by section 106(b) of Pub. L. 103-448, specifically makes the choice of a menu planning system a local school option. While the State agency can (and, in the Department's view, should) provide advice on which system might prove to be most effective for an individual school food authority, the final decision rests with the local school food authority.

Component and Quantity Requirements

Eleven commenters gave general approval to the proposed meal patterns, while 13 disagreed completely with the proposal. For the most part, however, commenters discussed specific issues without entirely approving or disapproving. The most prevalent concern was that increased servings of vegetables/fruits and grains/breads would lead to increased plate waste (69 comments) and cost (115 comments). With respect to the meat/meat alternate component, 58 comments recommended reducing the quantity but were not specific. Another 64 commenters recommended specific reductions, and about the same number recommended crediting various alternatives, including yogurt. The Department received 142 comments on the proposed vegetables/fruits portions. Forty of these were concerned with increased plate waste and costs. The remainder generally raised technical questions or proposed revisions to the quantity requirements. The Department received 232 comments on the proposed grains/breads requirements. About half of these recommended revisions to the quantity requirements (80 comments) or raised crediting issues (47 comments). The remaining comments were concerned with a variety of technical issues, the most important of which was the proposed provision to allow one serving of dessert per day to be credited toward meeting the grains/breads requirement. Finally, 73 comments addressed the milk component. Most of these comments (52) recommended that yogurt be credited as meeting the milk requirement.

The Department appreciates commenters' recommendations for adjustments to the proposed quantity requirements. The Department did not propose to reduce the quantity requirement for the meat/meat alternate component because, while it is true that this component will generally be higher in fat than the other components, the meat/meat alternate contributes a substantial portion of the calories and protein in the meal. If this component were to be reduced, the quantities of fruits/vegetables and grains/breads would need to be significantly greater than was proposed in order to replace the calories lost from this source. The proposed food-based menu planning alternative was designed to enable schools to comply with all of the meal standards, including the requirement that lunches provide one-third of the calories needed by growing children. Therefore, the Department does not believe it is feasible to reduce the meat/meat alternate component without a correspondingly large increase in the other components. The Department continues to recommend, however, that schools use lower-fat protein sources and employ preparation techniques that will minimize the levels of fat and saturated fat.

As noted above, the Department proposed to increase the quantities of fruits/vegetables and grains/bread to increase dietary fiber and calories from low-fat or nonfat sources. The Department appreciates commenters' concerns about possible increases in food costs. However, it would not be possible to reduce the servings of these components and still have a meal pattern that meets the Dietary Guidelines. Moreover, in designing the proposed patterns, the Department considered the cost ramifications. As discussed elsewhere in this preamble, the Department compared the costs currently incurred by school food authorities with the costs of items in the meal pattern and concluded that the current cost-per-component-serving for food can be maintained through the selection of lower-cost grains/breads. For a complete discussion of the nutrition basis and cost implications of the proposed revisions to the meal pattern, readers should refer to the preamble and regulatory assessment for the proposed rule at 60 FR 5514.

The Department also shares commenters' concerns about plate waste. However, as noted elsewhere in this preamble, the Department is undertaking a major initiative to educate children and their families about good nutrition and to provide school food authorities with recipes and techniques

that can make more healthful meals that are also appealing to children. The Department continues to believe that there is no inherent reason why fruits/vegetables and grains/breads should not be appealing if they are properly prepared and presented.

In the January 27th proposed rule, the Department sought to include the crediting of one dessert per day to provide schools with flexibility in meeting the enhanced grains/breads requirement in the proposed rule. The Department appreciates commenters' concerns about possible sugar content of desserts. The Department emphasizes, however, that if desserts are served as part of the reimbursable meal service, all of the elements in these food items will be analyzed by the State agency as part of its review of the school's compliance with the nutrition standards. To assist schools in preparing desserts that make a balanced contribution to the meal, the Department has developed modified dessert recipes which reduce fat content and increase the use of whole grain products. Such popular desserts as orange rice pudding, whole grain cookies and fruit-filled items will provide many of the children's other needs, such as dietary fiber, without overemphasizing sugar and fat. For the above reasons, the Department is adopting in this final rule, at § 210.10(k) and § 220.8(g), the proposed food-based menu planning meal patterns.

Age/Grade Groupings

One concern cited by commenters to the January 27th proposed rule was the difference between the age/grade groups for NuMenus and those for the food-based menu planning systems. In the June 10, 1994, proposal, the Department advocated establishing minimum levels of calories and nutrients for four age groups: (1) Ages 3–6, (2) ages 7–10, (3) ages 11–13 and (4) ages 14–17. These groupings were designed to take into account the ages at which children tend to need greater amounts of nutrients and calories to ensure proper growth. The specific levels represented weighted averages of the levels of nutrients and calories needed by children in those groups with the greatest increase coming at approximately age 11. Under a system of nutrient analysis, such as NuMenus or Assisted NuMenus, the computer software enables the menu planner to calculate the required nutrient levels easily and to adjust the menu and portion sizes to reflect the nutrient profile of the children when more than one age group is being served.

With a food-based menu planning system, however, the components and portion sizes are prescribed for menu planners to ensure that sufficient food is provided to meet the children's calorie and nutrient needs. Consequently, this system, which is not as flexible as nutrient analysis, does not allow for the tailoring that is possible under a system of nutrient analysis. In recognition of this limitation, the Department proposed to establish minimum portion sizes (accompanied by the appropriate levels of calories and nutrients for these grade levels) for two grade groupings in the January 27, 1995, rulemaking: Kindergarten-grade 6 and grades 7–12 for the NSLP while retaining the current single grade group of kindergarten-grade 12 for the SBP. In addition, optional levels were established in the NSLP for kindergarten-grade 3 and in the SBP for grades 7–12. These groups were selected because they reflect the age breakouts commonly used for individual schools and because they recognize the need for significant increases in nutrients and calories for adolescents.

The Department received over 500 comments on the age/grade groupings proposed in the June 10, 1994, rule, the vast majority of which were from school food service personnel. While a few commenters agreed with the four age groupings for nutrient analysis, most raised questions or concerns. About a third of the commenters asserted that the groupings were too complicated and too costly and would require too much paperwork. Some commenters were concerned that the groupings did not reflect the actual age/grade groups in some schools, and some maintained that these groupings would not work in schools with kindergarten-grade 12. A small number recommended that a single generic standard be established for all ages/grades. Over half of the commenters, again mainly representing school food service, addressed miscellaneous concerns about applying these groupings in different local situations and recommended modifications such as applying one age category based upon the majority of students or establishing standards for pre-school, elementary, middle and high schools.

The Department received 53 comments addressing the age/grade groupings of the January 27, 1995, proposed rule for the food-based menu planning system. Three commenters agreed with the proposed groupings, while eight disagreed without raising specific issues. Over forty commenters suggested changes to the groupings because of concerns about the

applicability of the two groupings to their particular situations.

The Department does recognize that no set of age/grade groupings will apply precisely to every school's structure, nor will they satisfy the nutrition and calorie needs of every child. Moreover, it recognizes that not all systems will be able to tailor meals to the optimum. Therefore, the final rule adopts the same grade groups for both NuMenus and Assisted NuMenus as were proposed for the food-based menu planning alternative as the minimum requirement. In addition, the regulation also provides a number of alternatives for age/grade groupings for the nutrient analysis alternatives. Schools may use the age levels provided in the January 27, 1995, proposed regulation (ages 3–6, 7–10, 11–13 and 14 and above) as an option or may develop their own age/grade groupings. The Department continues to believe it is important to recognize the age related nutrient needs of children and provides the option of these more age appropriate levels for schools that are able to implement them. The software will readily allow for these variations, and FCS will be providing guidance on how to develop individual groupings and levels. The age/grade groupings for NuMenus and Assisted NuMenus may be found at § 210.10(c) and (i)(1) and at § 220.8(b) and (k)(1).

The January 27, 1995, proposal was structured to take into account that, in many cases, school food authorities using the food-based menu planning alternative would not have access to computer technology and would, therefore, need a simpler pattern. Consequently, as noted above, the Department proposed two grade groupings for both the nutrition standards and portion sizes which essentially overlap the four age groupings of the June 10, 1994, proposal. Since these groupings generally reflect the grade structures of most schools, the Department considers that school food authorities using these patterns should experience little, if any, difficulty in complying with the requirements. In fact, the grade groups in this rule conform more closely to the standard structures of elementary and secondary schools than did the groupings in the existing patterns (kindergarten-grade 3 and grades 4–12). Finally, the Department notes that school food authorities may always increase the portion sizes to accommodate older children, but to require schools to do so would introduce an unreasonable complexity into the system. For these reasons, the age/grade groupings of the January 27th proposal are adopted without change at

§ 210.10(d) and (k)(2) and at § 220.08(c) and (g)(2).

Monitoring Compliance With Nutrition Standards

In both proposals, the Department proposed modifications to the review requirements so that compliance with the updated nutrition standards would be monitored properly. Currently, State agencies monitor compliance with meal pattern components and quantities on a per-meal basis through observation of the meal service. If there is reason to believe that a school is consistently offering meals which are deficient, State agencies may examine menus and production records to ensure that all components were available, and that sufficient quantities were offered.

Under both the June 10, 1994, and the January 27, 1995, proposals, reimbursable meals offered over a school week must collectively meet the updated nutrition standards, including the Dietary Guidelines, as well as provide the minimum number of food items required for a reimbursable meal. Therefore, both proposals would have continued to require reviewers to determine that, on the day of review, the minimum number of menu items (NuMenus or Assisted NuMenus) or components (the food-based alternative) are offered and accepted. Meals lacking the required items or components would be disallowed. To determine compliance with the overall nutrition standards, the Department proposed to implement a review mechanism outside of the administrative review procedure set forth in § 210.18(g).

In the June 10, 1994, proposal, the Department sought to establish a separate nutrition analysis review requirement to supplement the administrative review requirements. Under this requirement (proposed at § 210.19(a)(1)), the State agency would review the school's nutrient analysis to determine that NuMenus or Assisted NuMenus are being properly conducted and that the meals provided do, in fact, comply with the program's nutrition standards. Under food-based systems, however, there generally would be no local nutrition analysis records to review. Therefore, the January 27, 1995, proposal would have required the State agency to conduct a nutrient analysis of one week's meals using the school's production records. That proposal (again § 210.19(a)(1)) also permitted State agencies to develop an alternate review methodology to nutrient analysis, subject to Departmental approval, or to examine local records of nutrient analysis should there be any. Nutrient analysis is needed because,

even with a food-based system that incorporates enhanced meal pattern requirements, there is no guarantee that meals will comply with the Dietary Guidelines. Food selection, preparation techniques and student choices will have a significant effect. Periodic nutrient analysis, even if only at five-year intervals, will be the only way of gauging the school's compliance with the nutrition standards or of identifying ways to improve performance.

Both proposals stressed the Department's commitment to technical assistance and corrective action in non-compliance situations as an alternative to taking fiscal action. In both proposals, State agencies would require corrective action when meals collectively fail to meet the nutrition standards. However, reimbursement for those meals would not be disallowed. School food authorities would be required to develop an acceptable corrective action plan in collaboration with the State agency. For school food authorities making good faith efforts to comply with the terms of the corrective action plan, the State agency would provide technical assistance and training to help them meet the nutrition standards. However, if the school food authority had not been acting in good faith to meet the terms of the corrective action plan and refused to renegotiate the plan, the State agency would be required to determine if a disallowance of reimbursement was warranted.

Over 800 commenters addressed the monitoring requirements in the June 10, 1994, proposal. Most of these were parents/students (350), school food service personnel (316) and teachers and other school officials (101). In general, commenters agreed with the proposed compliance procedure; 140 commenters expressed overall approval, while only 36 completely disapproved. Commenters were concerned, however, about the provision requiring school food authorities to develop corrective action plans with the concurrence of the State agency and the provision requiring disallowance of funds if the school food authority does not act in good faith to achieve corrective action. For the most part, these concerns were technical in nature and involved such issues as defining "intentional" failure to take corrective action or requesting a methodology for calculating a fiscal penalty. Some commenters believed there should be no fiscal penalties, while others believed the State agency should have greater authority to take fiscal action for non-compliance.

The Department received 148 comments on the proposed monitoring requirement for school food authorities

electing to use food-based menu planning systems. The principal concern was with the proposed requirement that State agencies conduct a nutrient analysis of one week's food service using the school's menus and supporting production records. Thirty commenters opposed the provision, while most of the others raised technical concerns or suggested alternate methodologies such as analyzing only menus.

The Department proposed to monitor compliance with the nutrition standards outside of the normal CRE process because of the belief that State agencies should have maximum flexibility to provide training and technical assistance to their schools. Therefore, both proposals stressed corrective action over automatic disallowances (except when the State agency observes that meals are not complete) because the Department does not wish to penalize school food authorities which are making good faith efforts to move toward compliance.

The Department believes that State agencies are in the best position to determine what corrective actions must be taken, what the time frames for completion will be and whether or not the school food authority is making a good faith effort to comply. Because circumstances will vary from one situation to another, the Department does not believe rigid criteria can adequately determine a "good faith" effort, although progress toward compliance with the nutrition standards would certainly be one major indicator. Moreover, the Department does not envision that disallowances would occur routinely. The timing and amount of any disallowances are entirely at the State agency's discretion, but the Department intends that they would be imposed only when the school is not taking the agreed upon corrective action and is not making progress toward compliance.

Finally, the Department proposed to have State agencies conduct a nutrient analysis as part of the review of schools using food-based menu systems because there is no other way to demonstrate that these school food authorities are actually meeting the nutrition standards, including the Dietary Guidelines. As noted elsewhere in this preamble, section 9(f) of the NSLA now requires that all schools comply with the Dietary Guidelines, and the Department's proposed meal patterns will allow schools using a food-based menu planning system to achieve these goals. However, there is a wide variation in the foods schools select to meet the component requirements. Consequently,

without nutrient analysis of the foods produced, it is impossible to document that the meals do, in fact, meet the Dietary Guidelines and the standards for RDA and calories.

By law (42 U.S.C. 1758(f)(2)(D)), schools electing to use a food-based menu planning system are not required to conduct such an analysis. Consequently, unlike schools using NuMenus or Assisted NuMenus, these schools will have no records of nutrient analysis for the State agency to review. Therefore, the State agency must conduct such an analysis to determine compliance. Moreover, the State agency must analyze the school's production records in conjunction with the menus. As discussed elsewhere in this preamble, a weighted analysis which takes into account the actual production trends is the only reliable method for determining the quality of the meal service. Simply averaging the items offered without regard to their acceptance would provide results which have little, if any, correlation to the overall meal service.

Finally, as with reviews of schools using the nutrient based system, the Department is emphasizing technical assistance and corrective action rather than fiscal action. While State agencies would continue to disallow meals which are incomplete at the point of service, the school's failure to meet the overall nutrition standards would not automatically result in disallowances. Instead, the State agency would work with schools to develop a corrective action plan and would monitor the school's progress toward the nutrition standards. Fiscal sanctions would need to be imposed *only* if the school does not make a good faith effort to work toward improvement. For these reasons, this final rule adopts the monitoring requirements at § 210.19(a)(1) as proposed in the June 10, 1994, and January 27, 1995, rules.

Streamlining: Paperwork Reduction/ Nonprofit Status

As part of the Department's continuing efforts to streamline the administration of Child Nutrition Programs, the June 10, 1994, proposal also offered State agencies and local school food authorities flexibility and reduced administrative burden in three important areas. The first provision would have extended the CRE cycle from 4 to 5 years. This change, which would result in a 20 percent decrease in annual reviews, would provide State agencies with additional flexibility and resources to enable them to work with schools to improve meals. The second provision would have eliminated the

current requirement for a specific daily edit check on meal counts for those school food authorities that have been found through CRE reviews to have accurate meal counts and claims. These school food authorities would have the option of establishing their own systems of internal controls without the Department's specified edits. Finally, the Department's proposal would have removed the requirement in § 210.15(b)(4) that distinct records be maintained to document the nonprofit status of the school food service. The Department determined that it was not necessary for the program regulations to mandate this recordkeeping requirement because these records (e.g., receipts, expenditures, etc.) are the accounts which any enterprise needs to maintain in the normal course of conducting business. These kinds of records are a necessary part of a school food authority's own accountability system and, in many cases, are required by State laws. It is important to emphasize that the school food authority would still have to be operated on a nonprofit basis; the proposed amendment would have only eliminated the requirements for *documentation* of nonprofit status. It is still incumbent upon the school food authority to demonstrate that the school food service is being operated on a nonprofit basis if a question arises during an audit or other oversight activity.

Slightly over 500 of the more than 14,000 commenters discussed the change in the administrative review cycle. Of these, 430 agreed with the extension to 5 years, although 23 commenters stated that the new cycle would not make much difference to the State agencies and a few opposed the change altogether. The Department continues to believe that the proposed reduction in the number of annual reviews will not compromise program accountability, but will enable State agencies to increase their commitments to training and technical assistance so necessary to the efficient implementation of the nutrition standards and is, therefore, adopting this amendment to § 210.18(c) as proposed. State agencies are, of course, encouraged to exceed the regulatory requirements when resources permit, and they will continue to be required to conduct follow-up reviews of school food authorities which are found to exceed error thresholds on the initial reviews.

