8–3–95
Vol. 60 No. 149
Pages 39625–39834

federal register

Thursday
August 3, 1995

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–115; Special Conditions No. 25–ANM–103]

Special Conditions: Modified Learjet Model 55, 55B and 55C Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Learjet Models 55, 55B, and 55C airplanes modified by Duncan Aviation, Inc., of Lincoln, Nebraska. These models will be equipped with a Flight Visions Corporation, FV–2000 Head-Up Display System (HUD) that will perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of the HUD from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions performed by this system are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is July 26, 1995. Comments must be received on or before September 18, 1995.

ADDRESSES: Comments on these final special conditions, request for comments, may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7) Docket No. NM–115, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked ''Docket No. NM–115.'' Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–115.'' The postcard will be date stamped and returned to the commenter.

Background

On May 2, 1995, Duncan Aviation, Inc., of Lincoln, Nebraska, applied for a supplemental type certificate to modify the Learjet Models 55, 55B, and 55C airplanes. The Learjet Model 55 series airplane is a business jet with two aft-mounted turbofan engines. The airplane can carry two pilots and 8 passengers, depending on the exit and interior configuration, and is capable of operating to an altitude of 51,000 feet. The proposed modification incorporates the installation of a digital avionics system that will present critical functions on the Head-up Display System (HUD), which is potentially vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR) Duncan Aviation, Inc., must show that the altered Learjet Model 55 Series airplane continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A10CE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

The regulations incorporated by reference in Type Certificate No. A10CE include the following for the Learjet Model 55, 55B and 55C airplanes: 14 CFR part 25, dated February 1, 1965, as amended by 25–2 and 25–4.

In addition, for the Models 55 and 55B: Amendments 25–3, 25–7, 25–10, 25–12, 25–18, 25–21 and 25–30, plus § 25.955(b)(2) of Amendment 25–11; § 25.954 of Amendment 25–14; §§ 25.803(e), 25.811(f), 25–853(a), 25.853(b), and 25–855(a) of Amendment 25–15; § 25.1359 of Amendment 25–17; § 25.785(c) of Amendment 25–20; §§ 25.251(c), 25.251(d), 25.251(e), 25.303, 25.305(b), 25.307(d), 25.331(a)(3), 25.335(b), 25.335(f), 25.337(b), 25.349(b), 25.351(a), 25.363, 25.395(a), 25.395(b), 25.471(a)(1), 25.471(a)(2), 25.473, 25.493(b), 25.499(b), 25.499(c), 25.499(d), 25.509(a)(3), 25.561(b)(3), 25.581, 25.607, 25.615, 25.619, 25.625, 25.629, 25.677, 25.697, 25.699, 25.701, 25.721, 25.723, 25.725, 25.727, 25.729, 25.733, 25.735, 25.865, 25.867, 25.871, 25.903(d), 25.934, 25.994, 25.1103(d), 25.1143(e), 25.1303, 25.1307, 25.1331, and 25.1585(c) of Amendment 25–23; § 25.1013(e), 25.1305(c)(4), and 25.1305(c)(6) of Amendment 25–36; §§ 25.815, 25.1322, and 25.1403 of Amendment 25–38; §§ 25.903(e), 25.939, and 25.943 of Amendment 25–40, § 25.255 of Amendment 25–42; § 25.1326 of Amendment 25–43; Part 36 of the FAR effective December 1, 1969, as amended through Amendment 36–10; Special Federal Aviation Regulation (SFAR) 27 effective February 1, 1974, as amended through Amendment SFAR 27–2; and Special Conditions 25–99–CE–14.

For the Model 55 configured per ECR 2377A or modified per AAK 55–83–4: In addition to the basis listed above, Special Conditions 25–ANM–2 dated June 24, 1983.

For the Model 55C: Amendments 25–3, 25–7, 25–10, 25–12, 25–18, 25–21, and 25–30; plus § 25.955(b)(2) of Amend-Amendment 25–11; § 25.954 of Amendment 25–14; § § 25.803(e), 25.811(f), and 25.855(a) of Amendment 25–15; § 25.1359 of Amendment 25–17; § 25.785(c) of Amendment 25–20; § § 25.251(c), 25.251(c), 25.251(e), 25.303, 25.305(b), 25.307(d), 25.331(a)(3), 25.335(b), 25.335(f), 25.337(b), 25.349(b), 25.351(a), 25.363, 25.395(a), 25.395(b), 25.471(a)(1), 25.471(a)(2), 25.473, 25.493(b), 25.499(b), 25.499(c), 25.499(d), 25.509(a)(3), 25.561(b)(3), 25.581, 25.607, 25.615, 25.619, 25.625, 25.629, 25.677, 25.697, 25.699, 25.701, 25.721, 25.723, 25.725, 25.727, 25.729, 25.733, 25.735, 25.865, 25.867, 25.871, 25.903(d), 25.934, 25.994, 25.1103(d), 25.1143(e), 25.1303(a)(1), 25.1303(a)(3), 25.1303(b), 25.1303(c), 25.1307, 25.1331, and 25.1585(c) of Amendment 25–23; § § 25.1013(e), 25.1305(c)(4), and 25.1305(c)(6) of Amendment 25–36; § § 25.815, 25.1303(a)(2), 25.1322, and 25.1403 of Amendment 25–38; § § 25.903(e), 25.939, and 25.943 of Amendment 25–40; §§ 25.255 and 25.703 of Amendment 25–42; § 24.1326 of Amendment 25–43; § 25.853 of Amendment 25–51; § 25.851 of Amendment 25–54; Part 36 of the FAR effective December 1, 1969, as amended through Amendment 36–15; SFAR 27 effective February 1, 1974, as amended through Amendment SFAR 27–6; Special Conditions 25–ANM–2 dated June 24, 1983; and Special Conditions 25–99–CE–14 dated March 10, 1981.

Compliance with structural provisions of § 25.801(b) through (e) and § 25.807(d) has not been shown for Models 55, 55B, and 55C.

For Ice Protection: § 25.1419. When ice protection system is installed per ECR 1906, Model 55, 55B, and 55C.

For Noise Standards: Part 36 of the FAR. Compliance with Noise Standards, Part 36, has been established for Models 55, 55B, and 55C airplanes, when modified according to ECR 1511.

For Equivalent Level of Safety: § 25.201(c)(2) (except Model 55C); § 25.773(b)(2); § 25.1305(r); § 25.1505(b)(1) (except Model 55C).

In addition, under § 21.101(b)(1), the following sections of the FAR apply to the HUD installation: § 25.1309; § 25.1321(a)(b)(d), and (e); § § 25.1331, 25.1333, and 25.1335, as amended by Amendment 25–41. These special conditions will form an additional part of the supplemental type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Learjet Model 55 Series airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

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

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

Discussion

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

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the modified Learjet Model 55 Series airplanes that would require that the HUD be designed and installed to preclude component damage and interruption of function due to the effects of HIRF.

High-Intensity Radiated Fields (HIRF)

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

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

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

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

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

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

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

As discussed above, these special conditions are applicable to the Learjet Model 55 Series airplane, modified by Duncan Aviation. Should Duncan Aviation apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A10CE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain unusual or novel design features on Learjet Model 55, 55B, and 55C airplanes modified by Duncan Aviation. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of this feature on these airplanes.

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

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

List of Subjects in 14 CFR part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Learjet Model 55, 55B, and 55C airplanes, as modified by Duncan Aviation:

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

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

Issued in Renton, Washington, on July 26, 1995.

Darrell M. Pederson,

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

[FR Doc. 95–19140 Filed 8–2–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–CE–12–AD; Amendment 39–9318; AD 95–15–12]

Airworthiness Directives; Jetstream Aircraft Limited (JAL) HP137 Mk1 and Jetstream Series 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Jetstream Aircraft Limited (JAL) HP137 Mk1 and Jetstream series 200 airplanes. This action requires incorporating operating limitations that revise the maximum flap operating speed for DOWN flaps to 120 knots indicated airspeed (KIAS), and prohibit extending the flaps beyond the take-off position if ice is visible on the airplane. An incident where an airplane of similar type design to the affected airplanes experienced sudden pitch down because of the accumulation of over one inch of ice prompted the proposed action. The actions specified by this AD are intended to prevent sudden pitch down of the airplane during icing conditions, which could lead to loss of control of the airplane.

DATES: Effective September 19, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 19, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Manager, Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P. O. Box 16029, Dulles International Airport, Washington, D.C., 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–12–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Lovell, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to JAL HP137 Mk1, and Jetstream series 200 airplanes was published in the **Federal Register** on March 2, 1995 (60 FR 11635). The action proposed to incorporate operating limitations that revise the maximum flap operating speed for DOWN flaps to 120 KIAS, and prohibit extending flaps beyond the take-off position if ice is visible on the airplane. Accomplishment of the proposed action would be in accordance with Jetstream Service Bulletin (SB) 27–A–JA 911044, dated January 31, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 10 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts (placards fabricated from local resources) cost approximately $30 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $900. This figure is based upon the assumption that no affected airplane owner/operator has accomplished the proposed inspection.

All 10 of the affected airplanes are HP137 Mk1 airplanes; there are no Jetstream series 200 airplanes registered in the United States, but they are type certificated for operation in the United States. According to FAA records, none of these HP137 Mk1 airplanes are in operation. Since there are no airplanes currently in operation, the cost impact of the proposed AD would be narrowed to only those owners/operators returning their airplane to operation.

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 copy of the final 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, 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 a new airworthiness directive to read as follows:

95–15–12 Jetstream Aircraft Limited: Amendment 39–9318; Docket No. 95–CE–12–AD.

Applicability: HP137 Mk1 and Jetstream Series 200 airplanes (all serial numbers), 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) 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 within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent sudden pitch down of the airplane during icing conditions, which could lead to loss of control of the airplane, accomplish the following:

(a) Modify the operating limitations placards located on the flight deck in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) No. 27–A–JA 911044, dated January 31, 1992. This modification limits the maximum flap operating speed for DOWN flaps to 120 knots indicated airspeed (KIAS). Insert a copy of this AD into the Limitations section of the applicable airplane flight manual (AFM).

(b) Fabricate a placard with the words ''Do not extend the flaps beyond the take-off position if ice is visible on the aircraft. Ensure the landing gear selector is down prior to landing.'' Install this placard on the airplane's instrument panel within the pilot's clear view. Insert a copy of paragraph ''B.Instructions for Aircraft Operations'' of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 27–A–JA 911044, dated January 31, 1992, into the Limitations section of the AFM.

Note 2: Parts of the airplane where ice could specifically be visible include the windshield wipers, center windshield, propeller spinners, or inboard wing leading edges.

(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) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety, may be approved by the Manager, Brussels Aircraft Certification Office (ACO), Europe, Africa, Middle East office, FAA, c/o American Embassy, B–1000 Brussels, Belgium. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Office.

(e) The inspections required by this AD shall be done in accordance with Jetstream Service Bulletin No. 27–A–JA 911044, dated January 31, 1992. 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 Jetstream Aircraft Limited, Manager, Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, D.C., 20041– 6029; telephone (703) 406–1161; facsimile (703) 406- 1469. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(f) This amendment (39–9318) becomes effective on September 19, 1995.

Issued in Kansas City, Missouri, on July 18, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18123 Filed 8–2–95; 8:45 am]

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14 CFR Part 39

[Docket No. 95–NM–126–AD; Amendment 39–9320; AD 95–16–01]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model MD–11 series airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) that prohibits autoland operation below 100 feet above ground level, and installation of flight control computer software. It also provides for an optional terminating action for the AFM revision. This amendment provides for a new optional terminating action for the AFM revision. This amendment is prompted by reports of erroneous central aural warning system altitude callouts and erroneous radio altimeter indications during autoland approaches due to radio frequency leakage (RF) on airplanes on which the optional terminating action had been accomplished. The actions specified in this AD are intended to prevent radio altimeter antenna/coaxial cable RF leakage, which could result in early and/or abnormal flare (pitch) control during autoland operation and potential degradation of the landing capability of the airplane.

DATES: Effective August 18, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of August 18, 1995.

The incorporation by reference of McDonnell Douglas MD–11 Alert Service Bulletin A34–57, dated December 19, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of February 6, 1995 (60 FR 4076, January 20, 1995).

Comments for inclusion in the Rules Docket must be received on or before October 2, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–126–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5347; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On January 6, 1995, the FAA issued AD 94–26–51, amendment 39–9120 (60 FR 4076, January 20, 1995), applicable to all McDonnell Douglas Model MD–11 series airplanes. It requires a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit autoland operation below 100 feet above ground level (AGL), and installation of –905 flight control computer (FCC) software. It also provides for an optional terminating action for the AFM revision, consisting of certain inspections and tests. That action was prompted by reports of a loose nut on a coaxial connector on a radio altimeter receiver/transmitter rack, and the transmittal of erroneous altitude data to the FCC while the airplane was below 100 feet AGL, which resulted in abnormal flare (pitch) control during autoland operation. The actions required by that AD are intended to prevent abnormal flare (pitch) control, which could result in degradation of the landing capability of the airplane.

Since the issuance of that AD, the FAA has received several reports of erroneous central aural warning system (CAWS) altitude callouts and erroneous radio altimeter indications during autoland approaches on Model MD–11 series airplanes. Investigation has revealed that these incidents occurred on these airplanes following accomplishment of the optional terminating action (inspections and tests) and the installation of the –905 FCC software, as specified in AD 94–26–51. In light of these incidents, the FAA has determined that those provisions of AD 94–26–51 do not adequately preclude radio frequency (RF) leakage of the radio altimeter antenna/coaxial cable. That condition could result in abnormal flare (pitch) control during autoland operation and potential degradation of the landing capability of the airplane.

Additionally, since the issuance of AD 94–26–51, McDonnell Douglas has developed a new, improved modification to the FCC software for Model MD–11 series airplanes. Further, Allied Signal has developed a new, improved modification to the radio altimeter.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin MD11–34–063, dated July 10, 1995, which describes procedures for replacement of the radio altimeters 1 and 2 located in the center accessory compartment with modified radio altimeters, for certain airplanes. The modified radio altimeters are less susceptible to influence by antenna/coaxial system RF leakage.

The FAA has also reviewed and approved McDonnell Douglas Service Bulletin MD11–34–060, Revision 3, dated July 14, 1995, which describes procedures for:

1. Performing an inspection to identify the part number (P/N) of the coaxial cables of the radio altimeter;

2. Installing new clamps, replacing the cables with new cables, performing an inspection to verify if lockwashers having P/N MS51848–45 are installed on the coaxial contacts, and various follow-on actions; and

3. Installing new clamps on certain airplanes, and replacing and relocating the brackets of the terminal grounding block on certain other airplanes, if any cable is identified as P/N AE11919–1, –2, –3, or –4.

These procedures will minimize the possibility of RF signal leakage. The service bulletin specifies that these actions be accomplished within 7 months.

Additionally, the FAA has reviewed and approved McDonnell Douglas Service Bulletin MD11–22–015, dated July 3, 1995, which describes procedures for updating the software of two flight control computers (FCC) having part number (P/N) 4059001–904 or –905 and reidentifying them as P/N 4059001–906. This update will minimize the effects of radio altimeter signal leakage. Accomplishment of the update and reidentification constitutes terminating action for the AFM revision.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 94–26–51 to continue to require a revision to the Limitations Section of the FAA-approved AFM to prohibit autoland operation below 100 feet AGL. However, this AD provides for a new optional terminating action, which would constitute terminating action for the AFM revision and the temporary optional terminating action (repetitive inspections and tests, which have been retained from AD 94–26–51). Operators electing to accomplish the new terminating action will be required to perform it in accordance with procedures described in the service bulletins described previously. This AD also requires that operators report results of inspection findings, positive or negative, to the FAA.

Operators who currently are accomplishing the terminating action specified in AD 94–26–51 should note that, although McDonnell Douglas Service Bulletin MD11–34–060 recommends accomplishment of the described procedures within 7 months, this AD requires their accomplishment within 60 days. The FAA finds that continuing to perform the previous terminating actions for a period of 7 months would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the upcoming inclement weather conditions and the maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. The FAA finds 60 days to be an appropriate compliance time for initiating these new terminating actions.

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–126–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 removing amendment 39–9120 (60 FR 4076, January 20, 1995), and by adding a new airworthiness directive (AD), amendment 39–9320, to read as follows:

95–16–01 McDonnell Douglas: Amendment 39–9320. Docket 95–NM–126–AD. Supersedes AD 94–26–51, Amendment 39–9120.

Applicability: All Model MD–11 series airplanes, 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 (e) 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 degradation of the landing capability of the airplane, accomplish the following:

(a) Within 24 hours after February 6, 1995 (the effective date of AD 94–26–51, amendment 39–9120), revise the Limitations Section of the FAA-approved MD–11 Airplane Flight Manual (AFM), page 5–3, Flight Guidance, Automatic Landing Section, to include the following restriction. This may be accomplished by inserting a copy of this AD in the AFM.

''Autoland operation below 100 feet above ground level (AGL) is prohibited. The autopilot must be disconnected prior to descent below 100 feet AGL.''

(b) For airplanes on which the inspections and tests specified in paragraph (b) of AD 94–26–51, amendment 39–9120, (and reiterated below) have been initiated prior to the effective date of this AD: Accomplishment of the inspections and tests specified in paragraphs (b)(1) and (b)(2) of this AD, in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A34–57, dated December 19, 1994, temporarily terminates the AFM revision required by paragraph (a) of this AD. These inspections and tests must be repeated at intervals not to exceed 500 hours time-in-service. As of 60 days after the effective date of this AD, however, those actions no longer constitute terminating action for paragraph (a) of this AD. As of 60 days after the effective date of this AD, only the actions specified in paragraph (c) of this AD constitute such terminating action.

(1) Perform an inspection to determine if the connector nut of the four coaxial connectors on the back of the radio altimeter receiver/transmitter is loose.

(i) If no loose nut is found, prior to further flight, loosen the nut until finger tight, retorque the nut to 10 to 15 inch pounds, and mark the nut with a torque stripe.

Note 2: Retorque is not necessary during repetitive inspections if the torque stripe is in line, as specified in the alert service bulletin.

(2) Perform a leakage indication test to verify the integrity of the radio altimeter antenna system. Prior to further flight, correct any discrepancy found.

(c) Accomplishment of the actions specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, as applicable, constitutes terminating action for the AFM revision required by paragraph (a) of this AD, and for the repetitive inspections and tests specified in paragraph (b) of this AD. Following accomplishment of the actions specified in this paragraph, the AFM revision may be removed from the AFM.

(1) For airplanes equipped with Allied Signal radio altimeters: Replace radio altimeters 1 and 2 located in the center accessory compartment with modified radio altimeters, in accordance with McDonnell Douglas Service Bulletin MD11–34–063, dated July 10, 1995. The requirements of this paragraph must be accomplished prior to or in conjunction with paragraph (c)(3) of this AD.

(2) For all airplanes: Perform an inspection to identify the part number (P/N) of the coaxial cables of the radio altimeter in accordance with McDonnell Douglas Service Bulletin MD11–34–060, Revision 3, dated July 14, 1995. The requirements of this paragraph must be accomplished prior to or in conjunction with paragraph (c)(3) of this AD.

(i) For Group 1, 2, and 4 airplanes: Prior to further flight, accomplish either paragraph (c)(2)(i)(A) or (c)(2)(i)(B) of this AD, as applicable, in accordance with the service bulletin.

(A) If the cables are identified as P/N AE11532–1, –2, –3, or –4, install new clamps, replace the cables with new cables, and perform an inspection to verify if lockwashers having P/N MS51848–45 are installed on the coaxial contacts.

(*1*) If no lockwasher is installed, prior to further flight, install a lockwasher having P/N MS51848–45 and install the coaxial contact, in accordance with the service bulletin.

(*2*) If a lockwasher having P/N MS51848–45 is installed, prior to further flight, install the coaxial contact in accordance with the service bulletin.

(B) If the cables are identified as P/N AE11919–1, –2, –3, or –4, install the new clamps.

(ii) For Group 3 airplanes: Prior to further flight, accomplish either paragraph (c)(2)(ii)(A) or (c)(2)(ii)(B) of this AD, as applicable, in accordance with the service bulletin.

(A) If the cables are identified as P/N AE11532–1, –2, –3 or –4, install the new clamps, replace the cables with new cables, perform an inspection to verify if lockwashers having P/N MS51848–45 are installed on the coaxial contacts, and replace the brackets of the terminal grounding block with a new bracket and relocate them, in accordance with the service bulletin.

(*1*) If no lockwasher is installed, prior to further flight, install a lockwasher having P/N MS51848–45 and install the coaxial contact, in accordance with the service bulletin.

(*2*) If a lockwasher having P/N MS51848–45 is installed, prior to further flight, install the coaxial contact in accordance with the service bulletin.

(B) If the cables are identified as P/N AE11919–1, –2, –3, or –4, install the new clamps, and replace the brackets of the terminal ground block with new brackets and relocate them, in accordance with the service bulletin.

(3) For all airplanes: Update the software of the two flight control computers (FCC) having part number (P/N) 4059001–904 or –905, and reidentify them as P/N 4059001–906, in accordance with McDonnell Douglas Service Bulletin MD11–22–015, dated July 3, 1995. The requirements of paragraphs (c)(1) and/or (c)(2), as applicable, must be accomplished prior to or in conjunction with this paragraph.

(d) Within 10 days after accomplishing the inspection required by paragraph (b)(2) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712; fax (310) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) 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. 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) 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.

(g) The actions shall be done in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A34–57, dated December 19, 1994; McDonnell Douglas Service Bulletin MD11–34–063, dated July 10, 1995; McDonnell Douglas Service Bulletin MD11–34–060, Revision 3, dated July 14, 1995; and McDonnell Douglas Service Bulletin MD11–22–015, dated July 3, 1995. The incorporation by reference of McDonnell Douglas MD–11 Alert Service Bulletin A34–57, dated December 19, 1994, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of February 6, 1995 (60 FR 4076, January 20, 1995). The incorporation by reference of the remainder of the service documents listed above 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 McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on August 18, 1995.

Issued in Renton, Washington, on July 21, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18434 Filed 8–2–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–06–AD; Amendment 39–9321; AD 95–16–02]

Airworthiness Directives; Boeing Model 747 SP, SR, –100, –200, and –300 Series Airplanes Equipped with Pratt & Whitney Model JT9D Series Engines (Excluding Model JT9D–70 Engines)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 SP, SR, –100, –200, and –300 series airplanes, that requires repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found. This amendment is prompted by the results of an investigation, which revealed that, in the event of thrust reverser deployment during high-speed climb or during cruise, these airplanes could experience control problems. The actions specified by this AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Effective September 5, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 5, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules

Docket, 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: G. Michael Collins, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2689; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 SP, SR, –100, –200, and –300 series airplanes was published in the **Federal Register** on March 30, 1995 (60 FR 16392). [A correction of the proposal was published in the **Federal Register** on April 5, 1995 (60 FR 17385).] That action proposed to require repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found during the test.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposed rule.

One commenter requests an extension of the intervals for repeating the operational tests from 2,000 flight hours to 2,200 flight hours so that the tests can be performed during regularly scheduled maintenance visits. The commenter indicates that it has performed the initial test and one repetitive test on all of its aircraft, and no anomalies have been found. The FAA does not concur. The FAA established the repetitive test interval of 2,000 flight hours to provide an acceptable level of safety and to allow the majority of affected operators to schedule the tests during normal maintenance intervals at a maintenance base where special equipment and trained maintenance personnel will be available, if necessary. In addition, the interval is consistent with the interval recommended by the manufacturer in the alert service bulletin cited in this AD. However, under the provisions of paragraph (d) of the final rule, operators may apply for the approval of an adjustment of the compliance time if sufficient justification is presented to the FAA.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

This AD is considered to be interim action until final action is identified, at which time the FAA may consider additional rulemaking.

There are approximately 456 Model 747 SP, SR, –100, –200, and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 173 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $166,080, or $960 per airplane.

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

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:

95–16–02 Boeing: Amendment 39–9321. Docket 95–NM–06–AD.

Applicability: Model 747 SP, SR, –100, –200, and –300 series airplanes equipped with Pratt & Whitney Model JT9D series engines (excluding Model JT9D–70 engines), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (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 ensure the integrity of the fail safe features of the thrust reverser system, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform an operational test of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, in accordance with Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994. Repeat the test thereafter at intervals not to exceed 2,000 flight hours.

(b) If any of the tests required by this AD cannot be successfully performed, or if any discrepancy is found during those tests, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

(c) Within 30 days after performing each initial test required by this AD, submit a report of the test results, both positive and negative, to the FAA, Seattle Aircraft

Certification Office (ACO), ANM–100S, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (206) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

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

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

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

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–78A2131, dated September 15, 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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 September 5, 1995.

Issued in Renton, Washington, on July 21, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18435 Filed 8–2–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–36–AD; Amendment 39–9322; AD 95–16–03]

Airworthiness Directives; McDonnell Douglas Model DC–9 Series Airplanes and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Model DC–9 series airplanes and C–9 (military) airplanes, that requires inspection of the driver links of the thrust reverser door to determine whether the driver links are chamfered, an inspection to detect damage of the overcenter links, and follow-on corrective actions, if necessary; and replacement or rework of the driver links. This amendment is prompted by reports of a thrust reverser door that failed to operate properly due to improperly manufactured (missing chamfers on the) driver links. The actions specified by this AD are intended to prevent damage to the overcenter links due to missing chamfers on the driver links, which may result in uncommanded opening of the thrust reverser door, and subsequently, adversely affecting controllability of the airplane.

DATES: Effective September 5, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 5, 1995.

ADDRESSES: The service information referenced in this AD 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 Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5245; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Model DC–9 series airplanes and C–9 (military) airplanes was published in the **Federal Register** on April 17, 1995 (60 FR 19188). That action proposed to require a one-time visual inspection of the driver links of the thrust reverser door to determine whether the driver links are chamfered, and a one-time visual inspection to detect damage of the overcenter links, and follow-on corrective actions, if necessary; and replacement or rework of the driver links.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requests a revision to the proposal to include an option that would allow deactivation of a thrust reverser in accordance with the Minimum Equipment List (MEL). Additionally, the commenter states that if damage limits are required for driver links or overcenter links that are installed on deactivated thrust reversers, then McDonnell Douglas Alert Service Bulletin A78–67 (that is referenced in the proposal as the appropriate source of service information) should be revised to include those limits. The commenter contends that the revised service bulletin should then be referenced in the final rule as the appropriate source of service information. The commenter states that this suggested change would minimize the impact on scheduled service to the public.

The FAA does not concur. The FAA acknowledges that the MEL permits continued operation of an airplane for up to 10 days with a deactivated thrust reverser. However, the FAA's intent in issuing this AD is to remove all defective driver links from the fleet in a timely manner so as to preclude the potential for any further incidents of uncommanded openings of the thrust reverser door after takeoff. Deactivation of the thrust reverser would essentially extend the compliance time of this AD; the FAA considers such extension to be unacceptable since the affected fleet must be purged of the discrepant part in order to ensure safety. Where there are differences between the MEL and the AD, the AD takes precedence; therefore inspection, and any necessary replacement, must be accomplished by affected operators within 3 months, as required by this AD.

Further, the FAA does not concur with the commenter's request that essentially would delay the issuance of this rule until the manufacturer can release a revised service bulletin containing damage limits for driver links and overcenter links that are installed on deactivated thrust reversers. The FAA does not consider that delaying this action until after the release of a revised service bulletin is warranted or appropriate, since, as explained above, the FAA does not concur with the commenter's request to permit flight with a deactivated thrust reverser.

The same commenter also requests a revision to the proposal to include an alternative to the proposed inspections

of the links. The commenter states that if no discrepant parts were received then no inspection should be required. Therefore, the commenter suggests including an alternative to permit operators to check shipping records in lieu of performing the inspections.

The FAA does not concur. Discrepant links have the same part number as those links that have chamfers. Therefore, discrepant links would not be identifiable by checking shipping records.

Two commenters request a revision of the 3-month compliance time proposed in paragraphs (a) and (b). One of these commenters requests that the proposed compliance time be extended to 6 months. The other commenter requests that the inspections be allowed to be accomplished during the time of a normally scheduled ''C'' check. This commenter states that adoption of a compliance time that coincides with operators' ''C'' checks would minimize interruptions to the operators' regularly scheduled maintenance.

The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the practical aspects of accomplishing the inspections within an interval of time that parallels normally scheduled maintenance for the majority of affected operators.

The FAA notes that the driver link and overcenter link assemblies of the thrust reverser are commonly referred to as ''driver link and overcenter link.'' Therefore, for purposes of clarification, paragraph (d) of the final rule has been revised to delete the phrase ''assembly of a thrust reverser'' following the terms ''driver link or overcenter link.''

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 892 airplanes of the affected design in the worldwide fleet. The FAA estimates that 557 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspections and 10 work hours per airplane to accomplish the required replacement/rework, and that the average labor rate is $60 per work hour. Required replacement/rework parts will cost approximately $4,100 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,651,320, or $4,760 per airplane.

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

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:

95–16–03 McDonnell Douglas: Amendment 39–9322. Docket 95–NM–36–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes, as listed in McDonnell Douglas DC–9 Alert Service Bulletin A78–67, dated February 27, 1995, 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 (e) 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 uncommanded opening of the thrust reverser door, which may adversely affect controllability of the airplane, accomplish the following:

(a) Within 3 months after the effective date of this AD, perform a visual inspection of the actuating mechanisms of the upper and lower doors of the thrust reverser on the left and right engines to determine whether the driver links are chamfered, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A78–67, dated February 27, 1995.

(1) If all the driver links are chamfered, prior to further flight, perform a visual inspection to detect damage of the overcenter links (including the bearings, races, and attaching hardware), in accordance with the alert service bulletin.

(i) If no damage to the overcenter links is detected, no further action is required by this paragraph.

(ii) If any damage to the overcenter links is detected, prior to further flight, replace the damaged overcenter links with new or serviceable overcenter links in accordance with the alert service bulletin.

(iii) If any damage to the bearings, races, or attaching hardware of the overcenter links is detected, prior to further flight, perform a visual inspection to detect damage of the drive mechanism of the thrust reverser, in accordance with the alert service bulletin. If any damage to the drive mechanism is detected, prior to further flight, repair or replace the damaged parts with new or serviceable parts, in accordance with the Chapter 78 of the DC–9 Overhaul Manual.

(2) If any driver link is not chamfered, prior to further flight, remove the driver link and perform dimensional and fluorescent penetrant inspections to determine serviceability of the driver link, in accordance with the alert service bulletin.

(i) If the driver link is serviceable, prior to further flight, machine chamfer the driver link, or replace the driver link with a new or

serviceable part, in accordance with the alert service bulletin.

(ii) If the driver link is not serviceable, prior to further flight, replace it with a new or serviceable driver link, in accordance with the alert service bulletin.

(b) Within 3 months after the effective date of this AD, perform a visual inspection to detect damage of the overcenter links (including the bearings, races, and attaching hardware, in accordance with the McDonnell Douglas DC–9 Alert Service Bulletin A78–67, dated February 27, 1995.

(1) If no damage to the overcenter links is detected, no further action is required by this paragraph.

(2) If any damage to the overcenter links is detected, prior to further flight, replace the damaged overcenter links with new or serviceable overcenter links in accordance with the alert service bulletin.

(3) If any damage to the bearings, races, or attaching hardware of the overcenter links is detected, prior to further flight, perform a visual inspection to detect damage of the drive mechanism of the thrust reverser, in accordance with the alert service bulletin. If any damage to the drive mechanism is detected, prior to further flight, repair or replace the damaged parts with new or serviceable parts, in accordance with the Chapter 78 of the DC–9 Overhaul Manual.

(c) Within 10 days after accomplishing the visual inspection of the driver links of the thrust reverser door to determine whether the driver links are chamfered, as required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5245; fax (310) 627–5210; Attention: Robert Baitoo. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(d) As of the effective date of this AD, no person shall install, on any airplane, a driver link or overcenter link that has not been previously inspected, and replaced or reworked, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A78–67, dated February 27, 1995.

(e) 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.

(f) 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.

(g) Certain actions shall be done in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A78–67, dated February 27, 1995. 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 McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 5, 1995.

Issued in Renton, Washington, on July 21, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18436 Filed 8–2–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–129–AD; Amendment 39–9329; AD 95–16–09]

Airworthiness Directives; Jetstream Model BAe ATP 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 Jetstream Model BAe ATP airplanes. This action requires modification of the electrical connections at the switches of the scavenge oil filter and pressure oil filter. This amendment is prompted by reports indicating that the electrical connections were miswired at the switches of the scavenge oil filter and pressure oil filter. The actions specified in this AD are intended to prevent the circulation of unfiltered oil through the engine without warning to the flightcrew, due to miswiring of electrical connections. Unfiltered oil containing contaminants could lead to a precautionary shutdown of the engine.

DATES: Effective August 18, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1995.

Comments for inclusion in the Rules Docket must be received on or before October 2, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–129–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. 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: Gregory Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2799; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model BAe ATP airplanes. The CAA advises that it has received reports indicating that the amber light on the central warning panel did not illuminate to warn the flight crew that the engine oil filter would be bypassed. Investigation revealed that the light did not illuminate because the electrical connections were miswired at the switches of the scavenge oil filter of the reduction gearbox (RGB) and of the pressure oil filter. The miswiring configuration was inadvertently included as part of the original wiring design plan for these airplanes and, thus, the miswiring occurred during production. Such miswiring could lead to the circulation of unfiltered oil through the engine without warning to the flightcrew, which could result in a precautionary shutdown of the engine due to contaminants in the unfiltered oil.

Jetstream has issued Service Bulletin ATP–79–25–10382A, Revision 1, dated May 25, 1995, which describes procedures for modification of the electrical connections at the switches of the scavenge oil filter of the RGB and of the pressure oil filter, of the left and right engines. The modification entails rerouting of the 28-volt DC. wiring from pin A to pin C of the switches. The CAA classified this service bulletin as mandatory in order to assure the

continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom 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, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, 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 prevent the circulation of unfiltered oil through the engine without warning to the flightcrew, which could lead to a precautionary shutdown of the engine due to contaminants in the unfiltered oil. This AD requires modification of the wiring connections at the switches of the scavenge oil filter of the RGB and of the pressure oil filter, of the left and right engines. The actions are required to be accomplished in accordance with the service bulletin 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 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–129–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. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–16–09 Jetstream Aircraft Limited (Formerly British Aerospace Commercial Aircraft, Limited.): Amendment 39–9329. Docket 95–NM–129–AD.

Applicability: Model BAe ATP airplanes having constructor's numbers 2002 through 2056 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 (b) 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 the flightcrew from being unaware that unfiltered oil is being circulated through the engine, which may result in a precautionary shutdown of the engine due to the circulation of contaminants in unfiltered oil, accomplish the following:

(a) Within 60 days after the effective date of this AD, modify the wiring connections at the switches of the scavenge oil filter of the reduction gearbox (RGB) and of the pressure oil filter, of both the left and right engines, in accordance with Jetstream BAe ATP Service Bulletin ATP–79–25–10382A, Revision 1, dated May 25, 1995.

(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 modification shall be done in accordance with Jetstream Aircraft Limited BAe ATP Service Bulletin ATP–79–25–10382A, Revision 1, dated May 25, 1995, which contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3, 7	1	May 25, 1995.
2, 4–6, 8–13 .	Original	February 10, 1995.

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 Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. 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 August 18, 1995.

Issued in Renton, Washington, on July 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18981 Filed 8–2–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–ANE–64; Amendment 39–9323; AD 95–16–04]

Airworthiness Directives; AlliedSignal, Inc. (Formerly Textron Lycoming) LTS101 Series Turboshaft and LTP101 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to AlliedSignal Inc. LTS101 series turboshaft and LTP101 series turboprop engines, that requires replacement of cast material axial compressor rotors with wrought material axial compressor rotors that have improved fatigue characteristics and material properties. This amendment is prompted by 36 reports of axial compressor blade failures on cast rotors. The actions specified by this AD are intended to prevent engine power loss and inflight engine shutdown.

DATES: Effective October 2, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 2, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal, Inc., 550 Main Street, Stratford, CT 06497. This information may be examined at the Federal Aviation Administration (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: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7148, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to AlliedSignal Inc. (formerly Textron Lycoming) LTS101 series turboshaft and LTP101 series turboprop engines was published in the **Federal Register** on January 4, 1995 (60 FR 393). That action proposed to require replacing cast material axial compressor rotors with wrought material axial compressor rotors that have improved fatigue characteristics and material properties, in accordance with Textron Lycoming Service Bulletin No. LT 101–72–30–0088, Revision 5, dated September 25, 1992.

On October 28, 1994, AlliedSignal Inc. purchased the turbine engine product line of Textron Lycoming, and this final rule has been revised to refer to the engine by its new name.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously.

There are approximately 200 engines of the affected design in the worldwide fleet. The FAA estimates that 100 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 50 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $6,500 per engine, on a prorated cost basis. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $955,000.

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:

95–16–04 AlliedSignal, Inc.: Amendment 39–9323. Docket 94–ANE–64.

Applicability: AlliedSignal, Inc. (formerly Textron Lycoming) LTS101 turboshaft and LTP101 turboprop engines installed on but not limited to Aerospatiale AS 350 and SA366G, Bell 222, and Messerschmitt-Bolkow-Blohm (MBB) BK117 helicopters; Piaggio P166–DL3 and Airtractor AT302 airplanes. NOTE: This AD applies to each

engine 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 engines 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 engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine power loss and inflight engine shutdown, accomplish the following:

(a) Remove from service Part Numbers (P/N) 4–101–006– 20, –21, –24, –26, –35, –36, and –40 cast material axial compressor rotors, as follows:

(1) For axial compressor rotors P/N 4–101–006–35 with serial number suffix ''E,'' remove in accordance with Textron Lycoming Service Bulletin (SB) No. LT 101–72–30–0088, Revision 5, dated September 25, 1992, within 50 hours time in service (TIS), or 60 days after the effective date of this AD, whichever occurs first.

(2) For axial compressor rotors P/N 4–101–006–35 with serial number suffix other than ''E,'' and all other axial compressor rotors with P/N listed in paragraph (a) of this airworthiness directive (AD), remove in accordance with Textron Lycoming SB No. LT 101–72–30–0088, Revision 5, dated September 25, 1992, as follows:

(i) For axial compressor rotors that have accumulated 600 hours or less TIS since new, remove within 100 hours TIS, or 120 days after the effective date of this AD, whichever occurs first.

(ii) For axial compressor rotors that have accumulated more than 600 but less than or equal to 1,200 hours TIS since new, remove within 300 hours TIS, or 240 days after the effective date of this AD, whichever occurs first.

(iii) For axial compressor rotors that have accumulated more than 1,200 but less than or equal to 2,400 hours TIS since new, remove within 600 hours TIS, or 360 days after the effective date of this AD, whichever occurs first.

(iv) For axial compressor rotors that have accumulated more than 2,400 hours TIS since new, remove within 1,200 hours TIS, or 720 days after the effective date of this AD, whichever occurs first.

(3) Replace with a serviceable wrought material axial compressor rotor P/N 4–101–006–28, –32, –39, or –41, as applicable, in accordance with Textron Lycoming SB No. LT 101–72–30–0088, Revision 5, dated September 25, 1992.

(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, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(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 aircraft to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be done in accordance with the following SB:

Document No.	Pages	Revision	Date
Textron Lycoming SB No. LT 101–72–30–0088	1–4	5	September 25, 1992.
Total Pages: 5.			

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 AlliedSignal, Inc., 550 Main Street, Stratford, CT 06497. 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.

(e) This amendment becomes effective on October 2, 1995.

Issued in Burlington, Massachusetts, on July 20, 1995.

James C. Jones,

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

[FR Doc. 95–18551 Filed 7–31–95; 10:37 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ASO–15]

Removal of Class D Airspace; Fort Rucker Shell, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment removes Class D airspace at Fort Rucker Shell, AL. The United States Army has altered the operational requirements of Shell Army Heliport (AHP) and transferred the training mission from Shell Army AHP to another location. Therefore, there is no longer a requirement for Class D airspace for the heliport.

EFFECTIVE DATE: 0901 UTC, September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Stanley Zylowski, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

The United States Army altered the operational requirements of and transferred the former training mission from Shell AHP to another location. As a result, the United States Army requested the Federal Aviation Administration to remove the Class D airspace for the heliport, as it is no longer needed. There is no instrument flight rules (IFR) activity and visual flight rules (VFR) activity has been significantly reduced. This action will eliminate the impact that Class D airspace has placed on users of the airspace in the vicinity of Shell AHP. This rule will become effective on the date specified in the **DATES** section. Since this action removes the Class D airspace, which eliminates the impact of Class D airspace on users of the airspace in the vicinity of Shell AHP, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class D airspace at Fort Rucker Shell, AL. The United States Army has altered the operational requirements of Shell AHP and transferred the training mission from Shell AHP to another location. Therefore, there is no longer a requirement for Class D airspace for the heliport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a

''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace.

* * * * *

ASO AL D Fort Rucker Shell, AL [Removed]

* * * * *

Issued in College Park, Georgia, on July 24, 1995.

Stanley Zylowski,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–18918 Filed 8–2–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Docket No. 95–ANE–28]

Amendment to Class D and Class E Airspace; Hartford, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will modify the Class D and Class E airspace areas established in the vicinity of the Hartford-Brainard Airport, Hartford, CT. Those airspace areas also define controlled airspace to contain aircraft operating to and from the Rentschler Airport, a privately operated airport in East Hartford, CT. The owner of Rentschler Airport has recently closed the control tower. Therefore, this action is necessary to revise the Class D and Class E airspace in the vicinity of the Rentschler and Hartford-Brainard airports.

EFFECTIVE DATE: 0901 UTC, September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph A. Bellabona, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (617) 238–7536; fax: (617) 238–7596.

SUPPLEMENTARY INFORMATION:

History

On May 24, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class D and Class E airspace areas established in the vicinity of the Hartford-Brainard Airport, Hartford, CT. That action was prompted by the closing of the control tower at the privately operated Rentschler Airport. The proposed action would also provide the necessary controlled airspace to accommodate the Standard Instrument Approach Procedures (SIAP's) that remain at the now closed Rentschler Airport.

Interested parties were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. One comment noted a misspelling of the name of the Hartford-Brainard Airport, and a minor correction to the longitude and latitude coordinates for that airport. The FAA has made these minor changes to the rule. Class D and Class E airspace areas are published in FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. Class D areas appear in paragraph 5000 of FAA Order 7400.9B, and Class E areas extending upward from 700 feet or more above the surface of the earth appear in paragraph 6005. The Class D and Class E airspace designations in this document would be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Hartford, CT Class D and the Hartford, CT Class E airspace areas by revising those areas in the vicinity of the Hartford-Brainard and Rentschler Airports, and by providing the necessary controlled airspace to accommodate the SIAP's to the Rentschler Airport.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 General

* * * * *

ANE CT D Hartford, CT [Revised]

Hartford Brainard Airport, Hartford, CT
(Lat. 41°44′11″ N, long. 72°39′01″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within 4.6-mile radius of Hartford-Brainard Airport from the Hartford Brainard Airport 158° bearing clockwise to the Hartford-Brainard Airport 052° bearing, and with a 6.0-mile radius of Hartford-Brainard Airport from the Hartford-Brainard Airport 052° bearing clockwise to the 158° bearing;

excluding that airspace within the Windsor Locks, CT Class C airspace area. This Class D airspace is effective during the specific dates and times established in advance by a Notice of airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANE CT E5 Hartford, CT [Revised]

Hartford-Brainard Airport, Hartford, CT
(Lat. 41°44′11″ N, long. 72°39′01″ W)

That airspace extending upward from 700 feet above the surface within an 11.5-mile radius of Hartford-Brainard Airport; excluding that airspace within the Windsor Locks, CT and Chester, CT Class E airspace areas.

Issed in Burlington, MA, on July 27, 1995.

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 95–19141 Filed 8–2–95; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 3

Administrative Litigation Following the Denial of a Preliminary Injunction

AGENCY: Federal Trade Commission.

ACTION: Final rule, with request for public comment.

SUMMARY: Elsewhere in this issue, the Federal Trade Commission has published statements explaining how, after a court has denied preliminary injunctive relief to the Commission, the Commission decides whether administrative litigation should be commenced or, if it has already been commenced, should be continued. The Commission has also adopted a rule to facilitate such consideration in those cases where administrative litigation has already commenced. While the rule is effective upon publication in the **Federal Register**, the Commission will receive comment for thirty days, and will thereafter take such further action as may be appropriate.

DATES: The rule is effective August 3, 1995. Comments will be receive until September 5, 1995.

ADDRESSES: Comments should be sent to the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580. Comments will be entered on the public record of the Commission and will be available for public inspection in Room 130 during the hours of 9 a.m. until 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ernest Nagata, Deputy Assistant Director for Policy and Evaluation, Bureau of Competition, (202) 326–2714, or Marc Winerman, Office of the General Counsel, (202) 326–2451.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue, the Commission has published a policy statement that explains the process it follows in deciding whether to pursue administrative merger litigation following denial of a preliminary injunction in a separate proceeding brought, under section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), in aid of the adjudication. The Commission has also determined to adopt a new rule, 16 CFR 3.26, to facilitate the consideration of these issues in matters where the Commission has issued an administrative complaint, and thus begun an adjudicative proceeding, before the court denied the preliminary injunction. Rule 3.26 provides two options for respondents to request such review [1]: (a) Respondents may move to have the administrative case withdrawn from adjudication so that the review may be conducted without the constraints of adjudicative rules, or (b) respondents may argue their case for dismissal within the adjudicative framework by filing a motion for dismissal of the complaint and briefing the matter on the public record.[2]

II. Motion to Withdraw From Adjudication

The first alternative open to respondents is a motion to withdrawn the matter from adjudication. A motion to withdraw a matter from adjudication pursuant to Rule 3.26(c) should be filed directly with the Commission (rather than filed with the Administrative Law Judge and then certified to the Commission), and will result, two days after filing, in automatic withdrawal from adjudication.[3]

In requiring that all respondents make a motion for withdrawal from adjudication, the rule implicitly obtains their unanimous consent to such withdrawal, and to ex parte communications that will be permitted during such time as the litigation is withdrawn.[4] Once a matter is withdrawn from adjudication, complaint counsel and respondents (and even third parties) can communicate informally with Commissioners to discuss the matter. In addition, since such communications will not be on the record of the administrative proceeding, counsel will be able to discuss the case without concern that their statements might compromise their litigation position if the case is returned to adjudication.

III. Motion for Consideration on the Public Record

If one or more respondents do not want the matter withdrawn from adjudication, Rule 3.26(d) permits any respondent or respondents to make a motion for dismissal that will be briefed on the public record. Such motions are similarly filed directly with the Commission rather than the Administrative Law Judge.

Rule 3.26 imposes a fourteen-day time limit for respondents to file a motion under the rule, and fourteen days for complaint counsel to file an answer, and it imposes a limit of thirty printed pages, or forty-five typewritten pages, on respondent's motion (and any accompanying brief) and complaint counsel's answer. The rule also provides that a stay will be automatic, although the Commission could subsequently lift it.[5] Further, the rule provides that

[1] The Commission also reserves the right to consider sua sponte the public interests in continuing administrative litigation.

[2] It should be noted that, under its general rule governing adjudicative motions, 16 CFR § 3.22, the Commission has previously entertained motions to dismiss a complaint as no longer warranted by the public interest. See, e.g., *Boise Cascade Co.*, 101 F.T.C. 17 (1983), *American Home Products Corp.* 90 F.T.C. 148 (1977).

[3] The two-day delay will enable complaint counsel to object (and the Commission to defer or halt the withdrawal from adjudication) if there is a question respecting whether the motion meets the requirements of Rule 3.26(b). For example, the motion may be untimely, or there may be a question as to whether a particular court order constitutes a denial of preliminary injunctive relief. A brief delay in withdrawing a matter from adjudication is preferable to the risk that the matter might be prematurely removed from adjudication and placed back in adjudication shortly afterward.

[4] Various constraints on communications with Commissioners during the pendency of an administrative proceeding arise by virtue of the ex parte rule, 16 CFR 4.7 (which applies to communications with both complaint counsel and outside parties), of the separation of functions provision of the APA, 5 U.S.C. 554(d) (which applies to communications with complaint counsel), of the ex parte provision of the APA, 5 U.S.C. 557(d) (which applies to communications with outside parties), and of due process strictures.

[5] As noted previously, in the context of a motion to withdraw a case from adjudication under proposed Rule 3.26(c), the rule provides that the automatic withdrawal would be deferred to enable some opportunity to consider whether respondent's motion was consistent with the rule. Rule 3.26(d) does not provide for similar deferral of a stay. Withdrawal from litigation has serious consequences, insofar as it permits ex parte communications, and it is appropriate to defer withdrawal briefly rather than risk that a matter

materials whose confidentiality is protected under a court order or an administrative order shall be treated as if they had been granted in camera treatment by the Commission. Thus, assuming that the protective order does not preclude use in the administrative proceeding, the parties will be able to rely on such materials in nonpublic filings.

IV. Timing

Pursuant to Rule 3.26(b), the procedures under the rule become available if the Commission is denied preliminary injunctive relief in a judicial proceeding brought in aid of an administrative proceeding. Two details are discussed below.

First, these procedures become available following denial of preliminary injunctive relief. A temporary restraining order (''TRO'') is not ''preliminary injunctive relief,'' so the procedures will not become available on denial of a TRO.[6]

Second, the procedures become available when a district court denies the Commission preliminary injunctive relief and (a) all opportunity has passed for the Commission to seek reconsideration of the district court's denial or to appeal it to a court of appeals, and the Commission has neither sought reconsideration of the denial nor appealed it, or b) a court of appeals has denied preliminary injunctive relief.[7] Thus, these mechanisms will not be available while the Commission might seek reconsideration by the district court or appeal the denial to a court of appeals.[8] Rule 3.26(b) does not delay motions for reconsideration of the public interest in an administrative proceeding until after time has passed for seeking rehearing by the court of appeals of certiorari by the Supreme Court.[9]

List of Subjects in 16 CFR Part 3

Administrative practice and procedure, Investigations.

Accordingly, the Federal Trade Commission amends title 16, chapter I, subchapter A, part 3 of the CFR as follows:

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

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

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

2. Section 3.22(a) is amended by revising the first full sentence to read as follows:

§ 3.22 Motions.

(a) *Presentation and disposition.* During the time that a proceeding is before an Administrative Law Judge, all motions therein, except those filed under § 3.26, § 3.42(g), or § 4.17, shall be addressed to the Administrative Law Judge, and, if within his authority, shall be ruled upon by him. * * *

3. Section 3.26 is added to subpart C to read as follows:

§ 3.26 Motions following denial of preliminary injunctive relief.

(a) This section sets forth two procedures by which respondents may obtain consideration of whether continuation of an adjudicative proceeding is in the public interest after a court has denied preliminary injunctive relief in a separate proceeding brought, under section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), in aid of the adjudication.

(b) A motion under this section shall be addressed to the Commission and filed with the Secretary of the Commission. Such a motion must be filed within fourteen (14) days after:

(1) A district court has denied preliminary injunctive relief, all opportunity has passed for the Commission to seek reconsideration of the denial or to appeal it, and the Commission has neither sought reconsideration of the denial nor appealed it; or

(2) A court of appeals has denied preliminary injunctive relief.

(c) *Withdrawal from adjudication.* If a court has denied preliminary injunctive relief to the Commission in a section 13(b) proceeding brought in aid of an adjudicative proceeding, respondents may move that the adjudicative proceeding be withdrawn from adjudication in order to consider whether or not the public interest warrants further litigation. Such a motion shall be filed by all of the respondents in the adjudicative proceeding. The Secretary shall issue an order withdrawing the matter from adjudication two days after such a motion is filed, except that, if complaint counsel have objected that the conditions of paragraph (b) of this section have not been met, the Commission shall determine whether to withdraw the matter from adjudication.

(d) *Consideration on the record.* (1) In lieu of a motion to withdraw a matter from adjudication under paragraph (c) of this section, any respondent or respondents may file a motion under this paragraph to dismiss the administrative complaint on the basis that the public interest does not warrant further litigation after a court has denied preliminary injunctive relief to the Commission. Motions filed under this paragraph shall incorporate or be accompanied by a supporting brief or memorandum.

(2) *Stay.* A motion under this paragraph will stay all proceedings before the Administrative Law Judge until such time as the Commission directs otherwise.

(3) *Answer.* Within fourteen (14) days after service of a motion filed under this paragraph, complaint counsel may file an answer.

(4) *Form.* Motions (including any supporting briefs and memoranda) and answers under this paragraph shall not exceed 30 pages if printed, or 45 pages if typewritten, and shall comply with the requirements of § 3.52(e).

(5) *In camera materials.* If any filing includes materials that are subject to

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would be withdrawn from adjudication and then returned to adjudication shortly thereafter. No similar concerns arise when a matter is stayed and the stay is subsequently lifted.

[6] This will rarely be an issue because the Commission rarely commences administrative litigation before a court rules on a TRO motion. Under section 13(b), the Commission must issue its administrative complaint within twenty days after entry of a preliminary injunction or a TRO. Thus, if a court issues a TRO bureau delays ruling on a preliminary injunction, the Commission may have no choice but to issue its administrative complain the before the preliminary injunction ruling. In contrast, section 13(b) does not compel the Commission to issue an administrative complaint before a TRO ruling. Even if the situation did arise, however, the denial of a TRO in and of itself will not trigger Commission review of the public interest in continued litigation, which will rather await dismissal of the proceeding or other action rejecting preliminary injunctive relief.

[7] In some cases, most likely involving consumer fraud, a court could grant a preliminary injunction as to some defendants but deny such relief as to others. When that occurs, Rule 3.26 would be available to the defendants as to whom relief was denied but not the defendants as to whom relief was granted. (In such a situation, though, the affected respondents would be limited to on-the-record consideration under Rule 3.26(d); the procedure for withdrawal from adjudication under subsection (c), which requires a motion by all the respondents in the adjudication, would not be an option.)

[8] This would not, however, preclude earlier communications by staff, respondents, or even third parties, that are occasioned by and concern whether the Commission will appeal the district court's decision. Such communications are permissible, even if the opposing parties are not given prior notice, because they are ''occasioned by and concerning'' a non-adjudicative function. See Rule 4.7(f).

[9] After a court of appeals has rejected preliminary injunctive relief, the Commission has ninety days to see certiorari, 28 U.S.C. 2101(c), and forty-five days to seek rehearing, F.R. Appl. Proc. 40(a). (Although the rule permits respondents to seek reconsideration of the public interest in continuing an adjudication immediately after a court of appeals denies a preliminary injunction in aid of that adjudication, it does not preclude the Commission from seeking rehearing or certiorari, whether or not such a motion is filed.)

confidentiality protections pursuant to an order entered in either the proceeding under section 13(b) or in the proceeding under this part, such materials shall be treated as *In camera* materials for purposes of this paragraph and the party shall file two versions of the document in accordance with the procedures set forth in § 3.45(e). The time within which complaint counsel may file an answer under this paragraph will begin to run upon service of the *in camera* version of the motion (including any supporting briefs and memoranda).

By direction of the Commission, Commissioner Azcuenaga dissenting.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga, Concerning FTC's Adoption of Rule 3.26, Respecting Administrative Litigation Following Denial of a Preliminary Injunction

On June 26, 1995, the Commission issued a Statement of Policy Regarding Administrative Merger Litigation Following the Denial of a Preliminary Injunction and an accompanying explanation.[1] These documents reaffirm the Commission's longstanding policy, consistent with section 5 of the FTC Act, 15 U.S.C. 45(b), of reconsidering whether to pursue administrative litigation following the denial of preliminary relief by the courts. Section 5 requires that the Commission premise issuance of an adjudicative complaint on finding reason to believe that the law has been violated and that enforcement would be in the public interest. This obligation continues implicitly throughout the proceeding, requiring the Commission to take all reasonable steps to assure itself that an enforcement action, once begun, remains in the public interest. I joined in that Statement.

The Commission now adopts new Rule 3.26 to govern how the agency will proceed if a court denies a requested preliminary injunction pending completion of an administrative adjudication.[2] A central feature of the new rule is that following the court's action, the respondents may choose to have the administrative matter removed from adjudication to permit the parties to discuss with the Commission privately, off the record and ''without the constraints of adjudicative rules,''[3] the public interest in continuing the adjudication in light of the court's action.[4] Strictly speaking, no revision of the rules is necessary because existing provisions of the rules of practice are sufficient to permit the Commission to address any effect the court's action may have on the public interest in continuing the adjudication.[5] Nevertheless, I have no objection to adopting a new rule to provide specific procedures for reconsidering an administrative adjudication following denial of a preliminary injunction. My difference of opinion is this: I believe that a rule adopted to address this situation should provide that the matter be left in adjudication for any reconsideration by the Commission and that any communication between the parties and the Commission take place on the record.[6]

The Commission opines that complaint counsel will be more candid off the record because they ''will be able to discuss the case without concern that their statements might compromise their litigation position if the case is returned to adjudication.''[7] It also suggests that the *ex parte* procedure will confer similar benefits on ''respondents (and even third parties).''[8] It is unclear to me why all this candor cannot and should not take place on the public record.

Traditionally, the Commission acts as a prosecutor up to and including its decision to issue an administrative complaint. As soon as the vote to issue an administrative complaint is complete, the Commission assumes a judicial role with respect to that case, which then is said to be ''in adjudication.''[9] It should go without saying that the Commission must not allow its prosecutorial role to intrude in any respect in carrying out its deliberative role in an administrative adjudication. Removing a matter from adjudication to chat off the record suggests that there is something that the Commission would prefer that the world not know. It also suggests an unease on the part of the Commission in carrying out its judicial function and an unseemly reluctance to relinquish its prosecutorial role. Although the automatic withdrawal provision may not disadvantage the respondent in any given proceeding, it may well undermine public confidence in the integrity of the Commission's adjudicative process.

Let us consider three scenarios following a court's denial of a preliminary injunction: First, complaint counsel have a strong case, notwithstanding the court's denial of a preliminary injunction. If this is so, complaint counsel can explain why on the record. After the case has been withdrawn from adjudication and reconsidered, presumably the Commission will return the case to adjudicative status. Even if the respondents initiated withdrawing the matter from adjudication, the procedure, in-and-out-and-in adjudication, may create a perception that complaint counsel, speaking off the record, had an unfair advantage. The respondents may believe that had they only known what the staff was saying to the Commission behind closed doors while the case was withdrawn from adjudication, they could have defended more effectively and won a dismissal. After all, the court gave the first round to the respondents on the record.

A second scenario is that the case is weak, and complaint counsel's arguments in support of the complaint are correspondingly weak. The Commission suggests in its **Federal Register** notice that if discussion is held on the record, complaint counsel will be inhibited from pointing to weaknesses in the case for fear that if the Commission disagrees and requires the adjudication to go forward, complaint counsel will be disadvantaged by having conceded the weaknesses of the case on the record. An underlying assumption here is that any weaknesses in the case will remain undiscovered (by the courts, by the respondent and by the administrative law judge), as long as complaint counsel can confide in the Commission off the record. Perhaps more serious, the assumption suggests an abiding lack of confidence in the administrative system of adjudication and the Commission's place in it. Complaint counsel will not be able to

[1] These materials appear again in this volume of the **Federal Register**.

[2] *See* 15 U.S.C. § 53(b).

[3] Notice of Final Rule with Request for Public Comment, 60 FR __, Slip Notice at 2–3.

[4] I do not oppose the alternative procedure included in the new rule, which expressly authorizes a motion by any respondent to dismiss the complaint in the public interest. Although the alternative procedure is redundant in light of existing Rules 3.22 and 3.23, 16 CFR 3.22 and 3.23 (1955), I do not find it objectionable because the arguments would be presented on the record unless the Commission directs otherwise.

[5] *See, e.g.,* Rule 3.22 governing adjudicative motions and Rule 3.23 governing interlocutory appeals. The Commission also, of course, may act *sua sponte* to seek briefing from the parties or to dismiss the complaint.

[6] Confidential communications between the Commission and its staff before a matter enters adjudication and when the Commission is still carrying out its prosecutorial responsibility make sense. In our system of law, investigational and prosecutorial decisions are protected from public scrutiny. *See* 5 U.S.C. 552(b)(5). Such confidential communications after the prosecutorial function has concluded with the issuance of a complaint, however, raise issues concerning the exercise by the Commission of its quasi-judicial function.

[7] 60 FR __, Slip Notice at 4.

[8] *Id.*

[9] At this point, all further communications between the parties (complaint counsel and the respondent[s] are on the record with certain specified exceptions. Rule 4.7, 16 CFR § 4.7.

avoid the weakness of the case by confiding that fact in secret to the Commission. At most, they might conceal the weakness for a time, a result that ultimately would be wasteful of both government and private resources. Regardless of when during an adjudicative proceeding complaint counsel or the Commission itself discovers a possible weakness in the case, the Commission should base its decision whether to continue the proceeding on publicly available information.

The new rule may lend itself to a public perception that the staff of the Commission has an advantage over targets of enforcement actions because the staff has the secret ear of the Commission. If the staff is permitted secret access to the Commission, a decision to continue an adjudication, particularly one that, based on publicly available information, appears weak, likely would suggest that complaint counsel were able to persuade the commission to proceed only by ''hiding the ball'' form the respondents. Such a message hardly is consistent with fairness to the respondent or with the role of the Commission as an unbiased decisionmaker.[10]

A third scenario is that the case is weak, respondents move to withdraw the matter from adjudication, and complaint counsel file nothing in support of the complaint.[11] In such an instance, the Commission may agree with the respondents and dismiss the adjudication, or it may disagree and order that the proceeding continue. There seems no good reason not to have this occur on the public record. Again, private discussions between the Commission and its staff can create a public perception of unfairness to the respondents arising from apparent complicity the prosecuting attorneys and the purportedly impartial adjudicators—the very danger the separation of functions requirements of the Administrative Procedure Act and the Commission's *ex parte* rule are designed to avoid.[12]

In addition to undermining the separation of functions at the Commission, the new rule limits the Commission's discretion to decide when individual cases should be in adjudication and remain on the public record. The exercise of discretion in an adjudicative matter is a responsibility of the Commission, not an occasion for apology. This responsibility, which must be carried out consistent with the law and with fundamental fairness, should not be ceded without a reason for doing so. Here, I see none. Both the policy to maintain the separation of deliberative and prosecutorial functions and the appearance of having done so are enhanced when the Commission retains its discretion to determine the appropriate disposition of a motion to withdraw from adjudication. The shifting of a portion of that discretion in favor of the respondents may appear open-minded, but, in the long term, it will disserve the Commission and the public interest.

On balance, the Commission and the public would be better served if the Commission retained its discretion to decide which, if any, cases should be withdrawn from adjudication following denial of a preliminary injunction. The new rule is likely to undermine the integrity of the Commission and its adjudicative process by breaking down the wall between the Commission's prosecutorial and adjudicatory roles in a manner inconsistent with the separation of functions requirement of the Administrative Procedure Act and its own *ex parte* rule.

I dissent.

[FR Doc. 95–19109 Filed 8–2–95; 8:45 am]

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[10] Off-the-record discussions with the respondents, followed by dismissal of the complaint, also may create misperceptions of unfairness and favoritism, with the implication that nonpublic communications that could not bear the light of day influenced the Commission's decision.

[11] This assumes that complaint counsel find themselves unable to make a principled argument in support of the complaint. *See* Jose Calimlim, M.D., Dkt. No. 9199 (June 24, 1986) (''complaint counsel represent the Commission's prosecutorial decision as embodied in the allegations of the complaint and in the notice of contemplated relief''); *accord* R.J. Reynolds Tobacco Co., Dkt. No. 9206 (interlocutory order, Dec. 1, 1986); *see also* R.J. Reynolds Tobacco Co. (interlocutory order, Dec. 10, 1986) (purpose of adjudication is ''to subject the Commission's complaint to an adversarial test'').

[12] *See* 5 U.S.C. 552(d); 16 CFR 4.7.

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 200

[Release No. 34–36031]

Establishment of Office and Delegation of Authority to Administer Functions

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is amending its Rules of Organization and Program Management to establish the Office of Compliance Inspections and Examinations (''OCIE'') and to delegate authority to administer its functions to the Director of OCIE. This reorganization is designed to improve efficiency and allow for an enhanced integration of functions by combining the inspection and examination operations of the Division of Market Regulation and the Division of Investment Management.

EFFECTIVE DATE: September 5, 1995.

FOR FURTHER INFORMATION CONTACT: James A. Chan, 202/942–0742; Matthew O'Toole, 202/942–0694; or Philip H. Oettinger, 202/942–0784.

SUPPLEMENTARY INFORMATION: On March 22, 1995, the Chairman of the Securities and Exchange Commission announced the creation of a new office, OCIE, that would combine the inspections and examinations functions of the Division of Market Regulation and the Division of Investment Management. The goal of OCIE is to increase the efficiency of the inspection and examination process by integrating the functions and personnel of both Divisions. The Commission today is adopting Rules 19c and 30–18 of its Rules of Organization and Program Management to delegate responsibility for the examination and inspection of brokers, dealers, transfer agents, self-regulatory organizations, investment companies, and investment advisers to OCIE, and to establish the administrative and substantive responsibilities of the Office.

The Commission has determined that this addition to its rules relates solely to the agency's organization, procedure or practice. Therefore, the provisions of the Administrative Procedure Act (''APA'') regarding notice of proposed rulemaking and opportunities for public participation,[1] are not applicable. Similarly, the provisions of the Regulatory Flexibility Act,[2] which apply only when notice and comment are required by the APA or other law, are not applicable.

In the rare instances involving close questions or cases that may be potentially controversial, the staff would either consult with the Commission, or seek Commission authorization before acting.[3] The staff believes that its experience with the issues that may arise in this area

[1] 5 U.S.C. 553.

[2] 5 U.S.C. 601 *et seq.*

[3] Rule 30–18(i) states that ''[n]otwithstanding anything in the foregoing [delegations], in any case in which the Director of the Office of Compliance Inspections and Examinations believes it appropriate, the Director may submit the matter to the Commission.''

reduces the need for day-to-day review by the Commission.

Effects on Competition

Section 23(a)(2) of the Securities Exchange Act of 1934 (''Exchange Act'')[4] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the additions to its rules announced in this release in light of the standards cited in section 23(a)(2) and believes that their adoption would not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

Statutory Basis of Rule

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

List of Subjects in 17 CFR Part 200

Administrative practices and procedures, Authority delegations (Government agencies), Organizations and functions (Government agencies).

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

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

Subpart A—Organization and Program Management

1. The authority citation for Part 200, Subpart A continues, in part, to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.19c is added to read as follows:

§ 200.19c Director of the Office of Compliance Inspections and Examinations.

The Director of the Office of Compliance Inspections and Examinations (''OCIE'') is responsible for the compliance inspections and examinations relating to the regulation of exchanges, national securities associations, clearing agencies, securities information processors, the Municipal Securities Rulemaking Board, brokers and dealers, municipal securities dealers, transfer agents, investment companies, and investment advisers, under Sections 15C(d)(1) and 17(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(d)(1) and 78q(b)), Section 31(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–30(b)), and Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4).

3. Section 200.30–18 is added to read as follows:

§ 200.30–18 Delegation of authority to Director of the Office of Compliance Inspections and Examinations.

Pursuant to the provisions of Pub. L. 100–181, 101 Stat. 1254, 1255 (15 U.S.C. 78d–1, 78d–2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following authority to the Director of the Office of Compliance Inspections and Examinations (''OCIE'') to be performed by the Director or by such other person or persons as may be designated from time to time by the Chairman of the Commission:

(a) To administer the provisions of § 240.24c–1 of this chapter; provided that access to nonpublic information as defined in such Section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(b) Pursuant to the Securities Exchange Act of 1934 (''the Exchange Act'') (15 U.S.C. 78a, *et seq.*):

(1) To grant and deny applications for confidential treatment filed pursuant to Section 24(b) of the Exchange Act (15 U.S.C. 78x(b)) and Rule 24b–2 thereunder (§ 240.24b–2 of this chapter); and

(2) To revoke a grant of confidential treatment for any such application.

(c) Pursuant to Section 17(b) of the Exchange Act (15 U.S.C. 78q(b)), prior to any examination of a registered clearing agency, registered transfer agent, or registered municipal securities dealer whose appropriate regulatory agency is not the Commission, to notify and consult with the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer.

(d) Pursuant to Section 17(c)(3) of the Exchange Act (15 U.S.C. 78q(c)(3)), in regard to clearing agencies, transfer agents and municipal securities dealers for which the Commission is not the appropriate regulatory agency:

(1) To notify the appropriate regulatory agency of any examination conducted by the Commission of any such clearing agency, transfer agent, or municipal securities dealer;

(2) To request from the appropriate regulatory agency a copy of the report of any examination of any such clearing agency, transfer agent, or municipal securities dealer conducted by such appropriate regulatory agency and any data supplied to it in connection with such examination; and

(3) To furnish to the appropriate regulatory agency on request a copy of the report of any examination of any such clearing agency, transfer agent, or municipal securities dealer conducted by the Commission and any data supplied to it in connection with such examination.

(e) To administer the provisions of Section 24(d) of the Exchange Act (15 U.S.C. 78x(d)).

(f) To notify the Securities Investor Protection Corporation (''SIPC'') of facts concerning the activities and the operational and financial condition of any registered broker or dealer which is or appears to be a member of SIPC and which is in or approaching financial difficulty within the meaning of Section 5 of the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. 78aa, *et seq.*

(g) Pursuant to Section 15(b)(2)(C) of the Exchange Act (15 U.S.C. 78o(b)(2)(C)):

(1) To delay until the second six month period from registration with the Commission the inspection of newly registered broker-dealers that have not commenced actual operations within six months of their registration with the Commission; and

(2) To delay until the second six month period from registration with the Commission the inspection of newly registered broker-dealers to determine whether they are in compliance with applicable provisions of the Exchange Act and rules thereunder, other than financial responsibility rules.

(h) With respect to the Investment Advisers Act of 1940 (''Advisers Act'') (15 U.S.C. 80b–1, *et seq.*):

(1) Pursuant to Section 203(h) of the Advisers Act (15 U.S.C.80b–3(h)), to authorize the issuance of orders cancelling registration of investment advisers, or applications for registration, if such investment advisers or applicants for registration are no longer in existence or are not engaged in business as investment advisers; and

(2) Pursuant to Rule 204–2(j)(3)(ii) (§ 275.204–2(j)(3)(ii) of this chapter), to make written demands upon non-resident investment advisers subject to the provisions of such rule to furnish to the Commission true, correct, complete, and current copies of any or all books and records which such non-resident investment advisers are required to make, keep current, or preserve pursuant to any provision of any rule or regulation of the Commission adopted

[4] 15 U.S.C. 78w(a)(2).

under the Advisers Act, or any part of such books and records which may be specified in any such demand.

(i) Notwithstanding anything in the foregoing, in any case in which the Director of the OCIE believes it appropriate, the Director may submit the matter to the Commission.

By the Commission.

Dated: July 28, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19160 Filed 8–2–95; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 94F–0090]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide broadened specifications for congealing point and oil content for synthetic paraffinic waxes produced by the Fischer-Tropsch process so that the specifications for synthetic paraffin waxes more closely resemble specifications for other synthetic waxes permitted for use in food packaging under other regulations. This action is in response to a petition filed by Shell Oil Co.

DATES: Effective August 3, 1995; written objections and requests for a hearing September 5, 1995.

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

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 18, 1994 (59 FR 18412), FDA announced that a food additive petition (FAP 4B4416) had been filed by Shell Oil Co., One Shell Plaza, P.O. Box 4320, Houston, TX 77210. The petition proposed to amend the food additive regulations in § 175.250 *Paraffin (synthetic)* (21 CFR 175.250) to incorporate broadened specifications for congealing point and oil content for synthetic paraffinic waxes produced by the Fischer-Tropsch process, so that the specifications for synthetic paraffin waxes more closely resemble specifications for other synthetic paraffin waxes permitted for use in food packaging under other regulations.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that § 175.250 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

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

Any person who will be adversely affected by this regulation may at any time on or before September 5, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

§ 175.250 [Amended]

2. Section 175.250 *Paraffin (synthetic)* is amended in paragraph (a) in the third sentence by adding the words ''may be'' after the word ''and'', in paragraph (b)(1) in the first sentence by removing ''93 °C'' and adding in its place ''50 °C'', and in paragraph (b)(2) in the first sentence by removing ''0.5 percent'' and adding in its place ''2.5 percent.''

Dated: July 22, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–19152 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 176

[Docket No. 92F–0504]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of perfluoroalkyl substituted phosphate ester acids, ammonium salts formed by the reaction of 2,2-bis[(γ,ω-perfluoroC_{4-20}alkylthio)methyl]-1,3-propanediol, polyphosphoric acid and ammonium hydroxide as an oil and water repellant for paper and

paperboard intended for use in contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective August 3, 1995 written objections and requests for a hearing by September 5, 1995.

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

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3080.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 12, 1993 (58 FR 8289), FDA announced that a food additive petition (FAP 3B4353) had been filed by Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419–8300. The petition proposed to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of perfluoroalkyl substituted phosphate ester acids, ammonium salts formed by the reaction of 2,2-bis[(γ,ω-perfluoroC_{4-20}alkylthio)methyl]-1,3-propanediol, polyphosphoric acid and ammonium hydroxide as an oil and water repellant for paper and paperboard intended for use in contact with food.

During review of the petition, it was observed that the perfluoro reactant used in the synthesis of the additive was incorrectly described as 2,2-bis[(γ,ω-perfluoroC_{4-20}alkylthio)methyl]-1,3-propanediol. The petitioner was asked to confirm that the correct nomenclature should be 2,2-bis[(γ,ω-perfluoroC_{4-20}alkylthio)methyl]-1,3-propanediol. In their submission of July 20, 1994, the petitioner provided their concurrence with the agency's finding. Therefore, this final rule uses the correct nomenclature.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the additive in paper and paperboard products in contact with non-alcoholic foods is safe. Based on this information, the agency has also concluded that the additive will have the intended technical effect. Therefore, § 176.170 is amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

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

Any person who will be adversely affected by this regulation may at any time on or before September 5, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 379e).

2. Section 176.170 is amended in the table in paragraph (a)(5) by alphabetically adding a new entry under the heading ''List of Substances'' and ''Limitations'' to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of Substances	Limitations
* * * * *	* *
Perfluoroalkyl substituted phosphate ester acids, ammonium salts formed by the reaction of 2,2-bis[(γ,ω-perfluoroC_{4-20}alkylthio) methyl]-1,3-propanediol, polyphosphoric acid and ammonium hydroxide.	For use only as an oil and water repellant at a level not to exceed 0.44 percent perfluoroalkyl actives by weight of the finished paper and paperboard in contact with non-alcoholic foods under condition of use H as described in Table 2 of paragraph (c) of this section
* * * * *	* *

* * * * *

Dated: July 22, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–19094 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 177

[Docket No. 95F–0017]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of diisopropyl xanthogen polysulfide as a component of rubber articles intended for repeated use in contact with food. This action is in response to a petition filed by Robinson Brothers Ltd.

DATES: Effective August 3, 1995; written objections and requests for a hearing by September 5, 1995.

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

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 13, 1995 (60 FR 8243), FDA announced that a food additive petition (FAP 5B4437) had been filed by Robinson Brothers Ltd., Phoenix St., West Bromwich, West Midland, B70 OAH, England. The petition proposed to amend the food additive regulations in § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) to provide for the safe use of diisopropyl xanthogen polysulfide as a component of rubber articles intended for repeated use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use in repeated use food-contact articles is safe, and the regulation in § 177.2600(c)(4)(ii) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

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

Any person who will be adversely affected by this regulation may at any time on or before September 5, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.2600 is amended in paragraphs (c)(4)(ii)(*a*) and (c)(4)(ii)(*b*) by alphabetically adding new entries for ''Diisopropyl xanthogen polysulfide'' to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(*a*) * * *

Diisopropyl xanthogen polysulfide (a 1:2:1 mixture of O,O-di(1-methylethyl)trithio-bis-thioformate, O,O-di(1-methylethyl)tetrathio-bis-thioformate, and O,O-di(1-methylethyl)pentathio-bis-thioformate) for use as a cross linking agent in the vulcanization of natural rubber, styrene-butadiene copolymer, acrylonitrile-butadiene copolymer, and ethylene-propylene terpolymers identified under paragraph (c)(4)(i) of this section and limited to use at levels not to exceed 2.4 percent by weight of such copolymers.

* * * * *

(*b*) * * *

Diisopropyl xanthogen polysulfide (a 1:2:1 mixture of O,O-di(1-methylethyl)trithio-bis-thioformate, O,O-di(1-methylethyl)tetrathio-bis-thioformate, and O,O-di(1-methylethyl)pentathio-bis-thioformate).

* * * * *

Dated: July 22, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–19092 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 178

[Docket No. 94F–0423]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 4-chloro-2-[[5-hydroxy-3-methyl-1-(3-sulfophenyl)-1H-pyrazol-4-yl]azo]-5-methylbenzenesulfonic acid, calcium salt (1:1) (C. I. Pigment Yellow 191) as a colorant for all polymers intended for use in contact with food. This action is in response to a petition filed by Hoechst Celanese Corp.

DATES: Effective August 3, 1995; ; written objections and request for a hearing by September 5, 1995.

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

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 29, 1994 (59 FR 67301), FDA announced that a food additive petition (FAP 5B4441) had been filed by Hoechst Celanese Corp., 500 Washington St., Coventry, RI 02816. The petition proposed to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of benzenesulfonic acid, 4-chloro-2-[[5-hydroxy-3-methyl-1-(3-sulfophenyl)-1H-pyrazol-4-yl]azo]-5-methyl-,calcium salt (1:1) (C. I. Pigment Yellow 191) as a colorant in all polymers intended for use in contact with food. In this final rule the agency is using the alternative name 4-chloro-2-[[5-hydroxy-3-methyl-1-(3-sulfophenyl)-1H-pyrazol-4-yl]azo]-5-methylbenezenesulfonic acid, calcium salt (1:1) (C. I. Pigment Yellow 191).

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that the regulations in § 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

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

Any person who will be adversely affected by this regulation may at any time on or before September 5, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3297 is amended in the table in paragraph (e) by alphabetically adding a new entry under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
* * * * * * *	
4-Chloro-2-[[5-hydroxy-3-methyl-1-(3-sulfophenyl)-1H-pyrazol-4-yl]azo]-5-methylbenzenesulfonic acid,calcium salt (1:1); (C. I. Pigment Yellow 191, CAS Reg. No. 129423–54–7).	For use at levels not to exceed 0.3 percent by weight of the finished polymers. The finished articles are to contact food only under conditions of use B through H as described in Table 2 of § 176.170(c) of this chapter.
* * * * * * *	

Dated: July 22, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–19093 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8606]

RIN 1545–AR64

Definition of Qualified Electric Vehicle, and Recapture Rules for Qualified Electric Vehicles, Qualified Clean-fuel Vehicle Property, and Qualified Clean-fuel Vehicle Refueling Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on the definition of a qualified electric vehicle, the recapture of any credit allowable for a qualified electric vehicle, and the recapture of any deduction allowable for qualified clean-fuel vehicle property or qualified clean-fuel vehicle refueling property. These regulations reflect changes to the law made by the Energy Policy Act of 1992 and affect taxpayers who are owners of qualified electric vehicles, clean-fuel vehicles, and clean-fuel vehicle refueling property.

DATES: These regulations are effective August 3, 1995.

For dates of applicability of these regulations, see § 1.30–1(c) and § 1.179A–1(h).

FOR FURTHER INFORMATION CONTACT: Joanne E. Johnson at (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 14, 1994, the IRS published in the **Federal Register** a notice of proposed rulemaking providing the definition of a qualified electric vehicle under section 30(c) and the rules for the recapture of the section 30 credit and section 179A deduction under sections 30(d)(2) and 179A(e)(4), respectively (59 FR 52105).

Written comments responding to the notice were received. No public hearing was requested or held. After consideration of all the comments, this Treasury decision adopts the regulations as proposed.

Explanation of Provisions

In General

The final regulations define a qualified electric vehicle for purposes of section 30 of the Internal Revenue Code (Code). Several commentators recommended expanding the definition to include a vehicle converted from a used non-electric vehicle. The final regulations do not adopt this recommendation because section 30(c)(1)(B) provides that the original use of the vehicle must commence with the taxpayer. Moreover, conversion costs are deductible under section 179A.

Some commentators suggested including a hybrid-electric vehicle in the definition of a qualified electric vehicle. This issue will be addressed along with other substantive rules in additional proposed regulations under sections 30 and 179A of the Code.

Effective Date

The final regulations are effective on October 14, 1994. If the recapture date is before the effective date of these regulations, a taxpayer may use any reasonable method to recapture the benefit of any section 30 credit allowable or section 179A deduction allowable consistent with sections 30 and 179A and their legislative history.

Special Analyses

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

Drafting Information

The principal author of these regulations is Joanne E. Johnson, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.30–1 also issued under 26 U.S.C. 30(d)(2) * * *

Section 1.179A–1 also issued under 26 U.S.C. 179A(e)(4) * * *

Par. 2. Section 1.30–1 is added immediately following the undesignated center heading ''Credits Allowable'' to read as follows:

§ 1.30–1 Definition of qualified electric vehicle and recapture of credit for qualified electric vehicle.

(a) *Definition of qualified electric vehicle.* A qualified electric vehicle is a

motor vehicle that meets the requirements of section 30(c). Accordingly, a qualified electric vehicle does not include any motor vehicle that has ever been used (for either personal or business use) as a non-electric vehicle.

(b) *Recapture of credit for qualified electric vehicle*—(1) *In general*—(i) *Addition to tax.* If a recapture event occurs with respect to a taxpayer's qualified electric vehicle, the taxpayer must add the recapture amount to the amount of tax due in the taxable year in which the recapture event occurs. The recapture amount is not treated as income tax imposed on the taxpayer by chapter 1 of the Internal Revenue Code for purposes of computing the alternative minimum tax or determining the amount of any other allowable credits for the taxable year in which the recapture event occurs.

(ii) *Reduction of carryover.* If a recapture event occurs with respect to a taxpayer's qualified electric vehicle, and if a portion of the section 30 credit for the cost of that vehicle was disallowed under section 30(b)(3)(B) and consequently added to the taxpayer's minimum tax credit pursuant to section 53(d)(1)(B)(iii), the taxpayer must reduce its minimum tax credit carryover by an amount equal to the portion of any minimum tax credit carryover attributable to the disallowed section 30 credit, multiplied by the recapture percentage for the taxable year of recapture. Similarly, the taxpayer must reduce any other credit carryover amounts (such as under section 469) by the portion of the carryover attributable to section 30, multiplied by the recapture percentage.

(2) *Recapture event*—(i) *In general.* A recapture event occurs if, within 3 full years from the date a qualified electric vehicle is placed in service, the vehicle ceases to be a qualified electric vehicle. A vehicle ceases to be a qualified electric vehicle if—

(A) The vehicle is modified so that it is no longer primarily powered by electricity;

(B) The vehicle is used in a manner described in section 50(b); or

(C) The taxpayer receiving the credit under section 30 sells or disposes of the vehicle and knows or has reason to know that the vehicle will be used in a manner described in paragraph (b)(2)(i)(A) or (B) of this section.

(ii) *Exception for disposition.* Except as provided in paragraph (b)(2)(i)(C) of this section, a sale or other disposition (including a disposition by reason of an accident or other casualty) of a qualified electric vehicle is not a recapture event.

(3) *Recapture amount.* The recapture amount is equal to the recapture percentage times the decrease in the credits allowed under section 30 for all prior taxable years that would have resulted solely from reducing to zero the cost taken into account under section 30 with respect to such vehicle, including any credits allowed attributable to section 30 (such as under sections 53 and 469).

(4) *Recapture date.* The recapture date is the actual date of the recapture event unless a recapture event described in paragraph (b)(2)(i)(B) of this section occurs, in which case the recapture date is the first day of the recapture year.

(5) *Recapture percentage.* For purposes of this section, the recapture percentage is—

(i) 100, if the recapture date is within the first full year after the date the vehicle is placed in service;

(ii) 66 ⅔, if the recapture date is within the second full year after the date the vehicle is placed in service; or

(iii) 33 ⅓, if the recapture date is within the third full year after the date the vehicle is placed in service.

(6) *Basis adjustment.* As of the first day of the taxable year in which the recapture event occurs, the basis of the qualified electric vehicle is increased by the recapture amount and the carryover reductions taken into account under paragraphs (b)(1)(i) and (ii) of this section, respectively. For a vehicle that is of a character that is subject to an allowance for depreciation, this increase in basis is recoverable over the remaining recovery period for the vehicle beginning as of the first day of the taxable year of recapture.

(7) *Application of section 1245 for sales and other dispositions.* For purposes of section 1245, the amount of the credit allowable under section 30(a) with respect to any qualified electric vehicle that is (or has been) of a character subject to an allowance for depreciation is treated as a deduction allowed for depreciation under section 167. Therefore, upon a sale or other disposition of a depreciable qualified electric vehicle, section 1245 will apply to any gain recognized to the extent the basis of the depreciable vehicle was reduced under section 30(d)(1) net of any basis increase described in paragraph (b)(6) of this section.

(8) *Examples.* The following examples illustrate the provisions of this section:

Example 1. A, a calendar-year taxpayer, purchases and places in service for personal use on January 1, 1995, a qualified electric vehicle costing $25,000. On A's 1995 federal income tax return, A claims a credit of $2,500. On January 2, 1996, A sells the vehicle to an unrelated third party who subsequently converts the vehicle into a non-electric vehicle on October 15, 1996. There is no recapture upon the sale of the vehicle by A provided A did not know or have reason to know that the purchaser intended to convert the vehicle to non-electric use.

Example 2. B, a calendar-year taxpayer, purchases and places in service for personal use on October 11, 1994, a qualified electric vehicle costing $20,000. On B's 1994 federal income tax return, B claims a credit of $2,000, which reduces B's tax by $2,000. The basis of the vehicle is reduced to $18,000 ($20,000 − $2,000). On March 8, 1996, B sells the vehicle to a tax-exempt entity. Because B knowingly sold the vehicle to a tax-exempt entity described in section 50(b) in the second full year from the date the vehicle was placed in service, B must recapture $1,333 ($2,000×66 ⅔ percent). This recapture amount increases B's tax by $1,333 on B's 1996 federal income tax return and is added to the basis of the vehicle as of January 1, 1996, the beginning of the taxable year in which the recapture event occurred.

Example 3. X, a calendar-year taxpayer, purchases and places in service for business use on January 1, 1994, a qualified electric vehicle costing $30,000. On X's 1994 federal income tax return, X claims a credit of $3,000, which reduces X's tax by $3,000. The basis of the vehicle is reduced to $27,000 ($30,000 − $3,000) prior to any adjustments for depreciation. On March 8, 1995, X converts the qualified electric vehicle into a gasoline-propelled vehicle. Because X modified the vehicle so that it is no longer primarily powered by electricity in the second full year from the date the vehicle was placed in service, X must recapture $2,000 ($3,000 × 66⅔ percent). This recapture amount increases X's tax by $2,000 on X's 1995 federal income tax return. The recapture amount of $2,000 is added to the basis of the vehicle as of January 1, 1995, the beginning of the taxable year of recapture, and to the extent the property remains depreciable, the adjusted basis is recoverable over the remaining recovery period.