Slightly fewer than 500 commenters addressed the proposal to eliminate specific edit checks for school food authorities found to have accurate counting and claiming systems.

Essentially, commenters tended to assert that this change would not really reduce paperwork or that it could impose an additional burden on State agencies to approve alternative systems. Several commenters recommended other areas such as elimination of verification requirements of free and reduced-price applications or the process of determining "severe need" status in the SBP.

When the Department proposed to require edit checks several years ago, many commenters stated that school food authorities should have the flexibility of devising their own systems of internal controls. However, at that time, the Department believed that school food authorities must, at a minimum, compare their meal counts, by type, to the number of eligible children in each category multiplied by an attendance factor. A few years later, in the regulation implementing CRE, the Department broadened State agencies' authority to authorize alternative systems of edits. The Department now believes that States and local school food authorities have had several years of experience with internal controls and are in the best position to modify these systems to meet their own needs. Therefore, this final rule adopts the amendment to § 210.8 (a)(2) and (a)(3) as proposed.

Only 150 commenters addressed the issue of documentation of nonprofit status. Most of these were from those in school food service. While over 30 commenters agreed with the proposed provision, about 100 commenters stated that it was not a real reduction in paperwork at the local level. Some commenters felt "real" reduction in paperwork could be accomplished through elimination of the verification procedures, on-site reviews and other requirements. However, the Department continues to believe that this provision will reduce the paperwork burden on schools because they will no longer need to maintain records using Federal specifications; records would be maintained in the manner preferred by the school district or required by State laws. Therefore, the proposed amendments to § 210.14(c) and § 210.15(b) are adopted as final without change. It is not possible for the Department to implement other changes suggested by commenters at this time since they were not a part of the original proposal. The Department will, however, retain them for future consideration.

Related Topics of Concern

Competitive Foods

Approximately 640 commenters addressed the sale of foods in competition with school meals. Nearly 400 commenters recommended that all foods sold in the cafeteria, including a la carte items, be included in the analysis to determine whether or not the food service meets the Dietary Guidelines. More than 500 commenters recommended that the Department go even further and regulate the food items that may be sold in vending machines throughout the school or ban vending machines altogether.

The Department appreciates and shares many of these concerns. Currently, the program regulations (§ 210.11(a) and § 220.12(a)) prohibit the sale of certain foods of minimal nutritional value in the food service area between the start of school and the last lunch period of the day. Other foods may be sold in competition with reimbursable meals provided that the proceeds inure to the benefit of the schools or of student organizations. These items would include foods sold a la carte.

The Department has no authority to regulate the sale of foods *outside* the food service area. The current regulations governing the sale of competitive foods result from a Federal court's ruling in a lawsuit filed against the Department by a soft drink manufacturers' association. In that ruling, the court found that the Department had no authority to regulate the sale of competitive foods beyond the food service area. The court also limited the Department's jurisdiction over the food service area after the meal service has ended. Therefore, the Department cannot address the issue of vending machines elsewhere in the school in this rulemaking. The Department notes, however, that State agencies and local school food authorities have complete authority to impose more stringent limitations on the sale of competitive foods. This authority is underscored in Pub. L. 103-448, which directs the Department to provide States with a copy of the current regulations dealing with competitive foods and to provide States with model language prohibiting the sale of foods of minimal nutritional value anywhere on elementary school grounds between the start of the school day and the last lunch period. The Department intends to provide these materials to States for distribution to school food authorities in the near future.

The Department shares commenters' concerns about a la carte items. The

Department notes that these items are generally not intended to be part of a complete, balanced meal. A la carte sales can range from a second helping of a food item prepared as part of a reimbursable meal to items from a separate salad bar. Consequently, an analysis which includes a la carte items would shift the focus to individual foods, something which the Dietary Guidelines do not intend. Moreover, in the case of prepackaged items, the school would need to establish a separate system of records to track their selection and would need to identify their nutrient content. The Department believes, therefore, that requiring schools to apply the principles of the Dietary Guidelines to these items would greatly increase the complexity and burden of nutrient analysis.

Fortification

The preamble to the June 10, 1994, proposal solicited comments regarding the use of fortified foods in school meal programs. The Department was particularly interested in whether there are practical ways to control excessive use of fortification, the degree to which this should be a concern, and the potential impact on the character of school meals.

No regulatory proposals were made on this subject because the Department was unaware of any practical method for controlling the use of highly fortified foods. It was our understanding at the time of the proposal that it was virtually impossible to distinguish those nutrients that have been added to a product from those that are naturally occurring, especially for food items with numerous ingredients. Nevertheless, the Department was committed to the principle that meals be comprised of a variety of conventional foods, as recommended in the Dietary Guidelines, rather than ones containing formulated fortified foods.

More than 2,300 commenters responded to our request for comments, some of whom recommended adoption of the fortification policy developed by USDA and employed in the USDA nutrient standard pilots in the mid-1980's. This method, which is also a part of pilot projects currently operating in California, permits nutrients which are added to foods to be counted toward the nutrient standards only if they were added in accord with one of the following criteria: (1) a standard of identity or standard for enrichment issued by the Food and Drug Administration (FDA), (2) a USDA purchase specification for a donated commodity, (3) a standard for an Alternative Food for Meals under

Appendix A of Parts 210 and 220, excluding formulated grain/fruit products, and (4) in a breakfast cereal available on the commercial market.

The Department had seriously considered adopting this policy as a part of the June 10, 1994, proposal. However, following discussions with the FDA, the food industry, the nutrient data laboratory of the USDA's Agriculture Research Service and local school food service personnel, the Department concluded that it could not be implemented at the local level for several reasons.

First, there is no simple way to distinguish between the amount of synthetic nutrients added to a food and the level which occurs naturally because FDA does not require such distinctions to be made on food labels. Moreover, the Department has found that FDA standards of identity are not a particularly helpful source of information because they are only available for a limited number of products (under 40). Standards do not exist, for example, for many fruit juices commonly fortified and sold on the market. It would be difficult and costly to require the food industry to identify the primary source of nutrients on the label because such a requirement would exceed the requirements of the Nutrition Labeling and Education Act. It should be noted that further inquiries to the California State agency concerning this policy confirmed that it had not been successfully implemented in the pilot sites.

Some commenters also suggested that USDA use the fortification standards established by FDA. These standards (21 CFR 101.14) only apply to those instances in which a health claim is being made in connection with the use of a particular food product. Therefore, such standards would have little applicability to the school meal programs. Since commenters did not provide new information that could be used to fashion a practical method for regulating the use of fortified products in the school meal programs, this final regulation contains no new regulatory proscriptions. The Department does wish to stress its continued commitment to the principle that school meals should be comprised of a variety of foods which provide naturally occurring nutrients rather than formulated foods which have been artificially fortified. The training and technical assistance the Department plans to provide on implementing the Dietary Guidelines will stress the importance of serving a variety of foods as well as the potential dangers of serving highly fortified foods.

The Department also wishes to reiterate that the nutrition standards for school meals include standards for calories as well as for key nutrients. Moreover, the nutrient analysis alternatives continues to require that a minimum of three food items, one of which must be an entree, be available as part of every reimbursable meal. Finally, the Department notes that engineered foods generally cost more than foods that are not artificially fortified. All these factors are disincentives to the use of heavily fortified foods and should serve to minimize their use. The Department will be monitoring the implementation of the nutrient analysis menu planning alternatives and will continue to consider this issue should a feasible method of monitoring fortification levels become available in the future.

Alternate Foods for Meals

The regulations governing Alternate Foods for Meals for the school lunch program are found in Appendix A of 7 CFR Part 210. This Appendix sets forth the requirements for enriched macaroni products with fortified protein, cheese alternate products and vegetable protein products. These regulations were developed to define and clarify the use of new products in the Child Nutrition Programs. Advances in food processing have allowed food producers to engineer ingredients into fabricated or formulated foods, usually in answer to a specific need or problem. Cheese alternate products, for example, were developed to supplement the natural cheese supply at a time when the availability of natural cheese had decreased and the price had increased. The alternate foods regulations were designed to maintain nutritional quality in school meals while providing schools with flexibility in menu planning, convenience in food preparation and an economic advantage. Because the Department proposed no changes to these regulations, the current requirements for alternative foods in Appendix A will remain in effect. However, the Department recognizes that more recent developments in food processing may necessitate revisions and that some products not currently allowable may provide schools with additional low-fat options. Therefore, the Department is considering proposing changes to these regulations in the near future. Prior to making any decisions, however, the Department will be consulting with an expert panel, as appropriate, to develop options.

Lunch Periods

In the June 10, 1994, proposal, the Department indicated its concern that schools have an adequate number of lunch periods to accommodate all of their students and that the lunch periods provide sufficient time for children to eat the entire meal. Therefore, the Department proposed a recommendation at § 210.10(i) that school food authorities make every effort to provide adequate meal service times and periods to ensure that children can effectively participate in the school lunch program.

Nine hundred and forty-five commenters addressed this provision; over 850 were from school food service personnel, teachers, other school officials, parents and teachers. Overwhelmingly, they asserted that lunch periods need to be longer, especially if additional foods are served, and nearly 600 maintained that the Department should regulate this aspect of the food service. The Department appreciates these concerns. However, as noted in the preamble to the proposed rule, the Department has no authority to regulate meal times. Nevertheless, we intend to continue working with our partners in the Department of Education to solicit support in the education community to ensure that educators and school administrators understand the importance of giving students adequate time to eat. The Department also emphasizes that this is an issue that can be dealt with effectively at the local level, and the Department strongly encourages school food service directors to work with other school officials. Therefore, this final rule adopts the recommendation included in the proposed rule at § 210.10(f).

Nutrition Disclosure

The June 10, 1994, proposal included a provision at § 210.10(n) encouraging school authorities to make a public disclosure of the nutrients contained in their meals. The Department intended that such a provision would promote an increased awareness on the part of students and their families of the nutrients in their meals, enhance the ability of children and their parents to make healthful food choices and increase support for school meals through public recognition of improved meal quality. However, in recognition of the differing needs of school food authorities, the Department did not mandate disclosure, nor was a particular method of making the disclosure prescribed, although the proposal did indicate that the information should be

readily available to children and their families.

The Department received over 260 comments on this issue, over 200 of them from school food service personnel. Approximately 190 commenters agreed that nutrition disclosure should be optional, and only 15 believed the Department should require disclosure. The remaining comments addressed narrower issues, such as suggesting that information be sent home with elementary students. Because the Department did not propose mandatory disclosure, the Department is adopting the provision as it was proposed at § 210.10(h) and § 220.8(l). The Department appreciates the overall support for voluntary disclosure. However, section 9(f)(1)(A) of the NSLA, as amended by section 106(b) of Pub. L. 103-448, 42 U.S.C. 1758(f)(1), includes a provision requiring schools to make a public disclosure of the nutrient content of their meals. The Department is assessing various methods of disclosure and intends to issue a proposed rule on this subject at a later time.

Compliance Over a School Week

The June 10, 1994, proposal would have required nutrient analysis of the reimbursable meals served over the course of a school week, as defined in proposed § 210.2 as a period of three to seven days. The normal school week would, of course, be five consecutive days. To accommodate situations when school is not in session for a complete week, the Department intended that weeks in which school lunches are offered fewer than three times would be combined with either the previous or the following week. The Department's proposal for weekly compliance and the proposed definition of "school week" were repeated in the January 27, 1995, rule, in keeping with a provision of Pub. L. 103-448 (section 106(a), 42 U.S.C. 1758(a)(1)(A)(ii)) requiring that, at a minimum, compliance with the nutrition standards be based on the weekly average of the nutrient content of school lunches. This proposal was intended to provide schools with a manageable time period in which to vary menus and make meaningful calculations and adjustments. The range of three to seven days was intended to provide school food authorities with flexibility in planning menus when the school is not in session for an entire week.

The Department received over 600 comments on this provision in the June 10, 1994, proposal. Nearly 400 of the comments were from school food service personnel, and approximately 130 were from parents and students.

Over half of the comments agreed with weekly analyses. Those who disagreed generally suggested a different length of time, although some believed there should be no specific time period at all, since the Dietary Guidelines have none. Generally commenters recommended that planning and analysis be done on a daily, bi-weekly or monthly basis, although some commenters recommended averaging over the length of the menu cycle or even the entire school year. Approximately 50 commenters were also concerned that requiring weekly compliance could result in less variety in meals overall, since schools might tend simply to repeat a qualifying menu every week.

The Department received 25 comments on this provision as applied to the proposed food-based menu planning system in the January 27, 1995, rulemaking. The largest number of these came from persons in school food service. Generally, these commenters recommended that the school week be defined strictly as five days or raised technical concerns about shorter periods.

The Department appreciates commenters' suggestions for changing the length of the planning cycle. The Department continues to believe, however, that a school week represents the optimum length of time for determining nutrient content, as long as flexibility is built in to accommodate days when schools are not in session. A school week allows enough time for schools to vary menus but still ensures that nutrients are reasonably concentrated. Moreover, since the law now mandates compliance with the nutrition standards over the school week, the Department is adopting this provision as proposed at § 210.2 and § 220.2(w-1).

Operational Obstacles

Over 9,000 commenters addressed perceived operational obstacles to implementation of the June 10, 1994, proposal. Nearly 7,000 commenters were from those in school food service, and more than 100 others were teachers or school officials. Commenters were chiefly concerned about the potential for increased administrative and paperwork burdens, the possibility that schools would drop out of the program because of the complexity of the requirements, the need for additional staff to conduct nutrient analysis and the difficulty in balancing good nutrition with student acceptance.

The Department has given due consideration to these concerns. The Department believes, however, that the complexities of NuMenus and Assisted

NuMenus are not as great as commenters have represented them to be. While it is true that nutrition analysis will measure nutrients and calories more precisely than in the past, this analysis will be done entirely by computer. Once the information has been entered, there is little additional burden on the school. Much the same is true of menu adjustments. Creating the initial menu may require more time than is currently the case with the meal pattern. However, once the recipe and product data has been entered and the menu cycle has been adjusted to comply with the nutrition standards, wholesale changes with resulting new analysis should not generally be needed. The Department also notes that the computer software approved for NuMenus will have the capability of searching for food sources of high nutrient density when a particular nutrient must be provided.

The Department also believes that the amount of paperwork resulting from NuMenus will not be as great as commenters have stated. The nutrient analysis, itself, will remain in the computer unless a report is generated by the school or at the request of the State agency. The Department also wishes to emphasize that the analysis need not be performed individually by every school. If the school food authority wishes, the analysis can be performed centrally. For these reasons, it will not be necessary for schools' food authorities to add additional personnel to conduct NuMenus.

Also, the Department does not consider appealing meals as incompatible with good nutrition. The Department has undertaken Team Nutrition—a comprehensive initiative to help meal planners produce meals that are appealing as well as nutritious and to foster an awareness on the part of children that good meals do taste good. The Department is promoting an array of technical assistance programs among State and local school food agencies. One prominent example is our partnership with the American Culinary Federation and others to develop recipes and provide information on how to make the meal presentation more appealing. In addition, the Department believes that the Children's Nutrition Campaign, which concentrates on bringing the message of good nutrition to children and their parents, will make nutritious foods more popular. Thus, the Department anticipates that these efforts to assist and educate will lead to increased participation.

Cost Implications

Over 5,500 commenters, many from school food service personnel, were

concerned that the changes set forth in the June 10, 1994, proposal would significantly increase the cost of their food operations. These concerns were based on the perception that they would need to purchase more expensive lower-fat foods and employ costlier preparation techniques along with the expense of acquiring computer equipment and software for NuMenus. Approximately 145 commenters raised cost concerns about the January 27, 1995, proposal because of the increased quantity requirements for fruits/vegetables and grains/breads.

The Department extensively studied the cost implications of both proposals as part of the Regulatory Assessments published with the proposals. The analysis published on June 10, 1994, found that the nutrient requirements of NuMenus can be met at about the current cost of food in the National School Lunch Program. Moreover, the Department does not anticipate the need for significant changes in meal preparation practices that would affect the cost of meals. While schools without computer resources might experience one-time acquisition costs, these costs must be considered in light of the length of time the schools will be using that equipment. Moreover, software to conduct NuMenus can have other food service applications as well, thereby providing some administrative efficiencies. For a complete discussion of the cost analysis, readers should refer to the June 10, 1994, issue of the **Federal Register** (59 FR 30250).

In the cost/benefit analysis for the January 27, 1995, proposed rule, the Department noted that its school lunch model did experience slight increases in costs for leaner meat and for fruits/vegetables. These increases, however, can be effectively offset by selecting less expensive items from the grains/breads component. In fact, the analysis found that the nutrient requirements of the food-based menu planning system can be met at about the current cost of food in the program. Again, readers wishing a complete discussion of costs should refer to the January 27, 1995, issue of the **Federal Register** (60 FR 5525-26).

General Comments on Meal Content

The Department received over 4,200 comments on various issues related to the content of school meals. More than 2,500 were from persons in school food service, while nearly 800 were from students or their families and over 250 were from the medical, public health and food advocacy communities. Some of these comments were general observations on the quality of existing meal services or reflected concerns

about plate waste. For the most part, however, commenters discussed increasing or decreasing specific food components. Approximately 1,000 commenters recommended increasing the amounts of fruits and vegetables, and another 500 wanted more breads and grain products. On the other hand, approximately 400 commenters recommended using either lower fat meats or meat substitutes such as soy, while over 1,200 opposed the milk requirement.

The Department appreciates commenters' concerns. The Department agrees that it is important for children to receive plenty of fruits and vegetables as well as grain products. Although there are no component or quantity requirements under NuMenus and Assisted NuMenus, the Department believes that menu planners will use more of these food groups since they are prime sources of low-fat, nutrient-dense foods needed to meet the recommendations of the Dietary Guidelines. The Department's January 27, 1995, proposal did, in fact, significantly increase the quantity requirements for both fruits/vegetables and grains/breads. In addition, the Department believes that the nutrition standards established for school meals will ensure that a wide variety and ample amount of these items will be served.

With respect to meats, the Department reiterates that it is important to obtain essential nutrients from a variety of foods. The Department agrees that foods, particularly those high in fat, must be eaten in moderation, but the Department does not share the view that any given foods are necessarily "good" or "bad." For this reason, the January 27, 1995, proposal retained the quantity requirements for meats/meat alternates currently in effect, and the Department does not plan to limit or eliminate items from this food group in any future rulemakings. It is also important to note that meat is a significant source of iron, a nutrient that was not adequately met for some participants in the school meal programs reviewed in the 1993 SNDA study. As one final note, the Department is aware that yogurt can be a useful meat alternate, and the Department is considering a future action which would allow meal planners to substitute yogurt for meat.

The Department also appreciates commenters' suggestions to eliminate the whole milk requirement or permit alternatives to milk. The requirement that schools offer fluid milk as part of a reimbursable lunch is statutory (42 U.S.C. 1758(a)(2)(A)(i)). The Department notes, however, that section 107 of Pub.

L. 103-448 did modify this requirement. In the past, schools were required to offer fluid whole milk and fluid unflavored low-fat milk. Schools now are required to offer a variety of fluid milk consistent with children's preferences in the prior year. Schools also may cease offering any variety which constituted less than one percent of the total milk consumed in the prior year (42 U.S.C. 1758(a)(2)(A)(ii)). Therefore, while schools must still make milk available as part of all reimbursable lunches, they will have somewhat more flexibility than in the past to reflect their children's changing preferences. This provision is found at § 210.10(l)(1).

NuMenus and Assisted NuMenus for Meals Served Under the Child and Adult Care Food Program and the Summer Food Service Program

A few commenters recommended that schools using NuMenus or Assisted NuMenus should be allowed to use these systems when the school is providing meals under the Child and Adult Care Food Program (CACFP) or the Summer Food Service Program (SFSP). Otherwise, the school food service could be placed in the position of following multiple sets of meal requirements. The Department agrees that schools should be able to use the same menu planning system for all meals it prepares and serves. Moreover, once the analysis has been properly completed and appropriate adjustments made, meals served under NuMenus or Assisted NuMenus will generally be more healthful and nutritious than meals planned and prepared under the old meal patterns. Therefore, although NuMenus and Assisted NuMenus has not yet been proposed for the CACFP or the SFSP, the Department is providing in this final rule (§ 210.10 (i)(12) and (j)(7); § 220.8 (e)(12) and (f)(7)) that schools, with State agency approval, may use, in addition to the food-based menu planning systems, nutrient analysis for all of the meal programs receiving USDA reimbursement that they operate. These exceptions are consistent with the current requirements in the regulations governing the CACFP and the SFSP. The Department emphasizes, however, that schools would still be required to follow the existing meal patterns for snacks and for meals served to children under two years of age.

Implementation Schedules

The June 10, 1994, proposal would have required all schools to comply with the Dietary Guidelines and nutrition standards established by that

proposal by School Year 1998. Over 750 commenters agreed with the proposed implementation schedule, although 40 commenters believed implementation should be sooner. Over 200 commenters, however, believed that School Year 1998 would be too early for full implementation or requested that waivers be authorized for schools unable to comply. Subsequently, Congress amended the NSLA to require that school meals comply with the Dietary Guidelines by School Year 1996/97, unless a waiver not to exceed two years is authorized by the State agency. This provision (42 U.S.C. 1758 (f)(2)) affirms the importance of having school meals that comply with the best scientific research regarding nutrition, and the Department appreciates Congressional support on this issue. Therefore, this final regulation, at § 210.10(o) and § 220.8(m), will require implementation by School Year 1996, although State agencies may authorize schools to delay implementation on a case by case basis until a later date, but not later than School Year 1998/1999. This provision of the law will accommodate schools that have training or resource needs that require delayed implementation. However, State agencies and school food authorities may implement the provisions in this rule, such as the streamlining/paperwork reduction provisions including the extension of the CRE review period, prior to that date. Nonetheless, while the revised menu planning alternatives may be implemented early, they must be implemented in their entirety.

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grants programs-social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Children, Food assistance programs, Grant programs-social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

Accordingly, 7 CFR Parts 210 and 220 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR Part 210 continues to read as follows:

Authority: 42 U.S.C. 1751-1760, 1779.

2. In § 210.2:

- a. the definition of "Food component" is revised;
- b. the definition of "Food item" is revised;
- c. the definition of "Lunch" is revised;
- d. a new definition of "Menu item" is added;
- e. a new definition of "Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning" is added;
- f. the definition of "Reimbursement" is amended by adding the words "or § 210.10a, whichever is applicable," after "§ 210.10"; and
- g. a new definition of "School Week" is added.

The revisions and additions read as follows:

§ 210.2 Definitions.

* * * * *

Food component means one of the four food groups which compose the reimbursable school lunch, i.e., meat or meat alternate, milk, grains/breads and vegetables/fruits for the purposes of § 210.10(k) or one of the four food groups which compose the reimbursable school lunch, i.e., meat or meat alternate, milk, bread or bread alternate, and vegetable/fruit under § 210.10a.

Food item means one of the five required foods that compose the reimbursable school lunch, i.e., meat or meat alternate, milk, grains/breads, and two (2) servings of vegetables, fruits, or a combination of both for the purposes of § 210.10(k) or one of the five required foods that compose the reimbursable school lunch, i.e., meat or meat alternate, milk, bread or bread alternate, and two (2) servings of vegetables, fruits, or a combination of both for the purposes of § 210.10a.

* * * * *

Lunch means a meal which meets the nutrition standards and the appropriate nutrient and calorie levels designated in § 210.10. In addition, if applicable, a lunch shall meet the requirements by age/grade groupings in § 210.10(k)(2) or the school lunch pattern for specified age/grade groups of children as designated in § 210.10a.

Menu item means, under Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning, any single food or combination of foods. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards provided in § 210.10, except for those foods that are considered as foods of minimal nutritional value as provided for in § 210.11(a)(2) which are not offered as part of a menu item in a

reimbursable meal. For the purposes of a reimbursable lunch, a minimum of three menu items must be offered, one of which must be an entree (a combination of foods or a single food item that is offered as the main course) and one of which must be fluid milk. Under offer versus serve, a student shall select, at a minimum, an entree and one other menu item. If more than three menu items are offered, the student may decline up to two menu items; however, the entree cannot be declined.

* * * * *

Nutrient Standard Menu Planning/ Assisted Nutrient Standard Menu Planning mean ways to develop menus based on the analysis for nutrients in the menu items and foods offered over a school week to determine if specific levels for a set of key nutrients and calories were met. Such analysis is based on averages weighted in accordance with the criteria in § 210.10(i)(5). Such analysis is normally done by a school or a school food authority. However, for the purposes of Assisted Nutrient Standard Menu Planning, menu planning and analysis are completed by other entities and shall incorporate the production quantities needed to accommodate the specific service requirements of a particular school or school food authority.

* * * * *

School week means the period of time used to determine compliance with the nutrition standards and the appropriate calorie and nutrient levels in § 210.10. Further, if applicable, school week is the basis for conducting Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning for lunches as provided in § 210.10(i) and § 210.10(j). The period shall be a normal school week of five consecutive days; however, to accommodate shortened weeks resulting from holidays and other scheduling needs, the period shall be a minimum of three consecutive days and a maximum of seven consecutive days. Weeks in which school lunches are offered less than three times shall be combined with either the previous or the coming week.

* * * * *

§ 210.4 [Amended]

3. In § 210.4, paragraph (b)(3) introductory text is amended by removing the words "§ 210.10(j)(1) of this part" and adding in their place the words "§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable".

§ 210.7 [Amended]

4. In § 210.7:

a. paragraph (c)(1)(v) is amended by removing the reference to "§ 210.10(b) of this part" and adding in its place the words "§ 210.10(a)(2) or § 210.10a(b), whichever is applicable,"; and

b. paragraph (d) is amended by removing the reference to "§ 210.10(j)(1) of this part" and adding in its place the words "§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable".

5. In § 210.8:

a. the third sentence of paragraph (a)(2) is removed and new paragraphs (a)(2)(i) and (a)(2)(ii) are added at the end;

b. Paragraph (a)(3) is revised;

c. the first sentence of paragraph (a)(4) is revised;

d. the first sentence of paragraph (b)(2)(i) is amended by removing the reference to "paragraph (a)(2)" and adding in its place a reference to "paragraph (a)(3)" and by adding at the end of the sentence the words "or the internal controls used by schools in accordance with paragraph (a)(2)(i) of this section." The revisions and additions read as follows:

§ 210.8 Claims for reimbursement.

(a) *Internal controls.* * * *

(2) *School food authority claims review process.* * * *

(i) Any school food authority that was found by its most recent administrative review conducted in accordance with § 210.18, to have no meal counting and claiming violations may:

(A) Develop internal control procedures that ensure accurate meal counts. The school food authority shall submit any internal controls developed in accordance with this paragraph to the State agency for approval and, in the absence of specific disapproval from the State agency, shall implement such internal controls. The State agency shall establish procedures to promptly notify school food authorities of any modifications needed to their proposed internal controls or of denial of unacceptable submissions. If the State agency disapproves the proposed internal controls of any school food authority, it reserves the right to require the school food authority to comply with the provisions of paragraph (a)(3) of this section; or

(B) Comply with the requirements of paragraph (a)(3) of this section.

(ii) Any school food authority that was identified in the most recent administrative review conducted in accordance with § 210.18, or in any other oversight activity, as having meal counting and claiming violations shall comply with the requirements in paragraph (a)(3) of this section.

(3) *Edit checks.* (i) The following procedure shall be followed for school

food authorities identified in paragraph (a)(2)(ii) of this section, by other school food authorities at State agency option, or, at their own option, by school food authorities identified in paragraph (a)(2)(i) of this section: the school food authority shall compare each school's daily counts of free, reduced price and paid lunches against the product of the number of children in that school currently eligible for free, reduced price and paid lunches, respectively, times an attendance factor.

(ii) School food authorities that are identified in subsequent administrative reviews conducted in accordance with § 210.18 as not having meal counting and claiming violations and that are correctly complying with the procedures in paragraph (a)(3)(i) of this section have the option of developing internal controls in accordance with paragraph (a)(2)(i) of this section.

(4) *Follow-up activity.* The school food authority shall promptly follow-up through phone contact, on-site visits or other means when the internal controls used by schools in accordance with paragraph (a)(2)(i) of this section or the claims review process used by schools in accordance with paragraphs (a)(2)(ii) and (a)(3) of this section suggest the likelihood of lunch count problems.

* * *
* * * * *

§ 210.9 [Amended]

- 6. In § 210.9:
 - a. paragraph (b)(5) is amended by adding the words "or § 210.10a, whichever is applicable" at the end of the paragraph;
 - b. paragraph (c) introductory text is amended by removing the reference to "§ 210.10(j)(1) of this part" and adding in its place the words "§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable"; and
 - c. paragraph (c)(1) is amended by adding the words "or § 210.10a, whichever is applicable" after the reference to "§ 210.10."

- 7. Section 210.10 is redesignated as § 210.10a.
- 8. A new § 210.10 is added to read as follows:

§ 210.10 Nutrition standards for lunches and menu planning methods.

- (a) *General requirements for school lunches.*
 - (1) In order to qualify for reimbursement, all lunches served to children age 2 and older, as offered by participating schools, shall, at a minimum, meet the nutrition standards provided in paragraph (b) of this section and the appropriate level of calories and nutrients provided for in either

paragraph (c) or paragraph (i)(1) of this section for nutrient standard menu planning and assisted nutrient standard menu planning or in paragraph (d) of this section for food-based menu planning, whichever is applicable. Compliance with the nutrition standards and the nutrient and calorie levels shall be determined by averaging lunches offered over a school week. Except as otherwise provided herein, school food authorities shall ensure that sufficient quantities of foods are planned and produced to meet, at a minimum, the nutrition standards in paragraph (b) of this section, the appropriate nutrient and calorie levels in paragraphs (c), (d), or (i)(1) of this section, whichever is applicable, and to either contain all the required food items in at least the amounts indicated in paragraph (k) of this section or to supply sufficient quantities of menu items and foods as provided in paragraphs (i) or (j) of this section.

(2) School food authorities shall ensure that each lunch is priced as a unit and that lunches are planned and produced on the basis of participation trends, with the objective of providing one reimbursable lunch per child per day. Any excess lunches that are produced may be offered, but shall not be claimed for general or special cash assistance provided under § 210.4. The component requirements for meal supplements served under the Child and Adult Care Food Program authorized under part 225 of this chapter shall also apply to meal supplements served by eligible school food authorities in afterschool care programs under the NSLP.

(3) Production and menu records shall be maintained to demonstrate that the required number of food components and food items or menu items are offered on a given day. Production records shall include sufficient information to evaluate the menu's contribution to the requirements on nutrition standards in paragraph (b) of this section and the appropriate levels of nutrients and calories in paragraphs (c), (d) or (i)(1) of this section, whichever is applicable. If applicable, schools or school food authorities shall maintain nutritional analysis records to demonstrate that lunches meet, when averaged over each school week, the nutrition standards provided in paragraph (b) of this section and the nutrient and calorie levels for the appropriate age or grade group as provided for in paragraphs (c) or (i)(1) of this section, whichever is applicable.

(b) *Nutrition standards for reimbursable lunches.* School food authorities shall ensure that

participating schools provide nutritious and well-balanced meals to children. In addition, for children ages 2 and above meals shall be provided based on the nutrition standards provided in this section.

(1) Provision of one-third of the Recommended Dietary Allowances (RDA) of protein, calcium, iron, vitamin A and vitamin C to the applicable age or grade groups in accordance with the appropriate levels provided in paragraph (c), (d) or (i)(1) of this section, whichever is applicable;

(2) Provision of the lunchtime energy allowances for children based on the appropriate age or grade groups in accordance with the levels provided in paragraphs (c), (d) or (i)(1) of this section, whichever is applicable;

(3) The applicable recommendations of the *1990 Dietary Guidelines for Americans* which are:

- (i) Eat a variety of foods;
- (ii) Limit total fat to 30 percent of calories;
- (iii) Limit saturated fat to less than 10 percent of calories;
- (iv) Choose a diet low in cholesterol;
- (v) Choose a diet with plenty of vegetables, fruits, and grain products; and
- (vi) Use salt and sodium in moderation.

(4) The following measures of compliance with the applicable recommendations of the *1990 Dietary Guidelines for Americans*:

- (i) A limit on the percent of calories from total fat to 30 percent based on the actual number of calories offered;
- (ii) A limit on the percent of calories from saturated fat to less than 10 percent based on the actual number of calories offered;
- (iii) A reduction of the levels of sodium and cholesterol; and
- (iv) An increase in the level of dietary fiber.

(5) School food authorities have three alternatives for menu planning in order to meet the requirements of this paragraph and the appropriate nutrient and calorie levels in paragraphs (c), (d) or (i)(1) of this section, whichever is applicable: nutrient standard menu planning as provided for in paragraph (i) of this section, assisted nutrient standard menu planning as provided for in paragraph (j) of this section, or food-based menu planning as provided for in paragraph (k) of this section. The actual minimum calorie levels vary depending upon the alternative followed due to differences in age/grade groupings of each alternative.