Example 4. The facts are the same as in *Example 3.* In 1996, X sells the vehicle for $31,000, recognizing a gain from this sale. Under paragraph (b)(7) of this section, section 1245 will apply to any gain recognized on the sale of a depreciable vehicle to the extent the basis of the vehicle was reduced by the section 30 credit net of any basis increase from recapture of the section 30 credit. Accordingly, the gain from the sale of the vehicle is subject to section 1245 to the extent of the depreciation allowance for the vehicle plus the credit allowed under section 30 ($3,000), less the previous recapture amount ($2,000). Any remaining amount of gain may be subject to other applicable provisions of the Internal Revenue Code.

(c) *Effective date.* This section is effective on October 14, 1994. If the recapture date is before the effective date of this section, a taxpayer may use any reasonable method to recapture the benefit of any credit allowable under section 30(a) consistent with section 30 and its legislative history. For this

purpose, the recapture date is defined in paragraph (b)(4) of this section.

Par. 3. Section 1.179A–1 is added to read as follows:

§ 1.179A–1 Recapture of deduction for qualified clean-fuel vehicle property and qualified clean-fuel vehicle refueling property.

(a) *In general.* If a recapture event occurs with respect to a taxpayer's qualified clean-fuel vehicle property or qualified clean-fuel vehicle refueling property, the taxpayer must include the recapture amount in taxable income for the taxable year in which the recapture event occurs.

(b) *Recapture event*—(1) *Qualified clean-fuel vehicle property*—(i) *In general.* A recapture event occurs if, within 3 full years from the date a vehicle of which qualified clean-fuel vehicle property is a part is placed in service, the property ceases to be qualified clean-fuel vehicle property. Property ceases to be qualified clean-fuel vehicle property if—

(A) The vehicle is modified by the taxpayer so that it may no longer be propelled by a clean-burning fuel;

(B) The vehicle is used by the taxpayer in a manner described in section 50(b);

(C) The vehicle otherwise ceases to qualify as property defined in section 179A(c); or

(D) The taxpayer receiving the deduction under section 179A sells or disposes of the vehicle and knows or has reason to know that the vehicle will be used in a manner described in paragraph (b)(1)(i) (A), (B), or (C) of this section.

(ii) *Exception for disposition.* Except as provided in paragraph (b)(1)(i)(D) of this section, a sale or other disposition (including a disposition by reason of an accident or other casualty) of qualified clean-fuel vehicle property is not a recapture event.

(2) *Qualified clean-fuel vehicle refueling property*—(i) *In general.* A recapture event occurs if, at any time before the end of its recovery period, the property ceases to be qualified clean-fuel vehicle refueling property. Property ceases to be qualified clean-fuel vehicle refueling property if—

(A) The property no longer qualifies as property described in section 179A(d);

(B) The property is no longer used predominantly in a trade or business (property will be treated as no longer used predominantly in a trade or business if 50 percent or more of the use of the property in a taxable year is for use other than in a trade or business);

(C) The property is used by the taxpayer in a manner described in section 50(b); or

(D) The taxpayer receiving the deduction under section 179A sells or disposes of the property and knows or has reason to know that the property will be used in a manner described in paragraph (b)(2)(i) (A), (B), or (C) of this section.

(ii) *Exception for disposition.* Except as provided in paragraph (b)(2)(i)(D) of this section, a sale or other disposition (including a disposition by reason of an accident or other casualty) of qualified clean-fuel vehicle refueling property is not a recapture event.

(c) *Recapture date*—(1) *Qualified clean-fuel vehicle property.* The recapture date is the actual date of the recapture event unless an event described in paragraph (b)(1)(i)(B) of this section occurs, in which case the recapture date is the first day of the recapture year.

(2) *Qualified clean-fuel vehicle refueling property.* The recapture date is the actual date of the recapture event unless the recapture occurs as a result of an event described in paragraph (b)(2)(i) (B) or (C) of this section, in which case the recapture date is the first day of the recapture year.

(d) *Recapture amount*—(1) *Qualified clean-fuel vehicle property.* The recapture amount is equal to the benefit of the section 179A deduction allowable multiplied by the recapture percentage. The recapture percentage is—

(i) 100, if the recapture date is within the first full year after the date the vehicle is placed in service;

(ii) 66⅔, if the recapture date is within the second full year after the date the vehicle is placed in service; or

(iii) 33⅓, if the recapture date is within the third full year after the date the vehicle is placed in service.

(2) *Qualified clean-fuel vehicle refueling property.* The recapture amount is equal to the benefit of the section 179A deduction allowable multiplied by the following fraction. The numerator of the fraction equals the total recovery period for the property minus the number of recovery years prior to, but not including, the recapture year. The denominator of the fraction equals the total recovery period.

(e) *Basis adjustment.* As of the first day of the taxable year in which the recapture event occurs, the basis of the vehicle of which qualified clean-fuel vehicle property is a part or the basis of qualified clean-fuel vehicle refueling property is increased by the recapture amount. For a vehicle or refueling property that is of a character that is subject to an allowance for depreciation, this increase in basis is recoverable over its remaining recovery period beginning as of the first day of the taxable year in which the recapture event occurs.

(f) *Application of section 1245 for sales and other dispositions.* For purposes of section 1245, the amount of the deduction allowable under section 179A(a) with respect to any property that is (or has been) of a character subject to an allowance for depreciation is treated as a deduction allowed for depreciation under section 167. Therefore, upon a sale or other disposition of depreciable qualified clean-fuel vehicle refueling property or a depreciable vehicle of which qualified clean-fuel vehicle property is a part, section 1245 will apply to any gain recognized to the extent the basis of the depreciable property or vehicle was reduced under section 179A(e)(6) net of any basis increase described in paragraph (e) of this section.

(g) *Examples.* The following examples illustrate the provisions of this section:

Example 1. A, a calendar-year taxpayer, purchases and places in service for personal use on January 1, 1995, a clean-fuel vehicle, a portion of which is qualified clean-fuel vehicle property, costing $25,000. The qualified clean-fuel vehicle property costs $11,000. On A's 1995 federal income tax return, A claims a section 179A deduction of $2,000. On January 2, 1996, A sells the vehicle to an unrelated third party who subsequently converts the vehicle into a gasoline-propelled vehicle on October 15, 1996. There is no recapture upon the sale of the vehicle by A provided A did not know or have reason to know that the purchaser intended to convert the vehicle to a gasoline-propelled vehicle.

Example 2. B, a calendar-year taxpayer, purchases and places in service for personal use on October 11, 1994, a clean-fuel vehicle costing $20,000, a portion of which is qualified clean-fuel vehicle property. The qualified clean-fuel vehicle property costs $10,000. On B's 1994 federal income tax return, B claims a deduction of $2,000, which reduces B's gross income by $2,000. The basis of the vehicle is reduced to $18,000 ($20,000 − $2,000). On January 31, 1996, B sells the vehicle to a tax-exempt entity. Because B knowingly sold the vehicle to a tax-exempt entity described in section 50(b) in the second full year from the date the vehicle was placed in service, B must recapture $1,333 ($2,000 × 66⅔ percent). This recapture amount increases B's gross income by $1,333 on B's 1996 federal income tax return and is added to the basis of the motor vehicle as of January 1, 1996, the beginning of the taxable year of recapture.

Example 3. X, a calendar-year taxpayer, purchases and places in service for its business use on January 1, 1994, qualified clean-fuel vehicle refueling property costing $400,000. Assume this property has a 5-year recovery period. On X's 1994 federal income tax return, X claims a deduction of $100,000, which reduces X's gross income by $100,000.

The basis of the property is reduced to $300,000 ($400,000 − $100,000) prior to any adjustments for depreciation. In 1996, more than 50 percent of the use of the property is other than in X's trade or business.

Because the property is no longer used predominantly in X's business, X must recapture three-fifths of the section 179A deduction or $60,000 ($100,000×(5–2)/5 = $60,000) and include that amount in gross income on its 1996 federal income tax return. The recapture amount of $60,000 is added to the basis of the property as of January 1, 1996, the beginning of the taxable year of recapture, and to the extent the property remains depreciable, the adjusted basis is recoverable over the remaining recovery period.

Example 4. X, a calendar-year taxpayer, purchases and places in service for business use on January 1, 1994, qualified clean-fuel vehicle refueling property costing $350,000. Assume this property has a 5-year recovery period. On X's 1994 federal income tax return, X claims a deduction of $100,000, which reduces X's gross income by $100,000. The basis of the property is reduced to $250,000 ($350,000 − $100,000) prior to any adjustments for depreciation. In 1995, X converts the property to store and dispense gasoline. Because the property is no longer used as qualified clean-fuel vehicle refueling property in 1995, X must recapture four-fifths of the section 179A deduction or $80,000 ($100,000×(5–1)/5 = $80,000) and include that amount in gross income on its 1995 federal income tax return. The recapture amount of $80,000 is added to the basis of the property as of January 1, 1995, the beginning of the taxable year of recapture, and to the extent the property remains depreciable, the adjusted basis is recoverable over the remaining recovery period.

Example 5. The facts are the same as in *Example 4.* In 1996, X sells the refueling property for $351,000, recognizing a gain from this sale. Under paragraph (f) of this section, section 1245 will apply to any gain recognized on the sale of depreciable property to the extent the basis of the property was reduced by the section 179A deduction net of any basis increase from recapture of the section 179A deduction. Accordingly, the gain from the sale of the property is subject to section 1245 to the extent of the depreciation allowance for the property plus the deduction allowed under section 179A ($100,000), less the previous recapture amount ($80,000). Any remaining amount of gain may be subject to other applicable provisions of the Internal Revenue Code.

(h) *Effective date.* This section is effective on October 14, 1994. If the recapture date is before the effective date of this section, a taxpayer may use any reasonable method to recapture the benefit of any deduction allowable under section 179A(a) consistent with section 179A and its legislative history. For this purpose, the recapture date is defined in paragraph (c) of this section.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: June 21, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–19028 Filed 8–2–95; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 301

[TD 8605]

RIN 1545–AE30

Presumptions Where Owner of Large Amount of Cash is not Identified

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations regarding the presumptions that arise where the owner of a large amount of cash or its equivalent is not identified. The final regulations reflect changes to the law made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Technical and Miscellaneous Revenue Act of 1988, and incorporate the rules of current § 301.6867–1T, relating to cash, cash equivalents, specific cash equivalents and the value of cash equivalents. In addition, several new items have been added to the list of specific cash equivalents. The final regulations affect individuals who are found in possession of a large amount of cash or its equivalent and the true owners of that cash or its equivalent.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, (202) 622–3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6867 of the Internal Revenue Code of 1986 (Code). The regulations reflect the enactment of section 6867 by section 330(a) of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248), and the amendment made by section 1001(a)(1) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647).

The IRS published a notice of proposed rulemaking in the **Federal Register** on September 29, 1994, (59 FR 49613) providing proposed rules under section 6867 of the Code. No written comments were received. No public hearing was requested or held. In most respects, the final regulations are identical to the proposed regulations. The final regulations, however, do not contain those provisions of the proposed regulations that had permitted a possessor of cash, solely in that person's capacity as possessor of cash, to bring a suit for refund in the district court after the deficiency had been collected.

Explanation of Provisions

Section 330(a) of the Tax Equity and Fiscal Responsibility Act of 1982 amended the Code by adding section 6867, designed to be used in making jeopardy or termination assessments, as appropriate, when there is no known owner of large amounts of cash. Section 6867 provides that if an individual in physical possession of cash in excess of $10,000 does not claim the cash as belonging to that individual or as belonging to another person whose identity is readily ascertainable and who acknowledges ownership of the cash to the IRS, it is presumed that the cash represents gross income of a single individual for the taxable year in which the possession occurs and that the collection of tax will be jeopardized by delay. Section 6867, as originally enacted, made the entire amount of the cash subject to a 50 percent tax rate. Section 1001(a)(1) of the Technical and Miscellaneous Revenue Act of 1988 amended section 6867, effective for taxable years beginning after December 31, 1986, to provide that the tax rate is to be the highest rate of tax for an individual specified in section 1.

Under section 6867, the possessor of cash is treated (solely with respect to the cash) as the taxpayer for the purposes of chapters 63 and 64 of the Code, relating to assessment and collection, and for the purposes of section 7429(a)(1), entitling that individual to a written statement of information concerning the assessment provided for by that section. Because section 6867 does not treat the possessor as the taxpayer for the purposes of sections 7429(a)(2) and 7429(b), relating to administrative and judicial review of termination and jeopardy assessments, the proposed regulations do not permit the possessor of cash to maintain an action under section 7429 for such review. In addition, because section 7422, relating to civil actions for refund, is in chapter 76B and other provisions dealing with refunds are contained in chapter 65 and not chapters 63 or 64 of the Code, a possessor of cash, solely in that person's capacity as possessor of cash, may not institute a suit for refund

in district court after the deficiency has been collected. This in no way diminishes the right of the possessor of cash to petition the United States Tax Court to challenge the notice of deficiency issued to the possessor solely in that person's capacity as possessor of cash.

The true owner of cash may maintain an action under section 7429 for administrative and judicial review of the deficiency notice issued to the possessor. However, the true owner may only institute the section 7429 action concerning the notice of deficiency issued to the possessor by making a request for review within 30 days from the date the possessor is given the written statement of information required under section 7429(a)(1). After the deficiency asserted against the possessor of cash has been levied upon, the true owner of cash may bring an action in federal district court, within the time frame specified in section 6532(c), to recover the cash, as provided in section 7426, relating to civil actions by persons other than taxpayers. In addition, the true owner of cash, with the permission of the court, may appear before the United States Tax Court in any proceeding that may be filed by the possessor of the cash challenging the notice of deficiency issued to the possessor as possessor of the cash.

Section 301.6867–1(f) of the final regulations incorporates the definitions contained in § 301.6867–1T, relating to cash, cash equivalents, specific cash equivalents and the value of cash equivalents. In addition, several other items have been identified and added to the list of specific cash equivalents. Section 301.6867–1T will be removed on August 3, 1995.

Special Analyses

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

Drafting Information

The principal author of these regulations is Jerome D. Sekula, Office of Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in their development.

Lists of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6867–1 is added to read as follows:

§ 301.6867–1 Presumptions where owner of large amount of cash is not identified.

(a) *General rule.* For purposes of section 6851 (relating to termination assessments) and section 6861 (relating to jeopardy assessments), if cash in excess of $10,000 is found in the physical possession of an individual who does not claim either ownership of that cash or ownership by some other person whose identity the Commissioner can readily ascertain and who acknowledges ownership of that cash as of the date the cash was found, then, it shall be presumed that—

(1) The cash represents gross income of an unknown single individual; and

(2) That the collection of tax on that income will be jeopardized by delay.

(b) *Rules for assessment.* The Commissioner may make an assessment pursuant to section 6851 or section 6861, as appropriate, using the rules for assessment specified in this paragraph. In the case of any assessment resulting from the application of paragraph (a) of this section—

(1) The entire amount of cash is treated as taxable income for the taxable year in which the cash is found;

(2) The income is treated as taxable at the highest rate of tax specified in section 1 of the Internal Revenue Code; and

(3) Except as provided in paragraph (c), the possessor of the cash is treated (solely with respect to that cash) as the taxpayer for purposes of chapters 63 and 64 and section 7429(a)(1) of the Internal Revenue Code.

(c) *Effect of later substitution of true owner*—(1) *In general.* If an assessment resulting from the application of paragraph (a) of this section is later abated and replaced by an assessment against the true owner of the cash, the later assessment is treated for purposes of all laws relating to lien, levy, and collection as relating back to the date of the original assessment. Notwithstanding the preceding sentence, any notice and review provided for by section 7429 and the notice of deficiency issued to the true owner relative to the later assessment are to be made within the prescribed time limits, using the actual date of the later assessment against the true owner.

(2) *Example.* The provisions of paragraph (c)(1) of this section may be illustrated by the following example:

Example. On June 5, 1994, A is found in possession of a bag, containing $200,000, which A claims he was holding for a friend whose name A cannot remember. Because A does not claim ownership of the cash and does not provide the name of the true owner so that the Commissioner can identify the true owner and have that person acknowledge ownership of the cash, it is presumed that the cash represents gross income of an individual for calendar year 1994, and that the collection of tax on that gross income will be jeopardized by delay. Accordingly, on June 17, 1994, a termination assessment under section 6851 is made against A, in his capacity as possessor of the cash. On June 21, 1994, the written statement of information provided for by section 7429(a)(1) is given to A. No request for review under section 7429(a)(2) is made by the true owner within 30 days after the day on which A was furnished the written statement provided for in section 7429(a)(1). Subsequently, individual B comes to the Service and states that he is the owner of the cash. On September 2, 1994, the Service determines that B was the true owner of the cash on June 5, 1994. On September 9, 1994, the Service abates the termination assessment made against A solely as possessor of cash and, after determining that jeopardy exists, replaces it with a termination assessment under section 6851 against B. The lien against B that arises under section 6321 is treated as arising on June 17, 1994. However, within 5 days after September 9, 1994, the Service must give B the written statement of information required by section 7429(a)(1) so that B can make a request for review under section 7429(a)(2). In addition, a notice of deficiency must be sent to B within 60 days after the later of the due date or the actual filing of B's tax return for 1994, as required by section 6851(b).

(d) *Rights of possessor of cash*—(1) *Action permitted.* Section 6867 provides that the possessor of cash is treated as the taxpayer for purposes of chapter 63 (relating to assessment) and chapter 64 (relating to collection) of the Internal Revenue Code. Accordingly, the possessor of cash may file a petition with the United States Tax Court, within the applicable time limits,

challenging the notice of deficiency issued to the possessor solely in that person's capacity as possessor of cash.

(2) *Actions not permitted.* Section 6867 provides that the possessor of cash is treated as the taxpayer solely for purposes of section 7429(a)(1), and is entitled to the written statement of information provided for by that section. The possessor of cash is not treated as the taxpayer for purposes of sections 7429(a)(2) and 7429(b), relating to administrative and judicial review of termination and jeopardy assessments, and may not maintain an action under section 7429 for such review. The possessor of cash is not treated as the taxpayer for purposes of section 7422, relating to civil actions for refund, or chapter 65 of the Internal Revenue Code, relating to abatements, credits, and refunds, and may not institute a suit for refund in district court after the deficiency has been collected.

(e) *Rights of true owner of cash*—(1) *Actions permitted.* The true owner of cash may request administrative review under section 7429(a)(2) and may maintain a civil action under section 7429(b) for judicial review of an assessment under section 6851 or section 6861 made against the possessor solely in that person's capacity as possessor of cash. Such an action, however, must be preceded by a request for review under section 7429(a)(2) made by the true owner within 30 days after the day on which the possessor is furnished the written statement provided for in section 7429(a)(1). In addition, after the deficiency asserted against the possessor of cash has been levied upon, the true owner of cash may bring an action in federal district court to recover the cash, as provided in section 7426, relating to civil actions by persons other than taxpayers. See, however, section 6532(c), relating to the 9-month statute of limitations for suits under section 7426. In addition, the true owner of cash, with the permission of the court, may appear before the United States Tax Court in any proceeding that may be filed by the possessor of the cash challenging the notice of deficiency issued to the possessor solely in that person's capacity as possessor of the cash.

(2) *Actions not permitted.* The true owner of cash may not file a petition with the United States Tax Court challenging the notice of deficiency issued to the possessor solely in that person's capacity as possessor of cash. Notwithstanding the preceding sentence, the true owner of cash may file a petition with the United States Tax Court challenging any notice of deficiency issued to the true owner following the abatement of the assessment made against the possessor of cash.

(f) *Definitions.* For the purposes of this section and section 6867—

(1) *Cash.* The term *cash* includes any cash equivalents.

(2) *Cash equivalent*—(i) *In general.* The term *cash* equivalent includes foreign currency, any bearer obligation, and any medium of exchange that is of a type that has been frequently used in illegal activities, as listed in paragraph (f)(2)(ii) of this section.

(ii) *Specific cash equivalents.* For purposes of paragraph (f)(2)(i), the following are also cash equivalents—

(A) Coins;

(B) Precious metals;

(C) Jewelry;

(D) Precious stones;

(E) Postage stamps;

(F) Traveler's checks in any form;

(G) Negotiable instruments (including personal checks, business checks, official bank checks, cashier's checks, notes, and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery;

(H) Incomplete instruments (including personal checks, business checks, official bank checks, cashier's checks, notes, and money orders) signed but with the payee's name omitted; and

(I) Securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery.

(iii) *Value of cash equivalents.* A cash equivalent is taken into account at its fair market value except in the case of a bearer obligation, in which case it is taken into account at its face value.

(3) *Possessor of cash.* An individual is considered to be the possessor of cash if the cash is found on that individual's person or in that individual's possession or is found in any object, container, vehicle, or area under that individual's custody or control.

(4) *True owner of the cash.* The true owner of cash is the individual who beneficially owns the cash on the date such cash is found in the physical possession of the individual described in paragraph (f)(3) of this section. An agent, bailee, or other custodian of the cash is not the true owner of cash. A true owner of cash does not include an individual who, subsequent to the date on which the cash is found in the physical possession of the individual described in paragraph (f)(3) of this section, obtains ownership of the cash by purchase, subrogation, descent, or other means.

(g) *Effective date.* This section is effective with respect to cash found in the physical possession of an individual on or after August 3, 1995.

§ 301.6867–1T [Removed]

Par. 3. Section 301.6867–1T is removed.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: June 29, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–18888 Filed 8–2–95; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 712

[OPPTS–82046B; FRL–4970–4]

Toxic Substances; Preliminary Assessment Information Rule Reporting; Response to Comment on the Listing of Isobutyl Alcohol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to 40 CFR 712.30(c) of the Toxic Substances Control Act (TSCA) Section 8(a) Preliminary Assessment Information Rule (PAIR), EPA is revising its decision to add isobutyl alcohol (CAS No. 78–83–1) to the PAIR and is withdrawing it from a final rule published in the **Federal Register** of July 5, 1995.

EFFECTIVE DATE: This rule is effective on August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Office (7408), Office of Pollution Prevention and Toxics, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of this Action

EPA issued a final rule adding isobutyl alcohol, among other chemical substances, to the TSCA section 8(a) PAIR (40 CFR part 712), which was published in the **Federal Register** of July 5, 1995 (60 FR 34879). The PAIR provides that chemical substances, mixtures, and categories added by the Interagency Testing Committee to the TSCA section 4(e) Priority List, for testing by the Agency, will be added to the PAIR 30 days after EPA publishes in the **Federal Register** a rule amendment listing these chemical substances, mixtures, or categories. The PAIR also

provides that EPA may withdraw substances from the rule, for good cause, prior to the effective date of a substance's listing (40 CFR 712.30(c)).

On July 19, 1995, EPA received a letter from the Oxo Process Panel of the Chemical Manufacturers Association requesting that EPA remove isobutyl alcohol from the PAIR. In the letter, several recent and ongoing activities covering isobutyl alcohol were identified as alternate sources for use and exposure data, including a recent TSCA section 4 rulemaking action (Neurotoxicity Test Rule (58 FR 40262, July 27, 1993) and Testing Consent Order Incorporating Enforceable Consent Agreement (60 FR 4516, January 23, 1995)), and the development of a dossier under the Organization for Economic Cooperation and Development's Screening Information Data Set program. The Oxo Process Panel argued that the data generated or collected as part of these other activities make it unnecessary for the Agency to add isobutyl alcohol to the PAIR.

EPA agrees that information on isobutyl alcohol substantially similar to that which would be required under the PAIR is already or will soon be available. For this reason, EPA is revising its decision to add isobutyl alcohol to the PAIR and withdrawing it from the rule.

II. Analyses Under E.O. 12866, the Unfunded Mandates Act of 1995, the Regulatory Flexibility Act, and the Paperwork Reduction Act

Because this action reduces certain pending requirements, this action is not ''significant'' within the meaning of Executive Order 12866 (58 FR 51735, October 4, 1993), and does not impose any Federal mandate on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reasons, pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), it has been determined that this action will not have a significant economic impact on a significant number of small entities. Additionally, the information collection requirements associated with the PAIR have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, and have been assigned OMB control number 2070–0054. EPA has determined that this rule eliminates certain pending recordkeeping and reporting requirements.

III. Rulemaking Record

The following documents constitute the record for this action (docket control number OPPTS–82046B. These documents are available to the public in the TSCA Nonconfidential Information Center (NCIC), formerly the TSCA Public Docket Office, from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA Headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

1. This final rule.
2. The final rule adding isobutyl alcohol to the PAIR (60 FR 34979, July 5, 1995).
3. Letter dated July 19, 1995, from Dr. Langley A. Sperlock, Vice President, CHEMSTAR, Chemical Manufacturers Association, to Susan B. Hazen, Director, Environmental Assistance Division.

List of Subjects in 40 CFR Part 712

Environmental protection, Chemicals, Hazardous substances, Health and safety data, Reporting and recordkeeping requirements.

Dated: August 1, 1995.

Denise M. Keehner,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 712 is amended as follows:

1. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

§ 712.30 [Amended]

2. As added in the issue of July 5, 1995, page 34879, in § 712.30(e), under the category OSHA Chemicals in Need of Dermal Absorption Testing, the entire CAS No. entry for 78–83–1 is withdrawn.

[FR Doc. 95–19236 Filed 8–2–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7149

[CA–940–5700–00; CACA 29517]

Withdrawal of National Forest System Land for the Traverse Creek Botanical Special Interest Area; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 270 acres of National Forest System land from mining for a period of 50 years to protect the Traverse Creek Botanical Special Interest Area. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916–979–2858.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Forest Service's Traverse Creek Botanical Special Interest Area:

Mount Diablo Meridian

Eldorado National Forest

T. 12 N., R. 10 E.,
Sec. 24, lot 2, NW¼NW¼, S½NW¼, N½SW¼, E½SW¼SW¼, and SE¼SW¼.

The area described contains 270 acres in El Dorado County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: July 25, 1995.

Bonnie R. Cohen,

Assistant Secretary of the Interior.

[FR Doc. 95–19043 Filed 8–2–95; 8:45 am]

BILLING CODE 4310–40–P

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43 CFR Public Land Order 7150

[AK–932–1410–00; F–14223]

Modification of Public Land Order No. 5150, as Amended, for Conveyance of Land to the State of Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies a public land order insofar as it affects approximately 3,840 acres of public land located near Jarvis Creek, which is a portion of an area withdrawn for use as a utility and transportation corridor.

The action allows the State of Alaska's existing application for selection to attach, and classifies the land as suitable for conveyance of the land to the State, if such land is otherwise available. Any land described herein that is not conveyed to the State will continue to be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Sections 17(c), 17(d)(1), and 22(h)(4) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(c), 1616(d)(1), and 1621(h)(4) (1988), and by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 5150, as amended, which withdrew public lands as a utility and transportation corridor, is hereby modified to allow conveyance of the following described land to the State of Alaska:

Fairbanks Meridian

T. 15 S., R. 10 E. (Partly Surveyed),
Sec. 1, 2, 3, 10, 11, and 12.

The area described contains approximately 3,840 acres.

2. Subject to valid existing rights, the land described above is hereby classified as suitable for conveyance to the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988), or Section 906(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(b) (1988).

3. The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. If not conveyed to the State, the land will continue to be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

Dated: July 25, 1995.

Bonnie R. Cohen,

Assistant Secretary of the Interior.

[FR Doc. 95–19045 Filed 8–2–95; 8:45 am]

BILLING CODE 4310–JA–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 1

[DA 95–1617]

Interactive Video and Data Service (IVDS) Licenses—Clarification of ''Grace Period'' Rule for IVDS ''Auction'' Licensees Paying by Installment Payments

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: The staff of the Wireless Telecommunications Bureau of the Commission has clarified the ''grace period'' rule concerning installment payments for IVDS licenses won at auction.

EFFECTIVE DATE: June 26, 1995.

FOR FURTHER INFORMATION CONTACT: Joy Alford, Wireless Telecommunications Bureau, (202) 418–0680.

SUPPLEMENTARY INFORMATION: The following is the full text of the *Public Notice,* DA 95–1617, which was released June 26, 1995. The text may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Released: June 26, 1995.

Wireless Telecommunications Bureau Staff Clarifies ''Grace Period'' Rule for IVSD ''Auction'' Licensees Paying by Installment Payments

Section 1.2110(e) of the Commission's auction rules, 47 CFR 1.2110(e), provides that in the event a licensee defaults on its installment payment obligation, the FCC may cancel the license. In the *Second Report and Order* in PP Docket No. 93–253, 9 FCC Rcd 2348, 2391 ¶ 240 (1994) 59 FR 22980, May 4, 1994, the Commission stated that it would ''consider providing a three to six month grace period a delinquent payor's license cancels.'' Recently, the Wireless Telecommunications Bureau staff clarified this payment rule in the context of Personal Communications Service (PCS) auctions. *See* FCC Public Notice, ''Wireless Telecommunications Bureau Staff Responds to Questions About the Broadband PCS C Block Auction,'' Mimeo 54270, released June 8, 1995. In response to inquiries, the staff now clarifies that this interpretation applies to Interactive Video and Data Service (IVDS) licensees as well. Interested parties should understand that this advice and rule interpretation constitute informal staff opinion, not an official Commission decision or ruling.

IVDS licensees that elect to pay for their licenses in installments will have their licenses conditioned upon full and timely performance of all installment payment obligations. The Commission's rules provide that a licensee will be deemed in default on its installment payments if it is more than 90 days delinquent in making a payment to the government.

Any time prior to the expiration of the 90 days following the payment due date, a licensee may request a grace period. Generally, where a licensee submits a showing, supported by an affidavit, that it in bankruptcy, foreclosure or financial distress, there will be a presumption in favor of granting a three-month grace period (commencing ninety days after the missed payment date). Any request for a grace period based on financial distress must state with particularity the grounds for asserting such financial distress. Such grounds may include the existence of payment defaults on other third party debt, or the general inability to pay debts as they become due in the ordinary course of business. If no grace period is granted, then the FCC may declare a licensee in default and cancel the license any time after 90 days from the missed payment.

Where the Commission grants period and the default is not cured at the conclusion of such a grace period, the FCC may cancel the license. However, the FCC may in its discretion extend or grant additional grace periods where circumstances warrant.

In accordance with § 1.2110, the first IVDS installment payment was due June 30, 1995. IVDS licensees not making their first installment payment with the Commission by September 28, 1995, will be deemed to be in default. Requests for the additional three-month grace period should contain the detailed justification described above, and be sent to the following address: Federal Communications Commission, Wireless Telecommunications Bureau, Private Wireless Division, 2025 M Street NW., Room 8010, Washington, DC 20554, Attention: Stop Code 2000–F.

Wireless Telecommunications Bureau contact: Joy Alford at 418–0680.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–18452 Filed 8–2–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 2

[FCC 95–316]

Fixed-satellite service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By This *Memorandum Opinion and Order (MO&O)*, the Commission amends its Table of Frequency Allocations by adding a footnote and revising a footnote to permit use of the 17.8–20.2 GHz band for military space-to-Earth (''downlink'') fixed-satellite transmission. This action is taken at the request of the National Telecommunications and Information Administration (''NTIA'') for the purpose of advancing, supporting, and accommodating the national defense.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 776–1620.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *MO&O*, adopted July 28, 1995, and released July 31, 1995. The complete *MO&O* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington D.C. 20037.

Summary of MO&O

1. On July 12, 1995, NTIA requested that the Commission add a United States footnote to the United States Table of Frequency Allocations to permit use of the 17.8–20.2 GHz band for Government downlink fixed-satellite transmissions. NTIA states that the reallocation is essential to fulfill requirements for Government space systems to perform satisfactorily, that current Department of Defense (''DoD'') requirements cannot be accommodated in frequency bands currently allocated for Government use, and that due to the likely consideration of this band at 1995 World Radiocommunication Conference, this matter is urgent. NTIA further states that this matter involves military functions, as well as specific sensitive national security interests of the United States. NTIA therefore asks that the Commission forgo notice and comment rulemaking procedure and immediately amend the Table of Frequency Allocations in accordance with its request.

2. During our inter-agency consultations, NTIA stated that these Government satellite systems would comply with the International Telecommunication Union's Radio Regulations. NTIA also stated that, because of the urgent national security interests at stake, the amended rules should be made effective immediately upon publication in the **Federal Register.** In addition, the Commission proposed to revise Government Footnote G117 by adding a reference to the 17.8–20.2 GHz band, thereby limiting Government fixed-satellite use of the band to military systems. The Commission made this proposal in order to preserve as much of the spectrum as possible for commercial systems. NTIA did not object to the proposed revision of G117.

3. Based on the foregoing, the Commission finds that this matter involves the exercise of military functions of the United States and that, because the request is based on urgent national security needs, notice and public procedure are, for good cause shown, impracticable, unnecessary, and contrary to the public interest. *See* 5 U.S.C. § 553(a)(1), (b)(3)(B); *Bendix Aviation Corp* v. *F.C.C.*, 272 F.2d 533 (D.C.Cir. 1959), *cert. denied sub nom. Aeronautical Radio. Inc.* v. *U.S.*, 361 U.S. 965 (1960). Based on the representations of NTIA that the reallocation is essential to fulfill requirements for Government space systems to perform satisfactorily and that current DoD requirements cannot be accommodated in frequency bands currently allocated for Government use, the Commission finds that the public interest will best be served by accommodating the NTIA request and immediately adding United States Footnote US334 to and amending Government Footnote G117 of the Table of Frequency Allocations. In addition, we are ministerially adding non-Government Footnote NG144 to the non-Government table in both the 18.6–18.8 GHz and 18.8–19.7 GHz bands in order to correct their previous inadvertent omission. Because this is a ministerial correction and not a substantive change to the rules, notice and comment are unnecessary.

4. Accordingly, it is ordered that Part 2 of the Commission's Rules, 47 C.F.R. Part 2, is amended as set forth in the amendatory text, effective immediately. Authority for this action is contained in Sections 4(i), 4(j), 303(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 154(j), 303(c), and 303(r).

List of Subjects in 47 CFR Part 2

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary

Amendatory Text

Part 2 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in Part 2 continues to read as follows:

Authority: Sections 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Columns 4 and 5 in the frequency band 17.8–20.2 GHz are revised as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

International table			United States table		FCC use designators	
Region 1—allocation GHz	Region 2—alloction GHz	Regional 3—allocation GHz	Government allocation GHz	Non-Government allocation GHz	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
7.7–18.1 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 869 MOBILE	17.7–18.1 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 869 MOBILE	17.7–18.1 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 869 MOBILE	17.8–18.6	17.8–18.6 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	AUXILIARY BROADCASTING (74) CABLE TELEVISION RELAY (78) DOMESTIC PUBLIC FIXED (21) PRIVATE OPERATIONAL-FIXED MICROWAVE (94)	
18.1–18.6 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE 870	18.1–18.6 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE 870	18.1–18.6 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE 870	870 US334 G117	870 US334 NG1434		
18.6–18.8 FIXED FIXED-SATELLITE (space-to-Earth) 872 MOBILE except aeronautical mobile Earth Exploration—Satellite (passive) Space Research (passive)	18.6–18.8 EARTH EXPLORATION—SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 872 MOBILE except aeronautical mobile SPACE RESEARCH (passive)	18.6–18.8 FIXED FIXED-SATELLITE (space-to-Earth) 872 MOBILE except aeronautical moble Earth Exploration—Satellite (passive) Space Research (passive)	18.6–18.8 EARTH EXPLORATION—SATELLITE (passive) SPACE RESEARCH (passive)	18.6–18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile SPACE RESEARCH (passive)	AUXILIARY BROADCASTING (74) CABLE TELEVISION RELAY (78) DOMESTIC PUBLIC FIXED (21) PRIVATE OPERATIONAL-FIXED MICROWAVE (94)	
871	871	871	US254 US255 US334 G117	US254 US255 US334 NG144		
18.8–19.7 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	18.8–19.7 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	18.8–19.7 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	18.8–19.7	18.8–19.7 FIXED FIXED-SATELLITE (space-to-earth) MOBILE	AUXILIARY BROADCASTING (74) CABLE TELEVISION RELAY (78) DOMESTIC PUBLIC FIXED (21) PRIVATE OPERATIONAL-FIXED MICROWAVE (94)	
			US334 G117	US334 NG144		
19.7–20.1 FIXED-SATELLITE (space-to-Earth) Mobile-Satellite (space-to-Earth)	19.7–20.1 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth)	19.7–20.1	FIXED-SATELLITE (space-to-Earth) Mobile-Satellite (space-to-Earth)	19.7–20.1	19.7–20.1 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth)	
873	873 873A 873B 873C 873D 873E	873	US334 G117	873A 873B 873C 873D 873E US334		
20.1–20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth)	20.1–20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 873 873A 873B 873C 873D	20.1–20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth)	20.1–20.2 US334 G117	20.1–20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 873A 873B 873C 873D US334		
*	*	*	*	*	*	*

b. Add the text of new United States footnote US334 to read as follows:

United States (US) Footnotes

* * * * *

US334 In the band 17.8–20.2 GHz, Government space stations and associated earth stations in the fixed-satellite (space-to-Earth) service may be authorized on a primary basis. For a Government geostationary satellite network to operate on a primary basis, the space station shall be located outside the arc measured from East to West, 70° W to 120° W. Coordination between Government fixed-satellite systems and non-Government systems operating in accordance with the United States Table of Frequency Allocations is required.

c. Revise the text of existing Government footnote G117 to read as follows:

Government (G) Footnotes

* * * * *

G117 In the bands 7.25–7.75 GHz, 7.9–8.4 GHz, 17.8–21.2 GHz, 30–31 GHz, 39.5–40.5 GHz, 43.5–45.5 GHz, and 50.4–51.4 GHz the Government fixed-satellite and mobile-satellite services are limited to military systems.

* * * * *

[FR Doc. 95–19164 Fixed 8–2–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 95–29; RM–8596 and RM–8637]

Radio Broadcasting Services; Iron Mountain and Negaunee, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 294A to Iron Mountain, Michigan in response to a request from Superior Media Group, Inc. *See* 60 FR 12530, March 7, 1995. The coordinates for Channel 294A at Iron Mountain are 45–49–12 and 88–04–06. In response to a counterproposal filed by Negaunee Miners Radio, we shall allot Channel 258A to Negaunee, Michigan. The coordinates for Channel 258A at Negaunee are 46–30–18 and 87–36–24. Canadian concurrence has been received for the allotment of Channel 294A at Iron Mountain and Channel 258A at Negaunee. With this action, this proceeding is terminated.

DATES: Effective September 14, 1995. The window period for filing applications will open on September 14, 1995, and close on October 16, 1995.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 95–29, adopted July 24, 1995, and released July 31, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel 294A at Iron Mountain and by adding Negaunee, Channel 258A.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 95–19098 Filed 8–2–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 87–417, RM–6108]

Television Broadcasting Services; Lima, OH; Muncie, IN; Rockford, IL; and Grand Rapids, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Chief, Policy and Rules Division dismissed as moot the application for review filed by Lima Communications Corporation in response to the withdrawal by the original proponent of the allotment of its commitment to file an application for authority to construct a television station to operate on Channel 17 at Lima, Ohio. The Chief, Policy and Rules Division, had affirmed, by *Memorandum Opinion and Order*, 7 FCC Rcd 5933 (1992), the *Report and Order* in this proceeding, 52 FR 29,896, published August 9, 1988.. Accordingly, the Commission rescinds the allotments ordered in the communities of Lima, Ohio of Channel 17; Muncie, Indiana of Channel *61; Rockford, Illinois of Channel 17+; and Grand Rapids, Michigan of Channel 17–. The Commission further orders the restoration of Channel *17+ in Muncie, Indiana; Channel 17– in Rockford, Illinois; and Channel 17 in Grand Rapids, Michigan. With this action, the proceeding is terminated.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, MM Docket No. 87–417, adopted July 21, 1995 and released July 31, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services,

2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–19099 Filed 8–2–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 90

[DA 95–1669]

Inter-Category Sharing of Private Mobile Radio Services in the 806–821/ 851–866 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Notice; petitions for reconsideration and clarification.

SUMMARY: The Wireless Telecommunications Bureau has denied reconsideration and/or clarification of the Bureau's Order imposing a freeze on the acceptance of new applications for inter-category sharing of frequencies allocated to the Public Safety, Industrial/ Land Transportation and Business Radio Services. This action was taken because of the need to ensure the continued availability of these frequencies to license applicants eligible in these service categories until the Commission resolves the significant spectrum allocation issues raised in PR Docket No. 93–144 and by the Public Safety community. this action will maintain the integrity of the Commission's licensing process.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Wireless Telecommunications Bureau, (202) 418–0627.

SUPPLEMENTARY INFORMATION: This is a summary of the Wireless Telecommunications Bureau's Memorandum Opinion and Order, DA–1669, adopted July 26, 1995, and released July 28, 1995. The full text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the Private Wireless Division, Wireless Telecommunications Bureau, 2025 M Street, Room 8010, Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, Suite 140, Washington, D.C. 20037, telephone (202) 857–3800. This will impose no paperwork burden on the public.

Summary of Memorandum Opinion and Order

1. The Wireless Telecommunications Bureau (Bureau) denied requests for reconsideration and clarification of the Bureau's Order (60 FR 20247 (1995)) imposing a freeze on inter-category sharing of frequencies in the 806–821/ 851–866 MHz band allocated to the Public Safety, Industrial/Land Transportation (I/LT), and Business Radio (Business) Services. Petitions for Reconsideration were filed by UTC, the Telecommunications Association (UTC) and, in a joint pleading, by Central and South West Corporation, Indianapolis Power and Light Company and Union Electric Company (CIU). Additionally, a Request for Clarification of the Bureau's Order was filed by the Industrial Telecommunications Application (ITA). Oppositions to the reconsideration and clarification requests were filed by the Association of Public-Safety Communications Officials-International, Inc. (APCO) and Replies were filed by both ITA and CIU.

2. Because of pressure placed on the 800 MHz Business and I/LT categories by Specialized Mobile Radio (SMR) applicants seeking to use these channels on an inter-category sharing basis there has been a significant increase in the number of Business and I/LT license applicants filing applications (on an inter-category basis) for 800 MHz Public Safety channels. In response to these developments, the Commission has initiated a rule making proceeding (PR Docket 93–144, 59 FR 60111 (November 22, 1994)) to determine, among other things, the appropriate allocation of this segment of the spectrum. To avoid compromising the resolution of this issue, as well as the spectrum concerns of the Public Safety community, the Bureau imposed a temporary freeze on the acceptance of applications for inter-category sharing of channels allocated to the Public Safety, I/LT and Business Services.

3. In response to UTC's contention that the freeze constituted substantive action, the Bureau indicated that freezes have long been considered by the Commission as procedural in nature and, therefore, this action did not require compliance with the notice and comment provisions of the Administrative Procedure Act. Further, the Bureau stated that providing the public with notice of the action to be taken and an opportunity to comment would undercut the effectiveness of the freeze and, thus, not be in the public interest.

4. The Bureau concluded that neither UTC's nor ITA's suggested modifications to the freeze Order were adequate to preserve the *status quo* until resolution of the spectrum allocation issues raised in PR Docket No. 93–144 and by the Public Safety community. Limiting the freeze to SMR use of the relevant channels, as suggested by UTC, would be an incomplete remedy because of previous encroachment by SMRs in the I/LT pool. Also, ITA's proposal to limit inter-category use to internal communications is inadequate to maintain the *status quo*.

5. Contrary to CIU's assertions, the record supports the conclusion that the communications needs of the Public Safety community are currently at risk of not being met. Further, current problems cannot be addressed—as suggested by CIU—merely by identifying their cause. In any case, the freeze is not a final resolution of the matter, by merely a temporary action to prevent compromising the Commission's resolution of significant spectrum allocation issues.

6. For the foregoing reasons, the Bureau affirms the Order suspending the acceptance of applications for inter-category sharing to the 800 MHz Private Mobile Radio Service Frequencies allocated to the Public Safety, Industrial/land Transportation and Business Radio Services.

List of Subjects in 47 CFR Part 90

Administrative practice and procedure.

Federal Communications Commission.

Reginal M. Keeney,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 95–19138 Filed 8–2–95; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 519 and 552

[APD 2800.12A, CHGE 63]

RIN 3090–AF77

General Services Administration Acquisition Regulation; Small Business

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to remove a provision regarding small business concern representation which is a deviation to the Federal Acquisition Regulation (FAR). The deviation is not needed since Federal Acquisition

Circular (FAC) 90–23 amended the FAR 48 CFR 52.219–1. Miscellaneous revisions are made in regulations on small business and small disadvantaged business concerns to reflect current GSA organizational changes.

EFFECTIVE DATE: August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION

A. Public Comments

This rule was not published in the **Federal Register** for public comment because it merely revises the GSAR to conform to the FAR as amended by FAR 90–23, which had already undergone the public comment process.

B. Executive Order 12866

This rule was not submitted to the Office of Management and Budget (OMB) for review because the rule is not a significant regulatory action as defined in Executive Order 12866, Regulatory Planning and Review, and therefore was not required to be submitted.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply because this rule is not a significant revision as defined in FAR 1.505–1.

D. Paperwork Reduction Act

This rule does not impose any information collection or recordkeeping requirements that require the approval of OMB under 44 U.S.C. 3501 et seq. Therefore, the requirements of the Paperwork Reduction Act do not apply.

List of Subjects in 48 CFR Parts 519 and 552

Accordingly, 48 CFR Parts 519 and 552 are amended as follows:

1. The authority citation for 48 CFR Parts 519 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. Section 519.001 is revised to read as follows:

§ 519.001 Definitions.

Agency small business technical advisors (SBTAs) as used in this part, means the directors of the Business Service Centers (or designees) in the regions and the individuals in FSS, ITS and PBS who have been designated to serve as SBTAs in the Central Office. In addition to the duties outlined at FAR 19.201(c), the agency small business technical advisors perform the functions of the small and disadvantaged business utilization specialist/representative described in FAR 19.506 (a) and (b) and 19.705–4(d)(5).

3. Section 519.201 is revised to read as follows:

§ 519.201 General policy.

The Associate Administrator for Enterprise Development (E) may make recommendations to the contracting officer as to whether a particular acquisition should be awarded under FAR 19.5 as a set-aside (including those involving labor surplus areas) or under FAR 19.8 as a section 8(a) award directly or through the SBTA.

4. Section 519.202–2(c) is revised to read as follows:

§ 519.202–2 Locating small business sources.

* * * * *

(c) BSC's will keep each other and the Office of Enterprise Development (E) informed on items of mutual interest regarding the small business programs.

§ 519.304 [Removed]

5. Section 519.304 is removed.

§ 552.219 [Removed]

6. Section 552.219–1 is removed.

Dated: June 22, 1995.

Ida M. Ustad,

Associate Administrator, Office of Acquisition Policy.

[FR Doc. 95–19044 Filed 8–2–95; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF STATE

Office of the Procurement Executive

48 CFR Parts 601, 602, 605, 606, 609, 610, 613, 616, 619, 625, 636, 637, and 653

[Public Notice 2231]

Department of State Acquisition Regulation (DOSAR); Simplified Acquisition Threshold

AGENCY: Office of the Procurement Executive, Department of State.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of State Acquisition Regulation (DOSAR) to reflect changes with respect to the change in the simplified acquisition threshold as outlined in the FAC 90–29. The rule also makes changes in Commerce Business Daily synopsis requirements for overseas contracting activities. Finally, the rule makes several technical corrections.

EFFECTIVE DATE: July 3, 1995.

FOR FURTHER INFORMATION CONTACT: Gladys Gines, Senior Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street NW, Suite 603, State Annex Number 6, Washington, DC 20522–0602, telephone (703) 516–1691. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

On July 3, 1995, FAC 90–29 became effective. The changes contained therein dealt with implementation of the Federal Acquisition Computer Network (FACNET) and simplified acquisition requirements of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–55. The changes published today focus only on the simplified acquisition threshold revisions of FAC 90–29. They are editorial in nature.

In addition, DOSAR 605.202–70 is being revised to reflect a recently authorized deviation from FAR requirements for certain Commerce Business Daily (CBD) synopses for the Department's foreign acquisitions awarded by overseas contracting activities, other than local guard service contracts.

The Department has determined that this document need not be published as a proposed rule. The rule generally makes only editorial and technical revisions to the current DOSAR. The deviation from CBD notice requirements for overseas contracting activities was approved by the Office of Federal Procurement Policy and the Small Business Administration, as required by FAR 5.202(b).

II. Impact

The Department of State certifies that this regulation will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

III. Paperwork Reduction Act

There are no additional information collection requirements associated with this rule. All information collection requirements associated with acquisition were approved under the Paperwork Reduction Act of 1980 by OMB and were assigned control number 1405–0050.

List of Subjects in 48 CFR Parts 601, 602, 605, 606, 609, 610, 613, 616, 619, 625, 636, 637, and 653

Government procurement, Department of State Acquisition Regulation (DOSAR).

Accordingly, title 48, chapter 6 of the Code of Federal Regulations is amended as follows:

1. The authority citation for 48 CFR Parts 601, 602, 605, 606, 609, 610, 613, 616, 619, 625, 636, 637, and 653 continues to reads as follows:

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SUBCHAPTER A—GENERAL

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATION

Subpart 601.6—Career Management, Contracting Authority, and Responsibilities

2. The title of Subpart 601.6 is revised to read as set forth above.

601.603–70 [Amended]

3. Section 601.603–70 is amended in paragraph (b)(5) by removing the phrase ''Bureau of Refugee Programs'' and inserting ''Bureau of Population, Refugees, and Migration'' in its place.

4. Section 601.603–70 is amended in paragraph (b)(6) by removing the phrase ''Bureau of International Narcotics Matters'' and inserting ''Bureau of International Narcotics and Law Enforcement Affairs'' in its place.

PART 602—DEFINITIONS OF WORDS AND TERMS

Subpart 602.1—Definitions

602.101–70 [Amended]

5. In section 602.101–70, the definition of ''Despatch Agency'' is amended in the last sentence by removing the words ''San Francisco, California;''.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 605—PUBLICIZING CONTRACT ACTIONS

Subpart 605.2—Synopsis of Proposed Contract Actions

6. Section 605.202–70 is revised to read as follows:

605.202 Exceptions.

605.202–70 Foreign acquisitions.

(a) *Policy*. In accordance with a Determination and Findings issued by the Assistant Secretary of State for Administration, the requirement for advance CBD notices for the Department's foreign acquisitions awarded by overseas contracting activities is waived. CBD notices may be published for any acquisition where the contracting officer decides that publication would be in the Department's best interests. This waiver shall remain in effect until June 15, 1998.

(b) *Procedures.* Contracting officers at overseas contracting activities are not required to prepare an individual determination and findings to document their decision to waive the CBD notice requirements.

(c) *Competition requirements.* Nothing in this section waives the requirement to obtain competition as required by FAR part 6 and DOSAR (48 CFR) part 606. Competition, including the use of written solicitation, shall be obtained in all cases to the extent feasible. If there are known U.S. firms or firms with U.S. affiliations in local residence capable of supplying the required supplies or services, the contracting activity shall ensure that those firms are included in the source list for the acquisition.

(d) *Policy exclusion.* CBD waiver authority does not apply to local guard service contracts that exceed $250,000. Local guard service contracts that exceed $250,000 shall be synopsized in the CBD. Option year prices shall be included when computing the applicability of this threshold.

PART 606—COMPETITION REQUIREMENTS

Subpart 606.5—Competition Advocates

7. Section 606.570 is revised to read as follows:

606.570 Solicitation provisions.

The contracting officer shall insert the provision at 652.206–70, Competition Advocacy/Ombudsman, in all solicitations over the threshold for using simplified acquisition procedures.

PART 609—CONTRACTOR QUALIFICATIONS

Subpart 609.4—Debarment, Suspension, and Ineligibility

8. Section 609.405 is amended in paragraph (d)(4)(i) by revising the first sentence to read as follows:

609.405 Effect of listing.

* * * * *

(d) * * *

(4)(i) For procurement actions (both domestic and overseas) that do not exceed the threshold for using simplified acquisition procedures, contracting officers need not consult the ''List of Parties Excluded from Procurement Programs'' prior to award. * * *

PART 610—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

610.002–70 [Amended]

9. Section 610.002–70 is amended in paragraph (d)(5)(i) by removing the amount of ''$25,000'' and inserting ''$50,000'' in its place.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 613—SIMPLIFIED ACQUISITION PROCEDURES

613 Heading [Amended]

10. The title of Part 613 is revised to read as set forth above.

Subpart 613.1—General

613.103–70 [Amended]

11. Section 613.103–70 is amended by removing the words ''small purchases'' and inserting ''purchase orders'' in their place.

Subpart 613.4—Imprest Fund

613.404 [Amended]

12. Section 613.404 is redesignated as 613.403. Newly designated 613.403 is amended by removing ''FAR 13.404(a)'' and inserting ''FAR 13.403(a)'' in its place.

Subpart 613.5—Purchase Orders

13. Section 613.505–1 is revised to read as follows:

613.505 Purchase order and related forms.

613.505–1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule—Continuation.

(a) The OF–347 and OF–348 shall be mandatory for use by domestic contracting activities for issuing purchase orders and delivery orders, unless ordering against another Federal agency contract which stipulates a different form (e.g., DD–1155, Order for Supplies or Services); or, unless the Procurement Executive has approved another form. The OF–347 may also be used as a voucher.

(b) In lieu of the OF–347 and OF–348, DOS overseas contracting activities may use the Optional Form (OF) 206, Purchase Order, Receiving Report and Voucher, and Optional Form 206A, Continuation Sheet (illustrated at 653.303–206 and 653.303–206A, respectively). When using the OF–206, contracting activities may use Optional Form (OF) 127, Receiving and Inspection Report (illustrated at 653.303–127), for that purpose.

613.505–2 [Removed]

14. Section 613.505–2 is removed.

15. Section 613.507, consisting of section 613.507–70, is revised to read as follows:

613.507 Provisions and clauses.

613.507–70 DOSAR clauses.

In addition to the FAR provisions and clauses required for or applicable to the particular acquisition, each DOS purchase order shall incorporate all DOSAR clauses required for or applicable to the acquisition. All such clauses shall be listed on a separate document and attached to each copy of the purchase order. The document shall be identified by the purchase order number and the name and address of the contracting activity. The DOSAR clauses may be incorporated without setting out full text.

Subpart 613.6–70—Governmentwide Commercial Purchase Card Program

16. Section 613.601–70 is amended by revising paragraph (b) to read as follows:

613.601–70 Policy.

(a) * * *

(b) *Policy.* It is the Department's policy that:

(1) The purchase card shall be used in preference to other methods of procurement (particularly BPAs) for individual purchases up to $2,500;

(2) The purchase card shall be issued primarily to personnel outside of the procurement office to purchase products and services up to $2,500 quickly with a minimum of paperwork and without having to send an individual requisition to a procurement office; and,

(3) The purchase card may be used in procurement offices for purchases up to $25,000.

* * * * *

PART 616—TYPES OF CONTRACTS

17. Section 616.000 is added to read as follows:

616.000 Scope of part.

The contracting officer may use any of the contract types described in FAR part 16 for acquisitions made under simplified acquisition procedures. The contracting officer shall document his/her decision to use a contract type in accordance with the requirements of FAR part 16.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 619—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 619.1—General

619.20 [Amended]

18. Section 619.201 is amended in paragraph (d)(5) by removing the word ''limitation'' and inserting the word ''threshold'' in its place in the second sentence.

Subpart 619.5—Set Asides for Small Business

619.501 [Amended]

19. Section 619.501 is amended in paragraph (c) by removing the words ''Small Purchase Limitation'' and inserting ''Simplified Acquisition Threshold'' in their place.

PART 625—FOREIGN ACQUISITION

Subpart 625.7—Restrictions on Certain Foreign Purchases

20. and 21. Section 625.703 is revised to read as follows:

625.703 Exceptions.

The authority to approve exceptions for other contracts in excess of the simplified acquisition threshold is delegated, without power of redelegation, to the head of the contracting activity.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 636.6—Architect-Engineer Services

636.602–5 [Amended]

22. Section 636.602–5 is amended by removing the word ''limitation'' and inserting the word ''threshold'' in its place in the heading and the text of the section.

PART 637—SERVICE CONTRACTING

Subpart 637.1—Service Contracts—General

637.104–70 [Amended]

23. Section 637.104–70 is amended in paragraph (b) by removing the words ''Bureau for Refugee Programs'' and inserting ''Bureau of Population, Refugees, and Migration'' in their place.

24. Section 637.104–70 is amended in paragraph (c) by removing the words ''Bureau for International Narcotics Matters'' and inserting ''Bureau for International Narcotics and Law Enforcement Affairs'' in their place.

SUBCHAPTER H—CLAUSES AND FORMS

PART 653—FORMS

Subpart 653.2—Prescription of Forms

25. Section 653.213 is amended by revising the heading to read as follows:

653.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

26. Section 653.213–70 is amended by revising the heading to read as follows, and by adding the following sentence to the end of paragraph (b):

653.213–70 DOS Forms (OF–206, OF–206A, OF–127, DST–1918, DST–1919, DST–1920).

(a) * * *

(b) * * * The OF–127 may be used as a receiving report in conjunction with other contract forms (e.g., SF–26, SF–33) by both domestic and overseas contracting activities.

* * * * *

27. Section 653.219–70 is amended by revising the heading to read as follows:

653.219–70 DOS form DS–1910, Small Business/Labor Surplus Area Review—Actions Above the Simplified Acquisition Threshold.

Dated: July 17, 1995.

Lloyd W. Pratsch,

Procurement Executive.

[FR Doc. 95–18900 Filed 8–2–95; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 072895A]

Pacific Halibut Fisheries; Area 2A Non-Treaty Commercial Fishery Reopening; Oregon Sport Fishery Reopening

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

ACTION: Inseason actions.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes inseason actions pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. These actions are intended to enhance the conservation of the Pacific halibut stock

in order to help sustain it at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: Area 2A: 8:00 a.m. through 6:00 p.m., local time, August 1, 1995; Oregon sport fishery: 8:00 a.m. through 6:00 p.m., local time, August 3, 1995 and August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907–586–7221; William W. Stelle, Jr., 206–526–6140; or Donald McCaughran, 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued these inseason actions pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, these inseason actions are published in the **Federal Register** to provide additional notice of their effectiveness, and to inform persons subject to the inseason actions of the restrictions and requirements established therein.

Inseason Actions

1995 Halibut Landing Report Number 11

Area 2A Non-treaty Commercial Fishery to Reopen

The July 18 fishing period in Area 2A resulted in a catch of 35,000 lb (15.87 metric tons (mt)), leaving approximately 50,000 lb (22.67 mt) yet to be caught from the catch limit.

Area 2A will reopen on August 1 for 10 hours from 8:00 a.m. to 6:00 p.m. local time. The fishery is restricted to waters that are south of Point Chehalis, WA (46°53'18'' N. lat.) under regulations promulgated by NMFS. Fishing period limits as indicated in the following table will be in effect for this opening.

Vessel class		Fishing period limit (lb)	
Length	Letter	Dressed, head-on	Dressed, head-off [1]
0–25	A	225	200
26–30 ..	B	240	210
31–35 ..	C	380	335
36–40 ..	D	1,050	925
41–45 ..	E	1,130	995
46–50 ..	F	1,350	1,190
51–55 ..	G	1,510	1,330
56+	H	2,275	2,000

[1] Weights are after 2 percent has been deducted for ice and slime if fish are not washed prior to weighing.

The appropriate vessel length class and letter is printed on each halibut license.

The fishing period limit is shown in terms of dressed, head-off weight as well as dressed, head-on weight, although fishermen are reminded that regulations require that all halibut from Area 2A be landed with the head on.

The fishing period limit applies to the vessel, not the individual fisherman, and any landings over the vessel limit will be subject to forfeiture and fine.

Oregon Sport Fishery Reopens for Two Days

The Oregon sport fishery from Cape Falcon to the California border will open for 2 days, Thursday, August 3 and Friday, August 4, 1995, rather than for 3 days as indicated in the halibut regulations. Approximately 15,500 lb (7.03 mt) remain for harvest, not enough to assure that harvest from 3 days of fishing will remain under the catch limit. The daily bag limit will be two fish per person, one with a 32-inch (12.59 centimeters (cm)) minimum size limit, and one with a 50-inch (19.68 cm) minimum size limit. If sufficient catch limit remains after August 4, an additional opening may be announced by the IPHC.

Dated: July 28, 1995.

Donald J. Leedy,

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

[FR Doc. 95–19036 Filed 7–28–95; 4:41 pm]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 60, No. 149
Thursday, August 3, 1995

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

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA07

Financial Crimes Enforcement Network; Proposed Amendments to the Bank Secrecy Act Regulations Regarding Tribal Gaming

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') is proposing to amend the regulations implementing the statute generally referred to as the Bank Secrecy Act to include certain gaming establishments operated by or on behalf of Indian tribes within the definition of financial institution subject to those regulations. The amendments would extend the reporting and recordkeeping requirements and anti-money laundering safeguards of the Bank Secrecy Act to such gaming establishments.

DATES: Written comments on all aspects of the proposed regulation are welcome and must be received on or before November 1, 1995.

ADDRESSES: Written comments should be submitted to: Office of Regulatory Policy and Enforcement, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, Virginia 22182, *Attention:* NPRM—Tribal Gaming. *Submission of comments.* An original and four copies of any comment must be submitted. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted. *Inspection of comments.* Comments may be inspected at the Department of Treasury between 10:00 a.m. and 4:00 p.m., in the Treasury Library, which is located in room 5030, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220. Persons wishing to inspect the comments submitted should request an appointment at the Treasury Library at (202) 622–0990.

FOR FURTHER INFORMATION CONTACT: Leonard C. Senia, Compliance Specialist, Office of Regulatory Policy and Enforcement, Financial Crimes Enforcement Network, (703) 905–3931, or Joseph M. Myers, Attorney-Advisor, Office of Legal Counsel, Financial Crimes Enforcement Network, (703) 905–3557.

SUPPLEMENTARY INFORMATION:

Introduction

This document proposes (i) to amend the definition of ''casino'' in 31 CFR 103.11(i)(7)(i), (ii) to amend or add other definitions in 31 CFR 103.11, and (iii) to make a conforming change to the specification in 31 CFR 103.36(b)(7) of certain records required to be maintained by casinos. The proposed changes reflect the terms of section 409 of the Money Laundering Suppression Act of 1994 (the ''Money Laundering Suppression Act''), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325.

Background

The statute popularly known as the ''Bank Secrecy Act,'' Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring financial institutions to (i) keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, (ii) implement counter-money laundering programs and compliance procedures, and (iii) report potentially suspicious transactions to the federal government. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330), appear at 31 CFR Part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The range of financial institutions to which the Bank Secrecy Act applies includes not only banks and other depository institutions, but also securities brokers and dealers, money transmitters, and the other non-bank businesses that offer customers one or more financial services. Gambling casinos were made subject to the Bank Secrecy Act as of May 7, 1985, by regulation issued early that year, *see* 50 FR 5065 (February 6, 1985). Treasury has issued three sets of rules relating to the application of the Bank Secrecy Act to casino gaming establishments. *See* 50 FR 5064–5069 (February 6, 1985); 54 FR 1165–1167 (January 12, 1989); and 59 FR 61660–61662 (December 1, 1994) (modifying and putting into final effect the rule originally published at 58 FR 13538–13550 (March 12, 1993)).

Legalized casino gaming in the United States has grown greatly since 1985. An important component of that growth has been the opening of casinos and other gaming establishments on Indian lands, primarily under the procedures established by the Indian Gaming Regulatory Act (Pub. L. 100–497, codified at 18 U.S.C. 1166–1168, and 25 U.S.C. 2701–2721). State gaming regulators and staff members of the National Indian Gaming Commission (the ''NIGC''), established pursuant to the Indian Gaming Regulatory Act, have indicated that there were approximately 120 tribal casinos, of various sizes and types, operating during 1994 in a total of 16 states. Industry statistics for 1993 (the last year for which statistics are readily available) indicate that wagering at tribal casinos exceeded $27 billion in that year, a steep rate of increase from prior years' results.

Section 409 of the Money Laundering Suppression Act codified the application of the Bank Secrecy Act to gaming activities by adding casinos and other gaming establishments to the list of financial institutions specified in the Bank Secrecy Act itself.[1] The statutory specification reads:

(2) financial institution means—

(X) a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than $1,000,000 which—

(i) is licensed as a casino, gambling casino, or gaming establishment under the laws of

[1] The 1985 action initially making casinos subject to the Bank Secrecy Act had been based on Treasury's statutory authority to designate as financial institutions (i) businesses that engage in activities ''similar to'' the activities of the businesses listed in the Bank Secrecy Act, as well as (ii) other businesses ''whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.'' *See* 31 U.S.C. 5312(a)(2)(Y) and (Z) (as renumbered by the Money Laundering Suppression Act).

any State or any political subdivision of any State; or

(ii) is an Indian gaming operation conducted under or pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of such Act) * * *.

31 U.S.C. 5312(a)(2)(X). As discussed more fully below, this notice is part of the broader process of rethinking the application of the Bank Secrecy Act to casinos that began with the issuance of burden-reducing amendments to the Bank Secrecy Act regulations governing casinos in December 1994.

See 59 FR 61660–61662 (December 1, 1994).

Explanation of Provisions

A. *Overview.* The proposed regulations would amend the definition of ''casino'' to include explicitly casinos operated on Indian lands; make related changes to the regulatory definitions of ''person'' and ''United States'' in 31 CFR 103.11(n) and 103.11(s), respectively; and add definitions of the terms ''Indian Gaming Regulatory Act'', ''State'', and ''Territories and Insular Possessions'', as proposed in 31 CFR 103.11 (v), (w), and (x), respectively. A related amendment is proposed to the record retention requirements found in 31 CFR 103.36(b)(7), to reflect the regulatory system contemplated by the Indian Gaming Regulatory Act.

B. *Definition of Casino.* The definition of casino is proposed to be amended to include explicitly casinos operated on Indian lands. Under the proposed amendment, the term casino would include, *inter alia,* any casino or gambling casino duly licensed or authorized to do business under the Indian Gaming Regulatory Act or other federal, state, or tribal law or arrangement affecting Indian lands. The term would thus include casinos that are doing business on Indian lands on a basis other than that specified in the Indian Gaming Regulatory Act. For example, a casino that operates on Indian lands under a view that compliance with the Indian Gaming Regulatory Act is unnecessary or inconsistent with inherent tribal rights would not for that reason be exempted from the terms of the Bank Secrecy Act, to the extent that those terms would otherwise apply to the casino's operations.[2]

The general need for and appropriateness of treatment of casinos as financial institutions for purposes of the Bank Secrecy Act have been accepted, as indicated above, since the mid-1980s. Treasury made clear in its first formal statements on this subject the need to prevent casinos, which both deal in cash and cash-equivalent chips and can offer a variety of other financial services to customers, from being used to avoid the effect of the Bank Secrecy Act.[3] There is no reason to expect that the potential risk of such activity in casinos on Indian lands, if those casinos were not subject to the Bank Secrecy Act, is any less (or any greater) than for state-licensed casinos. Prior to the enactment of the Money Laundering Suppression Act, the issue whether the Bank Secrecy Act could be applied to gaming operations on Indian lands was unsettled in light of the language of section 20(d) of the Indian Gaming Regulatory Act, 25 U.S.C. 2719(d), and the disinclination to apply general federal legislation to the affairs of Indian tribes without clear Congressional authorization. Section 409 of the Money Laundering Suppression Act grants direct authority to the Secretary of the Treasury to apply the Bank Secrecy Act to most tribal gaming operations and is backed by a strong expression of Congressional intent, in the legislative documents accompanying the statute, ''* * * to eliminate confusion about which currency reporting system applies to Indian casinos.'' *See* H.R. Rep. No. 652, 103d Cong., 2d Sess. 193 (1994). (The other currency reporting system is that created, for trades or businesses not subject to the Bank Secrecy Act, by section 6050I of the Internal Revenue Code of 1986.)

The retention in the proposed regulation of the term ''casino'', rather than substitution in 31 CFR 103.11(i)(7)(i) of the broader authorizing language of 31 U.S.C. 5312(a)(2)(X), is intentional. The Department of the Treasury has generally sought to apply the Bank Secrecy Act to gaming establishments that provide their customers with a financial product—gaming—and as a corollary offer a broad array of financial services, such as customer deposit or credit accounts, facilities for transmitting and receiving funds transfers directly from other institutions, and check cashing and currency exchange services, that are similar to those offered by depository institutions and other financial firms.

By way of contrast, the Indian Gaming Regulatory Act defines classes of gaming establishments with reference to specific games that may be offered by those establishments. States or the NIGC may authorize and regulate under that Act tribal gaming activities, such as bingo, lotteries, and pari-mutuel betting, that are not generally offered in casino settings. These types of gaming may create different problems for law enforcement, tax compliance, and counter-money laundering programs than do full-scale casino operations. Although the Money Laundering Suppression Act grants the Department of the Treasury authority to extend the Bank Secrecy Act to the full range of gaming establishments in the United States, FinCEN wishes to concentrate at this time on resolving the issues raised by extending the existing Bank Secrecy Act structure to true casino-like establishments operating on Indian lands.

The other changes in the definition of casino are designed simply to list explicitly the three classes of government authorities that can authorize or license casinos subject to the Bank Secrecy Act. The changes are intended neither to expand nor contract the coverage of the Bank Secrecy Act to casinos operating under State authority or under the authority of various United States territories or possessions.

C. *Treatment of Casinos Under the Bank Secrecy Act.* Thus, under the proposed regulations, casinos operating on Indian lands would become subject not simply to the Bank Secrecy Act's currency transaction reporting rules but to the full set of provisions (described by the Congress as ''a comprehensive currency reporting and detailed recordkeeping system with numerous

[2] The authority for the application of the Bank Secrecy Act to casinos that are neither licensed by state or local authorities nor operated on Indian Lands pursuant to the Indian Gaming Regulatory Act is found in 31 U.S.C. 5312(a)(2)(Y) and (Z), cited above, which as noted were the basis for application of the Bank Secrecy Act to casinos prior to the enactment of the Money Laundering Suppression Act.

[3] The preamble to the final rule bringing casinos within the Bank Secrecy Act stated that

[i]n recent years Treasury has found that an increasing number of persons are using gambling casinos for money laundering and tax evasion purposes. In a number of instances, narcotics traffickers have used gambling casinos as substitutes for other financial institutions in order to avoid the reporting and recordkeeping requirements of the Bank Secrecy Act.

Inclusion of casinos in the definition of financial institution[s] in 31 CFR Part 103 was among the specific recommendations in the October 1984 report of the President's Commission on Organized Crime, 'The Cash Connection: Organized Crime, Financial Institutions, and Money Laundering'. The problem was also the subject of hearings in 1984 before the House Judiciary Subcommittee on Crime entitled 'The Use of Casinos to Launder the Proceeds of Drug Trafficking and Organized Crime'.

In order to prevent the use of casinos in this fashion, Treasury is amending the regulations in 31 CFR Part 103 to require gambling casinos to file the same types of reports [and maintain the same types of records] that it requires from financial institutions currently covered by the Bank Secrecy Act.

50 FR 5065, 5066, (February 6, 1985); *see also* 49 FR 32861, 32862 (August 17, 1984) (corresponding language in notice of proposed rulemaking).

anti-money laundering safeguards'') to which other casinos in the United States are subject. *See* H.R. Rep. No. 652, *supra*.

The Bank Secrecy Act generally imposes several sets of requirements on casinos. First, each casino is required to file with the Department of the Treasury a report of each receipt or disbursement of more than $10,000 in currency in its gaming operations; aggregation of multiple transactions is required in a number of situations. *See* 31 CFR 103.22(a)(2). In addition, later this year, Treasury will issue regulations to require financial institutions, including casinos, to file reports of suspicious transactions. *See* 31 U.S.C. 5318(g)(1).

Each casino is also required by the Bank Secrecy Act to maintain certain records relating to the casino's operation, including records identifying account holders (*see* 31 CFR 103.36(a)), or showing transactions for or through each customer's account (*see, generally,* 31 CFR 103.36(b)), and transactions involving persons, accounts or places outside the United States, (*see* 31 CFR 103.36(b)(5)); records which are prepared or used by a casino to monitor a customer's gaming activity or records of purchases of more than $3,000 worth of checks or other monetary instruments are also among the types of records that must be maintained (*see* 31 CFR 103.36(b)(8) and (b)(9)). Finally, casinos must institute training and internal control programs to assure and monitor compliance with the Bank Secrecy Act (*see* 31 CFR 103.36(b)(10) and 103.54(a)).

Gaming establishments within the scope of the proposed rule will remain subject to the filing requirements of section 6050I of the Internal Revenue Code, with respect to their gaming and financial services operations, until this proposed rule becomes effective. *See* section 6050I of the Internal Revenue Code, 26 U.S.C. 6050I(a) and (c); Treas. Reg. 1.6050I–1(d)(2). Gaming establishments, whether non-tribal or tribal, that are not included within the definition of casino in the Bank Secrecy Act remain fully subject to the currency reporting rules of section 6050I of the Internal Revenue Code; section 6050I of the Code will also continue to apply to non-gaming and non-financial services operations, for example hotel accommodations, at casinos that are subject to the Bank Secrecy Act.

D. *Request for Comments on Specific Subjects.* FinCEN recognizes that the circumstances of tribal gaming are not uniform throughout the United States, and it is keenly aware of the need to proceed thoughtfully in adopting the rules of the Bank Secrecy Act to the realities of the operation of casinos on Indian lands. FinCEN specifically seeks comment on the following questions:

1. Are there particular parts of the Bank Secrecy Act regulations applicable to casinos generally that do not accurately reflect the way tribal casinos operate?

2. What types of financial services, other than gaming, are offered by tribal casinos or by other financial businesses operating at such casinos?

3. How can compliance with the Bank Secrecy Act by tribal casinos best be examined and enforced?

4. How should compliance by tribal casinos with the Bank Secrecy Act be integrated with the regulatory regimes created by the Indian Gaming Regulatory Act and the tribal-state compacts required by that statute for authorization of Class III gaming?

In seeking guidance on these and other issues raised by this notice of proposed rulemaking, FinCEN is interested in hearing from all parties potentially affected by the proposed rules, including Indian tribes on whose lands gaming is conducted, tribal or non-tribal enterprises that manage casinos on such lands, and officials of state and local governments within whose boundaries such lands are located. FinCEN will consider holding a public hearing on the proposed rule if comments suggest that a public hearing would be productive.

Equalization of the treatment of state-licensed and tribal casinos is necessary as a prelude to the consideration of broader issues affecting the application of the Bank Secrecy Act to the gaming industry. Those issues include whether clarifications should be made in the definition of casino as new types of gaming develop (or whether the term ''casino'' is sufficiently elastic to encompass such developments,[4]) whether special rules should be applicable to small casinos, and how best to implement the provisions added to the Bank Secrecy Act generally with respect to gaming establishments by the Annunzio-Wylie Anti-Money Laundering Act of 1992, Title XV of the Housing and Community Development Act of 1992, Pub. L. 102–550, and the Money Laundering Suppression Act.

E. *Other Changes in ''Meaning of Terms''.* Changes are also proposed to be made to the definitions of ''person'' and ''United States'' in 31 CFR 103.11(n) and (s), and definitions of the terms ''Indian Gaming Regulatory Act'', ''State'', and ''Territories and Insular Possessions'' are proposed to be added to § 103.11 as new paragraphs (v), (w), and (x), respectively. As explained immediately above, these definitions are proposed to permit efficient application of 31 CFR Part 103 to tribal casinos. The proposed definitions of terms ''State'' and ''Territories and Insular Possessions'' will be repeated in the rules published to implement the provisions of section 402 of the Money Laundering Suppression Act relating to the mandatory exemption of certain transactions with depository institutions from the currency transaction reporting requirements of 31 U.S.C. 5313 and 31 CFR 103.22.[5]

F. *Additions to Record Maintenance Requirements.* The requirement of 31 CFR 103.36(b)(7) that casinos retain all records, documents or manuals required to be maintained under state and local laws or regulations is proposed to be amended to recognize that tribal casinos are required to retain records in many cases either by tribal governing authorities or under the terms of tribal-state compacts authorizing Class III gaming on Indian lands under the Indian Gaming Regulatory Act. The proposed change simply conforms the record retention requirements to reflect the fact that a casino on tribal lands will retain certain documents because tribal rules or tribal-state compacts, rather than state regulation, require their retention.

Proposed Effective Date

The amendments to 31 CFR Part 103 proposed in this notice of proposed rulemaking will become effective 90 days following publication in the **Federal Register** of the final rule to which this notice relates.

[4] For example, an establishment that claimed to be a gambling ''club'' rather than a casino because it simply offered customers an opportunity to gamble with one another, but that in practice funded certain customers so that other customers were in effect gambling against ''house'' money, and that offered its customers financial services of various kinds, is arguably a casino under present law. Thus, for example, if such a ''club'' failed to file currency transactions reports or allowed a customer to deposit funds in a player bank account in the name of the customer without requiring the customer to provide identifying information, the club would arguably be operating in violation of the Bank Secrecy Act.

[5] The numbering scheme used in this notice of proposed rulemaking reflects the July 1, 1994 edition of the Code of Federal Regulations; the definitions contained in 31 CFR 103.11 will automatically be renumbered as of January 1, 1996, when the rules relating to funds transfers and transmittals of funds by financial institutions take effect. FinCEN intends to issue in the near future a notice of proposed rulemaking reordering all of the provisions of 31 CFR 103.11 as well as proposing changes in certain of those provisions; the terms dealt with in this notice will appear in that notice of proposed rulemaking without further changes relating to tribal casinos.

Special Analyses

It has been determined that this notice of proposed rulemaking (i) is not subject to the ''budgetary impact statement'' requirement of section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) and (ii) is not a significant regulatory action as defined in Executive Order 12866. It is not anticipated that this proposed rule, if adopted as a final rule, will have an annual effect on the economy of $100 million or more. Nor will it, if so adopted, affect adversely 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. The proposed rule is neither inconsistent with, nor does it interfere with, actions taken or planned by other agencies. Finally, it raises no novel legal or policy issues.

Because this rule affects Indian gaming establishments with gross annual gaming revenues in excess of $1 million, it is hereby certified that this proposed rule is not likely to have a significant economic impact on a substantial number of small entities.

Drafting Information

Several individuals in FinCEN's Office of Legal Counsel and its Office of Regulatory Policy and Enforcement participated in the development of these regulations.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Proposed Amendments to the Regulations

Accordingly, 31 CFR Part 103 is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: Pub. L. No. 91–508, Title I, 84 Stat. 1114 (12 U.S.C. 1829b, 1951–1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. No. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5330).

2. Section 103.11 is amended by revising paragraphs (i)(7)(i), (n), and (s), and adding paragraphs (v), (w), and (x) to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(i) * * *

(7) (i) *Casino.* A casino or gambling casino that (A) is duly licensed or authorized to do business as such in the United States, whether under the laws of a State or of a Territory or Insular Possession of the United States, or under the Indian Gaming Regulatory Act or other federal, state, or tribal law or arrangement affecting Indian lands (including, without limitation, a casino operating on the assumption or under the view that no such authorization is required for casino operation on Indian lands) and that (B) has gross annual gaming revenue in excess of $1 million. The term includes the principal headquarters and every domestic branch or place of business of the casino.

* * * * *

(n) *Person.* An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

* * * * *

(s) *United States.* The States of the United States, the District of Columbia, the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States.

* * * * *

(v) *Indian Gaming Regulatory Act.* The Indian Gaming Regulatory Act of 1988, codified at 25 U.S.C. 2701 *et seq.*

(w) *State.* The States of the United States and, wherever necessary to carry out the provisions of this Part, the District of Columbia.

(x) *Territories and Insular Possessions.* The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and all other territories and possessions of the United States other than the Indian lands and the District of Columbia.

§ 103.36 [Amended]

3. Section 103.36(b)(7) is amended by adding after the words ''state and local laws or regulations'' the words '', regulations of any governing Indian tribe or tribal government, or terms of (or any regulations issued under) any Tribal-State compacts entered into pursuant to the Indian Gaming Regulatory Act, with respect to the casino in question''.

Dated: July 26, 1995.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 95–19137 Filed 7–31–95; 3:30 pm]

BILLING CODE 4820–03–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL–5267–9]

Open Market Trading Rule for Ozone Smog Precursors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed policy statement and model rule; Notice of public hearing.

SUMMARY: This notice conveys EPA's strong support for an innovative approach in emissions trading that would bring better, faster, and less expensive progress towards our nation's air quality goals. This innovative approach, known as open market trading, would allow all types of sources to trade emissions of pollutants that cause ground-level ozone and significantly reduce the overall cost of meeting the public health and environmental goals of the national ambient air quality standards (NAAQS) for ozone. An important feature of this approach is that individual trades would not have to be processed as separate State implementation plan (SIP) revisions. Rather, open market trades would provide sources with an alternative means of compliance, and they would be reviewed by State and Federal authorities predominantly during compliance determinations. The EPA believes this open market approach can provide important emissions reduction benefits. It can be put into operation immediately in places where area-wide emissions budgets and source allocations needed to meet the ozone standard have yet to be determined. The unique character of this approach encourages and permits market participation and innovation by smaller stationary sources and mobile sources. It also encourages sources to make reductions early; these reductions can provide immediate public health benefits. By providing a lower cost compliance alternative, the open market approach can make it easier for States to adopt additional control measures where needed to achieve attainment.

The EPA has developed today's proposed open market trading rule (OMTR) as a new approach that would supplement, and would not modify or

limit the adoption by States of other emissions trading approaches available under the Clean Air Act (Act) and existing EPA rules and policies. Today's proposal is in the form of a model rule; any State which adopts the final version of this rule could expect its rule to be immediately approved by EPA. This feature would enable States to begin operation of an open market trading program without delay. The EPA continues to encourage States to take advantage of all market-based programs available to them, including emissions budget (cap and trade) programs and emissions offsets, as well as emissions averaging programs.

DATES: *Comments.* Comments must be received on or before October 2, 1995. *Public Hearing.* A public hearing will be held August 31, 1995, beginning at 9 a.m. Persons wishing to present testimony must contact Ms. Shelby Journigan at (919) 541–5543 by August 24, 1995. Persons wishing to attend the hearing should contact Ms. Journigan to obtain the location of the hearing.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to Air and Radiation Docket and Information Center (6102), ATTN: Docket No. A–95–21, Room M1500, U.S. EPA, 401 M Street, SW., Washington, DC 20460; Phone 202–260–7548 or 202–260–7549. Fax 202–260–4400. Docket No. A–95–21, containing information supporting the development of today's proposal, is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, at the address listed below. A reasonable fee for copying may be charged.

FOR FURTHER INFORMATION CONTACT: Nancy A. Mayer, U.S. EPA, MD–15, Research Triangle Park, North Carolina 27711, telephone 919–541–5390, fax 919–541–0839; or Scott L. Mathias, U.S. EPA, MD–15, Research Triangle Park, North Carolina 27711, telephone 919–541–5310, fax 919–541–0839.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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2. Open Market Trading
B. Open Market and Emissions Budgets Can Work in Concert
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I. Introduction and Overview

On March 16, 1995, President Clinton and Vice President Gore announced 25 major initiatives for regulatory reinvention at EPA. The number one initiative was an ''open market'' air emissions trading rule to achieve the public health standard for ozone faster and at lower cost. The Presidential announcement said:

> EPA will issue an emissions trading rule for smog-creating pollutants that will allow States to obtain automatic approval for open market trading of emissions credits with accountability for quantified results. Expanding use of market trading on a local and regional level will give companies broad flexibility to find lowest cost approaches to emissions reductions. The rule will encourage experimentation with new trading options, while enabling States to pursue more quickly allowance-based cap systems, which are already under development in some areas. (Reinventing Environmental Regulations; Clinton/Gore, March 16, 1995)

Today's proposal of a model rule for open market trading fulfills this commitment. It would provide an expedited path by which States, with EPA's cooperation, could quickly implement this new approach.

Together with ongoing initiatives to promote emissions budget (cap and trade) programs, the open market rule signifies a major push to introduce market-based approaches to cleaning up the air: Reducing costs, increasing innovation, enhancing flexibility, and accelerating attainment of health standards.

Ground level ozone, the primary constituent of smog, continues to be one of the most pervasive pollution problems in the United States. Exposure to ozone may cause serious respiratory health problems, such as chest pain, coughing, nausea, and congestion.

Elevated ozone levels have been associated with observed increases of hospital admissions for respiratory diseases such as asthma and decreased lung function of children attending summer camp. It is estimated that ozone damage to crops, forests, natural systems and synthetic materials is significant and exceeds $2 billion per year lost to crops alone. Ozone is not directly emitted into the air, but instead is formed in the atmosphere from reactions of ''precursor'' pollutants in the presence of sunlight and warm conditions. The major ozone precursor emissions are oxides of nitrogen (NO_X) and volatile organic compounds (VOC).

In the last 25 years great progress has been made toward achieving healthy air quality under the Act. However, over 100 million people still live in areas that do not meet the ozone health standard. Continued reductions in ozone precursor emissions are important to protect public health, and represent a tremendous challenge for our nation's citizens and industries.

The 1990 Amendments to the Act established new deadlines for meeting the health standard for ozone and substantially increased EPA, State and industry attainment efforts. All areas that have not yet attained and maintained the ozone standard are categorized as marginal, moderate, serious, severe, or extreme areas. Each category has a compliance deadline, ranging from 3 years (for marginal areas) to 20 years (for extreme areas; e.g., Los Angeles). All such areas have requirements for reasonably available control technology (RACT) for major stationary sources of VOC and NO_X and with the exception of marginal areas have defined rates of progress (ROP) for reducing ozone precursor emissions.

The smog reduction programs in the U.S. are typically based on traditional forms of environmental regulation: source-specific emissions standards (e.g., RACT) set on a uniform basis for categories of similar sources. Even though set as performance standards, these regulations have a tendency to treat all sources within a category the same and to be oriented toward the lowest common denominator, that is, toward sources within the class that have the greatest difficulty and/or greatest cost of control. Such standards simultaneously miss substantial opportunities for cheap emissions controls by ''better'' sources, and impose a disproportionately high cost (per ton of pollutant reduced) on a smaller group of sources. Government frequently lacks information on untapped but cost-effective control options, and sources have no incentive to be forthcoming. Government also tends to overlook smaller or unconventional sources.

Recognizing some of these problems in traditional regulations, EPA has developed policies permitting an increasing variety of ''emissions trading'' approaches since the late 1970's. The EPA ''bubble,'' ''netting,'' and ''offset'' programs allow certain kinds of trading of emissions reduction obligations within the pre-existing regulatory structure. These programs use the existing command and control regulations as a baseline for trading.

The results of these existing programs have been mixed. Overall, the volume of existing source trading has been small, perhaps due to high transaction costs associated with the bubble policies. New sources have found it possible through netting to avoid both time- and resource-consuming Government review processes. Bubbles, netting and offsets have reduced sources' overall compliance costs. However, there have been significant problems of quality control, reducing the environmental effectiveness of the programs.