(c) *Nutrient levels for school lunches/nutrient analysis.* (1) For the purposes of nutrient standard and assisted nutrient

standard menu planning, as provided for in paragraphs (i) and (j), respectively, of this section, schools shall, at a minimum, provide calorie and nutrient levels for school lunches (offered over a school week) for the required grade groups specified in the chart following:

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL LUNCHES/NUTRIENT ANALYSIS (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Minimum requirements			Optional
	Preschool	Grades K-6	Grades 7-12	Grades K-3
Energy allowance/calories	517	664	825	633
Total fat (as a percent of actual total food energy)	(1)	(1)	(1)	(1)
Saturated fat (as a percent of actual total food energy)	(2)	(2)	(2)	(2)
RDA for protein	7	10	16	9
RDA for calcium (mg)	267	286	400	267
RDA for iron (mg)	3.3	3.5	4.5	3.3
RDA for vitamin A (RE)	150	224	300	200
RDA for vitamin C (mg)	14	15	18	15

¹ Not to exceed 30 percent over a school week.
² Less than 10 percent over a school week.

(2) At their option, schools may provide for the calorie and nutrient levels for school lunches (offered over a school week) for the age groups specified in the following chart or may develop their own age groups and their corresponding levels in accordance with paragraph (i)(1) of this section.

OPTIONAL MINIMUM NUTRIENT LEVELS FOR SCHOOL LUNCHES/NUTRIENT ANALYSIS (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Ages 3-6	Ages 7-10	Ages 11-13	Ages 14 and above
Energy allowance/calories	558	667	783	846
Total fat (as a percent of actual total food energy)	(1)	(1)	(1)	(1)
Saturated fat (as a percent of actual total food energy)	(2)	(2)	(2)	(2)
RDA for protein (g)	7.3	9.3	15.0	16.7
RDA for calcium (mg)	267	267	400	400
RDA for iron (mg)	3.3	3.3	4.5	4.5
RDA for vitamin A (RE)	158	233	300	300
RDA for vitamin C (mg)	14.6	15.0	16.7	19.2

¹ Not to exceed 30 percent over a school week.
² Less than 10 percent over a school week.

(d) *Minimum nutrient levels for school lunches/food-based menu planning.* For the purposes of food-based menu planning, as provided for in paragraph (k) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for school lunches offered over a school week:

MINIMUM NUTRIENT LEVELS FOR SCHOOL LUNCHES/FOOD-BASED MENU PLANNING (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Preschool	Grades K-6	Grades 7-12	Grades K-3 option
Energy allowances (Calories)	517	664	825	633
Total fat (as a percentage of actual total food energy)	(1)	(1)	(1)	(1)
Total saturated fat (as a percentage of actual total food energy)	(2)	(2)	(2)	(2)
Protein (g)	7	10	16	9
Calcium (mg)	267	286	400	267
Iron (mg)	3.3	3.5	4.5	3.3
Vitamin A (RE)	150	224	300	200
Vitamin C (mg)	14	15	18	15

¹ Not to exceed 30 percent over a school week.
² Less than 10 percent over a school week.

(e) *Choice.* To provide variety and to encourage consumption and participation, schools should, whenever possible, offer a selection of menu items and foods from which children may make choices. When a school offers a selection of more than one type of lunch or when it offers a variety of menu items, foods or milk for choice within a reimbursable lunch, the school shall

offer all children the same selection regardless of whether the children are eligible for free or reduced price lunches or pay the school food authority's designated full price. The school may establish different unit prices for each type of lunch offered provided that the benefits made available to children eligible for free or reduced price lunches are not affected.

(f) *Lunch period.* At or about mid-day schools shall offer lunches which meet the requirements of this section during a period designated as the lunch period by the school food authority. Such lunch periods shall occur between 10:00 a.m. and 2:00 p.m., unless otherwise exempted by FCS. With State agency approval, schools that serve children 1-5 years old are encouraged to divide the

service of the meal into two distinct service periods. Such schools may divide the quantities, and/or menu items, foods or food items offered between these service periods in any combination that they choose. Schools are also encouraged to provide an adequate number of lunch periods of sufficient length to ensure that all students have an opportunity to be served and have ample time to consume their meals.

(g) *Exceptions.* Lunches claimed for reimbursement shall meet the nutrition requirements for reimbursable meals specified in this section. However, lunches served which accommodate the exceptions and variations authorized under this paragraph are also reimbursable. Exceptions and variations are restricted to the following:

(1) *Medical or dietary needs.* Schools shall make substitutions in foods listed in this section for students who are considered to have a disability under 7 CFR part 15b and whose disability restricts their diet. Schools may also make substitutions for students who do not have a disability but who are unable to consume the regular lunch because of medical or other special dietary needs. Substitutions shall be made on a case by case basis only when supported by a statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FCS. Such statement shall, in the case of a student with a disability, be signed by a physician or, in the case of a student who is not disabled, by a recognized medical authority.

(2) *Ethnic, religious or economic variations.* FCS encourages school food authorities to consider ethnic and religious preferences when planning and preparing meals. For the purposes of the food-based menu planning alternative as provided for in paragraph (k) of this section, FCS may approve variations in the food components of the lunch on an experimental or on a continuing basis in any school where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, or economic needs.

(3) *Natural disaster.* In the event of a natural disaster or other catastrophe, FCS may temporarily allow schools to serve lunches for reimbursement that do not meet the requirements of this section.

(h) *Nutrition disclosure.* School food authorities are encouraged to make information available indicating efforts to meet the nutrition standards in paragraph (b) of this section.

(i) *Nutrient standard menu planning.*

(1) *Adjusted nutrient levels.* (i) At a

minimum, schools with children age 2 that choose the nutrient standard menu planning alternative shall ensure that the nutrition standards in paragraph (b) and the required preschool level in paragraph (c)(1) of this section are met over a school week except that, such schools have the option of either using the nutrient and calorie levels for preschool children in paragraph (c)(2) of this section or developing separate nutrient and calorie levels for this age group. The methodology for determining such levels will be available in menu planning guidance material provided by FCS.

(ii) At a minimum, schools shall offer meals to children based on the required grade groups in the table, *Minimum Nutrient Levels for School Lunches/Nutrient Analysis*, in paragraph (c)(1) of this section. However, schools may, at their option, offer meals to children using the age groups and their corresponding calorie and nutrient levels in paragraph (c)(2) of this section or, following guidance provided by FCS, develop their own age or grade groups and their corresponding nutrient and calorie levels. However, if only one age or grade is outside the established levels, schools may use the levels for the majority of children regardless of the option selected.

(2) *Contents of reimbursable meal and offer versus serve.* (i) *Minimum requirements.* For the purposes of this menu planning alternative, a reimbursable lunch shall include a minimum of three menu items as defined in § 210.2; one menu item shall be an entree and one shall be fluid milk as a beverage. An entree may be a combination of foods or a single food item that is offered as the main course. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards in paragraph (b) of this section and the appropriate nutrient and calorie levels in paragraph (c) or (i)(1) of this section, whichever is applicable, except for those foods that are considered foods of minimal nutritional value as provided for in § 210.11(a)(2) which are not offered as part of a menu item in a reimbursable meal. Such reimbursable lunches, as offered, shall meet the established nutrition standards in paragraph (b) and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever is applicable, when averaged over a school week.

(ii) *Offer versus serve.* Each participating school shall offer its students at least three menu items as required by paragraph (i)(2)(i) of this

section. Under offer versus serve, senior high students must select at least two menu items and may decline a maximum of two menu items; one menu item selected must be an entree. At the discretion of the school food authority, students below the senior high level may also participate in offer versus serve. The price of a reimbursable lunch shall not be affected if a student declines a menu item or requests smaller portions. State educational agencies shall define "senior high."

(3) *Nutrient analysis under Nutrient Standard Menu Planning.* School food authorities choosing the nutrient analysis alternative shall conduct nutrient analysis on all menu items or foods offered as part of the reimbursable meal. However, those foods that are considered as foods of minimal nutritional value as provided for in § 210.11(a)(2) which are not offered as part of a menu item in a reimbursable meal shall not be included. Such analysis shall be over the course of each school week.

(4) *The National Nutrient Database and software specifications.* (i) Nutrient analysis shall be based on information provided in the National Nutrient Database for Child Nutrition Programs. This database shall be incorporated into software used to conduct nutrient analysis. Upon request, FCS will provide information about the database to software companies and others that wish to develop school food service software systems.

(ii) Any software used to conduct nutrient analysis shall be evaluated by FCS or by an FCS designee beforehand and, as submitted, has been determined to meet the minimum requirements established by FCS. However, such review does not constitute endorsement by FCS or USDA. Such software shall provide the capability to perform all functions required after the basic data has been entered including calculation of weighted averages and the optional combining of analysis of the lunch and breakfast programs as provided in paragraph (i)(5) of this section.

(5) *Determination of weighted averages.* (i) Menu items and foods offered as part of a reimbursable meal shall be analyzed based on portion sizes and projected serving amounts and shall be weighted based on their proportionate contribution to the meals. Therefore, in determining whether meals satisfy nutritional requirements, menu items or foods more frequently offered will be weighted more heavily than menu items or foods which are less frequently offered. Such weighting shall be done in accordance with guidance

issued by FCS as well as that provided by the software used.

(ii) An analysis of all menu items and foods offered in the menu over each school week shall be computed for calories and for each of the following nutrients: protein; vitamin A; vitamin C; iron; calcium; total fat; saturated fat; and sodium. The analysis shall also include the dietary components of cholesterol and dietary fiber.

(iii) At its option, a school food authority may combine analysis of the National School Lunch and School Breakfast Programs. Such analysis shall be proportionate to the levels of participation in the two programs in accordance with guidance issued by FCS.

(6) *Comparing average nutrient levels.* Once the appropriate procedures of paragraph (i)(5) of this section have been completed, the results shall be compared to the appropriate nutrient and calorie levels, by age/grade groups, in paragraph (c)(1) or (c)(2) of this section or to the levels developed in accordance with paragraph (i)(1) of this section, whichever is applicable, to determine the school week's average. In addition, comparisons shall be made to the nutrition standards provided in paragraph (b) of this section in order to determine the degree of conformity over the school week.

(7) *Adjustments based on students' selections.* The results obtained under paragraph (i)(5) and (i)(6) of this section shall be used to adjust future menu cycles to accurately reflect production and the frequency with which menu items and foods are offered. Menus may require further analysis and comparison, depending on the results obtained in paragraph (i)(6) of this section, when production and selection patterns of students change. The school food authority may need to consider modifications to the menu items and foods offered based on student selections as well as modifications to recipes and other specifications to ensure that the nutrition standards provided in paragraph (b) of this section and paragraphs (c) or (i)(1) of this section, whichever is applicable, are met.

(8) *Standardized recipes.* Under Nutrient Standard Menu Planning, standardized recipes shall be developed and followed. A standardized recipe is one that was tested to provide an established yield and quantity through the use of ingredients that remain constant in both measurement and preparation methods. USDA/FCS standardized recipes are included in the National Nutrient Database for the Child Nutrition Programs. In addition, local

standardized recipes used by school food authorities shall be analyzed for their calories, nutrients and dietary components, as provided in paragraph (i)(5)(ii) of this section, and added to the local databases by school food authorities in accordance with guidance provided by FCS.

(9) *Processed foods.* Unless already included in the National Nutrient Database, the calorie amounts, nutrients and dietary components, as provided in paragraph (i)(5)(ii) of this section, of purchased processed foods and menu items used by the school food authority shall be obtained by the school food authority or State agency and incorporated into the database at the local level in accordance with FCS guidance.

(10) *Menu substitutions.* If the need for serving a substitute food(s) or menu item(s) occurs at least two weeks prior to serving the planned menu, the revised menu shall be reanalyzed based on the changes. If the need for serving a substitute food(s) or menu item(s) occurs two weeks or less prior to serving the planned menu, no reanalysis is required. However, to the extent possible, substitutions should be made using similar foods.

(11) *Compliance with the nutrition standards.* If the analysis conducted in accordance with paragraphs (i)(1) through (i)(10) of this section shows that the menus offered are not meeting the nutrition standards in paragraph (b) of this section and the appropriate levels of nutrients and calories in paragraph (c)(1) or (c)(2) of this section or the levels developed in accordance with paragraph (i)(1) of this section, whichever is applicable, actions, including technical assistance and training, shall be taken by the State agency, school food authority, or school, as appropriate, to ensure that the lunches offered to children comply with the nutrition standards established by paragraph (b) and the appropriate levels of nutrients and calories in paragraphs (c) or (i)(1) of this section, whichever is applicable.

(12) *Other programs.* Any school food authority that operates the Summer Food Service Program authorized under part 225 of this chapter and/or the Child and Adult Care Food Program under part 226 of this chapter may, at its option and with State agency approval, prepare meals provided for those programs using the nutrient standard menu planning alternative, except for children under two years of age. For school food authorities providing meals for adults, FCS will provide guidance on the level of nutrients and calories needed. Meal supplements shall

continue to be provided based on the appropriate program's meal pattern.

(j) *Assisted Nutrient Standard Menu Planning.*

(1) School food authorities without the capability to conduct Nutrient Standard Menu Planning, as provided in paragraph (i) of this section, may choose an alternative which uses menu cycles developed by other sources. Such sources may include, but are not limited to the State agency, other school food authorities, consultants, or food service management companies. This alternative is Assisted Nutrient Standard Menu Planning.

(2) Assisted Nutrient Standard Menu Planning shall establish menu cycles that have been developed in accordance with paragraphs (i)(1) through (i)(10) of this section as well as local food preferences and local food service operations. These menu cycles shall incorporate the nutrition standards in paragraph (b) of this section and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever is applicable. In addition to the menu cycle, recipes, food product specifications and preparation techniques shall also be developed and provided by the entity furnishing Assisted Nutrient Standard Menu Planning to ensure that the menu items and foods offered conform to the nutrient analysis determinations of the menu cycle.

(3) At the inception of any use of Assisted Nutrient Standard Menu Planning, the State agency shall approve the initial menu cycle, recipes, and other specifications to determine that all required elements for correct nutrient analysis are incorporated. The State agency shall also, upon request by the school food authority, provide assistance with implementation of the chosen system.

(4) After initial service of the menu cycle under the Assisted Nutrient Standard Menu Planning, the nutrient analysis shall be reassessed and appropriate adjustments made in accordance with paragraph (i)(7) of this section.

(5) Under Assisted Nutrient Standard Menu Planning, the school food authority retains final responsibility for ensuring that all nutrition standards established in paragraph (b) and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever are applicable, are met.

(6) If the analysis conducted in accordance with paragraphs (i)(1) through (i)(10) and paragraph (j)(4) of this section shows that the menus offered are not meeting the nutrition standards in paragraph (b) of this

section and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever is applicable, actions, including technical assistance and training, shall be taken by the State agency, school food authority, or school, as appropriate, to ensure that the lunches offered to children comply with the nutrition standards established by paragraph (b) and the appropriate nutrient and calorie levels in paragraphs (c) or (i)(1) of this section, whichever is applicable.

(7) Any school food authority that operates the Summer Food Service Program authorized under part 225 of

this chapter and/or the Child and Adult Care Food Program under part 226 of this chapter may, at its option and with State agency approval, prepare meals provided for those programs using the assisted nutrient standard menu planning alternative, except for children under two years of age. For school food authorities providing meals for adults, FCS will provide guidance on the level of nutrients and calories needed. Meal supplements shall continue to be provided based on the appropriate program's meal pattern.

(k) *Food-based menu planning.* (1) *Menu planning alternative.* School food

authorities may choose to plan menus using the food-based menu planning alternative. Under the food-based menu planning alternative, specific food components in minimum quantities must be served as provided in paragraphs (k)(2) through (k)(5) of this section.

(2) *Minimum quantities.* At a minimum, school food authorities choosing to plan menus using the food-based menu planning alternative shall offer all five required food items in the quantities provided in the following chart:

Meal component	Minimum quantities required for			
	Ages 1-2	Preschool	Grades K-6	Grades 7-12
Milk (as a beverage)	6 ounces	6 ounces	8 ounces	8 ounces.
Meat or meat alternate (quantity of the edible portion as served):				
Lean meat, poultry or fish	1 oz	1½ oz	2 oz	2 oz
Cheese	1 oz	1½ oz	2 oz	2 oz.
Large egg	½	¾	1	1.
Cooked dry beans or peas	¼ cup	⅜ cup	½ cup	½ cup.
Peanut butter or other nut or seed butters ..	2 tbsp	3 tbsp	4 tbsp	4 tbsp.
The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above:				
Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 ounce of nuts/seeds=1 ounce of cooked lean meat, poultry or fish.)	½ oz.=50%	¾ oz.=50%	1 oz.=50%	1 oz.=50%.
Vegetables/Fruits (2 or more servings of vegetables or fruits or both)	½ cup	½ cup	¾ cup plus additional ½ cup over a week ¹ .	1 cup.
Grains/Breads Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or ½ cup of cooked rice, macaroni, noodles, other pasta products or cereal grains.	5 servings per week—minimum of ½ per day ¹ .	8 servings per week—minimum of 1 per day ¹ .	12 servings per week—minimum of 1 per day ^{1,2} .	15 servings per week—minimum of 1 per day. ^{1,2}

¹ For the purposes of this chart, a week equals five days.
² Up to one grains/breads serving per day may be a dessert.

(3) *Meat or meat alternate component.* The quantity of meat or meat alternate shall be the quantity of the edible portion as served. When the school determines that the portion size of a meat alternate is excessive, it shall reduce the portion size of that particular meat alternate and supplement it with another meat/meat alternate to meet the full requirement. To be counted as meeting the requirement, the meat or meat alternate shall be served in a main dish or in a main dish and only one other of the items offered. The Department recommends that if schools do not offer children choices of meat or meat alternates each day, they serve no one meat alternate or form of meat (e.g., ground, diced, pieces) more than three times in a single week.

(i) Vegetable protein products, cheese alternate products, and enriched

macaroni with fortified protein defined in appendix A of this part may be used to meet part of the meat or meat alternate requirement when used as specified in appendix A of this part. An enriched macaroni product with fortified protein as defined in appendix A of this part may be used as part of a meat alternate or as a grain/bread item, but not as both food components in the same meal.

(ii) Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts shall not be used as meat alternates due to their low protein and iron content. Nut and seed meals or flours shall not be used as a meat alternate except as defined in this part under appendix A: Alternate Foods for

Meals. Nuts or seeds may be used to meet no more than one-half of the meat/meat alternate requirement. Therefore, nuts and seeds must be used in the meal with another meat/meat alternate to fulfill the requirement.

(4) *Vegetables and fruits.* Full strength vegetable or fruit juice may be counted to meet not more than one-half of the vegetable/fruit requirement. Cooked dry beans or peas may be used as a meat alternate or as a vegetable, but not as both food components in the same meal. For children in kindergarten through grade six, the requirement for this component is based on minimum daily servings plus an additional ½ cup in any combination over a five day period.

(5) *Grains/breads.* (i) All grains/breads such as bread, biscuits, muffins or rice, macaroni, noodles, other pastas or cereal grains such as bulgur or corn

grits, shall be enriched or whole grain or made with enriched or whole grain meal or flour.

(ii) Unlike the other component requirements, the grains/breads requirement is based on minimum daily servings and total servings per week. The requirement for this component is based on minimum daily servings plus total servings over a five day period. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in the Food Buying Guide for Child Nutrition Programs (PA 1331), an FCS publication.

(6) *Offer versus serve.* Each school shall offer its students all five required food items as set forth in the table presented under paragraph (k)(2) of this section. Senior high students shall be permitted to decline up to two of the five required food items. At the discretion of the school food authority, students below the senior high level may be permitted to decline one or two of the required five food items. The price of a reimbursable lunch shall not be affected if a student declines food items or accepts smaller portions. State educational agencies shall define "senior high."

(7) *Outlying areas.* Schools in American Samoa, Puerto Rico and the Virgin Islands may serve a starchy vegetable such as yams, plantains, or sweet potatoes to meet the grain/bread requirement. For the Commonwealth of the Northern Mariana Islands, FCS has established a menu consistent with the food-based menu alternative and with local food consumption patterns and which, given available food supplies and food service equipment and facilities, provides optimum nutrition consistent with sound dietary habits for participating children. The State agency shall attach to and make a part of the written agreement required under § 210.9 the requirements of that menu option.

(1) *Milk.* (1) *Varieties.* Regardless of the menu planning alternative chosen, schools shall offer students fluid milk. The selection of the types of milk offered shall be consistent with the types of milk consumed in the prior year. This requirement does not preclude schools from offering additional kinds of milk. However, in the event that a particular type of milk represents less than one (1) percent of the total amount of milk consumed in the previous year, a school may elect not to make this type of milk available. All milk served shall be pasteurized fluid types of milk which meet State and local standards for such milk; except that, in the meal pattern for infants under 1 year of age, the milk

shall be unflavored types of whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meets such standards. All milk shall contain vitamins A and D at levels specified by the Food and Drug Administration and be consistent with State and local standards for such milk.

(2) *Insufficient milk supply.* The inability of a school to obtain a supply of milk shall not bar it from participation in the Program and is to be resolved as follows:

(i) If emergency conditions temporarily prevent a school that normally has a supply of fluid milk from obtaining delivery of such milk, the State agency may approve the service of lunches during the emergency period with an available alternate form of milk or without milk.

(ii) If a school is unable to obtain a supply of any type of fluid milk on a continuing basis, the State agency may approve the service of lunches without milk if the school uses an equivalent amount of canned or dry milk in the preparation of the lunch. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, if a sufficient supply of fluid milk cannot be obtained, "milk" shall include reconstituted or recombined milk, or as otherwise provided under written exception by FCS.

(m) *Infant lunch pattern.* (1) *Definitions for infant meals.* For the purpose of this section:

(i) Infant cereal means any iron-fortified dry cereal especially formulated and generally recognized as cereal for infants and that is routinely mixed with formula or milk prior to consumption.

(ii) Infant formula means any iron-fortified formula intended for dietary use solely as a food for normal, healthy infants; excluding those formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems. Infant formula, as served, must be in liquid state at recommended dilution.

(2) *Infants under the age of one.* Infants under 1 year of age shall be served an infant lunch as specified in this paragraph when they participate in the Program. Foods within the infant lunch pattern shall be of texture and consistency appropriate for the particular age group being served, and shall be served to the infant during a span of time consistent with the infant's eating habits. For infants 4 through 7 months of age, solid foods are optional and should be introduced only when the infant is developmentally ready.

Whenever possible the school should consult with the infant's parent in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food authorized in the meal patterns set forth below must be provided in order to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother, may be served in place of infant formula from birth through 11 months of age. However, meals containing only breast milk do not qualify for reimbursement. Meals containing breast milk served to infants 4 months of age or older may be claimed for reimbursement when the other meal component or components are supplied by the school. Although it is recommended that either breast milk or iron-fortified infant formula be served for the entire first year, whole milk may be served beginning at 8 months of age as long as infants are consuming one-third of their calories as a balanced mixture of cereal, fruits, vegetables, and other foods in order to ensure adequate sources of iron and vitamin C. The infant lunch pattern shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age group:

(i) Birth through 3 months—4 to 6 fluid ounces of iron-fortified infant formula.

(ii) 4 through 7 months:

(A) 4 to 8 fluid ounces of iron-fortified infant formula;

(B) 0 to 3 tablespoons of iron-fortified dry infant cereal (optional); and

(C) 0 to 3 tablespoons of fruit or vegetable of appropriate consistency or a combination of both (optional).

(iii) 8 through 11 months:

(A) 6 to 8 fluid ounces of iron-fortified infant formula or 6 to 8 fluid ounces of whole milk;

(B) 2 to 4 tablespoons of iron-fortified dry infant cereal and/or 1 to 4 tablespoons meat, fish, poultry, egg yolk, or cooked dry beans or peas, or 1/2 to 2 ounces (weight) of cheese or 1 to 4 ounces (weight or volume) of cottage cheese, cheese food or cheese spread of appropriate consistency; and

(C) 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

(n) *Supplemental food.* Eligible schools operating afterschool care programs may be reimbursed for one meal supplement served to an eligible child (as defined in § 210.2) per day.

(1) Eligible schools mean schools that:

(i) Operate school lunch programs under the National School Lunch Act;
 (ii) Sponsor afterschool care programs as defined in § 210.2; and
 (iii) Were participating in the Child and Adult Care Food Program as of May 15, 1989.
 (2) Meal supplements shall contain two different components from the following four:
 (i) A serving of fluid milk as a beverage, or on cereal, or used in part for each purpose;
 (ii) A serving of meat or meat alternate. Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts are excluded and shall not be used as meat alternates due to their low protein content. Nut or seed meals or flours shall not be used as a meat

alternate except as defined under appendix A: Alternate Foods for Meals of this part;
 (iii) A serving of vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods. Juice may not be served when milk is served as the only other component;
 (iv) A serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or a serving of cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgur, or corn grits; or an equivalent quantity of any combination of these foods.
 (3) Infant supplements shall contain the following:
 (i) Birth through 3 months: 4–6 fluid ounces of infant formula.

(ii) 4 through 7 months: 4–6 fluid ounces of infant formula.
 (iii) 8 through 11 months: 2–4 fluid ounces of infant formula or whole fluid milk or full strength fruit juice; 0–1/2 slice of crusty bread or 0–2 cracker type products made from whole-grain or enriched meal or flour that are suitable for an infant for use as a finger food when appropriate. To improve the nutrition of participating children over one year of age, additional foods may be served with the meal supplements as desired.
 (iv) The minimum amounts of food components to be served as meal supplements as set forth in paragraph (n)(3) of this section are as follows. Select two different components from the four listed. (Juice may not be served when milk is served as the only other component.)

MEAL SUPPLEMENT CHART FOR CHILDREN

Snack (supplement) for children	Children 1 and 2	Children 3 through 5	Children 6 through 12
(Select two different components from the four listed)			
Milk, fluid	1/2 cup	1/2 cup	1 cup.
Meat or meat alternate ⁴	1/2 ounce	1/2 ounce	1 ounce.
Juice or fruit or vegetable	1/2 cup	1/2 cup	3/4 cup.
Bread and/or cereal: Enriched or whole grain bread or	1/2 slice	1/2 slice	1 slice.
Cereal: Cold dry or	1/4 cup ¹	1/3 cup ²	3/4 cup ³ .
Hot cooked	1/4 cup	1/4 cup	1/2 cup.

¹ 1/4 cup (volume) or 1/3 ounce (weight), whichever is less.
² 1/3 cup (volume) or 1/2 ounce (weight), whichever is less.
³ 3/4 cup (volume) or 1 ounce (weight), whichever is less.
⁴ Yogurt may be used as meat/meat alternate in the snack only. You may serve 4 ounces (weight) or 1/2 cup (volume) of plain, or sweetened and flavored yogurt to fulfill the equivalent of 1 ounce of the meat/meat alternate component. For younger children, 2 ounces (weight) or 1/4 cup (volume) may fulfill the equivalent of 1/2 ounce of the meat/meat alternate requirement.
 Caution: Children under five years of age are at the highest risk of choking. USDA recommends that nuts and/or seeds be served to them ground or finely chopped in a prepared food.

SUPPLEMENTS FOR INFANTS

Birth through three months	Four months through seven months	Eight months through eleven months
4–6 fluid ounces formula ¹	4–6 fluid ounces formula ¹	2–4 fluid ounces formula, ¹ breast milk, ⁴ whole milk or fruit juice. ² 0–1/2 slice bread or 0–2 crackers (optional). ³

¹ Shall be iron-fortified infant formula.
² Shall be full-strength fruit juice.
³ Shall be from whole-grain or enriched meal or flour.
⁴ Breast milk provided by the infant's mother may be served in place of formula from birth through 11 months. Meals containing only breast milk are not reimbursable. Meals containing breast milk served to infants 4 months or older may be claimed when the other meal component(s) is supplied by the school.

(o) *Implementation of the nutrition standards.* School food authorities shall comply with the *1990 Dietary Guidelines for Americans* as provided in paragraph (b) of this section no later than School Year 1996–97 except that State agencies may grant waivers to postpone implementation until no later than School Year 1998–99. Such waivers shall be granted by the State agency using guidance provided by the Secretary.

9. In the newly redesignated § 210.10a:
 a. the section heading is revised and
 b. the table in paragraph (c) is amended by revising the “Milk” description under “Food Components and Food Items.”

The revisions read as follows:

§ 210.10a Lunch components and quantities for the meal pattern.

* * * * *

(c) *Minimum required lunch quantities.* * * *

SCHOOL LUNCH PATTERN—PER LUNCH MINIMUMS

Food components and food items	Minimum quantities				Recommended quantities: group V, 12 years and older (7–12)
	Group 1, ages 1–2, (preschool)	Group II, ages 3–4 (preschool)	Group III, ages 5–8 (K–3)	Group IV, age 9 and older (4–12)	
Milk (as a beverage): Fluid whole milk and fluid unflavored lowfat milk must be offered; (Flavored fluid milk, skim milk or buttermilk optional)	* * *	* * *	* * *	* * *	* * *
	*	*	*	*	*

* * * * *
 10. In § 210.14, paragraph (c) is revised to read as follows:

§ 210.14 Resource management.

(c) *Financial assurances.* The school food authority shall meet the requirements of the State agency for compliance with § 210.19(a) including any separation of records of nonprofit school food service from records of any other food service which may be operated by the school food authority as provided in paragraph (a) of this section.

11. In § 210.15:
 a. Paragraph (b)(2) is revised;
 b. Paragraph (b)(3) is amended by removing the reference to “210.10(b) of this part” and adding in its place the words “§ 210.10(a)(2) or § 210.10a(b), whichever is applicable;” and
 c. Paragraph (b)(4) is removed and paragraph (b)(5) is redesignated as (b)(4).

The revision reads as follows:

§ 210.15 Reporting and recordkeeping.

(b) *Recordkeeping summary.* * * *
 (2) Production and menu records as required under § 210.10a and production and menu records and, if appropriate, nutrition analysis records as required under § 210.10, whichever is applicable.

12. In § 210.16:
 a. paragraph (b)(1) is amended by adding the words “developed in accordance with the provisions of § 210.10 or § 210.10a, whichever is applicable,” after the words “21-day cycle menu” whenever they appear; and
 b. the first sentence of paragraph (c)(3) is revised to read as follows:

§ 210.16 Food service management companies.

(c) * * *
 (3) No payment is to be made for meals that are spoiled or unwholesome

at time of delivery, do not meet detailed specifications as developed by the school food authority for each food component or menu item as specified for the appropriate menu planning alternative in § 210.10 or for each food component in § 210.10a, whichever is applicable, or do not otherwise meet the requirements of the contract. * * *

§ 210.18 [Amended]

13. In § 210.18:
 a. Paragraph (c) introductory text is amended by removing the number “4” in the phrase “4-year review cycle” wherever it appears and adding in its place the number “5”;
 b. the first sentence of paragraph (c)(1) is amended by removing the number “4” in the phrase “4-year review cycle” and adding in its place the number “5” and by removing the number “5” in the phrase “every 5 years” and adding in its place the number “6”;
 c. paragraph (c)(2) is amended by removing the number “4” in the phrase “4-year cycle” and adding in its place the number “5”;
 d. paragraph (c)(3) is amended by removing the number “5” in the phrase “5-year review interval” and adding the number “6” in its place;
 e. paragraph (d)(3) is amended by removing the reference to “210.19(a)(4)” and adding in its place a reference to “210.19(a)(5);” and
 f. paragraph (h)(2) is amended by removing the words “210.10 of this part” and adding in their place the words “§ 210.10 or § 210.10a, whichever is applicable.”

§ 210.19 [Amended]

14. In § 210.19:
 a. paragraphs (a)(1) through (a)(5) are redesignated as paragraphs (a)(2) through (a)(6), respectively, and a new paragraph (a)(1) is added;
 b. newly redesignated paragraph (a)(2) is revised;
 c. the last sentence in newly redesignated paragraph (a)(3) is revised;

d. the number “4” in the second sentence of newly redesignated paragraph (a)(6) is removed and the number “5” is added in its place;
 e. the second sentence of paragraph (c) introductory text is revised;
 f. a new sentence is added at the end of paragraph (c)(1);
 g. the reference to “§ 210.10” in paragraph (c)(6)(i) is removed and the words “§ 210.10a or the food-based menu planning alternative in § 210.10(k), whichever is applicable;” are added in its place;
 h. paragraph (c)(6)(ii) is amended by removing the period at the end and adding in its place the word “; or”; and
 i. a new paragraph (c)(6)(iii) is added.
 The additions and revisions read as follows:

§ 210.19 Additional responsibilities.

(a) General Program management.
 (1) *Compliance with nutrition standards.* Beginning with School Year 1996–1997 (unless the school food authority has an implementation waiver as provided in § 210.10(o)), State agencies shall evaluate compliance, over the school week, with the nutrition standards in § 210.10(b) and § 210.10(c) or (d), whichever is applicable. At a minimum, these evaluations shall be conducted once every 5 years and may be conducted at the same time a school food authority is scheduled for an administrative review in accordance with § 210.18. State agencies may also conduct these evaluations in conjunction with technical assistance visits, other reviews, or separately. The type of evaluation conducted by the State agency shall be determined by the menu planning alternative chosen by the school food authority.
 (i) For school food authorities choosing the nutrient standard menu planning or assisted nutrient standard menu planning options provided in § 210.10(i) and § 210.10(j), respectively, the State agency shall assess the nutrient analysis for the last completed school week prior to the review period

to determine if the school food authority is applying the methodology in § 210.10(i) or § 210.10(j), as appropriate. Part of this assessment shall be an independent review of menus and production records to determine if they correspond to the analysis conducted by the school food authority and if the menu, as offered, over a school week, corresponds to the nutrition standards set forth in § 210.10(b) and § 210.10(c).