A. Emerging Market-Based Approaches for Ozone Control

The 1990 Act Amendments recognized the merit of market-based solutions to pollution control. The Amendments introduced a market-based allowance trading system for sulfur dioxide to control acid rain. The Amendments also included a requirement, in certain cases, for economic incentive programs (EIP's) to be used as part of States' plans to meet the ozone and carbon monoxide standards in designated nonattainment areas. In 1994, EPA issued the EIP rule, which provided rules and guidance for establishing EIP's. Two market-based approaches have emerged that show particular promise for EIP's or other ozone related trading systems: emissions budget programs and, more recently, the open market approach.

1. Emissions Budgets: (''Cap and Trade'')

Emissions budget programs have been highly successful where they have been implemented to date and offer the potential for high integrity achievement of environmental goals and considerable cost savings. Emissions budgets programs are predictable, flexible, offer low transaction costs, and in practice have yielded both unexpectedly high rates of innovation and unexpectedly lower costs. The cost of the acid rain program is proving to be considerably lower than expected—in large part because of the flexibility and innovation allowed under an emissions budget program. Estimated national annualized cost of the program at the time of enactment (1990) was $4 billion; the current (December 1994) estimate from the General Accounting Office is $2 billion (Market-Based Pollution Control Programs, ICF Kaiser, Inc. May 11, 1995). Recent scrubber costs are about half of their historic level and their removal efficiency has increased. Prices for low sulfur coal are also lower than expected because of increased production, increased use of low expense coal cleaning, bundling of allowances with fuel sales, and competition in transportation. The Regional Clean Air Incentives Market (RECLAIM) program is expected to cut Southern California NO_X emissions by 80 percent over 10 years while saving about $58 million annually compared to traditional regulations (ICF Kaiser, 1995). Well-designed emissions budget proposals offer the highest degree of certainty for the environment and sources alike, and EPA wants to do everything possible to support and encourage them. The EPA is currently providing strong support for ongoing State development of emissions budget approaches for large-scale regional control of NO_X in the Northeast Ozone Transport Region (OTR), and for VOC emissions in Chicago and Los Angeles.

Notwithstanding their substantial benefits, emissions budget programs are unlikely to capture all of the market-based opportunities to achieve environmental results with reduced cost and greater flexibility. Emissions budget programs have required considerable start-up time and effort. They require agreement on (1) The universe of covered sources, (2) baseline emissions levels, (3) the emissions cap and its rate of decline, (4) the allocation of emissions allowances, and (5) standardized monitoring and measurement techniques for determining each source's emissions. Experience with RECLAIM and the acid rain program shows that obtaining agreement on these points can take several years. As a result, emissions budget programs have been applied to date mostly to well-measured pollutants from relatively uniform industrial sectors, e.g., oxides of sulfur (SO_X) and NO_X from utilities. Start-up time should decline, however, as experience is gained. The RECLAIM program and the Chicago program are making great strides in extending emissions budget programs to some categories of VOC sources.

The EPA is committed to continue providing financial and staff support to emissions budget development projects,

and the Agency will process emissions budget SIP revisions on an expedited basis. Nonetheless, opportunities remain for market-based solutions that emissions budgets are not likely to capture in the near term. The EPA is pursuing the open market approach, in addition to emissions budget approaches, to reach more of these opportunities for cost reduction and flexibility while meeting public health protection standards.

2. Open Market Trading

As stated, the open market approach has the potential to reach market-based opportunities that emissions budgets are not capturing, and to serve in some cases as a transitional stage until full emissions budget programs can be developed. Open market trading programs can begin operating without waiting for agreement on a cap, on allocations, or on pre-established emissions measurement methodologies.[1]

They can be implemented before there is agreement on an area-wide or regional budget or other package of emissions reduction measures fully adequate to demonstrate attainment of the ozone smog health standard. They also have the potential to reach more diverse and numerous types of sources (including mobile sources) than have been covered to date by emissions budget programs.

The OMTR described today builds on the pioneering work done in a major demonstration project overseen by the Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid Atlantic Regional Air Management Association (MARAMA) (Emissions Reduction Credit Demonstration Project, Phase II, Volume I Final Report, April 1995). This project was partially funded by EPA's market-based initiative grant program and has involved many State air pollution officials, EPA staff, environmentalists, and representatives of major corporations in the Northeast.

The open market system differs both in concept and execution from the traditional emissions reduction credit (ERC) programs, ''bubbles,'' ''netting,'' and ''offsets.— These programs involve trading of contemporaneous emissions rates that extend indefinitely into the future. The open market, on the other hand involves trading of discrete quantities (tons) of emission reductions already made. The discrete reductions are measured from an emissions baseline that is generally defined as the lower of actual or legally allowable emissions at the source. Retrospective quantification of discrete reductions offers the potential for achieving greater certainty and verifiability for all parties regarding reductions already accomplished.

Administration of ERC programs under the 1986 Emissions Trading Policy Statement has required a heavy investment of State, Federal, and public resources in ''up-front'' review and clearance of specific trades. In the effort to avoid quality control problems (''paper trades'') that existed at points in the past, States typically devote substantial resources and take considerable time to review individual trades. High governmental costs and delays for the private sector have kept the volume of emissions trades quite low.

The open market system would shift review and approval of individual trades from the front end as a SIP revision or a permit change, to the time of use as a compliance determination and enforcement matter. Instead of complying with an emissions limitation through control equipment or process changes on site, a source operating under the open market rule may comply by buying and using an appropriate number of tons of discrete emissions reductions (DER's). This system places responsibility for the quality of those DER's on the source that uses them for compliance. These features would reduce front-end costs and delays while harnessing private sector resources to assist government in assuring quality control. Responsibility for compliance would motivate arms-length users to inspect carefully and choose wisely among the DER's offered on the market, and to protect themselves through contract indemnification provisions with sellers of reductions, or with third party auditors, and through purchases of extra reductions as ''insurance.'' Trades can take place before governmental review and approval, increasing flexibility and lowering costs.

The likely benefits of this system would be several. The fact that reductions are accomplished before they are traded and used, encourages earlier achievement of reductions. The private sector would be rewarded for revealing, rather than concealing, cost-effective pollution control opportunities. Lower cost curves would make it easier for States to deny variances and promulgate additional needed rules. The open market system would also expand the participating pool of sources beyond those currently subject to direct regulation.

The practical implementation of an open market trading system gives rise to many significant questions. These questions are identified here and addressed in Section III of the preamble to today's notice. How would open market trading be made consistent with air quality goals and legal requirements? What would be EPA's role in assuring market integrity? To promote certainty in the market as well as quality and enforceability of reductions, what level of EPA support for emissions reduction quantification protocols would be necessary? What would be the appropriate degree of compliance oversight?

B. Open Market and Emissions Budgets Can Work in Concert

The EPA believes open market and emissions budget systems can complement each other and even work together. Open market systems can be put into place more quickly because they do not require consensus-building on a budget, allocation disbursement and related infrastructure. Open market systems can involve different source sectors and smaller, more diverse sources that are not easily captured by budgets. Open market systems can operate in concert with budgets and positively affect areas outside the emissions budget domain.

Emissions budget systems would still offer substantial advantages over open market systems. Under emissions budgets, sources have greater certainty about future allowance allocations and thus greater flexibility and ability to plan operations and trading in the future. Reductions from shutdowns and curtailments, while not compatible with the open market system, can be accommodated under an emissions budget program. Thus, there will be continuing incentives to move from an open market to a budget system, which would allow increased flexibility and cost savings consistent with achieving health and environmental goals.

C. Rationale and Principles for Today's Proposal

The model State rule proposed in today's notice has several features that would clear the way for widespread application of open market trading programs. Today's proposal is designed to eliminate the bottleneck of the single-source SIP revisions for emissions trading. The adoption of the OMTR into the SIP would allow sources to legally substitute DER's for on-site compliance through pollution control equipment. Today's proposal is a model rule for incorporation into the SIP. Once this rule is made final, EPA proposes to automatically approve SIP revisions that adopt this rule.

[1] The name ''open market'' was coined to reflect the absence of an emissions budget or cap (so-called ''closed market'' systems).

The model rule would not displace any other trading rule or option currently approved or under development. It would open a new method of trading and a new route for adopting that method. The model rule describes a set of provisions that EPA has concluded are approvable in all circumstances and in any area of the country. Variations that are more expansive (e.g., trading over greater distances than provided in the model rule) may be approvable in specific areas or under the specific circumstances of a particular State. The EPA would evaluate SIP revisions containing variations of this model rule on a case-specific basis. The EPA is committed to working closely with any State interested in pursuing any such variation. The EPA is available to consult with States on the approvability of potential variations and to provide expeditious review and decisions on any such submissions.

In producing this proposed model rule, EPA has observed the following over-arching principles:

1. Do Not Interfere With Ongoing State Market-Based Programs

As mentioned above, one function of the OMTR is to encourage, enable, and support emerging State trading programs, whether they are classified as open market, emissions budget, or another trading approach. The proposed model rule is neither mandatory nor prescriptive. States would be free to tailor their own programs, which may or may not include an open market trading component, and EPA encourages States to harness compliance tools appropriate to their particular circumstances.

2. Reduce Compliance Costs Without Compromising Environmental Integrity

A key test for any market-based strategy, including the OMTR, is to lower the overall cost to the economy of clean air compliance, in a manner that has equivalent or better environmental integrity.

3. Provide for a Long-Term Benefit to the Environment

The open market rule should benefit the environment in a number of ways. Facilities may reduce emissions beyond their current levels in order to sell the reductions, and facilities purchasing the reductions would in turn have more flexibility to meeting their compliance obligations, often obviating the need for source-specific emissions limit modifications and exemptions. The open market program should encourage early reductions through banking. It also should create an incentive to try incremental and innovative emissions reduction strategies, as well as reward accurate emissions measurement procedures. To ensure an environmental benefit, the proposed rule requires 10 percent of every credit used to be retired for environmental benefit.

4. Maximize Flexibility and Minimize Transaction and Regulatory Costs

Reflecting one of the President's concerns with the role and effectiveness of the Government in his reinvention initiative, a major goal in this rule development is to improve upon the burdensome oversight, and reporting and recordkeeping requirements that currently exist in many pollution control programs. In this spirit, the rule proposes requirements that are less burdensome yet consistent with the level of quality necessary to maintain environmental integrity within the open market system.

5. Actively Involve the Public, Industry and States in the Process

The EPA has worked with States, industry, and the public in developing this model rule. This cooperative process will continue as the proposed rule emerges toward its final version.

II. Summary of Proposed Rule

A. Purpose

The purpose of the model open market trading rule is to allow sources to generate and use DER's for compliance with Title I and various Title II VOC and NO_X rules while complying with all other applicable requirements of the Act. The model rule would provide VOC and NO_X sources with a financial incentive to reduce emissions below levels required by applicable Federal and State requirements and below their actual emissions in the recent past. Sources would be permitted to make more economical decisions regarding how to comply with pollution control requirements applicable to them. These sources would be able to supplement or replace traditional compliance strategies with a strategy of purchasing and using DER's.

B. Applicability

Today's notice applies to any State that adopts and submits an identical rule to EPA as a SIP revision. The preamble to the proposed model rule serves as a policy statement on open market emissions trading, and explains how EPA would view specific deviations from the proposed model rule.

C. State Program Election and Submittal

The EPA would automatically and immediately approve any State submittal that revises that State's SIP to incorporate the identical language of the model rule. That does not imply, however, that a State could not develop variations on the model rule tailored to its particular needs. The EPA would review any such rule and judge its approvability in accordance with the adequacy and reasonableness of the justifications for any variations from the model rule. Variations could not be automatically approved, but EPA is committed to reviewing them expeditiously.

D. Rule and Program Summary

This section briefly describes, in nontechnical terms, how the open market trading system would work under the model rule proposed in today's notice. It serves as a brief summary of the steps a source would take to generate and/or use a DER, including any limitations. It also describes what, when and how the source would need to tell the State about their DER activity. A brief description of EPA's enforcement strategy is also included.

1. Generating DER's

Any NO_X or VOC source could generate DER's under the OMTR. In contrast with traditional trading programs, where a source must accept a permanent tightening of applicable emissions reduction requirements in order to generate a continuing stream of emissions reduction credits, in the open market program a generating source would not change its legal emissions limitations. The source could generate DER's by any action that reduces its emissions per unit of production or operation (e.g., install pollution controls, make process changes, switch fuels). Qualifying actions may even be temporary (e.g., a temporary fuel switch); after the discrete period in question, the source would have no obligation to continue emitting below its legal limitations.

To be valid, DER's must meet the requirements of the model rule and of guidance regarding emissions quantification that will be issued by EPA. The DER's must be real, surplus, and verifiably quantified. The DER's must represent real reductions in ozone-forming emissions. In addition, they must be surplus, that is, reductions that were not otherwise required by existing regulatory requirements or accounted for in attainment or maintenance plans. DER's are emission reductions generated

over a discrete period of time, measured in units of mass (usually tons). The generating source would be responsible for verifiably documenting the amount of DER's it had produced, and DER's would have to be measured through a valid quantification protocol.

To generate DER's, a source would first determine its baseline, which reflects what the source would have emitted during the generation period absent its DER generation strategy. In general, this would be determined by referring to either the emissions level that would be allowed by current law, or the facility's emissions that would have occurred based on recent actual emissions rates. After the baseline was ascertained, measurements would be taken and calculations would be made to determine the amount of DER's that resulted from the specific action taken to reduce emissions. This process must follow a valid quantification protocol developed in one of several ways as indicated below. The protocol would take into account an individual source's characteristics (e.g., rates of VOC and NO_X production, continuous or batch processes, etc.) and monitoring capabilities. A source could chose to follow a protocol that had been found to be previously acceptable, or it could forge a new protocol following criteria that EPA will issue in protocol guidance.

The generator would quantify its reduction by factoring relevant source-specific information into the quantification protocol to determine the amount of DER's generated. The generator must document DER's in a format that would allow enforcement authorities to verify them, to determine the user's compliance and, where necessary, to enforce in cases of invalid DER's. Once generated, DER's could be used at any later time for compliance with an eligible VOC or NO_X emissions reduction requirement. Like other emissions allowances recognized under the Act, they would not be the holder's property, but instead would be a limited authorization to emit the designated amount of emissions.

After a DER had been generated, the source generating the DER's would submit a Notice and Certification of Generation to the State where the generation had taken place. This notice must contain a certification, made under penalty of law, as to the accuracy of certain information, including:

(a) The name and location of the source that reduced emissions;

(b) The discrete time period over which the emissions reductions occurred;

(c) The amount of emissions reductions that occurred during the ozone season and the amount of reductions that occurred during other parts of the year;

(d) The unique identification number for each ton of DER's created;

(e) The emissions quantification protocols that were used to calculate and document the emissions reductions;

(f) Information on existing requirements, if any, to which the generator source is subject; and

(g) A signature of an authorized individual who is certifying under penalty of law that the above information is accurate and complete.

Certain actions described in the rule would not create DER's, such as:

(a) Facility shutdowns;

(b) Temporary or permanent production curtailments;

(c) Emissions reductions resulting from modifying or discontinuing any activity that is otherwise illegal;

(d) Emissions reductions that occur as the result of any applicable Federal or State requirement including compliance with MACT, BACT, LAER, and NSPS requirements, or emission reductions relied on by the State for meeting the ozone NAAQS; and

(e) Actions that occurred prior to the start of the relevant 1995 ozone season.

2. Using DER's for Compliance

Once DER's were generated, they could be transferred to any party for use to comply with eligible requirements. Anyone could hold, purchase and sell DER's. Intermediaries could act as DER brokers to further facilitate the market process. Any source could use DER's to cover eligible compliance obligations. Common uses for DER's might be: (a) To comply with specified NO_x and VOC emissions limits; (b) to cover emissions increases that currently are commonly legitimized by variances; or (c) as offsets under an EPA-approved major new source review regulation.

A source that desired to use DER's for compliance purposes over a specified period must determine the amount of DER's it would need. Thus, the source must estimate its DER requirement through a valid emission quantification protocol, similar to the process described for DER generation, except that the user source must project its underlying activity rate for the use period. The source must retire 10 percent of the DER's it uses; thus it must purchase a fraction more than it needed for compliance purposes in order to help ensure that the flexibility and economic benefits of the open market trading program would also produce a public health protection gain in each future year.

In order for a user source to use DER's for compliance purposes, that source must own such DER's before the applicable date for compliance. The user must notify its State at least 30 days prior to its first actual use of DER's of its intentions to use such DER's. This notice would not obligate the notifying source to use the specified DER's. The notice would give the State the opportunity, if it wished, to begin inspecting the validity of the DER's before they are used.

The source must ''true-up'' its original DER need estimate by using the appropriate protocol to determine its DER compliance requirement during or after the period in which DER's would be applied. When a source had actually used specific DER's, it must file a Notice and Certification of Use along with its regular compliance reports to the State no less often than once every year. This notice would become part of the documentation that the State would rely upon to verify that the user had met its compliance obligations.

The model OMTR would prohibit certain DER uses. Such prohibitions include: (a) To avoid penalties or enforcement actions by obtaining DER's after the fact of noncompliance; (b) for netting or other means to avoid NSR/PSD requirements; (c) to meet Act section 111 and 129 NSPS, LAER, BACT or MACT requirements; and (d) to meet requirements for motor vehicle emissions standards, reformulated gasoline, Reid vapor pressure standards, clean fueled fleets, employer trip reduction programs, or vehicle inspection and maintenance programs.

3. Time and Place Use Limitations

By definition, DER's must be used at a time after their generation. This is known as intertemporal trading. Intertemporal trading could occur, within the same ozone season, from one ozone season to a later one, or from the ozone season to a non-ozone season. However, DER's generated during a time outside of the ozone season could not be used to comply with any emission reduction obligations during the ozone season.

User sources must also comply with certain geographic restrictions to ensure that the new geographic distribution of emissions created by trading would not interfere with a State's obligation to maintain air quality or reach attainment of the ozone smog standard in a timely manner. Due to differences in the role of natural emissions and in how VOC and NO_x react to form ozone, the

proposed model rule places different geographic limitations on VOC and NO_x.

Under the model rule as proposed herein, VOC reductions generated outside any ozone nonattainment area may not be used for compliance inside any nonattainment area. NOx emissions generated outside a SIP's modeling domain (as defined by urban airshed modeling) may not be used for compliance inside the modeling domain. These limitations could be relaxed in some but not all State-specific OMTR applications due to an area's unique meteorology. If a State submitted appropriate justification, EPA would consider and expeditiously review any area-specific variations on the model rule's geographic limitations.

Consistent with these geographical limitations, interstate trading and use of DER's would be allowed and encouraged, so long as the relevant States had entered into agreements that allowed such transactions. Participating States must provide for an interstate DER tracking system so the States could protect against DER's being used more than once.

4. Reporting, Recordkeeping, and Public Availability

Sources must keep adequate and accurate records so as to ensure that the DER's are real, quantified, surplus and verifiable. In addition to the records they must create themselves, users would be expected to have pertinent records of DER generation from the generator to prove they held valid DER's. The user source then must hold such records for a minimum of 5 years after the DER's are used.

The notices that are submitted to the State must be made available to the public by the State under the appropriate State law regarding public access to such documentation. This requirement applies equally to both title V and non-title V sources. This will allow the public to monitor specific transactions and contribute to public confidence in the open market system.

5. Market Participants

Both sources that have and do not have title V operating permits could, and are encouraged to, participate in the open market trading program, especially as DER generators. One of the benefits of the open market program is that small stationary sources and mobile sources that are not subject to title V requirements could contribute to reducing overall pollution levels in an area. The Notice of Intent to Use and the Notice and Certification of Use must be filed with any applicable operating permit.

6. Protocol Development and Approval

One key to integrity in the operation of an open market system is accurate quantification of the amount of surplus DER's created, and accurate quantification of the amount of DER's needed to meet compliance obligations. For the program to be adequately enforceable by State and Federal authorities, these measurements or calculations require emissions quantification protocols that could be recognized by the State and the EPA for use in the open market program. All DER generation and use activities must be documented through the use of DER quantification protocols that either have been approved by EPA, or that correspond to EPA guidance on acceptable protocols. Typically, a protocol would specify the measurement methods, monitoring methods, calculation procedures, and documentation requirements for estimating or measuring emissions for both the source's discrete reduction strategy and its baseline. All protocols must include methods that are credible and replicable.

EPA-approved protocols could come into existence in two ways. First, EPA intends to issue EPA-approved protocols for a number of reduction strategies. Second, EPA would work together with States and industries to jointly review and approve quantification protocols for a variety of source types. As a separate action, EPA also plans to issue guidance on the development of an acceptable protocol. This guidance would lay out specific criteria that must be met by a protocol developed by a generator or user which had not already been approved by EPA. The EPA intends to issue this guidance by the time the model rule is finalized.

7. Enforcement

The user source would be responsible for complying with all applicable requirements, and therefore would bear the burden of demonstrating that the DER's it relied on were real, surplus, in sufficient quantity to meet its compliance obligation, came from an appropriate place and season, and met all other applicable requirements of the rule. The user would be subject to enforcement proceedings for insufficient or invalid DER holdings. The DER user, not the State, would bear the burden of proof that the amount of DER's purchased were sufficient to cover its compliance obligation including the environmental discount, and that the DER use met all applicable requirements of this rule.

From a compliance and enforcement standpoint, a lack of adequate and credible recordkeeping would be equivalent to a lack of creditable DER's. As stipulated in the Act, each violation (emissions limit or recordkeeping) would be subject to maximum penalty of $25,000 per day. Criminal sanctions could also apply as allowed under law. In assessing penalties, EPA enforcement policy does take into account the nature and degree of violation when determining what is an appropriate enforcement action.

8. Program Audit

At least once every 3 years, the State would be required to audit their open market trading program to evaluate the program's performance. The audit would include, but would not be limited to, an examination of the program's effects on requirements for rate of progress (ROP) and timely attainment (credits used compared to credits generated in a given year or ozone season), and the effects of reconciliation measures that might have been taken as a result of previous audit findings.

If the audit indicated a problem with implementing this rule, then the State must consider initiating measures to reconcile the problem. Possible reconciliation measures would include, but would not be limited to: (a) Enhancing monitoring requirements; (b) increasing the environmental benefit component of DER use, or limiting the use of DER's to compensate for the difference between actual emissions and the reductions needed to reach attainment; (c) implementing additional technology-specific emissions reductions; (d) increasing penalties, or (e) restricting trading.

The EPA would also perform a national audit based on the compilation of State audit reports and if necessary, would revise the open market program in accord with the audit's findings.

III. Discussion of Issues

This section provides more detail on the provisions of the OMTR and issues surrounding the development of an open market trading system and requests public comment on several issues. This section also discusses elements of the proposed model rule that States could modify to meet their unique needs. The EPA recognizes that States may develop variations on this rule that are better suited to specific local air pollution problems, and EPA will be flexible with respect to approving a variation to the model rule if the State provides an adequate and reasonable justification.

A. Regulatory and Contractual Liability in the Open Market

Currently, most emissions trades between existing sources are made through single-source SIP revisions that must be approved by both States and EPA. Pre-approval scrutiny of each trade is generally effective in ensuring that trading does not interfere with air quality requirements: For example, that the emission reductions and increases involved are calculated from appropriate baselines and are appropriately quantified. However, individual SIP revisions take considerable time and involve substantial costs for both the private sector and State and Federal governments. At least in part because of these transaction costs, the number of emissions trades between existing sources has been relatively low, and significant potential opportunities to meet air quality objectives at lower cost have not been realized.

The EPA's fundamental objectives in this proposal are to free up the market for a higher volume of cost-effective emissions trading while at the same time maintaining the relatively high level of quality assurance that the current system provides. To meet these objectives, EPA has used the following ''design criteria'' in designing the proposed open market trading rule. The proposed rule should:

(1) Support timely attainment and maintenance of the Clean Air Act's public health protection standards;

(2) Reduce private sector compliance costs, making it possible to better protect the environment at lower cost;

(3) Reduce governmental costs in administering an expanded emissions trading system;

(4) Make maximum use of private sector mechanisms for quality assurance (liability arrangements, contractual guarantees, insurance, third party services, etc.);

(5) Give potential market participants the ability to predict with reasonable certainty which emission reduction actions will be found valid and creditable by governmental authorities; and

(6) Provide the private sector with strong incentives to comply with all requirements while at the same time giving responsible (''good faith'') market participants reasonable expectations on potential exposure to civil or criminal penalties.

The proposed rule, as already noted, is derived from the ''open market'' concept developed by the EPA-supported NESCAUM-MARAMA demonstration project and elaborated in a recent article.[2] This approach avoids the need for single-source SIP revisions by treating emissions trading as a compliance option, that is, as another means of compliance with applicable pollution control requirements contained in the State Implementation Plan (SIP).

At present, most SIP's establish emission limitations directly applicable to specific equipment and operations at facilities. Owners and operators of such facilities must comply with these emission limitations by installing emissions control equipment, making process changes, or changing fuels or other inputs. Failure to comply is a violation of State law and section 113 of the Clean Air Act and exposes the source to enforcement proceedings by the State and EPA. Citizens may also bring actions to enforce these obligations under section 304 of the Act.

Under the open market concept, sources would have the option of complying by purchasing appropriate amounts (tons) of discrete emission reductions (DER's) generated by others. The governmental role in reviewing emissions trades would be transformed from prior approval during SIP revisions to ''post-hoc'' scrutiny during compliance determinations. Eliminating pre-approval of reductions and shifting to review at the compliance stage would greatly free up the market and increase trading volume, thereby reducing compliance costs and benefitting the environment.

A key issue identified, however, in the NESCAUM-MARAMA demonstration project and in the above-cited article is how to maintain confidence that DER quality will remain high—that reductions will be taken only from appropriate baselines and rigorously quantified—as government involvement moves from prior approval to compliance auditing.

Maintaining confidence in the quality of DER's is critical from all perspectives. Regulatory authorities and the public need to know that pollution will actually be reduced as projected, and the private sector needs to know that the market will reward high quality reductions and reject defective ones. Yet detailed compliance audits are inherently conducted on only a fraction of sources each year, as limited governmental enforcement resources must be targeted at a range of high priority environmental problems.

In the stakeholder and interagency review processes conducted prior to this proposal, a number of options were put forward for maintaining DER quality assurance in an expanded emissions trading market. The proposal made today is a hybrid of these options that EPA has developed using the ''design criteria'' described above. The EPA believes this hybrid best serves the twin objectives of freeing up the market for a higher volume of emissions trading while maintaining sound quality assurance incentives.

1. Option 1: User Liability

The first option considered was put forth by the original developers of the open market concept. Building directly on the current regulatory structure, they contemplated that liability for deficiencies in DER's under the Clean Air Act and State air pollution laws would remain with the party who purchased and used the DER's as a compliance option, since that party had the original compliance obligation. The key concepts underlying this option are that (1) DER's are compliance products similar to pollution control equipment, and (2) as such the user source is responsible for compliance when using DER's just as it is when complying by use of control equipment.

Like sources using purchased control equipment or services, sources using DER's to meet their emission limits would be able to control their compliance risks by choosing carefully among vendors and by negotiating for appropriate guarantees, insurance, or indemnification provisions. Pollution control equipment and services purchased from vendors generally come with guarantees specified in contracts or implied under commercial law, or with specific insurance policies or indemnification agreements as negotiated by the parties. Pollution sources using purchased control equipment or services, however, remain responsible for their own compliance obligations with State and Federal pollution laws, and remain liable to enforcement authorities in cases of non-compliance, even if the non-compliance was caused by a shortcoming in the products or services purchased from a vendor. In that case, sources have recourse to contractual guarantees, insurance, or indemnification provisions. Through these provisions sources can return to compliance (e.g., obtain satisfactory equipment) and be compensated appropriately for damages.

Liability for compliance with State and Federal pollution laws and the

[2] Emissions Reduction Credit Demonstration Project, Phase II, Volume I Final Report, April 1995. Developing a Market in Emission Credits Incremental: An ''Open Market'' Paradigm for Market-Based Pollution Control; Richard Ayres, Bureau of National Affairs Environment Reporter, Current Affairs December 2, 1994.

prospect of enforcement for non-compliance encourage each source to pay attention to the quality of goods and services offered by prospective vendors of emission control equipment, fuels, and services. In the competition for sources' business, market forces favor vendors with great expertise, good track records for reliability, or the best guarantees. Less capable vendors, who expose their clients to greater risks of non-compliance, generally command lower prices—if they can get any business at all. Market forces would be expected to operate in the same way for DER's. In order to minimize risk, buyers would look for quality and favor DER's that present low risks of placing users in non-compliance. Users would remain responsible to enforcement authorities in cases of non-compliance, but would be able to use contractual provisions (guarantees, insurance, etc.) to shift the financial consequences to generators or intermediaries that sold them defective goods. The care users would take to reduce their compliance risks would help assure the quality of DER's for the benefit of both governmental authorities and the public.

Many participants in pre-proposal stakeholder discussions expressed support for this option of placing liability for DER validity on the buyer. Some participants, however, expressed concern that this option would not provide appropriate incentives for attention to DER quality if the seller and buyer are not in an independent, arms-length business relationship, such as when DER transactions are internal to a company or between companies that have close ties.

Still other participants expressed concern that buyer liability could create excessive uncertainties and risks for buyers. They predicted that buyer liability would reduce market activity and suggested other options.

2. Option 2: Retaining Pre-Approval Requirement

Several commentors recommended that EPA continue to allow trading only in reductions that have been pre-approved by governmental authorities. They contended that an active market could develop only if buyers have certainty that reductions offered on the market will be accepted by governmental authorities, and that this degree of certainty could be provided only by governmental pre-approval.

These commenters acknowledged, however, that the requirement for a source-specific SIP revision was an expensive and lengthy process for both industry and government and would remain a bottleneck preventing expansion of the market, especially given current governmental budgetary constraints. In response, these commenters suggested process changes such as limiting the time allowed for State review or dispensing with EPA review.

Other commenters, however, expressed concern that these process changes would present too high a risk of approving poor quality DER's. Governmental approval would be given despite reduced scrutiny of DER quality. Neither buyers nor any other party would have incentives to scrutinize the quality of DER's offered on the market once they were governmentally approved. These commenters expressed concern that this would lead to an influx of unsupported DER's, to the disadvantage of generators that were trying to follow the rules, and an increase in actual pollution levels.

3. Option 3: Splitting Regulatory Liability Between User and Generator

Other commenters suggested splitting liability for compliance under State laws and the Clean Air Act among the generators and users of DER's. Under this option, DER generators would bear full liability for the validity of the DER's they sold, and users' liability would be limited to deficiencies in how DER's were used (i.e., inaccurate calculation of a user's compliance ''debit''). In other words, users could purchase and use DER's without any legal risk for deficiencies in the generation of those DER's. In a variation of this option, the user would have the limited obligation to make up shortfalls if compliance authorities discovered deficiencies in the DER's it relied on. Commenters stated that one of the advantages of this approach would be that each party would be held responsible for actions under its own control. The transaction costs associated with constructing legal arrangements to give the DER buyer information and certainty about DER generation activities (inspecting potential DER purchases and negotiating for guarantees or insurance) would be avoided, thereby expanding the volume of trading and the cost savings.

Proponents of this option acknowledged that buyers would have fewer incentives to inspect DER's offered to them, compared to the buyer liability option. They contended, however, that it would be possible to increase the frequency of governmental audits, and the size of penalties, enough to maintain DER quality assurance. Other commenters expressed concern that an increase in governmental auditing sufficient to preserve DER quality would be difficult in light of budgetary constraints, and that it would be difficult to convey appropriate market signals about potential penalties through case-by-case enforcement actions. Legal issues were also raised over whether State authorities could obtain jurisdiction over out-of-state generators, and on whether statutes of limitations with respect to generation violations would begin to run before the DER's are used.

4. Option 4: Reliance on Third Party Guarantors

Another suggested option is to allow independent third parties to guarantee the validity of DER generation and assume the compliance liability for invalid DER's. In this option, independent third parties would become subject to penalties under State laws and the Clean Air Act if DER's were deficient. This liability would give such third parties incentives similar to those of the buyer under Option 1 to inspect DER's carefully and choose those that are best supported. The user would remain liable for deficiencies in how DER's were used, as in the split liability option above.

Proponents indicated that this approach could be of special value when dealing with small sources that have the potential to generate cost-effective emission reductions, but that lack the knowledge or capacity to seize the opportunities on their own. Likewise, the availability of such third parties might be valuable to small sources that were potential users of DER's, but that lacked the necessary expertise to purchase high quality DER's on their own or the willingness to assume liability for defective DER's. Other commenters raised questions about the legal means by which such third parties would be made subject to regulatory liability, how to define an independent third party, and how to handle the potential bankruptcy of such a party.

5. Proposed Approach

The proposed open market trading rule adopts a hybrid of these options, as well as other measures to address concerns about incentives and uncertainties. The proposal is based largely on Options 1 and 4, while also requesting comment on the issues raised in Option 3. The EPA believes that the principle of buyer liability will work the best to assure DER quality. The EPA also believes that in addition to their major role through contractual mechanisms, third parties should be allowed to assume regulatory liability in certain circumstances. The proposal also reflects other significant features

intended to promote market activity by reducing the uncertainties associated with buyer liability.

Accordingly, under the proposed open market trading rule, sources may use DER's in lieu of direct pollution control measures to demonstrate compliance with their emission reduction obligations under State and Federal law. Today's rule proposes that the user source would be responsible to enforcement authorities for compliance. The EPA has taken four steps in this proposal to reduce the uncertainties and transaction costs associated with this liability structure. Included in these steps are provisions for third parties, in certain circumstances, to assume the legal responsibilities of a generator. In addition, EPA is considering and asking for comment on whether there are appropriate circumstances in which a third party could take on a portion of the legal liability of certain users, or liability could be divided between user and generator.

a. Generator Certification. First, the proposal would require generator sources to certify, under penalty of law, to the accuracy of the underlying factual information (e.g., the accuracy of monitoring and other data used to calculate the reductions), which supports DER's offered for sale. If subsequent investigation should demonstrate that such information was inaccurate, the generator would be subject to civil and, if appropriate, criminal enforcement. It should be noted that certification is a requirement to which pollution control equipment vendors are not subject, but EPA believes it is an appropriate requirement for DER generators in order to provide a significant added measure of DER quality assurance to prospective users, State and Federal authorities, and the public.

b. Guidance for Emissions Quantification Protocols. Second, EPA proposes to issue guidance containing criteria for emissions quantification protocols. Quantification of the emissions reductions that sources have generated and the amounts that are needed by users would have to meet the criteria in this guidance. In addition, working with the States, industry, and the environmental community, EPA proposes to create a mechanism for approving specific quantification protocols for priority types of generation and use activities. A number of such protocols would be drafted by industries, and others by EPA or States. They would be reviewed by a multi-stakeholder process prior to an EPA approval decision. The EPA believes these protocol guidance and specific protocols would give generators and users, as well as compliance authorities, a predictable ''road map'' for distinguishing DER's that have a high likelihood of being considered valid, from ones that are suspect or clearly inadequate.

c. Third-Party Relationships. Third, EPA proposes to encourage the emergence of a variety of third-party relationships that could help the market function. Within the context of Option 1, third parties could, through contractual arrangements, assume many important functions that would assist generators and users. Further, as suggested in Option 4 above, EPA proposes to allow third parties to assume the regulatory liability of generators in certain circumstances. Finally, EPA is considering and requesting comment on the possibility of allowing third parties to take on a portion of the regulatory liability of certain users.

(i) Third party contractual roles. Under the proposal, generators and users could enter contractual arrangements with third parties to perform a variety of important functions. For example, generators and users could hire technical and legal experts to improve their ability to create and purchase high quality DER's. Technical experts could help generators develop quantification protocols that conform to EPA guidance, and develop the data that plugs into such protocols. Lawyers could provide expert opinions on the applicable State and Federal requirements that determine a source's baseline. Similar technical and legal services could be performed for the user, both to determine the user's need for DER's and to pick the highest quality.

Third parties could also serve as brokers matching sellers and buyers. Some third parties may acquire their own portfolios of DER's and offer guarantees, insurance, or indemnification services to buyers.

Independent third parties could serve as a trusted source of expert opinions establishing the quality of DER's. Such opinions would not relieve the user of its regulatory liability under State law and the Clean Air Act, but they could serve to reduce uncertainty, distinguish high quality products, and build market confidence. The EPA specifically requests comment on whether an opinion by an independent third party should be required when the generator and the user are not in an ''arms-length'' relationship.

(ii) Third parties as generators. The EPA also proposes that, under defined circumstances, third parties could directly assume the regulatory liability of generators. Third parties could play an instrumental role when dealing with small batches of cost-effective emission reductions from smaller sources. The EPA recognizes that the requirement for generator certification could discourage participation by small sources with the potential to make highly cost-effective reductions. Buyers may also be reluctant to take on the task of inspecting numerous small DER offerings from such sources. Third parties may be more familiar with the emission reduction methods and the DER calculation protocols than the owners and operators of such generator sources. Third parties could offer the service of taking operational responsibility for performing and documenting emission reducing actions for such sources, thereby capturing inexpensive emission reductions opportunities that smaller sources would otherwise be unaware of, or that they would be unwilling to seize on their own given the requirement for generator certification. The third party could then take ownership or control of the reductions achieved, aggregate many small batches of DER's, and offer them for sale to users.

To promote such actions, EPA is proposing that third party aggregators of DER's from small sources could take on the responsibilities of generators under the rule in certain circumstances. Specifically, this could occur where the third party enters an agreement with the owner of the small source to take actual operational responsibility for performing and documenting the action that generates DER's. Under the rule, the third party would be considered an ''operator'' of the sources in question, for the purposes of the Clean Air Act. The third party, not the numerous smaller sources, would file the Notice and Certification of Generation and assume the legal risk associated with the generator's certification as to the accuracy of the information underlying its DER; the sources whose emissions the aggregator reduced would have no liability. The user would look to the third party operator, not the actual owners of those sources, for the necessary documentation and certification as to the validity of the DER's, and for appropriate guarantee or insurance provisions.

In order to qualify for this role, the third party also would need to demonstrate financial responsibility, in order to insure that it has an adequate stake in generating bona fide DER's, and that the neither subsequent users nor the environment bear an undue risk in case of fraud or bankruptcy. EPA solicits comment on what specific criteria for a

showing of financial responsibility should be set forth in the final rule, and whether any additional qualifications or requirements on such third parties would be appropriate.

(iii) Third parties as users. EPA is considering and requests comment on whether third parties could play a similar role on the user side. The EPA recognizes that, as on the generation side, some sources with the potential to reduce control costs by using DER's may nonetheless be unwilling to take on the regulatory liability associated with responsibility for the validity of the DER's. It has been suggested that the rule could allow a qualified third party, by agreement with the user source, to assume the user's liability under State law and the Clean Air Act for the validity of the DER's used. Under this suggested approach, the user would retain legal responsibility for the calculation of the amount of DER's needed for compliance, as well as all other aspects of how the user source is operated. The third party, however, would assume legal responsibility for the validity of the DER's acquired and used.

The EPA is considering and requests comment on this approach should be adopted, and if so, with what appropriate conditions. Specifically, EPA is considering and solicits comment on what conditions would be necessary to maintain DER quality assurance incentives and capabilities for compliance determinations and enforcement actions equal to those associated with user liability alone. For example, to ensure that the third party has the same motivation as would the otherwise liable user to review DER offerings with care and choose on the basis of quality, the third party would have to be functionally independent of the generator from which it acquired the DER's. The third party would also have to consent expressly to take on the legal responsibility of the user source for deficiencies in the DER's, and to being considered an ''operator'' of user source for that purpose. The user and third party would have to file a single, unified Notice of Intended Use. They would have to do likewise for the Notice and Certification of Use, which would have to include certifications under penalty of law by responsible corporate officers of both the user and the third party as well as to the accuracy of the facts underlying their respective portions of the documentation. The third party would have to acknowledge the jurisdiction of the user source's State, and that any statutes of limitations on DER validity run from the time DER's are used, regardless when they were generated. The third party would have to commit to be present and make records available, on the same basis as the user, present with the user itself, for any inspections or related interaction with compliance authorities. As on the generation side, a demonstration of the third party's financial responsibility would assure that it has a sufficient stake to motivate diligence in determining the validity of DER's, and would protect the environment from undue risks of fraud or bankruptcy. As above, EPA solicits comment on what specific criteria should govern a showing of financial responsibility. The EPA is also considering and requests comment on how this approach would affect compliance determinations and enforcement proceedings in terms of complexity, resource demands, and effectiveness.

d. ''Good Faith'' Purchasers. Fourth, EPA proposes to develop a penalty or enforcement response policy in conjunction with the final open market trading rule that would lay out in greater detail how EPA intends to respond when DER's are determined to be deficient, despite users' ''good faith'' efforts, and the criteria upon which good faith would be judged. Enforcement of the Clean Air Act has a number of objectives, including remediation of environmental harm and deterrence of further non-compliance. The penalty or enforcement response policy will address the case where a source has fully acted in good faith in the purchase of DER's, including exercising due diligence in the inspection and selection of those DER's, and yet the DER's are subsequently determined to be deficient by compliance authorities. The policy will make clear that EPA's focus would be on remedying the harm to the environment from deficiencies in the DER's (i.e., the harm from excess emissions). This could be accomplished by requiring the user only to purchase and retire a sufficient number of DER's (perhaps with a multiplier) to recoup the deficiencies in the DER's originally used. The EPA requests comments on the steps a purchaser might take to be considered a good faith purchaser and on the appropriate multiplier, if any, should be applied in cases where replacement DER's are to be acquired.

The EPA believes these four features of the proposal would provide generators, users, and government authorities with sufficient guidance and certainty so that an active market in high quality DER's would develop.

After careful consideration, EPA rejected Option 2 (pre-approval requirement). The EPA agrees with concerns expressed by some commenters that retaining prior approval would maintain the bottleneck in the current system, and that proposals to limit State governmental review time or dispense with Federal review would run too high a risk of giving governmental sanction to poor quality DER's.

It should be noted that nothing in the proposed model rule is intended to prevent a State or other authorities from examining the quality of a particular DER prior to the compliance determination phase. Indeed, the Notice and Certification of Generation and the Notice of Intent to Use would give a State the opportunity to review a particular DER at an earlier stage, if it so chooses. The EPA expects also that many sources may seek informal consultations with States or EPA on the appropriateness of an emissions quantification protocol, the correct application of a monitoring method, the applicable baseline requirements, or other issues. The availability of such informal consultations could play an important role in providing certainty and predictability to the market. The EPA intends to continue working with stakeholders to explore mechanisms for informal early review of particular DER's.

With respect to Option 3, eliminating the user's responsibility for the quality of the DER's it purchased would reduce transaction costs and thereby expand the scope of trading leading to economic and environmental benefits. It would also increase the importance of governmental scrutiny during compliance determinations as a check on DER validity and a means of ensuring achievement of the environmental benefits. Only a fraction of sources are subject to detailed compliance inspections each year. If users are responsible for making up deficiencies, they will have some incentive to inspect the DER's offered to them to assure that they are real, surplus, and appropriately quantified. Nevertheless, it is possible that more unsupported or invalid DER's would be sold. This would increase pollution, damage public health, and undermine confidence in the market. The EPA is also concerned that both of these approaches could put the most scrupulous DER generators at a competitive disadvantage as compared with others that may exercise less care in their DER generation activities, unless compliance determinations are an effective check on the supply of defective reductions. The EPA requests comment on these issues. The EPA also requests comment on how, under a split

liability approach, States would address jurisdictional issues over out-of-State generators, or issues of responsibility for DER's generated in the past by sources no longer in business.

The EPA requests comments on all aspects of its proposed approach to liability.

B. DER Generation

1. DER Formation and Baseline

Under the proposed OMTR, participating sources may create reductions by reducing their emissions for a specific period of time below levels allowed by the approved SIP, State adopted rules (if more stringent and not yet in the approved SIP), applicable Federal requirements (e.g., NSPS), or historical actual emissions, whichever is more stringent. The source would not be required to remain at that new lower level permanently, but instead could reduce for a discrete time period. During that period, reductions may be calculated by determining the difference between what the source's emissions would have been under the baseline emissions rate (actual or allowable emissions without the DER generation strategy) and the actual emissions for the discrete period of operation at the new lower emissions level, times a measure of the source's operational level. The source would calculate its DER's in one ton units.

The generation baseline establishes a benchmark for what is surplus to all the source's applicable Federal and State requirements, including those contained in the area's SIP. Therefore, for sources located in areas where the attainment or maintenance plan is based on a source's actual emissions, the generation baseline would be the lower of the source's expected actual or allowable emissions. In areas that have fully approved attainment or maintenance plans which are based on sources' allowable emissions, the State has the option to let sources use their allowable emissions as the generation baseline. For sources not subject to any applicable VOC or NO_X requirements, and located in areas that are not required to have attainment or maintenance plans, the baseline would also be based on the source's actual pre-generation strategy emissions.

In some cases, the sources ''actual'' baseline emissions could be measured directly, for example, as the pre-control device emissions. In other cases, the baseline could be determined by reference to emissions rates for the two years immediately prior to the generation period in question, unless some other time period was deemed to be more representative of the operation of the source. In such cases, the expected actual emissions would be the product of the historical baseline emissions rate per unit production and the actual production during the generation period. The expected allowable emissions would be the product of the allowable emissions rate per unit production and the actual production during the generation period.

Some comments have expressed concern about the establishment of the emissions baseline for sources generating DER's in areas which have failed on a prolonged basis to submit and gain EPA approval of: (a) Measures needed to meet rate of progress (ROP) requirements, (b) attainment demonstrations, or (c) maintenance plans. These commenters have argued that if a State has not yet adopted the additional emissions control measures that would be necessary to rectify such a SIP deficiency, DER generating sources would be operating from an inappropriately high baseline. The commenters have suggested that steps would need to be taken to address such situations, for example, (a) barring further DER accrual by generators until the ROP, attainment demonstration, or maintenance plan deficiency is remedied, or (b) discounting DER generation by an amount proportional to the area's overall reduction deficiency.

Other commenters have argued that while a DER generator's baseline would be inappropriately high in such cases, all sources' baselines would be inappropriately high, whether the sources are participating in the open market program or not. These commenters believe that including in the OMTR a requirement to address such SIP problems by selectively targeting DER generators and users is unwarranted, since all sources reap an economic benefit from not having a lower baseline and tighter control requirements. They also believe that singling out open market participants would act to discourage participation in the open market system by creating undue regulatory uncertainty about the ability to create and use DER's, thereby sacrificing the efficiency gains provided by this regulatory approach. They have argued that States should rectify such attainment problems without singling out open market participants.

The EPA believes that both arguments raise valid concerns, and requests comments on whether the OMTR should require action to address DER generation in cases where States have such attainment problems, and, if so, what those actions should be.

2. Start Date for DER Generation

DER's that may be used for compliance under this model rule must have been generated after the start of the 1995 ozone season (May 1, 1995 in most cases) and must meet all other requirements of the model rule. One of the objectives of this model rule development process has been to make trading possible during the 1995 ozone season. Earlier dates were considered but rejected because of the potential to overwhelm the market with pre-existing reductions that by definition were not motivated by the prospect of creating a tradable product of value. Another objective of the rule is to create an incentive for sources to make additional reductions beyond those they would otherwise have made. It would not be consistent with this objective to give retroactive credit for actions taken before this rule was developed and which were made for other reasons. The EPA is also concerned that crediting earlier reductions could lead to an imbalance in the first years after a State program is in place. Thus, if a large-scale use of pre-1995 reduction stockpiles occurred in that period, before large-scale generation of new DER's had developed, it could lead to elevated ozone levels during the use years, creating human health consequences and jeopardizing an area's compliance with underlying Act requirements.

The EPA acknowledges that some stationary sources in the Northeast have participated in the NESCAUM–MARAMA Demonstration Project, and have made discrete reductions before the 1995 ozone season which they intend to sell as DER's. While EPA has acknowledged and encouraged these potential trades, they cannot fall within this model rule. These facilities may need to proceed through source-specific SIP revisions. The EPA will continue to work with the NESCAUM–MARAMA participants to process revisions expeditiously.

3. Converting ERC Activity Into DER Activity

The EPA recognizes that there are beneficial emissions reductions that will occur in the future under the current ERC program. Emissions reduction activity intended for ERC use would be creditable as DER's, provided that the activity met all applicable requirements of the OMTR. However, the same emissions reduction activity may not be used in both programs; the source would have to choose one program to the exclusion of credit in the other. Reductions made before the 1995 ozone

season by an activity approved as an ERC could not, however, be used as DER's.

4. Prohibited Generation Activities

a. Shutdowns & Production Curtailments. Under the proposed model rule, DER's would be generated by actions that reduce the rate of emissions of a source per unit of production. Typically, these actions would consist of installing control equipment, making process changes, or changing fuels or other inputs so as to reduce emissions per unit of production. The proposed model rule would not allow shutdowns or production curtailments to generate DER's.

Many participants in stakeholder meetings have argued that shutdowns and curtailments would not be undertaken, or hastened, to generate DER's (i.e., they would have happened anyway). The EPA has no evidence at this time that shutdowns and curtailments would occur earlier on account of the economic benefit derived from generating DER's. Shutdowns and curtailments generally occur due to economic conditions, and they do not result in an improved efficiency of emissions per product. In addition, EPA is concerned that for major sources under emissions rate limits, economic-related curtailments could be used to generate DER's with no requirement to offset higher emissions through use of DER's during full production boom periods. Therefore, EPA believes that in general, allowing DER's to be generated from shutdowns and curtailments could lead to increased emissions from sources using DER's without real, additional reductions having been made by DER generators.

As noted previously, a major purpose of this proposed rule would be to promote innovative approaches to controlling and preventing air pollution, involving the full range of major, minor, area, and mobile source sectors. The EPA believes banking of DER's created from shutdowns could provide a massive supply of inexpensive DER's that would inhibit investment by others in measures that actually reduce emissions per unit of production from sources that continue in operation. The EPA believes this glut of DER's from actions that would have otherwise occurred and that produced no additional reductions could also lead to emissions spikes and therefore jeopardize compliance with underlying Act requirements for attainment of the ozone standard.

In addition to concerns about the effect of shutdowns on attainment, EPA is also concerned with load-shifting that could occur when sources shut down. If small sources (e.g. gas stations or print shops) reduce emissions by shutting down, their economic activity will likely be picked up by new or existing sources in the same areas. Since emissions created by increased operating rates by other existing sources are not limited, and since new small sources are not subject to an offset or cap requirement, the net effect of allowing shutdowns to generate DER's would be to increase overall emissions.

The EPA does recognize some situations in which DER's generated from activities that appear to be shutdowns and curtailments might be consistent with an open market system. For example, for mobile sources, reductions in use levels should be allowed to generate DER's if such reductions occur in the context of a formal plan to shorten or obviate trips and are generated with an appropriate emission quantification protocol. Such use level reductions would not be considered curtailments. An example of a program that could reduce motor vehicle use levels is an employee commute option that generates emissions reductions beyond what might be required for an area under section 182(d)(1)(B) of the Act.

Another example would be the early automobile retirement program known as scrappage. The EPA does not consider mobile source scrappage to be a shutdown, and scrappage programs would be allowed to generate DER's under the proposed rule. This would be acceptable because scrappage programs conforming to EPA guidance actually would achieve earlier retirement of old, high-emission vehicles than would otherwise occur.

In the process of developing this rule, a number of industry and State groups offered other examples where shutdowns and curtailments might be consistent with an open market system. One example is the concept of allowing DER's to be generated from shutdowns and curtailments when such reductions can be captured within a ''closed loop'' of existing and new sources. Facilities that replace small boilers with a central energy source and thus create fewer emissions might create a net environmental benefit through small boiler shutdowns. This differs from the more common shutdown case, where a facility closes and the production load could shift to another unrelated source. In general, establishing conditions by which closed loop or other potentially beneficial shutdowns could be considered in the open market program would add complexity to the proposed rule and still might be problematic with respect to the intent of the rule as outlined above. The EPA requests comments on language that would allow for acceptable, environmentally benign or beneficial exceptions to the common shutdown circumstances.

The EPA is also interested in public comment on whether a State that has an approved attainment demonstration or maintenance plan that does not rely on emission reductions from shutdowns and curtailments may permit such shutdowns and curtailments to generate DER's. In such cases, EPA believes that the use of DER's generated from shutdowns and curtailments would not jeopardize attainment, since the SIP would already contain enough emission reductions from other sources to satisfy the attainment demonstration requirement of the Act. Thus, it might be appropriate to allow States to credit emission reductions from shutdowns and curtailments.

On the other hand, except where shutdowns are used for new source offsets, air quality improves as sources shut down. Shutdowns are already available as offsets for new sources. In the major new source offset program, Congress decided that encouraging continued economic development in nonattainment areas by allowing emission reductions from shutdowns to offset new source emissions was worth the sacrifice of the natural improvement in air quality that results from sources that shut down. If existing sources are allowed to relax otherwise applicable emission limits by using DER's generated from shutdowns and curtailments, States would be giving up this built-in air quality improvement. The EPA believes that allowing DER's to be generated from shutdowns could be inconsistent with Congress' intent to encourage economic development, since the value of DER's generated from shutdowns would be expected, on the margin, to encourage sources to shutdown. The EPA is interested in comment from the public on this matter.

In the event that shutdowns and curtailments were allowed to generate DER's in areas with approved attainment demonstrations or maintenance plans that do not rely on such reductions, EPA requests comment on the period of time into the future that a shutdown source would be allowed to continue generating credit. The EPA also requests comment on the effect that allowing DER's to be generated from shutdowns and curtailments would have on incentives for owners and operators of existing, ongoing sources to invest in innovative pollution control or prevention measures. The EPA also

requests comment on how to treat discrete increases in emissions that result from full production boom periods if discrete decreases due to production curtailments are creditable.

While EPA is proposing that the use of credits from shutdowns be restricted under the proposed open market system, this does not imply that such reductions cannot be used in other programs. Emission reductions from shutdowns remain creditable in the offset program for major new sources discussed previously, and can be used in emissions budget systems. In emissions budget systems, the integrity of the agreed emissions budget cannot be violated by emissions credits from shutdowns and curtailments, since the closed system ensures that the stated emissions target will be attained and maintained.

The Department of Defense (DoD) was especially concerned about the impact of the rule on military base closures and the civilian redevelopment of closure properties, as well as the ability of DoD to use shutdown reductions to support other military installations of other federal activities. In particular, DoD highlighted the fact that most redevelopment of closed bases occurs over a long period of time in a phased process. Credits for shutdown reductions are not only needed at the time of the shutdown, but need to have an extended life to be available to support actions 5, 10, or 15 years in the future.

The EPA believes that its current new source review (NSR) rules and soon-to-be proposed changes to those rules will support base closure redevelopment needs. For areas with approved attainment demonstrations, current NSR regulations allow the use of emission reductions that are contained in the emissions inventory at time of use—including emissions from shutdowns and source curtailment—to be used to comply with the NSR offset requirement.

In areas without approved attainment demonstrations, current EPA regulations restrict the use of shutdown/source curtailments to be used as NSR offsets where the reductions occur prior to submittal of the permit application by the new source (with the exception of replacement facilities). However, EPA is already planning a regulatory change as part of the NSR update package that proposes to relax this restriction in the Federal NSR requirements. This package is scheduled to be proposed this fall. This would mean that under EPA's proposal, emission reductions from shutdowns held by DoD or the local redevelopment authority (LRA) would be available until needed for NSR offset purposes.

The DoD was also concerned about the availability of shutdown reductions to satisfy general conformity requirements. Since the preamble of the general conformity rule references the NSR rules to define offsets, any emission reductions that are consistent with EPA guidance regarding NSR offsets are also available for conformity offsets. This means that any mobile or stationary source emissions increase needing conformity offsets may obtain them from both mobile or stationary source reductions, including reductions resulting from shutdown or curtailments if such sources are contained in the emissions inventory at time of use. The EPA also confirms conformity offsets from shutdown (closure reductions) could be retained by DoD or the LRA indefinitely, freely transferred, and used for conformity purposes when needed. The EPA requests comments on these determinations.

b. Overcompliance With An Alternative Emission Limit. In many States, sources are given flexibility from RACT requirements when the State grants them an alternative emission limit (AEL) that is less stringent than the RACT standard. The OMTR would not allow sources to generate DER's by reducing emissions below levels required by an AEL but still above levels required by the otherwise applicable RACT standard. Sources subject to AEL's could, however, generate DER's by reducing emissions below the levels associated with the otherwise applicable RACT standard.

C. DER Use and Transfer. 1. Potential Uses. One key to a strong DER market and to minimizing compliance costs is enhancing the demand for DER's created by allowing as many and varied uses as possible. One use of DER's would be as a substitute for compliance with an applicable RACT standard. However, EPA expects that there would be many other uses as well. The philosophy of the model OMTR is that any use not prohibited in the rule is a valid use. The EPA encourages States that adopt this OMTR to adopt this approach.

a. Use by Regulated Sources. The EPA believes appropriate use of DER's by sources would include, but not be limited to:

(1) Use for delayed RACT compliance;

(2) Use as compliance insurance margins to cover uncertainties in the value of DER's or variations in process emissions or control device efficiency;

(3) Use as a substitute for reductions to be achieved through certain non-statutory mobile source requirements not otherwise prohibited in the rule;

(4) Use as offsets for new stationary sources used either by a new source or by States as an incentive for economic development;

(5) Use as part of a noncompliance settlement to compensate the environment for past violations.

b. Advantages to States. States could also benefit from the adoption of an open market program because the existence of DER's could give the State more flexibility in attainment planning. For instance, a State could eliminate the granting of alternative emission limits or variances, or regulate emissions from occasional small-scale research and development activities. Sources could comply with applicable requirements through the use of DER's. These measures could increase rule effectiveness.

2. Special New Source Review Requirements. Any proposed major stationary source or major modification applying for a permit to construct in an ozone nonattainment area may employ DER's to satisfy the requirements for offsets. Offsets are governed by EPA and State regulations for new source review (NSR).[3] Nothing in today's notice would alter EPA NSR requirements or exempts owners or operators from compliance with applicable preconstruction permit requirements under section 173 of the Act or regulations contained at 40 CFR 51.165(a).

Today's model rule establishes specific criteria which the State must ensure would be met if DER's were used for offsetting new source emissions. In general, emissions reductions used as offsets must be real, surplus, enforceable, permanent, and quantifiable. In addition, section 173 of the Act sets forth specific requirements for emissions offsets which must be satisfied by a proposed major stationary source or major modification.

Section 173 of the Act requires that the emissions reductions be Federally enforceable before the construction permit may be issued (section 173(a)(1)), and achieved by the time the source or modification commences operation (section 173(c)(1)). In using DER's for offsets, it would be necessary for the new major source or modified source to secure a series of DER's over the life of the source. The EPA believes that it is reasonable to require that sufficient DER's be obtained to offset the source's emissions on at least an annual basis. The first year's DER's should be

[3] 3 States have rules concerning the preconstruction review of major stationary sources and major modifications applying for permits to construct in nonattainment areas. These rules must be consistent with the minimum requirements set forth under Federal regulations at 40 CFR 51.165(a).

submitted to the permitting authority prior to the public notice announcing the proposed construction permit. The determination of the amount of offset needed must take into account the prescribed offset ratio for the nonattainment area of concern. The permit must contain an enforceable condition requiring the source, each year, to have demonstrated to the permitting authority that, at that time, it held sufficient DER's to meet offset needs for at least the next year of operation. Failure to obtain any required offsets in a timely manner would be a violation of the source's permit.

Section 173(c)(2) of the Act prohibits emissions reductions otherwise required by the Act from being used as offsets. For example, reductions required to meet RACT, MACT, acid rain reductions, and the phase-out of chlorofluorocarbons pursuant to statutory requirements are not creditable as emissions offsets.

3. Special DER Use Restrictions. The proposed model OMTR would limit the use of DER's with respect to certain generation and use characteristics of the DER. Relevant characteristics include pollutant type, the modeling domain or nonattainment status of the area where the DER was generated, and the time of generation. The proposed OMTR would provide for these limiting provisions, in part, to assure that in nearly all cases the uses would be helpful toward reducing peak ozone concentrations. That is, the connection between generation and use must be correct, considering the distance between the generator and user sources and the patterns of pollutant transport in the relevant area (direction). States would be encouraged to assess their own unique situations, and devise an OMTR that contains special DER use limitations that are consistent with relevant modeling analyses that are in the SIP.

a. Geographic Restrictions. Ozone smog formation is a difficult problem that has resulted in various approaches aimed at resolving it. Prior to the 1990 amendments to the Act, ozone attainment plans largely focused on emission reductions in nonattainment areas. More recently, attention has been focused on the issue of long-range transport and its contribution to ozone formation and to violation of the ozone standard. Ozone precursor pollutants mix and react together as they travel long distances over several days, thus creating a serious problem. For example, high ozone concentrations in the northeast occur on scales of over 1,000 km and can persist for many days. Our current understanding of ozone formation suggests that the relative importance of VOC and NOx control varies with the location and scale of the ozone problem. In general, VOC control is most likely to be effective in urbanized nonattainment areas, and less effective in the surrounding countryside where local natural VOC emissions can overwhelm those from human activities. On the other hand, NOx control tends to be most beneficial over larger distances. Therefore, the model OMTR would restrict VOC DER use to the same area in which the DER was generated, and would permit NOx DER trades to occur within the larger modeling domain.

While considering the general relationships among VOC, NOx and ozone formation, it is also important to consider unique local effects that might be characterized in a specific SIP modeling analysis. DER uses should be consistent with relevant modeling analyses that are in the SIP to preserve the integrity of the SIP. In these modeling analyses, distance and direction effects are considered by analysis of various episodes, meteorological regimes, and boundary conditions. SIP's may define locations where emission reductions are most helpful, marginal, or even counterproductive.

Some SIP's may have a regional NOx strategy component. A regional strategy means that emission reductions are planned to occur across a large area that may include sources located both within the local urban airshed modeling domain and outside the modeling domain. A modeling domain is the geographic area covered by an air quality model used to support an attainment or maintenance demonstration. The domain can be thought of as a rectangular box which is superimposed over the area being modeled. For the current (1994) revisions to State implementation plans (SIP's) for ozone, 23 modeling domains have been defined for different locations in the United States. Typical domain size ranges from 100 km x 100 km to 350 km x 350 km. Specifications for each of the 23 modeling domains are available through the U.S. EPA's Technology Transfer Network (TTN). In addition, maps should be available from the State agency having lead responsibility for the modeling analysis. Lead State agencies are also identified in the TTN.

In the regional strategy knowing the precise location of each emissions reduction is not as critical as understanding the general distances and directions emission reductions travel from the nonattainment area. In such cases, the modeling analysis shows ozone reductions in the nonattainment area through both local emission reductions within the modeling domain and by reduced regional, boundary concentrations coming in to the area due to emission reductions outside the modeling domain.

The above considerations are reflected in SIP attainment demonstration or other modeling analyses conducted in support of the SIP. Thus, in some cases a SIP's control strategy may simply call for local reductions in a nonattainment area and, in other cases, the SIP may be supported by modeling analyses which indicate that both local and regional emission reductions are needed.

In general, EPA would view NO_X DER's used within the same urban airshed modeling domain as they were generated as acceptable as long as they: (1) Are consistent with the regional concept in the SIP strategy, and (2) address distance and direction concerns. The EPA acknowledges that in special cases, NO_X trades within a modeling domain could result in higher NO_X emissions in an urbanized area, and may increase already high ozone levels in that area; in this case, the use of NO_X DER's in that area might not be consistent with attainment demonstration and in such cases should be disallowed.

In addition, EPA believes that DER uses would be generally beneficial where NO_X or VOC DER's generated inside a nonattainment or maintenance area were used by sources not located in a nonattainment area, maintenance area or modeling domain. Trades which crossed or were entirely outside of modeling domain boundaries could be ineffective where the distances are great or the direction of pollutant transport showed little benefit in reducing peak ozone concentrations from such a trade.

Because of the complexity that would be required of EPA to list in the model rule all possible combinations of distance and direction for NO_X and VOC trades in all areas wanting to adopt open market trading programs, the model rule proposes to allow NO_X DER use only if the NO_X DER was generated within the same modeling domain, and VOC DER use only if the VOC DER was generated in the same area. States would be encouraged to assess their own unique situations, and propose an OMTR that allowed NO^{T2X} trades from outside the modeling domain at an appropriate discount, or allowed VOC trades with adjacent nonattainment areas, after taking into account and justifying the distance and direction considerations.

In addition, States could choose to adopt rules which allowed NO_X trades

without discount where certain distance and direction criteria were met. For example, EPA would approve a State OMTR that allowed trades without discounting for distance and direction where the rule included the following criteria. Regarding distance, the generator and user sources should be within either 200 km or 2 days transport of each other. The transport criterion should be determined by examining the average wind speed which occurs on days with ozone exceedances near the user source. In all cases, the direction of the prevailing wind near the generator source and the user source should be within a ± 22.5 degree sector of a straight line between the two sources. Average wind speed and prevailing wind direction should be based on data from National Weather Service stations near both the generator and user sources. The prevailing direction and average speed should be calculated over the period 7 a.m. to 7 p.m. This period captures the time of day when emissions are typically highest, as well as to include the portion of the day when surface wind measurements are most representative of overall transport within the mixed layer. In calculating the prevailing wind direction, one could include those days with exceedances near the user source during the years used for classification of the nonattainment area. As an alternative, one could base the direction calculation upon all days in the ''ozone season'' for any year used for classification purposes in the area of the user source. For distances or directions which extended beyond these criteria, EPA believes that discounting may be necessary.

In general, EPA encourages States to propose their own geographic requirements based on the characteristics of their areas. The model OMTR would contain generic restrictions that States could modify to more appropriately meet their air quality objectives. The EPA is committed to working with States in creating the most beneficial geographic restrictions for their specific areas.

b. Interpollutant Trading. Interpollutant trades are defined as trades that occur between the two classes of ozone precursor pollutants, VOC and NO_X. The available scientific and modeling information suggests both positive aspects and risks with an interpollutant trading program. Certain trades have the potential to be complementary, leading to greater reductions in ozone than would otherwise occur (e.g., a facility sells NO_X DER's to a buyer who operates a VOC source in a rural area within the Northeast Ozone Transport Region). Others, however, may be counterproductive. For example, if a modeling analysis in the SIP identified a specific geographical area as an area where VOC reductions were needed and NO_X reductions were not helpful over a local or regional scale, then a reduction in NO_X emissions in that area should not be exchanged for required reductions in any other area. Since EPA cannot account for all possible site-specific cases where interpollutant trading is beneficial, the proposed model OMTR would not include interpollutant trading.

States are nevertheless encouraged to submit as variations on the model OMTR, rules of their own that would permit interpollutant trading if adequate prior analyses had been performed which indicated that the nature of trades meeting specific criteria was consistent with expected lower ozone concentrations. These prior analyses might be performed by the State(s) or by others in support of one or more SIP's. Although a user could perform modeling analyses to support each proposed use of specific DER's, this would not be required. In general, interpollutant trading rules should encourage excess VOC emission reductions in geographic locations where ozone is limited by available VOC or encourage excess NO_X emission reductions in locations where ozone is limited by available NO_X. In the event a user and generator were in different States, review responsibility should be consistent with the policy on interstate trades. Where such interpollutant trades were permitted by States, the applicable rule should address distance and direction considerations as they applied to allowable interpollutant trades. The EPA would expeditiously review any such variations.

c. Seasonal Restrictions. Whereas DER's generated in the ozone season might be traded to meet emissions requirements either during or outside the ozone season, DER's generated in the non-ozone season could be used only to meet non-ozone season emissions requirements. Using DER's during the ozone season that were generated outside the ozone season should not be allowed since such uses clearly would run counter to programs designed to attain or maintain the ozone standard and to meet ROP requirements. Ozone season reductions are the only ones effective in reducing peak ozone concentrations and are needed then. Thus, the rule would not allow DER's generated during a time outside of the ozone season to be used to comply with any air quality obligations during the ozone season.

The time of year in which areas experience ozone concentrations above the standard varies with location. In general, areas with greater intensity of sunlight will experience longer ozone seasons. Thus, southern areas tend to have longer ozone seasons than northern areas of the country. The EPA has defined the ozone season for each State at 40 CFR part 58, Appendix D. The purpose of this definition is to set the time of year during which States must monitor ozone concentrations. Ozone violations are not expected to occur outside the defined ozone season.

4. Prohibited DER Uses

The proposed model OMTR prohibits several uses of DER's for a variety of statutory and policy reasons. The following sections explain the rationale for each specific prohibition, and where appropriate, seek comment on specific issues relating to the prohibition. In general, EPA requests comment on any DER use that would be expressly prohibited by the proposed model OMTR. Comments that explain in detail how EPA could allow the prohibited uses given the language in the Act and the rationale for current EPA policies would be particularly helpful.

a. Compliance With Certain Mobile Source Requirements. The EPA believes that compliance with national mobile source programs (i.e., national exhaust and evaporative emission standards for cars, trucks, and nonroad equipment under sections 202 and 213 of the Act, plus any national fuel standards under section 211 of the Act) cannot be avoided through the use of DER's generated by other control measures. Some of these national mobile source control programs have internal averaging, banking and trading provisions, and EPA is currently examining whether more flexibility can be built into them. However, the statutory provisions by their terms appear to preclude compliance through DER's generated from other sources. In addition, using DER's generated outside of these programs (e.g., between different mobile source programs) would be inappropriate in instances where reductions associated with these programs occur nationally, and stationary and area source DER's generated in a specific region would be used to increase emissions nationally. The EPA is currently considering whether DER's generated regionally can be credited toward meeting same-source national requirements within a specific program (e.g., a scrapped outboard engine could create a DER in the national marine engine average standard structure).

The EPA also believes the Act would not allow the use of DER's generated from other programs to meet the requirements of certain regional or local mobile source control programs. Many local or regional mobile source control programs, such as vehicle inspection and maintenance under sections 182(b)(4) or (c)(3) of the Act, employer trip reduction programs under section 182(d)(2)(B) of the Act, or clean fuel fleet requirements under section 246 of the Act, have provisions that appear to preclude compliance through DER's generated from other sources. However, unless prohibited by other provisions of the Act, DER's could be used to meet any regional or local mobile source requirements that are in addition to those specifically mandated by the Act. The EPA requests comment on whether the Act would allow the use of DER's to meet Federal mobile source requirements and whether EPA should adopt such an approach.

The EPA believes that emission reductions generated in the context of an existing averaging, banking, and trading (ABT) program specific to a particular mobile source program should not be used to generate DER's. The same rule applies to fuel producers. The reason for this restriction would be to avoid double use of DER's, especially since the State may not be aware of the use of the ABT DER in the context of the relevant program.

The EPA is concerned about quantifying DER's generated for upstream and downstream emissions reductions strategies. An example of an upstream activity is fuel distribution emissions—providers of natural gas may seek to generate a DER to reflect reductions in gasoline distribution emissions that result from sales of natural gas for alternative fuel vehicles. In this case, the use of an additional clean fuel vehicle does not necessarily take a known quantity of gasoline out of the conventional fuel distribution system. However, these kinds of emission reductions may be allowed to generate DER's if an adequate quantification method can be devised and approved by EPA. The EPA solicits comments on whether and under what conditions these emission reduction strategies should be allowed to generate DER's.

b. Compliance With Certain Technology Standards. Today's proposal is consistent with the EIP rule (59 FR 16696 (1994)) in that DER's could not be used to meet Act sections 111 and 129, new source performance standards (NSPS), best available control technology (BACT) standards, or lowest achievable emissions reduction (LAER) standards.

The EPA believes it is important to begin investigating whether compliance flexibility and costs savings can be offered to new sources. In this regard, the Agency has proposed in the model rule that DER's be used for offsets that satisfy new source review requirements. However, EPA questions whether additional flexibility and cost savings can be achieved by allowing sources subject to NSPS, BACT or LAER to utilize the open market program to meet these control technology requirements. In certain cases, the compliance requirements for NSPS, BACT or LAER may inhibit new low-pollution facilities from replacing older, high-pollution facilities as quickly as would have occurred otherwise. If DER's were used to lower the economic hurdle in these cases, both the environment and the economy would be better off in the long run.

The EPA requests comment on how to allow the use of DER's under the open market program to meet NSPS, BACT and LAER requirements.

c. Compliance With Toxics Standards. Today's proposal would not relieve sources participating in the open market trading of the obligation to meet all requirements under section 112 of the Act. Standards promulgated under section 112 require sources to meet maximum achievable control technology (MACT) standards for air toxics. Often, section 112 standards apply to the same emissions point at a facility as RACT requirements. For example, a RACT requirement and a MACT requirement could both require control of an emissions point to a level achieved by a flare. In such a case, the source could not use a DER to meet the RACT control requirement because the MACT standard imposes an independent obligation to achieve the specified level of control. This ensures that trading would not result in higher levels of hazardous air pollutant emissions from a source than are permitted by Federal air toxics control requirements.

d. Avoiding New Source Review. While allowing the use of DER's to satisfy the requirement for offsets, EPA believes that it would be unlawful to allow DER's to be used to avoid new source review requirements altogether. Therefore, the model rule would specifically prohibit the use of DER's to ''net out'' of review.

In addition, sources that had previously agreed to operational limitations in order to avoid the new source review requirements, could not use DER's to subsequently increase their emissions to major source levels, and thus circumvent the provisions requiring retroactive review as a major source or major modification.

e. Use To Avoid Penalties. The proposed model OMTR would require sources to purchase DER's before using them. A user could not defer purchase until after failing to comply. The EPA believes allowing such a retroactive acquisition of DER's would encourage sources to avoid their compliance obligations until such time as they were determined to be out of compliance. However, as described elsewhere in today's preamble, EPA does not wish to preclude the purchase of DER's as part of a settlement agreement for a violation or as a potential component of EPA's penalty policy.

f. Use To Increase Over 1990 Emissions Levels. The EPA recognizes the possibility that a source may want to use DER's to allow that source to relax current costly compliance obligations. Such use of DER's may, in some cases, allow a facility to emit levels of pollution greater than levels accounted for in the 1990 emissions inventory. The EPA requests comment on whether in order to prevent excessive degradation of air quality near a particular source the OMTR should prohibit sources from using DER's to revert to pre-1990 levels. The EPA acknowledges that it may be difficult to effectively enforce such a provision since the State may not know with certainty the lower of actual or allowable emissions from a particular source prior to 1990.

5. Use for Conformity Offsets

The EPA's General Conformity rule allows the conformity requirements to be met by a Federal agency obtaining emissions offsets (40 CFR 51.858, 93.158). The rule requires the offsets to come from within the same nonattainment or maintenance area.

The definition of emissions offsets in the conformity rule is intended to assure that offsets within the air programs are calculated and credited consistently and that the term is used the same in the conformity rules as in the EPA NSR program. All offsets must therefore be quantifiable, consistent with the applicable SIP attainment and ROP demonstrations, surplus to reductions required by—and credited to—other applicable SIP provisions, enforceable at both the State and Federal levels, and permanent within the time-frame specified by the program. DER's used in accordance with the OMTR could meet these requirements. Thus, the current conformity rule allows DER's to be used as conformity offsets where they occur

in the same nonattainment or maintenance area.

Since the purpose of conformity is to assure that Federal actions are consistent with SIP's, SIP's which explicitly allow the use of DER's should logically allow the use of DER's as part of their conformity SIP. That is, DER's which meet the SIP requirements should also be considered to be DER's which conform to the SIP. Thus, if a State adopts an OMTR into their SIP, such DER's should be available for conformity offsets.

6. Use in Place of Variances

Many States currently provide for source-specific variances in the form of compliance extensions and alternative emissions limits for circumstances where it would be economically or technically infeasible to install controls. States are encouraged to consider discontinuing variances in areas where open market trading exists. Several States have already included such provisions in their proposed EIP's. Instead of granting variances, the State could achieve universal application of a RACT standard and allow sources that might otherwise be granted variances to comply through use of DER's. Discontinuing variances has the potential to improve ''rule effectiveness'' by allowing more timely rule compliance. This benefit could be reflected in attainment demonstrations or maintenance plans, if approved by EPA.

7. Holding DER's Before Use

The model OMTR would require that DER's intended to be used by sources for compliance purposes must be held before the intended use period. This means that a particular DER generation activity must be completed prior to the start of the use period. To meet this requirement, a stream of DER's generated from an ongoing generation activity could be broken and parcelled prior to the start of the use period. This approach ensures the benefits of retrospective quantification described elsewhere in today's preamble. Under the OMTR, near-simultaneous trades similar to ERC trades could occur. For example, two facilities could arrange beforehand a series of transactions where one facility made reductions that were creditable to another facility. The EPA believes this type of transaction could facilitate same-season trading.

However, this near-simultaneous transaction must comport with the 30-day advance Notice of Intent to Use requirement. One way to enable this transaction would be to prearrange such transactions 30 days in advance and maintain a 30 day lag-time between the continuous generation and use of the DER's. Another method might be to make an exception for this special transaction, such that steps are taken to assure the benefits of retrospective quantification while allowing near-simultaneous trading. The EPA requests comment on how near-simultaneous trading could occur or be improved in light of the 30-day advance notice requirement.

The EPA recognizes that the near-simultaneous use and generation might increase transactions costs since the Notice and Certification of Generation and the Notice of Intent to Use, as well as the underlying generation and use documentation, would have to accompany each transaction. While these notices could be made routine and could be kept in electronic form, EPA requests comment on procedures that could be used in the open market trading program without compromising the program's enforceability, that maintain the benefits of retrospective quantification, but result in reasonable transactions costs for the sources that wish to engage in near-simultaneous trading.

8. Contribution to the Environment

The final economic incentive program (EIP) rules (59 FR 16690 (1994)) and guidance establish as a goal for all EIP's that they be designed to benefit both the environment and the regulated entities. The rule and guidance requires States to design programs that would meaningfully meet this goal, while providing flexibility to the States in determining how best to accomplish such benefit-sharing in the context of each specific program. Requiring that at least ten percent of the DER's traded be retired would meet this benefit sharing goal.

The EPA believes this ten percent requirement is justified because the OMTR has the ability to greatly reduce costs to regulated industry and it is fair that some of those savings should be used to achieve further emissions reductions. Such a discount is clearly appropriate in the case where intertemporal trading is permitted. Intertemporal trades can increase the risk of emissions spiking, which in extreme circumstances could, in some years, negate the benefits of the early reductions provided by banking. The discount decreases the risk of spiking, and provides additional confidence that a retrospective approach to auditing the effects of the program will be sufficient.

Therefore, EPA would approve the component of a State OMTR that required a user to retire any specific percentage of at least ten percent of the DER's it purchases for compliance use.

9. Potential Market Participants

An active market with a large number of participants helps to promote economic efficiency in air pollution control. Subject to the limits specified by the rule, any source that emits NO_X or VOC in an area that adopts an OMTR could participate in the open market system as a DER generator, and any source subject to a VOC or NO_X emissions reduction requirement could participate as a DER user. The open market system would provide an incentive for VOC and NO_X sources that have traditionally not been regulated to make pollution reductions. Large sources, small sources, area sources, mobile sources and non-title V sources could all participate.

The EPA anticipates that DER's will be handled much like any other tradeable emissions reduction. They could be bought and sold by service-providing intermediaries, brokers, or even speculators. DER's could also be purchased and permanently or temporarily retired solely for environmental benefit by environmentally minded individuals or charitable organizations.

D. Characteristics of DER's

1. DER Life

The maximum length of time between DER generation and use is the DER life. The proposed OMTR places no limit on DER life. The EPA considered a variety of approaches to limiting DER life, and concluded that longer lives promote market stability and diminish the risk of emissions ''spiking.'' Market confidence increases as the life increases, because DER holders are assured that barring unusual circumstances, their DER's will not ''die'' before they are needed for use. Spiking risks appear to diminish in proportion to longer DER lives because the timing of DER use presumably becomes more random and less tied with anticipated DER expiration. DER's with unlimited lives would also require less recordkeeping and tracking burdens.

In recognizing the value of long DER lives, EPA found no obvious basis for any particular number of years that DER's should last. Any limit to DER life—however long—might encourage DER's being stockpiled for future use, which creates the risk of spiking. Moreover, no procedural or environmental problems have been found to date with the unlimited lives granted for allowances in the acid rain trading program. The EPA is therefore

inclined to adopt the same convention for DER's in the open market program. The EPA requests comments on whether and for what reasons a long finite life might be more appropriate than an unlimited DER life.

2. Limited Authorization to Emit and DER Limitation or Termination

Just as under the Title IV SO2 emissions trading program, the OMTR would not confer property rights to the DER holder. Section 403(f) of the Act states:

> An allowance allocated * * * is a limited authorization to emit sulfur dioxide * * * Such allowance does not constitute a property right. Nothing in this subchapter or in any other provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization. (42 U.S.C. 7651b)

Congress included this requirement to ensure that allowance holders understood that they were barred from claiming a governmental taking under the 5th Amendment of the U.S. Constitution. Like the acid rain SO2 allowances, DER's would not be property, but would be limited authorizations to emit the regulated pollutant. Property status is unnecessary to secure a stable commercial setting for DER trading and could produce undesired and perverse results, such as requiring a government agency to compensate the owner of a pollution source when its emissions are limited. A tradeable reduction derives its value wholly from the regulation under which it was created. DER holders could exercise a specific license to use DER's in the manner set out under the model OMTR.

Program audit and reconciliation provisions in the model rule would authorize the participating air pollution control agency to limit or terminate DER use in extreme circumstances. States should consider this an option only when other options have failed to provide for meeting the State's underlying Act obligations. Although EPA would not expect this to occur, and would expect that the program will achieve real and cost-effective emissions reductions without having to resort to DER limitation, this contingency measure must be available to provide confidence that States will make continued progress toward their air pollution control goals.

E. Notices, Reporting and Recordkeeping

As with all environmental compliance programs, appropriate reporting and recordkeeping would be necessary to allow for the proper enforcement of all applicable requirements and the tracking of the overall compliance program. In addition, there is a need for the public to obtain access to sufficient information to monitor the performance of industry and government in meeting their obligations. In an emissions trading program of this type, these reports are essential for ensuring the integrity of the system and the confidence of the public that air quality goals are being met.

Each record that must be kept, or report that must be filed, puts a resource burden on the entity required to produce it. Therefore, it is important to reduce the amount of recordkeeping and reporting to the minimum necessary to ensure a high-integrity market. Three notices would be considered necessary: (1) A notice of generation of DER's, (2) a notice of intent to use DER's for compliance purposes, and (3) a notice of use of DER's for compliance.

1. Notice and Certification of DER Generation

A DER generator would be required to file a Notice and Certification of DER Generation with the State containing information on the creation of DER's. This notice must be submitted within 90 days after a generation action is complete, or 1 year after commencement of the generation action, whichever is sooner. A responsible corporate officer must certify under penalty of law that the information in this notice is true, accurate and complete, based upon information and belief formed after reasonably inquiry.

This notice would provide potential buyers, the States (in their role as prospective compliance authorities), and the public the opportunity to review the records concerning the methods (protocols) used to generate reductions, the specific data (emissions rates, production volumes, etc.), and the relevant baseline (lower of actual or allowable) to verify that the DER's are real, surplus, and accurately quantified. Second, this notice, coupled with the user's responsibility to report a DER use, would serve as the necessary ''tracking'' record to assure that a specific DER was used only once, since the tracking system should uncover the case of multiple use of a ton with the same serial number. Third, the notice would provide pertinent information for audits of the overall emissions trading program by the State.

To provide systematic certainty and integrity to the program, the State would assign a unique serial number to each ton of reduction. This would allow a subsequent Notice and Certification of DER Use to be matched to the exact tons which were generated and ensure that such tons came from a relevant geographic location and were used only once. Each State could establish its own numbering system, or could collaborate with other States to design a regional or national system.

2. Notice of Intent to Use DER's

The Notice of Intent to Use DER's for compliance purposes would be required in order to alert the State and public that a source intended to use DER's. The State and the public would have the opportunity thereby to examine a DER compliance strategy prior to use and prior to the possibility of any environmental harm. The notice must be filed at least 30 days prior to the source's first use of DER's and renewed at least annually in cases of continued or repeated use. This notice would serve to ensure that a prospective user held sufficient DER's prior to use. It also would allow the State to consider the level of inspection oversight to employ with the user. This notice only signals intent to use DER's; a notifying source would not actually have to use them.

As part of their Notice of Intent to Use, States may want to require sources to submit the price paid for each DER. The EPA believes that knowledge of DER price could serve to assist States in determining which DER's were high quality and which were low quality. Therefore, price could serve as a signal to target a State's enforcement resources. For example, a generator would be likely to charge premium prices for DER's they created that were supported with high quality documentation, whereas a generator of a less supportable DER might tend to lower its DER price in order to compete. The lower-priced DER in this context would denote a lower quality, or higher risk product. Of course, in other instances low price may indicate no more than that the generator has found a low-cost control opportunity. Nonetheless, price might serve as a signal to a State to examine specific DER's more carefully during compliance reviews. The EPA requests comment as to whether price should be a required submission in the model rule.

3. Notice and Certification of DER Use

The Notice and Certification of DER Use would be required in order to provide the State with information on the actual amount of DER's used by a particular source for compliance purposes. It would include information on the methods by which both the amount generated and the amount needed for compliance purposes were calculated. A duly authorized corporate

officer must certify under penalty of law that the information in this notice was true, accurate and complete, based upon information and belief formed after reasonable inquiry. Based on receipt of this notice, the State could conduct compliance determinations and inspections to ensure that the source had met all of its obligations through the use of DER's. This notice is essential for the purposes of compliance assurance and enforcement.

No action would be required by the State when it received a notice, other than to make it publicly available as discussed below. The Notice and Certification of Generation and the Notice and Certification of Use, however, would be the State and Federal authorities' main compliance and enforcement tools for generators and users of DER's.

To lessen the paperwork burden on sources, the information in each of the proposed notices has been reduced to the minimum necessary. However, the source would be required to keep full records of all of the documentation associated with the generation and/or use of DER's at their facility.

4. Notice of Intent to Generate Rejected

The EPA has considered creating a Notice of Intent to Generate which would be filed before any generation activity, but prefers not to require it in the model OMTR. Proponents advocated the notice so as to provide the State with advance notice of the time period over which DER's would be generated and the method that would be used to generate them (''Emission Reduction Credit Demonstration Project,'' Phase II, Volume I; Final Report, April 1995). Proponents cited reasonable justifications for such a notice. The notice could provide some preemptive assurances against invalid DER generation, and hopefully could result in a higher level of scrutiny which would lead to a system with enhanced environmental integrity. However, EPA believes this benefit is outweighed by the resource burden required to be placed on each participating source and State, since the notification is, by definition, a non-binding assertion of intent that some facilities may and will ultimately decide not to follow. Although the model OMTR would not require a Notice of Intent to Generate, a State may decide that in its particular case that the benefits of the notice outweigh the burdens. Therefore, EPA would approve specific OMTR's that require this notice.

5. Public Availability of Information

Adopting the model rule into the SIP would replace the need for single-source SIP revisions. Such SIP revisions, however, serve the purpose of providing the public with notification of each proposed trade. Without some other vehicle for public notice, the public would not be aware of DER trades. The EPA believes public confidence is essential to the success of the open market program. Members of the public have a legally recognized role in compliance assurance and enforcement through the citizens suit provisions under section 304 of the Act. The public must have fair access to the information related to DER generation and use activity.

The proposed model rule would require the State to make all of the notices received available to the public. For sources with a title V permit, the information must be filed with or attached to the permit and made available where the permit is available. For non-title V sources, the State would make the notices available in a similar manner to the title V sources. Facility documentation that is not included in, but supports the information in, the notices must be made available through the State's ''freedom of information'' or other laws, if applicable, relating to the public's access to a source's compliance documentation.

The EPA is concerned that not all States will have laws that allow the documentation underlying the notices to be reasonably accessed by the public if it is not submitted to the State along with the required notices. The Agency considered a range of requirements that would facilitate the public availability of such documentation. At one end of the range, the Agency considered a rule requirement for sources to make the documentation available to the public upon request. At the other end of the range, the Agency considered a rule requirement that all source documentation be submitted to the State along with the required notices so that the State could make the information available. A middle ground option would require sources to submit the underlying documentation to the State, but waive the requirement if the source agreed to make the documentation available to the public upon request. The Agency requests comment on the appropriate way to ensure that the public has reasonable access to a source's compliance documentation without unreasonably burdening either the source or the State.

F. Federally Enforceable Operating Permits

The purpose of the title V program, codified in 40 CFR Part 70, is to ensure effective implementation of all applicable requirements of the Act for those sources subject to a Federally enforceable operating permit. The title V program rules impose various important administrative and procedural provisions (e.g., permit fees, opportunity for public participation). The title V program does impose a limited number of requirements relevant to source operation that supplement the applicable requirements of the Act in order to enhance their implementation. For example, a source's title V permit must specify methods for monitoring and certifying compliance, and must address these if the applicable requirement fails to otherwise provide them. The provisions of the Part 70 rule that provide for individual source emissions trading under permit-specific caps and for trading under a SIP are currently the subject of rulemaking.

If adopted into a State's SIP, the provisions of the OMTR become part of the underlying requirements reflected in a source's operating permit. Therefore, changes in a source's operating permit language are not necessary for the source to participate in the open market program. However, for the benefit of both the source and the public, language that specifically addresses the ability of the source to comply with applicable requirements through emissions trading could appear in the permit. The EPA intends to issue permit writing guidance that would include language on open market trading that could be incorporated into individual permits.

G. DER Registries

Open marketplace participants would require access to information that enabled them to make accurate and informed decisions about the supply, demand, quality and expense of DER's. This information could be efficiently transferred among participants through one or more registries that sent and received relevant DER information. Registries should provide convenient and inexpensive public access, should not interfere with the ability of ''small'' market players to participate, and should help assure that specific DER's are not used more than once.

Comprehensive, high-quality information should be readily available at reasonable cost to all participants and the public. Such information might include: DER source listings, generator source type, location, contact name of DER holder or holder's agent, DER

generation period, DER price, specific use restrictions if applicable, generator and user nonattainment area classification, and DER user's needs and requirements.

The EPA also believes that small market players, i.e., generator or user sources that generate or use relatively small market quantities, should not be disadvantaged by registry access requirements or the listing fee structure. The EPA does not wish in any way to discourage small sources from taking advantage of the benefits of open market trading.

The EPA has addressed the issue of double-counting of DER uses through the proposed rule's notice requirements. States must ensure that unique identification is assigned to each ton of DER's generated and reported in the Notice and Certification of Generation that each generator source would be required to submit. States could then check that a specific DER was used only once by cross-referencing DER use notices with the DER generation notice. This check would be more complicated in a case where use occurred in a State other than the generator source's State. Therefore, the proposed OMTR would require that States that allow such uses must have a memorandum of understanding (MOU) or similar agreement approved by the EPA, which facilitates checking for double-use of DER's.

While EPA recognizes that this function might best be performed through a national registry, a question remains as to whether EPA, State governments, or the private sector should provide these services. The EPA is inclined to encourage registry development in the private sector. For resource and efficiency reasons, EPA believes the private sector is a more appropriate choice than EPA. Thus EPA requests comment on (1) whether the private sector should provide such services; (2) whether registries should be subject to regulation to assure access and coverage of relevant information; (3) whether EPA or the State should operate registries; and (4) whether a national registry, as opposed to multiple regional or local registries, is necessary for the open market program to function properly.

H. Protocol Development and Approval

A key to integrity in the operation of the open market trading system is accurate quantification of the amount of surplus DER's created and of the amount needed to meet compliance obligations. Emissions quantification is generally divided into two conceptual components. First, emissions quantification protocols specify the type of data needed on emissions rates and operating rates (e.g., monitoring methods, emissions factors, production rate or other activity measures) and address other critical methodological issues (e.g., data quality and statistical considerations). Second, specific data must be developed pursuant to such protocols and used to calculate specific results. Quantification protocols can be defined to varying degrees of specificity in advance of particular emissions reduction actions. The actual data used in particular cases, naturally, can be developed and evaluated only case-by-case.

A number of cross-cutting factors must be considered regarding the development of emissions quantification protocols. On the one hand, both emission sources and compliance authorities have strong interests in certainty. Federal and State authorities want to be sure that methods are technically sound and that sources can be held to follow them. Sources want methods they can use with assurance of predictable outcomes at the time of compliance determinations. Based on these concerns, some State and industry stakeholders have urged that protocols be reviewed and approved by EPA before DER's are introduced into the market. This would give both sources and compliance authorities a common yardstick with which to gauge the validity of DER's and the greatest certainty of outcomes, without requiring redundant resource investment by multiple States.

On the other hand, a protocol pre-approval requirement would greatly strain governmental resources and significantly dampen development of the open market system. Given the variety of source types eligible to participate and the variety of emissions reduction strategies available to them, dozens (possibly hundreds) of specific quantification protocols would be needed. Resource constraints on EPA and States could severely limit the number of such protocols that could be developed and approved in the near future, even with the benefit of partnerships with industry and others. Many DER generation and use actions could be delayed or precluded by the unavailability of pre-approved protocols and the lack of a route for proceeding without such protocols.

In response to these cross-cutting considerations, EPA has tried to develop a middle ground that provides a sufficient measure of certainty and predictability with due regard for governmental resource constraints and the need for flexibility to adapt to new situations. The EPA intends to issue guidance containing criteria for acceptable emissions quantification protocols. The criteria would set forth meaningful standards for the kinds and quality of data required to support the calculation of amounts of emissions reduced by generators or needed by users. DER Generators and users would be able to employ these criteria to develop specific quantification protocols for their applications. Compliance and enforcement authorities would be able to use these criteria to determine whether submitted protocols, and associated data, are sufficient to establish compliance. The guidance would be issued with the final model OMTR and revised and expanded as necessary from time to time. Generators and users would be able to rely on, and would be held to, the guidance in effect at the time they generated DER's or at the time they determined their need for DER's to meet compliance obligations, respectively.

In addition, EPA intends to create a mechanism for working with States, industry, and the environmental community to develop and approve specific quantification protocols for priority types of generation and use activities. It is envisioned that some such protocols would be drafted by industries, and others by EPA or States. They would be reviewed by a multi-stakeholder process prior to an EPA approval decision. The EPA believes that in many cases emissions quantification protocol development may not be a large additional burden. This could be especially true for protocols that determine the amount of DER's needed to be in compliance, since user sources subject to emissions limits may be already familiar with the task of evaluating their emissions levels.

The EPA specifically requests comments on two variations on this basic approach. In both cases, sources would develop their own protocols subject to EPA's protocol guidance criteria where no pre-approved protocol existed. Where EPA-approved protocols existed, however, two options could be followed. In one case, a source would be required to use the pre-approved protocol unless it obtained EPA's approval of an alternative protocol. In the other case, a source would be allowed to use an alternative of its own design in lieu of the pre-approved protocol, so long as the alternative conformed to the criteria in EPA's protocol guidance.

The model rule would allow State OMTR's to incorporate EPA's protocol guidance and specific pre-approved protocols by reference. In this way, a

source which generated or used DER's would be on notice that it was legally bound by the protocol guidance or specific protocols (as applicable) that were in effect at the time of their generation or use action. Incorporation by reference would provide fair notice and binding effect while avoiding the need for continual SIP revisions as new specific protocols were adopted and as EPA's protocol guidance was revised. In the interest of assuring enforceability, EPA is also considering whether each EPA-approved protocol and/or the EPA protocol guidance should be incorporated directly into State SIP's and requests comment on the sufficiency of the incorporation by reference approach.

The EPA acknowledges, however, that there are risks for both sources and authorities associated with allowing operation under protocol guidance as proposed. Generators would be allowed to introduce DER's into the market based on specific protocols that they devised pursuant to the guidance, without advance approval. Compliance agencies would have to determine the protocol's consistency with the guidance at the time of the compliance determination, after sources had made use of the reductions. Despite the fact that the proposed rule assigns users the burden of proof of DER validity, it may be more difficult at this stage for compliance authorities to reject DER's based on unsound methodologies. Further, at least a portion of the resource burden associated with evaluating protocols in advance would be shifted to State and Federal compliance authorities later in the process. The EPA requests comment on these issues.

The EPA believes this combination of protocol guidance and specific protocols would give generators and users, as well as compliance authorities, a predictable ''road map'' for distinguishing DER's that have a high likelihood of being considered valid from ones that are doubtful or clearly inadequate. The EPA requests comment on all aspects of this approach.

I. Meeting Related Federal Requirements

The Act requires SIP's to include provisions to meet specific rate of progress (ROP) requirements applicable to certain ozone nonattainment areas under section 182. The Act also requires SIP's to provide for the attainment and maintenance of the NAAQS. SIP's must include specific emissions limits within a nonattainment area to meet ROP and, in moderate or above nonattainment areas, as well as certain marginal areas, the SIP must require RACT. SIP's may also include modeling analyses which result in emissions limits over an area larger than the nonattainment area—the modeling domain—as needed to attain the NAAQS. Emissions trades between sources far apart could cross multiple nonattainment areas and modeling domains and, thus, impact ROP, RACT and attainment requirements contained in more than one SIP.

As noted above, the proposed rule would limit certain DER uses with respect to pollutant, modeling domain, and nonattainment area. These provisions recognize the regional nature of the ozone nonattainment problem and the specific limitations are intended to help assure consistency with any attainment or maintenance plan and ROP requirements.

In addition, the model rule would require an audit of the trading program to evaluate, among other items, the effect of the program on the attainment demonstration and ROP requirements. The provisions would require a retrospective look at the effects of the trading program at least once every three years. Where an inconsistency with the attainment or maintenance plan or ROP is determined by the State, the State must institute measures to correct the problem.

1. Attainment and Maintenance Plans

The EPA recognizes that the intertemporal use of DER's may, under certain circumstances, place pressure on an area's attainment requirements. If numerous DER's generated prior to the attainment date were used near the attainment date, the additional emissions from sources that avoided otherwise required reductions could lead to violations of the NAAQS and delay attainment.

In addition, emissions trades between sources far apart could cross multiple nonattainment areas, States, and modeling domains and, thus, impact ROP and attainment or maintenance plan requirements contained in the SIP's.

The validity of attainment and maintenance plan modeling analyses could be eroded by trading if the location and amount of emissions significantly changed from the initial plan assumptions. Such shifts would add uncertainty to predictions of the ozone levels expected on peak ozone days. In a worst-case scenario, reductions created during non-episodic conditions could be used during episodic conditions, exacerbating peak ozone levels.

The EPA must evaluate these potential planning concerns in light of section 110(l) of the Act, which provides that EPA—

> shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of this Act.

Whether DER use would interfere with an attainment demonstration depends on numerous factors involving the amount, timing, and location of trades. Limitations in the model rule (e.g., spatial limitations) could reduce the risk of such interference. Based on available information, EPA does not have evidence at this time that would lead it to believe that an overly large number of DER's will be used during the year of an attainment deadline, or at any other time that could precipitate exceedances of the standard. Rather, it seems reasonable to assume that DER's will be generated fairly steadily as opportunities for better controls arise, in response to continuing demand by DER users. Moreover, certain sources may require use of DER's over a long period of time; under these circumstances, it is doubtful that the intertemporal or spatial aspects of the OMTR would interfere with attainment. The EPA acknowledges, however, that generation of DER's could be bunched at particular points in time, such as new control deadlines, by sources that are able to implement controls prior to the required date. Also, use of DER's could be bunched just after such deadlines. If this phenomenon occurs on a large enough scale and at a particular time, attainment could be jeopardized. On balance, EPA has concluded in this proposal that current information does not establish a sufficient risk of this scenario to constitute interference with attainment. Although the open market trading program adds an element of uncertainty to the attainment planning, attainment demonstrations have many other unavoidable uncertainties which may include growth projections, biogenic emissions, mobile source emissions, rule effectiveness, model boundary conditions, and model precision. The EPA invites comments on its analysis and conclusions on this point.

It is possible to imagine trades that could adversely affect a SIP's attainment or maintenance strategy by creating ''spikes'' over permissible aggregate emissions levels. The mere possibility of such events does not mean that the program would necessarily interfere with attainment planning. It does, however, offer support for the need of periodic trading program audits to monitor trading.

2. Rate of Progress (ROP) Requirements

ROP requirements must be met in nonattainment areas. Section 182(b)(1)(A) of the Act, applicable to ozone nonattainment areas classified as Moderate or higher, provides that the SIP—

shall provide for such specific annual reductions in emissions of volatile organic compounds and oxides of nitrogen as necessary to attain the national primary ambient air quality standard for ozone by the attainment date applicable under this Act.

Section 171(l), applicable to all nonattainment areas, contains a similar requirement. Section 182(b)(1)(A) further requires a 15 percent reduction in VOC by the end of 1996. Section 182(c)(2)(B), applicable to areas classified Serious and higher, generally requires a 9 percent reduction in VOC or NO_X for each 3 year period thereafter, until attainment.

An area's success in meeting ROP requirements depends on many factors, including growth rate, rule adoption schedule, and control effectiveness. In many cases, trading would clearly not impact ROP: for example, in areas not covered by ROP programs; in areas trading NO_X emissions and affected by VOC-only ROP programs; for same pollutant trades within a single nonattainment area; and for trades involving emissions reduction from sources in one nonattainment area over one ozone season. In addition, where the SIP's nonattainment area reductions were greater than ROP requirements, VOC trading within that margin would not affect ROP and, thus, would be acceptable. In general, EPA believes that an audit program should be part of a State's ROP planning, because, like attainment planning, it may be affected by trades under an OMTR. The intertemporal aspect of trades, as well as trades across nonattainment areas, raise the possibility that under certain circumstances, trading could jeopardize ROP.

The EPA has made use of a computer model which allows a rough approximation of the impact of intertemporal trades on attainment and ROP plans, under various simplified assumptions about overall market activity and some alternative policy choices. As discussed above with respect to attainment planning, hypothetical circumstances may arise in which large quantities of DER's are generated in year 1 and used in year 2, or generated in one area and used in a neighboring area, to a degree that interferes with reduction targets in year 2 or in the neighboring area.

However, for much the same reasons discussed above with respect to attainment planning, EPA believes it reasonable to assume that intertemporal trading will not be of the magnitude necessary to interfere with the 1996 and subsequent ROP targets. For the same reasons, EPA believes it reasonable to assume that OMTR trading will not cause annual emissions spikes that may interfere with the section 182(b)(1)(A) requirement concerning annual reductions as necessary to attain. In any event, EPA believes that even if annual ''spikes'' were likely to occur as a result of an OMTR program, this requirement should be interpreted in light of the purpose of the OMTR, which is to encourage early reductions in exchange for an opportunity to trade the DER's so generated. If year 2 emissions are higher than in year 1 because DER generation causes emission reductions to occur a year early, EPA would not conclude that DER use interfered with the section 182(b)(1)(A) requirement. The EPA invites comment on its analysis and conclusions concerning ROP.

3. RACT

Act section 182(b)(2) requires a SIP revision implementing RACT for VOC sources for ozone nonattainment areas classified as ''moderate'' and higher. Section 182(f)(1) imposes the same requirement on NO_X sources. The Act does not define RACT; instead, EPA defines RACT as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762 (1979)). VOC RACT has traditionally been met on a 24-hour basis unless the State has shown that a longer averaging time is needed because of recordkeeping difficulties or control infeasibility. Many RACT rules adopted by States include emissions rate limits based on daily or 30 day averaging times.

For many years, EPA has interpreted RACT as a performance standard, which normally manifests itself as an emissions limitation based on a particular control technology, as opposed to a requirement for the technology itself. The EPA has applied RACT on an aggregate basis in the EIP rule, so that some sources may meet RACT limits through averaging (59 FR 16706 (1994)). However, under the model OMTR, DER's that were generated before a RACT compliance deadline could be used after the deadline. This raises the possibility that stationary sources subject to RACT requirements, in the aggregate, would not meet their otherwise applicable SIP RACT limits in the period after the RACT compliance deadline.

The EPA believes that it has the discretion to define ''reasonable available control technology'' to allow intertemporal averaging that may occur around a RACT compliance deadline under the OMTR. In the EIP rule, EPA considered air quality factors in determining whether stationary sources subject to RACT could emit at levels higher than levels otherwise deemed RACT if the excess emissions were more than offset by reductions among non-RACT sources. The EPA concluded that this system was consistent with the definition of RACT because the higher emissions levels of the RACT sources would be considered to be reasonable in light of the exceptional environmental benefits of the additional offsetting reductions.

A comparable analysis applies in the case of the OMTR. The OMTR would encourage early reductions by both RACT and non-RACT sources in year 1. In year 2, DER use might cause higher-than-current RACT levels of emissions. However, because DER generation would have provided early environmental benefits in year 1, and because 10 percent of the DER's used in year 2 would be retired for environmental benefit, EPA could conclude that the emissions levels in year 2 continue to reflect RACT.

J. Enforcement Issues

1. Calculation of Violations

The proposed rule provides for the calculation of violation days as consecutive days with a DER shortfall after first taking into account all valid DER's. This standard is applicable when emissions or emissions rates are measured on a daily basis. For example, if a source exceeds its emissions rate for 10 days and can demonstrate that it held sufficient DER's to cover its emissions overages for only the first 5 days, the source would be subject to penalties for the last 5 days. In circumstances when sources use a longer period of time for measuring emissions (e.g., a 30 day average period), violation days would be calculated based on the number of days of the measurement period for which there is any DER shortfall. For example, if a source measured emissions over a 30 day period and it was determined to have had a shortfall of DER's beginning any day during the measurement period, the enforcement action and penalty calculation would be for 30 days of violations. The EPA believes that this would encourage market participants to develop better, more accurate emissions measurement methods that will enable

sources to measure emissions on a daily basis.

2. State Compliance Determinations

Sources subject to the title I permit requirements would be required to submit compliance certifications annually. States monitor compliance of other stationary sources on a periodic basis. This rule would not impose a particular time period or frequency for States to review the validity of DER uses. However, it is EPA's expectation that States would develop inspection plans which address both generator and user sources in a manner consistent with EPA's Compliance Monitoring Strategy and other applicable guidance. In addition, because the integrity of the open market trading program relies so heavily on retrospective review, it is likely that EPA would identify the OMTR as a national priority in the early years of implementation. As a result, States would be expected to address a wide range of OMTR participants in their inspection planning. In this regard, DER use would be treated exactly the same as other air pollution control programs. The EPA solicits comment on whether a particular time limit within which to review particular DER uses should be imposed, in light of the fact that OMTR is a new program that carries risks concerning, for example, the quantification of DER's.

K. Program Audits and Reconciliation Measures

The OMTR would require States to conduct periodic audits of the open market trading program and implement reconciliation measures if appropriate. The State must evaluate and report on the following program elements:

(1) The amount and timing of emissions reductions (e.g. DER's used compared to DER's generated in a given year or ozone season);

(2) Compliance by generators and users;

(3) The effect of the program on temporal and spatial assumptions in the attainment demonstration and ROP plans;

(4) The effect of trading on emissions of hazardous air pollutants; and

(5) The effects of remedial measures, if applicable, implemented as a result of previous audit findings.

Unlike the EIP requirement (59 FR 16700 (1994)), under the OMTR program, reconciliation measures would not have to be automatically executing, and therefore, an appropriate ''trigger'' for the automatic execution of reconciliation measures would not be necessary. However, in the event the program audit revealed problems attributable to the trading program that were likely to persist, EPA encourages States to adopt remedial measures.

The following list of contingencies should be considered depending upon the nature of the problem that is uncovered by the audit:

(1) Restrict trading (limit trading so that the difference between DER generation and use is reconciled in a one-year period); increasing the environmental benefit component of DER's or limiting DER's or portions of DER's to compensate for the difference between the projected and actual emissions inventory;

(2) Enhanced monitoring (increase monitoring or quantification requirements for facilities in the OMTR program to better determine impacts on progress and attainment from the participating sources);

(3) Implement specific additional emissions reduction measures; and

(4) Increase enforcement and/or penalties (for use in the case where the discrepancy between actual and projected data is related to non-compliance with the OMTR program).

Audits must occur at least every 3 years, coinciding with a ROP milestone determination, or, if none applies, simply every three years after State adoption of the OMTR.

In conjunction with the triennial audits proposed above, EPA would work cooperatively with States that adopt open market programs to assess on a three-year basis the nationwide performance of open market trading programs. Using the results of State audits, an analysis would be prepared to assess the open market program's effectiveness. In the event that the triennial assessments showed that programs based on the OMTR jeopardized particular areas' ability to attain the NAAQS, to demonstrate required progress, or to meet other Act requirements, then EPA could issue specific SIP calls or, in the extreme case, adjust the OMTR program to compensate for such shortcomings.

The EPA solicits comment on all aspects of the audit requirements, in particular: (1) The frequency of the audits (more or less frequent than every three years); (2) the components of the audit program that should be required; (3) whether a mechanism for triggering reconciliation measures should be required; and (4) which, if any, reconciliation measures should be required.

L. Interstate Trading

The proposed OMTR limits interstate trades to areas which have Memoranda of Understanding (MOU's) to assure the success of the trading program in each State. This provision recognizes the regional and interstate nature of the ozone nonattainment problem and the specific limitation is intended to help assure consistent compliance programs and facilitate information exchange between the States.

After States adopt the model rule, sources might wish to effect trades across State lines. Such VOC trades could occur within interstate nonattainment areas; for NO_X, modeling domains are frequently interstate. A mechanism would be needed to assure that an emissions reduction in one State was recognized in another State and that trades were made consistent with the requirements of the respective State's rules. Further, a trading program needs enforcement provisions that assure proper monitoring and enforcement in all participating States. Therefore, EPA believes that States must sign a MOU or equivalent document. The MOU must include the following provisions:

(a) The State where the generator is located must agree to provide the State where the user is located in a timely manner with all relevant information it possesses concerning the DER's and the generator, including, but not limited to, information on the generator's SIP limits and permit, as well as a copy of the notice of generation proffered by the DER user;

(b) The user State must agree to provide the generator State in a timely manner with all relevant information, including the notice of intent to use and the notice of use;

(c) The State where the generator is located must agree to notify the State where the user is located as to whether the DER has been used previously;

(d) The State where the user is located must agree to enforce its individual State emissions requirements as modified by any valid trades.

The EPA solicits comment on all aspects of the interstate trading issue, including whether States should be permitted to include interstate trading only after EPA approval of its MOU's with other States.

M. Effect of VOC Trading on Emissions of Air Toxics

Many volatile organic compounds (VOC's) are listed as hazardous air pollutants (HAP's) under section 112 of the Act. Emissions of these toxic pollutants are often reduced incidentally by compliance with VOC limitation. Citizens groups have been concerned that by relaxing site-specific VOC limitations, VOC trading programs might lessen public health protection from air toxics at some facilities. The

EPA is considering whether open market trading programs should contain safeguards (beyond the continued requirement to meet section 112 standards) to reduce the chance that a facility using off-site DER's in lieu of meeting otherwise applicable VOC limits, would have higher HAP emissions than if it directly met the VOC limits with on-site controls.

Overall, EPA believes that open market trading programs would encourage quicker reductions of VOC emissions, including HAP's that are VOC's, by reducing the cost of Act control requirements and providing incentives for early reductions. This could reduce aggregate risks from toxic air emissions.

At the facility-specific level, however, results may not be geographically uniform. For example, if a facility emits VOC's that are toxic air pollutants, and buys DER's to satisfy a RACT requirement, the facility's emissions of air toxics would be higher than if the facility had installed controls. Conversely, if the facility chooses to make extra emissions reductions and sell them as DER's, toxic emissions from the facility should be lower than without trading.

The EPA has considered several options for dealing with potential changes in toxics emissions as a result of open market trading. The first option would require all sources participating in the open market system to disclose to the public when DER generation or use would cause HAP increases (or forgone decreases), and that States should retroactively study the effect of open market VOC trading on aggregate and facility-specific hazardous air pollutant emissions.

A second option would be for EPA to prohibit a source from using a DER for RACT compliance if the effect would be to increase hazardous air pollutant emissions.

A third option would require States to include in their programs some mechanism to prevent trades that could pose significant toxics concerns, with the mechanism to be determined by the State. Such mechanisms could include screening assessments to provide an indication of whether health or environmental risks from a facility might increase significantly, or a fuller risk assessment. As a variation of this option, a requirement for sources to notify the public of HAP increases due to trades could be among the options available to a State.

The fourth option would be for EPA to leave to State discretion the issue of whether State programs should include restrictions, disclosure, or other safeguards to ensure that toxic emissions changes are acceptable. The EPA could issue guidance on ways to determine whether a VOC trade should be considered unacceptable due to toxics impacts.

The EPA has decided to propose a disclosure requirement which might serve many purposes. Citizens who live near a facility could use the information to determine whether the trade posed a health concern. In many instances, this information may be reassuring, where perceived HAP emissions were larger than actual amounts. The State could also use disclosed information to help ascertain whether to use State regulatory authorities to curb any HAP increases (or to ensure attainment of expected decreases).

Many facilities already are subject to annual toxic release inventory reporting required by the Emergency Planning and Community Right-to-Know Act of 1986 and Pollution Prevention Act of 1990. These reports include estimates of annual emissions of all but eight of the 189 hazardous air pollutants listed under section 112 of the Act. Using the same methodologies it uses for toxic release inventory (TRI) reporting, the facility could estimate HAP emissions with and without DER generation or use. DER generators would include this information in their generation certification notices submitted to the State. DER users would include the information in their notice of intent to use DER's and in their post-use compliance certifications. As described in other sections of this preamble, the rule would require States to make these notices available to the public.

Some commentors have expressed concern that a toxic pollutant disclosure requirement would stigmatize the use of DER's with the detrimental effect of ''chilling'' the use of DER's and discourage market participation. These commentors have further argued that plant-specific fluctuations in HAP emissions resulting from the generation and use of DER's are not likely to be significant, and that they will in most cases be below the level of Federal and State regulatory concern. Toxic emissions that do not fall below this level are already (or will be soon) regulated under Section 112 of the Act. The EPA solicits comments as to whether it should balance this concern against the potential lack of knowledge about toxic pollutant emissions changes.

The EPA seeks comment on all aspects of this possible disclosure requirement. The Agency seeks comment on the suitability of TRI emissions estimation methodologies for the purposes of this rule. In addition, EPA seeks comment on alternative ways to estimate the difference in emissions of each HAP that would result from DER use or generation, especially for facilities not subject to TRI.

The EPA is also soliciting comments on the approach that States should take in studying the effects of open market VOC trading on the aggregate level of risk from air toxics, and on such risks from individual facilities. Depending on the results, the study could either allay concerns of significant increases in risk, or suggest a need for changes in open market trading or air toxics programs. One component of this study might be to evaluate the information that would be available as a result of the proposed disclosure requirement.

N. Impact of OMTR on Related Programs and Policies

1. Emission Trading Policy Statement

The final Emission Trading Policy Statement (ETPS), published in the **Federal Register** on December 4, 1986 provides a general framework for EPA-approvable emission trading. This policy requires that all reductions used in trades be enforceable, permanent, surplus and quantifiable. This policy provides guidance for States to develop model trading rules that would allow specific two-source trades without source-specific SIP revisions, as well as approval criteria for trades submitted as source-specific SIP revisions. The OMTR does not change the requirements of the ETPS, or the types of emissions trading that can occur under the ETPS.

2. Economic Incentive Program Rule and Guidance

The EPA's most recent policy on emissions trading is embodied in the Economic Incentive Program (EIP) rules that were promulgated on April 7, 1994. The 1990 Amendments of the Act required EPA to promulgate EIP rules for certain areas that must implement an EIP as part of their ozone and carbon monoxide attainment strategy. These rules also serve as guidance for all other areas that choose to develop and implement EIP's. The types of trading programs envisioned in the EIP are emissions limiting strategies (such as RECLAIM), market-response strategies, and directionally-sound strategies. The model rule proposed here would establish the ground rules for one type of market-response strategy, namely open market emissions trading of ozone precursor emissions. The model rule proposed today in no way limits the use of other strategies.

The open market program would differ from the requirements for EIP programs in many respects, including, among others:

(1) The intertemporal, spatial, and inter-pollutant trading requirements and restrictions;

(2) Requirements for trading between RACT and non-RACT sources;

(3) Notifications by generators and users;

(4) Lack of pre-approval for trades; and

(5) Requirements for program audits and reconciliation measures.

In light of these differences, EPA is considering amendments to the final EIP rules and guidance, so that the model OMTR would meet all the criteria for an EIP mandated under section 182(g). These amendments could affect the final EIP decisions in such areas as the definition of surplus, the averaging time for RACT, and the requirement that protocols be approved by EPA before they are used.

3. Memorandum to Region IX Regarding Surplus Determination

On August 26, 1994 EPA issued a guidance document on the use of pre-1990 ERC's and adjusting for RACT at time of use. In this memo EPA stated that for banked ERC's it was not sufficient to determine surplus at time of generation, but ERC's must be discounted at time of use to account for any new RACT requirements that may have occurred since the ERC was banked.

ERC's are reductions in the rate of emissions (e.g., pound per day or tons per year). When a source creates an ERC it takes an action which reduces the rate of emissions on a continuous basis. The ERC's are used to offset increases (or lack of decreases) in the rate of emissions on a contemporaneous basis. Thus the reduction created by the ERC must be surplus at the time of use. DER's, on the other hand, would be created and documented before they were used. Thus, barring any restrictions at the time of use, DER's would be surplus only at the time of creation.

The Memorandum also ties surplus to the 1990 and other subsequent emissions inventories as well as attainment demonstrations and ROP plans. The EPA believes that this policy is still valid for ERC programs but would only be partially applicable to DER programs. Several aspects of the proposed open market program illustrate this point. First, one purpose of the proposed open market rule would be to encourage early reductions, and this incentive would be reduced or lost if there were not a reasonable expectation that the reductions could be used at a later date because they were no longer surplus. Second, the proposed rule would not allow pre-1995 reductions to qualify for credit, which would reduce the likelihood that a large amount of banked reductions could be used in the future. Finally, the proposed rule would retain the link to emissions inventories, attainment demonstrations and ROP plans for determining surplus at the time of generation, but would rely on retrospective program audits to ensure that DER use would not chronically interfere with progress toward attainment or attainment.

4. Emissions Budget Programs

Since the 1990 amendments to the Act there has been considerable activity in developing emissions budget programs for attaining the ozone standard. These programs determine the quantity of emissions an area can emit and still demonstrate attainment. This emissions budget is then allocated among the sources in the nonattainment area in the form of emissions allowances. Sources are then allowed to trade their allowances. The EPA has proposed conditional approval of the NO_X/SO_X Regional Clean Air Incentives Market (RECLAIM) program in the Los Angeles area, which is the most fully developed ozone program of this kind. Various cap and trade programs are also being developed in Illinois for VOC, and in the Ozone Transport Region for NO_X. The model rule would not inhibit the development and implementation of these programs. The EPA continues to strongly encourage States to develop cap and trade programs as part of their attainment strategies.

The EPA envisions that open market trading programs could be complementary to emissions budget programs. It is typically difficult to include all of an area's VOC and NO_X sources in an emissions budget due to administrative costs or difficulty in quantifying the sources' emissions. For these reasons, smaller stationary sources and mobile sources are omitted. An open market program could offer sources not covered by the emissions budget a cost-reducing compliance option, as well as provide a continuous incentive to those sources to quantify their surplus emissions reductions.

IV. Administrative Requirements

A. Public Hearing

A public hearing will be held to discuss the proposed standards in accordance with Section 307(d)(5) of the Act. Persons wishing to make an oral presentation on the proposed model OMTR should contact the Agency in accordance with the instructions given in the **DATES** Public Hearing section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket section address given in the **ADDRESSES** section of this preamble, and should refer to Docket No. A–95–21.

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the Agency in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) (Section 307(d)(7)(A) of the Act).

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (1993)), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and other requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan 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.''

It has been determined that today's proposed model rule is a significant action because it raises novel policy issues arising out of the President's priorities. This action was submitted to OMB for review in accordance with the Executive Order, and changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prapare 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. A ''Federal intergovernmental mandate'' excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease the Federal Governement's responsibility to provide funding. A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The proposed model OMTR would be a volutary program that State and local governments could adopt. If adopted, the rule would govern the voluntary participation of private sector entities in an emissions trading program. Because the program would be voluntary for State and local governments and private entities, the Agency has not prepared a budgetary impact statement.

E. Paperwork Reduction Act

Today's proposal contains voluntary information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

This collection of information has an estimated reporting burden averaging of 73.5 hours per trade and an estimated annual recordkeeping burden averaging 60 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to Director, Regulatory Information Division, EPA, 401 M St., SW (Mail Code 2138), Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.''

F. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 and applicable EPA guidelines revised in 1992 require Federal agencies to identify potentially adverse impacts of Federal rules upon small entities. Small entities include small businesses, organizations, and governmental jurisdictions. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis.

Today's proposal does not of itself impose an requirements on small entities, nor require or exclude small entities participation in open market trading in the future. As a result, the EPA has determined that the proposed rule will not have a significant impact on a substantial number of small entities.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. *601 et seq.*, I certify that this rule does not have a significant impact on a substantial number of small entities.

G. Clean Air Act Section 117

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator welcomes comment on all aspects of the proposed model rule, including health, economic, technological, and other aspects.

Dated: July 26, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–18869 Filed 8–2–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 10

RIN 3067–AC41

Environmental Considerations/ Categorical Exclusions

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise the categories of actions or categorical exclusions that normally would not require an environmental impact statement or environmental assessment. These proposed changes are intended to reduce the administrative processes and decrease the time required for project funding and implementation, while still ensuring that FEMA satisfies environmental concerns and issues. The proposed changes are consistent with Federal directives, regulations and statutes.

DATES: We invite comments on the proposed rule, which must be received on or before September 18, 1995.

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

FOR FURTHER INFORMATION CONTACT: Rick Shivar, Office of Policy and Assessment, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, or phone (202) 646–3610.

SUPPLEMENTARY INFORMATION: The proposed changes respond to numerous suggestions for additional exclusion categories and for modifications to existing exclusion categories. They reflect several years' experience on the types of actions that generally receive a finding of no significant impact after FEMA makes an environmental assessment. The proposed changes are intended to speed the approval of those projects with no potential for significant environmental effects and to allow attention to be focused on those projects with potential environmental concerns.

In order to produce a complete and effective update of exclusion categories, we conducted a review of the environmental assessments (EA) and the findings of no significant impact (FONSI) that FEMA has issued. In the last few years we have completed over 340 EAs, but there is only one case where an environmental impact statement (EIS) was written. While many EAs identified impacts that were able to be mitigated below the level of significance, we found that the clear majority of actions have no significant impact. Reviewing this last group revealed specific types of projects that historically did not produce significant environmental effects. In conjunction with the review of FEMA's EAs, we conducted a literature review of other Federal documents containing similar types of exclusions to ensure consistency of FEMA's exclusions with other Federal agencies' regulations. The results of these two reviews are the basis for the proposed change to FEMA's list of exclusion categories.

These proposed changes are also in keeping with the Council on Environmental Quality's guidance to

Federal agencies on this subject (48 FR 34263, July 28, 1983). That guidance encourages Federal agencies to add flexibility to implementing procedures to allow new types of actions to be classified as categorical exclusions (CATEXs) with minimal documentation required. This is done by developing more broadly defined categories as well as providing examples of typical CATEXs, rather than a comprehensive list, so that specific actions not previously listed by an agency can be considered for CATEX status on a case-by-case basis.

The proposed exclusion categories would not affect FEMA's responsibility to comply with all other applicable local, state, and Federal laws and regulations relating to health, safety and the environment. This would encompass Federal environmentally oriented statutes including, among others: the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Coastal Zone Management Act, the Coastal Barrier Resources Act, the Endangered Species Act, the National Historic Preservation Act, and the Archaeological and Historic Preservation Act. It would not affect FEMA's responsibilities under Executive Orders 11988, 11990, and 12898. Nor would it affect FEMA's implementing regulations at 44 CFR part 9, or FEMA's National Flood Insurance Program rules at 44 CFR parts 59 through 77.

A point of clarification of the term ''categorical exclusion'' is necessary in the discussion of this proposed rule. Section 316 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Pub.L. 93–288, as amended, 42 U.S.C. 5159, provides (1) for a statutory exclusion from NEPA requirements for certain actions taken under specific sections of that Act (sections 402, 403, 407 and 502), and (2) for those actions under section 406 of the Stafford Act that have ''the effect of restoring a facility substantially to its condition prior to the disaster or emergency.'' While statutory exclusions are exempted from all NEPA documentation, actions that are categorically excluded from preparation of an EA or an EIS must be documented by FEMA under this part. However, as with actions categorically excluded, an action statutorily excluded from NEPA is not exempt from the requirements of the other environmentally oriented statutes indicated above. To help determine the level of environmental review required and, specifically, when neither an EA nor an EIS is likely to be required for a proposed action, the list of exclusion categories presented by this rule is comprehensive in that it includes both categorical exclusions and those actions that are statutorily excluded (denoted by [SE]).

We present the list of proposed exclusion categories with administrative type actions appearing first followed by emergency and other actions. The administrative actions relate mainly to activities that in and of themselves do not normally impact the environment, such as: planning, design, procurement, acquisition, training, studies and other administrative processes. The emergency and other actions mainly address emergency, disaster-related, or other activities that could impact features of the human and natural environment, such as: construction; maintenance or repair of facilities or vegetation; relocation of structures; floodproofing; emergency response and deployment; physical and other assistance.

Since the proposed revision would republish and redesignate some paragraphs, and modify other paragraphs, the following discussion is directed only at those items that are added, removed, or revised.

44 CFR 10.8 would be revised to redesignate and revise the discussion of statutory exclusions to recognize the difference between the basic nature of the statutory exclusion and of the CATEX. We also updated references to sections of the Stafford Act.

New paragraph (d)(2) modifies the nomenclature ''List of categorical exceptions'' to ''List of exclusion categories'' to reflect the categorical nature of the list as opposed to a list of exceptions. This change is also reflected in new paragraph (d)(6). New paragraphs (d)(2)(i),(ii),(iii),(v),(vi), and (vii) make minor wording revisions and clarify the language of existing categories but do not change their general substance.

New paragraph (d)(2)(iv) would address inspection and monitoring processes that are part of the compliance requirements for various programs. These activities are passive as to the environment. Any federally funded action that the inspections or monitoring might recommend is subject to the NEPA process.

Paragraph (d)(2)(viii) would allow for the timely evaluation and acquisition of land in advance of project development to avoid land speculation that could arise with early public disclosure. This categorical exclusion applies only to acquisition of the land. Any subsequent use of the property for a facility or project must be considered as a separate action under this part without regard to ownership of the land.

Paragraph (d)(2)(ix) would address the purchase or leasing of existing facilities when land use requirements allow the proposed use.

Paragraph (d)(2)(x) would allow for interagency exchange of real property.

Paragraph (d)(2)(xi) would cover the acquisition, installation, or operation of utilities, gauges, communication and warning systems when using established rights-of-way, existing systems or facilities.

Paragraph (d)(2)(xiii) would allow for the planting of indigenous vegetation, for example, to reduce erosion or fire hazard.

Paragraph (d)(2)(xiv) would apply to the removal of structures, improvements or debris to sites permitted for such material. The paragraph also applies to the demolition, as well as removal, of structures to such permitted locations.

Paragraph (d)(2)(xv) would apply to small, individual structures that are to be relocated to a new site, where the new site is developed with substantially completed infrastructure, and existing lots have been previously disturbed, for example, by grading or prior construction activities.

Paragraph (d)(2)(xvi) would exclude the act of granting a community exception for residential basement floodproofing pursuant to the National Flood Insurance Program.

Paragraph (d)(2)(xvii) would provide to actions under the mitigation and other programs the same exclusion available by statute to actions funded pursuant to section 406 of the Stafford Act whereby a facility can be restored to its approximate preexisting design, function and location.

Paragraph (d)(2)(xviii) would allow for improvements or upgrading to current codes or standards an existing facility in an already developed and appropriately zoned area on previously disturbed or graded lots. This would include improvements in the disturbed portion of a lot of an existing building, culverts and berms within the previously disturbed perimeter of a road, storm drainage or utility system or existing facility. New construction of hazard mitigation measures that satisfy the conditions of this section are also covered.

Paragraph (d)(2)(xix) would permit actions within enclosed facilities which comply with local construction, noise, pollution and waste disposal regulations.

Paragraph (d)(2)(xx) and paragraph (d)(2)(xxi) would incorporate some existing statutory exclusions into the CATEX list. Paragraph (d)(2)(xx) would

exclude, in addition to the existing category for the deployment and support of Emergency Support Teams, direct response activities including activation and support of the Catastrophic Disaster Response Group, Regional Operations Centers, Emergency Response Teams, Urban Search and Rescue teams, and situation assessment, reconnaissance and other data gathering efforts in response to and for recovery from a disaster.

Paragraph (d)(2)(xxi) would exclude emergency assistance and relief activities and would rephrase terminology to reflect the amended Stafford Act. This would include general federal and essential assistance (Stafford Act sections 402 and 403), food coupons and commodities (sections 412 and 413), and Federal emergency assistance (section 502). Debris removal (section 407) would become less restrictive. The temporary housing definition (section 408) would be simplified as would the definitions of the individual and family grant (section 411) and community disaster loan (section 417) exclusions.

In paragraph (d)(3) the list of Extraordinary Circumstances, which was section 10.8(e), would be updated to clarify the circumstances that may cause an action that is normally categorically excluded to have the potential for significant environmental impact. The previous paragraph (e)(2) describing ''actions in highly populated or congested areas'' is replaced in paragraph (d)(3)(ii) with a more workable ''actions with a high level of controversy.'' In paragraph (d)(3)(iv) clarifying language is added to the term ''unproven technology.'' In paragraph (d)(3)(vi) the hazardous substance condition was changed from ''use'' to ''presence.'' Paragraph (d)(3)(vii), which addresses flood plains or wetlands, would be expanded to include other special or critical resources, i.e., coastal zones, wildlife refuge and wilderness areas, wild and scenic rivers, sole or principal drinking water aquifers, etc.

Two new categories were added to insure that adverse health and safety effects, paragraph (d)(3)(viii) and the potential violation of Federal, state, local or tribal requirements, paragraph(d)(3)(ix), would be considered as extraordinary circumstances.

Paragraph (d)(5), Revocation, would be added to assure that if the conditions upon which a categorical exclusion was granted have changed or new information is discovered indicating that the action no longer meets the conditions of the categorical exclusion, the responsible official must revoke the exclusion and ask for a full environmental review.

Paragraph (d)(6)(i) and (d)(6)(ii), which addresses changes to the list of exclusion categories, adds ''directorates'' to ''offices and administrations'' to more correctly reflect all the organizational entities in FEMA.

National Environmental Policy Act

The requirements of 44 CFR Part 10, Environmental Consideration, would exclude this proposed rule. FEMA has not prepared an environmental impact statement.

Regulatory Flexibility Act

I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The rule adds eight categories to FEMA's categorical exclusions from reviews under the National Environmental Policy Act, and FEMA does not expect the rule (1) would affect adversely the availability of disaster assistance funding to small entities, (2) would have significant secondary or incidental effects on a substantial number of small entities, or (3) would create any additional burden on small entities.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, Regulatory Planning and Review, 3 CFR, 1994 Comp., p. 638. To the extent possible this proposed rule adheres to the regulatory principles set forth in E.O. 12866, but has not been reviewed by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 10

Environmental impact statements.

Accordingly, 44 CFR part 10 is proposed to be amended as follows:

PART 10—ENVIRONMENTAL CONSIDERATIONS

1. The authority citation for part 10 is revised to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; E.O. 11514 of March 7, 1970, 35 FR 4247, as amended by E. O. 11991 of March 24, 1977, 3 CFR, 1977 Comp., p. 123; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148 of July 20, 1979, 44 FR 43239, 3 CFR, 1979 Comp., p. 412, as amended.

2. In § 10.8, paragraphs (c), (d), and (e) are revised to read as follows:

§ 10.8 Determination of requirement for environmental review.

* * * * *

(c) *Statutory exclusions.* The following actions are statutorily excluded from NEPA and the preparation of environmental impact statements and environmental assessments by section 316 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5159 (Stafford Act);

(1) Action taken or assistance provided under sections 403, 407, 502, or 422 of the Stafford Act; and

(2) Action taken or assistance provided under section 406 or 422 of the Stafford Act that has the effect of restoring facilities substantially as they existed before a major disaster or emergency.

(d) *Categorical Exclusions (CATEXs).* CEQ regulations at 40 CFR 1508.4 provide for the categorical exclusion of actions that do not individually or cumulatively have a significant impact on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. Full implementation of this concept will help FEMA avoid unnecessary or duplicate effort and concentrate resources on significant environmental issues.

(1) *Criteria.* The criteria used for determination of those categories of actions that normally do not require either an environmental impact statement or an environmental assessment include:

(i) Minimal or no effect on environmental quality;

(ii) No significant change to existing environmental conditions; and

(iii) No significant cumulative environmental impact.

(2) *List of exclusion categories.* FEMA has determined that the following categories of actions have no significant effect on the human environment and are, therefore, categorically excluded from the preparation of environmental impact statements and environmental assessments except where extraordinary circumstances as defined in paragraph (d)(5) of this section exist. If the action is of an emergency nature as described in section 316 of the Stafford Act (42 U.S.C. 5159), it is statutorily excluded and is noted with [SE]. Paragraphs (c)(2)(i) through (x) of this section address administrative actions and paragraphs (c)(2) (xi) through (xxi) of this section relate to emergency and other actions.

(i) Administrative actions such as personnel actions, travel, procurement of supplies, etc., in support of normal day to day activities and disaster related activities;

(ii) Preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions which qualify for categorical exclusions;

(iii) Studies that involve no commitment of resources other than manpower and associated funding;

(iv) Inspection and monitoring activities, granting of variances, and actions to enforce Federal, state, or local codes, standards or regulations;

(v) Training activities and both training and operational exercises utilizing existing facilities in accordance with established procedures and land use designations;

(vi) Procurement of goods and services for support of day-to-day and emergency operational activities, and the storage of goods other than hazardous materials, so long as storage occurs on previously disturbed land or in existing facilities;

(vii) The acquisition of properties under any applicable authority when the acquisition is from a willing seller, the buyer coordinated acquisition planning with affected authorities, and the acquired property will be dedicated in perpetuity to uses that are compatible with open space, recreational, or wetland practices.

(viii) Acquisition of unimproved real property not related to specific facility plans or when necessary to protect the interests of FEMA in advance of final project approval; (This categorical exclusion applies only to the acquisition. Any subsequent use of the property for a facility or project must be considered under this part without regard to ownership of the real property);

(ix) Acquisition or lease of existing facilities where planned uses generally conform to past use or local land use requirements;

(x) Transfer of administrative control of FEMA real property to another Federal agency;

(xi) Acquisition, installation, or operation of utility and communication systems that use existing rights-of-way, distribution systems, or facilities;

(xii) Routine maintenance, repair, and grounds-keeping activities;

(xiii) Planting of indigenous vegetation;

(xiv) Demolition of structures and/or disposal of uncontaminated structures and other improvements for removal to permitted off-site locations;

(xv) Physical relocation of individual structures to previously disturbed or graded lots in existing developed areas with substantially completed infrastructure;

(xvi) Granting of community-wide exceptions for floodproofed residential basements meeting the requirements of 44 CFR 60.6(c) under the National Flood Insurance Program;

(xvii) Repair, reconstruction, restoration, elevation, retrofiting, or replacement of any facility in a manner that substantially conforms to the preexisting design, function, and location; [SE, in part]

(xviii) Improvements or upgrading to current codes and standards of existing facilities and construction of hazard mitigation measures when those actions are in existing developed areas with substantially completed infrastructure, and when those actions do not alter function, system capacity, or land use; provided the operation of the completed project will not, of itself, have an adverse effect on the quality of the human environment;

(xix) Actions conducted within enclosed facilities where all airborne emissions, waterborne effluent, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing Federal, state, and local laws and regulations;

(xx) The following planning and administrative activities in support of emergency and disaster response and recovery:

(A) Activation of the Emergency Support Team and convening of the Catastrophic Disaster Response Group at FEMA headquarters;

(B) Activation of the Regional Operations Center and deployment of the Emergency Response Team, in whole or in part;

(C) Deployment of Urban Search and Rescue teams;

(D) Situation Assessment including ground and aerial reconnaissance;

(E) Information and data gathering and reporting efforts in support of emergency and disaster response and recovery and hazard mitigation; and

(xxi) The following emergency and disaster response, recovery and hazard mitigation activities pursuant to the Stafford Act:

(A) General Federal Assistance (§ 402); [SE]

(B) Essential Assistance (§ 403); [SE]

(C) Debris Removal (§ 407) [SE]

(D) Temporary Housing (§ 408), except locating multiple mobile homes or other readily fabricated dwellings on sites, other than private residences, not previously used for such purposes;

(E) Unemployment Assistance (§ 410);

(F) Individual and Family Grant Programs (§ 411), except to the extent that grants will be used for restoring, repairing or building private bridges, or purchasing mobile homes or other readily fabricated dwellings;

(G) Food Coupons and Distribution (§ 412);

(H) Food Commodities (§ 413);

(I) Legal Services (§ 415);

(J) Crisis Counseling Assistance and Training (§ 416);

(K) Community Disaster Loans (§ 417);

(L) Emergency Communications (§ 418);

(M) Emergency Public Transportation (§ 419);

(N) Fire Suppression Grants (§ 420); and

(O) Federal Emergency Assistance (§ 502) [SE].

(3) *Extraordinary circumstances.* If extraordinary circumstances exist within an area affected by an action, such that an action that is categorically excluded from NEPA compliance may have a significant adverse environmental impact, an environmental assessment shall be prepared. Extraordinary circumstances that may have a significant environmental impact include:

(i) Greater scope or size than normally experienced for a particular category of action;

(ii) Actions with a high level of public controversy;

(iii) Potential for degradation, even though slight, of already existing poor environmental conditions;

(iv) Employment of unproven technology with potential adverse effects or actions involving unique or unknown environmental risks;

(v) Presence of endangered or threatened species or their critical habitat, archaeological remains, or other protected resources;

(vi) Presence of hazardous or toxic substances;

(vii) Actions with the potential to adversely affect special status areas or other critical resources such as

wetlands, coastal zones, wildlife refuge and wilderness areas, wild and scenic rivers, sole or principle drinking water aquifers;

(viii) Potential for adverse effects on health or safety; and

(ix) Potential to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

(4) *Documentation.* The Regional Director will prepare and maintain an administrative record of each proposal that is determined to be categorically excluded from the preparation of an environmental impact statement or an environmental assessment.

(5) *Revocation.* The Regional Director shall revoke a determination of categorical exclusion and shall require a full environmental review if, subsequent to the granting of an exclusion, the Regional Official determines that due to changes in the proposed action or in light of new findings, the action no longer meets the requirements for a categorical exclusion.

(6) *Changes to the list of exclusion categories.* (i) The FEMA list of exclusion categories will be continually reviewed and refined as additional categories are identified and experience is gained in the categorical exclusion process. An office, directorate, or administration of FEMA may, at any time, recommend additions or changes to the FEMA list of exclusion categories.

(ii) Offices, directorates, and administrations of FEMA are encouraged to develop additional categories of exclusions necessary to meet their unique operational and mission requirements.

(iii) If an office, directorate, or administration of FEMA proposes to change or add to the list of exclusion categories, it shall first:

(A) Obtain the approval of the Environmental Officer and FEMA's Office of the General Counsel; and

(B) Publish notice of such proposed change or addition in the **Federal Register** at least 60 days before the effective date of such change or addition.

(e) *Actions that normally require an environmental assessment.* When a proposal is not one that normally requires an environmental impact statement and does not qualify as a categorical exclusion, the Regional Director shall prepare an environmental assessment.

Dated: July 28, 1995.

Harvey G. Ryland,

Deputy Director.

[FR Doc. 95–19136 Filed 8–2–95; 8:45 am]

BILLING CODE 6718–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 950725189–5189–01; I.D. 062795A]

RIN 0648–XX24

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Changes in Catch Limits

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes changes in the management regimes for the Atlantic migratory groups of king and Spanish mackerel and the Gulf group of king mackerel, in accordance with the framework procedure for adjusting management measures for the Fishery Management Plan for the Coastal Migratory Pelagic Resources (FMP). For Atlantic group king mackerel, this rule proposes changes in the total allowable catch (TAC), establishment of commercial vessel trip limits, and reduction of the recreational bag limit; for Atlantic group Spanish mackerel, increases in the TAC and allocations; and for Gulf group king mackerel, changes in the commercial vessel trip limits. The intended effect of this rule is to protect king and Spanish mackerel from overfishing and continue stock rebuilding programs while still allowing catches by important recreational and commercial fisheries dependent on king and Spanish mackerel.

DATES: Written comments must be received on or before August 18, 1995.

ADDRESSES: Comments must be mailed to Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the environmental assessment and regulatory impact review supporting aspects of this action relating to Gulf group mackerel should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609–2486. Requests for comparable documents relating to Atlantic group mackerel should be sent to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

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

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642.

In accordance with the framework procedure of the FMP, the Councils appointed a Stock Assessment Panel (Panel) to assess, on an annual basis, the condition of each stock of king and Spanish mackerel in the management unit, to report its findings, and to make recommendations to the Councils. Based on the Panel's 1995 report and recommendations, advice from the Mackerel Advisory Panels (MAPs) and the Scientific and Statistical Committees (SSCs), and public input, the Councils recommended to the Director, Southeast Region, NMFS (Regional Director), changes to the TAC and allocations for the Atlantic migratory groups of king and Spanish mackerel, reduction of the recreational bag limit in the northern area and establishment of commercial trip limits for Atlantic group king mackerel, and changes in the commercial trip limits for Gulf group king mackerel in the east and west coast sub-zones of the eastern zone. The recommended changes are within the scope of the management measures that may be adjusted, as specified at 50 CFR 642.29. For the 1995–96 fishing year, the Councils recommended no changes for Gulf group Spanish mackerel or for cobia.

Specifically, the Councils recommended that, effective with the fishing year that began April 1, 1995, the annual TAC for the Atlantic migratory group of Spanish mackerel be increased from 9.20 million lb (4.17 million kg) to 9.40 million lb (4.26 million kg) and the annual TAC for the Atlantic migratory group of king mackerel be decreased from 10.00 million lb (4.54 million kg) to 7.30 million lb (3.31 million kg). These recommended TACs are within the range of the acceptable biological catch chosen by the Councils and represent a conservative approach supported by their SSCs and MAPs. Under the provisions of the FMP, the recreational and commercial fisheries are allocated a fixed percentage of the TAC. Under the established percentages, the proposed TACs for the fishing year that commenced April 1, 1995, would be allocated as follows:

Species	m. lb	m. kg
Atlantic Spanish Mackerel—TAC	9.40	4.26
Recreational allocation (50%)	4.70	2.13
Commercial allocation (50%)	4.70	2.13
Atlantic King Mackerel—TAC	7.30	3.31
Recreational allocation (62.9%)	4.60	2.09
Commercial allocation (37.1%)	2.70	1.22

The commercial sector of the Atlantic group Spanish mackerel fishery is managed under trip limits. In the southern zone, i.e., south of a line extending directly east from the Georgia/Florida boundary, the specific trip limits vary depending on the percentage of catch of the adjusted allocation. The adjusted allocation is the commercial allocation for Atlantic migratory group Spanish mackerel reduced by an amount calculated (250.00 lb) (113.40 kg) to allow continued harvests of Atlantic group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted allocation is reached. Along with the increased commercial allocation, the Councils recommended that the adjusted allocation be increased from 4.35 million lb (1.97 million kg) to 4.45 million lb (2.02 million kg).

The commercial sector of the Gulf group king mackerel fishery in the eastern zone (off Florida) also is managed under trip limits. The proposed trip limit changes are specific for Florida east and west coast sub-zones and respective quotas. For the Florida east coast sub-zone, the Councils proposed that the commercial vessel trip limit of 50 king mackerel per day would not be reduced if 75 percent of the sub-zone's fishing year quota is not harvested before March 1, but would remain at 50 king mackerel per day until the entire quota has been harvested or until March 31, whichever occurs first. Currently, the trip limit is reduced from 50 to 25 fish per day when 75 percent of the quota is taken and remains at that level until the entire quota has been harvested or until March 31, whichever occurs first. Last season's projected harvest did not reach 75 percent of the quota until the end of the season; therefore, the trip limit was not reduced to 25 king mackerel per day. The Florida east coast sub-zone exists November 1 through March 31 and encompasses the waters off the Florida east coast from a line extending directly east from the Dade/Monroe County boundary to a line extending directly east from the Volusia/Flagler County boundary.

For the Florida west coast sub-zone, the Councils recommended daily trip limits for vessels harvesting king mackerel under the hook-and-line quota; no trip limits were in effect last season. The daily possession/landing limit for a vessel using hook-and-line gear, holding a Federal commercial mackerel permit would be 125 fish for the taking of the first 75 percent of the hook-and-line quota, then be reduced to 50 fish until the entire quota has been harvested. From November 1 through March 31, the Florida west coast sub-zone encompasses the waters off the southeast, south, and west coasts of Florida from the Dade/Monroe County boundary to a line extending directly south from the Alabama/Florida boundary. From April 1 through October 31, when the boundary separating the Gulf and Atlantic groups of king mackerel is a line extending directly west from the Monroe/Collier boundary (25°48′ N. lat.), the west coast sub-zone would extend from that boundary to the Alabama/Florida boundary and would exclude the Florida Keys (Monroe County).

For the Atlantic group king mackerel, the Councils recommended daily trip limits for vessels harvesting under the commercial allocation. Previously this segment of the fishery has not had trip limits. The commercial trip limits were proposed to prevent a likely closure, to distribute catch among user groups, and to minimize ongoing user-group conflicts and those that would result if new entrants displaced by Florida's inshore net prohibition would cause a large shift in effort. The daily possession/landing limit for a vessel using non-prohibited gear holding a Federal commercial mackerel permit would be 3,500 lb (1,588 kg) of king mackerel, in or from the exclusive economic zone (EEZ), year-round in the northern area between the New York/Connecticut and Flagler/Volusia County, FL boundaries. Off Volusia County, FL, the daily trip limit would be 3,500 lb (1,588 kg) of king mackerel, in or from the EEZ, from April 1 through October 31. South of there, between the Volusia/Brevard and Monroe/Collier County boundaries, a daily trip limit of 50 king mackerel in or from the EEZ would be effective April 1 through October 31. All trip limits proposed for the Atlantic group king mackerel are daily landing/possession limits that would reduce to zero for that group whenever the annual commercial allocation is reached.

The Regional Director initially concurs that the Councils' recommendations are necessary to protect the king and Spanish mackerel stocks and prevent overfishing and that they are consistent with the objectives of the FMP. Accordingly, the Councils' recommended changes are published for comment. In addition to these changes, § 642.28(b) has been revised and reformatted to improve clarity.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed commercial trip limits for the east coast sub-zone of Gulf king mackerel are expected to result in a slight increase in economic benefits; west coast sub-zone trip limits are expected to have favorable distributional effects but perhaps minor adverse impacts on short-term profitability. Commercial trip limits for Atlantic group king mackerel should result in small increases in long-term benefits to the industry. The proposed reduction in TAC for Atlantic group king mackerel is not expected to affect revenues of small entities, because the reduced level is consistent with catch levels in recent years. The reduction in the recreational bag limit for Atlantic group king mackerel is expected to affect only a small portion of recreational anglers. The minor increase in TAC for Atlantic group Spanish mackerel would increase revenues to the commercial sector slightly. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 27, 1995.

Richard B. Stone,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

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

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

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

2. In § 642.7, paragraphs (q) through (u) are revised to read as follows:

§ 642.7 Prohibitions.

* * * * *

(q) Exceed a commercial trip limit for Atlantic group king or Spanish mackerel, as specified in § 642.27(a) or (b).

(r) Transfer at sea from one vessel to another an Atlantic group king or Spanish mackerel subject to a commercial trip limit, as specified in § 642.27(f).

(s) In the eastern zone, possess or land Gulf group king mackerel in or from the EEZ in excess of an applicable trip limit, as specified in § 642.28(a), (b)(1), or (b)(2), or transfer at sea such king mackerel, as specified in § 642.28(e).

(t) In the Florida west coast sub-zone, possess or land Gulf group king mackerel in or from the EEZ aboard a vessel that uses or has aboard a run-around gillnet on a trip when such vessel does not have on board a commercial permit for king and Spanish mackerel with a gillnet endorsement, as specified in § 642.28(b)(2)(i).

(u) In the Florida west coast sub-zone, aboard a vessel for which a commercial permit for king and Spanish mackerel with a gillnet endorsement has been issued, retain Gulf group king mackerel in or from the EEZ harvested with gear other than run-around gillnet, as specified in § 642.28(b)(1)(ii)(C).

* * * * *

3. In § 642.24, paragraph (a)(1)(ii)(A) is revised to read as follows:

§ 642.24 Bag and possession limits.

(a) * * *

(1) * * *

(ii) * * *

(A) *Northern area*—five per person through December 31, 1995; three per person thereafter.

* * * * *

§ 642.25 [Amended]

4. In § 642.25, in paragraph (a)(2), the numbers ''3.71'' and ''1.68'' are revised to read ''2.70'' and ''1.22'', respectively and in paragraph (b)(2), the numbers ''4.60'' and ''2.09'' are revised to read ''4.70'' and ''2.13'', respectively.

5. In § 642.27, paragraphs (a) through (e) are redesignated as paragraphs (b) through (f), respectively; in newly redesignated paragraphs (c) and (d), the references to ''paragraph (a)(2) of this section'' are revised to read ''paragraph (b)(2) of this section''; in newly redesignated paragraph (c) the numbers ''4.35'' and ''1.97'' are revised to read ''4.45'' and ''2.02'', respectively; the reference in newly redesignated paragraph (f) introductory text and in newly redesignated paragraph (f)(2), ''Spanish mackerel'' is revised to read ''king or Spanish mackerel''; the section heading is revised; paragraph (a) is added; and a paragraph heading is added to newly redesignated paragraph (b) to read as follows:

§ 642.27 Commercial trip limits for Atlantic group king and Spanish mackerel.

(a) *Atlantic group king mackerel.* (1) North of a line extending directly east from the Volusia/Flagler County, Florida boundary (29°25′ N. lat.) to the outer limit of the EEZ, king mackerel in or from the EEZ may not be possessed aboard or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg).

(2) In the area between lines extending directly east from the northern and southern boundaries of Volusia County, Florida (29°25′ N. lat. and 28°47.8′ N. lat., respectively) to the outer limit of the EEZ, king mackerel in or from the EEZ may not be possessed aboard or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg) from April 1 through October 31.

(3) In the area between lines extending directly east from the Volusia/Brevard County, Florida boundary (28°47.8′ N. lat.) to the outer limit of the EEZ and directly west from the Monroe/Collier County, Florida boundary (25°48′ N. lat.) to the outer boundary of the EEZ, king mackerel in or from the EEZ may not be possessed aboard or landed from a vessel in a day in amounts exceeding 50 fish from April 1 through October 31.

(b) *Atlantic group Spanish mackerel.*

* * *

* * * * *

6. In § 642.28, a sentence is added at the end of paragraph (a)(2), and paragraph (b) and paragraph (e) introductory text, are revised to read as follows:

§ 642.28 Additional limitations for Gulf group king mackerel in the eastern zone.

(a) * * *

(2) * * * However, if 75 percent of the sub-zone's quota has not been harvested by March 1, the vessel limit remains at 50 king mackerel per day until the sub-zone's quota is filled or until March 31, whichever occurs first.

(b) *Florida west coast sub-zone*—(1) *Gillnet gear.* (i) In the Florida west coast sub-zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for which a permit with a gillnet endorsement has been issued under § 642.4, from July 1, each fishing year, until a closure of the Florida west coast sub-zone's commercial fishery for vessels fishing with run-around gillnets has been effected under § 642.26—in amounts not exceeding 25,000 lb (11,340 kg) per day.

(ii) In the Florida west coast sub-zone:

(A) King mackerel in or from the EEZ may be possessed aboard or landed from a vessel that uses or has aboard a run-around gillnet on a trip only when such vessel has on board a commercial permit for king and Spanish mackerel with a gillnet endorsement;

(B) King mackerel from the west coast sub-zone landed by a vessel for which such commercial permit with endorsement has been issued will be counted against the run-around gillnet quota of § 642.25(a)(1)(i)(B)(*2*); and

(C) King mackerel in or from the EEZ harvested with gear other than run-around gillnet may not be retained aboard a vessel for which such commercial permit with endorsement has been issued.

(2) *Hook-and-line gear.* In the Florida west coast sub-zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel permitted under § 642.4(a)(1) and operating under the commercial hook-and-line gear quota in § 642.25(a)(1)(i)(B)(*1*):

(i) From July 1, each fishing year, until 75 percent of the sub-zone's hook-and-line gear quota has been harvested—in amounts not exceeding 125 king mackerel per day; and

(ii) From the date that 75 percent of the sub-zone's hook-and-line gear quota has been harvested until a closure of the west coast sub-zone's hook-and-line fishery has been effected under § 642.26—in amounts not exceeding 50 king mackerel per day.

* * * * *

(e) *Transfer at sea.* A person for whom a trip limit specified in paragraph (a), (b)(1)(i), or (b)(2) of this section or a gear limitation specified in paragraph (b)(1)(ii)(A) of this section applies may not transfer at sea from one vessel to another a king mackerel:

* * * * *

[FR Doc. 95–19038 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–22–W

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50 CFR Part 697

[Docket No. 950605148–5148–01; I.D. 060195C]

RIN 0648–AH58

Atlantic Coast Weakfish Fishery; Moratorium in Exclusive Economic Zone; Comment Period Extension

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: On June 20, 1995, NMFS published a proposed rule that would prohibit fishing for and possession of Atlantic coast weakfish in the exclusive economic zone offshore from Maine through Florida. NMFS announces that it is extending the comment period from August 2 to August 15, 1995.

DATES: Written comments must be received on or before August 15, 1995.

ADDRESSES: Written comments on the proposed rule should be sent to: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1315 East-West Highway, Room 14657, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: William Hogarth, 301-713-2339.

SUPPLEMENTARY INFORMATION: On June 20, 1995, NMFS published a proposed rule in the **Federal Register** (60 FR 32130). As a result of the initial hearings held in July 1995, and requests from the public, NMFS has determined that it is important for commenters to have additional time to submit their comments on this proposed rulemaking. Therefore, NMFS is extending the comment period from August 2, 1995 to August 15, 1995.

Dated: July 28, 1995.

Richard B. Stone,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 95–19053 Filed 7–28–95; 4:41 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 149
Thursday, August 3, 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

Foreign Agricultural Service

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request an extension for and revision to a currently approved information collection in support of the FAS/Cooperator Market Development Program based on re-estimates.

DATES: Comments on this notice must be received by October 2, 1995 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Sharon L. McClure, Director, Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250–1042, (202) 720–5521.

SUPPLEMENTARY INFORMATION:

Title: FAS/Cooperator Market Development Program.

OMB Number: 0551–0026.

Expiration Date of Approval: December 31, 1995.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The primary objective of the Foreign Market Development Program is to develop, maintain and expand long-term export markets for U.S. agricultural products. Created 40 years ago, the program has developed into a partnership between the FAS, USDA and private agricultural trade organizations (called ''Cooperators''). The FAS currently has joint projects with 40 Cooperators working in more than 100 countries.

Prior to initiating program activities, Cooperators must submit detailed marketing plans, or amendments thereof, to FAS which include an assessment of the overseas market potential; the marketing strategy, goals and individual activities; estimated budgets; and performance measurements. Prior years' plans often dictate the content of current year plans because many activities are continuations of previous activities. Each Cooperator is also responsible for submitting: (1) Reimbursement claims for costs incurred as outlined in the marketing plans, (2) an end-of-year contribution report, (3) travel reports, and (4) progress reports/evaluation studies. Cooperators must maintain records on all information submitted to FAS. The information collected is used by FAS to manage, plan, evaluate and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 22 hours per response.

Respondents: Non-profit institutions and state or local governments.

Estimated Number of Respondents: 40.

Estimated Number of Responses per Respondent: 91.

Estimated Total Annual Burden on Respondents: 77,180 hours.

Copies of this information collection can be obtained from Pamela Hopkins, the Agency Information Collection Coordinator, at (202) 720–6713.

Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to:

Sharon L. McClure, Director, Marketing Operations Staff, U.S. Department of Agriculture, 14th & Independence Ave., SW., AG Box 1042, Washington, DC 20250.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C. July 26, 1995.

August Schumacher,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 95–19070 Filed 8–2–95; 8:45 am]

BILLING CODE 3410–10–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on Friday, September 1, 1995, at the Holiday Inn, 181 West Broadway, Tucson, Arizona 85701. The purpose of the meeting is to plan for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Manuel Peña, 602–542–4171, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–19064 Filed 8–2–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on Wednesday, September 13, 1995, at the Marriott Biscayne Bay Hotel, 1633 N. Bayshore Drive, Miami, Florida 33132. The purpose of the meeting is to discuss the status of the Commission and

appropriations; to discuss the status of the report, *Racial and Ethnic Tensions in Florida*; to discuss plans for a press conference to release the report; and discuss plans to follow up on the report.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Rabbi Solomon Agin, 813–433–0018, or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–19065 Filed 8–2–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Idaho Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Idaho Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on Friday, August 18, 1995, at the Canyon Springs Motel, 1357 Blue Lakes, North, Twin Falls, Idaho 83301. The purpose of the meeting is to plan for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Gladys Esquibel, 208–678–3838, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–19066 Filed 8–2–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on Thursday, August 31, 1995, at the Seelbach Hotel, 500 4th Street in downtown Louisville, Kentucky 40202. The meeting will include: (1) A discussion of the status of the Commission; (2) a report on the SAC Chairpersons Conference held in Washington, DC, in June; (3) a discussion of civil rights problems and progress in the State; and (4) a session to review the draft report, Bigotry-Related Violence in Kentucky.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Porter G. Peeples, 606–233–1561, or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–19067 Filed 8–2–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on Friday, August 25, 1995 at the Red Lion-Lloyd Center, 1000 N.E. Multnomah, Portland, Oregon 97232. The purpose of the meeting is to plan for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Jeannette Pai, 503–510–1694, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–19068 Filed 8–2–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: U.S Census – Age Search.

Form Number(s): BC–600, BC–649(L), BC–658(L).

Agency Approval Number: 0607–0117.

Type of Request: Extension of a currently approved collection.

Burden: 2,120 hours.

Number of Respondents: 7,940.

Avg Hours Per Response: 10 minutes.

Needs and Uses: The Census Bureau maintains the 1910–1990 Federal censuses for searching purposes. The purpose of searching is to furnish, upon request, transcripts of personal data from historical population census records. Information relating to age, place of birth, and citizenship is furnished upon payment of the established fee to individuals for their use in qualifying for Social Security, old age benefits, retirement, court litigation, passports, insurance settlements, etc.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

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: July 31, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–19150 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A–428–820]

Notice of Antidumping Duty Order and Amended Final Determination: Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Fabian Rivelis, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–6320 or (202) 482–3853, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Amended Final Determination

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on June 12, 1995, the Department made its final determination that certain small diameter seamless carbon and alloy steel standard, line and pressure pipe (seamless pipe) from Germany is being, or is likely to be, sold in the United States at less than fair value (60 FR 31974, June 19, 1995). After publication of this determination, we received submissions, timely filed pursuant to 19 CFR 353.28(b)(1994), from Mannesmannrohren-Werke AG (MRW) and petitioner, alleging certain ministerial errors in the Department's determination. We determined, in accordance with 19 CFR 353.28(d), that a ministerial error was made with respect to the margin used as uncooperative best information available. We determined that we inadvertently used the highest margin alleged in the original petition, rather than the highest margin alleged in the revised petition. For a detailed discussion of the alleged ministerial error and the Department's analysis, see the Memorandum from the Team to Barbara R. Stafford dated July 13, 1995. In accordance with 19 CFR 353.28(c), we are amending the final result of the antidumping duty investigation of seamless pipe from Germany to correct the above-cited ministerial error. The revised final weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Original margin percent	Revised margin percent
MRW	58.23	57.72
All Others	58.23	57.72

Scope of Investigation and Order

The scope of this investigation includes small diameter seamless carbon and alloy standard, line and pressure pipes (seamless pipes) produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to these investigations are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for

use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

On July 26, 1995, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of seamless pipe from Germany materially injure a U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of seamless pipe from Germany. These antidumping duties will be assessed on all unliquidated entries of seamless pipe from Germany entered, or withdrawn from warehouse, for consumption on or after January 27, 1995, the date on which the Department published its preliminary determination notice in the **Federal Register** (60 FR 5355).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Mannesmannrohren-Werke AG	57.72
All Others	57.72

This notice constitutes the antidumping duty order with respect to seamless pipe from Germany, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19145 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–814]

Notice of Antidumping Duty Order: Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Dolores Peck, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6320 or (202) 482–4929, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Case History

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on June 12, 1995, the Department made its final determination that certain small diameter seamless carbon and alloy steel standard, line and pressure pipe (seamless pipe) from Italy is being, or is likely to be, sold in the United States at less than fair value (60 FR 31981, June 19, 1995). After publication of this determination, we received a submission, timely filed pursuant to 19 CFR 353.28(b)(1994), from Dalmine S.p.A. (Dalmine), alleging certain ministerial errors in the Department's determination. We also received a timely rebuttal of respondent's ministerial error allegations from the petitioner. We determined, in accordance with 19 CFR 353.28(d), that no ministerial errors were made. For a detailed discussion of the alleged ministerial errors and the Department's analysis, see the Memorandum from the Team to Gary Taverman dated July 17, 1995.

Scope of Investigation and Order

The scope of this investigation includes small diameter seamless carbon and alloy standard, line and pressure pipes (seamless pipes) produced to the ASTM A–335, ASTMA–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to these investigations are currently classifiable

under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

On July 26, 1995, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of seamless pipe from Italy materially injure a U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of seamless pipe from Italy. These antidumping duties will be assessed on all entries of seamless pipe from Italy entered, or withdrawn from warehouse, for consumption on or after June 19, 1995, the date on which the Department published its final determination notice in the **Federal Register** (60 FR 31981).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Dalmine S.p.A.	1.84
All Others	1.84

This notice constitutes the antidumping duty order with respect to seamless pipe from Italy, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19146 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–351–826]

Notice of Antidumping Duty Order and Amended Final Determination: Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Fabian Rivelis, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6320 or (202) 482–3853, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Amended Final Determination

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on June 12, 1995, the Department made its final determination that certain small diameter seamless carbon and alloy steel standard, line and pressure pipe (seamless pipe) from Brazil is being, or is likely to be, sold in the United States at less than fair value (60 FR 31960, June 19, 1995). After publication of this determination, we received a submission, timely filed pursuant to 19 CFR 353.28(b)(1994), from Mannesmann S.A. (MSA), alleging certain ministerial errors in the Department's determination. We also received a timely rebuttal of respondent's ministerial error allegations from the petitioner. We determined, in accordance with 19 CFR 353.28(d), that a ministerial error was made with respect to the figures used as best information available for home market and U.S. packing expenses. We determined that we inadvertently used the highest U.S. and lowest home market packing figures on the record without regard to the month of shipment. We have corrected that error. Consistent with our hyperinflationary methodology, we applied the lowest home market packing expense and the highest U.S. packing expense on the record based on the month of shipment. With respect to those U.S. sales shipped after June 1994, for which we did not have information on packing expenses, we used the highest U.S. packing expense on the record for June 1994. For a detailed discussion of the alleged ministerial errors and the Department's analysis, see the Memorandum from the Team to Gary Taverman dated July 17, 1995. In accordance with 19 CFR 353.28(c), we are amending the final result of the antidumping duty investigation of seamless pipe from Brazil to correct the above-cited ministerial error. The revised final weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Original margin percent	Revised margin percent
MSA	125.00	124.94
All Others	125.00	124.94

Scope of Investigation and Order

The scope of this investigation includes small diameter seamless carbon and alloy standard, line and pressure pipes (seamless pipes) produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to these investigations are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1,000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such

as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

On July 26, 1995, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of seamless pipe from Brazil materially injure a U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of seamless pipe from Brazil. These antidumping duties will be assessed on all unliquidated entries of seamless pipes from Brazil entered, or withdrawn from warehouse, for consumption on or after January 27, 1995, the date on which the Department published its preliminary determination notice in the **Federal Register** (60 FR 5351).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Mannesmann S.A	124.94
All Others	124.94

This notice constitutes the antidumping duty order with respect to seamless pipe from Brazil, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19147 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–357–809]

Notice of Antidumping Duty Order: Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Fabian Rivelis, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6320 or (202) 482–3853, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Investigation and Order

The scope of this investigation includes small diameter seamless carbon and alloy steel standard, line and pressure pipes (seamless pipes) produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to these investigations are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American

Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

On July 26, 1995, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of seamless pipe from Argentina materially injure a U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of seamless pipe from Argentina. These antidumping duties will be assessed on all unliquidated entries of seamless pipe from Argentina entered, or withdrawn from warehouse, for consumption on or after January 27, 1995, the date on which the Department published its preliminary determination notice in the **Federal Register** (60 FR 5348).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Siderca S.A.I.C	108.13
All Others	108.13

This notice constitutes the antidumping duty order with respect to seamless pipe from Argentina, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19148 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Amendment to Final Results of Antidumping Duty Administrative Review.

SUMMARY: On March 9, 1995, in the case of *Zenith Electronics Corp., et al.* v. *United States*, Slip-Op 95–35, Consol. Court No. 91–07–00515 (*Zenith*), the United States Court of International Trade (the Court) affirmed the Department of Commerce's (the Department's) results of redetermination on remand of the final results of the fifth administrative review of the antidumping duty order on color

television receivers, except for video monitors, from Taiwan. The fifth administrative review covered the following companies: Action Electronics, Ltd. (Action); AOC International (AOC); Funai Electric Co. (Funai); Hitachi Television, Ltd. (Hitachi); Kuang Yuan (Kuang Yuan); Nettek Corp., Ltd. (Nettek); Paramount Electronics (Paramount); Philips Electronics Industries (Taiwan), Ltd. (Philips); Proton Electronic Industrial Co., Ltd. (Proton); RCA Taiwan Ltd. (RCA); Sampo Corp. (Sampo); Sanyo Electric (Taiwan) Co., Ltd. (Sanyo); Shinlee Corp. (Shinlee); Shin-Shirasuna Electric Corp. (Shirasuna); Tatung Co. (Tatung); and Teco Electric and Machinery Co., Ltd. (Teco) for the period April 1, 1988, through March 31, 1989. Action, AOC, Proton, and Tatung were the only companies whose weighted-average margins were affected by the remand order. In accordance with the Court's determination, we are hereby amending the final results of this administrative review.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1991, the Department published in the **Federal Register** (56 FR 31378) the final results of the fifth administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan, covering the period April 1, 1988, through March 31, 1989.

Subsequent to the Department's final results, Zenith Electronics Corporation, a domestic producer, alleged before the Court that the Department erred in calculating the value added tax (VAT) for the above-named companies. The Court agreed and remanded the issue to the Department to recalculate the VAT according to the Department's new methodology set out in *Independent Radionic Workers of America* v. *United States*, Slip Op. 94–144 (September 16, 1994). As a result of the recalculation, we have determined that the weighted-average margins for each company are as follows:

Action	2.20 percent.
AOC	1.53 percent.
Funai	4.44 percent.
Hitachi	10.82 percent.
Kuang Yuan	0.0000 percent.
Nettek	10.82 percent.
Paramount	10.82 percent.
Philips	10.82 percent.
Proton	0.60 percent.
RCA	5.74 percent.
Sampo	0.78 percent.
Sanyo	4.66 percent.
Shinlee	10.14 percent.
Shirasuna	10.82 percent.
Tatung	0.0003 percent.
Teco	5.46 percent.

The decision became final on March 9, 1995, when the Court issued its final decision on this administrative review in *Zenith*.

Amended Final Results of Review

Based on our revised calculations, we have amended our final results of review for the period April 1, 1988, through March 31, 1989. The amended weighted-average margins for each company are shown above. The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

This notice is in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: July 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19151 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–DS–P

University of Hawaii, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–069. *Applicant:* University of Hawaii, Honolulu, HI 96822. *Instrument:* Nitrogen Liquefier, Model MNP 10/1/300. *Manufacturer:* Stirling Cryogenics and Refrigeration, The Netherlands. *Intended Use:* See notice at 59 FR 31208, June 17, 1994. *Advice Received From:* The National Institute of Standards and Technology, April 25, 1955

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides liquid nitrogen at 10 liters/hour with purity beyond 99% for a variety of cryogenic applications. The National Institute of Standards and Technology advises that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–19158 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–DS–F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–054. *Applicant:* California State University, 1250 Bellflower Blvd., Long Beach, CA 90840. *Instrument:* Real-Time 4 Camera System, Model VICON 370. *Manufacturer:* Oxford Metrics, Ltd., United Kingdom. *Intended Use:* The instrument will be used for analysis of cyclical motion in human subjects, primarily during walking, balancing, and other functional activities. In addition, the instrument will be used for educational purposes in PT 301 and 302. Anatomy and Kinesiology and PT 475, Research Methods. *Application*

Accepted by Commissioner of Customs: June 29, 1995.

Docket Number: 95–055. *Applicant:* Dartmouth College, Earth Sciences, 6105 Fairchild Science Center, Hanover, NH 03755-3571. *Instrument:* Thermal Ionization Mass Spectrometer, Model MAT 262/RPQ. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used to measure isotope ratios of various chemical elements, such as Ca, Sr, Nd, U, Th, Pb, and OS in order to find new information about the evolution of the Earth throughout geologic time. Studies will be used to constrain the processes responsible for mineral weathering and soil formation, rock petrogenesis, meteorite impact, and biogeochemical element cycling in aquatic and terrestrial ecosystems. In addition, the instrument will be used for demonstration purposes, laboratory assignments and student projects in several earth science courses. *Application Accepted by Commissioner of Customs:* June 29, 1995.

Docket Number: 95–056. *Applicant:* Dartmouth College, Earth Sciences, 6105 Fairchild Science Center, Hanover, NH 03755-3571. *Instrument:* MAT 252 Mass Spectrometer Upgrade. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used to add ConFlo flow injection and elemental analysis capabilities to an existing gas-source mass spectrometer. With these capabilities, stable isotope ratios of H, C, N, O and S and elemental concentrations of N, C and S will be measured for geological and environmental samples. These measurements will support a wide range of research projects undertaken by faculty and students. In addition, the instrument will be used for demonstration purposes, laboratory assignments and student projects in several earth science courses. *Application Accepted by Commissioner of Customs:* June 29, 1995.

Docket Number: 95–057. *Applicant:* University of Connecticut, Psychology Department U-20, 406 Babbidge Road, Storrs, CT 06269-1020. *Instrument:* Fiber-Electron Manipulator System. *Manufacturer:* Thomas Recording, Germany. *Intended Use:* The instrument will be used for studies of the electrical activity of brain cells (neurons) of the cerebral cortex with the primary goal of understanding the mechanisms whereby individual cortical neurons obtain their unique repertoire of response properties. *Application Accepted by Commissioner of Customs:* June 29, 1995.

Docket Number: 95–058. *Applicant:* University of Maryland, College Park, Institute for Plasma Research, College Park, MD 20742. *Instrument:* Scanning Electron Microscope, Model XL-40. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used for studies of the following phenomena: (a) micromachining with focused ion beams, (b) modification of integrated circuits, (c) ion lithography, and (d) ion beam - electron beam interactions in solids. Experiments will be conducted primarily to investigate the interactions of ion beams with solid materials in order to improve the ''surface finish'' that can be achieved while, e.g., producing optical elements in solid state lasers or preparing materials for observation with electron microscopy. The instrument will also be used for educational purposes in a graduate course in liquid metal ion source technology and in short courses to train people in focused ion beam technology. *Application Accepted by Commissioner of Customs:* July 3, 1995.

Docket Number: 95–059. *Applicant:* Woods Hole Oceanographic Institution, 183 Oyster Pond Road, MS 40, Fenno House, Woods Hole, MA 02543-1522. *Instrument:* Noble Gas Mass Spectrometer, Model MAP 215-50. *Manufacturer:* Mass Analyzer Products, United Kingdom. *Intended Use:* The instrument will be used to measure noble gas concentrations and isotopic compositions within mantle derived rocks and minerals to help to understand the history and structure of the earth's interior, and formation of the earth's atmosphere by outgassing. It will also be used to measure the concentrations of cosmic ray produced nuclides in surficial rocks and minerals. One of the main goals of this research is to determine ages for Antarctic glacial moraines, and thereby to reconstruct the history of the Antarctic ice sheets. *Application Accepted by Commissioner of Customs:* July 5, 1995.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–19159 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–DS–F

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 95–00001.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to VINEX International, Inc. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1993).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. *Products*

All products.

2. *Services*

All services.

3. *Technology Rights*

Technology rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

4. *Export Trade Facilitation Services (as they relate to the Export of Products, Services and Technology Rights)*

Export Trade Facilitation Services include professional services in the areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities, marketing; negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers associations.

Export Markets

The export markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam,

the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.)

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets as an Export Intermediary, VINEX International, Inc. may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;
3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights in Export Markets;
4. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;
5. Allocate export sales or divide Export Markets among suppliers for the sale or divide Export Markets among suppliers for the sale and/or licensing of products, services, and/or Technology Rights;
6. Allocate export orders among suppliers;
7. Establish the price of Products, Services, and/or Technology Rights for sale and/or licensing in Export Markets;
8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;
9. Enter into contracts for shipping; and
10. Exchange information on a one-on-one basis with individual suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating exports with distributors.

Terms and Conditions of Certificate

1. In engaging in the above Export Trade Activities and Methods of Operation, VINEX International, Inc. will not intentionally disclose directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. VINEX International, Inc. will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

Definitions

1. ''Export Intermediary'' means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.
2. ''Supplier'' means a person who produces, provides, or sells a Product and/or Service.
3. ''Technology Rights: means such things as, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

Protection Provided by the Certificate

This Certificate protects VINEX International, Inc. and his employees acting on its behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits VINEX International, Inc. from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to VINEX International, Inc. by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary or by the Attorney General concerning either (a) the viability or quality of the business plans of VINEX International, Inc. (b) the legality of such business plans of VINEX International, Inc. (other than provided by the Act) or under the laws of any foreign country. The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V. (D.) of the ''Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)'', 50 FR 1786 (January 11, 1985).