(ii) For school food authorities choosing the food-based menu planning alternative in § 210.10(k), the State agency shall conduct nutrient analysis on the menu(s) served during the review period to determine if the nutrition standards set forth in § 210.10(b) and § 210.10(d) are met, except that, the State agency may:

(A) Use the nutrient analysis of any school or school food authority that offers meals using the food-based menu planning alternative provided in § 210.10(k) and/or § 220.8(e) or § 220.8(f) of this chapter and that conducts its own nutrient analysis under the criteria for nutrient analysis established in § 210.10 and § 220.8 for nutrient standard menu planning and assisted nutrient standard menu planning of those meals; or

(B) Develop its own method for compliance review, subject to USDA approval.

(iii) If the menu for the school week fails to comply with the nutrition standards specified in § 210.10(b) and/or § 220.8(a) and the appropriate nutrient levels in either § 210.10(c), § 210.10(d), or § 210.10(i)(1) whichever is applicable, and/or § 220.8(b), § 220.8(c) or § 220.8(e)(1) of this chapter, whichever is applicable, the school food authority shall develop, with the assistance and concurrence of the State agency, a corrective action plan designed to rectify those deficiencies. The State agency shall monitor the school food authority's execution of the plan to ensure that the terms of the corrective action plan are met.

(iv) If a school food authority fails to meet the terms of the corrective action plan, the State agency shall determine if the school food authority is working in good faith towards compliance and, if so, may renegotiate the corrective action plan, if warranted. However, if the school food authority has not been acting in good faith to meet the terms of the corrective action plan and refuses to renegotiate the plan, the State agency shall determine if a disallowance of reimbursement funds as authorized under paragraph (c) of this section is warranted.

(2) Assurance of compliance for finances. Each State agency shall ensure

that school food authorities comply with the requirements to account for all revenues and expenditures of their nonprofit school food service. School food authorities shall meet the requirements for the allowability of nonprofit school food service expenditures in accordance with this part and, as applicable, 7 CFR part 3015. The State agency shall ensure compliance with the requirements to limit net cash resources and shall provide for approval of net cash resources in excess of three months' average expenditures. Each State agency shall monitor, through review or audit or by other means, the net cash resources of the nonprofit school food service in each school food authority participating in the Program. In the event that net cash resources exceed 3 months' average expenditures for the school food authority's nonprofit school food service or such other amount as may be approved in accordance with this paragraph, the State agency may require the school food authority to reduce the price children are charged for lunches, improve food quality or take other action designed to improve the nonprofit school food service. In the absence of any such action, the State agency shall make adjustments in the rate of reimbursement under the Program.

(3) Improved management practices.

* * * If a substantial number of children who routinely and over a period of time do not favorably accept a particular item that is offered; return foods; or choose less than all food items/components or foods and menu items, as authorized under § 210.10 or § 210.10a, whichever is applicable, poor acceptance of certain menus may be indicated.

* * * * *

(c) Fiscal action. * * * State agencies shall take fiscal action against school food authorities for Claims for Reimbursement that are not properly payable under this part including, if warranted, the disallowance of funds for failure to take corrective action in accordance with paragraph (a)(1) of this section. * * *

(1) Definition. * * * Fiscal action also includes disallowance of funds for failure to take corrective action in accordance with paragraph (a)(1) of this section.

* * * * *

(6) Exceptions. * * *

(iii) when any review or audit reveals that a school food authority's failure to meet the nutrition standards of § 210.10 is unintentional and the school food authority is meeting the requirements of

a corrective plan developed and agreed to under paragraph (a)(1)(iii) of this section.

* * * * *

[Appendix A—Amended]

15. In Appendix A, Alternate Foods for Meals; Enriched Macaroni Products with Fortified Protein, the first sentence of paragraph 1(a) is amended by adding the words "or § 210.10a, whichever is applicable," after the reference to "§ 210.10".

16. In Appendix A, Alternate Foods for Meals; Cheese Alternate Products:

a. the introductory text of paragraph 1 is amended by adding the words "or § 210.10a, whichever is applicable," after the reference to "§ 210.10"; and

b. paragraph 1(d) is amended by adding the words "or § 210.10a, whichever is applicable," after the reference to "§ 210.10".

17. In Appendix A, Alternate Foods for Meals; Vegetable Protein Products:

a. the introductory text of paragraph 1 is amended by adding the words "or § 210.10a, whichever is applicable," after the reference to "§ 210.10";

b. the second sentence of paragraph 1(d) is amended by adding the words "or § 210.10a, whichever is applicable," after the reference to "§ 210.10";

c. the first sentence of paragraph 1(e) is amended by adding the words "§ 210.10a, whichever is applicable," after the reference to "§ 210.10"; and

d. the first sentence of paragraph 3 is amended by adding the words "or § 210.10a, whichever is applicable," after the reference to "§ 210.10".

Appendix C—[Amended]

18. In Appendix C, Child Nutrition Labeling Program:

a. paragraph 2(a) is amended by adding the words "or 210.10a, whichever is applicable," after the reference to "210.10"; and

b. the first sentence of paragraph 3(c)(2) is amended by adding the words "or 210.10a, whichever is applicable," after the reference to "§ 210.10" and by adding the words "or 220.8a, whichever is applicable," after the reference to "§ 220.8"; and

c. the second sentence of paragraph 6 is amended by adding the words "or 210.10a, whichever is applicable," after the reference to "§ 210.10" and by adding the words "or 220.8a, whichever is applicable," after the reference to "§ 220.8".

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

2. In § 220.2:

a. paragraph (b) is amended by adding the words "or § 220.8a, whichever is applicable," after the reference to "§ 220.8;"

b. paragraph (m), previously reserved, is added;

c. a new paragraph (p-1) is added;

d. paragraph (t) is amended by adding the words "or § 220.8a, whichever is applicable," after the reference to "§ 220.8"; and

e. a new paragraph (w-1) is added.

The additions read as follows:

§ 220.2 Definitions.

* * * * *

(m) *Menu item* means, under Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning, any single food or combination of foods. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards provided in § 220.8, except for those foods that are considered as foods of minimal nutritional value as provided for in § 220.2(i-1) which are not offered as part of a menu item in a reimbursable meal. For the purposes of a reimbursable breakfast, a minimum of three menu items must be offered, one of which shall be fluid milk served as a beverage or on cereal or both; under the offer versus serve, a student may decline only one menu item.

* * * * *

(p-1) *Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning* mean ways to develop menus based on the analysis of nutrients in the menu items and foods offered over a school week to determine if specific levels for a set of key nutrients and calories were met. Such analysis is based on averages weighted in accordance with the criteria in § 220.8(e)(5). Such analysis is normally done by a school or a school food authority. However, for the purposes of Assisted Nutrient Standard Menu Planning, menu planning and analysis are completed by other entities and shall incorporate the production quantities needed to accommodate the specific service requirements of a particular school or school food authority.

* * * * *

(w-1) *School week* means the period of time used to determine compliance with the nutrition standards and the appropriate calorie and nutrient levels

in § 220.8. Further, if applicable, school week is the basis for conducting Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning for breakfasts as provided in § 220.8(e) and § 220.8(f). The period shall be a normal school week of five consecutive days; however, to accommodate shortened weeks resulting from holidays and other scheduling needs, the period shall be a minimum of three consecutive days and a maximum of seven consecutive days. Weeks in which school breakfasts are offered less than three times shall be combined with either the previous or the coming week.

* * * * *

§ 220.7 [Amended]

3. In § 220.7, paragraph (e)(2) is amended by adding the words "or § 220.8a, whichever is applicable," after the reference to "§ 220.8".

4. Section 220.8 is redesignated as 220.8a and a new section 220.8 is added to read as follows:

§ 220.8 Nutrition standards for breakfast and menu planning alternatives.

(a) *Nutrition standards for breakfasts for children age 2 and over.* School food authorities shall ensure that participating schools provide nutritious and well-balanced breakfasts. For children age 2 and over, breakfasts shall be offered based on the nutrition standards provided in this section when averaged over a school week. For the purposes of this section, the nutrition standards are:

(1) Provision of one-fourth of the Recommended Dietary Allowances (RDA) of protein, calcium, iron, vitamin A and vitamin C to the applicable age or grade groups in accordance with the appropriate levels provided in paragraphs (b), (c), or (e)(1) of this section, whichever is applicable;

(2) Provision of the breakfast energy allowances for children based on the age or grade groups in accordance with the appropriate levels provided in paragraphs (b), (c) or (e)(1) of this section, whichever is applicable;

(3) The applicable recommendations of the *1990 Dietary Guidelines for Americans* which are:

- (i) Eat a variety of foods;
- (ii) Limit total fat to 30 percent of calories;
- (iii) Limit saturated fat to less than 10 percent of calories;

(iv) Choose a diet low in cholesterol;

(v) Choose a diet with plenty of vegetables, fruits, and grain products; and

(vi) Use salt and sodium in moderation.

(4) The following measures of compliance with the applicable recommendations of the *1990 Dietary Guidelines for Americans*:

(i) A limit on the percent of calories from total fat to 30 percent based on the actual number of calories offered;

(ii) A limit on the percent of calories from saturated fat to less than 10 percent based on the actual number of calories offered;

(iii) A reduction of the levels of sodium and cholesterol; and

(iv) An increase in the level of dietary fiber.

(5) School food authorities have three alternatives for menu planning in order to meet the requirements of this paragraph and the appropriate nutrient and calorie levels in paragraphs (b), (c) or (e)(1) of this section, whichever is applicable: nutrient standard menu planning as provided in paragraph (e) of this section, assisted nutrient standard menu planning as provided for in paragraph (f) of this section, or food-based menu planning as provided for in paragraph (g) of this section. The actual minimum calorie and nutrient levels vary depending upon the alternative followed due to the differences in age/grade groupings of each alternative.

(6) Production and menu records shall include sufficient information to evaluate the menu's contribution to the requirements on nutrition standards in paragraph (a) of this section and the appropriate levels of nutrient and calorie levels in paragraphs (b), (c) or (e)(1) of this section, whichever is applicable. If applicable, schools or school food authorities shall maintain nutritional analysis records to demonstrate that breakfasts meet, when averaged over each school week, the nutrition standards provided in paragraph (a) of this section and the nutrient and calorie levels for children for each age or grade group in accordance with paragraphs (b) or (e)(1) of this section.

(b) *Nutrient levels/nutrient analysis.*

(1) For the purposes of nutrient standard and assisted nutrient standard menu planning, as provided for in paragraphs (e) and (f), respectively, of this section, schools shall, at a minimum, provide the calorie and nutrient levels for school breakfasts (offered over a school week) for required grade groups specified in the following chart:

MINIMUM REQUIREMENTS FOR NUTRIENT AND CALORIE LEVELS FOR SCHOOL BREAKFAST
[School week averages]

	Preschool	Grades K-12	Option for grades 7-12
Energy Allowances (calories)	388	554	618
Total Fat (as a Percentage of Actual Total Food Energy)	(1)	(1)	(1)
Total Saturated Fat (as a Percentage of Actual Total Food Energy)	(2)	(2)	(2)
Protein (g)	5	10	12
Calcium (mg)	200	257	300
Iron (mg)	2.5	3.0	3.4
Vitamin A (RE)	113	197	225
Vitamin C (mg)	11	13	14

¹ Not to exceed 30 percent over a school week.
² Less than 10 percent over a school week.

(2) At their option, schools may provide for calorie and nutrient levels for school breakfasts (offered over a school week) for the age groups specified in the following chart or may develop their own age groups and their corresponding levels in accordance with paragraph (e)(1) of this section.

OPTIONAL MINIMUM NUTRIENT LEVELS FOR SCHOOL BREAKFASTS/NUTRIENT ANALYSIS
[School week averages]

Nutrients and energy allowances	Ages 3-6 years	Ages 7-10 years	Ages 11-13 years	Ages 14 and above
Energy Allowances/Calories	419	500	588	625
Total Fat (as a percent of actual total food energy)	(1)	(1)	(1)	(1)
Saturated Fat (as a percent of actual total food energy)	(2)	(2)	(2)	(2)
RDA for Protein (g)	5.50	7.00	11.25	12.50
RDA for Calcium (mg)	200	200	300	300
RDA for Iron (mg)	2.5	2.5	3.4	3.4
RDA for Vitamin A (RE)	119	175	225	225
RDA for Vitamin C (mg)	11.00	11.25	12.50	14.40

¹ Not to exceed 30 percent over a school week.
² Less than 10 percent over a school week.

(c) *Nutrient levels/food-based menu planning.* For the purposes of the food-based menu planning alternative as provided for in paragraph (g) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for school breakfasts offered over a school week:

CALORIE AND NUTRIENT LEVELS FOR SCHOOL BREAKFAST
[School week averages]

	Preschool	Grades K-12	Option for grades 7-12
Energy Allowances (Calories)	388	554	618
Total Fat (as a percentage of actual total food energy)	¹	¹	¹
Total Saturated Fat (as a percentage of actual total food energy)	²	²	²
Protein (g)	5	10	12
Calcium (mg)	200	257	300
Iron (mg)	2.5	3.0	3.4
Vitamin A (RE)	113	197	225
Vitamin C (mg)	11	13	14

¹ Not to Exceed 30 Percent Over a School Week
² Less Than 10 Percent Over a School Week

(d) *Exceptions.* Breakfasts claimed for reimbursement shall meet the nutrition requirements for reimbursable meals specified in this section. However, breakfasts served which accommodate the exceptions and variations authorized under this paragraph are also reimbursable. Exceptions and variations are restricted to the following:

(1) *Medical or dietary needs.* Schools shall make substitutions in the foods or menu items offered in accordance with

this section for students who are considered to have a disability under 7 CFR part 15b and whose disability restricts their diet. Schools may also make substitutions for students who do not have a disability but who are unable to consume the regular breakfast because of medical or other special dietary needs. Substitutions shall be made on a case-by-case basis only when supported by a statement of the need for

substitutions that includes recommended alternate foods, unless otherwise exempted by FCS. Such statement shall, in the case of a disabled student, be signed by a physician or, in the case of a student who is not disabled, by a recognized medical authority.

(2) FCS encourages school food authorities to consider ethnic and religious preferences when planning and preparing meals. For the purposes

of the food-based menu planning alternative, FCS may approve variations in the food components of the breakfast on an experimental or on a continuing basis in any school where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, or economic needs.

(e) *Nutrient Standard Menu Planning.* (1) *Adjusted nutrient levels.* (i) At a minimum, schools that choose the nutrient standard menu planning alternative and that have children age 2 enrolled shall ensure that the nutrition standards in paragraph (a) of this section and the required preschool levels for nutrients and calories in paragraph (b)(1) of this section are met except that, such schools have the option of either using the nutrient and calorie levels for preschool children in paragraph (b)(2) of this section, or developing separate nutrient levels for this age group. The methodology for determining such levels will be available in menu planning guidance material provided by FCS.

(ii) At a minimum, schools shall offer meals to children based on the required grade groups in paragraph (b)(1) of this section. However, schools may, at their option, offer meals to children using the age groups and their corresponding nutrient and calorie levels in paragraph (c)(2) of this section or, following guidance provided by FCS, develop their own age or grade groups and their corresponding nutrient and calorie levels. However, if only one age or grade is outside the established levels, schools may use the levels for the majority of children regardless of the option selected.

(2) *Contents of reimbursable meal and offer versus serve.* (i) *Minimum requirements.* For the purposes of this menu planning alternative, a reimbursable breakfast shall include a minimum of three menu items as defined in § 220.2. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraphs (b) or (e)(1) of this section, whichever is applicable, except for those foods that are considered foods of minimal nutritional value as provided for in § 220.2(i-1) which are not offered as part of a menu item in a reimbursable meal. Such reimbursable breakfasts, as offered, shall meet the established nutrition standards in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraphs (b) or (e)(1) of this section, whichever is

applicable, when averaged over a school week.

(ii) *Offer versus serve.* Each participating school shall offer its students at least three menu items as required by paragraph (e)(2)(i) of this section. Under offer versus serve, senior high students must select at least two menu items and may decline a maximum of one menu item offered. At the discretion of the school food authority, students below the senior high level may also participate in offer versus serve. The price of a reimbursable breakfast shall not be affected if a student declines a menu item or requests smaller portions. State educational agencies shall define "senior high."

(3) *Nutrient analysis under Nutrient Standard Menu Planning.* School food authorities choosing the nutrient analysis alternative shall conduct nutrient analysis on all menu items or foods offered as part of the reimbursable meal. However, those foods that are considered as foods of minimal nutritional value as provided for in § 220.2(i-1) which are not offered as part of a menu item in a reimbursable meal shall not be included. Such analysis shall be over the course of each school week.

(4) *The National Nutrient Database and software specifications.* (i) Nutrient analysis shall be based on information provided in the National Nutrient Database for Child Nutrition Programs. This database shall be incorporated into software used to conduct nutrient analysis. Upon request, FCS will provide information about the database to software companies that wish to develop school food service software systems.