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230.

Effective Date: July 25, 1995.

Dated: July 28, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 95–19080 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–DR–P

Performance Review Board Membership

This notice announces the appointment by the Department of Commerce Deputy Under Secretary for International Trade, Timothy J. Hauser, of the Performance Review Board (PRB). This is a revised list of membership which includes previous members as listed in the August 26, 1994, **Federal Register** Announcement 58 FR 44130 with additional members added for a two year term. The purpose of the International Trade Administration's PRB is to review and make recommendations to the appointing authority on performance and other issues concerning members of the Senior Executive Service (SES). The members are:

Anne L. Alonzo, Deputy Assistant Secretary for Environmental Technologies Exports Trade Development

Mary Fran Kirchner, Deputy Assistant Secretary for Export Promotion Services U.S. and Foreign Commercial Service

Susan Kuhbach, Director, Office of Countervailing Investigations Import Administration

Eleanor Roberts Lewis, Chief Counsel for International Trade Administration (non-ITA member)

Charles Ludolph, Director, Office of European Union and Regional Affairs International Economic Policy

Jon C. Menes, Director, Office of Trade and Economic Analysis Trade Development

John L. Walker, Deputy Assistant Secretary for Africa and the Near East International Economic Policy

Dated: July 28, 1995.

James T. King, Jr.,

Human Resources Manager, International Trade Administration.

[FR Doc. 95–19163 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–25–P

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted information collection 3038–0026, Gross Margining of Omnibus Accounts, to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. A carrying futures commission merchant (''FCM'') is required to maintain a written representation from the originating FCM if it allows a person trading through an omnibus account to margin positions in the account at a lower than normal level because a spread or hedge position is involved.

ADDRESSES: Persons wishing to comment on this information collection should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20502, (202) 395–7340. Copies of the submission are available from Joe F. Mink, Agency Clearance Officer, (202) 254–9735.

Title: Gross Margining of Omnibus Accounts

Control Number: 3038–0026

Action: Extension

Respondents: Businesses (excluding small businesses)

Estimated Annual Burden: 500 total hours

Respondents	Regulation (17 CFR)	Estimated number of respondents	Annual responses	Estimated average hours per response
Reporting:				
Businesses	1.58(b)	100	5,000	.04
Recordkeeping:				
Businesses	1.58(b)	300	300	1

Issued in Washington, DC on July 28, 1995.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 95–19100 Filed 8–2–95; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Availability of Invention for Licensing

The invention Patent Application Serial No. 08/321,066: BIOLUMINESCENT BIOASSAY SYSTEM, filed October 11, 1994, is assigned to the United States by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Request for copies of the patent application cited should be directed to the Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the application serial number.

For further information contact: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR OOCC, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: July 21, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–19114 Filed 8–2–95; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–395–000]

Williams Natural Gas Company v. Kansas Natural Partnership, et al.; Notice of Complaint

July 28, 1995.

Take notice that on July 21, 1995, Williams Natural Gas Company (Williams) filed with the Commission a complaint pursuant to Rule 206(a) of the Commission's Rules of Practice and Procedure against the above-captioned natural gas pipeline entities, that are owned by the Bishop Group.[1] Williams is an interstate natural gas company that competes with the Bishop Group companies. KansOK Partnership is regulated as an intrastate pipeline in Oklahoma; Kansas Pipeline Partnership and Kansas Natural Partnership are regulated as intrastate pipelines in Kansas; and Riverside Pipeline Company, L.P. is regulated as an interstate pipeline. Kansas Pipeline Operating Company operates these four pipelines.

Williams alleges that the four pipelines owned by the Bishop Group collectively constitute an interstate pipeline system, and should be subject to the Commission's jurisdiction under the Natural Gas Act. Williams requests that the Commission issue an order: (1) Declaring that the Bishop Group constitutes a single interstate pipeline system; (2) requiring respondents to promptly obtain all required Commission certificates and tariff approvals; (3) withdrawing any certificates that were issued to the Bishop Group on the assumption that its pipelines would continue to operate as bona fide intrastate systems; (4) requiring respondents to comply with all Commission regulations, including Order No. 636; (5) requiring the respondents to refrain from constructing new interstate facilities without Commission approval; (6) requiring respondents to refrain from imposing any direct bills or rate increases without Commission approval; and (7) taking such other action as the Commission deems appropriate.

Williams alleges that the Bishop Group plans to construct a pipeline, to be known as ''Linchpin 2'', which would connect its existing facilities with Panhandle Eastern Pipeline

[1] 19 CFR 385.206(a).

Company at a point south of Kansas City, Kansas. Williams requests that the Commission determine that such construction would be subject to the Commission's jurisdiction, and would thus require Commission approval as a prerequisite.

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 NE., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure.[2] All such motions or protests should be filed on or before August 21, 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 August 21, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18127 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11374–001, IA]

Butler County Conservation Board; Notice of Scoping Pursuant to the National Environmental Policy Act of 1969, Notice Requesting Interventions and Protests, and Notice Not Ready for Environmental Analysis

July 28, 1995.

On July 24, 1995, the Federal Energy Regulatory Commission (Commission) issued a letter accepting the Butler County Conservation Board's application for the Greene Milldam Project, located on the Shell Rock River in the Town of Greene, Butler County, Iowa. The application is not ready for environmental analysis at this time. A public notice will be issued in the future indicating its readiness for environmental analysis and soliciting comments, recommendations, terms and conditions, or prescriptions on the application and the applicant's reply comments.

The purpose of this notice is to (1) invite interventions and protests; (2) advise all parties as to the proposed scope of the staff's environmental analysis, including cumulative effects, and to seek additional information pertinent to this analysis; and (3) advise all parties of their opportunity for comment.

Interventions and Protests

All filings must: (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' OR ''COMPETING APPLICATION;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

All filings must be received 60 days from this issuance date of this notice.

Scoping Process

The Commission's scoping objectives are to:

- Identify significant environmental issues;
- Determine the depth of analysis appropriate to each issue;
- Identify the resource issues not requiring detailed analysis; and
- Identify reasonable project alternatives.

The purpose of the scoping process is to identify significant issues related to the proposed actions and the continued operation of the hydropower projects in the basin and to determine what issues should be covered in the environmental document pursuant to the National Environmental Policy Act of 1969 (NEPA). The document entitled ''Scoping Document I'' (SDI) will be circulated shortly to enable appropriate federal, state, and local resource agencies, developers, Indian tribes, non-governmental organizations, and other interested parties to effectively participate in and contribute to the scoping process. SDI provides a brief description of the proposed action, project alternatives, the geographic and temporal scope of a cumulative effects analysis, and a list of preliminary issues identified by staff.

All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h). In addition, commenters may submit a copy of their comments on a 3½-inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the test need only be submitted in the format and version that it was generated (i.e., MS Word, WordPerfect 5.⅕.2, ASCII, etc). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS machines. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should clearly show the following captions on the first page: Greene Milldam Project, FERC No. 11374.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring parties or interceders (as defined in 18 CFR 385.2010) to file documents on each person whose name is on the official service list for this proceeding. See 18 CFR 4.34(b).

The Commission staff will consider all written comments and may issue a Scoping Document II (SDII). SDII will include a revised list of issues, based on the scoping sessions.

For further information regarding the scoping process, please contact Mary Golato, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 825 North Capitol Street NE., Washington, D.C. 20426 at (202) 219–2804.

Lois D. Cashell,

Secretary.

[FR Doc. 95–19071 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–349–000]

The Brooklyn Union Gas Company v. CNG Transmission Corporation; Notice of Technical Conference

July 28, 1995.

Take notice that a technical conference will be convened to discuss issues concerning Brooklyn Union Gas Company's complaint requesting the Commission to direct CNG

[2] 18 CFR 385.214 and 385.211.

Transmission Corporation to refrain from requiring Brooklyn Union to comply with an operational flow order at Leidy, Pennsylvania. The conference will be held on Tuesday, August 15, 1995, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, D.C. 20426.

All interested persons and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–19073 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–397–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

July 28, 1995.

Take notice that on July 25, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing. The proposed effective date of these tariff sheets is August 24, 1995.

Panhandle states that the tariff sheets listed on Appendix A to the filing are being filed to implement Rate Schedule LFT for Limited Firm Transportation Service on Panhandle's system. Panhandle is proposing to make this service available to satisfy the needs of shippers who generally require firm transportation but are able to accommodate periodic service interruptions. Panhandle has gained valuable experience operating its system under Order No. 636 and believes there is a need in the marketplace for this type of service.

Panhandle states that the characteristics of Rate Schedule LFT are substantially similar to those of Rate Schedule EFT with the following exceptions: (1) Under proposed Rate Schedule LFT, transportation service will be available on a firm basis subject to Panhandle's right to interrupt service in whole or in part on any day, but not more than ten (10) days, in each month; (2) a provision has been added concerning the overrun charge for takes during a period when service has been interrupted pursuant to the interruption provisions of Rate Schedule LFT; and (3) if Panhandle receives a request for service under Rate Schedules FT or EFT which can only be provided by reducing the Maximum Daily Contract Quantity under Rate Schedule LFT, Shippers under Rate Schedule LFT may be required to convert part or all of their service to Rate Schedules FT, EFT, IT, EIT or terminate their service.

Panhandle states that copies of this filing have been served on all current shippers and applicable State regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 4, 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,

Secetary.

[FR Doc. 95–19074 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–88–002 and RP95–112–009]

Tennessee Gas Pipeline Company; Notice of Motion To Place Tariff Sheets Into Effect

July 28, 1995.

Take notice that on July 24, 1995, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a motion to move into effect the tariff sheets listed in Appendix A to the filing, effective August 1, 1995, in accord with Ordering Paragraph (c) of the Commission's June 28, 1995 Order on Rehearing and Following Technical Conference in the above-referenced dockets. *Tennessee Gas Pipeline Company,* 71 FERC ¶61,399 (1995).

Any person desiring to protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before August 4, 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 this proceeding. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–19075 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER89–672–009, et al.]

PSI Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 26, 1995.

Take notice that the following filings have been made with the Commission:

1. PSI Energy, Inc.

[Docket No. ER89–672–009]

Take notice that on July 10, 1995, PSI Energy, Inc. (PSI) filed certain information as required by the Commission's order issued on June 28, 1990 [51 FERC 61,367 (1990)], and pursuant to Section T of their Transmission Service Tariff. Copies of PSI's informational filing are on file with the Commission and are available for public inspection.

2. PECO Energy Company

[Docket No. ER95–207–000]

Take notice that on July 14, 1995, PECO Energy Company (PECO) withdrew its request for confidential treatment regarding its November 17, 1994 filing in this proceeding, and submitted copies of an unredacted version of that filing. PECO also renewed its request for expedited treatment and for Commission acceptance of the Agreement for filing at the earliest possible date. In addition, by letter dated December 23, 1994, PECO filed supplemental information (without request for confidential treatment) concerning its November 17, 1994 filing.

Copies of the unredacted version of the November 17, 1994 filing as well as the December 23, 1994 document have been sent to all parties to this proceeding, the Pennsylvania Public Utility Commission and the Maryland Public Service Commission.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Green Mountain Power Corporation

[Docket No. ER95–1320–000]

Take notice that on June 30, 1995, Green Mountain Power Corporation (GMP) tendered for filing an Electric Service Agreement for sale of power to the Northfield (Vt.) Electric Department under its Power Rate W in GMP's FERC Electric Tariff No. 1 beginning September 1, 1995. GMP also submitted a proposed Power Sales Agreement

pursuant to which it will purchase power and energy available from Northfield's generation resources. GMP has asked that the Electric Service Agreement and, to the extent necessary, the Power Sales Agreement be accepted for filing and made effective as of September 1, 1995.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Portland General Electric Company

[Docket No. ER95–1339–000]

Take notice that on July 3, 1995, Portland General Electric Company (PGE) tendered for filing under FERC Electric Tariff, Original Volume No. 2 (PGE–2) signed Service Agreements between PGE and the City of Anaheim Public Utilities Department, City of Glendale Public Service Department and Public Utility District No. 2 of Grant County.

PGE requests that the Commission grant waiver of the notice requirements to allow the signed Service Agreements to become effective October 9, 1994, sixty (60) days after PGE's original filing (Docket No. ER94–1543–000).

Copies of the filing were served upon the list of entities appearing on the Certificate of Service attached to the filing letter.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER95–1372–000]

Take notice that on July 13, 1995, Northern States Power Company-Minnesota (NSP-M) and Northern States Power Company-Wisconsin (NSP-W) jointly tendered and requested the Commission to accept two Transmission Service Agreements which provide for Limited and Interruptible Transmission Service to Heartland Energy Services, Inc.

NSP requests that the Commission accept for filing the Transmission Service Agreements effective as of August 14, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to Part 35 so the Agreements may be accepted for filing effective on the date requested.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Northern Indiana Public Service Company

[Docket No. ER95–1222–000]

Take notice that on July 11, 1995, Northern Indiana Public Service Company tendered for filing a letter to clarify provisions of its power sales tariff filed in the above-referenced docket.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Delmarva Power & Light Company

[Docket No. ER95–1362–000]

Take notice that on July 10, 1995, Delmarva Power & Light Company tendered for filing a Notice of Succession regarding contracts, rate schedules and supplements among Conowingo Power Company and its former parent PECO Energy Company and affiliate, Susquehanna Electric Company.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Electric Power Company

[Docket No. ER95–1370–000]

Take notice that on July 13, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and CENERGY. The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows CENERGY to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume 1, Rate Schedule T–1.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on CENERGY, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Company

[Docket No. ER95–1371–000]

Take notice that on July 13, 1995, New England Power Company tendered for filing a contract with the Green Mountain Power Corporation for construction of facilities in Vernon, Vermont.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Company

[Docket No. ER95–1373–000]

Take notice that on July 14, 1995, Southern California Edison Company (Edison), tendered for filing the following Interruptible Transmission Service Agreement (Agreement) with Coastal Electric Services Company (Coastal) as an initial rate schedule.

Edison-Coastal Interruptible Transmission Service Agreement (Matrix) Between Southern California Edison Company and Coastal Electric Services Company

This Agreement sets forth the terms and conditions under which Edison shall provide Coastal with interruptible transmission service between various points of delivery and receipt for the delivery of power to various customers of Coastal.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. National Fuel Resources, Inc.

[Docket No. ER95–1374–000]

Take notice that on July 14, 1995, National Fuel Resources, Inc. (NFR) petitioned the Commission for acceptance of NFR Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations. NFR is a subsidiary of National Fuel Gas Company, an integrated natural gas company.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Power, Inc.

[Docket No. ER95–1375–000]

Take notice that on July 14, 1995, Entergy Power, Inc. (EPI), tendered for filing an Interchange Agreement with Louisiana Energy & Power Authority.

EPI requests an effective date for the Interchange Agreement that is one (1) day after the date of filing, and respectfully requests waiver of the notice requirements specified in § 35.11 of the Commission's Regulations.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies)

[Docket No. ER95–1376–000]

Take notice that on July 14, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies) filed a

Supplement No. 3 to add five (5) Customers to the Standard Generation Service Rate Schedule under which the APS Companies offer standard generation and emergency service to these Customers on an hourly, daily, weekly, monthly or yearly basis. The following new Customers are added by this filing: Engelhard Power Marketing, Inc., Louis Dreyfus Electric Power Inc., Old Dominion Electric Cooperative, Stand Energy Corporation, and Utility-2000 Energy Corporation. The APS Companies request a waiver of notice requirements to make service available as of July 12, 1995.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Public Service Corporation

[Docket No. ER95–1386–000]

Take notice that on July 18, 1995, Wisconsin Public Service Corporation (WPSC), tendered for filing an amendment to an existing agreement with Wisconsin Power and Light Company relating to the construction of transmission facilities at WPSC's Aurora Street Substation.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. CINergy Services, Inc.

[Docket No. ER95–1387–000]

Take notice that on July 18, 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 July 1, 1995, between CIN, CG&E, PSI and Catex Vitol Electric LLC (CVE).

The Interchange Agreement provides for the following service between CIN and CVE.

1. Exhibit A—Power Sales by CVE
2. Exhibit B—Power Sales by CIN

CIN and CVE have requested an effective date of August 1, 1995.

Copies of the filing were served on Catex Vitol Electric LLC, the Massachusetts Department of Public Utilities, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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. 95–19123 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER92–517–006, et al.]

Southern Company Services, Inc., et al. Electric Rate and Corporate Regulation Filings

July 27, 1995.

Take notice that the following filings have been made with the Commission:

1. Southern Company Services, Inc.

[Docket No. ER92–517–006]

Take notice that on June 30, 1995, Southern Company Services, Inc. tendered for filing a refund report in the above-referenced docket.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Catex Vitol Electric, L.L.C.

[Docket No. ER94–155–007]

Take notice that on June 26, 1995, Catex Vitol Electric, L.L.C. filed certain information as required by the Commission's order issued on January 14, 1994. Copies of Catex's informational filing are on file with the Commission and are available for public inspection.

3. NORAM Energy Services, Inc.

[Docket No. ER94–1247–005]

Take notice that on June 17, 1995, NORAM Energy Services, Inc. (NORAM) filed certain information as required by the Commission's order issued on July 25, 1994. Copies of NORAM's informational filing are on file with the Commission and are available for public inspection.

4. J. Aron & Company

[Docket No. ER95–34–004]

Take notice that on June 11, 1995, J. Aron & Company filed certain information as required by the Commission's order issued on March 1, 1995. Copies of J. Aron's informational filing are on file with the Commission and are available for public inspection.

5. Southern Company Services, Inc.

[Docket No. ER95–59–003]

Take notice that on July 3, 1995, Southern Company Services, Inc. tendered for filing supplemental information in the above-referenced docket.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Kimball Power Company

[Docket No. ER95–232–003]

Take notice that on June 17, 1995, Kimball Power Company (Kimball) filed certain information as required by the Commission's order issued on February 1, 1995. Copies of Kimball's informational filing are on file with the Commission and are available for public inspection.

7. El Paso Electric Company

[Docket No. ER95–423–000]

Take notice that El Paso Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Ohio Edison Company, Pennsylvania Power Company

[Docket No. ER95–507–001]

Take notice that on June 30, 1995, Ohio Edison Company and Pennsylvania Power Company tendered for filing its compliance filing pursuant to the Commission's order dated June 2, 1995.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Amoco Power Marketing Corporation

[Docket No. ER95–1359–000]

Take notice that Amoco Power Marketing Corporation on July 17, 1995, tendered for filing an amendment to its July 11, 1995 filing in the above-referenced docket.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, West Penn Power Company (the APS Companies)

[Docket No. ER95–1377–000]

Take notice that on July 14, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies), filed Standard Transmission Service Agreements to add the following new customers to the APS Companies' Standard Transmission Service Rate Schedule which has been accepted for filing by the Federal Energy Regulatory Commission: Baltimore and Gas Electric Company, CNG Power Services Corporation, Engelhard Power Marketing, Inc., Heartland Energy Services, Old Dominion Electric Cooperative, Stand Energy Corporation, and Utility-2000 Energy Corporation. The proposed effective date under the proposed rate schedule is July 12, 1995.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Montaup Electric Company

[Docket No. ER95–1378–000]

Take notice that on July 14, 1995, Montaup Electric Company tendered for filing a proposed supplement to Rate M–14, FERC Electric Tariff, First Revised Volume No. 1. The change is a provision which will allow for Service for Resale to Interruptible Customers and will apply to customers who receive all-requirements service under the tariff. The filing is requested to become effective in 60 days.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Consumers Power Company

[Docket No. ER95–1379–000]

Take notice that on July 17, 1995, Consumers Power Company (Consumers), tendered for filing Amendment No. 1 to the Facilities Agreement Between Consumers and the City of Holland (designated Supplement No. 4 to Consumers Power Company Electric Rate Schedule FERC No. 50).

The Amendment provides for the replacement of and addition of certain facilities at the City of Holland's expense with no change in rates. The new facilities are to be owned by the City of Holland.

Copies of the filing were served upon the Holland Board of Public Works and the Michigan Public Service Commission.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Madison Gas and Electric Company

[Docket No. ER95–1380–000]

Take notice that on July 17, 1995, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with Utility-2000 Energy Corp. under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the filing date.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER95–1383–000]

Take notice that on July 17, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing an executed service agreement between PECO Energy Company and Virginia Power. Under the service agreement Virginia Power agreed to provide services to PECO under Virginia Power's Power Sales Tariff, which was accepted for filing on June 28, 1994 in Docket No. ER94–1022–000. Virginia Power requests waiver of the Commission's sixty-day notice requirement to permit an effective date of January 16, 1995. If this waiver request is denied, Virginia Power requests that the filing be made effective June 17, 1995.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Boston Edison Company

[Docket No. ER95–1385–000]

Take notice that on July 17, 1995, Boston Edison Company (Edison), tendered for filing an executed service agreement between Massachusetts Municipal Wholesale Electric Company (MMWEC) and Edison for the provision of firm transmission service for hydro-power produced by the Niagara and St. Lawrence Projects in the State of New York and purchased by the Massachusetts Department of Public Utilities, which has designated MMWEC as its agent in this matter, under Edison's firm transmission tariff, Original Volume No. 4. Since MMWEC will require the firm transmission service of July 1, 1995, Edison requests that date to be the effective date of the rate schedule change.

Copies of this filing have been served upon MMWEC and the Massachusetts Department of Public Utilities.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before 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. 95–19124 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11316–001 Alaska]

Iliamna-Newhalen-Nondalton Electric Cooperative; Notice of Availability of Environmental Assessment

July 28, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for exemption for the Tazimina River Hydropower Project, located near the town of Iliamna, Alaska, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protection and enhancement measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–19072 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 11544–000, et al.]

Hydroelectric Applications [Richard D. Ely, III, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: Preliminary Permit.

b. Project No.: 11544–000.

c. Date filed: May 30, 1995.

d. Applicant: Richard D. Ely, III.

e. Name of Project: Palermo Water Power Project.

f. Location: On the Feather River and the Palermo Canal, at the Oroville dam, near the town of Oroville, in Butte County, California. Sections 1 and 2 of T19N, R4E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Richard D. Ely, III, 1213 Purdue Drive, Davis, California 95616, (916) 753–8864.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219–2827.

j. Comment Date: September 28, 1995.

k. Description of Project: The proposed project would utilize the California Department of Water Resources' existing 770-foot-high Oroville dam and 16,000-acre Oroville Lake (Feather River Project No. 2100) and include: (1) A 1,050-foot-long penstock tying into an existing short pressurized conduit that runs through the dam; (2) a powerhouse containing three generating units with a total installed capacity of 481 Kw; (3) a tailrace returning flow to the Palermo Canal; (4) a 1,500-foot-long transmission line interconnecting with an existing Pacific Gas and Electric Company transmission line; and (5) appurtenant facilities.

The entire project is on lands owned by the state of California, within the existing boundary of the Feather River Project. No new access roads will be needed to conduct the studies.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

2 a. Type of Application: Minor License.

b. Project No.: 11512–000.

c. Date filed: December 27, 1994.

d. Applicant: John H. Bigelow.

e. Name of Project: Mckenzie.

f. Location: On the Mckenzie River in Lane County, Oregon, Section 10, Township 16S, Range 6E, West Meridian.

g. Filed Pursuant to: Federal Power Act 16 USC §§ 791(a)–825(r).

h. Applicant Contact: Amy Drought, Project Manager, Community Planning Workshop, Hendricks Hall, University of Oregon, Eugene, OR 97403, (503) 346–3653.

i. FERC Contact: Hector M. Perez at (202) 219–2843.

j. The project would consist of: (1) A diversion dam constructed of large rocks at river mile 73.6; (2) a concrete headgate; (3) a power canal about 1,500 feet long; (4) a 32-foot-long and 5-foot-diameter penstock; (5) a powerhouse with an installed capacity of 76 kilowatts; (6) a 30-foot-long tailrace; and (7) other appurtenances.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached paragraph E1.

l. Deadline for protests and motions to intervene: September 26, 1995.

m. This notice also consists of the following standard paragraph: B1, and E1.

n. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

3 a. Type of Application: Amendment of License.

b. Project No.: 459–081.

c. Dated Filed: June 12, 1995.

d. Applicant: Union Electric Company.

e. Name of Project: Osage Project.

f. Location: Lake of the Ozarks, Benton County, Eldon, Missouri.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Mr. Dan Jarvis, Union Electric Company, Route No. 3, P.O. Box 234, Eldon, MO 65026, (314) 621–3222.

i. FERC Contact: Joseph C. Adamson, (202) 219–1040.

j. Comment Date: September 15, 1995.

k. Description of Amendment: Union Electric requests approval of a dredging management plan. The plan is the permitting procedure to be used in accomplishing a significant portion of non-project related dredging activities on the Osage Project. The activities covered under the plan are for dredging or excavation of up to 500 cubic yards (cy) of material from the Lake of the Ozarks. These permits are for the purpose of allowing individuals to gain additional clearance under their boat dock, gain access to their boat dock or other minor dredging activities. Any request which involves removal of more than 500 cy of material will require specific approval from the Commission.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

4 a. Type of Application: Surrender of License.

b. Project No: 10818–007.

c. Date Filed: June 23, 1995.

d. Applicant: Greenbrier Electro-Motive, Inc.

e. Name of Project: Kincaid Project.

f. Location: Muddy Creek, Greenbrier County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 USC Section 791(a) - 825(r).

h. Applicant Contact: Raymond W. Tuckwiller RFD 2, Box 322, Lewisburg, WV 24901, (304) 647–3775.

i. FERC Contact: Hillary Berlin, (202) 219–0038.

j. Comment Date: September 18, 1995.

k. Description of Project: The license states that the project is uneconomical to construct at this time.

l. The notice also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely

notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: July 28, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–19125 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–636–000, et al.]

Transcontinental Gas Pipe Line Corporation, et al. Natural Gas Certificate Filings

July 28, 1995.

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipe Line Corporation)

[Docket No. CP95–636–000]

Take notice that on July 24, 1995, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed pursuant to and in accordance with Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's Regulations, an application in the above docket for an order approving the partial abandonment of Transco's Exxon Lateral, located in Mobile County, Alabama, to enable Transco to sell a partial ownership interest in such facility to Florida Gas Transmission Company (FGT), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Transco states that pursuant to the authorizations granted by the Commission in Docket No. CP92–182, *et al.*, Transco and FGT jointly own and operate the Mobil Bay Lateral (Also referred to sometimes as the ''Onshore Mobil Bay Pipeline''), a 123.4 mile, 30-inch diameter pipeline extending from the Mobil Oil Exploration and Producing Southeast Inc., gas treatment plant near Coden in Mobile County, Alabama, to an interconnection with FGT's main line near Citronelle, Alabama, and on to an interconnection with Transco's main line near Butler, Alabama. Transco further states that in June 1994, it completed construction of a two-mile, 26-inch diameter pipeline, referred to as the ''Exxon Lateral'', extending from an interconnection with Mobil Bay Lateral to an interconnection with the Exxon Mobil Bay Partnership gas treatment plant (Exxon Plant) located near Coden in Mobile County, Alabama.

Transco states that it has agreed to sell, and FGT has agreed to purchase, a 37.22% undivided ownership interest in the Exxon Lateral. The purchase price to be paid by FGT for such ownership interest will be 37.22% of Transco's net book value of the Exxon Lateral as of the closing of the purchase and sale.

Comment date: August 7, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Iroquois Gas Transmission System, L.P.

[Docket No. CP95–637–000]

Take notice that on July 24, 1995, Iroquois Gas Transmission System, L.P. (Iroquois), One Corporate Drive, Suite 600, Shelton, Connecticut 06484, filed in Docket No. CP95–637–000, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate a compressor station to be located near Athens, New York. Iroquois states that the compressor station is necessary to provide natural gas transportation services for three shippers in an aggregate amount of 75,000 Mcf per day (Mcf/d). Iroquois proposal is more fully set forth in the application which is on file with the Commission and open to public inspection.

Iroquois proposes to construct and operate a new compressor station to be located near Athens, Greene County, New York. The proposed Athens compressor station will be the third compressor station on Iroquois' system and will be rated as a 9,500 horsepower turbo-compressor unit. Iroquois says that this new compressor station, along with other system design and operational changes, will be required to provide the 75,000 Mcf/d of requested firm service. The estimated cost of the proposed Athens compressor station is approximately $21 million, as detailed in Exhibit K of Iroquois' application. The other system design changes described by Iroquois include aerodynamic assembly changes at Iroquois' Wright compressor station which will increase the capacity made available by that station; and the installation of a new compressor station by TransCanada PipeLines Ltd. at Iroquois, Ontario, which will increase the pressure at which deliveries are made by TransCanada into the Iroquois system at Waddington, New York from 1400 psig to 1440 psig.

In its application Iroquois states that it has entered into Precedent Agreements with CNG Energy Services Corporation for new firm transportation service for 50,000 Mcf/d, with Enron Capital and Trade Resources Corporation for new firm transportation service for 15,000 Mcf/d, and with Coastal Gas Marketing Company for new firm transportation service for 10,000 Mcf/d. Iroquois proposes to provide firm gas transportation service for these three shippers under its Part 284, Subpart G, Blanket Certificate and will be performed pursuant to Iroquois' RTS Rate Schedule and associated General Terms and Conditions of Iroquois' FERC Gas Tariff, First Revised Volume 1. Iroquois will charge its effective Part 284 open-access RTS rates for the new service.

Iroquois proposes to roll-in the costs of the construction and operation of the new Athens compressor station with the costs and rates of its existing system. Consistent with the Commission's recently issued policy statement in Docket No. PL94–4, Iroquois has filed a schedule which details the anticipated annual costs of the Athens compressor station and the increased system revenues associated with the new transportation service. Iroquois says that the schedule clearly shows that construction and installation of the Athens compressor station and a rolling in of the associated costs and revenues will have no detrimental financial impact on Iroquois' existing shippers. Iroquois anticipates that the net effect of such a rolling in will benefit existing shippers by reducing their annual costs by $1.6 million. Iroquois says that the impact of this benefit will be almost immediate, because the new service is proposed to commence on November 1, 1996, and Iroquois is required to file its next rate case on November 29, 1996, with such filing having an anticipated effective date of January 1, 1997.

Iroquois proposes to collect the return of capital for the Athens compressor station through the use of a 10% depreciation rate for this specific facility. Iroquois says that the 10% depreciation rate is consistent with the contractual arrangements supporting installation of the Athens compressor station and will allow Iroquois to recover the costs of the station over a period equal to the ten-year term of those contracts.

Iroquois is a limited partnership organized under the laws of Delaware. The limited partnership consists of eleven general partners and one limited partner, whose names and respective percentage interests are shown in Iroquois' application. The Iroquois pipeline extends from the New York-Canadian border near Iroquois, Ontario, through the states of New York and Connecticut, and terminates near South Commack, New York on Long Island.

Comment date: August 21, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Intermountain Municipal Gas Association

[Docket No. CP95–638–000]

Take notice that on July 21, 1995, InterMountain Municipal Gas Association (IMGA) [1] , C/O Wheatley & Ranquist, 34 Defense Street, Annapolis, MD 21401 filed in Docket No. CP95–638–000 a petition under Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order resolving the following jurisdictional issues: (1) Does the Utah Public Service Commission have jurisdiction over transportation of natural gas through Mountain Fuel 's pipeline for delivery to certain members of the IMGA (Cities) and the Cities' request for interconnections with Mountain Fuel; or (2) Does the Commission have sole jurisdiction pursuant to the petition of the Cities of said transportation under the Natural Gas Act?

It is stated that the Cities plan to establish municipally-owned natural gas distribution systems in their communities to serve the residential, commercial and industrial customers

[1] Members of the IMGA consist of the Cities of Blanding, Fayette, Hatch, Hilldale, Kanab, Manilla, Panquitch, Utah and Colorado City, Arizona. It is stated that these Cities represent the interests of 32 Cities in the State of Utah who are in the same or similar situation of having the need for a natural gas supply and are unable to obtain that benefit unless access to transportation over Mountain Fuel Supply Company's (Mountain Fuel) pipeline to the points of delivery for the various Cities is obtained. It is stated that Cities outside the State of Utah will receive gas into their transmission facilities at the Utah State line.

located therein desiring such service. It is stated that, at present, there is no natural gas service available in each of the Cities. The Cities contend that they have undertaken preliminary arrangements for such services and are assured that they can purchase the necessary supplies of natural gas in the interstate market from producers or marketers and can obtain the transportation of such natural gas by interstate pipeline companies to subsequent points of interconnection between those pipelines and Mountain Fuel. Cities states that Mountain Fuel has a pipeline system and available capacity to deliver such gas at points close to the Cities, where the Cities would construct lateral line facilities to Mountain Fuel's existing line. It is stated that Cities seek transportation contracts from Mountain Fuel to ensure a supply of gas to their high priority customers.

Cities contends that its petition has become necessary because the Utah Public Service Commission (Utah PSC) has declined to exercise its jurisdiction to order Mountain Fuel to undertake such transportation for Cities until it knows whether such transportation of interstate gas on behalf of a municipality would constitute a ''sale for resale'' under Section 1(b) of the Natural Gas Act and thereby be controlled by the provisions of Federal law, which vests in the Commission sole jurisdiction concerning sales for resale. It is stated that Mountain Fuel has refused to transport gas on behalf of the Cities under any terms. It is further stated that Mountain Fuel apparently denies that either the Commission or the Utah PSC has jurisdiction over the requested transportation service and has denied that it has any obligation to transport gas for any City, either under the jurisdiction of the Commission or the Utah PSC. IMGA states that it therefore filed its petition for declaratory order in order to resolve the jurisdictional issue or controversy and to remove uncertainty over the proposed interconnections and transportation service. Cities requests that the Commission declare that the Utah PSC has jurisdiction over the proposed transportation service or, in the alternative, that the Commission has jurisdiction over the transportation proposed by the Cities, and in the event the Commission is declared to have jurisdiction, the Cities request that the declaratory order provide that IMGA and its affected Cities may file an application under Section 7(a) of the Natural Gas Act requesting the Commission to order Mountain Fuel to interconnect with the Cities.

Comment date: August 18, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No. CP95–642–000]

Take notice that on July 26, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–642–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate tap facilities for two new delivery points under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to install tap facilities at two locations as well as electronic gas measurement equipment (EGM) at both locations, as described below. Texas Eastern states that the facilities will enable deliveries of natural gas to Mississippi Valley Gas Company (MVG) and that MVG has agreed to reimburse it for 100% of the costs and related expenses. Texas Eastern further states that it would provide transportation services for MVG under its Part 284 blanket certificate issued in Docket No. CP88–136–000, and pursuant to existing service agreements under Rate Schedules SCT and SS–1 of its FERC Gas Tariff, Sixth Revised Volume No. 1.

Details of the proposal follow:

1. Texas Eastern proposes to construct a 4-inch tap valve, a 4-inch check valve, an insulating flange and approximately 25 feet of 4-inch piping between the tap valve, check valve and insulating flange on Texas Eastern's 20-inch Line No. 26 at approximately milepost 107.62 in Yazoo County, Mississippi. Texas Eastern indicates that the daily maximum quantity would be 8,000 Mcf/day, and the costs and expenses are estimated to be $71,400.

2. Texas Eastern would construct a 2-inch tap valve, a 2-inch check valve, an insulating flange and approximately 25 feet of 2-inch piping between the tap valve, check valve and insulating flange on its 30-inch Line No. 18 at approximately milepost 324.44 in Madison County, Mississippi. It is indicated that the daily maximum quantity would be 2,500 Mcf/day, and the costs and expenses would be $56,400.

Comment date: September 11, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a

protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19126 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5270–1]

Public Water System Supervision Program Revision for the State of Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with the provisions of § 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f et seq., and 40 CFR 142, the National Primary Drinking Water Regulations Implementation, that the State of Maryland has revised its approved State Public Water System Supervision Primacy Program. Maryland has adopted drinking water regulations for (1) lead and copper that correspond to the National Primary Drinking Water Regulations promulgated by EPA on June 7, 1991 (56 FR 26548); and (2) Volatile Organic Chemicals, Synthetic Organic Chemicals, and Inorganic Chemicals (known as Phase II, IIB, and V) that correspond to the National Primary Drinking Water Regulations promulgated by EPA on January 30, 1991 (56 FR 3526), July 1, 1991 (56 FR 30266), and July 17, 1992 (57 FR 31776). EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by September 5, 1995 to the Acting Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Acting Regional Administrator. However, if a substantial request for a public hearing is made by (insert date, 30 days from day of publication), a public hearing will be held. If no timely and appropriate request for a hearing is received and the Acting Regional Administrator elects not to hold a hearing on his own motion, this determination shall become effective on September 5, 1995.

A request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Acting Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Acting Regional Administrator, U.S. Environmental Protection Agency, Region 3, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.
- Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Cynthia Yu, U.S. EPA, Region 3, Drinking Water Section (3WM41), at the Philadelphia address given above; telephone (215) 597–8992.

Dated: July 13, 1995.

W.T. Wisniewski,

Acting Regional Administrator, EPA, Region 3.

[FR Doc. 95–18986 Filed 8–2–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

FY 1995 Commercial Wireless Regulatory Fees

August 1, 1995.

The Federal Communications Commission issues this Public Notice in order to provide information concerning the payment of regulatory fees in 1995. If you hold authorizations in any of the commercial wireless services you should carefully review this Public Notice.

Who Must Pay Regulatory Fees in 1995

Most licensees and other entities regulated by the Commission must pay regulatory fees in 1995. This Public Notice concerns only the following commercial wireless regulatees: cellular and public mobile (Part 22) licensees. Personal communications service (PCS) and commercial mobile radio service (CMRS) licensees other than those listed above are exempt from payment of regulatory fees in FY 1995. Governments and nonprofit (exempt under Section 501(c) of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting to its exempt status.

Why the Commission Must Collect Regulatory Fees

The requirement to collect annual regulatory fees was contained in Public Law 103–66, ''The Omnibus Budget Reconciliation Act of 1993. ''These regulatory fees, which are likely to change each fiscal year, are used to offset costs associated with the Commission's enforcement, public service, international and policy and rulemaking activities. These fees are in addition to any application processing fees associated with obtaining a license or other authorization from the Commission.

When Fees Will Be Due

Fee payments must be *received* by the Commission by *September 20, 1995* in order to avoid a 25% late penalty.

Type of fee	Regulatory fee payment	Fee code
Cellular radio licensees (Part 22)	$0.15 per unit	CDCN
Public Mobile Radio-Two Way (Part 22)	0.15 per unit	CPMN
Public Mobile Radio-One Way Paging (Part 22)	0.02 per unit	CDWN

FCC Form 159

Regulatory fee payments *must* be accompanied by FCC Form 159 (''FCC Remittance Advice''). A copy of this form, with specific instructions, is attached to this Public Notice. Please see, ''Special Instructions for Completing FCC Forms 159 & 159–C'' for detailed information on how to correctly complete these Forms.

Where To Send Regulatory Fee Payments

If sending your regulatory fee payment by *mail*, please address your envelope as follows: Federal Communications Commission, Regulatory Fees, P.O. Box 358835, Pittsburgh, PA 15251–5835.

If you prefer to send your regulatory fee payment by *courier* to our lockbox bank, you may do so 24 hours per day (except bank holidays). Please address your envelope and deliver it to the following address: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153–2713, Pittsburgh, PA 15259–0001, (Attention: FCC Module Supervisor).

Method of Payment

Regulatory fee payments may be made by check, money order, or by credit card (Visa or Mastercard only). When paying by credit card, please make sure you sign the appropriate block of Form 159. Payments may also be made by wire transfer or by electronic funds transfer (EFT). Instructions for wire transfer payment are provided below.

We encourage arrangements to consolidate a number of regulatory fee payments either by a single entity or by different entities into a single payment instrument. Consolidated fee payments may cover several different service categories. Multiple fee payments may be made with one check, money order, credit card or electronic payment. Payors who will be making a single payment for a significant number of entities and wish to submit automated data submissions in lieu of a large number of FCC Forms 159–C (''Advice Continuation Sheets'') may do so. There is no limit to the number of payment items.

Wire Transfer Payment Instructions

A wire transfer is a transaction that you initiate via your bank. It authorizes your bank to wire funds from your account to our lockbox bank, the Mellon Bank in Pittsburgh, PA. All payments made by wire transfer must be supported by a completed FCC Remittance Advice (FCC Form 159) and Advice Continuation Sheet (FCC Form 159–C), if required. The Form 159 must be faxed to Mellon Bank at (412) 236–5702 at least one hour before the wire transfer on the same business day. Indicate on the top of the FCC Form 159 ''Wire Transfer—Regulatory Fee Payment.'' In the ''Reserve Box'' located at the upper left hand corner in ''358835.'' Failure to submit the completed Form 159 will result in a delay in crediting your account. Due to Federal Reserve regulations, wire transfers received after 6:00 p.m. (EST) will be credited the next business day.

The following information should be provided to your bank in order to complete the wire transfer:

ABA Routing Number 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/ACV—9116106
OBI Field: (Skip one space between each information item)
- ''REGULATORYPAY''
- FCC ACCOUNT NO. (Exactly as on Form 159 Block #1)
- PAYOR NAME (Exactly as on Form 159, Block #3)
- Phone: (Daytime Phone #, exactly as on Form 159, Block #9)

Compliance

Licensees are solely responsible for accurately accounting for all licenses and paying proper regulatory fees. Any omission or payment deficiency can result in a 25% monetary penalty, dismissal of pending actions, and/or revocation of any authorization. Additionally, the Commission intends to invoke its authority under the Debt Collection Act against any licensee failing to meet its regulatory fee payment obligations.

Note. The Commission has identified several entities which have not paid the required fee for FY 1994 and has begun taking appropriate steps to secure collection of these fees and penalties due. You are strongly urged to submit your payments on time and accurately in order to avoid a penalty.

Waivers, Reductions and Deferments of Regulatory Fees

The Commission will consider request for waivers, reductions or deferments of regulatory fees, *in extraordinary and compelling circumstances only*, upon a showing that such action overrides the public interest in reimbursing the Commission for its regulatory costs. Timely submission of the appropriate regulatory fee must accompany request for waivers or reductions. This will ensure efficient collection in situations where a waiver or reduction is not warranted and will allow the requestor to avoid a 25% late-payment penalty if its request is denied. The regulatory fee would be refunded later if the request is granted. Only in exceptional or compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in the reduction of service to a community or other financial hardship to the licensee), will the Commission accept a petition to defer payment along with a waiver or reduction request. All requests for deferments must be received before *September 20, 1995*, in order to avoid the 25% late-payment penalty.

Additional Information

The Commission has prepared a number of informative Fee Filing Guides for information on *application* fees for wireless radio services, or for information on *application* and *regulatory* fees for mass media, international, cable television, engineering and technology, compliance and information, and wireless radio services. These Guides, applicable Public Notices, and Forms 159 and 159–C are available from the Commission's Public Service Division and can be downloaded from the Internet (ftp@fcc.gov). Forms may also be obtained by contacting the Forms Hotline at (800) 418–3676 outside the Washington, DC area, or (202 418–3676 locally. For additional information, please contact the Fees Hotline at (202) 418–0192, or write to: Federal Communications Commission, ATTN: Public Service Division, 1919 M Street, NW., Washington, DC 20554.

Fee Payment Procedures for Mobile Service Providers

Who Must Pay: Cellular providers (common carriers providing cellular radio service to the public) and mobile service licensees (common carriers authorized, under Part 22 of our Rules, to offer land-based or air-to-ground mobile telephone or paging services to the public).[1] Governments and nonprofit (exempt under section 501 of the Internal Revenue Code) carriers and licensees are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter

[1] In addition to cellular telephone service, these services include those using radio to provide telephone services at fixed locations, such as Basic Exchange Telecommunications Radio Services, Rural Radio and Offshore Radio.

documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting to its exempt status.

Fee Requirement:

Type of fee	Regulatory fee payment	Fee code
Cellular radio licensees (Part 22)	$0.15 per unit	CDCN
Public Mobile Radio-Two Way (Part 22)	0.15 per unit	CPMN
Public Mobile Radio-One Way Paging (Part 22)	0.02 per unit	CDWN

Licensees whose fee payments are based upon a subscriber or unit count should use the number of subscribers or units as of December 31, 1994. Public mobile radio licensees with more than 99 locations that have been given multiple call signs for the same license should list only one call sign on Form 159 and provide a separate listing of all other related call signs. See ''Special Instructions for Completing FCC Form 159 and 159–C'' for correct Payment Type Codes.

Special Instructions for Completing FCC Forms 159 & 159–C

FCC Form 159 (''FCC Remittance Advice'') and, as necessary, FCC Form 159–C (''Advice Continuation Sheet'') must accompany all regulatory fee payments. Form 159 allows payors to report information on one or more payment items (e.g., cellular subscribers, public mobile subscribers, paging units, or a combination). Use Form 159–C to report additional payments.

An FCC Form 159 and 159–C have been attached to this Public Notice for you to complete and remit with your payment. You may make additional copies of the forms as required. In addition to the instructions for Form 159 (which are on the reverse side of the Form), the following information applies specifically to commercial wireless regulatees:

Block (12)—''FCC CALL SIGN/OTHER ID'':

- Cellular, public mobile two way, and public mobile one way paging[2] licensees should enter their *call sign*.

Block (14)—''PAYMENT TYPE CODES'':

Cellular and Public Mobile Licensees

CDCN: Use this when making a regulatory fee payment for a cellular radio license ($0.15 per telephone number/unit).

CPMN: Use this code when making a regulatory fee payment for a public mobile radio license ($0.15 per unit).

CDWN: Use this code when making a regulatory fee payment for a public mobile one way paging license ($0.02 per unit).

Block (15)—''QUANTITY'':

Cellular and Public Mobile Licensees

- Cellular radio licensees should enter the number of telephone numbers/units.
- Public mobile radio licensees should enter the total number of units.
- Public mobile radio one way paging licensees should enter the total number of units.

Block (16)—''AMOUNT DUE'':

- For cellular radio licensees (payment type code CDCN), multiply the amount from Block 15 (''Quantity'') by $0.15. Round *down* to the nearest whole dollar.
- For public mobile radio licensees (payment type code CPMN), multiply the amount from Block 15 (''Quantity'') by $0.15. Round *down* to the nearest whole dollar.
- For public mobile radio one way paging licensees (payment code CDWN), multiply the amount from Block 15 (''Quantity'') by $0.02. Round *down* to the nearest whole dollar.

Block (17)—''FCC CODE 1'':

- Leave this block blank.

Block (18—''FCC CODE 2'':

- Leave this block blank.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–19046 Filed 8–2–95; 8:45 am]

BILLING CODE 6712–01–M

FY 1995 Common Carrier Regulatory Fees

August 1, 1995.

The Federal Communications Commission issues this Public Notice in order to provide information concerning the payment of regulatory fees in 1995. If you hold authorizations in any of the common carrier services, excluding international facilities (space stations, earth stations, bearer circuits, and international public fixed) and commercial wireless facilities (cellular and public mobile), you should carefully review this Public Notice. Separate Public Notices for international licensees and commercial wireless licensees are available.

Who Must Pay Regulatory Fees in 1995

Most licensees and other entities regulated by the Commission must pay regulatory fees in 1995. This Public Notice concerns only the following Common Carrier regulatees: interexchange carriers, local exchange carriers, competitive access providers, operator service providers, resellers (except mobile resellers governed by the commercial wireless radio services) and other interstate providers, and domestic public fixed radio (Part 21) licensees. Governments and nonprofit (exempt under Section 501(c) of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting its exempt status.

Why the Commission Must Collect Regulatory Fees

The requirement to collect annual regulatory fees from common carriers was contained in Public Law 103–66. ''The Omnibus Budget Reconciliation Act of 1993.'' These regulatory fees, which are likely to change each fiscal year, are used to offset costs associated with the Commission's enforcement, public service, international and policy and rulemaking activities. These fees are in addition to any application processing fees associated with obtaining a license or other authorization from the Commission.

When Fees Will Be Due

Common carriers must pay the following regulatory fees to the Commission by *September 20, 1995*, in order to avoid a 25% late penalty.

[2] Public mobile radio licensees with more than 99 locations that have been given multiple call signs for the same license should list only one call sign on Form 159 and provide a separate listing of all other related call signs.

Type of fee	Regulatory fee payment	Fee code
Interexchange Carriers	$0.00088 per revenue dollar	CDIN
Local Exchange Carriers	0.00088 per revenue dollar	CDXN
Competitive Access Providers	0.00088 per revenue dollar	CDPN
Operator Service Providers	0.00088 per revenue dollar	CSPN
Resellers	0.00088 per revenue dollar	CRPN
Other Interstate Providers	0.00088 per revenue dollar	CIPN
Domestic Public Fixed (47 CFR Part 21)	140 per call sign	CCDN

FCC Form 159

Regulatory fee payments *must* be accompanied by FCC Form 159 (''FCC Remittance Advice''). A copy of this form, with specific instructions, is attached to this Public Notice. Please see, ''Special Instructions for Completing FCC Forms 159 & 159–C'' for detailed information on how to correctly complete these Forms.

Where to Send Regulatory Fee Payments

If sending your regulatory fee payment by *mail,* please address your envelope as follows: Federal Communications Commission, Regulatory Fees, P.O. Box 358835, Pittsburgh, PA 15251–5835.

If you prefer to send your regulatory fee payment by *courier* to our lockbox bank, you may do so 24 hours per day (except bank holidays). Please address your envelope and deliver it to the following address: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153–2713, Pittsburgh, PA 15259–0001, (Attention: FCC Module Supervisor).

Method of Payment

Regulatory fee payments may be made by check, money order, or by credit card (Visa or Mastercard only). When paying by credit card, please make sure you sign the appropriate block of Form 159. Payments may also be made by wire transfer or by electronic funds transfer (EFT). Instructions for wire transfer payment are provided below.

In its Report and Order the Commission directed that the Managing Director negotiate with NECA to process regulatory fees on behalf of its pooling exchange carriers and to submit their consolidated fees to our lockbox bank in a single instrument of payment. The Commission has no objection to NECA's submission of the fee on behalf of its pooling exchange carriers or others. However, we remind entities subject to the payment of a regulatory fee that the regulatee, not an agent, such as NECA, is responsible for ensuring that the payment is made and that it is subject to penalty for failure to submit the entire fee due in a timely manner.

Note: We encourage arrangements to consolidate a number of regulatory fee payments either by a single entity or by different entities into a single payment instrument. Consolidated fee payments may cover several different service categories. Multiple fee payments may be made with one check, money order, credit card or electronic payment. Payors who will be making a single payment for a significant number of entities and wish to submit automated data submissions in lieu of a large number of FCC Forms 159–C (''Advice Continuation Sheets'') may do so. There is no limit to the number of payment items.

Wire Transfer Payment Instructions

A wire transfer is a transaction that you initiate via your bank. It authorizes your bank to wire funds from your account to our lockbox bank, the Mellon Bank in Pittsburgh, PA. All payments made by wire transfer must be supported by a completed FCC Remittance Advice (FCC Form 159) and Advice Continuation Sheet (FCC Form 159–C), if required. The Form 159 must be faxed to Mellon Bank at (412) 236–5702 at least one hour before the wire transfer on the same business day. Indicate on the top of the FCC Form 159 ''Wire Transfer—Regulatory Fee Payment.'' In the ''Reserve Box'' located at the upper left hand corner indicate ''358835.'' Failure to submit the completed Form 159 will result in a delay in crediting your account. Due to Federal Reserve regulations, wire transfers received after 6:00 p.m. (EST) will be credited the next business day.

The following information should be provided to your bank in order to complete the wire transfer:

ABA Routing Number 043000261

Receiving Bank: Mellon Pittsburgh

BNF: FCC/ACV—9116106

OBI Field: (Skip one space between each information item)

''REGULATORYPAY''

FCC ACCOUNT NO. (Exactly as on Form 159, Block #1)

PAYOR NAME (Exactly as on Form 159, Block #3)

Phone: (Daytime Phone #, exactly as on Form 159, Block #9)

Compliance

Licensees are solely responsible for accurately accounting for all licenses and for paying proper regulatory fees. Any omission or payment deficiency can result in a 25% monetary penalty, dismissal of pending actions, and/or revocation of any authorization. Additionally, the Commission intends to invoke its authority under the Debt Collection Act against any licensee failing to meet its regulatory fee payment obligations.

Note: The Commission has identified several entities which have not paid the required fee for FY 1994 and has begun taking appropriate steps to secure collection of these fees and penalties due. You are strongly urged to submit your payment on time and accurately in order to avoid a penalty.

Waivers, Reductions and Deferments of Regulatory Fees

The Commission will consider requests for waivers, reductions or deferments of regulatory fees, *in extraordinary and compelling circumstances only,* upon a showing that such action overrides the public interest in reimbursing the Commission for its regulatory costs. Timely submission of the appropriate regulatory fee must accompany requests for waivers or reductions. This will ensure efficient collection in situations where a waiver or reduction is not warranted and will allow the requestor to avoid a 25% late-payment penalty if its request is denied. The regulatory fee would be refunded later if the request is granted. Only in exceptional or compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in the reduction of service to a community or other financial hardship to the licensee), will the Commission accept a petition to defer payment along with a waiver or reduction request. All requests for deferments must be received before *September 20, 1995,* in order to avoid the 25% late-payment penalty.

Additional Information

The Commission has prepared a number of informative Fee Filing Guides for information on *application*

fees for common carrier services, or for information on *application* and *regulatory* fees for mass media, international, cable television, engineering and technology, compliance and information, and wireless radio services. These Guides, applicable Public Notices, and Forms 159 and 159–C are available from the Commission's Public Service Division and can be downloaded from the Internet (ftp@fcc.gov). Forms may be obtained by contacting the Forms Hotline at (800) 418–3676 outside the Washington, DC area, or (202) 418–3676 locally. For additional information, please contact the Fees Hotline at (202) 418–0192, or write to: Federal Communications Commission, ATTN: Public Service Division, 1919 M Street, NW., Washington, DC 20554.

Payment Procedures for Common Carriers

Who Must Pay: Interexchange carriers (long distance telephone companies), local exchange carriers (local telephone operating companies),[1] competitive access providers (companies other than the traditional local telephone companies that provide interstate access services to long distance carriers and other companies), operator service providers (pay telephone operators), resellers (companies that obtain lines from facilities based carriers and sell service to others), other interstate service providers, and public fixed licensees (common carriers authorized, under Part 22 of our Rules, to offer land-based or air-to-ground mobile telephone services to the public).[2] Governments and nonprofit (exempt under section 501 of the Internal Revenue Code) carriers and licensees are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting its exempt status.

Filing Procedures for Public Fixed Radio Licensees

Who Must Pay:

Domestic Public Fixed Radio Licensees: Licensees authorized as of October 1, 1994, to use microwave frequencies for video and data distribution communications within the United States. These services, authorized under Part 21 of our Rules, include the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, and Digital Electronic Message Service.

Governments and nonprofit (exempt under section 501 of the Internal Revenue Code) carriers and licensees are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting its exempt status.

Fee Requirement:

Type of fee	Regulatory fee payment	Fee code
Domestic Public Fixed	$140 per call sign	CCDN

Special Instructions for Completing FCC Forms 159 & 159–C

FCC Form 159 (''FCC Remittance Advice'') and, as necessary, FCC Form 159–C (''Advice Continuation Sheet'') must accompany all regulatory fee payments. Form 159 allows payors to report information on one or more payment items (e.g., revenues, call signs, or a combination of any two). Use Form 159–C to report additional payments.

An FCC Form 159 and 159–C have been attached to this Public Notice for you to complete and remit with your payment. You may make additional copies of the forms as required. In addition to the instructions for Form 159 (which are on the reverse side of the Form), the following information applies specifically to common carrier regulatees:

Block (12)—''FCC CALL SIGN/OTHER ID'':

- Interexchange, local exchange, competitive access providers, operator service providers, resellers, and other interstate providers should enter their *NECA company identification number.*
- Public fixed radio licensees should enter their *call sign.*

Block (14)—''PAYMENT TYPE CODES'':

Carriers

CDIN: Use this code when paying for an interexchange carrier regulatory fee ($0.00088 per revenue dollar).

CDXN: Use this code when paying for a local exchange carrier regulatory fee ($0.00088 per revenue dollar).

CDPN: Use this code when paying for a competitive access provider regulatory fee ($0.00088 per revenue dollar).

CSPN: Use this code when paying for an operator service provider regulatory fee ($0.00088 per revenue dollar).

CRPN: Use this code when paying for a reseller regulatory fee ($0.00088 per revenue dollar).

CIPN: Use this code when paying for other interstate provider regulatory fee ($0.00088 per revenue dollar).

Public Fixed Radio Licensees

CCDN: Use this code when making a regulatory fee payment for a *domestic* public fixed radio license ($140 per call sign).

Block (15)—''QUANTITY'':

Carriers

- Interexchange carriers subtract the amount in Block 18 (''FCC CODE 2'') from the amount in Block 17 (''FCC CODE 1'') and enter their TRS net interstate revenue.
- Local exchange carriers subtract the amount in Block 18 (''FCC CODE 2'') from the amount in Block 17 '(''FCC CODE 1'') and enter their TRS net interstate revenue.
- Competitive access providers subtract the amount in Block 18 (''FCC CODE 2'') from the amount in Block 17 (''FCC CODE 1'') and enter their TRS net interstate revenue.
- Operator service providers subtract the amount in Block 18 (''FCC CODE 2'') from the amount in Block 17 (''FCC CODE 1'') and enter their TRS net interstate revenue.
- Resellers subtract the amount in Block 18 (''FCC CODE 2'') from the amount in Block 17 (''FCC CODE 1'') and enter their TRS net interstate revenue.
- Other interstate providers subtract the amount in Block 18 (''FCC CODE 2'') from the amount in Block 17 (''FCC

[1] We will permit the holding company of local exchange carriers to aggregate fee payments due by its operating companies and submit a single payment to cover the fee requirements of its subsidiaries.

[2] These services include those using radio to provide telephone services at fixed locations, such as Basic Exchange Telecommunications Radio Services, Rural Radio and Offshore Radio.

CODE 1'') and enter their TRS net interstate revenue.

Public Fixed Radio Licensees

➧ All public fixed radio licensees should enter ''1''.

Block(16)—''AMOUNT DUE'':

- For interexchange carrier regulatory fees (payment type code CDIN), multiply the amount in Block 15 (''Quantity'') by $0.00088.
- For local exchange carrier regulatory fees (payment type code CDXN), multiply the amount in Block 15 (''Quantity'') by $0.00088.
- For competitive access provider regulatory fees (payment type code CDPN), multiply the amount in Block 15 (''Quantity''(by $0.00088.
- For operator service provider regulatory fee (payment type code CSPN), multiply the amount in Block 15 (''Quantity'') by $0.00088.
- For reseller regulatory fees (payment type code CRPN), multiply the amount in Block 15 (''Quantity'') by $0.00088.
- For other interstate provider regulatory fees (payment type code CIPN), multiply the amount in Block 15 (''Quantity'') by $0.00088.
- For *domestic* public fixed radio licensees (payment type code CCDN), enter $140.00.

Block (17)—FCC CODE 1'':

- For interexchange carrier regulatory fee (payment type code CDIN), enter the total interstate revenue as reported to the TRS Fund (line 15 of FCC Form 431).
- For local exchange carrier regulatory fee (payment type code CDXN), enter the total interstate revenue as reported to the TRS Fund (line 15 of FCC Form 431).
- For competitive access provider regulatory fees (payment type code CDPN), enter the total interstate revenue as reported to the TRS Fund (line 15 of FCC Form 431).
- For operator service provider regulatory fees (payment type code CSPN), enter the total interstate revenue as reported to the TRS Fund (line 15 of FCC Form 431).
- For reseller regulatory fee (payment type code CRPN), enter the total interstate revenue as reported to the TRS Fund (line 15 of FCC Form 431).
- For other interstate provider regulatory fees (payment type code CIPN), enter the total interstate revenue as reported to the TRS Fund (line 15 of FCC Form 431).
- For *domestic* public fixed radio licensees (payment type code CCDN), leave blank.

Block (18)—FCC CODE 2'':

- For interexchange carrier regulatory fees (payment type code CDIN), enter the cost of interstate telecommunications facilities taken for resale (including the cost of access services).
- For local exchange carrier regulatory fees (payment type code CDXN), enter the cost of interstate telecommunications facilities taken for resale (including the cost of access services).
- For competitive access provider regulatory fees (payment type code CDPN), enter the cost of interstate telecommunications facilities taken for resale (including the cost of access services).
- For operator service provider regulatory fees (payment type code CSPN), enter the cost of interstate telecommunications facilities taken for resale (including the cost of access services).
- For reseller regulatory fees (payment type code CRPN), enter the cost of interstate telecommunications facilities taken for resale (including the cost of access services).
- For other interstate provider regulatory fees (payment type code CIPN), enter the cost of interstate telecommunications facilities taken for resale (including the cost of access services).
- For *domestic* public fixed radio licensees (payment type code CCDN), leave blank.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Attachment

Supplementary Information

A. What is TRS?

Telecommunications Relay Service (TRS) is a telephone transmission service that allows persons with hearing and/or speech impairments to use the telephone. TRS centers use special staff and equipment to relay messages between persons using text telephones and persons using traditional telephones. Under Title IV of the Americans with Disabilities Act of 1990 (ADA),[3] all common carriers providing voice communications services are required to provide TRS throughout the areas they serve. The rates charged for TRS calls must be no higher than those charged for functionally equivalent voice telephone calls of similar duration and distance.

B. What is the TRS Fund?

The TRS Fund is a shared funding mechanism for recovering the costs involved in providing interstate TRS service. All common carriers providing interstate telecommunications service (voice or non-voice) are required to contribute a portion of their gross interstate revenues to the TRS Fund. TRS providers receive payments from the Fund designed to compensate them for the reasonable costs incurred in providing interstate TRS. The TRS Fund is currently administered by the National Exchange Carrier Association (NECA).

C. Which Carriers Must File TRS Fund Worksheets?

All common carriers providing interstate telecommunications services within the United States must file the TRS Fund Worksheet. For this purpose, the United States is defined as the conterminous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island.

For the purpose of calculating TRS contributions, interstate telecommunications service includes, but is not limited to, the interstate portion of the following types of services: cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including Subscriber Line Charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, international, intraLATA, and resale services. Note that all local exchange carriers provide interstate access services, and therefore must file.

Each legal entity that provides interstate telecommunications service must file a separate TRS Fund Worksheet. Entities may not file worksheets aggregating revenue for more than one carrier. Entities that have distinct articles of incorporation are separate legal entities. All affiliates or subsidiaries must identify the ultimate controlling parent or entity on their TRS Fund Worksheets.

D. Should all Carriers Which File TRS Fund Worksheets Also Pay the Common Carrier Regulatory Fee?

No. Comsat, Mobile service and paging carriers pay different regulatory fees and should not pay the common carrier fee. All other carriers that file TRS Fund Worksheets must pay the common carrier based fee.

[3] Pub. L. No. 101–336, § 401, 104 Stat. 327, 366–69 (codified at 47 U.S.C. § 225).

E. Should a Carrier File the Regulatory Fee If It Has Not Filed a TRS Fund Worksheet?

Yes. If a common carrier provided interstate telecommunications services in 1994, then it should have filed a TRS Fund Worksheet and must also pay the common carrier based regulatory fee. Carriers should have filed their 1995 TRS Fund Worksheet on or before April 26, 1995. These worksheets used calendar year 1994 revenue data to calculate the TRS contribution for April 1995 through March 1996. Any carrier that did not file should contact the TRS Fund Administrator at 201–884–8173 in order to obtain a filing package and to be assigned a 6 digit TRS Fund ID number. This number must be included on the regulatory fee filing. The Mailing address of the TRS Fund Administrator is ''NECA, FCC TRS Fund Administration, 100 South Jefferson Rd., Whippany, NJ 07981''

F. What Type of Revenues Are Reported on TRS Fund Worksheets?

The TRS Fund Worksheet requires carriers to report their revenue under ten categories. Four of the revenue categories are for local services: (1) Local exchange service; (2) local private line service; (3) mobile radio, cellular, paging and PCS; and (4) alternative access and other—including services of competitive access providers. Six of the categories are for long distance services: (1) Intrastate access service; (2) interstate access service; (3) operator service and pay telephone; (4) non-operator switched tool service; (5) long distance private line service; and (6) all other long distance services. Carriers report total revenues and interstate revenues for each category. Carriers must include revenues from all of the different types of services listed in section C above.

Gross or total revenues include revenues from regulated, detariffed, and nonregulated telecommunications services. Gross revenues should not include non-telecommunications services, such as the lease of customer premises equipment. Gross revenues consist of total revenues billed to customers with no allowances for uncollectibles. Billed revenues may be distinct from booked revenues. For international services, gross revenues consist of gross revenues billed by U.S. carriers with no allowances for settlement payments. Gross revenues should also include any surcharges on communications services that are billed to the customer and either retained by the carrier or remitted to a non-government third party under contract. Gross revenues should exclude taxes and any surcharges that are not recorded as revenue, but which instead are remitted to government bodies.

G. What Kind of Costs can be Deducted From Revenues Reported on TRS Fund Worksheets in Order to Calculate the Common Carrier Regulatory Fee?

Carriers are allowed to deduct interstate access expense that they paid to local exchange carriers in 1994, and they are allowed to deduct the interstate portion of the costs of communications services taken for resale in 1994. Carriers can use the following worksheet to calculate their 1995 regulatory fee.

1994 data (show all amounts in whole dollars)	Total company	Interstate protion
1. Common carrier revenues from Line 15 of FCC Form 431 TRS Fund Worksheet		
2. Access expense paid to local exchange carriers		
3. Cost of facilities taken for resale		
4. Net Interstate Revenues (Line 1 minus Line 2 and minus Line 3)		
5. Common carrier fee factor		.00088
6. 1995 Regulatory Fee (Line 4 times Line 5)		

[FR Doc. 95–19047 Filed 8–2–95; 8:45 am]
BILLING CODE 6712–01–M

FY 1995 Mass Media Regulatory Fees

August 1, 1995.

The Federal Communications Commission issues this Public Notice in order to provide information concerning the payment of regulatory fees in 1995. If you are a licensee in any of the mass media services, you should carefully review this Public Notice.

Who Must Pay Regulatory Fees in 1995

Most licensees and other entities regulated by the Commission must pay regulatory fees in 1995. This Public Notice concerns the following Mass Media licensees: commercial AM & FM radio stations, commercial television stations, Low Power Television and television translator and booster licensees, broadcast auxiliary, FM translators and FM booster licensees, and multipoint distribution service licensees. Non-commercial educational licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency broadcast service (EBS) licenses for auxiliary service facilities are also exempt as are Instructional Television Fixed Service (ITFS) licensees. Governments and nonprofit (exempt under Section 501 of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental entity attesting to its exempt status. Direct broadcast satellite (DBS) licensees are exempt from payment of regulatory fees on an individual subscriber basis; however, licensees of operational geosynchronous orbit space stations are subject to payment of the space station regulatory fee (see Public Notice for FY 1995 International Services Regulatory Fees).

Why the Commission Must Collect Regulatory Fees

The requirement to collect annual regulatory fees was contained in Public Law 103–66, ''The Omnibus Budget Reconciliation Act of 1993''. These regulatory fees, which are likely to change each fiscal year, are used to offset costs associated with the Commission's enforcement, public service, international and policy and rulemaking activities. These fees are in addition to any application processing fees associated with obtaining a license or other authorization from the Commission.

When Fees Will Be Due

Fee payments must be *received* by the Commission by *September 20, 1995* in order to avoid a 25% late penalty.

FCC Form 159

Regulatory fee payments *must* be accompanied by FCC Form 159 (''FCC Remittance Advice''). A copy of this form, with specific instructions, is attached to this Public Notice. Please see, ''Special Instructions for Completing FCC Forms 159 & 159–C'' for detailed information on how to correctly complete these Forms.

Where to Send Regulatory Fee Payments

If sending your regulatory fee payment by *mail,* please address your envelope as follows: Federal Communications Commission, Regulatory Fees, P.O. Box 358835, Pittsburgh, PA 15251–5835.

If you prefer to send your regulatory fee payment by *courier* to our lockbox bank, you may do so 24 hours per day except bank holidays). Please address your envelope and deliver it to the following address: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153–2713, Pittsburgh, PA 15259–0001, (Attention: FCC Module Supervisor).

Method of Payment

Regulatory fee payments may be made by check, money order, or by credit card (Visa or Mastercard only). When paying by credit card, please make sure you sign the appropriate block of Form 159. Payments may also be made by wire transfer or by electronic funds transfer (EFT). Instructions for wire transfer payment are provided below.

We encourage arrangements to consolidate a number of regulatory fee payments either by a single entity or by different entities into a single payment instrument. Consolidated fee payments may cover several different service categories. Multiple fee payments may be made with one check, money order, credit card or electronic payment. Payors who will be making a single payment for a significant number of entities and wish to submit automated data submissions in lieu of a large number of FCC Forms 159–C (''Advice Continuation Sheets'') may do so. There is no limit to the number of payment items.

Wire Transfer Payment Instructions

A wire transfer is a transaction that you initiate via your bank. It authorizes your bank to wire funds from your account to our lockbox bank, the Mellon Bank in Pittsburgh, PA. All payments made by wire transfer must be supported by a completed FCC Remittance Advice (FCC Form 159) and Advice Continuation Sheet (FCC Form 159–C), if required. The Form 159 must be faxed to Mellon Bank at (412) 236–5702 at least one hour before the wire transfer on the same business day. Indicate on the top of the FCC Form 159 ''Wire Transfer—Regulatory Fee Payment.'' In the ''Reserve Box'' located at the upper left hand corner indicate ''358835.'' Failure to submit the completed Form 159 will result in a delay in crediting your account. Due to Federal Reserve regulations, wire transfers received after 6:00 p.m. (EST) will be credited to the next business day.

The following information should be provided to your bank in order to complete the wire transfer:

ABA Routing Number 043000261
Receiving Bank: Mellon Pittsburgh
FNF: FCC/ACV–9116106
OBI Field: (Skip one space between each information item)
  ''REGULATORYPAY''
  FCC ACCOUNT NO. (Exactly as on Form 159, Block #1)
  PAYOR NAME (Exactly as on Form 159, Block #3)
  Phone: (Daytime Phone #, exactly as on Form 159, Block #9)

Compliance

Licensees are solely responsible for accurately accounting for all licenses and for paying proper regulatory fees. Any omission or payment deficiency can result in a 25% monetary penalty, dismissal of pending actions, and/or revocation of any authorization. Additionally, the Commission intends to invoke its authority under the Debt Collection Act against any licensee failing to meet its regulatory fee payment obligations.

Note: The Commission has identified several entities which have not paid the required fee for FY 1994 and has begun taking appropriate steps to secure collection of these fees and penalties due. You are strongly urged to submit your payments on time and accurately in order to avoid a penalty.

Waivers, Reductions and Deferments of Regulatory Fees

The Commission will consider requests for waivers, reductions or deferments of regulatory fees, *in extraordinary and compelling circumstances only,* upon a showing that such action overrides the public interest in reimbursing the Commission for its regulatory costs. Timely submission of the appropriate regulatory fee must accompany requests for waivers or reductions. This will ensure efficient collection in situations where a waiver or reduction is not warranted and will allow the requestor to avoid a 25% late-payment penalty if its request is denied. The regulatory fee would be refunded later if the request is granted. Only in exceptional or compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in the reduction of service to a community or other financial hardship to the licensee), will the Commission accept a petition to defer payment along with a waiver or reduction request.

Additional Information

The Commission has prepared a number of informative Fee Filing guides for information on *application* fees for mass media services, and for information on *application* and *regulatory* fees for the common carrier, mass media, international, engineering and technology, compliance and information or wireless radio services. These Guides, other Public Notices, and Forms 159 and 159–C are available from the Commission's Public Service Division and can be downloaded from the Internet (ftp@fcc.gov). Forms may also be obtained by contacting the Forms Hotline at (800) 418–3676 outside the Washington, DC area, or (202) 418–3676 locally. For additional information, please contact the Fees Hotline at (202) 418–0192, or write to: Federal Communications Commission, ATTN: Public Service Division, 1919 M Street, NW., Washington, DC 20554.

Fee Payment Procedures for Commercial AM Radio Stations

Who Must Pay: Licensees of Class A, Class B, Class C & Class D AM radio stations and holders of construction permits for new stations in the AM service whose license or permit was granted on or before October 1, 1994. AM radio station licensees who also hold auxiliary broadcast service licenses operated in conjunction with the main AM station (e.g., remote pickup stations, aural broadcast STLs, intercity relay stations and low power auxiliary stations) will also be assessed a regulatory fee for each of these stations. Governments and nonprofit (exempt under Section 501 of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental entity attesting to its exempt status.

Conversion Table: For those licensees of AM radio stations who may be

unfamiliar with the current station class designations, we provide the following:

Old class	New class
Class I	Class A.
Class II & III	Class B.
Class II.D & II.S	Class D.
Class III.D & III.S	Class D.
Class IV	Class C.

Fee Requirement: Fees are assessed for AM radio station licensees based upon class of station as shown. Determination of class is based upon the station's most recent granted license on or before October 1, 1994:

AM regulatory fee category	Regulatory fee	Payment type code
Class A Station License	$1,120	MLAN
Class B Station License	620	MNAN
Class C Station License	250	MRAN
Class D Station License	310	MPAN
Broadcast Auxiliary Station License	30	MUBN
Construction Permit for New AM Station	125	MTAN

Note that an Am station licensee will be assessed $30 for each auxiliary license it holds. Holders of construction permits (CPs) for new AM stations for which a license to cover the CP had not been granted as of October 1, 1994 will be assessed a $125 fee for each permit held, regardless of station class.

Fee Payment Procedures for Commercial FM Radio Stations

Who Must Pay: Licensees of commercial FM radio stations and holders of construction permits for new stations in the FM service whose license or permit was granted on or before October 1, 1994. FM radio station licensees who also hold auxiliary broadcast service licenses operated in conjunction with the main FM station (e.g., remote pickup stations, aural broadcast STLs, intercity relay stations and low power auxiliary stations) will also be assessed a regulatory fee for each of these stations. Governments and nonprofit (exempt under section 501 of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting its exempt status.

Fee Requirement: Fees are assessed for commercial FM radio station licensees based upon class of station as shown below. Determination of class is based upon the station's most recent license granted on or before October 1, 1994:

FM regulatory fee category	Regulatory fee	Payment type code
Class C, C1, C2 or B FM License	$1,120	MLFN
Class A, B1 or C3 FM License	745	MMFN
Broadcast Auxiliary License	30	MUBN
Construction Permit for New FM Station	620	MNFN

Note that commercial FM station licensees will be assessed $30 for each auxiliary license it holds. Holders of construction permits (CPs) for new FM stations for which a license to cover the CP had not been granted as of October 1, 1994 will be assessed a $620 fee for each permit held, regardless of station class.

Fee Payment Procedures for Commercial VHF/UHF TV Stations

Who Must Pay: Licensees of commercial VHF and commercial UHF television stations and holders of construction permits for new stations whose license or permit was granted on or before October 1, 1994. A new reduced fee has been established for satellite television stations and holders of new satellite television construction permits. Commercial television station licensees who also hold auxiliary broadcast service licenses operated in conjunction with the main TV station (e.g., remote pickup stations, intercity relay stations) will also be assessed a regulatory fee for each of these stations. Governments and nonprofit (exempt under section 501 of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting its exempt status.

Fee Requirement: Fees are assessed commercial television stations licensees based upon the size of the Arbitron ADI market in which their stations are listed in the 1994 Edition of the TV & Cable Factbook No. 62 as published by Warren Publishing. Fees will be assessed as follows:

Commercial VHF station	Regulatory fee	Payment type code
Markets 1–1	$22,420	MAVN
Markets 11–25	19,925	MBVN
Markets 26–50	14,950	MEVN
Markets 51–100	9,975	MGVN
Remaining Markets	6,225	MIVN
Broadcast Auxiliary Station	30	MUBN
Construction Permits	4,975	MJVN

Commercial UHF stations	Regulatory fee	Payment type code
Markets 1–10	$17,925	MCUN
Markets 11–25	15,950	MDUN
Markets 26–50	11,950	MFUN
Markets 51–100	7,975	MHUN
Remaining Markets	4,975	MJUN
Broadcast Auxiliary Station	30	MUBN
Construction Permits	3,975	MKUN

Satellite TV stations	Regulatory fee	Payment type code
All Markets	$620	MSSN
Construction Permits	225	MCSN

Note that commercial television station licensees will be assessed $30 for each auxiliary license it holds. Holders of construction permits (CPs) for television stations for which a license to cover the CP had not been granted as of October 1, 1994 will be assessed $4,975 (VHF), $3,975 (UHF), or $225 (Satellite TV) for each permit held.

Fee Payment Procedures for LPTV, TV Translators & TV Boosters, FM Translators & FM Boosters

Who Must Pay: Holders of Low Power Television, TV translator and booster licenses, and FM translator and booster licenses whose license was granted before October 1, 1994. Governments and nonprofit (exempt under section 501 of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting its exempt status. Also exempted from this fee are non-commercial educational FM and full service television broadcast station licensees that hold low power television, TV translator or TV booster licenses, or FM translator or FM booster licenses issued on or before October 1, 1994, provided those stations operate on a noncommercial educational basis. We will automatically waive the regulatory fee for the licensee of any translator that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from the members of the community served for support. Finally, licensees of low power television, TV translator or TV booster, or FM translator or FM booster stations whose licenses were issued on or before October 1, 1994 and which have obtained a fee refund because of a NTIA facilities grant for their station or a fee waiver because of demonstrated compliance with the eligibility and service requirements of Section 73.621 of the Commissions Rules, are similarly exempt from payment of this regulatory fee. Licensees claiming an exemption based on one of these latter criteria should not submit payment, but may be asked to document their exempt status.

Fee Requirement: Fees are assessed on a per license basis as follows:

Type of license	Regualtory fee	Payment type code
Low Power Television Station, TV Translator/TV Booster	$170	MLPN
Translor/TV Booster	.....	
FM Translator/FM Booster	170	MSFN

Fee Payment Procedures for Multipoint Distribution Service

Who Must Pay: Holders of multipoint distribution service licenses whose license was granted on or before October 1, 1994. Governments and nonprofit (exempt under section 501 of the Internal revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting its exempt status.

Fee Requirement: Fees are assessed on a per license basis as follows:

Type of license	Regulatory fee	Payment type code
Multipoint Distribution Service	$140	MDSN

Special Instructions for Completing FCC Forms 159 & 159–C

FCC Form 159 (''FCC Remittance Advice'') and, as necessary, FCC Form 159–C (''Advice Continuation Sheet'') must accompany all regulatory fee payments. Form 159 allows payors to report information on one or more payment items (e.g., multiple FM or TV station licenses). Use Form 159–C to report additional payments.

An FCC Form 159 and a 159–C have been attached to this Public Notice for you to complete and remit with your payment. You may make additional copies of the forms as required. In addition to the instructions for Form 159 (which are on the reverse side of the Form), the following information applies specifically to mass media fee payors.

Block (12)—''FCC Call Sign/Other ID''

• All Mass Media payors must enter in this block the call sign of the station(s) for which the regulatory fee is being paid.

Block (14)—Payment Type Code''

Enter the appropriate payment type code as listed below:

VHF Television Stations

MAVN: Use this code when paying a regulatory fee for a commercial VHF television station in Arbitron markets 1–10 ($22,420).

MBVN: Use this code when paying a regulatory fee for a commercial VHF television station in Arbitron markets 11–25 ($19,925).

MEVN: Use this code when paying a regulatory fee for a commercial VHF television station in Arbitron markets 26–50 ($14,950).

MGVN: Use this code when paying a regulatory fee for a commercial VHF television station in Arbitron markets 51–100 ($9,975).

MIVN: Use this code when paying a regulatory fee for a commercial VHF television station in Arbitron markets ($6,225).

MJVN: Use this code when paying a regulatory fee for a construction permit for a VHF television station ($4,975).

UHF Television Stations

MCUN: Use this Code when paying a regulatory fee for a commercial UHF television station in Arbitron markets 1–10 ($17,925).

MDUN: Use this Code when paying a regulatory fee for a commercial UHF television station in Arbitron markets 11–25 ($15,950).

MFUN: Use this Code when paying a regulatory fee for a commercial UHF television station in Arbitron markets 26–50 ($11,950).

MHUN: Use this Code when paying a regulatory fee for a commercial UHF television station in Arbitron markets 51–100 ($7,975).

MJUN: Use this Code when paying a regulatory fee for a commercial UHF television station in all other Arbitron markets ($4,975).

MKUN: Use this Code when paying a regulatory fee for construction permit for a commercial UHF television station ($3,975).

AM Radio Stations

MLAN: Use this code when paying a regulatory fee for a Class A AM radio Station ($1,120).

MNAN: Use this code when paying a regulatory fee for a Class B AM radio Station ($620).

MRAN: Use this code when paying a regulatory fee for a Class C AM radio Station ($250).

MPAN: Use this code when paying a regulatory fee for a Class D AM radio Station ($310).

MTAN: Use this code when paying a regulatory fee for a construction permit for an AM radio Station ($125).

FM Radio Stations

MLFN: Use this code when paying a regulatory fee for a Class C, C!, C2 or B FM radio station ($1,120).

MMFN: Use this code when paying a regulatory fee for a Class A, B1 or C3 FM radio station ($745).

MNFN: Use this code when paying a regulatory fee for a construction permit for an FM radio station ($620).

Satellite Television Stations

MSSN: Use this code when paying a regulatory fee for a satellite TV station ($620).

MCSN: Use this code when paying a regulatory fee for a construction permit for a satellite TV station ($225).

Low Power Television Station, TV Translator/Booster FM Translator/ Booster

MLPN: Use this code when paying a regulatory fee for a Low Power Television station, or a television translator or television booster ($170).

MSFN: Use this code when paying a regulatory fee for an FM translator or FM booster ($170).

Broadcast Auxiliary Station

MUBN: Use this code when paying a regulatory fee for a broadcast auxiliary station ($30).

Multipoint Distribution Service Station

MDSN: Use this code when paying a regulatory fee for a multipoint distribution service station ($140).

Block (15)—''Quantity'':

• All mass media fee payors must enter ''1'' in this block.

Block (16)—''Amount Due'':

• Enter the dollar amount associated with the corresponding Payment Type Code entered in Block (14).

Block (17)—''FCC Code 1'':

• If you are paying an AM or FM regulatory fee, enter the authorized frequency shown on your license or permit.

• If you are paying a television or Low Power Television station regulatory fee, enter the applicable channel number.

• If you are paying a TV translator, TV booster, broadcast auxiliary, FM translator, FM booster or a multipoint distribution service station regulatory fee, leave this section blank.

Block (18)—''FCC Code 2'':

• If you are paying an AM, FM, TV or Low Power Television regulatory fee, enter the name of the state and community (in that order) of licenses for the station for which the regulatory fee is being paid. Please note that this block is for state and community of license, not mailing address. Please use the appropriate two letter post office abbreviation for the state.

• If you are paying a TV translator, TV booster, broadcast auxiliary, FM translator, FM booster or a multipoint distribution service station regulatory fee, leave this section blank.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–19048 Filed 8–2–95; 8:45 am]

BILLING CODE 6712–01–M

FY 1995 Cable Television System Regulatory Fee

August 1, 1995.

The Federal Communications Commission issues this Public Notice in order to provide information concerning the payment of regulatory fees in 1995. If you are an operator of a cable television system or a licensee of a cable antenna relay service (CARS) or broadcast auxiliary service, you should carefully review this Public Notice.

Who Must Pay Regulatory Fees in 1995

Cable television systems operating on or before *December 31, 1994* must pay regulatory fees per subscriber in 1995. Governments and nonprofit (exempt under Section 501(c) of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting to its exempt status. All cable television systems must pay regulatory fees of $0.49 per subscriber for each community unit in which it operates. Additionally, each system operating on or before *October 1, 1994* must pay a $290.00 fee for each CARS license held and, if applicable, a $30.00 fee for each Broadcast Auxiliary Service license held. In the event that there has been a change in ownership of a system after the effective dates above, but before the date payment is due, responsibility for payment of the regulatory fees rests upon the new owner.

Why the Commission Must Collect Regulatory Fees

The requirement to collect annual regulatory fees from cable television systems was contained in Public Law

103–66, ''The Omnibus Budget Reconciliation Act of 1993.'' These regulatory fees, which are likely to change each fiscal year, are used to offset costs associated with the Commission's enforcement, public service, international and policy and rulemaking activities. These fees are in addition to any applicable processing fees associated with obtaining a license or other authorization from the Commission.

When Fees Will Be Due

All cable systems must pay the following regulatory fees to the Commission by *September 20, 1995,* in order to avoid a 25% late penalty:

Type of fee	Regulatory fee payment	Fee code
Cable System Subscriber Fee	$0.49 per subscriber	TOCN
CARS License	290 per license	TQCN
Broadcast Auxiliary Services License	30 per license	MUBN

FCC Form 159

Regulatory fee payment *must* be accompanied by FCC Form 159 (''FCC Remittance Advice''). A copy of this form, with specific instructions, is attached to this Public Notice. Please see ''Special Instructions for Completing FCC Forms 159 & 159–C'' for detailed information on how to correctly complete these Forms.

Where To Send Regulatory Fee Payments

If sending your regulatory fee payment by *mail,* please address you envelope as follows: Federal Communications Commission, Regulatory Fees, P.O. Box 358835, Pittsburgh, PA 15251–5835.

If you prefer to send your regulatory fee payment by *courier* to our lockbox bank, you may do so 24 hours per day (except bank holidays). Please address your envelope and deliver it to the following address: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153–2713, Pittsburgh, PA 15259–0001, (Attention: FCC Module Supervisor).

Method of Payment

Regulatory fee payments may be made by check, money order, or by credit card (Visa or Mastercard only). When paying by credit card, please make sure you sign the appropriate block of Form 159. Payments may also be made by wire transfer or by electronic funds transfer (EFT). Instructions for wire transfer payment are provided below.

Note: We encourage arrangements to consolidate regulatory fee payments either by a single entity or by different entities into a single payment instrument. Consolidated fee payments may cover several different service categories. Multiple fee payments may be made with one check, money order, credit card or electronic payment. Payors who will be making a single payment for a significant number of entities and wish to submit automated data submissions in lieu of a large number of FCC Forms 159–C (''Advice Continuation Sheets'') may do so. There is no limit to the number of payment items.

Wire Transfer Payment Instructions

A wire transfer is a transaction that you initiate via your bank. It authorizes your bank to wire funds from your account to our lockbox bank, the Mellon Bank in Pittsburgh, PA. All payments made by wire transfer must be supported by a completed FCC Remittance Advice (FCC Form 159) and Advice Continuation Sheet (FCC For 159–C), if required. The Form 159 must be faxed to Mellon Bank at (412) 236–5702 at least one hour before the wire transfer on the same business day. Indicate on the top of the FCC Form 159 ''Wire Transfer—Regulatory Fee Payment.'' In the ''Reserve Box'' located at the upper left hand corner indicate ''358835.'' Failure to submit the completed Form 159 will result in a delay in crediting your account. Due to Federal Reserve regulations, wire transfers received after 6:00 p.m. (EST) will be credited the next business day.

The following information should be provided to your bank in order to complete the wire transfer:

ABA Routing Number 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/ACV—9116106
OBI Field: (Skip one space between each information item)
''REGULATORYPAY''
FCC ACCOUNT NO. (Exactly as on form 159, Block #1)
PAYOR NAME (Exactly as on Form 159, Block #3)
Phone: (Daytime Phone #, exactly as on Form 159, Block #9

Compliance

Cable television systems are solely responsible for accurately accounting for all CARS and Broadcast Auxiliary Service license, as well as subscribers within each community unit, and for paying the proper regulatory fees. Any omission or payment deficiency may result in a 25% monetary penalty, dismissal of pending actions, and/or revocation of any authorization. Additionally, the Commission will invoke its authority under the Debt Collection Act against any cable television system failing to meet its regulatory fee payment obligations.

Note: The Commission has identified several entities which have not paid the required fee for FY 1994 and has begun taking appropriate steps to secure collection of these fees and penalties due. You are strongly urged to submit your payment on time and accurately in order to avoid a penalty.

Waivers, Reductions and Deferments of Regulatory Fees

The Commission will consider requests for waivers, reductions or deferments of regulatory fees, *in extraordinary and compelling circumstances only,* upon a showing that such action overrides the public interest in reimbursing the Commission for its regulatory costs. Timely submission of the appropriate regulatory fee must accompany requests for waivers or reductions. This will ensure efficient collection in situations where a waiver or reduction is not warranted and will allow the requestor to avoid at 25% late-payment penalty if its request is denied. The regulatory fee would be refunded if the request is granted. Only in exceptional or compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in the reduction of service to a community or other financial hardship to the regulate or licensee) will the Commission accept a petition to defer payment along with a waiver or reduction request. All requests for deferments must be received before *September 20, 1995,* in order to avoid the 25% late-payment penalty.

Additional Information

The Commission has prepared a number of informative Fee Filing Guides for information on *application* fees for cable services, and for information on *application* and *regulatory* fees for the common carrier, mass media, international, engineering and technology, compliance and information. and wireless radio services. These Guides, applicable Public

Notices, and Forms 159 and 159–C are available from the Commission's Public Service Division and can be downloaded from the Internet (ftp@fcc.gov). Forms may also be obtained by contacting the Forms Hotline at (800) 418–3676 outside the Washington, DC area, or (202) 418–3676 locally. For additional information, please contact the Fees Hotline at (202) 418–0192, or write to: Federal Communications Commission, ATTN: Public Service Division, 1919M Street, NW., Washington, DC 20554.

Payment Procedures for Cable Television Systems

Suscriber Fees

All cable television system are subject to a fee of $0.49 per subscriber.[1] A system's total subscriber fee can be determined by multiplying $0.49 times the number of subscribers within all community units in which it operates (as defined below and at page 2 of the Instructions for FCC Form 325 ''Annual Report of Cable Television Systems''). Use the same number of subscribers as reported to the Commission in your 1994 Annual Report of Cable Television Systems—FCC Form 325. You may pay for multiple community units with a single payment instrument as long as the community units are all part of the same cable system or are part of a group of commonly-owned cable systems.

CARS and Broadcast Auxiliary Licenses

Cable systems holding CARS licenses must pay a regulatory fee of $290.00 for *each* CARS license and, if applicable, a regulatory fee of $30.00 for *each* Broadcast Auxiliary Service license held as of *October 1, 1994*.

Note: *One payment* may be submitted for all regulatory fee obligations (*i.e.*, ''subscriber fees'' and all Cable Antenna Relay Service and Broadcast Auxiliary Service licenses).

Payment Due Date

All regulatory fee payments for cable television systems must be *received* at the Commission by *September 20, 1995*.

Special Instructions for Completing FCC Forms 159 & 159–C

FCC Form 159 (''FCC Remittance Advice'') and, as necessary, FCC Form 159–C (''Advice Continuation Sheet'') must accompany all regulatory fee payments. Form 159 allows payors to report information on one or more payment items (e.g., multiple community units, CARS licenses, Broadcast Auxiliary Service licenses, or any combination). Use Form 159–C to report additional community units or licenses.

FCC Form 159 and 159–C have been attached to this Public Notice for you to complete and remit with your payment. Payors filing electronically must include information equivalent to the items on the FCC Form 159 and 159–C. You may make additional copies of the forms as required. In addition to the instructions for Form 159 (which are on the reverse side of the Form 159), the following information applies specifically to cable television payors:

Block 12—''FCC Call Sign/Other ID'':

- Enter your community unit identification number for reporting subscribers in *each community unit* within your system.
- Enter your call sign for CARS or Auxiliary Service licenses.

Block (14)—''Payment Type Code'':

TOCN: Use this code when paying a subscriber fee ($0.49 per subscriber). Please note that subscriber information must be provided for *each community unit* in which the system is operated.

TQCN: Use this code when making a regulatory fee payment for a CARS license ($290.00 per license).

MUBN: Use this code when making a regulatory fee payment for a Broadcast Auxiliary Service license ($30.00 per license).

Block (15)—''Quantity'':

- For subscriber fees (payment type code TOCN) enter the number of subscribers within each *community unit.* For CARS or Broadcast Auxiliary Service licensees, enter ''1'' in this block.

Block (16)—''Amount Due'':

- For subscriber fees (payment type code TOCN), multiply the amount in Block 15 (''Quantity'') by $0.49 and enter the result here. Round *down* to the nearest whole dollar.
- For CARS licenses (payment type code TQCN) enter $290.00.
- For Broadcast Auxiliary Service licenses (payment type code MUBN) enter $30.00.

Block (17)—''FCC Code 1'':

- Leave Blank.

Blank (18)—''FCC Code 2'':

- For subscriber fees only (i.e., payment type code TOCN): Provide the *name* of the community unit.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–19049 Filed 8–2–95; 8:45 am]

BILLING CODE 6712–01–M

[1] Number of Subscribers In a Community Unit=Number of single family dwellings+Number of individual households in multiple dwelling units (e.g., apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate+Number of bulk-rate customers+Number of courtesy and free service. (NOTE: Bulk-Rate Customers=total annual bulk rate charge÷basic annual subscription rate for individual households). See also, FCC Form 325 Instructions (page 2).

FY 1995 International Services Regulatory Fees

August 1, 1995.

The Federal Communications Commission issues this Public Notice in order to provide valuable information concerning the payment of regulatory fees in 1995. If you are a licensee in any of the services handled by the International Bureau, you should carefully review this Public Notice.

Who Must Pay Regulatory Fees in 1995

The following regulatees must pay fees in 1995: international public fixed (Part 23) licensees, international (HF) broadcast licensees (Part 73), providers of international bearer circuits, earth station regulatees, and space station regulatees. Governments and nonprofit (exempt under Section 501(c) of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting to its exempt status. Direct broadcast satellite (DBS) licensees are exempt from payment of regulatory fees on an individual subscriber basis; however, licensees of operational geosynchronous orbit space stations utilized for DBS are subject to payment of the space station regulatory fee.

Why the Commission Must Collect Regulatory Fees

The requirement to collect annual regulatory fees from international regulatees was contained in Public Law 103–66, ''The Omnibus Budget Reconciliation Act of 1993.'' These regulatory fees, which are likely to change each fiscal year, are used to offset costs associated with the Commission's enforcement, public service, international and policy and rulemaking activities. These fees are in addition to any application processing fees associated with obtaining a license or other authorization from the Commission.

When Fees Will Be Due

Regulatees must pay the following regulatory fees to the Commission by *September 20, 1995,* in order to avoid a 25% late penalty. For FY95, installment

payments will not be permitted for any service category. All regulatory fees must be paid in full by the September 20, 1995 due date.

Type of fee	Regulatory fee payment	Fee code
International Bearer Circuits	$4.00 per active 64 KB circuit or equivalent.[1].	CICN
International Public Fixed Radio Service	200 per call sign	CFRN
Geosynchronous Orbit Space Stations	75,000 per operational station	CSGN
VSAT and Equivalent C-Band Earth stations	330 per authorization or registration	CAVN
Mobile Satellite Earth Stations	330 per authorization or registration	CARN
Earth Station Antennas: Transmit/Receive or Transmit Only	330 per authorization or registration	CSTN
International (HF) Broadcast Stations	250 per station license	CRIN

[1] Equivalent circuits include the 64 KB circuit equivalent of larger bit stream circuits (e.g., the 64 KB equivalent of a 2.048 MB circuit is 30) and analog circuits such as 3 and 4 KHz circuits used for international services. The number of equivalent 64 KB circuits for analog television channels is given by the following table:

Analog television channel size (MHz)	No. of equivalent 64 KB circuits
36	630
24	288
18	240

Payment Procedures for International Services

International Bearer Circuits

Who Must Pay: Facilities-based common carriers activating international bearer circuits in any transmission facility for the provision of service to an end user or resale carrier. Private submarine cable operators also are to pay fees for international bearer circuits sold on an indefeasible right of use (IRU) basis or leased to any customer other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Government-licensed and nonprofit (exempt under section 501 of the Internal Revenue Code) entities are exempt from paying regulatory fees. Entities claiming exemption based on one of these criteria should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting to its exempt status.

Fee Calculation: $4.00 per active 64 KB circuit or equivalent. Use fee code ''CICN'' on FCC Form 159 when making payment for international bearer circuits.

International Public Fixed Radio Licensees

Who Must Pay: Licensees authorized as common carriers to provide radio communications between the United States and a foreign point via microwave, HF or troposcatter systems (other than satellite earth stations). This does not include service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. Government-licensed and nonprofit (exempt under section 501 of the Internal Revenue Code) licensees are exempt from paying regulatory fees. Licensees claiming exemption based on one of these criteria should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a government authority attesting to its exempt status.

Fee Calculation: $200 per call sign. Use fee code ''CFRN'' on FCC Form 159 when making payment for international public fixed radio service.

International (HF) Broadcast Stations

Who Must Pay: Licensees of international (HF) broadcast stations whose license was granted on or before October 1, 1994. Governments and nonprofit (exempt under section 501 of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting to its exempt status.

Fee Calculation: $250 per call sign. Use fee code ''CRIN'' on FCC Form 159 when making payment for international (HF) broadcast radio service.

Space Stations

Who Must Pay: Entities authorized to operate space stations in geosynchronous orbit[2] in accordance with section 25.120(d). Government-licensed and nonprofit (exempt under section 501 of the Internal Revenue Code) space stations are exempt from paying regulatory fees. Stations claiming exemption based on one of these criteria should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting to its exempt status.

Fee Calculation: $75,000 *per operational station*[3] in geosynchronous orbit. Use fee code ''CSGN'' on FCC Form 159 when making payment for space stations in geosynchronous orbit.

Earth Stations

Who Must Pay:

VSAT and Equivalent C-Band Antennas: Earth station systems comprising very small aperture terminals make up authorized networks operating in the 12 and 14 GHz bands that provide a variety of communications services to other stations in the network. Each system, authorized pursuant to blanket licensing procedures in Part 25 of the Rules, consists of a network of technically-identical small fixed-satellite earth stations which often includes a larger hub station. For FY 1995, entities holding these types of authorizations as of *October 1, 1994,* will be assessed a regulatory fee of $330 per authorization or registration *as well as a separate fee of $330 for each associated Hub Station.*

Mobile Satellite Earth Stations: Under Part 25 of the Rules, mobile satellite service providers operate under blanket licenses for mobile antennas (transceivers), which are smaller than one meter and provide voice or data communications, including position location information, for mobile platforms such as cars, buses or trucks. For FY 1995, entities holding these

[2] Domestic and international satellites, positioned in orbit to remain approximately fixed relative to the earth, authorized to provide communications between satellites and earth stations on a common carrier or private carrier basis in accordance with section 25.120(d). *See* 47 C.F.R. § 25.120(d). Entities authorized to operate these space stations in accordance with section 25.120(d), will be assessed an annual regulatory fee of $75,000 for each operational station in geosynchronous orbit on October 1, 1994.

[3] Stations operating in accordance with section 25.120(d) as of October 1, 1994.

types of authorizations as of *October 1, 1994,* will be assessed a fee of $330 per authorization or registration.

Earth Station Antennas: Transmit/Receive and Transmit Only Antennas: Persons authorized or registered under Part 25 to operate fixed-satellite earth station antennas that are operated by private carriers and common carriers to provide telephone, television, data, and other forms of communication. This category includes antennas used to transmit and receive and transmit-only. Also included in this category are telemetry, tracking and control (TT&C) earth stations. For FY 1995, holders of these types of authorizations as of *October 1, 1994,* will be assessed a fee of $330 per authorization or registration.

Earth Station Antennas: Receive Only Antennas: Receive only earth stations are *exempt* from payment of regulatory fees.

Government-licensed and nonprofit (exempt under section 501 of the Internal Revenue Code) earth station entities are exempt from paying regulatory fees. Stations claiming exemption based on one of these criteria should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting to its exempt status.

In instances in which an earth station's license limits its operational authority to a particular satellite system which is not yet operational, the regulatory fee payment for the *earth station* will not be due until the first satellite of the related system becomes operational pursuant to section 25.120(d) of our rules.

Fee Calculation

$330 per authorization or registration or Hub Station. Use fee code ''CAVN'' on FCC Form 159 when making payment for VSAT and Equivalent C-Band Antennas and associated Hub Stations.

$330 per authorization or registration. Use fee code ''CARN'' on FCC Form 159 when making payment for Mobile Satellite Earth Stations.

$330 per authorization or registration. Use fee code ''CSTN'' on FCC Form 159 when making payment for Transmit/Receive and Transmit Only Earth Station Antennas.

FCC Form 159

Regulatory fee payments *must* be accompanied by FCC Form 159 (''FCC Remittance Advice''). A copy of this form, with specific instructions, is attached to this Public Notice. Please see ''Special Instructions for Completing FCC Forms 159 & 159–C'' for detailed information on how to correctly complete these Forms.

Where To Send Regulatory Fee Payments

If sending your regulatory fee payment by *mail,* please address your envelope as follows: Federal Communications Commission, Regulatory Fees, P.O. Box 358835, Pittsburgh, PA 15251–5835.

If you prefer to send your regulatory fee payment by *courier* to our lockbox bank, you may do so 24 hours per day (except bank holidays). Please address your envelope and deliver it to the following address: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153–2713, Pittsburgh, PA 15259–0001, (Attention: FCC Module Supervisor).

Method of Payment

Regulatory fee payments may be made by check, money order, or by credit card (Visa or Mastercard only). When paying by credit card, please make sure you sign the appropriate block of Form 159. Payments may also be made by wire transfer or by electronic funds transfer (EFT). Instructions for wire transfer payment are provided below.

Note: We encourage arrangements to consolidate regulatory fee payments either by a single entity or by different entities into a single payment instrument. Consolidated fee payments may cover several different service categories. Multiple fee payments may be made with one check, money order, credit card or electronic payment. Payors who will be making a single payment for a significant number of entities and wish to submit automated data submissions in lieu of a large number of FCC Forms 159–C (''Advice Continuation Sheets'') may do so. There is no limit to the number of payment items.

Wire Transfer Payment Instructions

A wire transfer is a transaction that you initiate via your bank. It authorizes your bank to wire funds from your account to our lockbox bank, the Mellon Bank in Pittsburgh, PA. All payments made by wire transfer must be supported by a completed FCC Remittance Advice (FCC Form 159) and Advice Continuation Sheet (FCC Form 159–C), if required. The Form 159 must be faxed to Mellon Bank at (412) 236–5702 at least one hour before the wire transfer on the same business day. Indicate on the top of the FCC Form 159 ''Wire Transfer—Regulatory Fee Payment.'' In the ''Reserve Box'' located at the upper left hand corner indicate ''358835.'' Failure to submit the completed Form 159 will result in a delay in crediting your account. Due to Federal Reserve regulations, wire transfers received after 6:00 p.m. (EST) will be credited the next business day.

The following information should be provided to your bank in order to complete the wire transfer:

ABA Routing Number 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/ACV—9116106
OBI Field: (Skip one space between each information item)
- ''REGULATORYPAY''
- FCC ACCOUNT NO. (Exactly as on Form 159, Block #1)
- PAYOR NAME (Exactly as on Form 159, Block #3)
- Phone: (Daytime Phone #, exactly as on Form 159 Block #9)

Compliance

International regulatees are solely responsible for accurately accounting for all satellites, systems, and authorizations and for paying the proper regulatory fees. Any omission or payment deficiency can result in a 25% monetary penalty, dismissal of pending actions, and/or revocation of any authorization. Additionally, the Commission intends to invoke its authority under the Debt Collection Act against any regulatee failing to meet its regulatory fee payment obligations.

Note: The Commission has identified several entities which have not paid the required fee for FY 1994 and has begun taking appropriate steps to secure collection of these fees and penalties due. You are strongly urged to submit your payments on time and accurately in order to avoid a penalty.

Waivers, Reductions and Deferments of Regulatory Fees

The Commission will consider requests for waivers, reductions or deferments of regulatory fees, *in extraordinary and compelling circumstances only,* upon a showing that such action overrides the public interest in reimbursing the Commission for its regulatory costs. Timely submission of the appropriate regulatory fee must accompany requests for waivers or reductions. This will ensure efficient collection in situations where a waiver or reduction is not warranted and will allow the requestor to avoid a 25% late-payment penalty if its request is denied. The regulatory fee would be refunded later if the request is granted. Only in exceptional or compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in the reduction of service to a community or other financial hardship to the regulatee

or licensee), will the Commission accept a petition to defer payment along with a waiver or reduction request. All requests for deferments must be filed before *September 20, 1995,* in order to avoid the 25% late-payment penalty.

Additional Information

The Commission has prepared a number of informative Fee Filing Guides for information on *application* fees for international services, and for information on *application* and *regulatory* fees for the common carrier, mass media, international, engineering and technology, compliance and information, and wireless radio services. These Guides, other Public Notices, and Forms 159 and 159–C are available from the Commission's Public Service Division and can be downloaded from the Internet (ftp@fcc.gov). Forms may also be obtained by contacting the Forms Hotline at (800) 418–3676 outside the Washington, DC area, or (202) 418–3676 locally. For additional information, please contact the Fees Hotline at (202) 418–0192, or write to: Federal Communications Commission, ATTN: Public Service Division, 1919 M Street, NW., Washington, DC 20554.

Special Instructions for Completing FCC Forms 159 & 159–C

FCC Form 159 (''FCC Remittance Advice'') and, as necessary, FCC Form 159–C (''Advice Continuation Sheet'') must accompany all regulatory fee payments. Form 159 allows payors to report information on one or more payment items (e.g., satellites, earth stations, or any combination). Use Form 159–C to report additional payment items (when using Form 159–C, please indicate the page number in the appropriate space on the Form).

An FCC Form 159 and a 159–C have been attached to this Public Notice for you to complete and remit with your payment. You may make additional copies of the forms as required. In addition to the instructions for Form 159 (which are on the reverse side of the Form), the following information applies specifically to international payors:

Block (12)—''FCC Call Sign/Other ID'':

- Geostationary space station licensees should leave this block blank.
- International bearer circuit regulatees should leave this block blank.
- Earth station licensees should enter their *call sign.*
- International public fixed radio licensees should enter their *call sign.*
- International (HF) broadcast stations should enter their *call sign*

Block (14)—''Payment Type Codes'':

CSGN: Use this code when making a regulatory fee payment for a geostationary satellite space station.

CAVN: Use this code when making a regulatory fee payment for a VSAT or equivalent C–band earth station.

CARN: Use this code when making a regulatory fee payment for a mobile satellite earth station.

CSTN: Use this code when making a regulatory fee payment for fixed-satellite transmit/receive *or* transmit only earth station.

CICN: Use this code when making a regulatory fee payment for a 64 KB or equivalent international bearer circuit.

CFRN: Use this code when making a regulatory fee payment for an *international* public fixed radio license.

CRIN: Use this code when making a regulatory fee payment for an *international* (HF) broadcast station license.

Block (15)—''Quantity'':

- Space station licensees (i.e., geosynchronous satellites or low-earth orbiting satellite systems) should enter ''1'' in this book.
- Fixed-satellite earth station licensees should enter the number of authorizations or registrations.
- All other earth station licensees (e.g., VSATs, mobile satellites and fixed-satellite antennas) should enter the number of authorizations or registrations.
- Entities paying for international bearer circuits should enter the number of 64 KB or equivalent circuits.
- All public fixed licensees should enter ''1''.
- All public international (HF) broadcast station licensees should enter ''1''.

Block (16)—''Amount Due'':

- For geostationary satellite space station regulatory fees (payment type code CSGN), enter $75,000.
- For international bearer circuit payors (payment type code CICN), multiply the amount from Block 15 (''Quantity'') by $4.00.
- For *international* public fixed radio licensees (payment type code CFRN), enter $200.
- For *international* (HF) broadcast stations licensees (payment type code CRIN), enter $250.
- For earth station authorizations or registrations (payment type codes CARN, CAVN and CSTN), enter $330.

Block (17)—''FCC Code 1'':

- Leave this block blank.

Block (18)—''FCC Code 2'':

- For geosynchronous space station satellites *ONLY*. Enter the *satellite name.*
- For international bearer circuit payors, enter the *company name.*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–19050 Filed 8–2–95; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 2088]

Application for Review of Action in Rulemaking Proceeding

August 1, 1995.

Application for review have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed by August 18, 1995. Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Deferral of Licensing of MTA Commercial Broadband PCS. (GN Docket No. 93–253 and ET Docket No. 92–100).

Number of Petition Filed: 1.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 95–19139 Filed 8–2–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–007680–088.

Title: American West Africa Freight Conference.

Parties: Atlantic Bulk Carriers Limited, Delmas AAEL, Inc., Farrell Lines, Inc., Maersk Line, Societe Ivoirienne De Transport Maritime, Sitram, Torm West Africa Line, Wilhelmsen Lines A/S.

Synopsis: The proposed amendment restates and updates the geographic scope of the Agreement, makes conforming changes to the language of various provisions, deletes Societe Ivoirienne de Transport as a member effective July 31, 1995, and makes other non-substantive changes to the Agreement.

Agreement No.: 202–011456–008.

Title: South Europe American Conference.

Parties: Cast Logistics (USA) Limited, Cho Yang Shipping Co., Ltd., Compagnie Maritime d'Affretement, DSR Senator Lines GmbH, Evergreen Marine Corporation (Taiwan) Ltd., ''Italia'' di Navigazione, S.p.A., Lykes Bros. Steamship Co., Ltd., A.P. Moller Maersk Line, Nedlloyd Lijnen B.V., P&O Containers Limited, Sea-Land Service, Inc., Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment revises Article 8.6—Telephone or Telex Polls to provide that any Member which fails to respond to a telephone or telex poll pertaining to a rate item by the close of the third business day shall be recorded as abstaining from voting on the matter.

Agreement No.: 203–011508.

Title: Mediterranean Discussion Agreement.

Parties. Conship Container Lines Limited, Italia di Navigazione, S.p.A., Transportation Maritime Mexicana, S.A., Tecomar S.A. de C.V.

Synopsis: The proposed Agreement permits the parties to discuss and agree upon charges, conditions, rules and regulations, tariffs, rates, service items, service contracts , and other matter of mutual concern in the trade between U.S. Atlantic and Gulf Coasts ports and points and ports bordering on the Mediterranean Sea, the Black Sea, and the Sea of Marmara and points in Europe and Morocco via such ports. Adherence to any agreement reached is voluntary.

Agreement No.: 232–011509.

Title: Slot Exchange and Rationalization Agreement between A.P. Moller-Maersk Line and Sea-Land Service, Inc., P&O Containers Limited, and Nedlloyd Lijnen, BV.

Parties: A.P. Moller-Maersk Line. VSA Party—Agreement No. 203–011171, Sea-Land Service, Inc., P&O Containers Limited, Nedlloyd Lijnen, BV.

Synopsis: The proposed Agreement permits the parties to cross charter, exchange, or charter slots on their vessels and to rationalize sailings in the trade between U.S. Atlantic and Gulf Coast ports and points and ports and points in Europe.

By Order of the Federal Maritime Commission.

Dated: July 28, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–19079 Filed 8–2–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Cardinal Bancshares, Lexington, Kentucky; Notice to Engage in Certain Nonbanking Activities.

Cardinal Bancshares, Lexington, Kentucky (Applicant), has given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.23 of the Board's Regulation Y (12 CFR 225.23), to engage through its thrift subsidiary, Security First Network Bank, FSB, Pineville, Kentucky (SFNB), in certain nonbanking activities related to the provision of electronic banking services over the non-proprietary computer network known as the ''Internet.'' SFNB has received approval from the Office of Thrift Supervision to provide certain electronic banking services to its customers over the Internet, including deposit and bill-paying services.

Applicant proposes to acquire WebTech, Inc., Atlanta, Georgia (WebTech), and thereby market, design, develop, and provide ongoing technical support of data processing software for the electronic transmission of financial, banking, and economic data for financial institutions seeking to provide banking services to their customers over the Internet, pursuant to section 225.25(b)(7) of Regulation Y (12 CFR 225.25(b)(7)). Applicant seeks approval to conduct the proposed activities nationwide.

SFNB will acquire WebTech which will provide data processing and security software to financial institutions seeking to provide banking services to their customers over the Internet. Applicant indicates that this software is designed to enable electronic transmission of banking, financial, and economic data in a secure environment over the Internet. WebTech also will provide financial institutions ongoing technical support related to its software, customization and installation services, and data center operations. Moreover, WebTech expects to develop additional data processing services that will allow customers to provide secure access to accounts across other channels, such as through modems across public telephone lines.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity ''which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto.'' 12 U.S.C. 1843(c)(8). In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the notice, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

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, D.C. 20551, not later than August 18, 1995. Any request for a hearing on this proposal must, as required by section 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. The notice may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland.

Board of Governors of the Federal Reserve System, July 28, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–19101 Filed 8–2–95; 8:45 am]

BILLING CODE 6210–01–F

JDOB, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking

activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. JDOB, Inc., Sandstone, Minnesota; to engage *de novo* in making loans for its own account, purchasing overlines from its subsidiary bank, investing in loans originated by third parties pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. New York Mills Bancshares, Inc., New York Mills, Minnesota; to engage *de novo* in lending activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout the State of Minnesota.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Coronado, Inc., Sterling, Kansas; to engage *de novo* through its subsidiary, Farmers State Agency, Inc., Sterling, Kansas; in acting as a full service securities broker, pursuant to § 225.25(b)(15)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 28, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–19102 Filed 8–2–95; 8:45 am]

BILLING CODE 6210–01–F

NBD Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

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 to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 28, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. NBD Bancorp, Inc., Detroit, Michigan; to acquire 100 percent of the voting shares of NBD Bank, Venice, Florida.

Board of Governors of the Federal Reserve System, July 28, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–19103 Filed 8–2–95; 8:45 am]

BILLING CODE 6210–01–F

Shawmut National Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Shawmut National Corporation, Hartford, Connecticut and Boston, Massachusetts; to acquire Interpay, Inc., Mansfield, Massachusetts, and thereby engage in payroll processing services and related data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 28, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–19104 Filed 8–2–95; 8:45 am]

BILLING CODE 6210–01–F

Notice of Public Meeting

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of Meeting

SUMMARY: The Federal Reserve Board is announcing a series of public meeting in connection with the application of Fleet Financial Group Inc., Providence, Rhode Island, to acquire Shawmut National Corporation, Boston, Massachusetts, and Hartford, Connecticut, pursuant to sections 3 and 4 of the Bank Holding Company Act of 1956.

FOR FURTHER INFORMATION CONTACT: Diane A. Koonjy, Senior Attorney, Legal Division (202-452-3274), or Patricia A. Robinson, Attorney, Legal Division (202-452-3005), or Kathleen Conley, Review Examiner, Division of Consumer and Community Affairs (202-452-2389), Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorthea Thompson (202-452-3344), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Background and Public Meeting Notice

On July 7, 1995, Fleet Financial Group, Inc., Providence, Rhode Island (Fleet), applied pursuant to sections 3 and 4 of the Bank Holding Company Act (12 U.S.C. §§ 1842, 1843)(BHC Act) to acquire Shawmut National Corporation, Boston, Massachusetts, and Hartford, Connecticut (Shawmut), and thereby acquire the banking and nonbanking subsidiaries of Shawmut. Under authority delegated by the Board of Governors of the Federal Reserve System (Board) in section 265.6(a)(2) of the Board's Rules, the General Counsel of the Board hereby orders that public meetings on the applications be held in Boston, Massachusetts; Hartford, Connecticut, and Albany, New York, beginning August 26, 1995, to collect information on the convenience and needs of the communities to be served by this proposal, including the records of performance of these institutions under the Community Reinvestment Act (CRA).

The public meetings well be held at the following locations:

Boston-Saturday, August 26, 1995, at the Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, Massachusetts 02106. The meeting will begin at 9:00 a.m.

Hartford-Monday, August 28, at the Wild Auditorium, Gray Conference Center, University of Hartford, 200 Bloomfield Avenue, West Hartford, Connecticut 06117. The meeting will begin at 12:00 noon, E.D.T.

Albany-Tuesday, August 29, at the New York State Museum, Museum Theater, West Gallery, Cultural Education Center, Empire State Plaza, Madison Avenue, Albany, New York 12230. The meeting will begin at 12:00 noon, E.D.T.

To accommodate interested persons, the public meetings in Hartford, Connecticut, and Albany, New York, will include evening hours scheduled for testimony.

Purpose and Procedures

The purpose of the public meetings is to receive information regarding the convenience and needs of the communities to be served by this proposal, including the records of performance of Fleet and Shawmut under the CRA. The CRA requires the appropriate federal financial supervisory agency to ''assess [an] institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of [the] institution.'' 12 U.S.C. § 2903. The Board, as a federal financial supervisory agency, is required to take this record into account in its evaluation of an application under section 3 of the BHC Act.

The public meetings are convened under the Board's policy statement regarding informal meetings in section 262.25(d) of the Board's Rules (12 C.F.R. 225.25(d)). This policy statement provides that the purpose of a public meeting is to elicit information, to clarify factual issues related to an application, and to provide testimony. In contrast to a formal administrative hearing, the rules for taking evidence in an administrative proceeding will not apply to these public meetings. Testimony at the public meetings will be presented to a panel consisting of a Presiding Officer, Griffith L. Garwood, Director of the Board's Division of Consumer and Community Affairs, or his designee, and other panel members appointed by the Presiding Officer. These panel members may question witnesses, but no cross-examination of witnesses will be permitted.

In conducting each public meeting, the Presiding Officer will have the authority and discretion to ensure that the meeting proceeds in a fair and orderly manner. The public meetings will be transcribed and information regarding procedures for obtaining a copy of the transcripts will be announced at the public meetings.

All persons wishing to testify at the public meetings should submit a written request to William W. Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 (facsimile: 202-452-3819), not later than August 16, 1995, providing the following information:

(i) identification of which meeting they wish to attend,

(ii) a brief statement of the nature of the expected testimony and the estimated time required for the presentation,

(iii) address and telephone number (and facsimile number, if available), and

(iv) identification of any special needs, such as persons desiring translation services, persons with a physical disability who may need assistance, or persons using visual aids for their presentation. To the extent available, translators will be provided to persons wishing to present their views in a language other than English if they include this information in their request to testify.

Persons interested only in attending a meeting do not need to submit a written request to attend.

On the basis of the requests received, the Presiding Officer will prepare a schedule for persons wishing to testify. Persons not listed on the schedule may be permitted to speak at the public meetings at the discretion of the Presiding Officer if time permits at the conclusion of the schedule of witnesses. Copies of testimony may, but need not, be filed with the Presiding Officer before a person's presentation.

By order of the General Counsel of the Board of Governors, acting pursuant to authority delegated by the Board of Governors, effective, July 27, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19105 Filed 8–2–95; 8:45am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Administrative Litigation Following the Denial of a Preliminary Injunction: Policy Statement

AGENCY: Federal Trade Commission.

ACTION: Policy statement, and accompanying Commission statement, with request for public comment.

SUMMARY: The Federal Trade Commission has adopted policies explaining how, after a court had denied preliminary injunctive relief to the Commission, the Commission decides whether administrative litigation should be commenced or, if it has already been commenced, should be continued. While the policies are already in effect, the Commission will receive comment for thirty days, and will thereafter take

such further action as may be appropriate.

DATES: The policy statement was effective on June 21, 1995. Comments will be received until September 5, 1995.

ADDRESSES: Comments should be sent to the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580. Comments will be entered on the public record of the Commission and will be available for public inspection in Room 130 during the hours of 9 a.m. until 5 p.m.

FOR FURTHER INFORMATION CONTACT: William Baer, Director, Bureau of Competition, (202) 326–2932, or Ernest Nagata, Deputy Assistant Director for Policy and Evaluation, Bureau of Competition, (202) 326–2714.

SUPPLEMENTARY INFORMATION: 1. On June 21, 1995, the Commission issued the following statement to accompany its policy statement:

Commission Statement to Accompany Statement of Federal Trade Commission Policy Regarding Administrative Merger Litigation Following the Denial of a Preliminary Injunction

Introduction

The Federal Trade Commission is charged with ensuring that U.S. consumers are protected from higher prices, lower quality, and lessened innovation that could result from anticompetitive mergers.[1] Historically, the Commission has resolved merger cases through administrative trials or consent orders. In recent times, most of the Commission's antitrust complaints have been settled through administrative consent orders.[2] For those relatively few merger cases in which the Commission has litigated, the Commission's usual practice in recent years has been first to seek a preliminary injunction in federal district court to prevent the consummation of the proposed transaction.[3] The Commission has won most of its challenges at the federal district court level.[4]

There have been five instances in the last ten years in which a federal district court has refused to grant a preliminary injunction sought by the Commission, and the Commission then proceeded with a challenge to the merger in administrative litigation.[5] In such circumstances, the determination to continue a merger challenge in administrative litigation is not, and cannot be, either automatic or indiscriminate. In any given case, the evidence, arguments, and/or opinion from the preliminary injunction hearing may, or may not, suggest that further proceedings would be in the public interest. The Commission's guiding principle is that the determination whether to proceed in administrative litigation following the denial of a preliminary injunction and the exhaustion or expiration of all avenues of appeal must be made on a case-by-case basis.

The Commission is issuing the attached Statement to clarify the process it follows in deciding whether to pursue administrative litigation following denial of a preliminary injunction. The Statement also notes that, if necessary, the Commission will adopt certain procedures to ensure parties to a transaction the opportunity to have their views heard by the Commission before it makes its determination.

In order to place these issues in context, this Statement begins by addressing the value of administrative litigation and why a preliminary injunction proceeding, regardless of its outcome, may not in and of itself provide a sufficient basis for the resolution of complex merger litigation.

The Value of Administrative Litigation

The Federal Trade Commission was created in part because Congress believed that a special administrative agency would serve the public interest by helping to resolve complex antitrust questions. Congress intended that the Commission would play a ''leading role in enforcing the Clayton Act, which was passed at the same time as the statute creating the Commission.''[6] It was expected that an administrative agency was especially suited to resolving difficult antitrust questions, and that the FTC should be the principal fact finder in the process: it is ''within the Commission's primary responsibility'' to draw inferences of competitive consequences from the underlying facts.[7]

The Commission has fulfilled that special role in a number of important merger cases.[8] Administrative cases provide valuable guidance on how the Commission applies the relevant legal standards and analytical principles as they evolve over time. Application of these standards and principles to concrete factual situations, developed in a full record, can provide insight into why certain mergers are likely to harm competition and result in consumer injury, and why others may not. Especially because the Supreme Court has addressed substantive issues of merger law only rarely in recent decades,[9] and because antitrust law during that time has evolved in response to economic learning, the Commission's opinions have been an important vehicle to provide guidance to the business community on how to analyze complex merger issues.

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[1] As used herein, the term ''merger'' includes mergers, acquisitions, joint ventures, and equivalent transactions.

[2] For FY 1990 through FY 1994, the Commission resolved complaints through administrative consent orders, without authorizing either federal court or administrative litigation, in 67% of the merger enforcement actions that the Commission authorized.

[3] For FY 1990 through FY 1994, the Commission authorized preliminary injunction actions in 29% of the merger enforcement actions that it authorized; in 4% of its merger enforcement actions, the Commission authorized administrative trials without first proceeding to federal court for a preliminary injunction.

[4] During the five-year period covered by fiscal years 1990–1994, five out of seven of the Commission's motions for a preliminary injunction were granted. In one case, *FTC v. University Health, Inc.*, 938 F.2d 1206 (11th Cir. 1991), the district court's denial of a preliminary injunction was reversed on appeal. For fiscal years 1985–1989, the Commission was successful in six out of nine motions for a preliminary injunction.

[5] *R.R. Donnelley & Sons*, Dkt. 9243, is currently before the Commission on respondents' appeal from the Initial Decision of the administrative law judge. In *Owens-Illinois, Inc.*, Dkt. No. 9212, the Administrative Law Judge (''ALJ'') found liability but the Commission reversed. 1987–1993 Transfer Binder (CCH) ¶ 22,731 (Sept. 11, 1989) (Initial Decision), *rev.d*, 1987–1993 Transfer Binder (CCH) ¶ 23,162 (Feb. 26, 1992). In *Promodes, S.A.*, Dkt. No. 9928, the administrative complaint was settled. 113 F.T.C. 372 (1990). In *Occidental Petroleum Co.*, Dkt. No. 9205, both the ALJ and the Commission found liability. 1987–1993 Transfer Binder (CCH) ¶ 22,603 (Sept. 30, 1988) (Initial Decision), *aff'd*, 5 Trade Reg. Rep. (CCH) ¶ 23,370 (Dec. 22, 1992), *appeal dismissed pursuant to stipulation and modified order*, 5 Trade Reg. Rep. (CCH) ¶ 23,531 (Jan. 14, 1994). In a fifth case, *Lee Memorial Hospital*, Dkt. No. 9265, the administrative proceeding, which was filed prior to the district court's denial of a preliminary injunction, has been stayed pending appeal.

[6] *Hospital Corp. of America* v. *FTC*, 807 F. 2d 1381, 1386 (7th Cir. 1986), *cert. denied*, 481 U.S. 1038 (1987) (''*HCA*'').

[7] *HCA*, 807 F. 2d at 1386.

[8] For example, the Commission's decision in *Occidental Petroleum* provided important guidance on supply side substitution and coordinated interactions in merger analysis. The Commission's decision in *HCA* explained how coordination could occur in an industry with differentiated and non-homogeneous products. Judge Posner, writing for the Seventh Circuit affirming that decision, called it a ''model of lucidity.'' 807 F. 2d at 1385. The Commission's decision in *American Medical International, Inc.*, 104 F.T.C. 1 (1984) examined in detail the dimensions of price and non-price competition in the hospital industry and discussed efficiencies considerations in analyzing a merger.

[9] The Supreme Court's last opinion on substantive merger law was *United States* v. *General Dynamics Corp.*, 415 U.S. 486 (1974).

Why A Preliminary Injunction Proceeding May Not Be A Sufficient Substitute for Administrative Litigation

If the same value could be achieved through a preliminary injunction proceeding as through administrative litigation, then there would be no reason for the Commission ever to proceed past the preliminary injunction phase. The differences between the two types of proceedings, however, mean that one does not equate with the other.

A preliminary injunction hearing has a limited purpose: to determine whether to enjoin the consummation of a proposed transaction pending a full adjudication on the merits. Thus, the district overseeing a preliminary injunction hearing is not charged with making a final ruling on whether the acquisition in unlawful.

Indeed, there may be an inadequate basis for doing so. Because a preliminary injunction proceeding has a limited purpose, the evidentiary record produced is often limited in scope. A court may not hear any witnesses, but instead may rule solely on the basis of the papers filed by the parties. A preliminary injunction proceeding is generally much shorter in duration than a full trial, and, because of its expedited nature, the thoroughness of the evidentiary presentation and analysis may be less than would be expected in a full trial. Since merger analysis can be a highly complex, fact-intensive undertaking, it may be particularly ill-suited for final resolution on the merits in the abbreviated forum of a preliminary injunction proceeding.

Some commentators have suggested that because the Department of Justice lacks the ability to challenge mergers in the administrative process, the Commission's litigation should be confined to the federal courts in order to bring the two agency's enforcement powers in line with one another. The problem with such an approach is that the significant benefits of administrative litigation outlined above would be lost in such a change in enforcement policy. The business community would be denied the guidance provided by merger decisions based on a complete analysis of a full evidentiary record, and Congress' vision of the FTC's central role in merger enforcement would be subverted.

Nonetheless, the Commission recognizes that automatic pursuit of administrative litigation following denial of a preliminary injunction is not required to serve the public interest. The attached Statement of Policy is intended to clarify the process the Commission follows in determining whether to pursue administrative litigation following denial of a preliminary injunction.

2. On June 21, 1995, the Commission issued the following policy statement:

Statement of Federal Trade Commission Policy Regarding Administrative Merger Litigation Following the Denial of a Preliminary Injunction

The Commission will assess on a case-by-case basis whether to pursue administrative litigation following the denial of a preliminary injunction.[1] If necessary, the Commission will amend its Rules of Practice[2] in order to facilitate the reconsideration of the public interest in continuing with an administrative case when an administrative complaint has already issued.

As discussed in the Commission Statement to Accompany Statement of Policy Regarding Administrative Merger Litigation Following the Denial of a Preliminary Injunction, the Commission believes that it would not be in the public interest to forego an administrative trial solely because a preliminary injunction has been denied. Nor would it be in the public interest to require an administrative trial in every case in which a preliminary injunction has been denied. Thus, a case-by-case determination is appropriate. This approach gives the Commission the opportunity to assess such matters as (i) the factual findings and legal conclusions of the district court or any appellate court, (ii) any new evidence developed during the course of the preliminary injunction proceeding, (iii) whether the transaction raises important issues of fact, law, or merger policy that need resolution in administrative litigation, (iv) an overall assessment of the costs and benefits of further proceedings, and (v) any other matter that bears on whether it would be in the public interest to proceed with the merger challenge.

If necessary, the Commission will amend Part 3 of the Commission's Rules of Practice to expedite its review of the issues and determination immediately following the denial of a preliminary injuction and the exhaustion or expiration of all avenues of appeal. The issuance of an administrative complaint during the pendency of a preliminary injunction proceeding will affect only the nature of the procedures under which such considerations will be reviewed, not whether they will be reviewed.

If an administrative complaint has not been issued by the time of the district court's ruling on a preliminary injunction and the exhaustion or expiration of all avenues of appeal, the Commission's consideration of whether to issue an administrative complaint will be conducted under its normal procedures for non-adjudicatory matters. If an administrative complaint has already been issued, the Commission will make its determination within the procedural framework for adjudicatory proceedings under Part 3 of the Commission's Rules of Practice.

The policy articulated in this Statement is applicable to any current and future merger enforcement actions initiated by the Commission under Section 13(b) of the Federal Trade Commission Act. The Commission intends, however, to issue within thirty days a Federal Register notice soliciting public comment on the Commission's policy and, if necessary, setting forth any conforming amendments to Part 3 of its Rules of Practice.

3. The Commission has determined to adopt a new rule, 16 CFR § 3.26, to facilitate review of the public interest in continuing an adjudicative proceeding when, after the adjudicative proceeding has begun, a court denies preliminary injunctive relief in a section 13(b) case brought in aid of the adjudication. Under rule 3.26, which is published elsewhere in this issue, respondents can choose to have such review conducted either within the framework for adjudicative proceedings, or following withdrawal of the administrative case from adjudication.

Also, as noted in footnote 1 of the June 21 policy statement, the principles applicable to administrative merger litigation would apply in the context of non-merger competitive litigation. They are also applicable in the context of consumer protection litigation.

By direction of the Commission, Commissioner Azcuenaga concurring in part and dissenting in part.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga Concerning FTC'S Adoption of Rule 3.26 Respecting Administrative Litigation Following Denial of a Preliminary Injunction

On June 26, 1995, the Commission issued a Statement of Policy Regarding Administrative Merger Litigation Following the Denial of a Preliminary Injunction and an accompanying

[1] Although the focus of this policy statement is merger litigation, similar principles would apply following the denial of a preliminary injunction in the context of non-merger competition litigation.

[2] 16 CFR 3.1 *et seq.*

explanation.[1] These documents reaffirm the Commission's longstanding policy, consistent with Section 5 of the FTC Act, 15 U.S.C. § 45(b), of reconsidering whether to pursue administrative litigation following the denial of preliminary relief by the courts. Section 5 requires that the Commission premise issuance of an adjudicative complaint on finding reason to believe that the law has been violated and that enforcement would be in the public interest. This obligation continues implicitly throughout the proceeding, requiring the Commission to take all reasonable steps to assure itself that an enforcement action, once begun, remains in the public interest. I joined in that Statement.

The Commission now adopts new Rule 3.26 to govern how the agency will proceed if a court denies a requested preliminary injunction pending completion of an administrative adjudication.[2] A central feature of the new rule is that following the court's action, the respondents may choose to have the administrative matter removed from adjudication to permit the parties to discuss with the Commission privately, off the record and ''without the constraints of adjudicative rules,''[3] the public interest in continuing the adjudication in light of the court's action.[4] Strictly speaking, no revision of the Rules is necessary because existing provisions of the Rules of Practice are sufficient to permit the Commission to address any effect the court's action may have on the public interest in continuing the adjudication.[5] Nevertheless, I have no objection to adopting a new rule to provide specific procedures for reconsidering an administrative adjudication following denial of a preliminary injunction. My difference of opinion is this: I believe that a rule adopted to address this situation should provide that the matter be left in adjudication for any reconsideration by the Commission and that any communication between the parties and the Commission take place on the record.[6]

The Commission opines that complaint counsel will be more candid off the record because they ''will be able to discuss the case without concern that their statements might compromise their litigation position if the case is returned to adjudication.''[7] It also suggests that the *ex parte* procedure will confer similar benefits on ''respondents (and even third parties).''[8] It is unclear to me why all this candor cannot and should not take place on the public record.

Traditionally, the Commission acts as a prosecutor up to and including its decision to issue an administrative complaint. As soon as the vote to issue an administrative complaint is complete, the Commission assumes a judicial role with respect to that case, which then is said to be ''in adjudication.''[9] It should go without saying that the Commission must not allow its prosecutorial role to intrude in any respect in carrying out its deliberative role in an administrative adjudication. Removing a matter from adjudication to chat off the record suggests that there is something that the Commission would prefer that the world not know. It also suggests an unease on the part of the Commission in carrying out its judicial function and an unseemly reluctance to relinquish its prosecutorial role. Although the automatic withdrawal provision may not disadvantage the respondent in any given proceeding, it may well undermine public confidence in the integrity of the Commission's adjudicative process.

Let us consider three scenarios following a court's denial of a preliminary injunction: First, complaint counsel have a strong case, notwithstanding the court's denial of a preliminary injunction. If this is so, complaint counsel can explain why on the record. After the case has been withdrawn from adjudication and reconsidered, presumably the Commission will return the case to adjudicative status. Even if the respondents initiated withdrawing the matter from adjudication, the procedure, in-and-out-and-in adjudication, may create a perception that complaint counsel, speaking off the record, had an unfair advantage. The respondents may believe that had they only known what the staff was saying to the Commission behind closed doors while the case was withdrawn from adjudication, they could have defended more effectively and won a dismissal. After all, the court gave the first round to the respondents on the record.

A second scenario is that the case is weak, and complaint counsel's arguments in support of the complaint are correspondingly weak. The Commission suggests in its **Federal Register** notice that if discussion is held on the record, complaint counsel will be inhibited from pointing to weaknesses in the case for fear that if the Commission disagrees and requires the adjudication to go forward, complaint counsel will be disadvantaged by having conceded the weaknesses of the case on the record. An underlying assumption here is that any weaknesses in the case will remain undiscovered (by the courts, by the respondent and by the administrative law judge), as long as complaint counsel can confide in the Commission off the record. Perhaps more serious, the assumption suggests an abiding lack of confidence in the administrative system of adjudication and the Commission's place in it. Complaint counsel will not be able to avoid the weakness of the case by confiding that fact in secret to the Commission. At most, they might conceal the weakness for a time, a result that ultimately would be wasteful of both government and private resources. Regardless of when during an adjudicative proceeding complaint counsel or the Commission itself discovers a possible weakness in the case, the Commission should base its decision whether to continue the proceeding on publicly available information.

The new rule may lend itself to a public perception that the staff of the Commission has an advantage over targets of enforcement actions because the staff has the secret ear of the Commission. If the staff is permitted secret access to the Commission, a decision to continue an adjudication, particularly one that, based on publicly available information, appears weak, likely would suggest that complaint counsel were able to persuade the Commission to proceed only by ''hiding the ball'' from the respondents. Such a message hardly is consistent with fairness to the respondent or with the

[1] These materials appear again in this volume of the **Federal Register.**

[2] *See* 15 U.S.C. § 53(b).

[3] Notice of Final Rule with Request for Public Comment, 60 Fed. Reg._____, Slip Notice at 2–3.

[4] I do not oppose the alternative procedure included in the new rule, which expressly authorizes a motion by any respondent to dismiss the complaint in the public interest. Although the alternative procedure is redundant in light of existing Rules 3.22 and 3.23, 16 CFR §§ 3.22 and 3.23 (1995), I do not find it objectionable because the arguments would be presented on the record unless the Commission directs otherwise.

[5] *See, e.g.,* Rule 3.22 governing adjudicative motions and Rule 3.23 governing interlocutory appeals. The Commission also, of course, may act *sua sponte* to seek briefing from the parties or to dismiss the complaint.

[6] Confidential communications between the Commission and its staff before a matter enters adjudication and when the Commission is still carrying out its prosecutorial responsibility make sense. In our system of law, investigational and prosecutorial decisions are protected from public scrutiny. *See* 5 U.S.C. § 552(b)(5). Such confidential communications after the prosecutorial function has concluded with the issuance of a complaint, however, raise issues concerning the exercise by the Commission of its quasi-judicial function.

[7] 60 Fed. Reg. _____, Slip Notice at 4.

[8] *Id.*

[9] At this point, all further communications between the parties (complaint counsel and the respondent(s) are on the record with certain specified exemptions. Rule 4.7, 16 CFR § 4.7.

role of the Commission as an unbiased decisionmaker.[10]

A third scenario is that the case is weak, respondents move to withdraw the matter from adjudication, and complaint counsel file nothing in support of the complaint.[11] In such an instance, the Commission may agree with the respondents and dismiss the adjudication, or it may disagree and order that the proceeding continue. There seems no good reason not to have this occur on the public record. Again, private discussions between the Commission and its staff can create a public perception of unfairness to the respondents arising from apparent complicity between the prosecuting attorneys and the purportedly impartial adjudicators—the very danger the separation of functions requirements of the Administrative Procedure Act and the Commission's *ex parte* rule are designed to avoid.[12]

In addition to undermining the separation of functions at the Commission, the new rule limits the Commission's discretion to decide when individual cases should be in adjudication and remain on the public record. The exercise of discretion in an adjudicative matter is a responsibility of the Commission, not an occasion for apology. This responsibility, which must be carried out consistent with the law and with fundamental fairness, should not be ceded without a reason for doing so. Here, I see none. Both the policy to maintain the separation of deliberative and prosecutorial functions and the appearance of having done so are enhanced when the Commission retains its discretion to determine the appropriate disposition of a motion to withdraw from adjudication. The shifting of a portion of that discretion in favor of the respondents may appear open-minded, but, in the long term, it will disserve the Commission and the public interest.

On balance, the Commission and the public would be better served if the Commission retained its discretion to decide which, if any, cases should be withdrawn from adjudication following denial of a preliminary injunction. The new rule is likely to undermine the integrity of the Commission and its adjudicative process by breaking down the wall between the Commission's prosecutorial and adjudicatory roles in a manner inconsistent with the separation of functions requirement of the Administrative Procedure Act and its own *ex parte* rule.

I dissent.

[FR Doc. 95–19110 Filed 8–2–95; 8:45 am]

BILLING CODE 6750–01–M

[10] Off-the-record discussions with the respondents, followed by dismissal of the complaint, also may create misperceptions of unfairness and favoritism, with the implication that nonpublic communications that could not bear the light of day influenced the Commission's decision.

[11] This assumes that complaint counsel find themselves unable to make a principled argument in support of the complaint. *See* Jose Calimlin, M.D., Dkt. No. 9199 (June 24, 1986) (''complaint counsel represent the Commission's prosecutorial decision as embodied in the allegations of complaint and in the notice of contemplated relief''); *accord* R.J. Reynolds Tobacco Co., Dkt. No. 9206 (interlocutory order, Dec. 1, 1986); *see also* R.J. Reynolds Tobacco Co. (interlocutory order, Dec. 10, 1986) (purpose of adjudication is ''to subject the Commission's complaint to an adversarial test'').

[12] *See* 5 U.S.C. § 552(d); 16 C.F.R. § 4.7.

Notice and Request for Comment Regarding Statement of Policy Concerning Prior Approval and Prior Notice Provisions in Merger Cases

AGENCY: Federal Trade Commission.

ACTION: Notice of policy statement and request for public comment.

SUMMARY: The Federal Trade Commission has adopted a policy statement regarding the use of prior approval and prior notice provisions in Commission orders entered in merger cases. Under the policy, the Commission will no longer require prior approval of certain future acquisitions in such orders as a routine matter. The Commission will henceforth rely on the premerger notification and waiting period requirements of Section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino (HSR) Act, as the principal means of learning about and reviewing mergers proposed by such companies. Narrow prior notice or approval requirements will be retained for certain limited situations described in the Commission's Statement of Policy. The Commission also stated that it would initiate a process for reviewing the retention or modification of prior approval requirements in existing Commission orders.

Although these policies are already in effect, the Commission is soliciting comment from interested persons.

DATES: The policy statement was effective on June 21, 1995. Comments will be received until September 5, 1995.

ADDRESSES: Comments should be sent to the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580. Comments will be entered on the public record of the Commission and will be available for public inspection in Room 130 during the hours of 9 a.m. until 5 p.m.

FOR FURTHER INFORMATION CONTACT: Daniel P. Ducore, Assistant Director for Compliance, Bureau of Competition, (202) 326–2526.

SUPPLEMENTARY INFORMATION: Under previous Commission policy, Commission orders entered in merger cases generally have required that the respondent obtain the Commission's prior approval for certain future acquisitions in the same market. The Commission has reassessed that policy and has determined that prior approval of future acquisitions by a respondent should no longer be required as a routine matter. The Commission has issued the following Policy Statement as an exercise of its discretion.

The Commission invites comments on the issues discussed in this notice, in the Policy Statement and in the separate statement of Commissioner Azcuenaga.

Statement of Federal Trade Commission Policy Concerning Prior Approval and Prior Notice Provisions

Introduction

Under longstanding Commission policy, Commission orders entered in merger cases generally have contained a requirement that the respondent seek the Commission's prior approval for any future acquisition over a de minimis threshold within certain markets for a ten-year period.[1] In a few cases, the Commission also has required prior notice of intended transactions that would not be subject to the premerger notification and waiting period requirements of section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino (HSR) Act.[2] Prior approval and notice requirements are imposed pursuant to the Commission's broad authority to fashion remedies to prevent the recurrence of anticompetitive conduct.

In light of its now extensive experience with the HSR Act, the Commission has reassessed whether it needs to continue regularly to impose prior approval requirements. Although prior approval requirements in some cases may save the Commission the costs of re-litigating issues that already have been resolved, prior approval provisions also may impose costs on a company subject to such a requirement. Moreover, the HSR Act has proven to be an effective means of investigating and challenging most anticompetitive transactions before they occur.

[1] As used herein, the term ''merger'' includes mergers, acquisitions, joint ventures, and equivalent transactions.

[2] Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a.

Consequently, the Commission has concluded that a general policy of requiring prior approval is no longer needed. Narrow prior notice or approval requirements will be retained for certain situations, as described below.

Statement of Policy Concerning Future Orders

The Commission will henceforth rely on the HSR process as its principal means of learning about and reviewing mergers by companies as to which the Commission had previously found a reason to believe that the companies had engaged or attempted to engage in an illegal merger. The Commission believes that in most such situations the availability of HSR premerger notification and waiting period requirements will adequately protect the public interest in effective merger enforcement, without being unduly burdensome. Therefore, as a general matter, Commission orders in such cases will not include prior approval or prior notification requirements.

The Commission reserves its equitable power to fashion remedies needed to protect the public interest, including by ordering limited prior approval and/or notification in certain limited circumstances. Such orders are most likely to be used in two situations:

First, a narrow prior approval provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger.[3] The prior approval requirement in such cases would typically be limited to the proposed merger or other combination of essentially the same relevant assets that were involved in the challenged transaction.

Second, a narrow prior notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger.[4] The need for this supplemental, HSR-like premerger notification and waiting period requirement will depend on circumstances such as the structural characteristics of the relevant markets, the size and other characteristics of the market participants, and other relevant factors (including whether the challenged transaction itself was not reportable).

Statement of Policy for Existing Prior Approval Orders

There are approximately 90 outstanding Commission orders that contain a current prior approval requirement; some of these orders also contain a prior notice requirement. The Commission has determined to initiate a process for reviewing the retention or modification of these existing requirements. The Commission will issue to each person subject to such an order a notice regarding the Commission's prior approval policy as set forth in this Statement and an invitation to submit a request to reopen the order, pursuant to section 5(b) of the Federal Trade Commission Act and Rule 2.51 of the Commission's rules of practice.

The Commission has determined that, when a petition is filed to reopen and modify an order pursuant to this Statement of Policy, the Commission will apply a rebuttable presumption that the public interest requires reopening of the order and modification of the prior approval requirement consistent with the policy announced in this Statement. No presumption will apply to existing prior notice requirements, which have been adopted on a case-by-case basis and will continue to be considered on a case-by-case basis under the policy announced in this Statement.

Although the policies set forth in this Statement are effective immediately, the Commission will issue within thirty days a **Federal Register** notice soliciting public comment on them.

By direction of the Commission, Commissioner Azcuenaga dissenting.

Donald S. Clark,

Secretary.

[3] Such a provision is included in some consent judgments in cases brought by the Department of Justice. See, e.g., *United States* v. *Browning-Ferris Indus. Inc.*, Civ. Action No. 1:94CV02588 (proposed final judgment) (D.D.C., filed Nov 1, 1994).

[4] Such prior notice orders would require the company to comply with HSR-like premerger notification and waiting periods. From FY 1990 through FY 1994, the Commission undertook enforcement actions against twelve transactions that were not reportable under HSR. Four were hospital mergers, and the others covered a variety of markets including electrical products, scientific equipment, medical products or devices, security equipment, and food products.

Dissenting Statement of Commissioner Mary L. Azcuenaga on Decision to Abandon Prior Approval Requirements in Merger Orders

The Commission has abandoned its longstanding policy to include prior approval as a remedy in cases involving transactions that are unlawful under section 7 of the Clayton Act.[1] The Commission cites in support of its decision the effectiveness of premerger notification under the Hart-Scott-Rodino Act as a ''means of investigating and challenging most anticompetitive transactions before they occur'' and the possibility that ''prior approval provisions * * * may impose costs on a company subject to such a requirement.''[2] In my view, the policy should be retained because the benefits of prior approval requirements easily outweigh the costs.

Our authority to impose prior approval requirements is unquestioned, and the Commission reaffirmed its policy to require prior approval clauses in section 7 orders in 1988[3] and, most recently, in 1994 in its adjudicative opinion in the *Coca Cola* case.[4] The Commission imposes a variety of more costly requirements in its orders every day, ranging from complete bans on engaging in certain businesses and activities[5] to provisions that some might characterize as highly regulatory.[6] Why the Commission would choose now to eliminate this straightforward, modest, fencing-in relief for unlawful mergers is mystifying.

Prior approval clauses benefit the Commission by conserving public law enforcement dollars. A respondent subject to a prior approval requirement must notify the Commission of the proposed transaction and demonstrate that it would not be anticompetitive before consummating the deal. From the Commission's perspective, this process is less costly than a new investigation of a proposed transaction and a second challenge under the law. In the absence of a prior approval requirement, subsequent acquisitions that was challenged and found unlawful, must be

[1] Prior approval provisions require the firm under order to obtain the approval of the Commission before making acquisitions in the same market in which the unlawful acquisition occurred.

Early cases enjoined future acquisitions entirely, often together with a divestiture requirement, to remedy the effects of an unlawful acquisition. Prior approval was introduced as an ''escape clause,'' ''[t]o prevent the possibility of the injunction (against acquisitions) having unintended harsh results.'' Luria Brothers, 62 F.T.C. 243, 638 (1963), *aff'd*, 389 F.2d 847, 865–66 (3d Cir.), *cert. denied*, 393 U.S. 829 (1968). Early prior approval clauses varied in length, ranging from perpetual requirements to those with a duration of 5, 10 or 20 years.

[2] Statement of FTC Policy Concerning Prior Approval and Prior Notice Provisions at 4 (June 21, 1995) (hereafter ''Prior Approval Statement'').

[3] *See* FTC Staff Bulletin 88–01 (May 18, 1988).

[4] The Coca-Cola Co., Docket 9707 (June 13, 1994), Commissioners Azcuenaga & Starek recused; *order modified* (May 17, 1995); *appeal dismissed per stipulation* (D.C. Cir. May 18, 1995).

[5] *See, e.g.*, FTC v. Starlink, Inc., Civ. No. 91–1085 (E.D. Pa. Feb. 10, 1992) (lifetime ban on advertising, marketing or selling information concerning employment opportunities).

[6] Examples of highly regulatory orders are unfortunately plentiful. *See, e.g.*, Dissenting Statement of Commissioner Mary L. Azcuenaga in *Silicon Graphics, Inc.*, File 951–0064 (published for comment June 9, 1995).

investigated and challenged *de nove*.[7] To the extent that the prospect of the prior approval requirement may deter unlawful acquisitions by a respondent, this would appear to be a benefit. To the extent that the prospect of prior approval may deter unlawful acquisitions by firms that are not under order, this, too, would appear to be a benefit.[8]

Despite considerable squawking from a few representatives of firms that are actual, alleged or potential violators of section 7, there is little if anything to suggest that the burden of prior approval requirements is undue. It is important to remember how very limited the Commission's prior approval requirements are. First, and most obviously, the prior approval requirement is imposed only on firms that have attempted unlawful acquisitions.[9] It is limited to proposed acquisitions in the same geographic and product markets in which the Commission has found reason to believe that an acquisition by the respondent would violate the law. It is limited in time, usually to a duration of ten years. And it involves a minute universe of cases. For example, in the past five years, the Commission has issued 58 orders containing prior approval provisions, fewer than twelve per year. In comparison, in fiscal year 1994, 2,305 transactions were reported under the Hart-Scott-Rodino Act. In the first six months of fiscal year 1995, through the end of March 1, 348 transactions were filed.

According to the Commission, the policy should be changed because premerger notification under the Hart-Scott-Rodino Act is an adequate substitute. While the Hart-Scott-Rodino Act enables the Commission to investigate and challenge reported transactions before they occur, the success of the premerger notification program is not a recent discovery. If pre-transaction notice were the only purpose of prior approval clauses in orders, the policy could have been abandoned years ago. Instead, the Commission consistently has concluded (until now) that the Hart-Scott-Rodino Act does not eliminate the need for prior approval clauses in merger orders. *See, e.g., The Coca-Cola Co.,* Docket 9207, Order Denying Motion To Dismiss (August 9, 1988), Chairman Oliver dissenting[10] and Commissioner Azcuenaga recused.[11]

A prior approval requirement is a simple, direct and limited remedy to prevent recurrence of unlawful acquisitions. Even if we assume that prior approval is costly (*i.e.,* more costly than is compliance with the Hart-Scott-Rodino Act—and I am not persuaded that it is), the policy provides important law enforcement benefits. The decision to abandon prior approval in Commission orders relinquishes the benefits for no apparent return.[12]

I am against it.

[FR Doc. 95–19111 Filed 8–2–95; 8:45 am]

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[7] The Antitrust Division of the Department of Justice recently filed a civil antitrust complaint to block a company's second attempt in eight years to acquire its largest competitor. *See* United States v. Engelhard Corp., Civ. Action No. 6:95–CV–454 (M.D. Ga. filed June 12, 1995). Engelhard abandoned its previous acquisition attempt in 1987, after the Department announced that it would challenge the transaction.

[8] If the prior approval requirement is costly in fact or if it is perceived to be costly, then the requirement may have a deterrent effect. Formerly, a firm contemplating an anticompetitive acquisition might have decided that on balance the risk of prosecution combined with the likelihood of becoming subject to a prior approval requirement was sufficient cause not to go forward. Because firms cannot know in advance whether their transaction will be reviewed by the Commission or by the Department of Justice, any deterrent effect from the Commission's policy would apply to all transactions.

[9] Prior approval is a form of fencing-in relief. Fencing-in provisions ordinarily impose a limited ban on otherwise lawful conduct to inhibit repetition of the unlawful conduct. *See* FTC v. Ruberoid Co., 343 U.S. 470, 473 (1952) (''[T]he Commission is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past. If the Commission is to attain the objectives Congress envisioned, it cannot be required to confine its road block to the narrow land the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity.'').

[10] Then-Chairman Oliver favored dismissal of the compliant when ''the only relief * * * would be an order requiring prior notice or prior approval,'' but he observed (as did the majority) that Coca-Cola and complaint counsel could ''choose to withdraw this matter from adjudication'' by negotiating a settlement containing ''narrow prior approval provisions . . . [that in his view would] be preferable to the continuance of unwarranted litigation.''

[11] *See also* Warner Communications, Inc., 105 F.T.C. 342, 343 (1985) (''nothing in its legislative history suggests that [premerger notification under the Hart-Scott-Rodino Act] was intended to supersede the use of fencing-in provisions imposed after a merger has actually been found improper''); Louisiana-Pacific Corporation, 112 F.T.C. 547, 566 (1989) (Hart-Scott-Rodino ''premerger notification program is not coextensive with the order's prior approval requirement'').

[12] Determining on a case-by-case basis whether to require prior approval, *see* Prior Approval Statement at 2–3, increases the costs of negotiating and litigating orders in merger cases. Given the benefits of prior approval, this is a waste of government resources.

[File No. 941–0076]

Local Health System, Inc., et al; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal trade commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the merger of the two largest hospitals in St. Clair County, Michigan and would require the hospitals, for a limited time, to notify the Commission or obtain Commission approval before acquiring certain hospital assets in the Port Huron, Michigan area.

DATES: Comments must be received on or before October 2, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phillip L. Broyles, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Avenue, Suite 520–A, Cleveland, OH 44114. (216) 522–4207.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

[File No. 941–0076]

Agreement Containing Consent Order

In the matter of LOCAL HEALTH SYSTEM, INC., a corporation, BLUE WATER HEALTH SERVICES CORP., a corporation, and MERCY HEALTH SERVICES, a corporation.

The Federal Trade Commission (''Commission''), having initiated an investigation of the proposed acquisition by Local Health System, Inc. (''Local Health''), of certain assets of Mercy Hospital Port Huron (''Mercy-Port Huron'') from Mercy Health Services (''Mercy Health''), and of certain assets of Port Huron Hospital from Blue Water Health Services Corporation (''Blue Water Health''), and

it now appearing that Local Health, Mercy Health and Blue Water Health, hereinafter sometimes referred to as ''Proposed Respondents,'' are willing to enter into an agreement containing an order to cease and desist from making certain acquisitions, and providing for other relief:

It is hereby agreed by and between Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Local Health is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1001 Kearney Street, Port Huron, Michigan 48060.

2. Proposed Respondent Mercy Health is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 34605 Twelve Mile Road, Farmington, Hills, Michigan 48331.

3. Proposed Respondent Blue Water Health is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 1001 Kearney Street, Port Huron, Michigan 48060.

4. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint.

5. Proposed Respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to the Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following Order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to Proposed Respondents' addresses as stated in this agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to very or contradict the terms of the Order.

9. Proposed Respondents have read the proposed complaint and Order contemplated hereby. Proposed Respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

A. *Local Health* means Local Health System, Inc., its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Local Health System, Inc.; their directors, officers, employees, agents, and representatives; and their successors and assigns.

B. *Mercy Health* means Mercy Health Services, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Mercy Health Services; their directors, officers, employees, agents, and representatives; and their successors and assigns.

C. *Blue Water Health* means Blue Water Health Services Corporation, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Blue Water Health Services Corporation; their directors, officers, employees, agents, and representatives; and their successors and assigns.

D. *Respondents* means Local Health, Mercy Health and Blue Water Health, collectively and individually.

E. The *Acquisition* means the proposed acquisition of Port Huron Hospital and Mercy Hospital Port Huron by Local Health pursuant to the Memorandum of Understanding dated January 19, 1994.

F. *Acute care hospital* means a health facility, other than a federally owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized medical staff, that provides 24-hour inpatient care, as well as outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

G. To *operate an acute care hospital* means to own, lease, manage or otherwise control or direct the operations of an acute care hospital, directly or indirectly.

H. *Affiliate* means any entity whose management and policies are controlled in any way, directly or indirectly, by the person with which it is affiliated.

I. *Person* means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

J. *Greater Port Huron* means the area consisting of the cities of Port Huron, Marysville, Kimball Township, Port Huron Township and Fort Gratiot, Michigan.

K. *Commission* means the Federal Trade Commission.

II

It is further ordered that, unless they have already done so, Respondents shall, no later than seven (7) days after the date this Order becomes final: (1) Terminate any agreement that provides for or contemplates the Acquisition; (2) return or destroy all documents containing or recording confidential

information provided to Respondents by any other person in connection with negotiations or agreements relating to the Acquisition; and (3) recover from any other person or have such other person destroy all documents containing or recording confidential information provided by Respondents to such other person in connection with negotiations or agreements relating to the Acquisition.

III

It is further ordered that, for a period of three (3) years from the date this Order becomes final, no Respondent shall, without prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships or otherwise:

A. Acquire any majority or other controlling stock, share capital, equity or other interest in any other Respondent that operates any acute care hospital facility in Greater Port Huron;

B. Acquire a majority of any assets of any acute care hospital facility operated by any other Respondent in Greater Port Huron;

C. Enter into any agreement or other arrangement to obtain direct or indirect ownership, management or control of any acute care hospital facility operated by any other Respondent in Greater Port Huron, including but not limited to, a lease of or management contract for any such acute care hospital facility, or an agreement to replace an acute care hospital facility operated by another person with an acute care hospital to be operated by any Respondent;

D. Acquire or otherwise obtain the right to designate, directly or indirectly, a majority of the directors or trustees of any acute care hospital facility operated by any other Respondent in Greater Port Huron; or

E. Permit any acute care hospital it operates in Greater Port Huron to be acquired (by stock acquisition, asset acquisition, lease, management contract, establishment of a replacement facility, right to designate directors or trustees or otherwise) by any other Respondent that operated, or will operate immediately following such acquisition, any other acute care hospital in Greater Port Huron.

IV

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, no Respondent shall, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity or other interest in any person who operates any acute care hospital facility in Greater Port Huron;

B. Acquire any assets of any acute care hospital facility in Greater Port Huron;

C. Enter into any agreement or other arrangement to obtain direct or indirect ownership, management or control of any acute care hospital facility or any part thereof in Greater Port Huron, including but not limited to, a lease of or management contract for any such acute care hospital facility, or an agreement to replace an acute care hospital facility operated by another person with an acute care hospital facility to be operated by any Respondent;

D. Acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of any acute care hospital facility in Greater Port Huron; or

E. Permit any acute care hospital it operates in Greater Port Huron to be acquired (in whole or in part, by stock acquisition, asset acquisition, lease, management contract, establishment of a replacement facility, right to designate directors or trustees, or otherwise) by any person who operates, or will operate immediately following such acquisition, any other acute care hospital in Greater Port Huron.

Said notification shall be given on the Notification and Report Form set forth in the appendix to part 803 of title 16 of the Code of Federal Regulations as amended (hereinafter referred to as ''the Notification''), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty days prior to acquiring any such interest (hereinafter referred to as the ''first waiting period''). If, within the first waiting period, representatives of the Commission make a written request for additional information, Respondents shall not consummate the acquisition until twenty days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a.

Provided, however, that prior notification shall not be required by this Paragraph IV of this Order for:

1. The establishment by a Respondent of a new acute care hospital facility that is a replacement for that Repondent's existing acute care hospital facility;

2. The establishment by a Respondent of a new acute care hospital that is not a replacement for any other acute care hospital facility in Greater Port Huron;

3. Any transaction otherwise subject to this Paragraph IV of this Order if the fair market value of (or, in the case of a purchase acquisition, the consideration paid for) the acute care hospital facility or part thereof to be acquired does not exceed one million dollars ($1,000,000);

4. Any transaction otherwise subject to this Paragraph IV of this Order if the acquisition is pursuant to a joint venture which is to engage in no activities other than the provision of the following services: Laundry; data processing; joint ownership and management of inventory; materials management; billing and collection; dietary; industrial engineering management; printing; security; records management; laboratory testing; support services for charitable foundations; or personnel education, testing or training; or

5. Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a, or prior approval by the Commission is required, and has been granted pursuant to Paragraph III of this Order.

V

It is further ordered that, for a period of ten (10) years from the date this order becomes final, Respondents shall not permit all or any substantial part of any acute care hospital they operate in Greater Port Huron to be acquired (in whole or in part, stock acquisition, asset acquisition, lease, management contract, establishment of a replacement facility, right to designate directors or trustees or otherwise) by any other person unless the acquiring person fields with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this Order, which agreement Respondents shall require as a condition precedent to the acquisition.

VI

It is further ordered that:

A. Within sixty (60) days of the date this Order becomes final, each Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraph II of this order; and

B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may require, each Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraphs III, IV and V of this Order.

VII

It is further ordered that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents that may affect compliance obligations arising out of the Order, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

VIII

It is further ordered that, for the purpose of determining or securing compliance with this Order, upon reasonable notice to Respondents, Respondents shall permit, for a period of ten (10) years from the date this Order becomes final, any duly authorized representative of the Commission:

A. Reasonable access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order; and

B. Upon five days' notice to Respondents and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''the Commission'') has accepted, subject to final approval, an agreement containing a proposed consent order from Local Health System, Inc. (''Local Health''), Blue Water Health Services Corp. (''Blue Water Health'') and Mercy Health Services (''Mercy Health''). The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation of this matter concerns the acquisition of Port Huron Hospital, a general acute care hospital owned and operated by Blue Water Health, and Mercy Hospital-Port Huron (''Mercy Hospital''), a general acute care hospital owned and operated by Mercy Health, by Local Health. Port Huron Hospital and Mercy Hospital are the only general acute care hospitals in Port Huron, Michigan. In its administrative complaint, the Commission alleges, among other things, that the market for acute care inpatient hospital services in greater Port Huron is highly concentrated and would become substantially more concentrated as a result of the acquisitions. The Commission also alleges that it has reason to believe that the acquisitions would have anticompetitive effects and would violate section 7 of the Clayton Act. The agreement containing consent order would, if finally accepted by the Commission, settle charges that the acquisitions may substantially lessen competition in the delivery of acute care inpatient hospital services in greater Port Huron.

The order, accepted for public comment, contains provisions requiring Local Health, Blue Water Health and Mercy Health to terminate any and all agreements that provide for the acquisition of Port Huron Hospital and Mercy Hospital by Local Health.

For a period of three years from the date the order becomes final, the order prohibits Local Health, Blue Water Health and Mercy Health from acquiring, without prior Commission approval, a majority or controlling share of stock or other interests in, each other; or a majority of the assets of any acute care hospital facility operated in Greater Port Huron by either of the other companies named in the order.

For a period of ten years from the date the order becomes final, the order prohibits Local Health, Blue Water Health and Mercy Health from acquiring, without providing the Commission prior written notice, stock or assets of, or interests in any general acute care hospital facility in Greater Port Huron. If the Commission requests additional information regarding any acquisition for which prior notice is required, the order prohibits Local Health, Blue Water Health and Mercy Health from completing the acquisition until twenty days after they have provided substantially all of the information requested by the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga in Local Health System, Inc., File 941–0076

Not having found reason to believe that the proposed merger of Port Huron Hospital and Mercy Hospital would be unlawful, I do not support the proposed complaint and consent order.

Concurring Statement of Commissioner Roscoe B. Starek, III

In the Matter of Local Health System, Inc., et al., File No. 941 0076.

In deciding whether to vote for acceptance of the agreement containing consent order negotiated by the staff, I have evaluated with particular care the prior approval and prior notice provisions of the proposed order. The prior approval provisions (¶ III) requires each respondent, for three years, to obtain the Commission's approval before entering into any transaction that in essence would renew the Port Huron Hospital/Mercy Hospital merger that gave rise to this case. Under the prior notice requirement (¶ IV), a respondent must furnish notice to the Commission—largely along the lines of the Hart-Scott-Rodino premerger notification program—in advance of certain acquisitions and other transactions involving acute care hospitals in ''Greater Port Huron'' (an area consisting of five Michigan cities).

I have previously expressed my serious reservations about imposing a prior approval requirement on parties that have abandoned a challenged transaction.[1] Those reservations rest primarily on two foundations. The first is the moral neutrality of mergers and acquisitions—and therefore the dubious appropriateness of prior approval as a form of ''merger probation.'' The second is the superfluity—if not the downright excessiveness—of imposing a prior approval requirement on parties that will have to observe the notice and waiting requirements of section 7A of the Clayton Act[2] if they wish to undertake the same (or another competitively questionable) transaction in the future. Indeed, even when future acquisitions are likely to be competitively troublesome but not reportable pursuant to Section 7A, I

[1] *See, e.g.,* ''Reinventing Antitrust Enforcement? Antitrust at the FTC in 1995 and Beyond,'' Remarks of Commissioner Roscoe B. Starek, III, Marina del Rey, California (Feb. 24, 1995).

[2] 15 U.S.C. 18a.

would favor a prior notice-and-wait obligation—rather than a prior approval power—with regard to those transactions.[3]

Despite my general inclination to believe a broad prior approval provision unwarranted when the parties have abandoned their planned transaction (as they did here), acceptance of a narrowly tailored prior approval provision is appropriate in the special circumstances of this case, Paragraph III of the proposed order merely requires respondents to seek prior Commission approval, over a three-year period, for essentially the same transaction that the Commission challenged in the first place. Given that a renewed Port Huron/Mercy consolidation would be likely to raise the same antitrust concerns, this narrow prior approval requirement is neither punitive nor redundant.

I also find acceptable the proposed order's 10-year prior notification requirement. This provision pertains only to (1) transactions in the narrowly defined ''Greater Port Huron'' that (2) exceed $1 million yet (3) would not be reportable pursuant to Section 7A.[4] Where the Commission finds reason to believe that an acquisition would violate section 7, I consider it appropriate to require the respondent for some period of time to notify the Commission in advance of any proposed significant acquisitions in the relevant market that are not reportable under section 7A. That is all that Paragraph IV provides.

[FR Doc. 95–19112 Filed 8–2–95; 8:45 am]

BILLING CODE 6750–01–M

[3] ''Reinventing Antitrust Enforcement? Antitrust at the FTC in 1995 and Beyond,'' *supra* note 1, at 21–22.

[4] The third and fifth provisos to Paragraph IV, respectively, set forth the latter two limitations on the prior notification requirement.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; Computer Matching Programs—Department of Veterans Affairs

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of a Computer Matching Program to Comply with Public Law (Pub. L.) 100–503, the computer Matching and Privacy Protection Act of 1988.

SUMMARY: In compliance with Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act of 1988, the Administration for Children and Families (ACF) will conduct a computer matching program on behalf of itself, the Health Care Financing Administration (HCFA), and the Food and Consumer Service (FCS) utilizing Veterans Affairs pension and compensation information. The ACF will also work with the Kansas Department of Social and Rehabilitation Services (KDSRS), the Nebraska Department of Social Services (NDSS), the Pennsylvania Department of Public Welfare (PDPW), and the Texas Department of Human Services (TDHS) using public assistance client records.

ADDRESSES: Interested parties may comment on this notice by writing to the Acting Director, Office of Information Systems Management, Administration for Children and Families, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20047. All comments received will also be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Acting Director, Office of Information Systems Management, Administration for Children and Families, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20447. Telephone Number (202) 401–6960.

DATES: ACF filed a report of the subject matching program with the Senate Committee on Governmental Affairs, the House Committee on Government Reform and Oversight, and the Office of Information and Regulatory Affairs, at the Office of Management and Budget on July 31, 1995.

SUPPLEMENTARY INFORMATION:

A. General

Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. The law regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State and local government records.

The amendments require Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with source agencies;

(2) Provide notification to applicants and beneficiaries that their records are subject to matching;

(3) Verify match findings before reducing, suspending or terminating an individual's benefits or payments;

(4) Furnish detailed reports to Congress and OMB; and

(5) Establish a Data Integrity Board that must approve matching agreements.

B. ACF Computer Match Subject to Pub. L. 100–503

Below is a brief description followed by a detailed notice of a computer match that ACF will be conducting as of August 31, 1995 or later.

ACF computer match with the Department of Veterans Affairs (VA). Purpose: To detect and determine the amount of benefit overpayment to public assistance recipients by verifying client VA pension and compensation circumstances using VA automated data files.

Dated: July 31, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Notice of Computer Matching Program

The Kansas Department of Social and Rehabilitation Services (KDSRS), Nebraska Department of Social Services (NDSS), Pennsylvania Department of Public Welfare (PDPW) and Texas Department of Human Services (TDHS) public assistance client record matching with VA compensation and pension records.

A. Participating Agencies

ACF, VA, KDSRS, NDSS, PDPW and TDHS.

B. Purpose of the Matching Program

The purpose of this matching program is to provide KDSRS, NDSS, PDPW and TDHS with data from the VA benefit and compensation file. KDSRS, NDSS, PDPW and TDHS will provide ACF with a file of Medicaid, Aid to Families with Dependent Children (AFDC), general assistance and Food Stamp clients. VA will provide ACF with a file of individuals receiving VA compensation and pension benefits. ACF, on behalf of itself, HCFA, and FCS will match the KDSRS, NDSS, PDPW and TDHS files with the VA file and provide KDSRS, NDSS, PDPW and TDHS with VA pension and compensation benefit information. KDSRS, NDSS, PDPW and TDHS will use the VA information to determine the value of using VA information to verify client circumstances and to initiate adverse action when appropriate.

C. Authority for Conducting the Matching Program

ACF, HCFA, and FCS have an obligation to assist State Public Assistance Agencies in their efforts to verify client circumstances when determining an applicant's eligibility for public assistance benefits. The most cost-effective and efficient way to verify

client declarations of income circumstances is by means of a computer match.

D. Categories of Records and Individuals Covered by the Match

VA will disclose information from the VA Compensation, Pension, and Education and Rehabilitation Records—VA (58 VA 21/22), contained in the Privacy Act Issuances, 1989 compilation, Volume II, Pages 918–922 and as amended in **Federal Register** 56 FR 15667, April 17, 1991.

ACF will match this information with KDSRS, NDSS, PDPW and TDHS Client Eligibility files.

E. Inclusive Dates of the Match

This computer match will begin no sooner than September 5, 1995, or 30 days from the date copies of the approved agreement, and the notice of the matching program are sent to the Congressional committee of jurisdiction under subsections (O)(2)(B) and (r) of the Privacy Act, as amended, or 30 days from the date the approved agreement is sent to OMB, whichever is later, provided no comments are received which result in a contrary determination. This is a one-time match and is not subject to renewal.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments to the Acting Director, Office of Information Systems Management, Administration for Children and Families, Aerospace Building, 370 L'Enfant Promenade, SW, Washington, DC 20447.

[FR Doc. 95–19113 Filed 8–2–95; 8:45 am]

BILLING CODE 4184–01–M

Agency for Health Care Policy and Research

Public Meeting on Health Service Research: the Interface of Generalist and Specialist Health Care

AGENCY: Agency for Health Care Policy and Research (AHCPR).

ACTION: Notice of public meeting.

SUMMARY: A meeting is being held to discuss future directions of health services research related to the patterns, processes, and outcomes of medical referrals and consultations.

DATES: The meeting will be on Thursday, September 14, 1995, from 8:30 a.m. to 5:30 p.m. and Friday, September 15, from 8:30 a.m. to 12:00 p.m. Registration is required by August 30.

ADDRESSES: The meeting will be at the Madison Hotel, 15th and M Streets, N.W., Washington, D.C. 20005.

SUPPLEMENTARY INFORMATION:

I. Purpose

This meeting will focus on research that investigates patterns, processes, and outcomes of the referral of patients from primary care to specialist providers. The purposes of the meeting are (1) to identify gaps in current knowledge, and (2) to develop an agenda for future research. Of particular interest is the influence of new methods of organizing and financing health care on referral patterns and practices.

II. Agenda

The meeting will begin at 8:30 a.m. on September 14, with a review of the theoretical models and methods used in research that has focused on the referral of patients from primary care to specialist providers. Important problems and clinical issues involved in the care of patients referred from primary care to specialist care will be discussed. Presentations will be made by health services researchers, practicing clinicians, and representatives of managed care organizations and consumers. Questions and comments from the meeting participants will be encouraged.

The meeting participants will be assigned to small working groups which will meet concurrently during the afternoon of September 14. Each group will be asked to identify and discuss the important issues that need to be addressed by future research related to medical referrals and consultations. Reports and recommendations from working groups will be presented on Friday, September 15. A general discussion of a research agenda on medical referrals and consultations will conclude the meeting.

III. Arrangements for the September 14–15, 1995 Meeting

Individuals and representatives of organizations who would like to attend the meeting can obtain registration materials and information by calling 301–594–1369 extension 129, or by facsimile transmission at 301–594–3721. Facsimile cover sheets should be addressed to the attention of Ms. Kelly Morgan, Center for Primary Care Research, AHCPR, and should include the sender's name, organization, address, and telephone and facsimile numbers.

To register, submit the registration form and the required $100 registration fee by August 30 to Moshman Associates, the AHCPR contractor which is coordinating the meeting, at the address listed in the registration materials. Seating is limited to the first 100 registered individuals and will be reserved in the order in which both the registration form and the registration fee are received.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Ms. Kelly Morgan by August 30, at the telephone number listed above.

A brief, written summary of the presentations, discussions, and conclusions of the meeting will be made available in November 1995. To obtain a copy of this summary, please call the telephone number listed above after November 1.

Dated: July 27, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–19055 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–90–M

Food and Drug Administration

[Docket No. 95E–0047]

Determination of Regulatory Review Period for Purposes of Patent Extension; Allergen Patch Test (Thin-layer Rapid Use Epicutaneous (T.R.U.E.) Test™)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Allergen Patch Test (Thin-layer Rapid Use Epicutaneous (T.R.U.E.) Test™) and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biologic product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417)

and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biologic product, Allergen Patch Test (Thin-layer Rapid Use Epicutaneous (T.R.U.E.) Test™) (multiple allergen test). T.R.U.E. Test™ is indicated primarily as an aid in the diagnosis of allergic dermatitis in patients whose histories suggest sensitivity to one or more of substances included on the T.R.U.E. Test™ panels. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for T.R.U.E. Test™ (U.S. Patent No. 4,836,217) from Pharmacia AB, and the Patent and Trademark Office requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated June 21, 1995, FDA advised the Patent and Trademark Office that this human biologic product had undergone a regulatory review period and that the approval of T.R.U.E. Test™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for T.R.U.E. Test™ is 2,966 days. Of this time, 1,601 days occurred during the testing phase of the regulatory review period, while 1,365 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: October 10, 1986. FDA has verified the applicant's claim that the date the investigational new drug application (IND) became effective was on October 10, 1986.