(ii) Any software used to conduct nutrient analysis shall be evaluated beforehand by FCS or by an FCS designee and, as submitted, has been determined to meet the minimum requirements established by FCS. However, such review does not constitute endorsement by FCS or USDA. Such software shall provide the capability to perform all functions required after the basic data has been entered including calculation of weighted averages and the optional combining of analysis of the breakfast and lunch programs as provided in paragraph (e)(5) of this section.

(5) *Determination of weighted averages.* (i) Menu items and foods offered as part of a reimbursable meal shall be analyzed based on portion sizes and projected serving amounts and shall be weighted based on their proportionate contribution to the meals. Therefore, in determining whether

meals satisfy nutritional requirements, menu items or foods more frequently offered will be weighted more heavily than menu items or foods which are less frequently offered. Such weighting shall be done in accordance with guidance issued by FCS as well as that provided by the software used.

(ii) An analysis of all menu items and foods offered in the menu over each school week shall be computed for calories and for each of the following nutrients: protein; vitamin A; vitamin C; iron; calcium; total fat; saturated fat; and sodium. The analysis shall also include the dietary components of cholesterol and dietary fiber.

(iii) At its option, a school food authority may combine analysis of the National School Lunch and School Breakfast Programs. Such analysis shall be proportionate to the levels of participation in the two programs in accordance to guidance issued by FCS.

(6) *Comparing average nutrient levels.* Once the appropriate procedures of paragraph (e)(5) of this section have been completed, the results shall be compared to the appropriate nutrient and calorie levels, by age/grade group, in paragraphs (b)(1) or (b)(2) of this section or the levels developed in accordance with paragraph (e)(1) of this section, whichever is applicable to determine the school week's average. In addition, comparisons shall be made to the nutrition standards provided in paragraph (a) of this section in order to determine the degree of conformity over the school week.

(7) *Adjustments based on students' selections.* The results obtained under paragraph (e)(5) and (e)(6) of this section shall be used to adjust future menu cycles to accurately reflect production and the frequency with which menu items and foods are offered. Menus may require further analysis and comparison, depending on the results obtained in paragraph (e)(6) of this section when production and selection patterns of students change. The school food authority may need to consider modifications to the menu items and foods offered based on student selections as well as modifications to recipes and other specifications to ensure that the nutrition standards provided in paragraph (a) of this section and the appropriate calorie and nutrient levels in paragraphs (b) or (e)(1) of this section, whichever is applicable, are met.

(8) *Standardized recipes.* Under Nutrient Standard Menu Planning, standardized recipes shall be developed and followed. A standardized recipe is one that was tested to provide an established yield and quantity through

the use of ingredients that remain constant in both measurement and preparation methods. USDA/FCS standardized recipes are included in the National Nutrient Database for the Child Nutrition Programs. In addition, local standardized recipes used by school food authorities shall be analyzed for their calories, nutrients and dietary components, as provided for in paragraph (e)(5)(ii) of this section, and added to the local databases by school food authorities in accordance with guidance issued by FCS.

(9) *Processed foods.* Unless already included in the National Nutrient Database, the calorie amounts, nutrients and dietary components, as provided in paragraph (e)(5)(ii) of this section, of purchased processed foods and menu items used by the school food authority shall be obtained by the school food authority or State agency and incorporated into the database at the local level in accordance with FCS guidance.

(10) *Menu substitutions.* If the need for serving a substitute food(s) or menu item(s) occurs at least two weeks prior to serving the planned menu, the revised menu shall be reanalyzed based on the changes. If the need for serving a substitute food(s) or menu item(s) occurs two weeks or less prior to serving the planned menu, no reanalysis is required. However, to the extent possible, substitutions should be made using similar foods.

(11) *Compliance with the nutrition standards.* If the analysis conducted in accordance with paragraphs (e)(1) through (e)(10) of this section shows that the menus offered are not meeting the nutrition standards in paragraph (a) of this section and the appropriate levels of nutrients and calories in paragraphs (b)(1) or (b)(2) of this section or the levels developed in accordance with paragraph (e)(1), whichever is applicable, actions, including technical assistance and training, shall be taken by the State agency, school food authority, or school, as appropriate, to ensure that the breakfasts offered to children comply with the nutrition standards established by paragraph (a) of this section and the appropriate levels of nutrient and calories in paragraphs (b) or (e)(1) of this section, whichever is applicable.

(12) *Other programs.* Any school food authority that operates the Summer Food Service Program under Part 225 of this chapter and/or the Child and Adult Care Food Program under Part 226 of this chapter may, at its option and with

State agency approval, prepare meals provided for those programs using the nutrient standard menu planning alternative, except for children under two years of age. For school food authorities providing meals for adults, FCS will provide guidance on the level of nutrients and calories needed.

(f) *Assisted Nutrient Standard Menu Planning.* (1) School food authorities without the capability to conduct Nutrient Standard Menu Planning, as provided in paragraph (e) of this section may choose an alternative which uses menu cycles developed by other sources. Such sources may include but are not limited to the State agency, other school food authorities, consultants, or food service management companies. This alternative is Assisted Nutrient Standard Menu Planning.

(2) Assisted Nutrient Standard Menu Planning shall establish menu cycles that have been developed in accordance with paragraphs (e)(1) through (e)(10) of this section as well as local food preferences and local food service operations. These menu cycles shall incorporate the nutrition standards in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraph (b) or (e)(1) of this section, whichever is applicable. In addition to the menu cycle, recipes, food product specifications and preparation techniques shall also be developed and provided by the entity furnishing Assisted Nutrient Standard Menu Planning to ensure that the menu items and foods offered conform to the nutrient analysis determinations of the menu cycle.

(3) At the inception of any use of Assisted Nutrient Standard Menu Planning, the State agency shall approve the initial menu cycle, recipes, and other specifications to determine that all required elements for correct nutrient analysis are incorporated. The State agency shall also, upon request of the school food authority, provide assistance with implementation of the chosen system.

(4) After initial service of the menu cycle under the Assisted Nutrient Standard Menu Planning, the nutrient analysis shall be reassessed and appropriate adjustments made in accordance with paragraph (e)(7) of this section.

(5) Under Assisted Nutrient Standard Menu Planning, the school food authority retains final responsibility for ensuring that all nutrition standards established in paragraph (a) of this section and the appropriate nutrient and

calorie levels in paragraphs (b) or (e)(1) of this section, whichever is applicable, are met.

(6) If the analysis conducted in accordance with paragraphs (e)(1) through (e)(10) and paragraph (f)(4) of this section shows that the menus offered are not meeting the nutrition standards in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraph (b) of this section or the levels developed in accordance with paragraph (e)(1) of this section, whichever is applicable, actions, including technical assistance and training, shall be taken by the State agency, school food authority, or school, as appropriate, to ensure that the breakfasts offered to children comply with the nutrition standards established by paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraphs (b) or (e)(1) of this section, whichever is applicable.

(7) Any school food authority that operates the Summer Food Service Program under Part 225 of this chapter and/or the Child and Adult Care Food Program under Part 226 of this chapter may, at its option and with State agency approval, prepare meals provided for those programs using the assisted nutrient standard menu planning alternative, except for children under two years of age. For school food authorities providing meals for adults, FCS will provide guidance on the level of nutrients and calories needed.

(g) *Food-based menu planning.* (1) *Food components.* Except as otherwise provided in this paragraph and in any appendix to this part to be eligible for Federal cash reimbursement, a breakfast planned using the food-based menu planning alternative shall contain, at a minimum, the following food components in the quantities specified in the table in paragraph (g)(2) of this section:

(i) A serving of fluid milk served as a beverage or on cereal or used in part for each purpose;

(ii) A serving of fruit or vegetable or both, or full-strength fruit or vegetable juice; and

(iii) Two servings from one of the following components or one serving from each:

(A) Grains/breads;

(B) Meat/Meat alternate.

(2) *Minimum quantities.* At a minimum, schools shall serve meals in the quantities provided in the following chart:

Meal component	Minimum quantities required for			
	Ages 1-2	Preschool	Grades K-12	Option for grades 7-12
Milk (Fluid) (As a beverage, on cereal or both).	½ Cup	¾ Cup	8 Ounces	8 Ounces
Juice/Fruit/Vegetable: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice.	¼ Cup	½ Cup	½ Cup	½ Cup

SELECT ONE SERVING FROM EACH OF THE FOLLOWING COMPONENTS OR TWO FROM ONE COMPONENT:

Grains/Breads—One of the following or an equivalent combination:				
Whole-Grain or Enriched Bread.	½ Slice	½ Slice	1 Slice	1 Slice.
Whole-Grain or Enriched Biscuit, Roll, Muffin, Etc.	½ Serving	½ Serving	1 Serving	1 Serving.
Whole-Grain, Enriched or Fortified Cereal.	¼ Cup or ⅓ Ounce	⅓ Cup or ½ Ounce	¾ Cup or 1 Ounce	¾ Cup or 1 Ounce. Plus an Additional Serving of one of the Grains/Breads Above.
Meat or Meat Alternates:				
Meat/poultry or fish	½ Ounce	½ Ounce	1 Ounce	1 Ounce.
Cheese	½ Ounce	½ Ounce	1 Ounce	1 Ounce.
Egg (large)	½	½	½	½.
Peanut butter or other nut or seed butters.	1 Tablespoon	1 Tablespoon	2 Tablespoons	2 Tablespoons.
Cooked dry beans and peas	2 Tablespoons	2 Tablespoons	4 Tablespoons	4 Tablespoons
Nut and/or seeds (as listed in program guidance) ¹ .	½ Ounce	½ Ounce	1 Ounce	1 Ounce.

¹ No more than 1 ounce of nuts and/or seeds may be served in any one meal.

(3) *Offer Versus Serve.* Each school shall offer its students all four required food items as set forth under paragraph (g)(1) of this section. At the option of the school food authority, each school may allow students to refuse *one* food item from any component that the student does not intend to consume. The refused food item may be any of the four items offered to the student. A student's decision to accept all four food items or to decline one of the four food items shall not affect the charge for breakfast.

(4) *Outlying areas.* Schools in American Samoa, Puerto Rico and the Virgin Islands may serve a starchy vegetable such as yams, plantains, or sweet potatoes to meet the grain/bread requirement. For the Commonwealth of the Northern Mariana Islands, FCS has established a menu consistent with the food-based menu alternative and with local food consumption patterns and which, given available food supplies and food service equipment and facilities, provides optimum nutrition consistent with sound dietary habits for participating children. The State agency shall attach to and make a part of the written agreement required under § 210.9 of this chapter the requirements of that menu option.

(h) *Milk requirement for children ages 2-17.* (1) A serving of milk as a beverage or on cereal or used in part for each

purpose shall be offered for school breakfasts.

(2) If emergency conditions prevent a school normally having a supply of milk from temporarily obtaining delivery thereof, the State agency, or FCSRO where applicable, may approve reimbursement for breakfast served without milk during the emergency period.

(3) If a school is unable to obtain a supply of any type of fluid milk on a continuing basis, the State agency may approve the service of breakfasts without milk if the school uses an equivalent amount of canned or dry milk in the preparation of breakfasts. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, if a sufficient supply of fluid milk cannot be obtained, "milk" shall include reconstituted or recombined milk, or as otherwise provided under written exception by FCS.

(i) *Infant meal pattern.* When infants from birth through 11 months of age participate in the Program, an infant breakfast shall be offered. Foods within the infant breakfast pattern shall be of texture and consistency appropriate for the particular age group being served, and shall be served to the infant during a span of time consistent with the infant's eating habits. For infants 4

through 7 months of age, solid foods are optional and should be introduced only when the infant is developmentally ready. Whenever possible, the school should consult with the infant's parent in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food authorized in the meal patterns set forth below must be provided in order to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother, may be served in place of infant formula from birth through 11 months of age. However, meals containing only breast milk do not qualify for reimbursement. Meals containing breast milk served to infants 4 months or older may be claimed for reimbursement when the other meal component or components are supplied by the school. Although it is recommended that either breast milk or iron-fortified infant formula be served for the entire first year, whole milk may be served beginning at 8 months of age as long as infants are consuming one-third of their calories as a balanced mixture of cereal, fruits, vegetables, and other foods in order to ensure adequate

sources of iron and vitamin C. The infant breakfast pattern shall contain, at a minimum, each of the following components in the amounts indicated for the appropriate age groups:

(1) *Birth through 3 months.* 4 to 6 fluid ounces of iron-fortified infant formula.

(2) *4 through 7 months.* 4 to 8 fluid ounces of iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified dry infant cereal (optional).

(3) *8 through 11 months.* 6 to 8 fluid ounces of iron-fortified infant formula or 6 to 8 fluid ounces of whole milk; 2 to 4 tablespoons of iron-fortified dry infant cereal; and 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

(j) *Additional foods.* Additional foods may be served with breakfasts as desired to participating children over 1 year of age.

(k) *Choice.* To provide variety and to encourage consumption and participation, schools should, whenever possible, provide a selection of menu items and foods from which children may make choices. When a school offers a selection of more than one type of breakfast or when it offers a variety of menu items and foods and milk for choice as a reimbursable breakfast, the school shall offer all children the same selection regardless of whether the children are eligible for free or reduced price breakfasts or pay the school food authority designated full price. The school may establish different unit prices for each type of breakfast offered provided that the benefits made available to children eligible for free or reduced price breakfasts are not affected.

(l) *Nutrition disclosure.* School food authorities are encouraged to make

information available indicating efforts to meet the nutrition standards in paragraph (a) of this section.

(m) *Implementation of nutrition standards.* School food authorities shall comply with the *1990 Dietary Guidelines for Americans* as provided in paragraph (a) of this section no later than School Year 1996-97 except that State agencies may grant waivers to postpone implementation until no later than School Year 1998-99. Such waivers shall be granted by the State agency using guidance provided by the Secretary.

5. The section heading of newly redesignated § 220.8a is revised to read as follows:

§ 220.8a Breakfast components and quantities for the meal pattern.

* * * * *

§ 220.9 [Amended]

6. In § 220.9, the first sentence of paragraph (a) is amended by adding the words "or § 220.8a, whichever is applicable," after the reference to "§ 220.8".

7. In § 220.13, paragraphs (f)(3) and (f)(4) are redesignated as paragraphs (f)(4) and (f)(5), respectively and a new paragraph (f)(3) is added to read as follows:

§ 220.13 Special responsibilities of State agencies.

* * * * *

(f) * * *

(3) For the purposes of compliance with the *1990 Dietary Guidelines for Americans* and the calorie and nutrient levels specified in § 220.8, the State agency shall follow the provisions specified in § 210.19(a)(1) of this chapter.

* * * * *

§ 220.14 [Amended]

8. In § 220.14, paragraph (h) is amended by removing the reference to "§ 220.8 (a)(1), (b)(1), and (b)(3)" and adding in its place the words "§ 220.8 (g), § 220.8 (i)(2) and (i)(3) or § 220.8a (a)(1), (b)(2), and (b)(3), whichever is applicable."

Appendix A—[Amended]

9. In Appendix A, Alternate Foods for Meals, Formulated Grain-Fruit Products, paragraph 1(a) is amended by adding the words "or § 220.8a, whichever is applicable" after the reference to "§ 220.8."

Appendix C—[Amended]

10. In Appendix C, Child Nutrition (CN) Labeling Program:

a. paragraph 2(a) is amended by adding the words "or 210.10a, whichever is applicable," after the reference to "210.10";

b. the first sentence of paragraph 3(c)(2) is amended by adding the words "or 210.10a, whichever is applicable," after the reference to "210.10" and by adding the words "or 220.8a, whichever is applicable," after the reference to "220.8"; and

c. the second sentence of paragraph 6 is amended by adding the words "or 210.10a, whichever is applicable," after the reference to "210.10" and by adding the words "or 220.8a, whichever is applicable," after the reference to "220.8".

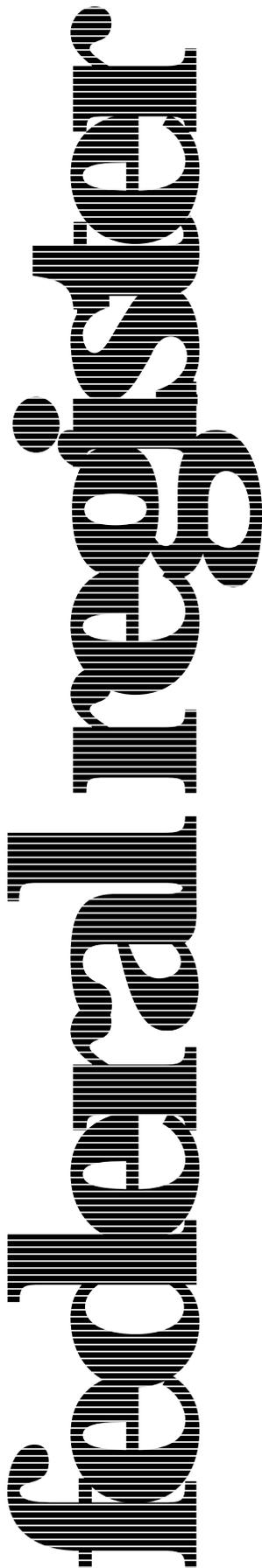
Dated: June 6, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 95-14292 Filed 6-12-95; 8:45 am]

BILLING CODE 3410-30-P



Tuesday
June 13, 1995

Part III

**Department of
Education**

**Bilingual Education: Evaluation Activities,
Benchmark Study; Final Priority and
Cooperative Agreement Award
Applications for Fiscal Year 1995; Notices**

DEPARTMENT OF EDUCATION

[1885-ZA00]

Bilingual Education: Evaluation Activities, Benchmark Study**AGENCY:** Department of Education.**ACTION:** Notice of final priority and selection criteria for fiscal year (FY) 1995.