2. *The date application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act*: February 26, 1991. The applicant claims July 16, 1986, as the date the product license application (PLA) for T.R.U.E. Test™ (PLA 91–0118) was initially submitted. However, FDA records indicate that the two-panel test kit for the product that was ultimately approved was submitted on February 26, 1991. Therefore, the PLA was submitted on February 26, 1991.

3. *The date the application was approved*: November 21, 1994. FDA has verified the applicant's claim that PLA 91–0118 was approved on November 21, 1994.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, the applicant seeks 898 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 2, 1995, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 30, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 26, 1995.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 95–19060 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95F–0187]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly[[6-[(1,1,3,3-tetramethylbutyl)amino]-s-triazine-2,4-diyl][(2,2,6,6-tetramethyl-4-piperidyl)imino] hexamethylene [(2,2,6,6-tetramethyl-4-piperidyl)imino]] as a light stabilizer in polymers used as an indirect food additive.

DATES: Written comments on the petitioner's environmental assessment by September 5, 1995.

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

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4467) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of poly[[6-[(1,1,3,3-tetramethylbutyl)amino]-s-triazine-2,4-diyl][(2,2,6,6-tetramethyl-4-piperidyl)imino] hexamethylene [(2,2,6,6-tetramethyl-4-piperidyl)imino]] as a light stabilizer in polymers used as an indirect food additive.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4 (b)), the

agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 5, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 21, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–19090 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95D–0157]

Decomposition and Histamine—Raw, Frozen Tuna and Mahi-Mahi; Canned Tuna; and Related Species; Revised Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised Compliance Policy Guide (CPG) 7108.24, entitled ''Decomposition and Histamine—Raw, Frozen Tuna and Mahi-Mahi; Canned Tuna; and Related Species.'' Revised CPG 7108.24 lowers the histamine level at which FDA may consider the fish subject to action under the Federal Food, Drug, and Cosmetic Act (the act) and states that the histamine defect action level (DAL) and the histamine action level (AL) now apply to raw, frozen tuna and mahi-mahi in addition to canned tuna. Furthermore, the revised CPG 7108.24 states that the AL also applies to related species of raw, frozen, and canned fish implicated in instances of histamine poisoning, such as bluefish, amberjack, and mackerel, in addition to tuna and mahi-mahi. Additionally, for these related species, levels of histamine less than the AL may be considered as evidence of decomposition on a case-by-case basis when supported by additional scientific data. The title of the revised CPG reflects these changes.

DATES: Written comments by September 5, 1995.

ADDRESSES: Submit written requests for single copies of CPG 7108.24, ''Decomposition and Histamine—Raw, Frozen Tuna and Mahi-Mahi and Canned Tuna; and Related Species,'' and Laboratory Information Bulletin no. 3794 to the Director, Office of Constituent Operations, Industry Activities Staff (HFS–565), Food and Drug Administration, rm. 5827, 200 C St. SW., Washington, DC 20204. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on CPG 7108.24, ''Decomposition and Histamine—Raw, Frozen Tuna and Mahi-Mahi; Canned Tuna; and Related Species,'' to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of revised CPG 7108.24, ''Decomposition and Histamine—Raw, Frozen Tuna and Mahi-Mahi; Canned Tuna; and Related Species,'' the *Official Methods of Analysis of the Association of Official Analytical Chemists 15th Ed.* (1990), section 977.13, and Laboratory Information Bulletin no. 3794, and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mary I. Snyder, Office of Seafood (HFS–416), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3160.

SUPPLEMENTARY INFORMATION: Histamine is a chemical compound that forms postmortem in the muscle of scombroid fish, such as tuna, and in other species, such as mahi-mahi, by the action of certain bacteria that are common in fish. Bacteria that have the ability to form histamine do so by the decarboxylation of L-histidine, an amino acid found in the fish muscle. The decarboxylation reaction is catalyzed by an enzyme, histidine decarboxylase, produced by the bacteria. Fish species that are particularly vulnerable to the development of histamine are those with high levels of free L-histidine in their muscle tissues. Additional histidine may be released during decomposition and spoilage by proteolysis, whereby the protein structure is degraded, and amino acids are liberated (Ref. 1). The level of histamine produced in scombroid or other histidine-containing fish by these processes serves as an indicator of the decomposition that has occurred. When present at higher levels, histamine represents a health hazard. Therefore, FDA uses histamine to indicate that these fish are adulterated within the meaning of section 402(a)(1) and (a)(3) of the act (21 U.S.C. 342(a)(1) and (a)(3)).

In the fishing industry, decomposition and bacterial histamine production are controlled primarily by the use of low temperature storage (Ref. 2). Significant decomposition and histamine formation can be avoided by good fish handling practices including icing or rapid immersion of the catch in water chilled to -1 °C (30 °F), followed by uninterrupted frozen storage. Under high temperature storage conditions, histamine may form before other indicators of decomposition are evident, especially the odor and appearance of decomposed fish (Ref. 3).

Histamine also may form during low temperature storage conditions. However, in low temperature storage, the rate of histamine formation is slower, and it is usually accompanied by the typical odor of decomposition. Research sponsored by the Department of Health and Human Services has suggested that freezing may be more damaging to histamine-forming bacteria than it is to nonhistamine producing spoilage bacteria (Ref. 4).

Canned fish is frequently prepared from fish preserved by frozen storage before delivery to canneries. These fish are thawed before processing and are subjected to additional handling that may result in histamine levels in canned fish being somewhat higher than the levels observed in raw, freshly caught fish.

Histamine is generally not uniformly distributed in a decomposed fish. A level of less than 50 parts per million (ppm) in one section may accompany a level in excess of 1,000 ppm elsewhere in the same fillet (Ref. 3). The anterior section of an individual fish generally is higher in histamine content than the posterior section, because the intestine, which is located in the forward end, is apparently the major source of the

bacteria responsible for histamine formation. Postmortem disintegration of the intestine releases the microbial contents of the intestine which contaminate the anterior muscle tissue, making these sites particularly vulnerable to an accumulation of the amine (Refs. 5 and 6). The preponderance of scientific evidence demonstrates that the presence of histamine equal to or greater than 50 ppm, in a sample, is evidence that the fish is in a state of decomposition (Refs. 3, 5, and 6).

Defect Action Level for Decomposition

Results of research conducted in the 1970's by FDA in cooperation with major universities, industry research associations, individual canners, and the National Marine Fisheries Service demonstrate that histamine levels in freshly caught tuna and mahi-mahi are less than 1 ppm. Acceptable commercial fish generally contain about 5 ppm and rarely as much as 20 ppm histamine (Ref. 3). In a notice published in the **Federal Register** of September 14, 1982 (47 FR 40487), FDA stated that histamine levels in tuna that are judged to be of acceptable quality, based on organoleptic and physical analyses, are on the order of 10 to 20 ppm. FDA data from 1990 to 1992 show that the average histamine levels in acceptable commercial raw frozen fish (number of samples in parentheses) are 2 ppm for mahi-mahi (4), 4 ppm for albacore tuna (7), 2 ppm for yellowfin tuna (10), and 2 ppm for skipjack tuna (10) (Ref. 3). Other investigators also have reported that raw freshly caught scombroid fish contain very little histamine (Refs. 5 and 6).

FDA conducted workshops in 1974 and 1976 in association with the Tuna Research Foundation. Test packs of canned tuna were prepared by the industry and classified by FDA experts using organoleptic evaluation. The average levels of histamine in the packs of canned tuna (numbers of cans in parentheses) found to be acceptable by organoleptic evaluation were 22 ppm for albacore (36), 12 ppm for skipjack (112), and 11 ppm for yellowfin (82). The average histamine level for all 230 samples was 13 ppm. These tuna packs were not authentic packs but confirmed that commercially canned tuna of acceptable quality does not contain high levels of histamine. Similarly, commercially canned tuna collected from retail stores, in a survey conducted in 1981, was found to contain an average of approximately 6 ppm histamine (Ref. 3).

The provisions of the current CPG 7108.24 announced in the September 14, 1982, notice, established a DAL of 200 ppm histamine for canned albacore, skipjack, and yellowfin tuna. The agency also stated that it would consider regulatory action against any canned tuna found to contain between 100 and 200 ppm histamine when a second indicator of decomposition (e.g., spoilage odors or honeycomb formation) is present.

Since the studies on which the previous histamine DAL was based were conducted, the analytical methodology available for determination of histamine to 5 ppm levels has become standard practice. The official method for histamine detection published in 1977 (Ref. 7) was refined in 1993 (Ref. 8). The 1993 methodology has successfully undergone collaborative evaluation and testing. Refinement in the methodology for histamine determination and experience in using the methodology have made the determination of 50 ppm histamine levels a routine practice.

Given the findings of these studies (Refs. 3, 5, and 6); the research that shows that the histamine levels in freshly caught fish are less than 2 ppm; the fact that commercially canned tuna classified as acceptable by FDA averages 6 ppm histamine; and the fact that levels at or above 50 ppm are only found in samples classified as decomposed by FDA organoleptic expert examination, the presence of 50 ppm histamine is evidence that raw, frozen, or canned tuna, and raw or frozen mahi-mahi, are in a state of decomposition. See *United States* v. *1,200 Cases, Pasteurized Whole Eggs*, 339 F. Supp. 131, 137 (N.D. Ga. 1972). Therefore, when 50 ppm or more histamine is found in these types of fish, the agency may recommend regulatory action against the fish under section 402(a)(3) of the act.

In the past two decades both industry and government have used organoleptic analysis of volatile odors for the detection of decomposition in raw and thermally processed fishery products. This analytical technique is acquired through extensive training and experience on samples and requires the analyst be periodically standardized in the application and performance of the analytical technique. However, organoleptic analysis is not quantifiable, and its application to stored and thermally processed commercial products, such as canned tuna, is difficult because the usual odors of decomposition found in raw product are often removed or altered during thermal processing. Unlike odors of decomposition, nonvolatile spoilage compounds such as histamine remain in the product and can be reliably measured by chemical analysis (Ref. 3). Therefore, confirmatory organoleptic examination for decomposition in regulatory samples would not be necessary when histamine levels at or above 50 ppm are detected by chemical analysis.

Although the agency intends to use this DAL in deciding whether to recommend regulatory action, it does not consider that the fact that a fish or fishery product has a histamine level below 50 ppm establishes that the fish or fishery product is acceptable. Other spoilage mechanisms are possible that do not result in the formation of histamine. Thus a finding of histamine levels between 20 and 50 ppm should be viewed as indicating that the fish or fishery product has deteriorated and should cause a producer to further evaluate or test the product.

Histamine Formation in Species Other Than Tuna and Mahi-Mahi

The agency's use of histamine level as a reliable indicator of decomposition is based primarily on agency experience with tuna and mahi-mahi. However, other species have been implicated in a significant number of incidents of histamine poisoning. These other species also contain high levels of free L-histidine in their muscle tissue and are known to form histamine as they decompose. Therefore, on a case-by-case basis, when these other species contain levels of histamine equal to or greater than 50 ppm, the agency may determine that these fish are decomposed particularly when such a judgment is supported by other scientific data, including the presence of other amines associated with decomposition in these fish.

Action Level for Health Hazard

In addition to being an indicator of decomposition, when ingested at sufficiently high levels histamine causes scombroid poisoning. The term ''scombroid fish poisoning'' developed because fish of the families Scombridae and Scomberesocidae are commonly implicated in instances of histamine poisoning deriving from advanced stages of decomposition in these fish. Tuna and mackerel are most frequently involved in instances of histamine poisoning, but this fact is attributable, in part, to the large amounts of these species that are consumed worldwide (Ref. 9).

Nonscombroid fish, such as mahi-mahi (*Coryphaena hippurus*), is also involved in histamine poisoning. Bluefish (*Pomatomus saltatrix*) has been responsible for several scombroid poisoning outbreaks in the United States

and has caused at least one outbreak in Australia. Pink salmon, redfish, yellowtail, marlin, and amberjack have also been implicated in scombroid poisoning outbreaks that have occurred in the United States. Outside the United States, pilchards, herring, anchovies, bluefish, and sardines have been involved in a number of cases. Sardines and pilchards have become a major source of histamine poisoning in Great Britain. Japan had an outbreak associated with black marlin, and anchovies have been implicated in single incidents in Japan, the United States, and Great Britain (Ref. 9).

From 1977 to 1981 there were 68 outbreaks of scombroid poisoning involving 461 illnesses (Ref. 10). In March 1980, the Centers for Disease Control and Prevention reported that mahi-mahi accounted for 40 percent of the scombroid poisoning outbreaks reported in the United States. Since 1980, FDA has placed most shipments of mahi-mahi offered for entry into the United States on automatic detention because of the frequent occurrence of histamine levels exceeding 500 ppm (Ref. 11).

Histamine is a poisonous or deleterious substance under section 402 (a)(1) of the act because, when ingested at sufficiently high levels, it is known to cause scombroid poisoning (Ref. 12). In the September 14, 1982, notice, the agency established, on an interim basis, an AL of 500 ppm histamine in canned tuna (47 FR 40487). At this level, the agency considers histamine to present a hazard to public health. The agency is not changing the 500 ppm AL at this time because the threshold toxic dose of histamine is not known. However, the action level for canned tuna of 500 ppm will also apply to other species of raw, frozen, and canned fish, such as mahi-mahi, bluefish, amberjack, and mackerel, all fish that have been implicated in histamine poisoning outbreaks. Furthermore, the presence of other amine decomposition products in fish may have a synergistic effect on histamine toxicity. This synergism may dramatically lower the threshold toxic dose (Refs. 9 and 10).

Therefore, FDA is revising its histamine policy and announcing the availability of revised CPG 7108.24 ''Decomposition and Histamine—Raw, Frozen Tuna and Mahi-Mahi; Canned Tuna; and Related Species,'' which: (1) Includes a lower histamine DAL for decomposition, 50 ppm histamine rather than 100 ppm; (2) extends the application of the DAL of 50 ppm (5 mg per 100g) histamine for decomposition to raw and frozen tuna and mahi-mahi; (3) eliminates the provision that findings of less than 200 ppm histamine need to be confirmed by organoleptic evaluation; (4) states that, on a case by case basis, histamine levels equal to or greater than 50 ppm, but less than 500 ppm, may be used as evidence of decomposition in other species commonly implicated in instances of histamine poisoning when supported by other scientific data; and (5) states that the AL of 500 ppm histamine now applies to other species of fish that have been implicated in histamine poisoning outbreaks.

Title of Revised CPG 7108.24

The title of CPG 7108.24 ''Decomposition and Histamine in Canned Albacore, Skipjack, and Yellowfin Tuna'' has been changed to ''Decomposition and Histamine—Raw, Frozen Tuna and Mahi-Mahi; Canned Tuna; and Related Species'' to more accurately describe the contents of the revised CPG.

References

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

1. Eitenmiller, R. R., and S. C. DeSouza, ''Enzymatic Mechanisms for Amine Formation in Fish,'' in *Seafood Toxins*, edited by E. P. Ragelis, American Chemical Society, Washington, DC, pp. 431–442, 1984.

2. Behling, A. R., and S. L. Taylor , ''Bacterial Histamine Production as a Function of Temperature and Time of Incubation,'' *Journal of Food Science* 47:1311–1314, and 1317, 1982.

3. Memorandum from Division of Science and Applied Technology (HFS–425) to Division of Programs and Enforcement Policy (HFS–415), CFSAN, FDA, dated August 6, 1992.

4. Baranowski, J. D., H. A. Frank, P. A. Brust, M. Chongsiriwatana, and R. J. Premaratne, ''Decomposition and Histamine Content in Mahi-Mahi (*Coryphaena Hippurus*),'' *Journal of Food Protection* 53:217–222, 1990.

5. Frank, H. A., D. H. Yoshinaga, and W–K. Nip, ''Histamine Formation and Honeycombing During Decomposition of Skipjack Tuna, *Katsuwonus pelamis*, at Elevated Temperatures,'' *Marine Fisheries Review* 43:9–14, 1981.

6. Frank, H. A., and Yoshinaga, ''Histamine Formation in Tuna'' in *Seafood Toxins*, edited by E.P. Ragelis, American Chemical Society, Washington, DC, pp. 443–451, 1984.

7. Staruszkiewicz, W. F., ''Fluorometric determination of Histamine in Tuna: Collaborative Study'' in *Journal of the Association of Official Analytical Chemists* 60 (5) pp. 1131–1136, 1977.

8. Rogers, P. R., and W. F. Staruszkiewicz, ''Modification of GLC Method for Putrescine and Cadaverine and the Fluorometric Method for Histamine,'' Laboratory Information Bulletin no. 3794, July 1993.

9. Stratton, J. E., and S. L. Taylor, ''Scombroid Poisoning,'' in *Microbiology of Marine Food Products*, edited by Ward, D. R., and C. Hackney, Van Nostrand Reinhold, New York, pp. 333–344, 1991.

10. Taylor, S. L., ''Marine Toxins of Microbial Origin,'' *Food Technology* 42(3):94–98, 1988.

11. Regulatory Procedure Manual, part 9, Imports, Import Alert 16–05—''Automatic Detention of Mahi-Mahi Because of Histamine and Decomposition,'' August 14, 1991.

12. Taylor, S. L., J. Y. Hui, and D. E. Lyons, ''Toxicology of Scombroid Poisoning,'' in *Seafood Toxins*, edited by E. P. Ragelis, American Chemical Society, Symposium Series, no. 262, pp. 417–430, 1984.

Interested persons may, on or before September 5, 1995, submit to the Dockets Management Branch (address above) written comments on the revised CPG 7108.24. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The revised CPG 7108.24 and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 26, 1995.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 95–19059 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0238]

Drug Export; Benoquin (Monobenzone U.S.P) Cream 20%

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that ICN Pharmaceuticals, Inc., has filed an application requesting approval for the export of the human drug Benoquin (Monobenzone U.S.P) Cream 20% to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug

Evaluation and Research (HFD–310), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–3150.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that ICN Pharmaceuticals, Inc., 3300 Hyland Ave., Costa Mesa, CA 92626, has filed an application requesting approval for the export of the human drug Benoquin (Monobenzone U.S.P) Cream 20% to Canada. This product is used for the final depigmentation in extensive vitiligo. The application was received and filed in the Center for Drug Evaluation and Research on June 15, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 14, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: July 21, 1995.

Betty L. Jones,

Acting Director, Office of Compliance, Center for Drug Evaluaiton and Research.

[FR Doc. 95–19153 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration

[Docket No. 95D–0162]

Marketing of Condom-like Products: Policy Statement; Notice of Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is making generally available a policy statement issued on February 23, 1994, directly to manufacturers, distributors, and importers of condom products, regarding the marketing of condom-like products. The policy statement is intended to inform manufacturers, distributors, and importers of condoms and condom-like products, including those products labeled or packaged as novelty items, that such products are subject to all of the regulatory requirements for medical devices. This policy statement revises and supersedes the 1989 policy statement regarding the labeling of condoms. FDA is making the policy statement generally available at this time to help ensure that the policy is known and understood by the regulated industry and the public.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the policy statement to the Division of Small Manufacturers Assistance (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6597 (1–800–638–2041 outside MD). Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the policy statement to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the policy statement and received comments are available for pubic examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765, ext. 157.

SUPPLEMENTARY INFORMATION: On February 13, 1989, FDA issued a statement of policy regarding the marketing of condoms. This policy statement was forwarded via certified mail—return receipt requested—to all manufacturers, importers, and repackagers of condoms for contraception or sexually transmitted disease prevention. Subsequently, FDA discovered that some marketers of functional condom-like products may have misinterpreted the 1989 policy statement, and were marketing functional condoms as novelty items without complying with condom leak testing requirements, current good manufacturing practice (CGMP) regulations, manufacturer registration, product listing, and premarket notification and clearance requirements. Such marketing is in violation of the Federal Food, Drug, and Cosmetic Act (the act) and implementing regulations. Therefore, to clarify that such products may only be legally marketed in compliance with these requirements, FDA issued a new policy statement on February 23, 1994.

Products that are capable of covering the penis with a closely fitting membrane and otherwise have the appearance of a condom are considered to be medical devices, regardless of their packaging or labeling. As such, these products must comply with all the above-referenced requirements. However, when condom-like products cannot be used as condoms, they need not meet the above requirements. For example, a product that resembles a condom but which has the closed end removed, the sides shredded, or the roll permanently sealed so that it is incapable of being unrolled would not be subject to the requirements of the act and the regulations. FDA emphasizes that merely labeling the products as a novelty does not remove it from the scope of the act or in any way exempt it from the requirements applicable to condoms.

Copies of this final policy statement, along with previous policy statements, are available for public examination in the Dockets Management Branch (address above).

Interested persons may, at any time, submit written comments on the final policy statement to the Dockets Management Branch (address above). Such comments will be considered when determining whether to amend the current policy statement. Two copies of any comments are to be

submitted, except that individuals may submit one copy.

Dated: June 23, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–19089 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration

Grassroots Regulatory Partnership Meeting; Southwest Region Device Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) (Office of External Affairs, Office of Regulatory Affairs, Office of the Southwest Region, and Center for Devices and Radiological Health) is announcing a free public meeting as a followup to a meeting held in April 1995. The FDA office of the Southwest Region will meet with interested persons in the Southwest Region to address specific issues related to the medical device industry, Southwest Region, and FDA. The agency is holding this meeting to promote the President's initiative for a partnership approach with front-line regulators and the people affected by the work of this agency, and to create local partnerships.

DATES: The public meeting will be held on Friday, August 25, 1995, from 8:30 a.m. to 3:30 p.m.

ADDRESSES: The public meeting will be held at the Sheraton Denver West Hotel, 360 Union Blvd., Lakewood, CO.

FOR FURTHER INFORMATION CONTACT: Virlie Walker, FDA Denver District, Bldg. 20, Entrance W–10, Denver Federal Center, Sixth and Kipling Sts., Denver, CO 80255–0087, 303–236–3018, FAX 303–236–3099.

SUPPLEMENTARY INFORMATION:

Those persons interested in attending this meeting should FAX their comments and registration by Monday, August 21, 1995, including name, firm name, address, and telephone number to 303–236–3099. There is no registration fee for this meeting, but advance registration is required. Space is limited and all interested parties are encouraged to register early.

Dated: July 27, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–19058 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0226]

Current Issues in AIDS Clinical Trials; Notice of a Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of a public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop on current issues in acquired immune deficiency syndrome (AIDS) clinical trials. The workshop will be followed by a joint meeting of subcommittees of the Antiviral Drugs Advisory Committee and the National Task Force on AIDS Drug Development, announced elsewhere in this issue of the **Federal Register**. The workshop will enable experts in the field of AIDS clinical trials, interested representatives of industry, and interested members of the public to exchange ideas regarding clinical trials of drugs for the treatment of AIDS. While the workshop is not intended to result in consensus among participants or to contribute to the formulation of agency policy, discussions regarding current issues in AIDS clinical trials may provide assistance to pharmaceutical sponsors in designing appropriate study protocols and expediting drug development.

DATES: The public workshop will be held on Wednesday and Thursday, September 6 and 7, 1995, from 8:30 a.m. to 5 p.m. Registration must be received by August 18, 1995.

ADDRESSES: The public workshop will be held at the National Institutes of Health, William H. Natcher Conference Center, 45 Center Dr., 2BC–02, Bethesda, MD. Written comments may be submitted at any time to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. A transcript and summary of the workshop will be available from the Docket Management Branch (address above) and from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Heidi C. Marchand or Kimberley M. Miles, Office of AIDS and Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0104. Persons interested in attending this meeting should FAX their registration to one of the individuals named above at 301–443–9216, including the participant's name; organization name, if any; address; and telephone number. There is no registration fee for any part of this workshop, but advance registration is required. Interested parties are encouraged to register early because space is limited.

SUPPLEMENTARY INFORMATION:

Current Federal regulations allow for the accelerated approval of drugs intended to treat serious and life-threatening diseases, including AIDS and human immunodeficiency virus (HIV)-related diseases, on the basis of clinical trials showing that the drugs have an effect on surrogate endpoints. Following approval, FDA may require that the drug applicant study the drug further to verify the clinical efficacy of the product by performing clinical trials designed to demonstrate therapeutic benefit by clinical endpoints. In AIDS, the clinical endpoints that have been considered meaningful are survival and disease progression as manifested by the development of AIDS-defining opportunistic infections.

One of the major challenges facing developers of HIV therapeutics is the successful design and conduct of the clinical trials intended to provide the data needed to confirm the clinical benefit of drugs that have received accelerated approval. Study design issues include, but are not limited to, choice of patient population, control groups, treatment modifications on study, and analysis of heterogeneous endpoints. Study conduct issues include efficient recruitment of volunteers and retention of study subjects in trials long enough to gather sufficient endpoint data. These studies are being designed and conducted in the context of a rapidly changing world of new information and treatment strategies and increasing reliance on the use of surrogate markers to make treatment decisions.

The goal of this workshop is to discuss critical issues in the conduct of clinical trials in HIV in accelerated approval matters and to suggest strategies to overcome identified obstacles so that new drugs and information on the best use of these new drugs can be made available more quickly.

A transcript and summary of the workshop will be available from the Freedom of Information Office (address above) approximately 10 business days after the workshop at a cost of 10 cents per page.

Interested persons may submit, at any time, to the Dockets Management Branch (address above) comments on the workshop. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the

heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the workshop will remain open until October 31, 1995. Persons who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (address above) by October 31, 1995.

Dated: July 28, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–19087 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Joint Subcommittee Meeting of the National Task Force on AIDS Drug Development and the Antiviral Drugs Advisory Committee on Clinical Trial Design Issues

Date, time, and place. September 8, 1995, 8:30 a.m., Auditorium, William H. Natcher Conference Center, National Institutes of Health, 45 Center Dr., 2BC.02, Bethesda, MD.

Type of meeting and contact person. Open committee discussion, 8:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 4 p.m.; Heidi C. Marchand or Kimberley M. Miles, Office of AIDS and Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0104, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), National Task Force on AIDS Drug Development, code 12602, or Antiviral Drugs Advisory Committee, code 12531.

General functions of the committees. The National Task Force on AIDS Drug Development shall identify any barriers and provide creative options for the rapid development and evaluation of treatments for human immunodeficiency virus (HIV) infection and its sequelae. It also advises on issues related to such barriers, and provides options for the elimination of these barriers. The Antiviral Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Those desiring to make formal presentations should notify a contact person before August 25, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open subcommittee discussion. The subcommittee will hear summary presentations from discussions held during the public workshop on current issues in AIDS clinical trials to be held on September 6 and 7, 1995, (announced elsewhere in this issue of the **Federal Register**) and discuss recommendations on the scientific design of AIDS clinical trials.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page.

The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 18, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–19088 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Proposed Data Collections Available for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects

1. Reporting Requirements for Ryan White CARE Act of 1990, Title IV—The Maternal and Child Health Bureau (MCHB) proposes to collect aggregated data from 38 grantees and their local service providers that are funded under Section 2671 of the Public Health Service Act (42 USC 300ff-71) about the organizational structures, service delivery approaches, numbers and demographic characteristics of clients served, service utilization, and activities related to outreach, prevention, and education. The Data Collection Strategy includes six tables that the 38 grantees and their local service providers will use to submit information annually about program and client characteristics. The purpose is to document the efforts of grantees to develop comprehensive systems of care for infants, children and families and to provide these patients with access to research. The data collected will be used within and outside MCHB and HRSA to inform the administration and Congress about the Title IV program and will be used by grantees and MCHB for other planning, research, and policy efforts. Burden estimates are as follows:

Type of form	Number of respondents	Responses per respondent	Range* (hours)	Average burden per response (hours)
Designation of Local Reporting Entities	38	1	.1–1.0	.5
Local Network Profile	38	1	.1–2.5	1.0
Service Mix Profile	85	1	1–44	2.5
Demographic and Clinical Status	85	1	4–120	33.0
Service Utilization Summary	85	1	1–70	20.0
Prevention and Education Activities	85	1	1–44	4.0

*Estimates are based on phone conversations with 6 grantees.

2. Health Professions Student Loan Program and Nursing Student Loan Program Debt Management Report—Extension—The Debt Management Report is used by three programs (Health Professions Student Loan (HPSL) Program, Nursing Student Loan (NSL) Program, and Loans for Disadvantaged Students (LDS) Program) to monitor the fiscal activities of participating schools. Data are requested on collection activities, investment income, return of excess cash, compliance with performance standards, and the return of the Federal share of monies collected. The report is submitted electronically once a year. No substantive changes in the data elements are proposed. Burden estimates are as follows:

Type of form	Number of respondents	Responses per respondent	Average burden per response
6-month report.	1,503	1	1 hour.

3. Health Education Assistance Loan (HEAL) Program Physician's Certification of Borrower's Total and Permanent Disability Form—New—This form, completed by the HEAL borrower, the borrower's physician, and the holder of the loan, is used to certify that the HEAL borrower meets the total and permanent disability provisions. The PHS will use this form to obtain precise information about the disability claim which includes the following: 1) the borrower's consent to release medical records to the Department of Health and Human Services and to the holder of the borrower's HEAL loans, 2) pertinent information supplied by the certifying physician, 3) the physician's certification that the borrower is unable to engage in any substantial gainful activity because of a medically determinable impairment that is expected to continue for a long and indefinite period of time or to result in death, and 4) information from the lender on the unpaid balance. Failure to submit the required documentation will result in a disability claim not being honored.

Type of form	Number of respondents	Responses per respondent	Average burden per response
Borrower	42	1	0.08 hours.
Physician	42	1	2.75 hours.
Loan Holder.	35	1.2	0.17 hours.

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 27, 1995.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 95–19054 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

[0905–ZA93]

Notice of Redesignation of Contract Health Service Delivery Area

AGENCY: Indian Health Service, HHS.

ACTION: Notice with request for comments.

SUMMARY: This notice advises the public that the Indian Health Service (IHS) proposes to redesignate the geographic boundaries of the Contract Health Service Delivery Area (CHSDA) for the Jamestown S'Klallam Tribe (''The Tribe''). The Jamestown S'Klallam CHSDA currently is comprised of Clallam County in the State of Washington. This county was designated as the Tribe's CHSDA when the IHS published its updated list of CHSDA's in the **Federal Register** of January 10, 1984 (49 FR 1291). It is proposed that the redesignated CHSDA be comprised of Clallam County and Jefferson County in the State of Washington. This notice is issued under authority of 43 FR 34654, August 4, 1978.

DATES: Comments must be received on or before September 5, 1995.

ADDRESSES: Comments may be mailed to Betty J. Penn, Regulations Officer, Indian Health Service, Room 450, 12300 Twinbrook Parkway, Rockville, Maryland 20852. Comments will be made available for public inspection at this address from 8:30 a.m. to 5:00 p.m., Monday-Friday, beginning approximately 2 weeks after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Leslie M. Morris, Deputy Director, Division of Legislation and Regulations, Office of Planning, Evaluation and Legislation, Indian Health Service, Room 450, 12300 Twinbrook Parkway, Rockville, MD 20852, telephone 301–443–1116. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Secretary of the Interior acknowledged the Tribe as an Indian tribe, effective February 10, 1981 (45 FR 81890). The Tribe has entered into a self-governance compact with the IHS under Title III of the Indian Self-Determination Act (Pub. L. 93–638, as amended) to provide direct services at a clinic facility and also to provide, for eligible Indians, services purchased from private sector health care providers. Such purchased services are called ''contract health services.''

On August 4, 1978, the IHS published regulations establishing eligibility criteria for receipt of contract health services and for the designation of CHSDA's (43 FR 34654, codified at 42 CFR 36.22, last published in the 1986 version of the Code of Federal Regulations). On September 16, 1987, the IHS published new regulations governing eligibility for IHS services. Congress has repeatedly delayed implementation of the new regulations by imposing annual moratoriums. Section 719(a) of the Indian Health Care Amendments of 1988, Pub. L. 100–713, explicitly provides that during the period of the moratorium placed on implementation of the eligibility regulations, the IHS will provide services pursuant to the criteria in effect on September 15, 1987. Thus, the IHS contract health services program continues to be governed by the regulations contained in the 1986 edition of the Code of Federal Regulations in effect on September 15, 1987. See 42 CFR 36.21 *et seq.* (1986).

As applicable to the Tribe, these regulations provide that, unless otherwise designated, a CHSDA shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation (42 CFR 36.22(a)(6) (1986)). The regulations also provide that after consultation with the tribal governing body or bodies of those reservations included in the CHSDA, the Secretary may, from time to time, redesignate areas within the United States for inclusion in or exclusion from a CHSDA. The regulations require that certain criteria must be considered before any redesignation is made. The criteria are as follows:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the tribe;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of contract health services.

Additionally, the regulations require that any redesignation of a CHSDA must be made in accordance with the procedures of the Administrative Procedure Act (5 U.S.C. 553). In compliance with this requirement, we are publishing this proposal and requesting public comment.

Since approximately 1984, the Tribe has been providing contract health services to 20 of its tribal members residing in Jefferson County, Washington. Under existing regulations, the CHSDA for the Tribe consists of only Clallam County. On December 21, 1992, the Tribe most recently requested the Secretary to redesignate its CHSDA as Clallam County and Jefferson County in the State of Washington. The Tribe based its request on the fact that S'Klallam tribal members are indigenous to Jefferson County, Washington, yet are still ineligible to receive contract health services because they do not reside within the Tribe's existing CHSDA. In addition, the Tribe has developed a land consolidation plan, which has been approved by the Department of the Interior, through the Bureau of Indian Affairs, and which includes tribal trust land in Jefferson County. However, the Jefferson County tribal trust land has not yet been added to the reservation by proclamation of the Secretary of the Interior.

In applying the aforementioned CHSDA redesignation criteria required by operative regulations (43 FR 35654), the following findings are made:

(1) There are 112 Indians residing in Jefferson County, of which 59 are members of the Tribe or have close socioeconomic ties to the Tribe. Of these 59, 20 are already receiving services due to a previous administrative decision. The remaining 53 individuals are not covered by this request as they do not have close social and economic ties to the Tribe and are therefore, not eligible for contract health services under existing law.

(2) The Tribe has determined that contract health services would be available to all of its members and to all federally recognized Indians in Jefferson

County having social and economic affiliation with the Tribe.

(3) Although the Tribe's reservation is in Clallam County, the Tribe has trust land in Jefferson County that is included in an approved land consolidation plan and is pending proclamation to add it to the Tribe's reservation. This tribal trust land is contiguous to the existing reservation and extends into Jefferson County.

(4) It is estimated that the current eligible contract health service population will be increased by 39 individuals, changing the active patient population from 192 to 231, assuming 100 percent utilization for Jefferson County eligibles. Based upon data from the fiscal year 1994 application of the health services priority system and the modified resource requirements methodology, the total clinical work units (CWU's) generated by the user population of 192 was 998.4, or 5.2 per individual. Assuming the same utilization, the 39 new users will generate an additional 202.8 CWU's. The calculated cost per CWU in the inpatient and ambulatory contract health care category was $139.22 for the Tribe. Therefore, potential added costs for contract health services resulting from new users is approximated at $139.22 X 202.8 CWU's = $28,233.82. Total resources available to the program in fiscal year 1994 were $139,000. The addition of new usage would not be expected to result in an increase in funding for the Tribe. The impact on existing contract health services will not be substantial. The current funding level will allow sufficient flexibility to assure that there will be no significant reduction in the level of contract health services to current CHSDA residents, so the designation of the two-county CHSDA is within available resources.

Accordingly, after considering the Tribe's request in light of the criteria specified in the regulations, I am proposing to redesignate the CHSDA of the Tribe to consist of Clallam and Jefferson Counties of the State of Washington.

This notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act of 1930.

Dated: May 23, 1995.

Michel E. Lincoln,

Acting Director.

[FR Doc. 95–19095 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–16–M

Notice Regarding Section 602 of the Veterans Health Care Act of 1992 Patient and Entity Eligibility

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: Section 602 of Public Law 102–585, the ''Veterans Health Care Act of 1992,'' enacted section 340B of the Public Health Service Act (PHS Act), ''Limitation on Prices of Drugs Purchased by Covered Entities.'' Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement with the Secretary of Health and Human Services in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed that amount determined under a statutory formula.

The purpose of this notice is to inform interested parties of decisions regarding certain issues of program implementation. The notice will discuss the determination of covered entity status (i.e., PHS entity and disproportionate share hospital eligibility) and the administrative program requirements for ''covered entity'' status. Further, PHS is proposing a definition of eligible covered entity ''patient'' in section III for public comment.

DATES: The public is invited to submit comments on the proposed definition of ''patient'' in section III by September 5, 1995. After consideration of the comments submitted, the Secretary will issue the final guidelines.

FOR FURTHER INFORMATION CONTACT: Marsha Alvarez, R. Ph., Attn: Drug Pricing Program, Bureau of Primary Health Care, 4350 East West Highway, 10th Floor, Bethesda, MD 20814, Phone (301) 594–4353.

SUPPLEMENTARY INFORMATION: The Office of Drug Pricing has developed the following guidelines to facilitate program implementation and is proposing a definition of ''patient'' in section III for public comment.

I. Covered Entity Status

PHS Entities

Section 340B(a)(4) of the PHS Act lists the various categories of PHS programs eligible to receive section 340B outpatient drug discount pricing. For each category, there is a Federal program office which oversees the grant program. The respective Federal program offices determine which individual facilities receive the grant funds specified by section 340B or are eligible under other criteria and compile a list of such entities. The Federal program office then submits this list to the Office of Drug Pricing (ODP) for inclusion on the master list of eligible facilities (''covered entities'').

Each program office is responsible for maintaining a current data file of eligible entities and submitting all updated information to the ODP. This information may either be submitted on a quarterly or yearly basis, depending upon the number of entity status changes in a given period. Each program office determines how often updates are necessary to maintain current entity information on the ODP master list of covered entities and notifies the ODP of their respective update time periods. The update file data is submitted to ODP in either a dbf or ASCI file, the formats of which are available from the ODP. Program offices submit their updates to the ODP on the following dates: (a) December 1 for the January 1 update, (b) March 1 for the April 1 update, (c) June 1 for the July 1 update, and (d) September 1 for the October 1 update.

The ODP will update the master covered entity file on a quarterly basis. The name of an entity will not be added or deleted at any other time. For example, if an entity becomes an eligible PHS grantee, its name will not appear on the ODP master list until the program office submits the name in its update package and the ODP subsequently updates the ODP master list during the next quarterly cycle. ODP will not directly add to or delete an entity name from the ODP master list. An entity name to be added or deleted must be submitted by the program office during a scheduled update period.

The following is a list of the Federal program offices which oversee the 340B eligible programs and contact persons (except as otherwise indicated, references are to sections of the Public Health Service Act):

1. Federally-qualified health center, as defined in section 1905(1)(2)(B) of the Social Security Act (42 U.S.C. § 1396d(1)(2)(B)), means an entity that:

(a) receives a grant under section 329 (migrant health center), section 330 (community health center), section 340 (health services for the homeless), and section 340A (health services for residents of public housing); or

(b) (i) receives funding from such a grant under a contract with the recipient of the grant, and (ii) meets the requirements to receive a grant under section 329, 330, 340 and 340A; or

(c) based on the recommendation of the Health Resources and Services Administration (HRSA) within the Public Health Service, is determined by the Secretary to meet requirements for

receiving such a grant (i.e., ''look-alikes''); or

(d) was treated by the Secretary, for purposes of part B of Title XVIII of the Social Security Act, as a comprehensive Federally funded health center as of January 1, 1990; or

(e) an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93–638) or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act for the provision of primary health services. (Norma Campbell, Division of Community and Migrant Health, 301–594–0287), (Marie Garramone, Division of Community and Migrant Health {for look-alikes}, 301–594–4335), (Charles Woodson, Division of Programs for Special Populations, homeless and public housing health centers, 301–594–4430: Laura Visser, {for 340S school based programs}, 301–594–4470), (Elmer Brewster, DCSP, Special Initiatives Branch {for Urban Indian}, 301–443–4680), and (Merry Elrod, Office of Tribal Activities {for P.L. 93–638}, 301–443–1044).

2. Family planning projects receiving grants or contracts under section 1001, 42 U.S.C. 300. (Sophia Lawson, Office of Population Affairs, 301–594–4000).

3. An entity receiving a grant for outpatient early intervention services for HIV infection under subpart II of part C of title XXVI, 42 U.S.C. 300ff–51 *et seq.* (Laverne Green, Office of Programs for Special Populations, HIV, 301–594–4451).

4. A State-operated AIDS drug purchasing assistance program receiving financial assistance under section 2616 of the Act, 42 U.S.C. 300ff–26. (Richard Schulman, Division of HIV Services, 301–443–9091).

5. A black lung clinic receiving funds under section 427(a) of the Black Lung Benefits Act, 30 U.S.C. 937(a). (Norma Campbell, Division of Community and Migrant Health, 301–594–0287).

6. A comprehensive hemophilia diagnostic treatment center receiving a grant under section 501(a)(2) of the Social Security Act, 42 U.S.C. 701(a)(2). (Patrick McGuckin, National Hemophilia Program, 301–443–9051).

7. A Native Hawaiian Health Center receiving funds under the Native Hawaiian Health Care Act of 1988, 42 U.S.C. 11701 *et seq.* (Julia Tillman, Division of Programs for Special Populations, 301–594–4460).

8. Certain covered facilities must be certified by the Secretary before they become eligible for the discount drug prices, pursuant to section 340B(a)(7) of the PHS Act. The facilities requiring certification are those that

(a) receive grant funds related to the treatment of sexually transmitted diseases through a state or local government under section 318 of the PHS Act, 42 U.S.C. 247c, or related to the treatment of tuberculosis through a state or local government under section 317 E (a) of the PHS Act, 42 U.S.C. 247b–6, (Carmine Bozzi, Centers for Disease Control and Prevention, National Center for Prevention Services, 404–639–8008), or

(b) receive assistance under title XXVI of the PHS Act, 42 U.S.C. 300ff *et seq.*, other than a State or unit of local government or a grantee for HIV outpatient early intervention services (subpart II of part C of title XXVI of the PHS Act). (Richard Schulman, Division of HIV Services, 301–443–9091).

The criteria for eligibility include State certification that the facility does receive Federal grant funds and is a facility described in (a), or (b) above.

Electronic Data Retrieval System (EDRS) which can be accessed by dialing (301) 594–4992.

Disproportionate Share Hospitals

Certain hospitals are eligible for section 340B discount outpatient drug pricing if they meet the eligibility criteria. First, section 340B(a)(4)(L)(ii) provides that a hospital must be a ''disproportionate share'' hospital (DSH) as defined in section 1886(d)(1)(B) of the Social Security Act, which (for the most recent cost reporting period that ended before the calendar quarter involved) had a disproportionate share adjustment greater than 11.75 percent. This percentage is determined by the Health Care Financing Administration (HCFA), and a list of DSHs which meet this criteria is provided to the Office of Drug Pricing.

Second, section 340B(a)(4)(L)(i) provides that DSHs eligible for PHS pricing must meet one of the following requirements: (1) is owned or operated by a unit of State or local government, (2) is a public or private non-profit corporation which is formally granted governmental powers by a unit of State or local government, or (3) is a private nonprofit hospital which has a contract with a State or local government to provide health care services to low income individuals who are not entitled to benefits under title XVIII or XIX of the Social Security Act. All DSHs wishing to have access to section 340B discount outpatient drug pricing must provide the ODP a certification of their compliance with one of the three alternative requirements.

Third, a DSH is prohibited from participating in a group purchasing organization or any group purchasing association, pursuant to section 340B(a)(4)(L)(iii). DSHs wishing to access the discount pricing must provide the Office of Drug Pricing with a certification of their compliance with this prohibition.

DSHs must submit all necessary certifications to the Public Health Service DSH contact person—Elizabeth Hickey, Office of Drug Pricing, Bureau of Primary Health Care, West Tower, 10th Floor, 4350 East West Highway, Bethesda, Maryland, 20814, telephone (301) 594–4353.

II. Entity Participation Requirements

Section 340B(a)(4) of the PHS Act defines a ''covered entity'' as belonging to one or more of the eligible categories of PHS grantees or disproportionate share hospitals listed in subparagraph (4) and meeting the requirements of subparagraph (5). Subparagraph (5)(A) requires HHS to develop a mechanism to prevent a double PHS discount/Medicaid rebate potential; therefore, as part of this mechanism, each eligible entity must provide the ODP with certification of its pharmaceutical Medicaid billing status. Any entity which does not comply with this requirement will not be deemed a ''covered entity'' and will not be eligible for section 340B drug discounts. Those entities currently listed on the ODP master list which have not certified their Medicaid billing status will be removed from the ODP master list unless they certify their current billing status by the next quarterly update. Entities listed on subsequent program updates will be given one quarter from the date of the program update or until the next ODP update to certify their Medicaid billing status to ODP. Once the entity has certified its Medicaid billing status, its name will be included on the master list as a covered entity on the next ODP update.

A certification of the following information must be provided to the ODP before an entity will be deemed a ''covered entity:'' First, a covered entity, billing on a cost basis for covered outpatient drugs, must provide the ODP with a pharmaceutical Medicaid number (the number which the entity uses to bill Medicaid for such drugs). Second, a covered entity using an all-inclusive rate (either per encounter or visit) must provide the ODP with certification of this billing status and whether the all-inclusive rate includes covered outpatient drugs. Third, if a covered entity does not bill Medicaid for covered outpatient drugs, the entity

must notify the ODP of this decision. Fourth, a facility which houses many different clinics, only one or several of which are eligible, must obtain a separate Medicaid provider number for the eligible clinics. For those States which cannot generate additional Medicaid provider numbers for entities, the covered entity must discuss and implement an alternative arrangement with the States to prevent the duplicate PHS discount/Medicaid rebate potential. *See* 59 FR 25112 (May 13, 1994). Please note that only covered entities wishing to access the PHS discount pricing should certify their pharmaceutical Medicaid billing status to ODP.

III. Definition of Eligible Entity ''Patient''

Section 340B(a)(5)(B) of the PHS Act states that the covered entity must provide drugs, discounted under the statute, only to its patients and not resell or otherwise transfer such drugs to individuals who are not patients of the entity. To address the potential for drug resale or transfer, PHS published final entity guidelines concerning drug diversion. See 59 Fed. Reg. 25112, May 13, 1994. In part, covered entities are required to ''develop and institute adequate safeguards to prevent the transfer of discounted outpatient drugs to individuals who are not eligible for the discount.'' To accomplish this end, entities are encouraged to utilize a separate purchasing account and separate dispensing records. To further address the potential for drug diversion, PHS is now proposing a definition of a covered entity ''patient.''

An individual is a ''patient'' of a covered entity (with the exception of State-operated AIDS drug purchasing assistance programs) only if:

1. the covered entity has established a relationship with the individual, such that the covered entity maintains records of the individual's health care; and

2. the individual receives health care services from a health care professional who is either employed by the covered entity or provides health care under contractual or other arrangements (e.g. referral for consultation) such that responsibility for the care provided remains with the covered entity; and

3. the individual receives a health care service or range of services from the covered entity which is consistent with the service or range of services for which grant funding or Federally-qualified health center look-alike status has been provided to the entity. Disproportionate share hospitals are exempt from this requirement.

An individual will not be considered a ''patient'' of the entity for purposes of 340B if the only health care service received by the individual from the covered entity is the dispensing of a drug or drugs for subsequent self-administration or administration in the home setting.

An individual registered in a State-operated AIDS drug purchasing assistance program receiving financial assistance under title XXVI of the PHS Act will be considered a ''patient'' of the covered entity for purposes of this definition if so registered as eligible by the State program.

Dated: June 5, 1995.

Ciro V. Sumaya,

Administrator, Health Resources and Services Administration.

[FR Doc. 95–19061 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–15–P

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/205–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab., 11850 West 85th St., Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984. (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

CompuChem Laboratories, Inc., Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263. (Formerly: Roche CompuChem Laboratories, Inc., Special Division, A Member of the Roche Group, CompuChem Laboratories, Inc.—Special Division)

CORNING Clinical Laboratories, South Central Divison, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 (formerly: Metropolitan Reference Laboratories, Inc.)

CORNING Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 800–526–0947 (formerly: Damon Clinical Laboratories, Damon/MetPath)

CORNING Clinical Laboratories Inc., 1355 Mittel Blvd., Wood Dale, IL 60191, 708–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories)

CORNING MetPath Clinical Laboratories, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000 (formerly: MetPath, Inc.)

CORNING National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science)

CORNING Nichols Institute, 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT))

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–836–3093

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 813–936–5446/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

HealthCare/MetPath, 24451 Telegraph Rd., Southfield, MI 48034, 800–444–0106 ext. 650 (formerly: HealthCare/Preferred Laboratories)

Holmes Regional Medical Center Toxicology Laboratory, 5200 Babcock St., N.E., Suite 107, Palm Bay, FL 32905, 407–726–9920

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100 (Formerly: National Health Laboratories Incorporated)

Laboratory Corporation of America, d.b.a. LabCorp Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522 (Formerly: National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division)

Laboratory Corporation of America, 21903 68th Ave. South, Kent, WA 98032, 206–395–4000 (Formerly: Regional Toxicology Services)

Laboratory Corporation of America, 2540 Empire Dr., Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627 / Inside NC: 800–642–0894 (Formerly: National Health Laboratories Incorporated)

Laboratory Corporation of America Holdings, 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath Laboratories, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–931–7200 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon)

MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808(x4512)

National Psychopharmacology Laboratory, Inc., 9320 Park W. Blvd., Knoxville, TN 37923, 800–251–9492

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 503–687–2134

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400

PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627 (formerly: Physicians Reference Laboratory Toxicology Laboratory)

Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619–279–2600/800–882–7272

Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640

Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788

S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800

Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–376–2520

SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 904–787–9006 (formerly: Doctors & Physicians Laboratory)

SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 404–934–9205 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010 (formerly: International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 1737 Airport Way South, Suite 200, Seattle, WA 98134, 206–623–8100

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.),

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory)

No laboratories withdrew from the Program during July.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–19062 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–20–U

Supplement to Renovate the Alcohol Detention Center, Page, Arizona

AGENCY: Center For Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of intent to provide a supplemental award to renovate a facility to serve the substance abuse needs of the people of Page, Arizona, and the western portion of the Navajo Nation.

SUMMARY: The Center for Substance Abuse Treatment (CSAT), SAMHSA, is publishing this notice to provide information to the public of a planned single source supplemental award to the Navajo Nation Division of Health for renovating a facility (i.e., the Alcohol Detention Center of Page, Arizona, and the western portion of the Navajo Nation). The anticipated project period is one year and the estimated FY 1995 award is $200,000. An award will be made based on the receipt of a satisfactory application that is approved by an initial review group and the CSAT National Advisory Council.

AUTHORITY/JUSTIFICATION: This supplemental award will be made under the authority of section 510(b)(1) of the Public Health Service Act, as amended. An award is being made on a single source basis because the Conference Report to the Treasury/Postal Service and General Appropriations Act of 1995, specified that $200,000 should be reserved for this renovation effort.

The Catalog of Federal Domestic Assistance number for this program is 93.122.

The Navajo Nation Division of Health is a current CSAT Rural, Remote and Culturally Distinct program grantee that is currently providing substance abuse services to the people of Page, Arizona, and the rural remote population in the western portion of the Navajo Nation, by utilizing the resources and existing network of local private and public, social, health and welfare organizations and agencies. It has been selected for a supplemental award for renovations to its Alcohol Detention Center to further address the special substance abuse problems of these populations.

The Navajo Nation has utilized this facility since 1981 for drug and alcohol treatment activities. The facility is currently being used to serve individuals targeted by the CSAT program. However, the facility requires renovations to provide 13 adult residential treatment beds for men and women which can be licensed by the State of Arizona.

The Navajo Nation Division of Health is the local entity with a developed infrastructure and ongoing collaborative arrangements with local officials most able to implement this renovation project with a minimum of start up time.

The Navajo Nation is extremely rural. Lack of transportation and communication are common problems. Further, there is a greater need than availability of basic medical and health care services. In 1992, the Navajo Nation Department of Health reported that approximately 55,000 Navajos participated in various treatment and counseling interventions. Alcohol related deaths, accidents, injuries, illness, violence, and driving while intoxicated are significant problems. For example, five of the nine leading causes of mortality for Navajos are accidents, heart disease, homicide, suicide, and chronic liver disease and cirrhosis. Alcohol can be a major contributing factor to each of these problems.

Based on Indian Health Service (IHS) statistics, Navajo youth aged 12–18 and young adults aged 19–35 (especially male) are the high risk groups for substance abuse, with about one-fourth having abused alcohol, marijuana, and/or inhalants. In any given community on the reservation or border town, substance abuse is highly prevalent. Further, 35% of 8th grade Navajo students off the reservation have used alcohol and/or other drugs of abuse.

The Navajo Nation Department of Health reports a limited residential capacity including only 28 youth drug treatment beds and no adult beds. The number of beds are inadequate to meet the inpatient treatment needs of the Navajo Nation.

FOR FURTHER INFORMATION CONTACT: Clifton D. Mitchell, Chief Special Policy Projects Branch, CSAT/SAMHSA, Rockwall II, Suite 740, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone number (301) 443–8804.

Dated: July 31, 1995.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–19154 Filed 8–2–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. FR–2473–N–05]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th St. SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members

of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 27, 1995.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: HUD Acquisition Regulation—FR–2473.

Office: Administration.

Description of the Need for the Information and its Proposed Use: The HUD Acquisition Regulation was issued to implement and supplement the Federal Acquisition Regulation. The information collection required of the public is solely in connection with the procurement process.

Form Number: HUD–441.1, HUD–66.1, and HUD–770.

Respondents: Business or Other For-Profit and Individuals or Households.

Reporting Burden:

	Number of Respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	900		Varies		Varies		61,502

Total Estimated Burden Hours: 61,502.

Status: Extension with changes.

Contact: Patricia Ann Wash, HUD, (202) 708–0294, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: July 27, 1995.

[FR Doc. 95–19133 Filed 8–2–95; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–3917–N–13]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposal use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 27, 1995.

David S. Cristy,

Director Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Reporting Requirements for the Auction of Section 221(g)(4) Multifamily Mortgages.

Office: Housing.

Description of the need for the information and its proposed use: This collection consists of project data that will be made available to potential purchasers participating in the auction of Section 221(g)(4) mortgages. The project data will be submitted on a Project Summary Data Sheet to the purchasers. The data will provide project information and will allow purchasers to make informed bids. After the sale, the mortgagee will submit form HUD–93487 monthly to receive interest payments.

Form Number: HUD–93487.

Respondents: Business or Other For-Profit.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–93487	360		12		.25		1,080
Summary Sheet	360		2		1.50		540

Total Estimated Burden Hours: 1.620

Status: Reinstatement with changes.

Contact: Audrey Hinton, HUD, (202) 708–3555, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: July 27, 1995.

[FR Doc. 95–19132 Filed 8–2–95; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–3917–N–12]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 27, 1995.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Solicitation Mailing List Application.

Office: Administration.

Description of the Need for the Information and its Proposed Use: This information will be used by potential sources to indicate their particular field(s) of expertise or interest. HUD will use this information to target the types of solicitations that organizations receive as a result of being placed on the Solicitation Mailing List.

Form Number: HUD–24010 and SF–129.

Respondents: Individuals or Households, State, Local, or Tribal Government, Business or Other For-Profit, and Non-Profit Institutions.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	1,200		1		.17		200

Total Estimated Burden Hours: 200.

Status: Extension, no changes.

Contact: Patricia Ann Wash, HUD, (202) 708–0294, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: July 27, 1995.

[FR Doc. 95–19131 Filed 8–2–95; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–3917–N–11]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the purposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July, 27, 1995.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Loan Servicing of all Coinsurance Programs—Sections 223(f), 221(d), and 232.

Office: Housing.

Description of the Need for the Information and its Proposed use: Information is needed to review and evaluate the financial, physical, and managerial adequacy of multifamily housing, retirement service centers, and nursing homes with coinsured loans. The information will be used to minimize risks and to protect the assets and Government's interest. The respondents are all approved mortgagees, mortgagors, and managing agents.

Form Number: None.

Respondents: Business or Other For-Profit.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	409		1		Varies		19,468

Total Estimated Burden Hours: 19,468.

Status: Extension with changes.

Contact: Richard Pace, HUD, (202) 401–3272, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: July 27, 1995.

[FR Doc. 95–19130 Filed 8–2–95; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. FR–3776–N–03]

Notice of Request for Comments on Fair Housing Initiatives Program

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Request for Comments on Fair Housing Initiatives Program (FHIP).

SUMMARY: This notice invites interested parties to comment on the Department's administration of FHIP funding.

DATES: Comment Due Date: August 15, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this Notice to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Maxine Cunningham, Director, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street, SW., Washington, DC 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–9300. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: In anticipation of the next round of funding under the Fair Housing Initiatives Program, the Department held a public meeting on July 21, 1995, to invite and consider comments on the next round of FHIP funding. A notice of this meeting was published on July 14, 1995 (60 FR 36301). The purpose of the present notice is to invite the submission of additional comments from potential applicants, prior grantees and applicants, and any other interested parties, particularly those who may have not been able to attend the public meeting. The Department will consider the comments received in response to the public meeting and this Notice when formulating plans for the disposition of funds appropriated for Fiscal Year 1996.

Dated: July 24, 1995.

Susan Forward,

Deputy Assistant Secretary for Enforcement and Investigations.

[FR Doc. 95–19134 Filed 8–2–95; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–018–1220–00]

Relocation/Change of Address, Taos, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Relocation and change of address for the BLM Taos Resource Area Office, Taos, New Mexico.

SUMMARY: Effective August 14, 1995, the BLM Taos Resource Area Office will move to new quarters. The physical location and mailing address will be: Bureau of Land Management, Taos Resource Area, 226 Cruz Alta Road, Taos, New Mexico 87571.

During the week of August 14–18, the Resource Area Office will be closed. Records will be unavailable for inspection, and phone service will not be operational.

DATES: The office relocation is effective August 14, 1995.

FOR FURTHER INFORMATION CONTACT: Steve Henke, Acting Resource Area Manager, BLM Taos Resource Area Office at (505) 758–8851.

Dated: July 27, 1995.

Sue E. Richardson,

Acting District Manager.

[FR Doc. 95–19116 Filed 8–2–95; 8:45 am]

BILLING CODE 4310–FB–M

[NV–930–4210–05;N–59613]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purpose Lease/Conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The Shiloh Christian School proposes to use the land for a church school.

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. SE¼NE¼SW¼.
Containing 10.00 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as

the Secretary of the Interior may prescribe;

And will be subject to:

1. An easement 30.00 feet in width along the north, west, and south boundaries, and an easement 40.00 feet in width along the east boundary in favor of Clark County for roads, public utilities and flood control purposes;

2. Those rights for water main purposes which have been granted to Las Vegas Valley Water District by Permit No. N–55369 the under the Act of October 21, 1976(43 U.S.C. 1761);

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, P. O. Box 26569, Las Vegas, Nevada 89126.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a church school facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a church school facility.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated June 21, 1995.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 95–19037 Filed 8–2–95; 8:45 am]

BILLING CODE 4310–HC–P

[AZ–055–05–1430–01; AZA 29158 and AZA 29168]

Arizona: Notice of Realty Action: Noncompetitive Sales of Public Land in La Paz County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, noncompetitive sales.

SUMMARY: The following lands have been found suitable for direct sales under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the estimated fair market value. The lands will not be offered for sale until at least 60 days after the date of this notice. The lands are within the Town of Quartzsite boundaries. The lands are being offered by direct sale to the following nonprofit organizations:

AZA 29158—Quartzsite Southern Baptist Church

Gila and Salt River Meridian, Arizona

T. 4 N., R. 19 W.,
Sec. 20, N½SE¼SE¼SE¼.

Containing 5.00 acres, more or less.

AZA 29168—Parker Community Hospital

Gila and Salt River Meridian, Arizona

T. 4 N., R. 19 W.,
Sec. 15, SE¼SW¼NW¼,
SW¼SE¼NW¼.

Containing 20.00 acres, more or less.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, until conveyance, publication in the **Federal Register** of a termination of the segregation, or 270 days from the date of publication of this notice in the **Federal Register**, whichever occurs first. If it is determined that the subject parcels contain no known mineral values, the mineral interests may be conveyed simultaneously to the purchaser, upon payment of a $50 nonrefundable filing fee.

The patents, when issued, will contain certain reservations to the United States and will be subject to any valid existing rights.

DATES: On or before September 18, 1995, interested parties may submit comments to the District Manager, Yuma District Office, address below. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning the sales, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365.

FOR FURTHER INFORMATION CONTACT: Area Manager Joy Gilbert, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, telephone (520) 726–6300.

Dated: July 27, 1995.

Clinton R. Oke,

Acting Association District Manager.

[FR Doc. 95–19117 Filed 8–2–95; 8:45 am]

BILLING CODE 4310–32–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATES: Comments must be received on or before August 17, 1995. If you anticipate commenting on the form but find that the time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

Lena Paulsen, Manager, Information Center, Overseas Private Investment

Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527; 202/336–8565.

OMB Reviewer

Jeff Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 3201, Washington, D.C. 20503; 202/395–7340.

Summary of Form Under Review

Type of Request: Revision.

Title: Project Information Report.

Form Number: OPIC 71 (OMB No. 3420–0004).

Frequency of Use: On occasion—a function of the sampling criteria.

Type of Respondents: Business or other institutions (except farms).

Standard Industrial Classification Codes: All .

Description of Affected Public: U.S. companies investing overseas.

Reporting Hours: Seven hours per project.

Number of Responses: 25 per year.

Federal Cost: $1,500 per year.

Authority for Information Collection: Title 22 USC 2191(k)(2) and 2199(h), Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Project Information Report is necessary to elicit and record the information on the development, environmental and U.S. economic effects of OPIC-assisted projects. The information will be used by OPIC's staff and management solely as a basis for monitoring these projects, and reporting the results in aggregate form, as required by Congress.

Dated: July 25, 1995.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 95–19039 Filed 8–2–95; 8:45 am]

BILLING CODE 3210–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32659]

Caldwell County Economic Development Commission—Exemption From 49 U.S.C. Subtitle IV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts Caldwell County Economic Development Commission (CCEDC) from the provisions of 49 U.S.C. Subtitle IV, subject to the conditions that CCEDC: (1) Notify the Commission in advance of any proposed abandonment or discontinuance of service on the line; (2) provide any environmental and historical data that may be required to permit the Commission to conduct an environmental review of the abandonment or discontinuance; and (3) comply with any conditions that might be imposed before abandonment or discontinuance is consummated.

DATES: Petitions to reopen must be filed by August 28, 1995. Petitions for stay must be filed by August 18, 1995. The exemption will be effective September 2, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32659 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Ave., N.W., Washington, DC 20423; and (2) Petitioner's representative: Robert A. Wimbish, Rea, Cross & Auchincloss, Suite 420, 1920 N Street, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Ave., N.W., Room 2229 Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: July 20, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19129 Filed 8–2–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *Chemical Leaman Tank Lines, Inc.*, Civil No. *95–4264* a civil action filed on or about July 10, 1995, was lodged on July 10, 1995, with the United States District Court for the Eastern District of Pennsylvania. As described above, the complaint was filed simultaneously with the lodging of the consent decree.

Under the consent decree, Chemical Leaman Tank Lines, Inc., a generator of hazardous substances disposed of at the site and the only viable responsible party: (1) Will perform the remaining Site remedy (involving the excavation of contaminated soils, thermal desorption of the volatile organic compounds the soils contain, and treatment of the air emissions from the desorption unit) as well as the interim groundwater remedy consisting of a groundwater study and interim pump and treat remedy; (2) pay $1.571 million, over time, towards the costs that EPA has incurred and will incur to implement an alternative water supply to those private houses which draw their drinking and washing water from the aquifer underlying the Site; and (3) reimburse all of EPA's past costs ($420,296) over a two year period. Ultimately, Chemical Leaman will bear about 94% of the total costs of cleaning up the site. Chemical Leaman will also pay a civil penalty of $260,000 for violating an EPA administrative order.

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 for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Chemical Leaman Tank Lines, Inc.*, DOJ Ref. #*90–11–2–746*.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania, 19106–4476; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107; 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 of the proposed decree, please refer to the referenced case, the decree requested, and enclose a check in the amount of $27.00 (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. 95–19040 Filed 8–2–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *ThermalKEM, Inc.*, Civil Action No. 92–2607, was lodged on July 26, 1995, with the United States Court for the District of South Carolina. The amended complaint, brought pursuant to Section 3008 (a) and (g) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6928 (a) and (g), against ThermalKEM, Inc. for violations of RCRA Sections 3004(j) and 3005, 42 U.S.C. 6924(j) and 6925, sought civil penalties and injunctive relief. The amended complaint alleged that ThermalKEM violated the metal feed rate limits and mass feed rate limit contained in its permit for the operation of a commercial hazardous waste incinerator in Rock Hill, South Carolina. The consent decree provides that ThermaKEM will pay a civil penalty of $750,000 and follow a protocol approved by the United States for monitoring and limiting the rate of hazardous wastes that are fed to the incinerator.

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 for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *ThermalKEM, Inc.*, DOJ Ref. #90–7–1–669.

The proposed consent decree may be examined at the Office of the United States Attorney, District of South Carolina, 1441 Main Street, Suite 500, Columbia, South Carolina 29202; the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365; 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 refer to the referenced case and enclose a check in the amount of $6.50 (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. 95–19041 Filed 8–2–95; 8:45 am]

BILLING CODE 4410–01–M

Membership of the 1995 Senior Executive Service Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of Department of Justice's 1995 Senior Executive Service Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of SES performance appraisals and bonus recommendations. The PRBs will make recommendations to the Deputy Attorney General regarding the final performance ratings to be assigned and SES bonuses to be awarded.

FOR FURTHER INFORMATION CONTACT: Henry Romero, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530, (202) 514–6788.

Valerie M. Willis,

Executive Secretary, Senior Executive Resources Board.

Department of Justice, 1995 Senior Executive Service, Performance Review Board Members

Antitrust Division

Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section
J. Robert Kramer, Chief, Litigation II Section
Anthony V. Nanni, Chief, Litigation I Section

Civil Division

Eugene M. Thirolf, Director, Office of Consumer Litigation
Joyce R. Branda, Deputy Branch Director, Commercial Litigation Branch
Shiela M. Lieber, Deputy Branch Director, Federal Programs Branch

Civil Rights Division

William Ho-Gonzalez, Special Counsel, Office of Special Counsel
Kay Baldwin, Acting Chief, Employment Litigation Section

Criminal Division

Julie Samuels, Director, Office of Policy and Management Analysis
Joseph Gangloff, Principal Deputy, Public Integrity Section
Maureen Killion, Senior Associate Director, Office of Enforcement Operations

Environment and Natural Resources Division

Ron Sarachan, Chief, Environmental Crimes Section
James Kilbourne, Chief, Wildlife and Marine Resources Section
William Cohen, Chief, General Litigation Section

Justice Management Division

Andrew J. Boots, III, Director, Systems Technology Staff
Michael A. Perez, Director, Asset Forfeiture Management Staff
D. Jerry Rubino, Director, Security and Emergency Planning Staff

Tax Division

J. Randolph Maney, Chief, Criminal Enforcement Section, Southern Region
Jerome H. Fridkin, Chief, Civil Trial Section, Western Region
Stephen J. Csontos, Special Litigation Counsel

Bureau of Prisons

Steven B. Schwalb, Assistant Director, Industrial, Educational and Vocational Training Division
John L. Clark, Assistant Director, Community Corrections and Detention Division
Ronald Waldron, Senior Deputy Assistant Director, Health Services Division
Peter M. Carlson, Assistant Director, Correctional Programs Division

Executive Office for U.S. Attorneys

Richard De Haan, Counsel to the Executive Office for U.S. Attorneys

Executive Office for U.S. Trustees

Jeffrey Miller, Associate Director

Immigration and Naturalization Service

Michael D. Cronin, Assistant Commissioner, Inspections
G.H. Kleinknecht, Associate Commissioner for Enforcement
Joseph Mancias, Jr., Director of Public Affairs
Jeffrey M. Weber, Assistant Commissioner, Budget

Office of Justice Programs

Jack A. Nadol, Senior Counsel to the Assistant Attorney General

Office of Legal Counsel

Paul Colborn, Special Counsel

U.S. Marshals Service

Gary E. Mead, Associate Director for Administration

[FR Doc. 95–19118 Filed 8–2–95; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–069)]

NASA Advisory Council; Life and Microgravity Sciences and Applications Advisory Committee; Life and Biomedical Sciences and Applications Advisory Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Life and Biomedical Sciences and Applications Advisory Subcommittee.

DATES: August 22, 1995, 8:30 a.m. to 5:30 p.m.; and August 23, 1995, 8:30 a.m. to 1 p.m.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E Street, SW., NIC 6 A & B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald White, Code UL, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2530.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Wednesday, August 23, 1995, from 8:30 a.m. to 9:30 a.m. in accordance with 5 U.S.C. 522b (c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Subcommittee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of the Office of Life and Microgravity Sciences and Applications Life and Biomedical Sciences and Application Division Status
—Issues Related to Ames Research Center—The Fettman Report
—Institutes and NASA's Intramural activities
—Space Station and Life Sciences
—Results of the 1995 Peer Review of Proposals
—Bioregenerative Life Support—Program Plan
—General Discussion and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 28, 1995.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 95–19097 Filed 8–2–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–068]

NASA Advisory Council; Life and Microgravity Sciences and Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee.

DATES: August 24, 1995, 8:30 a.m. to 5:30 p.m.; and August 25, 1995, 8:00 a.m. to 12:30 p.m.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Arnauld Nicogossian, Code U, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0215.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Thursday, August 24, 1995, from 4:30 p.m. to 5:30 p.m. in accordance with 5 U.S.C. 522b(c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Committee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of the Office of Life and Microgravity Sciences and Applications Status
—Commercial Activities
—Russian Science
—Human Research Activities
—International Space Station
—Discussion of Committee Findings and Recommendations
—Committee Discussion Regarding Future Activities

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 28, 1995.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 95–19096 Filed 8–2–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Presenting Advisory Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting Advisory Panel (Presenting Organizations B Section) to the National Council on the Arts will be held from 9 a.m. to 7 p.m. on August 21–24, 1995 and from 9 a.m. to 5 p.m. on August 25, 1995. This meeting will be held in Room M14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 2 p.m. to 5 p.m. on August 25 for a policy discussion.

The remaining portions of this meeting from 9 a.m. to 7 p.m. on August 21–24 and from 9 a.m. to 2 p.m. on August 25 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of Section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the

Arts, Washington, DC 20506, or call 202/682–5433.

Dated: July 28, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–19162 Filed 8–2–95; 8:45 am]

BILLING CODE 7537–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36029; File No. SR–NYSE–95–07]

Self-Regulatory Organization; Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by New York Stock Exchange, Inc., Relating to Listing Standards for Options on Securities Issued in Certain Corporate Restructuring Transactions

July 27, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 18, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is approving the proposal, as amended, and soliciting comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its initial listing standards for options as set forth in NYSE Rule 715 in order to permit the listing of options on securities issued by public companies in connection with corporate spin-offs, reorganizations, recapitalizations, restructurings and similar corporate transactions at an earlier time than is presently the case.[4] Similarly, NYSE proposes to amend its options maintenance standards as set forth in Rule 716 in order to give Restructure Securities greater opportunity to meet those standards during the first months after issuance. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The options exchanges currently maintain uniform standards regarding approval of underlying securities for options trading.[5] Specifically, to be options eligible, a security shall meet the following guidelines: (1) Trading volume in all markets of at least 2.4 million shares in the preceding twelve months (''Volume Test''); (2) market price per share of at least $7.50 for the majority of business days during the three calendar month period preceding the date of selection (''Price Test''); (3) a minimum of 7 million shares that are owned by persons other than those required to report their stock holdings under section 16(a) of the Act (''Share Requirement''); and (4) a minimum of 2,000 holders (''Number of Shareholder Requirement'').[6] The Exchange must determine that a security satisfies the above requirements, as of the date it is selected for options trading (''selection date''), before the exchange may certify the listing to the Options Clearing Corporation (''OCC''). Depending on interest from other markets, the exchange may begin options trading three or five business days after the selection date.

The options exchanges have adopted corresponding criteria for withdrawal of approval of underlying securities.[7] A security previously approved for options transactions shall be deemed not to meet the guidelines for continued listing if (1) trading volume in all markets is less than 1.8 million shares in the preceding twelve months (''Maintenance Volume Test''); (2) market price per share closes below $5.00 on a majority of business days during the preceding six calendar months (''Maintenance Price Test'');[8] (3) fewer than 6.3 million shares owned by persons not required to report their stock holdings under section 16(a) of the Act (''Maintenance Share Requirement''); or (4) there are fewer than 1,600 holders (''Maintenance Number of Shareholder Requirement'').[9]

The Exchange proposes to amend NYSE Rule 715 to permit the expedited listing of standardized options in certain restructuring transactions. The proposal will apply to securities (''Restructure Security'') issued by a public company to existing shareholders, with existing publicly traded shares subject to options trading, in connection with certain ''restructuring transactions.''[10]

Under current standards, the Exchange is generally precluded from listing eligible options on newly issued securities for at least three months, given that the guidelines require three months of price history to determine if the underlying security meets the Price Test. Additionally, the Exchange may only list eligible options on newly issued securities, if the underlying security meets the Volume Test which requires trading volume in all markets of at least 2.4 million shares in the preceding twelve months. The proposed rule change, however, would facilitate the earlier listing of options on a Restructure Security by permitting the Exchange to determine whether the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President, NYSE, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Market Regulation''), Commission, dated July 18, 1995 (''Amendment No. 1'').

[4] The Commission notes that substantively identical proposals by the other U.S. options exchanges have been recently approved. *See* Securities Exchange Act Release No. 36020 (July 24, 1995) (File Nos. SR–CBOE–95–11; SR–PSE–95–04; SR–Phlx–95–12; and SR–Amex–95–07).

[5] *See* NYSE Rule 715; Amex Rule 915; CBOE Rule 5.3; PSE Rule 3.6; and Phlx Rule 1009.

[6] This proposal addresses price, volume, public ownership, and holder requirements specifically. For a Restructure Security to meet initial listing requirements, however, it must additionally comply with all requirements set forth by the Exchange in its options eligibility rules. For example, the security must be registered, and listed on a national securities exchange, or traded through the facilities of a national securities association and reported as a ''national market system'' (''NMS'') security as set forth in Rule 11Aa3–1 under the Act, and the issuer must be in compliance with any applicable requirements of the Act. *See supra* note 5.

[7] *See* NYSE Rule 716; Amex Rule 916; CBOE Rule 5.4; PSE Rule 3.7; and Phlx Rule 1010.

[8] Additional criteria permits the underlying security under certain circumstances to trade as low as $3.00 for a temporary period of time. *See* Id.

[9] This proposal addresses maintenance criteria for market price and trading volume specifically. For a Restructure Security to meet maintenance requirements for an underlying security subject to options trading, however, it must additionally comply with all requirements set forth by the Exchange in its options eligibility rules. *See supra* note 7.

[10] The proposal defines a ''restructuring transaction'' as a spin-off, reorganization, recapitalization, restructuring or similar corporate transaction.

Restructure Security satisfies the trading volume and market price criteria by reference to the trading volume and market price history of an outstanding equity security (''Original Equity Security'') previously issued by the issuer of the Restructure Security, or affiliate thereof. In addition, the Exchange proposes specific criteria for evaluating the distribution of shares of a Restructure Security for the proposes of meeting the Share and Number of Shareholder Requirements. To the extent the initial options listing requirements are satisfied based upon these ''lookback'' provisions of the Original Equity Security and the other provisions of the proposal, then the Exchange will permit options trading to begin on the ex-date for the transaction.[11]

Before the Exchange may invoke this proposed ''lookback'' provision and utilize the volume and price of the Original Equity Security for purposes of meeting the options eligibility criteria for the Restructure Security, the Restructure Security must first satisfy one of four alternate conditions. The first three alternate conditions are intended to ensure that the trading volume and market price history of the Original Equity Security represent a reasonable surrogate for determining the likely future trading volume and price data of the Restructure Security. Under these conditions either, (a) the aggregate market value of the Restructure Security, (b) the aggregate book value of the assets attributed to the business represented by the Restructure Security (minimum $50 million) or (c) the revenues attributed to the business represented by the Restructure Security (minimum $50 million) must exceed one of two stated percentages (''Relevant Percentages'') of the same measure for the Original Equity Security.[12] The Relevant Percentages will be 25% if the applicable measure determined with respect of the Original Equity Security represents an interest in the combined enterprise prior to the restructuring transaction, and 33⅓% if the applicable measure determined with respect of the Original Equity Security represents an interest in the remainder of the enterprise after the restructuring transaction. The fourth alternate condition is that the aggregate market value represented by the Restructure Security be at least $500 million.

If any of the four alternate conditions set forth above is satisfied, a Restructure Security will qualify for the ''lookback'' provision. Under the ''lookback'' provision, a Restructure Security may be eligible for options trading immediately upon its issuance provided the following requirements are satisfied. First, the Restructure Security must satisfy the options Volume and Price Tests. The Exchange may be permitted to determine whether a Restructure Security satisfies the Volume and Price Tests by reference to the trading volume and market price history of the Original Equity Security. Under the proposed rule change, the trading volume and market price history of the Original Equity Security that occurs *prior to the restructuring ex-date* can be used for these calculations (emphasis added). Volume and price data may be derived from ''when issued'' trading in the Restructure Security. However, once the Exchange first uses ''when issued'' volume or price for the Restructure Security to satisfy the relevant guidelines, it may not use the Original Equity Security for that purpose on any subsequent trading day. In addition, both the trading volume and market price history of the Original Equity Security must be used, if either is so used.

Additionally, the Exchange must determine whether a Restructure Security will satisfy the Share and Number of Shareholder Requirements. This determination will either be based upon facts and circumstances that the Exchange expects to exist on the intended date for listing the option, or based on assumptions that are permitted under the proposal. Because the shares of the Restructure Security are to be issued or distributed to the shareholders of the issuer of the Original Equity Security, the Exchange proposes that these requirements may be satisfied based upon the Exchange's knowledge of the existing number of outstanding shares and holders of the Original Equity Security.

The Exchange further proposes that if a Restructure Security is to be listed on an exchange or automatic quotation system that has, and subjects the Restructure Security to, an initial listing requirement of no less than 2,000 holders, then the Exchange may assume that the Number of Shareholders Requirement will be satisfied. Similarly, if a Restructure Security is to be listed on an exchange or in an automatic quotation system that has, and subjects the Restructure Security to, an initial listing requirement of no less than 7 million shares, held by persons not required to report their stock holdings under section 16(a) of the Act, then the Exchange may assume that the Share Requirement will be satisfied. Additionally, if the Exchange determines that at least 40 million shares of a Restructure Security will be issued and outstanding in a restructuring transaction, then it may assume that the Restructure Security will satisfy both the Share and the Number of Shareholder Requirements.

The Exchange, however, may not rely on the above assumptions if, after reasonable investigation, it determines that either the Share or Number of Shareholder Requirement, in fact, will not be satisfied on the intended date for listing the option. In addition, pursuant to the proposal, other exchanges will have the opportunity to challenge the certification by demonstrating that the Restructure Security will not meet the initial listing criteria with respect to shares and number of shareholders.

Finally, the proposal will adopt a similar ''lookback'' provision for the Maintenance Volume Test and the Maintenance Price Test. Specifically, for purposes of satisfying these requirements, the trading volume and market price history of the Original Equity Security, as well as any ''when issued'' trading in the Restructure Security, can be used for such calculations, provided that they are only used for determining price and volume history for the period prior to commencement of trading in the Restructure Security.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

[11] The Exchange shall not list for trading option contracts that overlie a Restructure Security until the ex-date. The ex-date occurs at such time when shares of the Restructure Security become issued and outstanding and are not the subject of trading on a ''when issued'' basis or on another basis that is contingent upon the issuance or distribution of shares.

[12] Aggregate market values will be based on share prices that are either (a) the Restructure Security's closing prices in the primary market on the last business day preceding the selection date or (b) the Restructure Security's opening prices in the primary market on the selection date. The aggregate market value of the Restructure Security may be determined from ''when issued'' prices, if available.

Asset values and revenues will be derived from the later of (a) the most recent annual financial statements or (b) the most recent interim financial statements of the respective issuers covering a period of not less than three months. Such financial statements may be audited or unaudited and may be pro forma.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests accelerated effectiveness of the proposed rule change pursuant to section 19(b)(2) of the Act.

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, particularly, section 6(b)(5) of the Act,[13] in that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission believes that it is necessary for securities to meet certain minimum standards regarding both the quality of the issuer and the quality of the market for a particular security to become options eligible. These standards are imposed to ensure that those issuers upon whose securities options are to be traded are financially sound companies whose trading volume, market price, number of shareholders, and number of shares owned by persons not required to report their stock holdings under section 16(a) of the Act are substantial enough to ensure adequate depth and liquidity to sustain options trading that is not readily susceptible to manipulation. The Commission also recognizes that under current equity options listing criteria, existing shareholders of an issuer that becomes involved in a restructuring transaction, may be precluded for a significant period from employing an adequate hedging strategy involving options on any newly acquired Restructure Security received in connection with such transaction.

Accordingly, to determine whether the earlier listing of options overlying a Restructure Security is reasonable, the Commission must balance the benefits of providing adequate hedging strategies to shareholders of the issuer of the Restructure Security, and the risks of approving certain securities for options trading before such securities actually satisfy the options eligibility criteria, which currently, for newly issued securities, can not occur, at the very least, prior to the three months after the security begins trading. The Commission believes that the proposed limited exception to established equity options listing procedures, as proposed, strikes such a reasonable balance.

As discussed in more detail below, the Commission believes that the conditions of the new rule will help to ensure that only those securities that are most likely to have adequate depth and liquidity will be eligible for options trading prior to the establishment of a recognized trading history. Additionally, by facilitating the earlier listing of options on a Restructure Security, the Commission believes that investors formerly holding the Original Equity Security, upon which options are currently traded, should be able to better hedge the risk of their newly acquired stock position in the Restructure Security.[14]

Despite the benefits of the proposal, the Commission believes that the proposal should only apply to restructuring transactions that involve financially sound and sufficiently large companies. The Commission believes that the Exchange has addressed this concern by adding conditions to the proposal that require the Restructure Security to either satisfy certain comparative tests (comparing the Restructure Security, or its related business with that of the Original Equity Security, or its related business),[15] or meet a very high aggregate market value standard ($500 million).

The Commission believes that if one of the comparative tests is satisfied, the Restructure Security should adequately resemble the Original Equity Security to qualify for the ''lookback'' provision. Under the ''lookback'' provision, a Restructure Security will be able to satisfy the Volume and Price Tests if the trading volume and market price history of the Restructure Security, together with the trading volume and market price history of the Original Equity Security occurring prior to the ex-date, meet the existing related requirements. Moreover, the Commission believes that, given the limited scope of the proposal, it is appropriate to conclude that a Restructure Security with an aggregate market value of at least $500 million appropriately qualifies for the ''lookback'' provision.

The Commission also believes that it is appropriate for the Exchange to count ''when issued'' trading in the Restructure Security when determining if the Restructure Security will satisfy the Volume and Price Tests set forth in the initial options listing requirements. However, once the Exchange begins to use ''when issued'' volume or price history for the Restructure Security to satisfy the Volume or Price Tests, it may not use the Original Equity Security for such purposes on any subsequent trading day. In addition, both the trading volume and market price history of the Original Equity Security must be used, if either is so used. For example, if in order to satisfy the Volume Test for a Restructure Security for which the ex-date is expected to be February 1, 1996, an exchange may elect to base its determination on the trading volume of the Original Equity Security from February 1, 1995 through December 27, 1995, and then utilize the trading volume in the when-issued market for the Restructure Security from December 28, 1995 through January 31, 1996, in determining whether options covering the Restructure Security may be listed on the February 1 ex-date. Under this example, after December 28, 1995, only when-issued trading data for the Restructure Security may be used in determining whether it meets the Volume and Price Tests. An exchange, however, would be permitted to use the volume and price history of the Original Equity Security throughout the entire period prior to February 1, 1996, provided that it did not rely on any when-issued trading data during that period.

The Commission notes that the Exchange shall not use trading history relating to the Original Equity Security after the exdate to meet the initial options listing requirements for the option contracts overlying the Restructure Security. Additionally, the condition that option contracts overlying a Restructure Security shall not be initially listed for trading until such time as shares of the Restructure Security are issued and outstanding and are the subject of trading that is not on a ''when issued'' basis or in any other way contingent on the issuance or distribution of the shares will ensure that options will only be traded on a Restructure Security when it is certain the security is actually issued and outstanding.

In addition to satisfying the Volume and Price Tests, a Restructure Security must also meet certain distribution requirements before the Exchange can deem such security to be options eligible. Specifically, the Restructure Security must have 2,000 holders, and 7 million shares must be owned by

[13] 15 U.S.C. 78f(b)(5).

[14] Although not specifically addressed by the proposal, the Commission understands that the application of the proposal is limited to instances where options are listed on the Original Equity Security.

[15] *See supra* note 12 and accompanying text.

persons not required to report their stock holdings under Section 16(a) of the Act to be options eligible. Under the most typical restructuring transaction, a spin-off to existing shareholders of the issuer of the Original Equity Security, the Exchange should be able to determine from publicly available information or otherwise reasonably deduce whether the Restructure Security will satisfy the 2,000 shareholder requirement and the 7 million share requirement. As an example, if Issuer A, having 10 million outstanding shares of common stock owned by persons not required to report their stock holdings under section 16(a) of the Act, and 5,000 shareholders, intends to effect a spin-off of a subsidiary, whereby one share of the subsidiary is issued to existing shareholders of Issuer A for each currently held outstanding share of Issuer A, immediately following the spin-off the former subsidiary will have 10 million shares held by persons not required to report their stock holdings under section 16(a) of the Act, and 5,000 shareholders. As a result, the former subsidiary will satisfy both the Share and Number of Shareholder Requirements.

As an alternative to the above, the proposal provides that the Exchange may make certain limited assumptions based on facts and circumstances that the Exchange expects to exist on the intended date for listing the options in order to determine the Share and Number of Shareholder Requirements. First, if a Restructure Security is to be listed on an exchange or in an automatic quotation system that has, and applies to the Restructure Security, an initial listing requirement that the issuer have no less 2,000 shareholders, the Commission believes that it is reasonable for the Exchange to assume that its comparable option listing requirement will be satisfied. Second, if a Restructure Security is to be listed on an exchange or in an automatic quotation system that has, and applies to the Restructure Security, an initial listing requirement of no less than 7 million shares owned by persons not required to report their stockholdings under section 16(a) of the Act, the Commission believes that it is reasonable for the Exchange to assume that its comparable option listing requirement will be satisfied.