SUMMARY: The Secretary announces a priority and selection criteria for FY 1995 for program evaluation activities authorized by title VII of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The Secretary takes this action to conduct program evaluation activities for the purpose of improving the education of limited English proficient (LEP) students. The priority limits this competition to evaluation activities that investigate the dynamics of school change over time in school districts serving LEP students.

EFFECTIVE DATE: This priority takes effect July 13, 1995.

FOR FURTHER INFORMATION OR

APPLICATIONS CONTACT: Milagros E. Lanauze, U.S. Department of Education, 600 Independence Avenue SW., room 5623, Switzer Building, Washington, DC 20202-6510. Telephone: (202) 205-9475. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:**Background**

Title VII of the ESEA was recently reauthorized and now promotes coherent and comprehensive educational programs for limited English proficient students based on the principle that all children can to achieve to high standards. The ESEA and the Goals 2000: Educate America Act (Goals 2000) will now aim at fostering school reform and changing the manner in which all students, including LEP students, receive educational services. Title VII's new grants programs, authorized by subpart 1 of part A, will assist the Nation's school reform efforts for the education of LEP students.

Section 7131 of the ESEA authorizes the Secretary to conduct evaluation activities to improve bilingual education and special alternative instruction programs for LEP children and youth.

In order to examine how school reform efforts are affecting the education of LEP students, the Secretary is establishing an absolute priority under

section 7131 to fund a five-year "Benchmark Study" to evaluate the dynamics of school change in schools that serve LEP students and are undergoing the process of school reform.

Objectives

The priority limits the competition to applications that cover the three objectives listed below.

(a) To evaluate the effectiveness of the Comprehensive School Grants program, which is authorized by subpart 1 of part A of title VII of the ESEA. This program is expected to play a key role in promoting education reform for LEP students.

(b) To study the dynamics of school change in schools that serve LEP students, including:

(1) Establishing salient benchmarks in the process of school reform in schools serving LEP students and in the changes in instruction for LEP students.

(2) Examining how school instructional and organizational changes affect LEP students.

(c) To link or coordinate with other Department of Education evaluation activities.

Selection Criteria

The Secretary has established selection criteria to evaluate the quality of applications for this competition. In awarding a cooperative agreement, the Secretary will consider the technical soundness of the project, the quality of key personnel involved in the project, the quality of the plan of operation and adequacy of resources, the quality of the dissemination plan, and the adequacy of the proposed budget and cost-effectiveness.

The Secretary has included a criterion regarding the quality of the dissemination plan. Yearly dissemination activities that forge links and promote communication between researchers and practitioners will assist in promoting the purpose of this priority:

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this program only an application that meets this absolute priority:

An application that—

(a) Proposes a five-year evaluation study to investigate the dynamics of school change over time in school districts serving LEP students through the Comprehensive School Grants program;

(b) Proposes to establish benchmarks reflecting the status of the schools being studied at the beginning of the school

reform process and towards the end of the project period; and

(c) Provides an assurance that the study will link or coordinate with other Department of Education evaluation activities, particularly evaluation activities conducted under title I of the ESEA.

Selection Criteria

(a) The maximum score for all of the criteria in this section is 100 points.

(b) The maximum score for each criterion is indicated in parentheses following the heading of the criterion.

(c) The Secretary evaluates each application for a cooperative agreement under this competition by using the following selection criteria:

(1) *Technical soundness* (40 points).

The Secretary reviews each application to determine the technical soundness of the proposed activities, by examining—

(i) The adequacy and quality of the project's design, methodology, instrumentation, and data analysis plan, as applicable;

(ii) The extent to which the application demonstrates a thorough knowledge of current research and development concepts, theories, and outcomes and relates these to the proposed activity;

(iii) If appropriate, the extent to which the perspectives of a variety of disciplines are used;

(iv) The proposed plan for addressing:

(A) Which variables have been selected for study, and which ones will be studied at what level of analysis.

(B) Which educational levels (i.e., elementary, middle, secondary), if any specific levels, will be included in the design.

(C) Which geographical regions, if any specific regions will be used, will be included in the project design.

(D) How the evaluation study will examine LEP students and former LEP students who were reclassified during the project period as proficient in English, to consider the impact of changes in instruction for LEP students.

(E) How the evaluation study will use data from schools receiving title VII grants under the Comprehensive School Grants program and schools not receiving grants under that program.

(v) The extent to which the application demonstrates knowledge of issues relating to the education of LEP students.

(2) *Quality of key personnel* (20 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;

(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 (i) (A) and (B) of this section will commit to the project; and

(D) The process by which 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 (i) (A) and (B) of this section, the Secretary considers—

(A) Experience and training in fields related to the project objectives, including expertise relating to education of LEP students; and

(B) Any other qualifications that pertain to the quality of the project.

(3) *Plan of operation and adequacy of resources* (20 points).

The Secretary reviews each application to determine the quality of the plan of operation for the project and adequacy of resources for the project, including—

(i) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(ii) The quality of the applicant's plan to use its resources and personnel (both those federally funded and those not federally funded) to achieve each objective;

(iii) Adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies; and

(iv) The extent to which the plan establishes sound fiscal procedures that ensure proper and efficient administration of project funds.

(4) *Quality and reasonableness of the dissemination plan* (10 points).

The Secretary reviews each application to consider—

(i) The quality of the dissemination plan;

(ii) The extent to which the project's dissemination plan includes activities in each year of the project that—

(A) Inform the educational community, including practitioners, researchers, and administrators, of project findings; and

(B) Disseminate documents prepared by the recipient, such as technical and research reports, to the educational community; and

(iii) The extent to which proposed dissemination activities are reasonable for each year of the project.

(5) *Budget and cost-effectiveness* (10 points).

The Secretary reviews each application to determine the extent to which—

(i) Each year's budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives, design, and potential significance of the project.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed priorities. However, in order to make timely grant awards in FY 1995, the Director, in accordance with section 437(d)(1) of the General Education Provisions Act, has decided to issue this final notice of priority and selection criteria, which will apply only to this competition.

Executive Order 12866

This notice of final priority has 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 notice of final priority are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priority, the Secretary has determined that the benefits of the proposed final priority 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.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the order is to foster an intergovernmental partnership and a strengthened federalism by relying on the processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 7451.

Dated: May 5, 1995.

(Catalog of Domestic Assistance Number 292A Bilingual Education: General Research Programs)

Eugene E. García,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 95-14384 Filed 6-12-95; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

(CFDA No.: 84.292A)

Bilingual Education: Evaluation Activities, Benchmark Study Notice Inviting Applications for New Cooperative Agreement Award for Fiscal Year (FY) 1995

Purpose of Program: To provide assistance to conduct evaluation activities for the purpose of improving bilingual education and special alternative instruction programs for limited English proficient (LEP) children and youth.

Eligible Applicants: Institutions of higher education, nonprofit organizations, State educational agencies, and local educational agencies.

Deadline for Transmittal of Applications: July 28, 1995.

Deadline for Intergovernmental Review: September 28, 1995.

Applications Available: June 13, 1995.

Available Funds: In fiscal year 1995, \$450,000 is available for the first year of funding. The following list indicates the estimated funding levels over the five-year project period. The funding levels for years 1 through 5 are estimates. Actual funding will depend upon the availability of funds, needs as reflected in the approved application, and demonstration of substantial progress on the part of the recipient towards meeting the goals and objectives of the application.

First Year Funding—up to \$450,000.

Second Year Funding—up to \$650,000.

Third Year Funding—up to \$850,000.

Fourth Year Funding—up to \$650,000.

Fifth Year Funding—up to \$500,000.

Five Year Total: \$3,100,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Priority

The absolute priority in the notice of final priority for this program, as published elsewhere in this part of this issue of the **Federal Register**, applies to this competition. This priority limits the competition to applications proposing to conduct an evaluation study to investigate the dynamics of school change over time in school districts serving LEP students.

Selection Criteria

In evaluating applications for grants under this program, the Secretary uses the selection criteria established in the notice of final priority as published elsewhere in this part of this issue of the **Federal Register**.

SUPPLEMENTARY INFORMATION: This project will be awarded as a cooperative agreement. The nature of the cooperative agreement allows Government involvement in project activities. Under this program, the recipient must inform the Office of Bilingual Education and Minority Languages Affairs (OBEMLA) of project activities. OBEMLA, as appropriate, will be involved in those activities. The exact nature and extent of OBEMLA's involvement will be negotiated with the award recipient. OBEMLA's

involvement is likely to include activities such as the following:

- (1) Participation in the development of the project's evaluation design.
- (2) If necessary, redirection of project activities as promising lines of inquiry appear during the course of the study.
- (3) Assistance to the grantee in obtaining, from this Department and other sources, information and technical assistance needed for conducting the study.
- (4) Participation in the review and approval of documents or reports slated for publication.
- (5) Assistance to the recipient in designing project activities that link with other Department of Education evaluation activities.

Available Documents: OBEMLA has made available two documents relevant to this evaluation study. The documents are (1) "Literature Review and Synthesis Report on Institutional Change and Its Implications for Schools Serving Limited English Proficient Students;" (1994) and (2) "Research Designs for Measuring Institutional Change Affecting the Education of Limited English Proficient Students" (1995). These documents may be obtained from the National Clearinghouse on Bilingual Education (NCBE), Telephone: 1-800-321-NCBE.

FOR APPLICATIONS OR INFORMATION

CONTACT: Milagros E. Lanauze, U.S. Department of Education, 600 Independence Avenue SW., room 5623, Switzer Building, Washington, DC, 20202-6510. Telephone: (202) 205-9475. 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. 7451.

Dated: May 5, 1995.

Eugene E. Garcia,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 95-14383 Filed 6-12-95; 8:45 am]

BILLING CODE 4000-01-P

Reader Aids

Federal Register

Vol. 60, No. 113

Tuesday, June 13, 1995

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection announcement line	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-4534

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230
---------------------	----------

Other Services

Data base and machine readable specifications	523-4534
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. **202-275-0920**

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301-713-6905**

FEDERAL REGISTER PAGES AND DATES, JUNE

28509-28700	1
28701-29462	2
29463-29748	5
29749-29958	6
29959-30182	7
30183-30456	8
30457-30772	9
30773-31046	12
31047-31226	13

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:	
12962	30769

Proclamations:	
6806	28509
6807	29957

Administrative Orders:

Memorandums:	
June 6, 1995	30771

Presidential Determinations:

No. 95-21 of May 16,	
1995	28699

No. 95-22 of May 19,	
1995	29463

No. 95-23 of June 2,	
1995	31047

No. 95-24 of June 2,	
1995	31049

No. 95-25 of June 5,	
1995	31051

5 CFR

890	28511
4001	30773
4101	30778

Proposed Rules:	
1320	30438

7 CFR

Ch. VI	28511
210	31188
220	31188
319	30157
401	29749, 29959
443	29959
457	29959
620	28511
916	30994
917	30994
945	29724
947	29750
953	28701
981	28520
985	30783, 30785, 30786
1007	29436
1093	29436
1094	29436
1096	29436
1099	29465
1108	29436
1220	29960
1230	29962
1468	28522

Proposed Rules:	
273	29767
959	30794
982	30170
984	28744
1126	28745
1150	30013
1280	28747

8 CFR

3	29467, 29469
204	29751
238	30457

Proposed Rules:

204	29771
-----	-------

9 CFR

Proposed Rules:

3	28834
98	29781
130	30157
201	29506
308	28547
310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

310	28547
318	28547
320	28547
325	28547
326	28547
327	28547
381	28547

127.....29753	26 CFR	62.....31090	Proposed Rules:
129.....29753	301.....28719	63.....29484	0.....29535
135.....29753	Proposed Rules:	70.....30192	32.....30058
Proposed Rules:	1.....30487	81.....30789	36.....30059
25.....28547, 28550, 30019	301.....30211, 30487	82.....31092	61.....28774
39.....28761, 28763, 29511,	28 CFR	117.....30926	64.....28774
29513, 29795, 29797, 29800,	16.....30467	261.....31107, 31115	73.....29816, 29817, 30506,
30208, 30471, 30474, 30476,	29 CFR	271.....28539, 29992	30819
30797, 30798, 31122, 31124	Proposed Rules:	302.....30926	76.....29533
71.....28551, 28764, 30027,	1926.....30488	355.....30926	80.....28775, 29535
30028, 30029, 30478, 30479,	30 CFR	721.....30468	
30480, 30481	11.....30398	Proposed Rules:	48 CFR
73.....28552	49.....30398	Ch. I.....30506	Ch. XIV.....30791
91.....30690	56.....30398	52.....28557, 28772, 28773,	202.....29491
121.....30690	57.....30398	29809, 30217, 31127, 31128	203.....29491
125.....30690	58.....30398	55.....31128	206.....29491
135.....28765, 30690	70.....30398	62.....31128	207.....29491
234.....29514	72.....30398	63.....30801, 30817	209.....29491
15 CFR	75.....30398	70.....29809, 30037	215.....29491
Proposed Rules:	886.....29756	81.....30046	217.....29491
792.....30030	Proposed Rules:	180.....30048	219.....29491
16 CFR	Ch. II.....31126	257.....30964	225.....29491
305.....31077	Ch. VII.....29521	261.....30964	226.....29491
Proposed Rules:	56.....30488, 30491	271.....30964	228.....29491
310.....30406	57.....30488, 30491	300.....29814	231.....29491
409.....28554	211.....30492	455.....30217	232.....29491
1307.....29518	926.....29521	721.....30050	235.....29491
17 CFR	31 CFR	41 CFR	237.....29491
30.....30462	0.....28535	Proposed Rules:	242.....29491
200.....28717	32 CFR	201-9.....28560	244.....29491
240.....28717	254.....30188	42 CFR	245.....29491
18 CFR	33 CFR	84.....30336	247.....29491
284.....30186	100.....29756, 29757	Proposed Rules:	249.....29491
19 CFR	110.....29758	412.....29202	251.....29491
Proposed Rules:	117.....29760	413.....29202	252.....29491
10.....29520	164.....28834	424.....29202	253.....29491
12.....29520	165.....29761, 29762, 30157	485.....29202	915.....30002
102.....29520	Proposed Rules:	489.....29202	931.....30002
134.....29520	117.....29804	43 CFR	933.....28737
177.....29520	34 CFR	Public Land Order:	942.....30002
20 CFR	682.....30788	7143.....28540	951.....30002
200.....29983	690.....30788	7144.....28541	952.....30002
320.....28534	Proposed Rules:	7145.....28541	970.....28737, 30002
Proposed Rules:	700.....30160	7146.....28731	1831.....29504
404.....28767, 30482	36 CFR	Proposed Rules:	1852.....29504
410.....28767	1236.....29989	11.....28773	Proposed Rules:
416.....30482	Proposed Rules:	426.....29532	9.....30258
21 CFR	13.....29523, 29532	427.....29532	49 CFR
101.....30788	37 CFR	44 CFR	1.....30195
510.....29754	Proposed Rules:	64.....28732	218.....30469
522.....29754, 29984, 29985	1.....30157	65.....29993, 29995	571.....30006, 30196
558.....29481, 29482, 29483	39 CFR	67.....29997	1023.....30011
1220.....29986	20.....30702	Proposed Rules:	Proposed Rules:
1308.....28718	111.....30714	67.....30052	571.....28561, 30506, 30696,
Proposed Rules:	501.....30714	45 CFR	30820, 31132, 31135
54.....29801	Proposed Rules:	1357.....28735	50 CFR
182.....28555	265.....29806	Proposed Rules:	17.....29914
186.....28555	40 CFR	Ch. VII.....30058	227.....28741
872.....30032	9.....29954	46 CFR	625.....30923
22 CFR	52.....28720, 28726, 28729,	501.....30791	651.....30157
21.....29987	29484, 29763, 30189, 31081,	47 CFR	672.....29505, 30199, 30200
41.....30188	31084, 31086, 31087, 31088,	0.....30002	675.....30792
502.....29988	31090	43.....29485	Proposed Rules:
23 CFR	Proposed Rules:	61.....29488	17.....29537, 30825, 30826,
Proposed Rules:	265.....29806	64.....29489	30827, 30828, 31000, 31137
655.....31008	48 CFR	65.....28542	32.....30686