The Commission notes that currently no exchange or automatic quotation system has a share requirement for initial stock listing purposes that is as stringent as those required under the options eligibility requirements. Moreover, a stock exchange may now be able to list stocks pursuant to alternate listing standards. For example, the Commission has recently approved alternate listing standards for companies listed on the NYSE, including, among other things, the distribution of shares.[16] Under these alternate listing standards, the NYSE is currently allowed to list certain companies with 500 shareholders that meet heightened requirements in other areas in lieu of its 2,200 total shareholder requirement. Therefore, the Exchange should be careful to precisely determine which listing standards are being applied to the listing of the Restructure Security prior to making a determination as to whether the Restructure Security meets the corresponding options listing criteria.

Additionally, the proposal provides that if at least 40 million shares of a Restructure Security will be issued and outstanding in a restructuring transaction, the Exchange may assume that the Restructive Security will satisfy both the Share and Number of Shareholder Requirements. The Commission believes this is appropriate because it appears unlikely that a Restructure Security with at least 40 million issued and outstanding shares, will have fewer than 2,000 holders or less than 7 million shares owned by persons not required to report their stock holdings under section 16(a) of the Act.

The Commission believes that concerns associated with the ability of the Exchange to make important listing decisions based on assumptions rather than confirmed facts are alleviated by the crucial provision contained in the proposal that the Exchange may not rely on the above assumptions if, after a reasonable investigation, it determines that either the Share or Number of Shareholder Requirements, in fact, will not be satisfied on the intended date for listing the option. At the very least, the Exchange should investigate the basis for its assumptions regarding the ownership of shares and number of shareholders just prior to selecting the option and just prior to trading the option, utilizing a worst case analysis in making its assumptions that the Restructure Security will meet these listing standards upon completion of the restructuring transaction.[17]

In addition, other exchanges will continue to have the opportunity to challenge the certification by demonstrating that the Restructure Security will not meet the initial listing criteria with respect to the Share and Number of Shareholder Requirements. The Commission believes that this provision provides an important check and should help to ensure that no unqualified securities are listed for options trading.

The Commission also believes that it is appropriate for the Exchange to apply the ''lookback'' provision, to determine if a Restructure Security will satisfy the Maintenance Volume and Price Tests. The Commission believes that it is appropriate to use the trading volume and market price history of the Original Equity Security, as well as any ''when issued'' trading in the Restructure Security for such calculations, provided that they are only used for determining price and volume history for the period prior to commencement of trading in the Restructure Security.

The commission notes that because the Maintenance Volume and Price Tests are calculated on a rolling forward basis, ''when issued'' trading history for the Restructure Security or trading history for the Original Equity Security prior to the ex-date may be used for maintenance calculations for no more than twelve months after the ex-date for the Restructure Security with respect to the Maintenance Volume Test, and for no more than six months after the ex-date for the Restructure Security with respect to the Maintenance Price Test. For example, if in order to satisfy the Maintenance Volume Test for a Restructure Security on November 1, 1995, for which the ex-date is September 1, 1995, an exchange may elect to base its determination on the trading volume of the Original Equity Security from November 1, 1994 through August 1, 1995, the trading volume in the when-issued market for the Restructure Security from August 2, 1995 through August 31, 1995, but must use the trading volume in the Restructure Security from September 1, 1995 through November 1, 1995. Similarly, in order to satisfy the Maintenance Price Test for the same Restructure Security on November 1, 1995, an exchange may elect to base its determination on the trading price of the Original Equity Security from August 1, 1995 through August 15, 1995, the trading price in the when-issued market for the Restructure Security from August 16, 1995 through August 31, 1995, but must use the trading price in the Restructure Security

[16] *See* Paragraph 102.01 of the NYSE's Listed Company Manual. *See also* Securities Exchange Act Release No. 35571 (April 5, 1995), 60 FR 18649 (April 12, 1995) (order approving proposed rule change relating to domestic listing standards).

[17] *See e.g.*, Letter from Michael Meyer, Schiff Hardin & Waite, to Sharon Lawson, Assistant Director, OMS, Market Regulation, dated January 25, 1995 (File No. SR–CBOE–95–11).

from September 1, 1995 through November 1, 1995.

The Commission notes that the Exchange's proposal only permits it to avail itself of the accelerated listing procedures for a traditional restructuring transaction that is limited to the distribution of shares to existing shareholders of the issuer of the Original Equity Security. Accordingly, the Commission notes that this proposal does not address or apply to restructuring transactions that involve a sale of such securities to the general public, including, but not limited to, initial public offerings or secondary offerings. The Commission is approving the current proposal based, in part, on the need for investors and other market participants with combined stock/option positions in an Original Equity Security to be able to maintain their positions immediately following a restructuring transaction. Otherwise, holders of the Original Equity Security might be temporarily prevented (until the Restructure Security independently satisfies the options listing criteria) from adequately hedging their involuntarily received new positions in the Restructure Security.

The Commission also notes that this proposal does not address or apply to restructuring transactions that involve a sale of such securities in a rights offering to existing holders of the Original Equity Security. The Commission believes that the contingencies in the terms of such an offering make it too difficult to determine whether the number of subscribers for such an offering would be adequate to meet the Share and Number of Shareholder Requirements and therefore such an offering does not justify the immediate availability of options for the underlying security.

The Commission believes that if the Exchange proposes to expand the scope of this proposal beyond that of restructuring transactions involving distributions of securities to existing shareholders or expanding the rule to include rights offerings, it must address potential concerns associated with being able to adequately determine the minimum number of publicly owned shares and holders of the Restructure Security that will exist on the intended date for listing the options in order to justify accelerated availability of options trading.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The NYSE's proposed rule change is substantively identical to proposals submitted by the Chicago Board Options Exchange, the Pacific Stock Exchange, the Philadelphia Stock Exchange, and the American Stock Exchange, which were recently approved by the Commission.[18]

The NYSE rule change proposal raises no unique or novel issues that have not been previously addressed in the other options exchanges' approved proposals.[19] Moreover, the CBOE, PSE, and Phlx proposals were noticed for the full notice and comment period without any comments being received by the Commission.

Amendment No. 1 to the proposed rule change by the NYSE makes certain technical clarifications to make the proposed rule change substantively similar to those filed by the other options exchanges. The Commission does not believe Amendment No. 1 to NYSE's proposed rule change raises any new or unique regulatory issues. Accordingly, the Commission believes that it is consistent with section 6(b)(5) of the Act to approve the proposed rule change and Amendment No. 1 to the proposed rule change, on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to SR–NYSE–95–07 and should be submitted by August 24, 1995.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change, as amended, (File NO. SR–NYSE–95–07) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

[FR Doc. 95–19161 Filed 8–2–95; 8:45 am]

BILLING CODE 8010–01–M

[18] *See supra* note 4.

[19] *Id.*

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Notice of Order Adjusting the Standard Foreign Fare Level Index

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 95–6–7 established the currently effective two-month SFFL applicable through July 31, 1995.

In establishing the SFFL for the two-month period beginning August 1, 1995, we have projected non-fuel costs based on the year ended March 31, 1995 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 95–7–48 fares may be increased by the following adjustment factors over the October 1979 level: Atlantic 1.4505, Latin America 1.4329, Pacific 1.5229.

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Dated: July 28, 1995.

Mark L. Gerchick,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–19155 Filed 8–2–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS–109, implemented by Regulation ER–1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate

in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 95–6–8, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning August 1, 1995, we have projected non-fuel costs based on the year ended March 31, 1995 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 95–7–49 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level: Atlantic 1.1244, Western Hemisphere 1.0382, Pacific 1.2093.

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Dated: July 28, 1995.

Mark L. Gerchick,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–19156 Filed 8–2–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–95–27]

Petitons for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmtsmail.hq.faa.gov. The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB) 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 31, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28255.

Petitioner: United Parcel Service Co.

Sections of the FAR Affected: 14 CFR 43.17(e)(2) and 121.379(b).

Description of Relief Sought: To allow the United Parcel Service Co., to approve any aircraft, airframe, aircraft engine, propeller, or appliance for return to service after a major or major alteration that has been performed by a Canadian Approved Maintenance Organization with technical data approved by Transport Canada instead of the Administrator.

Docket No.: 28256.

Petitioner: Mr. James R. Ainsworth.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought: To permit Mr. Ainsworth to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.

Dispositions of Petitions

Docket No.: 11366.

Petitioner: United States Customs Service.

Sections of the FAR Affected: 14 CFR 91.117 (a), (b) and (c); 91.119(c); 91.159(a); and 91.209 (a) and (d).

Description of Relief Sought/ Disposition: To extend Exemption No. 5504, which allows conduct drug interdiction air support while in noncompliance with the above mentioned FAR sections. *GRANT, June 23, 1995, Exemption No. 5504A.*

Docket No.: 24237.

Petitioner: The Department of the Air Force.

Sections of the FAR Affected: 14 CFR 91.177(a)(2) and 91.177(b)(1).

Description of Relief Sought/ Disposition: To extend Exemption No. 4371, as amended, which permits the Military Aircraft Command to conduct operations under certain instrument flight rule (IFR) conditions. *GRANT, June 23, 1995, Exemption No. 4371C.*

Docket No.: 24541.

Petitioner: Boeing Commercial Airplane Group.

Sections of the FAR Affected: 14 CFR 91.611.

Description of Relief Sought/ Disposition: To extend Exemption No. 4467, as amended, which permits Boeing to conduct ferry flights with one engine inoperative on its Boeing-manufactured 707, 727, and 747 aircraft without obtaining a special flight permit. *GRANT, June 29, 1995, Exemption No. 4467E.*

Docket No.: 26503.

Petitioner: ABX, Inc., d.b.a. Airborne Express.

Sections of the FAR Affected: 14 CFR 121.623 (a) and (d), 121.643, and 121.645(e).

Description of Relief Sought/ Disposition: To extend Exemption No. 5307, as amended, which permits Airborne to conduct operations in accordance with the requirements applicable to a domestic air carrier, even though Airborne operates under supplemental air carrier regulations.. *GRANT, May 31, 1995, Exemption No. 5307B.*

Docket No.: 25630.

Petitioner: State of Hawaii, Department of Transportation.

Sections of the FAR Affected: 14 CFR 45.29(h).

Description of Relief Sought/ Disposition: To extend Exemption No. 5632, which allows such persons to operate their aircraft without displaying 12-inch nationality and registration marks required by § 45.29(h) when penetrating the inner boundary of the Hawaiian Coastal Air Defense Identification Zone (ADIZ). *GRANT, April 17, 1995, Exemption No. 5632A.*

Docket No.: 26919.

Petitioner: Kalamazoo Aviation History Museum.

Sections of the FAR Affected: 14 CFR 45.25 and 45.29.

Description of Relief Sought/ Disposition: To extend Exemption No. 5519, which permits the Kalamazoo Aviation History Museum to operate its

Ford Tri-motor, model number 5–AT–C, serial number 58, with 3-inch-high nationality and registration marks located on each side of the fuselage under the leading edge of the horizontal stabilizer. *GRANT, June 16, 1995, Exemption No. 5519A.*

Docket No.: 26997.

Petitioner: Department of the Air Force.

Sections of the FAR Affected: 14 CFR 45.29(a).

Description of Relief Sought/ Disposition: To extend Exemption No. 5655, which allows the Department of the Air Force to display the smaller aircraft nationality and registration markings in place of the 12-inch high markings required by the regulations. *GRANT, June 19, 1995, Exemption No. 5655A.*

Docket No.: 27157.

Petitioner: Daimler-Benz Aerospace.

Sections of the FAR Affected: 14 CFR 25.562(b)(2).

Description of Relief Sought/ Disposition: To extend Exemption No. 5704, as amended, which exempts Dornier Luftfarht from the floor distortion test requirements of § 25.562(b)(2) for captain's and first officer's set on Dornier Model 328 airplanes (listed with the complete exemption document). *GRANT, June 29, 1995, Exemption No. 5704C.*

Docket No.: 27347.

Petitioner: Houston Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought/ Disposition: To extend Exemption No. 5743, which permits appropriately trained and certificated pilots employed by Houston Helicopters, Inc., (HHI) a part 135 certificated operator using aircraft with 9 or fewer seats, to remove and reinstall cabin seats in HHI's Bell Model 206 and 212 helicopters. *GRANT, June 16, 1995, Exemption No. 5743A.*

[FR Doc. 95–19143 Filed 8–2–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 27, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0074.

Form Number: IRS Form 1040, Schedules A, B, C, C-EZ, D, E, EIC, F, H, R, and SE.

Type of Review: Revision.

Title: U.S. Individual Income Tax Return.

Description: These forms are used by individuals to report their income tax and compute their correct tax liability. The data is used to verify that the items reported on the forms are correct and are also for general statistical use.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 66,244,569.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1040	3 hours, 8 minutes	2 hours, 54 minutes	4 hours, 43 minutes	0 hours, 53 minutes.
Sch. A	2 hours, 32 minutes	0 hours, 26 minutes	1 hour, 10 minutes	0 hours, 27 minutes.
Sch. B	33 minutes	8 minutes	17 minutes	20 minutes.
Sch. C	6 hours, 26 minutes	1 hour, 10 minutes	2 hours, 5 minutes	0 hours, 35 minutes.
Sch. C–EZ	46 minutes	4 minutes	18 minutes	20 minutes.
Sch. D	0 hours, 51 minutes	1 hour, 8 minutes	1 hour, 1 minute	0 hours, 41 minutes.
Sch. E	2 hours, 52 minutes	1 hour, 7 minutes	1 hour, 16 minutes	0 hours, 35 minutes.
Sch. EIC.		2 minutes	4 minutes	5 minutes.
Sch. F:				
Cash Method	4 hours, 2 minutes	0 hours, 35 minutes	1 hour, 14 minutes	0 hours, 20 minutes.
Accrual Method	4 hours, 22 minutes	0 hours, 25 minutes	1 hour, 19 minutes	0 hours, 20 minutes.
Sch. H:	0 hours, 46 minutes	0 hours, 43 minutes	1 hour, 3 minutes	0 hours, 35 minutes.
Sch. R	20 minutes	15 minutes	22 minutes	35 minutes.
Sch. SE:				
Short	20 minutes	13 minutes	11 minutes	14 minutes.
Long	26 minutes	22 minutes	34 minutes	20 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 1,128,363,154 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 95–19076 Filed 8–2–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 27, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0087.

Form Number: IRS Forms 1040–ES, 1040–ES(NR), and 1040–ES(Espanol).

Type of Review: Extension.

Title: Estimated Tax for Individuals (U.S. Citizens and Residents) (1040–ES), For Nonresident Aliens (1040–ES(NR)), For Use in Puerto Rico (In Spanish).

Description: Form 1040–ES is used by individuals (including self-employed) to make estimated tax payments if their estimated tax due is $500 or more. IRS uses the data to credit taxpayers' accounts and to determine if estimated tax has been properly computed and timely paid.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 14,563,250.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	1040–ES	1040–ES(NR)	1040–Espanol
Recordkeeping	1 hr., 19 min	40 min	7 min.
Learning about the law	18 min	14 min	7 min.
Preparing the worksheets and payment vouchers	49 min	59 min	32 min.
Copying, assembling, and sending the payment voucher to the IRS	10 min	10 min	10 min.

Frequency of Response: Quarterly.

Estimated Total Reporting/Recordkeeping Burden: 106,438,132 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 95–19077 Filed 8–2–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 27, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the customer satisfaction survey described below in late August, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by August 8, 1995. To obtain a copy of this survey, please write to the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1349.

Project Number: SOI–012.

Type of Review: Revision.

Title: 1996 Fiscal Year Fresno Customer Service Center Telephone Survey.

Description: The IRS is continuing to change the way they do business because of the reinvention of government. To accomplish this goal they have changed the function of their Service Center from processing centers to customer service centers. The Fresno Service Center has been serving as a prototype. One of the goals of the new Customer Service Sites is to assist the taxpayer with a telephone call for all their tax questions rather than corresponding with them through the mail.

Respondents: Individuals or households.

Estimated Number of Respondents: 10.

Estimated Burden Hours Per Respondent: 4 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 35 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 95–19078 Filed 8–2–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 20, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0134.

Form Number: IRS Form 1128.

Type of Review: Extension.

Title: Application to Adopt, Change, or Retain a Tax Year.

Description: Form 1128 is needed in order to process taxpayers' requests to change their tax year. All information requested is used to determine whether the application should be approved. Respondents are taxable and nontaxable entities including individuals, partnerships, corporations, estates, tax-exempt organizations and cooperatives.

Respondents: Business or other for-profit, Individuals or households Not-for-profit institutions, Farms.

Estimated Number of Respondents/Recordkeepers: 20,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
Parts I and II	9 hrs., 20 min	2 hrs., 47 min	3 hrs., 4 min.
Parts I and III	14 hrs., 7 min	4 hrs., 4 min	4 hrs., 29 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 363,440 hours.

Clearance Officer: Garrick Shear, (202) 622–3869 Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 95–19107 Filed 8–2–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 20, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0072.

Form Number: IRS Form 2119.

Type of Review: Extension.

Title: Sale of Your Home.

Description: Taxpayers who sell their main home use Form 2119, even if they had a loss, and whether or not they replace the home. The form is also used by taxpayers age 55 or older who elect to exclude the gain on the sale of their main home. The information is used to determine whether or not the sale has been reported correctly.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,377,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—46 minutes

Learning about the law or the form—19 minutes

Preparing the form—1 hour, 31 minutes

Copying, assembling, and sending the form to the IRS—20 minutes

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 4,034,610 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 95–19106 Filed 8–2–95; 8:45 am]

BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 149

Thursday, August 3, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, August 10, 1995.

PLACE: 2033 K St., N.W., Washington, DC 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–19298 Filed 8–1–95; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, August 31, 1995.

PLACE: 2033 K St., NW., Washington, DC 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–19299 Filed 8–1–95; 3:40 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Thursday, August 31, 1995.

PLACE: 2033 K St., NW., Washington, DC 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–19300 Filed 8–1–95; 3:40 pm]

BILLING CODE 6351–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, August 8, 1995 at 10:00 a.m.

PLACE: 999 E St. NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 10, 1995 at 10:00 a.m.

PLACE: 999 E St. NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Any matters continued from meeting of August 3, 1995.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 95–19276 Filed 8–1–95; 3:29 pm]

BILLING CODE 6715–01–M

federal register

Thursday
August 3, 1995

Part II

Department of the Interior

Bureau of Indian Affairs

Tribal Consultation of Indian Education Topics; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation of Indian Education Topics

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Johnson O'Malley Program Issues.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) is continuing its consultation effort to obtain written comments concerning proposed methods of determining Johnson O'Malley (JOM) contract funding amounts to be transferred to the Tribal Priority Allocation (TPA) category or the Special Programs and pooled overhead category of the Tribal Budget System.

DATES: Written comments should be mailed, to be received, on or before August 25, 1995.

ADDRESSES: Mail or Handcarry comments to the Bureau of Indian Affairs, Office of Indian Education Programs, Mail Stop 3512–MIB, OIE–21, 1849 C Street NW., Washington, DC 20240, Attention: Dr. John Tippeconnic; or, may be hand delivered to Room 3512 at the same address. Telefax responses may be transmitted to (202) 219–9583.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Geboe or Ms. Loretta Draper at the above address or call (202) 219–1127.

SUPPLEMENTARY INFORMATION: The publication of this notice is a follow-up to consultation meetings conducted by the BIA since 1990. The purpose of the consultation, as required by 25 U.S.C. 2010(b), is to provide Indian tribes, school boards, parents, Indian organizations and other interested parties with an opportunity to comment on potential issues raised during previous consultation meetings or being considered by the BIA regarding Indian education program. Prior to finalizing the BIA's choice of method to be used in identifying tribal base funding levels for the JOM program, it is requesting final comments and viewpoints on the two methods under consideration.

Both the House and Senate Reports accompanying the BIA's FY 1995 appropriation act transferred the JOM program from the ''other recurring programs'' account to the ''TPA'' account in the BIA's budget. Senate Report No. 103–294 stated that a portion of the JOM funds may be transferred to the Special Programs and pooled overhead category where such funding is not under tribal contracts i.e., states and public school districts. House Report No. 103–551 required the BIA to consult with tribes on the development of a method of determining each tribe's portion of the JOM program and to publish such proposed methods in the **Federal Register** prior to finalizing such a distribution method.

During October, 1994, the BIA formally consulted with Indian Country, as required by Pub. Law 95–561, and the FY 1995 House and Senate Report(s) language on the development of such a distribution method. Eleven regional tribal consultation meetings were held across the country with more than 2700 comments received on the various education consultation items. Most of the comments received on the JOM item were in opposition to the movement of the JOM program funds to the TPA budget category and preferred the program to be administered as currently is by formula distribution of funds. The majority of commentors chose not to agree with the Bureau's proposals and proposed another option for the Bureau to consider.

Based on information received from the Congress and through the Tribal Consultation process, the Bureau is seeking input from Indian country on two final proposed distribution methodologies. The following methods are being considered by the BIA for determining each tribe's share of the JOM program funds for allocation to the TPA budget category:

Method A: JOM funds distributed to tribes under the TPA, which are earmarked for supplemental educational activities, according to tribal membership.

Method B: JOM funds distributed to tribes and non-tribal JOM contractors, which are earmarked for supplemental educational activities, according to service population.

Explanation of Method A: The following steps would be initiated for purposes of implementing this method:

1. Identify the number of JOM students by tribal enrollment in Federally recognized tribes.
2. Divide the total amount JOM funds by the number of FY 1995 students to arrive at an equal share per student.
3. Distribute the JOM funds by tribal enrollment times equal share.
4. Establish the base for each tribe under the TPA.

Explanation Method B: The following steps would be initiated for purposes of implementing this method:

1. Identify the number of JOM students served by all JOM contractors.
2. Using the FY 1995 distribution method, identify the amount of JOM funds each tribal JOM contractor receives to establish a base for each tribe.
3. Identify the amount of JOM funds each non-tribal JOM contractor (State and Public School Districts) receives.
4. Add another Line Item in budget, Special Programs and Pooled Overhead category entitled ''Non-Tribal JOM Contractors''.
5. Place the proportionate share of JOM funds that are provided to tribes, as tribal JOM contractors, for all JOM students served into each tribe's line item under the TPA.
6. Place the proportionate share of JOM funds that are provided to States and public school districts, as JOM contractors, for all JOM students served into the Non-Tribal JOM contractor line item under the TPA category.

Dated: July 20, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–18909 Filed 8–2–95; 8:45 am]

BILLING CODE 4310–02–M

federal register

Thursday
August 3, 1995

Part III

Department of Transportation

Coast Guard

33 CFR Parts 126 and 127

Waterfront Facilities Handling Liquefied Hazardous Gas; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 126 and 127

[CGD 88–049]

RIN 2115–AD06

Waterfront Facilities Handling Liquefied Hazardous Gas

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations for waterfront facilities capable of transferring liquefied hazardous gas, or ''LHG'', in bulk, to or from vessels. The transfer of LHG prevents hazards similar to those from the transfer of liquefied natural gas, or ''LNG'', yet facilities capable of transferring LNG in bulk are subject to much more stringent requirements. The amended regulations will strengthen the requirements for the transfer of LHG and move those requirements from part 126 to part 127.

DATES: This rule is effective on January 30, 1996. The Director of the Federal Register approves as of January 30, 1996 the incorporation by reference of certain publications listed in this rule.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA, 3406) [CGD 88–049], U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Gary W. Chappell, Port Safety and Security Division (G–MPS–3), by telephone (202) 267–0491 or fax (202) 267–0506.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Gary W. Chappell, Project Manager, and Mr. Patrick J. Murray, Project Counsel, Office of Chief Counsel.

Regulatory History

On October 5, 1993, the Coast Guard published a notice of proposed rulemaking entitled ''Waterfront Facilities Handling Liquefied Hazardous Gas'' in the **Federal Register** (58 FR 51906). The Coast Guard received 26 Letters commenting on the proposal. No public meeting was requested, and none was held.

Background and Purpose

The Coast Guard has determined that it needs to regulate transfers of LHG, in bulk, to and from vessels at waterfront facilities. Data collected over the last 10 years on deaths, injuries, and property damage resulting from accidents during these transfers indicate that restrictions on equipment and on operating procedures will prevent and mitigate damage and personal injuries. Although the transfer of LHG falls under the existing requirements in 33 CFR part 126, the available data indicate that these requirements are not adequate. LHG presents hazards similar to those of LNG, when transferred in bulk, yet facilities that transfer LNG fall under much stricter regulatory requirements than those that transfer LHG. The Coast Guard is establishing new regulations for waterfront facilities handling LHG in 33 CFR part 127 that expand upon the regulations in part 126 and include requirements similar to those for LNG facilities already in part 127.

This rule is being implemented under the authority of the Ports and Waterways Safety Act (PWSA), as amended (33 U.S.C. 1221 et seq.) There, Congress declared that the safety of vessels and protection of the marine environment are matters of major national concern and that increased supervision of activities in ports is necessary. The PWSA authorized the Secretary of Transportation to take whatever measures are necessary to protect structures or areas of land in or adjacent to the navigable waters of the United States, including measures for the loading, movement, unloading, storage, and other handling of hazardous materials on waterfront facilities. The Coast Guard maintains that the hazards presented by these materials justify the measures in this rule for the handling of LHG.

Discussion of the Comments on and Changes to the NPRM

The Coast Guard received 26 letters commenting on the notice of proposed rulemaking (NPRM) entitled ''Waterfront Facilities Handling Liquefied Hazardous Gas'' published in the **Federal Register** on October 5, 1993. It considered those comments in developing this final rule.

1. Two comments stated that the regulations duplicate the requirements of both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA). The comments suggested that the Coast Guard work with these two agencies to avoid duplicative requirements and, thereby, reduce the regulatory burden on the industry. The Coast Guard concurs in part. So far as OSHA, EPA, or other agencies of the Federal government have established similar requirements, this rule permits the use of documents, procedures, or training established under those requirements to satisfy requirements of the Coast Guard. For example, this rule allows the substitution of requirements of OSHA (29 CFR 1910.120) and EPA (40 CFR 311.1), on training in hazardous-waste operations and emergency response, to meet the requirements in § 127.1302, so far as such training addresses these requirements.

Representatives of the Coast Guard and OSHA met to resolve potential duplicate requirements, however, and found that they do not exist to the extent suggested by the commenters. Under 29 CFR 1910.5(b), the requirements in 29 CFR part 1910 do not apply within the ''marine transfer area for LHG'' because the Coast Guard has elected to regulate this area. Requirements of OSHA do apply where the Coast Guard has not established comparable requirements within the marine transfer area. In spite of attempts to harmonize these requirements with those of other agencies, some differences persist because these address the hazards of operations on waterfront facilities transferring LHG in bulk more specifically than do the general standards for industry at large developed by OSHA and EPA. But these are matters of particularity, not outright conflict.

2. Coast Guard regulatory standards now require the primary weights and measures to be specified in metric units. Therefore, though no comment raised this issue, this rule specifies all weights and measures in metric units followed by English equivalents. The conversions of weights and measures ensure that equipment or procedures complying with the English values in the NPRM will also comply with the metric values in this rule. So the conversions should have no impact on compliance with this rule.

3. One comment recommended that the most current edition of the materials incorporated by reference be cited in this rule. The Coast Guard concurs, since the most current edition represents the latest thought and since it is difficult for industry to obtain copies of outdated standards anyway. Section 127.003 of this rule reflects the latest edition of each publication. Because the NPRM cited what are still the latest editions of (1) ANSI S12.13,

Part 1, Performance Requirements, Combustible Gas Detectors, (2) API RP 2003, Protection Against Ignitions Arising Out of Static, Lighting and Stray Currents, and (3) ASTM F–1121, International Shore Connections for Marine Applications, this rule cites the same editions. Because ANSI B16.5, Pipe Flanges and Flanged Fittings, has subsumed its standard, ANSI B16.31, Non-Ferrous Pipe Flanges, has dropped from the list of material incorporated by reference.

The Coast Guard compared the older editions of the standards listed in the NPRM that apply to LHG with the latest editions listed in this rule and found no significant changes between them. It did the same with editions that apply to LNG facilities and likewise found no significant changes between them. Consequently, the updating of standards incorporated by reference will have no impact on existing LNG facilities.

4. Three comments asked that existing LHG facilities be grandfathered out of the standards incorporated by reference in § 127.003. The Coast Guard does not concur. These standards are widely accepted and used by industry. They are minimal. To accept less would not achieve the desired level of safety. However, the COTPs may approve alternatives for existing facilities built to different standards if the alternatives yield an equivalent level of safety.

5. Seven comments sought clarification of the definition of the ''marine transfer area for LHG'' in § 127.005. The Coast Guard believes that it has adequately defined this area. The area encompasses the pier or wharf in its entirety, including the cargo manifold, as well as that part of piping cargo and vapor inland from the pier to the first shutoff valve. Here, ''inland'' refers to the direction along the piping away from the vessel. Some of the confusion on this issue resulted from a misprint in the NPRM that replaced ''LNG'' with ''LHG'' in the definition of ''Marine Transfer Area for LNG''. This error has been corrected in this rule. Any facility operator uncertain where the area ends should reach a written understanding with the COTP on where the COTP will enforce this rule.

6. Three comments stated that it would be difficult to provide specific vessel-arrival and cargo data in the ''Letter of Intent,'' as required by § 127.007(d)(5). The comments asserted that LHG facilities rarely know in advance the type of vessel or frequency of arrivals. Section 127.007(d)(5) does not require facilities to list specific vessel-arrival or cargo data. The purpose of the ''Letter of Intent'' is to give the COTP general notice of both the type and estimated number of LHG vessels that may call at the facility and the size of shipments. This information can easily be obtained from the facility-design specifications.

7. Two comments requested a 60-day phase-in period to allow time to prepare the letter of intent required under § 127.007 and a 6-month phase-in period to allow time to prepare the manuals required under § 127.019. The effective date of this rule will occur 180 days after publication of this rule in the **Federal Register**. This delay should provide enough time to comply with the requirements of this rule, including submitting, and if necessary amending, the letter of intent and all manuals.

8. Four comments requested clarification of the length of cargo piping that must be cleared of LHG before a vessel may disconnect. According to the comments, § 127.1101(c) requires the entire length of the piping from the dock to the storage tank to be cleared of LHG. This length of piping can run several hundred feet and take up to four hours to clear, with no significant improvement in safety. Section 127.1101(c) states that hoses and loading arms must be cleared. It does not refer to the piping. This rule does not require any part of the piping to be cleared of LHG before the disconnecting of the vessel.

9. Two comments alleged a conflict between §§ 127.1101 and 127.1321. Section 127.1101(c) requires bleeds and vents to allow LHG or its vapor to discharge to a safe area, while § 127.1321 bans the intentional release of LHG into the environment. This rule defines ''release,'' in § 127.005, to clarify this term. It allows a minor release of LHG or its vapor under certain conditions. But it in no way authorizes releases prohibited by other law. Section 127.110(c) clarifies the term ''safe area'' by adding the phrase ''such as a tank or flare'' to the end of the last sentence.

10. Two comments recommended limiting the applicability of § 127.1102(a) to ''each hose used in the marine transfer of LHG or its vapors.'' These requirements are to govern hoses used to transfer LHG or its vapors to or from vessels within the marine transfer area. In some cases hoses not used for the transfer of LHG or its vapors to or from vessels may be in the area, or hoses used for it may be outside the area. To clarify this point this rule revises § 127.1102(a).

11. Three comments asked that continuously manned docks be acceptable as a substitute for alarms on loading arms under § 127.1102(b)(4). While an alarm is the preferred method of alerting personnel that the loading arm is approaching the limits of its extension, personnel carefully watching the arm's extension can perform it, too. This rule amends § 127.1102(b)(4) to allow a personnel watch to substitute for an alarm if the operations manual establishes such a watch.

12. Two comments requested clarification of the term ''new construction'' in § 127.1103(a). The term ''new'' is defined in § 127.005. The term ''new construction'' means any piers, wharves, buildings, or pipelines constructed after the effective date of this rule. It also covers replacement of any existing piers, wharves, buildings, or pipelines. But it does not cover minor repairs or repairs made in kind to these.

Similarly, this rule modifies § 127.1105 to clarify that it applies only to new waterfront facilities handling LHG, and to all new construction in the marine transfer area for LHG of existing facilities. An introductory text, new paragraph (a) of § 127.1105, clarifies this point.

13. Five comments requested clarification of the requirements in § 127.1103. They wanted to know whether the substructure at an existing LHG facility has to comply with the fire-endurance requirements. Because industry standards generally grandfather existing construction, § 127.1103(b) is intended to apply only to new facilities and new construction as defined in § 127.005. To clarify this point, this rule revises § 127.1103(b) to read: ''Each substructure on a new waterfront facility handling LHG, and all new construction in the marine transfer area for LHG of each existing facility, * * *.''

14. One comment sought amendment of § 127.1107 to allow the use of equipment approved by organizations other than Underwriters Laboratories, Inc., and Factory Mutual Research Corporation, which are the only organizations whose approval NFPA 70 recognizes. While the Coast Guard has reserved the authority to allow approvals by other organizations acceptable to the Commandant in regulating vessels, it will not reserve as much in regulating waterfront facilities. Unlike vessels, waterfront facilities are subject to State and local authorities, who generally apply NFPA standards. If the Coast Guard applied standards different from those applied by State and local authorities, facility operators would have a harder time determining what equipment they could use. Consequently, § 127.1107 remains unchanged. Requests to recognize

approvals by other organizations should go to the appropriate NFPA committee.

15. Two comments requested clarification of § 127.1109 to indicate what surface would be the reference point for measuring illumination and where the requirement of 11-lux illumination applies. This rule revises § 127.1109 to indicate that illumination should be measured 1 meter (3.3 feet) above the walking surface and that the requirement of 11-lux illumination applies to the ''remainder of the marine transfer area for LHG''.

16. Two comments asked that § 127.1203 allow the use of fixed gas-detectors. The Coast Guard concurs, and § 127.1203 of this rule allows the use of fixed as well as portable gas-detectors.

17. Four comments recommended that § 127.1203(b) exempt facilities handling anhydrous ammonia from its requirement of gas-detectors. The comments asserted that anhydrous ammonia is detectable by smell at 1–2 parts per million (ppm) and is very offensive at 15–20 ppm, both amounts falling well below the Permissible Exposure Limit (PEL) of OSHA. Smell can indeed determine the presence of ammonia, although it cannot determine the concentration. That section does exempt facilities that handle anhydrous ammonia from its requirement of gas detectors. However, such facilities must assume that the PEL of OSHA had been exceeded whenever smell determines the presence of ammonia, unless a gas-detector determines a lower concentration.

18. One comment suggested that gas-detectors are of little value because products such as butane, propane, and propylene quickly evaporate when released. The Coast Guard does not concur. Although LHGs quickly evaporate when exposed to atmospheric temperature and pressure, many LHG vapors are heavier than air. Their vapors may remain at ground level, possibly in explosive concentrations, or may accumulate in sumps or nearby buildings, possible presenting hazardous conditions.

19. Six comments requested clarification of whether pumps or compressors not used in the transfer of LHG from a vessel to the facility or vice versa—for example, those used in the transfer of LHG to rail cars—are subject to the emergency-shutdown requirements in § 127.1205(c). The comments contend that for safety reasons facilities must be free to transfer LHG within the facility. Section 127.1205(c) applies only to those pumps and compressors that transfer LHG, or its vapors, to or from the vessel. It does not apply to other pumps or compressors within the facility. This rule now indicates that, when activated, the actuator must automatically shut down ''any terminal pumps or compressors used to transfer LHG, or its vapors, to or from the vessel.''

20. Eight comments recommended that the warning alarm proposed by § 127.1207 consist in either a light or a siren, not in both. The alarm required by this rule, like that proposed, consists in both a light capable of being seen, and a siren capable of being heard, at one mile. Three stated that the audibility of a siren may be diminished by engine-room noise aboard approaching vessels. Two stated that the visibility of a light may be limited by hilly terrain, river bends, and other obstructions. One stated that the alarm would cause confusion because without prior notice the public would not understand its significance.

The purpose of the alarms is to warn both persons at the facility and the general public, including passing marine traffic, of a hazard at the facility. The Coast Guard believes that the prescribed alarms, together, are the best means to warn everyone intended. It agrees that under certain circumstances one of the alarms may not be effective, but believes that this fact further validates the need for both alarms, rather than for either. A facility can always ask the COTP for approval of an alternative arrangement under § 127.017. Although alarms are more effective if a community knows what to expect, the Coast Guard believes that the facility operator should determine how to educate the community. Therefore, it has kept § 127.1207 as it proposed it.

21. Seven comments suggested that no facility handling toxic LHGs be responsible for providing respiratory protection under § 127.1209 to personnel other than its own (personnel servicing, delivering to, or belonging to the vessel, or servicing or delivering to the facility) who may have reason to be in the marine transfer area. A facility may not always know who these personnel are or how many of them would be in the area at any given time. One comment recommended that the respiratory protection be required only during transfers. the Coast Guard agrees that it may be difficult and impracticable for a facility to provide a sufficient number of respirators for everyone who may pass through the area. Accordingly, § 127.1209 requires facility operators to provide respiratory protection only for their employees since only those employees are likely to be in the area for any significant amount of time during transfers. That section also clarifies that the respiratory protection needs to be provided only during transfers.

22. Five comments recommended that the Coast Guard delete certain training requirements in § 127.1302 when a facility has fire or medical department of the facility or when such services are readily available from local governmental agencies. The Coast Guard does not concur. In many emergencies, properly trained transfer personnel will be the most effective resource to take immediate corrective action and thereby prevent minor incidents from becoming catastrophes. In some, even fire and medical departments located on the facility, but away from the marine transfer area, may not be able to arrive on scene in time. In others, it may be more effective for the facility to evacuate its transfer personnel and allow others to respond. In any event, properly trained transfer personnel afford the facility greater flexibility in determining how to respond.

To avoid unnecessary duplication, § 127.1302(d) accepts training performed to meet requirements of OSHA (29 CFR 1910.120) and EPA (40 CFR 311.1) on hazardous-waste operations and emergency response, to the extent that this training addresses the subjects in § 127.1302(a).

23. Two comments recommended that training in the ''configuration and limitations of LHG vessel cargo systems'', required by proposed § 127.1302(a)(7), be deleted. The comments stated that it is difficult for a facility to forecast the types of LHG vessels that will arrive at the terminal. Moreover, personnel of a facility do not board the vessels. This requirement does not mandate training in cargo systems of specific LHG vessels. Rather, it requires transfer personnel to be knowledgeable in the ''configuration and limitations'' of cargo systems of LHG vessels that may call at the facility. This knowledge is necessary so that these personnel understand the impact that their acts can have upon the vessel. Although changed editorially and renumbered as § 127.1302(a)(6), proposed § 127.1302(a)(7) remains unchanged in substance.

24. Four comments recommended that the requirements in § 127.1311 on movement and control of vehicles not apply to an LHG facility that handles only toxic cargoes since these cargoes do not present a fire hazard. One comment stated that this requirement would leave a large part of the facility inaccessible to vehicular traffic with no appreciable increase in safety.

The Coast Guard does not concur. Approaches to the marine transfer area, as much as the area itself, must stay

clear of vehicles to allow adequate escape routes and allow access for emergency vehicles in cases of injury as well as fire. Even if the LHG is not flammable, the pier, its equipment, or the vessel can catch fire and necessitate this access. Furthermore, similar requirements in 33 CFR part 126 already apply to existing LHG facilities. However, for consistency with the requirements for LHG facilities, the distance from storage containers, manifolds, loading arms, or independent mating flanges containing a flammable liquid or vapor has dropped from 30 to 15 meters.

25. Two comments suggested that § 127.1313 not apply to facilities that handle toxic LHGs. The Coast Guard does not concur. It is essential that the amount of hazardous material stored in the marine transfer area be restricted, to limit the risk of catastrophe. This material may still be stored nearby, outside the area.

26. Two comments stated that § 127.1313 prohibits the storage of fuel oil for such equipment as an emergency generator. The Coast Guard does not intend to preclude facilities from storing reasonable amounts of fuel oil for such equipment. Accordingly, § 127.1313(a)(2) of this rule allows facilities to store, in the marine transfer area, fuel ''required by * * * emergency equipment'' in the area. The term ''required by'' should limit the amount of fuel stored to the amount necessary in an emergency.

27. Four comments recommended that the Coast Guard delete the requirements in § 127.1315(i) for tests of the emergency shutdown and of the warning alarm before each transfer. The comments asserted that these tests would disrupt facilities with frequent transfers and that repeated tests of the alarm might cause a local community to disregard it altogether. One comment recommended tests of these items every month, two recommended tests of them every two months, and one recommended tests of them every year. The Coast Guard concurs that tests before each transfer would be an excessive burden for some facilities. OSHA (29 CFR 1910.165(d)(2)) requires tests every two months. For the emergency shutdown, tests every two months should be adequate. But, for the warning alarms required under this rule, which can upset a local community, tests every six months would be more appropriate. These tests could be easier to conduct in conjunction with a community-education campaign to increase awareness of their meaning. Sections 127.1315(i) (3) and (4) have been deleted from the final rule. Sections 127.1407 (e) and (f), requiring tests of the emergency shutdown every two months and of the warning alarm every six months, have been added to the final rule. If transfers of LHG occur less often than the designated intervals, these tests may be conducted before each transfer instead of at the designated interval.

28. Nine comments stated that the requirement in § 127.1319(a), that the facility notify the COTP 24 hours before a transfer of LHG, is unrealistic and perhaps unattainable because a facility rarely knows that far in advance the time a vessel will arrive. Frequent changes in the time, due to weather, tides, schedule changes, or other operational constraints, do occur. Two comments suggested that the COTP and the facility should agree on how far in advance the facility should notify the COTP. Three comments recommended a requirement that the facility notify the COTP 4 hours before a transfer. The purpose of any such requirement is to notify the Coast Guard of transfers early enough that its personnel can periodically witness the transfers. Otherwise, the Coast Guard cannot effectively enforce its rules. 33 CFR 126.27 now requires ''prior notification'' without specifying the amount. The Coast Guard believes that reducing the notice from 24 to 4 hours is reasonable and has modified § 127.1319(a) of this rule accordingly. (The Coast Guard nonetheless encourages facilities to give as much notice as they can so the Coast Guard can deploy its resources as efficiently as it can.)

29. Three comments complained that § 127.1319 does not clearly indicate whether the person in charge (PIC) may supervise more than one transfer at one time. Section 127.1319(b)(1) insists that the PIC have ''no other assigned duties during the transfer.'' Supervising an additional transfer would constitute having another assigned duty. Generally, it is not safe for a single PIC to supervise more than one transfer at one time. However, supervising multiple transfers may be safe because of other trained personnel involved in the transfers or it may become necessary because of an emergency. To clarify this issue, a new § 127.1319(b)(2) indicates that the PIC may not supervise transfers to or from more than one vessel at a time unless authorized by the COTP. Proposed paragraphs (2) and (3) have become (3) and (4) respectively.

30. One comment was concerned that § 127.1319(c)(3)(i) requires a facility to discontinue the transfer of LHG that is not flammable when an electrical storm approaches. Another was concerned that § 127.1319(c)(3)(ii) requires the facility to discontinue the transfer in cases of routine operational releases. The Coast Guard concurs and has amended § 127.1319(c)(3) to clarify both issues.

31. One comment stated that the rule does not clearly require cargo hoses and loading arms to be drained and depressurized before being disconnected from a vessel. Section 127.1101 requires ''an isolation valve with a bleed connection, such that transfer hoses and loading arms can be blocked off, drained or pumped out, and depressurized before disconnecting''; however, nothing requires any act. To clarify this point a new § 127.1319(d) requires that hoses and loading arms be drained and depressurized before being disconnected from a vessel. (Two major casualties on waterfront facilities resulted from not carrying out this procedure.)

32. Twelve comments asked that the Coast Guard define ''release'' as used in § 127.1321. The NPRM would have required that, upon ''release'' of LHG or its vapor, a facility stop the transfer, notify the COTP, and not resume the transfer until authorized by the COTP. Because it specified no amount of ''release'', it would have required these measures even if the amount would not cause harm to human health or the environment. The commenters expressed concern that, as a rule, it would disrupt operations for minor releases that typically accompany connections and disconnections of hoses, tank gauging, sampling, and other routine operations. For example, it could prohibit the use of slip tubes (devices for gauging) because using a slip tube releases minor amounts of vapor.

The Coast Guard agrees that a definition of ''release'' is necessary to determine when a transfer should stop. The Coast Guard has never intended to prohibit minor, routine releases unless they cause harm to human health or the environment. It has defined ''release'' in § 127.005 of this rule to clarify for which releases the transfers must stop and be reported to the COTP. For the purposes of this part a ''release'' is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except a minor release of LHG, or its vapor, that may occur during the routine handling of LHG. No release is minor if it creates an atmosphere that exceeds the Lower Flammable Limit (LFL) for a flammable product or any PEL listed in 29 CFR part 1910.1000, Table Z–1 or Z–2, for a toxic product. This definition of ''release'' is similar to that of

''discharge'' in the National Response Plan (40 CFR 300.5) except that it also looks to flammability and exposure. Flammability and exposure make sense as criteria because releases of some LHGs will meet them long before the releases amount to a ''reportable quantity'' under 40 CFR part 302, and it is difficult to verify the size of a release of liquefied gas after it vaporizes.

To further reduce the potential for frequent activation of the warning alarms, § 127.1321(a)(2) now requires their activation only for releases that ''threaten vessels or persons outside the immediate transfer area.'' This should eliminate the need to activate the warning alarms for releases that, while more than minor, are small in that they do not threaten persons outside the area. Generally, other means will notify persons inside the area.

33. Three comments disliked the requirement in § 127.1325(c) to provide security guards. They argued that facilities cannot identify personnel, check ID cards, escort personnel, or perform other activities normally done by the guards. One suggested that facilities using public docks be exempt because they control neither the docks nor the persons who use them. Two recommended that § 127.1325 apply only during transfers.

The Coast Guard does not concur. Access to the transfer area must be limited to reduce the risk of fire, explosion, or other calamities resulting from vandalism or sabotage. Unless the piping and storage tanks on the facility contain no LHG, and no LHG vapors, the potential for a hazardous release exists even when no transfer is in progress. In many cases, access to critical parts of the area may be effectively restricted by means other than guards. (Unfortunately, these means and where they will be acceptable are too numerous to list within this rulemaking. Section 127.1325(c) lets the COTP approve alternative means such as electronic monitoring or random patrols where the stationing of guards is impracticable.)

34. One comment claimed that, because of the manpower entailed, it was not reasonable to escort each person entering a facility. The Coast Guard acknowledges that there are other good ways to prevent sabotage and vandalism. Ensuring that persons entering the facility have legitimate business on the facility, and display visitors' badges to show they have been identified, should suffice. Badges will help employees distinguish between authorized and unauthorized personnel. Section 127.1325(b) reflects this change.

35. Six comments objected to conducting static liquid-pressure (hydrostatic) tests of the piping, hoses, and loading arms of the LHG-transfer system, as required by § 127.1407(a). Instead, they suggested using alternatives such as pneumatic tests.

Hydrostatic tests of cargo piping and hoses are already the rule of 33 CFR 126.15(o)(7)(iv). No comments indicated that this rule has disrupted facilities. The Coast Guard believes that these tests provide the safest and most effective means of determining the integrity of piping and hoses. Nevertheless, the COTP may allow alternatives under § 127.017, if they provide the same degree of safety. (Authorities have granted waivers for some existing facilities under 33 CFR 126.11, and those waivers should continue.) To ease compliance, § 127.1407(b) reduces the pressure for the test from 1.5 times the maximum allowable working pressure (MAWP) to 1.1 times the MAWP because some LHGs are normally transferred at low working pressures.

36. One comment suggested recasting § 127.1407(a) to clarify which components of the cargo system need tests. Section 127.1407(a) applies only to that part of the system located in the marine transfer area. The section now says as much.

37. Four comments recommended that the firefighting requirements in §§ 127.1501 through 127.1511 not apply to facilities that handle only toxic LHGs. Six comments suggested that the water-systems requirements in § 127.1507 not apply to these facilities. Four comments recommended that the requirements of an international shore-connection in § 127.1511 not apply to these facilities. The Coast Guard concurs with these comments in part.

Section 127.1501 requires a facility to determine the number, kind, and site of equipment for fire detection, protection, control, and extinguishment on the basis of local conditions and hazards within the facility. This lets the facility determine the number, kind, and site of equipment for these purposes on the basis of its design and anticipated risks.

A facility that handles only toxic LHGs must determine whether its design and anticipated risks call for the equipment specified in § 127.1507. Although no water may be needed for fighting fire in LHG when a facility does not handle flammable LHG, it is a prime component of a facility's overall fire-control efforts. It may be necessary to protect the pier, the buildings, or vessels even if not to fight a fire involving LHG. It is an excellent cooling agent; it effectively protects personnel from fire and protects sprayed areas from radiated heat. It can also remove some toxic gases from the air after a release of toxic LHG. Therefore, it is usually essential in mitigating death, injury, damage to equipment, and further spreading of a fire, even if the LHG is not flammable.

The international shore-connection is to protect vessels, not the facility. Therefore, the design and capability of vessels are more important than area features of the facility for one determining whether this equipment is necessary.

If, after careful consideration of its own design and of the anticipated risks, a facility that handles toxic LHGs decides it does not need the water supply required by § 127.1507, then it must justify this decision in the plan required by § 127.1501. The plan must consider pier and vessel fires in addition to cargo fires. Existing facilities may certify their own plans. New facilities, and facilities with any new construction, must have their plans reviewed and approved by the COTP.

An international shore-connection makes it possible for fittings with incompatible threads to connect. One is required on the facility so that vessels moored to the facility have a source of water for firefighting in case an onboard source of firefighting water is nonexistent or inadequate. Incompatible threads generally are not a problem for U.S.-flag vessels, and some facilities do not receive foreign-flag vessels. To account for this, § 127.1511 now requires an international shore-connection only for those facilities that receive foreign-flag vessels.

38. Five comments recommended that a facility with an on-site fire department or with access to a local department be exempt from the requirement in § 127.1505 to provide emergency outfits. The intent of this requirement is to enable rapid response for injured or trapped personnel. An on-site department with appropriate outfits will meet the requirement since the outfits have never had to be located within the marine transfer area. The Coast Guard agrees that in some cases an off-site response unit, if trained and if located close enough to the area, may be able to provide an effective response. To confer greater flexibility, § 127.1505, renamed ''Emergency response and rescue'', allows the use of either on-site or off-site response to emergencies. An on-site response unit must furnish the appropriate training and equipment, including outfits. Training and equipment that satisfy OSHA [29 CFR 1910.120] will satisfy the Coast Guard. An off-site response unit must enter a written agreement with the facility

indicating the services it will perform and the time within which it will perform them to personnel in the area.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 127.003 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in that section.

Regulatory Evaluation

This not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)]. A Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES.** A summary follows.

This rule may produce discounted costs of about $17.3 million over the next 25 years. Most of these costs will be borne by the waterfront facilities regulated, with the remainder borne by the Coast Guard. This rule will affect about 137 waterfront facilities. Over half of those facilities also handle products subject to the pollution-prevention regulations in 33 CFR parts 154 and 156, which contain similar requirements. Costs to industry will arise primarily from purchase, replacement, and maintenance of equipment, and secondarily from training personnel and from collecting information. This rule should produce benefits of about $4.8 million in discounted property damages prevented, of 6 deaths prevented, and of 147 injuries prevented over the next 25 years. The cost of achieving these benefits is less than the value of life based on willingness to pay, assumed by most economists; therefore, this rule is cost-beneficial. It may also produce environmental benefits by preventing the release of LHGs into the environment, although those benefits might be slight, over the same span. Further details on the costs and benefits of this rule appear in the Regulatory Evaluation.

No comments concerned this section or the draft Regulatory Evaluation. The changes made in this rule will slightly reduce the economic impact, but should not significantly reduce the benefits, of this rule. The most significant changes are: exempting existing facilities from certain design requirements, allowing an alternative to providing emergency outfits, allowing an alternative to having an alarm on a loading arm, clarifying when transfers must be shut down, shortening the time before transfers for notifying the Coast Guard, extending the frequency of certain tests, allowing fixed gas-detection systems to be used in lieu of portable gas-detectors, and exempting ammonia facilities from gas-detectors entirely.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

This rule is not expected to affect any waterfront facilities owned or operated by a small entity. A recent review of the ownership and operation of waterfront facilities handling LHG in bulk did not reveal any owned by small entities as defined under the Regulatory Flexibility Act. No comments concerning small entities were received in response to the NPRM. An entity large or small, could avoid the impact of this rule by originating and receiving shipments of LHG in portable tanks, tank trucks, or rail cars rather than transferring in bulk from a vessel. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection-of-information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], and OMB has approved them. The section numbers and control numbers from OMB are as follows:

Section	Topic
127.007	Letter of intent.
127.015	Appeals.
127.017	Alternatives
127.019, 127.305, 127.1305.	Operations Manual.
127.019, 127.307, 127.1307.	Emergency Manual.
127.301, 127.1301	[Certification of PIC].
127.317, 127.1317	Decelaration of Inspection.
127.409, 127.1409	Records [of maintenance].
127.617, 127.1603	Hotwork [permits].

The estimated annual burden is significantly different from that estimated in the NPRM. That did not reflect the significantly reduced burden in subsequent years after the one-time initial burden of developing manuals. The following particulars apply:

DOT No: 2115.

(1) OMB Control No.: 0052.

Administration: U.S. Coast Guard.

Title: Waterfront Facilities Handling Liquefied Natural Gas and Liquefied Hazardous Gas (known to OMB as: Liquefied Natural Gas and Liquefied Hazardous Gas Waterfront Facilities)

Need for Information: To prevent, or mitigate the results of, release of liquefied natural gas and liquefied hazardous gases at waterfront facilities.

Proposed use of Information: To verify compliance with safety regulations and for program management, planning, and evaluation.

Frequency of Response: On occasion.

Burden Estimate: 3,531 hours per year.

Respondents: 137.

Forms: None.

Average Burden Hours Per Respondent: 3.1 hours per year.

(2) OMB Control No.: 0013.

Administration: U.S. Coast Guard.

Title: Welding and Hot-Work Permit

Need for Information: To restrict welding and other hot work on certain waterfront facilities to prevent fires and explosions.

Proposed use of Information: To ensure compliance with safety regulations.

Frequency of Response: On occasion.

Burden Estimate: 2,190 hours per year.

Respondents: 730.

Forms: None.

Average Burden Hours per Respondent: 2.5 hours per year.

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. This rule sets minimal safety standards for the operation of waterfront facilities transferring LHG to or from vessels in bulk. Since these are minimal standards, State and local governments are free to set higher standards where necessary for local

conditions. Therefore, this rule preempts State action to set lower safety standards, but does not preempt State action to set higher safety standards, for waterfront facilities transferring LHG.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule will prevent or mitigate releases of LHG and will have no adverse impact on the environment. A Determination of Categorical Exclusion is available in the docket for inspection or copying at the address under **ADDRESS.**

List of Subjects

33 CFR Part 126

Explosives, Harbors, Hazardous substances, Reporting and recordkeeping requirements.

33 CFR Part 127

Harbors, Hazardous substances, Incorporation by reference, Natural gas, Security measures, Vessels, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 126 and 127 as follows:

PART 126—[AMENDED]

1. The authority citation for part 126 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46(n)(4).

§ 126.05 [Amended]

2. Section 126.05(a) is amended by removing the words ''other than the cargoes listed in § 126.10(d)''.

§ 126.10 [Amended]

3. Section 126.10 is amended by removing paragraph (d).

§ 126.15 [Amended]

4. Section 126.15 is amended by removing paragraph (o).

PART 127—[AMENDED]

5. The authority citation for part 127 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46(n)(4).

6. The heading of part 127 is revised to read as follows:

PART 127—WATERFRONT FACILITIES HANDLING LIQUEFIED NATURAL GAS AND LIQUEFIED HAZARDOUS GAS

7. Section 127.001 is revised to read as follows:

§ 127.001 Applicability.

(a) Subparts A and B of this part apply to the marine transfer area for LNG of each new waterfront facility handling LNG and to new construction in the marine transfer area for LNG of each existing waterfront facility handling LNG.

(b) Subpart A of this part and §§ 127.301 through 127.617 apply to the marine transfer area for LNG of each active existing waterfront facility handling LNG.

(c) Sections 127.007 (c), (d), and (e); 127.019(b); and 127.701 of subparts A and B of this part apply to the marine transfer area for LNG of each inactive existing facility.

(d) Subparts A and C of this part apply to the marine transfer area for LHG of each active waterfront facility handling LHG.

(e) Sections 127.007 (c), (d), and (e); 127.019(b); and 127.1325(c) of subparts A and C of this part apply to the marine transfer area for LHG of each inactive facility.

8. Section 127.003 is revised to read as follows:

§ 127.003 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, Room 700, 800 North Capitol Street NW., Washington, DC 20408, and at the U.S. Coast Guard, (G–MPS), Room 1108, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected, are:

The American National Standards Institute (ANSI)	
1430 Broadway, New York, NY 10018:	
ANSI B16.5, Pipe Flanges and Flanged Fittings 1988, including 1992 Addenda and Errata	127.1102
ANSI S12.13, Part 1, Performance Requirements, Combustible Gas Detectors, 1986	127.1203
American Petroleum Institute (API)	
1220 L Street NW., Washington, DC 20005:	
API RP 2003, Protection Against Ignitions Arising Out of Static, Lightning and Stray Currents, 1991	127.1101
American Society of Mechanical Engineers (ASME)	
345 East 47th Street, New York, NY 10017:	
ASME B31.3, Chemical Plant and Petroleum Refinery Piping, 1993	127.1101
American Society for Testing and Materials (ASTM)	
1916 Race Street, Philadelphia, PA 19103:	
ASTM F–1121, International Shore Connections for Marine Applications, 1987 (reapproved 1993)	127.1511
National Fire Protection Association (NFPA)	
Batterymarch Park, Quincy, MA 02269:	
NFPA 10, Portland Fire Extinguishers, 1994	127.603; 127.1503
NFPA 30, Flammable and Combustible Liquids Code, 1993	127.313; 127.1313
NFPA 51B, Fire Prevention in Use of Cutting and Welding Processes, 1994	127.405; 127.1405
NFPA 59A, Production, Storage, and Handling of Liquefied Natural Gas (LNG), 1994	127.101; 127.201; 127.405; 127.603

NFPA 70, National Electrical Code, 1993	127.107; 127.201; 127.1107
NFPA 251, Fire Tests of Building Construction and Materials, 1990	127.005

9. § 127.005 is amended by revising the definitions for the terms ''active'', ''existing'', ''impounding space'', ''LNG vessel'', and ''new''; by removing the definitions for the terms ''LNG waterfront facility'' and ''marine transfer area''; and by adding definitions for the terms ''facility'', ''flammable product'', ''LHG'', ''LHG vessel'', ''liquefied hazardous gas'', ''LNG'', ''marine transfer area for LHG'', ''marine transfer area for LNG'', ''mating flange'', ''MAWP'', ''release'', ''toxic product'', ''waterfront facility handling LHG'', and ''waterfront facility handling LNG'', in alphabetical order, to read as follows:

§ 127.005 Definitions.

* * * * *

Active means accomplishing the transfer of LHG or LNG, or scheduling one to occur, within 12 months of the current date.

* * * * *

Existing as applied to a waterfront facility means a facility handling LNG constructed or being constructed under a contract awarded before June 2, 1988, or a facility handling LHG constructed or being constructed under a contract awarded before January 30, 1996.

Facility means either a waterfront facility handling LHG or a waterfront facility handling LNG.

* * * * *

Flammable product means a product indicated by the letter ''F'' or by the letters ''F + T'' in Table 1 to this part.

* * * * *

Impounding space means a space formed by dikes and floors that confines a spill of LHG or LNG.

LHG means liquefied hazardous gas.

LHG vessel means a vessel constructed or converted to carry LHG, in bulk.

Liquefied hazardous gas (LHG) means a liquid containing one or more of the products listed in Table 1 to this part.

* * * * *

LNG means liquefied natural gas.

LNG vessel means a vessel constructed or converted to carry LNG, in bulk.

* * * * *

Marine transfer area for LHG means that part of a waterfront facility handling LHG between the vessel, or where the vessel moors, and the first shutoff valve on the pipeline immediately inland of the terminal manifold or loading arm, including the entire part of a pier or wharf used to serve LHG vessels.

Marine transfer area for LNG means that part of a waterfront facility handling LNG between the vessel, or where the vessel moors, and the last manifold or valve immediately before the receiving tanks.

Mating flange means that flange in the product-transfer pipeline on a waterfront facility handling LHG or a waterfront facility handling LNG that connects this pipeline to the pipeline or transfer hose of the vessel.

* * * * *

MAWP means maximum allowable working pressure.

New as applied to a waterfront facility means a facility handling LNG constructed or being constructed under a contract awarded on or after June 2, 1988, or a facility handling LHG constructed or being constructed under a contract awarded on or after January 30, 1996.

* * * * *

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except a minor release of LHG or its vapor, that may occur during the routine handling of LHG. No release is minor if it creates an atmosphere that exceeds the Lower Flammable Limit (LFL) for a flammable product or any Permissible Exposure Limit (PEL) listed in 29 CFR 1910.1000, Table Z–1 or Z–2, for a toxic product.

Toxic product means a product indicated by the letter ''T'' or by the letters ''F+T'' in Table 1 to this part.

Waterfront facility handling LHG means any structure on, in, or under the navigable waters of the United States, or any structure on land or any area on shore immediately adjacent to such waters, used or capable of being used to transfer liquefied hazardous gas, in bulk, to or from a vessel.

Waterfront facility handling LNG means any structure on, in, or under the navigable waters of the United States, or any structure on land or any area on shore immediately adjacent to such waters, used or capable of being used to transfer liquefied natural gas, in bulk, to or from a vessel.

§ 127.007 [Amended]

§ 127.009 [Amended]

§ 127.013 [Amended]

§ 127.019 [Amended]

§§ 127.007, 127.009, 127.013, 127.019 [Amended]

10. Part 127 is amended by adding the phrase ''LHG or'' before the term ''LNG'' wherever the latter appears in the following:

a. § 127.007(c).
b. § 127.007(d)(5).
c. § 127.007(d)(6).
d. § 127.007(e)(2).
e. The introductory text of § 127.009.
f. The introductory text of § 127.013(a).
g. § 127.019(b).

§ 127.011 [Amended]

11. § 127.011 is amended by revising the heading to read ''Inspections of Waterfront Facilities.''

§ 127.019 [Amended]

12. § 127.019(c) is amended by removing the words ''§ 127.305 and the Emergency Manual meets § 127.307'' and adding in their place the words ''§ 127.305 or § 127.1305 and that the Emergency Manual meets § 127.307 or § 127.1307''.

Subparts B, C, D, E, F, G, and H—[Amended]

13. Subparts C, D, E, F, G, and H of this part are amended by removing their headings and leaving those headings as undesignated text headings, by removing the undesignated text heading ''Fire Equipment'' before § 127.601, and by removing the undesignated text heading ''Fire Protection'' before § 127.613; and Subpart B is amended by revising its heading to read as follows:

Subpart B—Waterfront Facilities Handling Liquefied Natural Gas

§§ 127.101, 127.109, 127.111, 127.113, 127.203, 127.207, 127.305, 127.313, 127.315, 127.319, 127.607, 127.609, 127.611, 127.613, 127.615, 127.701, 127.703, 127.705, and 127.711 [Amended]

14. Part 127 is amended by replacing the words ''marine transfer area'' wherever they appear with the words ''marine transfer area for LNG'' in the following:

a. The introductory text of § 127.101.
b. § 127.109(a).
c. § 127.111(a).

d. § 127.113(a), introductory text.
e. § 127.203.
f. §§ 127.207 (a) and (b).
g. §§ 127.305 (d) and (e).
h. § 127.313(a) introductory text.
i. § 127.315(g).
j. §§ 127.319 (a)(1) and (b)(3)(i).
k. The introductory text of § 127.603.
l. § 127.607(a).
m. § 127.609(a).
n. § 127.611.
o. § 127.613.
p. § 127.615.
q. The heading of § 127.703.
r. § 127.703(a), introductory text, and (b).
s. The introductory text of § 127.705.
t. § 127.711.

§ 127.105 [Amended]

15. § 127.105 is amended by revising the heading to read ''Layout and spacing of marine transfer area for LNG.''

§§ 127.103, 127.105, 127.301, 127.303, 127.305, 127.307, 127.309, 127.317, 127.319, 127.321, 127.401, 127.703, and 127.711 [Amended]

16. Part 127 is further amended by replacing the word ''facility'' with the phrase ''waterfront facility handling LNG'' wherever it appears in the following:
a. § 127.103(a).
b. § 127.105(a).
c. §§ 127.301(a) introductory text, and (b).
d. § 127.303.
e. § 127.305(d).
f. § 127.307(f).
g. § 127.309(a).
h. §§ 127.317 (b) and (c)(1).
i. § 127.319(a) introductory text.
j. § 127.321(a) introductory text.
k. § 127.401.
l. §§ 127.703 (a)(1) and (b).
m. § 127.711.

§ 127.405 [Amended]

17. § 127.405(a)(1) is amended by replacing the words ''subparts B, C, G, and H of this part'' with the words ''this subpart''.

18. A new subpart C, consisting of §§ 127.1101 through 127.1605, is added to read as follows:

Subpart C—Waterfront Facilities Handling Liquefied Hazardous Gas

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127.1102 Transfer hoses and loading arms.
127.1103 Piers and wharves.
127.1105 Layout and spacing of marine transfer area for LHG.
127.1107 Electrical systems.
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Equipment

127.1203 Gas detection.
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Design and Construction

§ 127.1101 Piping systems.

Each piping system within the marine transfer area for LHG used for the transfer of LHG must meet the following criteria:

(a) Each system must be designed and constructed in accordance with ASME B31.3.

(b) Each pipeline on a pier or wharf must be located so that it is not exposed to physical damage from vehicular traffic or cargo-handling equipment. Each pipeline under navigable waters must be covered or protected to meet 49 CFR 195.248.

(c) The transfer manifold of each liquid transfer line and of each vapor return line must have an isolation valve with a bleed connection, such that transfer hoses and loading arms can be blocked off, drained or pumped out, and depressurized before disconnecting. Bleeds or vents must discharge to a safe area such as a tank or flare.

(d) In addition to the isolation valve at the transfer manifold, each liquid-transfer line and each vapor return line must have a readily accessible isolation valve located near the edge of the marine transfer area for LHG.

(e) Each power-operated isolation valve must be timed to close so that it will not produce a hydraulic shock capable of causing failure of the line or equipment. Unless the layout of the piping allows the isolation valve at the transfer manifold to close within 30 seconds without creating excessive stresses on the system, the layout must be reconfigured to reduce the stresses to a safe level.

(f) Each waterfront facility handling LHG that transfers to or from a vessel requiring vapor return during transfer must be equipped with a vapor return line designed to attach to the vessel's vapor connection.

(g) Where two or more LHGs are loaded or unloaded at the same facility, each manifold must be identified or marked to indicate each LHG it handles.

(h) Each pipeline used to transfer flammable liquids or vapors must be provided with precautions against static, lightning, and stray current in accordance with API RP 2003.

§ 127.1102 Transfer hoses and loading arms.

(a) Each hose within the marine transfer area for LHG used for the transfer of LHG or its vapors to or from a vessel must—

(1) Be made of materials resistant to each LHG transferred, in both the liquid and vapor state (if wire braid is used for reinforcement, the wire must be of corrosion-resistant material, such as stainless steel);

(2) Be constructed to withstand the temperature and pressure foreseeable during transfer, with a MAWP not less than the maximum pressure to which it may be subjected and at least 1030 kPa gauge (149.4 psig);

(3) Be designed for a minimum bursting pressure of a least five times the MAWP;

(4) Have—

(i) Full-threaded connections;

(ii) Flanges that meet ANSI B16.5; or

(iii) Quick connect couplings that are acceptable to the Commandant;

(5) Be adequately supported against the weight of its constituent parts, the LHG, and any ice formed on it;

(6) Have no kinks, bulges, soft spots, or other defects that will let it leak or burst under normal working pressure; and

(7) Have a permanently attached nameplate that indicates, or otherwise be permanently marked to indicate—

(i) Each LHG for which it is suitable;

(ii) Its MAWP at the corresponding service temperature; and

(iii) If used for service at other than ambient temperature, its minimum service temperature.

(b) Each loading arm used for the transfer of LHG or its vapor must—

(1) Be made of materials resistant to each LHG transferred, in both the liquid and vapor state;

(2) Be constructed to withstand the temperature and pressure foreseeable during transfer;

(3) Be adequately supported against the weight of its constituent parts, the LHG, and any ice formed on it;

(4) Be provided with an alarm to indicate when it is approaching the limits of its extension, unless the examined Operations Manual requires a person to perform the same function; and

(5) Have a permanently attached nameplate that indicates, or otherwise be permanently marked to indicate—

(i) Each LHG it may handle;

(ii) Its MAWP at the corresponding service temperature; and,

(iii) If it is used for service at other than ambient temperature, its minimum service temperature.

§ 127.1103 Piers and wharves.

(a) Each new waterfront facility handling LHG, and all new construction in the marine transfer area for LHG of each existing facility, must comply with the standards for seismic design and construction in 49 CFR part 41.

(b) Each substructure on a new waterfront facility handling LHG, and all new construction in the marine transfer area for LHG of each existing facility, except moorings and breasting dolphins, that supports or is within 4.5 meters (14.8 feet) of any pipe or equipment containing a flammable LHG, or that is within 15 meters (49.2 feet) of a loading flange used to transfer a flammable LHG, must have a fire-endurance rating of not less than two hours.

§ 127.1105 Layout and spacing of marine transfer area for LHG.

Each new waterfront facility handling LHG, and all new construction in the marine transfer area for LHG of each existing facility, must comply with the following:

(a) Each building, shed, and other structure within each marine transfer area for LHG must be located, constructed, or ventilated to prevent the accumulation of flammable or toxic gases within the structure.

(b) Each impounding space for flammable LHGs located within the area must be designed and located so that the heat flux from a fire over the impounding space does not cause, to a vessel, damage that could prevent the vessel's movement.

(c) Each manifold, loading arm, or independent mating flange must be located at least 60 meters (197 feet) from each of the following structures, if that structure is intended primarily for the use of the general public or of railways:

(1) A bridge crossing a navigable waterway.

(2) The entrance to, or the superstructure of, a tunnel under a navigable waterway.

(d) Each manifold, loading arm, or independent mating flange must be located at least 30 meters (98.5 feet) from each public roadway or railway.

§ 127.1107 Electrical systems.

Electrical equipment and wiring must be of the kind specified by, and must be installed in accordance with, NFPA 70.

§ 127.1109 Lighting systems.

(a) Each waterfront facility handling LHG, at which transfers of LHG take place between sunset and sunrise, must have outdoor lighting that illuminates the marine transfer area for LHG.

(b) All outdoor lighting must be located or shielded so that it cannot be mistaken for any aids to navigation and does not interfere with navigation on the adjacent waterways.

(c) The outdoor lighting must provide a minimum average illumination on a horizontal plane 1 meter (3.3 feet) above the walking surface of the marine transfer area that is—

(1) 54 lux (5 foot-candles) at any loading flange; and

(2) 11 lux (1 foot-candle) for the remainder of the marine transfer area for LHG.

§ 127.1111 Communication systems.

(a) The marine transfer area for LHG must possess a communication system that enables continuous two way voice communication between the person in charge of transfer aboard the vessel and the person in charge of transfer for the facility.

(b) The communication system required by paragraph (a) of this section may consist either of fixed or portable telephones or of portable radios. The system must be usable and effective in all phases of the transfer and all weather at the facility.

(c) Devices used to comply with paragraph (a) of this section during the transfer of a flammable LHG must be listed as intrinsically safe by Underwriters Laboratories, Inc., Factory Mutual Research Corporation, or other independent laboratory recognized by NFPA, for use in the hazardous location in which it is used.

§ 127.113 Warning signs.

(a) The marine transfer area for LHG must have warning signs that—

(1) Meet paragraph (b) of this section;

(2) Can be seen from the shore and the water; and,

(3) Except as provided in paragraph (c) of this section, bear the following text:

Warning
Dangerous Cargo
No visitors
No Smoking
No Open Lights

(b) Each letter on the sign must be—

(1) In block style;

(2) Black on a white background; and

(3) At least 7.6 centimeters (3 inches) high.

(c) The words ''No Smoking'' and ''No Open Lights'' may be omitted when the product being transferred is not flammable.

Equipment

§ 127.1203 Gas detection.

(a) Each waterfront facility handling LHG that transfers a flammable LHG must have at least two portable gas detectors, or a fixed gas detector, in the marine transfer area for LHG. Each detector must be capable of indicating whether the concentration of flammable vapors exceeds 30% of the Lower Flammable Limit for each flammable product being transferred and must meet ANSI S12.13, Part 1.

(b) Each waterfront facility handling LHG that transfers a toxic LHG, other than anhydrous ammonia, must have at least two portable gas detectors, or a fixed gas detector, available in the area. The detectors must be capable of showing whether the concentration of each toxic LHG being transferred is above, at, or below any Permissible Exposure Limit listed in 29 CFR 1910.1000, Table Z–1 or Z–2.

(c) Each gas detector required by paragraph (a) or (b) of this section must serve to detect leaks, check structures for gas accumulations, and indicate workers' exposure to toxic gases in the area.

§ 127.1205 Emergency shutdown.

(a) Each piping system used to transfer LHG or its vapors to or from a vessel must have a quick-closing shutoff valve to stop the flow of liquid and vapor from the waterfront facility handling LHG if a transfer hose or loading arm fails. This valve may be the isolation valve with a bleed connection required by § 127.1101(c).

(b) The valve required by paragraph (a) of this section must be located as near as practicable to the terminal manifold or loading-arm connection and must—

(1) Close on loss of power;

(2) Close from the time of activation in 30 seconds or less;

(3) Be capable of local manual closing and remotely controlled closing; and,

(4) If the piping system is used to transfer a flammable LHG, either have fusible elements that melt at less than 105° (C 221°F) and activate the emergency shutdown, or have a sensor that performs the same function.

(c) A remote actuator for each valve must be located in a place accessible in an emergency, at least 15 meters (49.2 feet) from the terminal manifold or loading arm, and conspicuously marked with its designated function. When activated, the actuator must also automatically shut down any terminal pumps or compressors used to transfer LHG, or its vapors, to or from the vessel.

§ 127.1207 Warning alarms.

(a) Each marine transfer area for LHG must have a rotating or flashing amber light that is visible for at least 1,600 meters (1 mile) from the transfer connection in all directions.

(b) Each marine transfer are for LHG must also have a siren that is audible for at least 1,600 meters (1 mile) from the transfer connection in all directions.

(c) Each light and siren required by this section must be located so as to minimize obstructions. If any obstruction will prevent any of these alarms from meeting paragraph (a) or (b) of this section, the operator of the waterfront facility handling LHG shall propose for approval by the local COTP additional or alternative warning devices that provide an equivalent level of safety.

§ 127.1209 Respiratory protection.

Each waterfront facility handling LHG must provide equipment for respiratory protection for each employee of the facility in the marine transfer area for LHG during the transfer of one or more of the following toxic LHGs; anhydrous ammonia, chlorine, dimethylamine, ethylene oxide, methyl bromide, sulphur dioxide, or vinyl chloride. The equipment must protect the wearer from the LHG's vapor for at least 5 minutes.

Operations

§ 127.1301 Persons in charge of transfers for the facility: Qualifications and certification.

(a) No person may serve, or use the services of any person, as a person in charge of transfers for the facility regulated under this subpart, unless that person—

(1) Has at least 48 hours' transfer experience with each LHG being transferred;

(2) Knowing the hazards of each LHG being transferred;

(3) Knows the rules of this subpart; and

(4) Knows the procedures in the examined Operations Manual and the examined Emergency Manual.

(b) Before a person in charge of transfers for a waterfront facility handling LHG supervises a transfer of LHG, the operator of the facility shall certify in writing that that person has met the requirements in paragraph (a) of this section. The operator shall ensure that a copy of each current certification is available for inspection at the facility.

§ 127.1302 Training.

(a) Each operator of a waterfront facility handling LHG shall ensure that each person assigned to act as a person in charge of transfers for the facility has training in the following subjects:

(1) Properties and hazards of each LHG being transferred to or from the facility.

(2) Use of the gas detectors required by § 127.1203.

(3) Use of the equipment for respiratory protection required by § 127.1209.

(4) Basic firefighting procedures, including the use of the portable fire extinguishers required by § 127.1503.

(5) Content and use of the examined Operations Manual and examined Emergency Manual.

(6) The configuration and limitations of cargo systems of LHG vessels.

(7) Procedures for transferring LHG to and from LHG vessels.

(8) Procedures for response to a release of the LHG handled by the facility.

(9) First aid for persons—

(i) With burns;

(ii) Needing cardio-pulmonary resuscitation;

(iii) Exposed to toxic liquid or toxic vapors (if a toxic LHG is handled by the facility); and

(iv) Needing transport to a medical facility.

(10) Restrictions on access to the marine transfer area for LHG.

(b) Each person that receives training under paragraph (a) of this section shall receive refresher training in the same subjects at least once every 5 years.

(c) The operator shall maintain, for each person trained, a record of all training provided under paragraphs (a) and (b) of this section. The operator shall retain these records for the duration of the person's employment on the waterfront facility plus 12 months.

(d) Training conducted to comply with the hazard communication programs required by the Occupational Safety and Health Administration (OSHA) of the Department of Labor [29 CFR 1910.120] or the Environmental Protection Agency (EPA) [40 CFR 311.1] may be used to satisfy the requirements in paragraph (a) of this section, so far as the training addresses the requirements in paragraph (a) of this section.

§ 127.1303 Compliance with suspension order.

If the COTP issues to the owner or operator of a waterfront facility handling LHG an order to suspend a transfer, no transfer may take place at the facility until the COTP withdraws the order.

§ 127.1305 Operations Manual.

Each Operations Manual must contain—

(a) A description of each liquid-transfer system and vapor transfer system, including each mooring area, transfer connection, and (where installed) control room, and a diagram of the piping and electrical systems;

(b) The duties of each person assigned to transfers;

(c) The maximum relief-valve setting or MAWP of the transfer system;

(d) The telephone numbers of supervisors, persons in charge of transfers for the facility, persons on watch in the marine transfer area for LHG, and security personnel of the facility;

(e) A description for each security system provided for the transfer area;

(f) A description of the training programs established under § 127.1302;

(g) The procedures to follow for security violations; and

(h) For each LHG handled, the procedures for transfer that include—

(1) Requirements for each aspect of the transfer (start-up, gauging, cooldown, pumping, venting, and shutdown);

(2) The maximum transfer rate;

(3) The minimum transfer temperature;

(4) Requirements for firefighting equipment; and

(5) Communication procedures.

§ 127.1307 Emergency Manual.

(a) Each Emergency Manual must contain—

(1) For each LHG handled—

(i) A physical description of the LHG;

(ii) A description of the hazards of the LHG;

(iii) First-aid procedures for persons exposed to the LHG or its vapors;

(iv) The procedures for response to a release of the LHG; and,

(v) If the LHG is flammable, the procedures for fighting a fire involving the LHG or its vapors;

(2) A description of the emergency shutdown required by § 127.1205;

(3) The procedures for emergency shutdown;

(4) A description of the number, kind, place, and use of the fire equipment required by § 127.1501(a) and of the portable fire extinguishers required by § 127.1503;

(5) The telephone numbers of local Coast Guard units, hospitals, fire departments, police departments, and other emergency-response organizations;

(6) If the facility has personnel shelters, the place of and provisions in each shelter;

(7) If the facility has first-aid stations, the location of each station;

(8) Emergency procedures for mooring and unmooring a vessel; and,

(9) If an off-site organization is to furnish emergency response, a copy of the written agreement required by § 127.1505(a)(2).

(b) The employee-emergency plan and fire-prevention required by OSHA in 29 CFR 1910.38 may be used to comply with this section to the extent that they address the requirements specified in paragraphs (a) (1) through (9) of this section.

§ 127.1309 Operations Manual and Emergency Manual: Use.

Each operator of a waterfront facility handling LHG shall ensure that—

(a) No transfer is conducted unless the facility has an examined Operations Manual and an examined Emergency Manual;

(b) Each transfer is conducted in accordance with the examined Operations Manual; and

(c) Each emergency response is conducted in accordance with the examined Emergency Manual.

§ 127.1311 Motor vehicles.

(a) When LHG is being transferred or stored in the marine transfer area of a waterfront facility handling LHG, the operator shall ensure that no person—

(1) Stops or parks a motor vehicle in a space other than a designated parking space;

(2) Refuels a motor vehicle within the area; or

(3) Operates a vehicle or other mobile equipment that constitutes a potential source of ignition within 15 meters (49.2 feet) of any storage container, manifold, loading arm, or independent mating flange containing a flammable liquid or vapor.

(b) If motor vehicles are permitted to stop in the marine transfer area for LHG, the operator shall designate and mark parking spaces that—

(1) Do not block fire lanes;

(2) Do not impede any entrances or exits; and

(3) Are not located within 15 meters (49.2 feet) of any storage container, manifold, loading arm, or independent mating flange containing a flammable liquid or vapor.

§ 127.1313 Storage of hazardous materials.

(a) Each operator of a waterfront facility handling LHG shall ensure that no materials listed in the table of hazardous materials under 49 CFR 172.101, except for the following, are stored in the marine transfer area for LHG:

(1) The LHG being transferred.

(2) Fuel required by the vessel, or by emergency equipment in the area.

(3) Oily wastes received from vessels.

(4) Solvents, lubricants, paints and similar materials in the amount required for one day's operations and maintenance.

(b) The operator shall ensure that flammable liquids not stored in bulk are stored in accordance with Chapter 4 of NFPA 30.

§ 127.1315 Preliminary transfer inspection.

Before each transfer, the person in charge of transfer for the facility shall—

(a) Inspect piping and equipment within the marine transfer area for LHG to be used for transfer and ensure that it meets the requirements in this part;

(b) Determine the contents, pressure, temperature, and capacity of each storage tank to or from which LHG will be transferred, to ensure that it is safe for transfer;

(c) Confer with the person in charge of transfer aboard the vessel, to review and agree on—

(1) The sequence of acts required for transfer;

(2) The rate, maximum working pressure, and minimum working temperature of transfer;

(3) The duties, stations, and watches of each person assigned for transfer; and

(4) The emergency procedures in the examined Emergency Manual;

(d) Ensure that the vessel is securely moored and that the transfer connections allow it to move to the limits of its moorings without placing a strain on the piping, hose, or loading arm used for transfer;

(e) Ensure that each part of the transfer system is aligned to allow the flow of LHG to the desired place;

(f) Ensure the display of the warning signs required by § 127.1113;

(g) Ensure that the requirements of this part concerning smoking and fire protection are met;

(h) Ensure that qualified personnel are on duty in accordance with the examined Operations Manual and §§ 127.1301 and 127.1302; and

(i) Test the following to determine that they are operable:

(1) The communication system required by § 127.1111.

(2) The gas detectors required by § 127.1203.

§ 127.1317 Declaration of Inspection.

(a) Each person in charge of transfer for the facility shall ensure that no person transfers LHG to or from a vessel until a Declaration of Inspection that meets paragraph (c) of this section is executed and signed by both the person in charge aboard the vessel and the person in charge for the facility.

(b) No person in charge of transfer for the facility may sign the Declaration unless that person has fulfilled the requirements of § 127.1315 and has indicated fulfillment of each requirement by writing his or her initials in the appropriate space on the Declaration.

(c) Each Declaration must contain—

(1) The name of the vessel and that of the facility;

(2) The date and time that the transfer begins;

(3) A list of the requirements in § 127.1315 with the initials of both the person in charge aboard the vessel and the person in charge for the facility after each requirement, indicating the fulfillment of the requirement;

(4) The signatures of both the person in charge aboard the vessel and the person in charge for the facility, and the date and time of signing, indicating that they are both ready to begin transfer; and

(5) The signature of each relief person in charge and the date and time of each relief.

(d) The person in charge of transfer for the facility shall give one signed copy of the Declaration to the person in charge of transfer aboard the vessel and retain the other.

(e) Each operator of a facility shall retain a signed copy of the Declaration at the facility for 30 days after the transfer.

§ 127.1319 Transfer of LHG.

(a) The operator of a waterfront facility handling LHG shall notify the COTP of the time and place of each transfer of LHG in bulk at least 4 hours before it begins.

(b) During transfer, each operator of a waterfront facility handling LHG shall ensure that—

(1) The marine transfer area for LHG is under the supervision of a person in charge certified for transfers of LHG, who has no other assigned duties during the transfer;

(2) The person in charge supervises transfers only to or from one vessel at a time unless authorized by the COTP.

(3) No person transferring fuel or oily waste is involved in the transfer; and

(4) No vessel is moored outboard of any LHG vessel unless allowed by the COTP or the examined Operations Manual of the facility.

(c) During transfer, each person in charge of transfer for the facility shall—

(1) Maintain communication with the person in charge of transfer aboard the LHG vessel;

(2) Ensure that an inspection of the transfer piping and equipment for leaks, frost, defects, and other threats to safety takes place at least once every transfer;

(3) Ensure that—

(i) Transfer of LHG is discontinued as soon as a release or fire is detected in the area or aboard the vessel; and

(ii) Transfer of flammable LHG is discontinued when electrical storms or uncontrolled fires approach near the area; and

(4) Ensure that the outdoor lighting required by § 127.1109 is turned on between sunset and sunrise.

(d) Upon completion of transfer of LHG, each operator of a waterfront facility handling LHG shall ensure that hoses and loading arms used for transfer are drained of LHG residue and depressurized before disconnecting from the vessel.

Note to § 127.1319: Corresponding standards for vessels appear at 46 CFR part 154.

§ 127.1321 Release of LHG.

(a) Each operator of a waterfront facility handling LHG shall ensure that—

(1) No person intentionally releases LHG into the environment; and

(2) If a release of LHG or its vapor threatens vessels or persons outside the marine transfer area for LHG, they are notified by the warning devices.

(b) If LHG or its vapor is released, the person in charge of transfer for the facility shall—

(1) Immediately notify the person in charge of transfer aboard the vessel that transfer must be shut down;

(2) Shut down transfer in coordination with the person aboard the vessel;

(3) Notify the COTP of the release; and

(4) Not resume transfer until authorized by the COTP.

§ 127.1325 Access to marine transfer area for LHG.

Each operator of a waterfront facility handling LHG shall ensure that—

(a) Access to the marine transfer area for LHG from shoreside and waterside is limited to—

(1) Personnel who work in the area, transfer personnel, vessel personnel, and delivery and service personnel in the course of their business;

(2) Federal, State, and local officials; and

(3) Other persons authorized by the operator;

(b) Each person allowed into the area is positively identified as someone authorized to enter and that each person other than an employee of the facility displays an identifying badge;

(c) Guards are stationed, and fences or other devices are installed, to prevent, detect, and respond to unauthorized access, fires, and releases of LHG in the area, except that alternative measures approved by the COTP (such as electronic monitoring or random patrols) will be sufficient where the stationing of guards is impracticable; and

(d) Coast Guard personnel are allowed access to the facility, at any time, to make any examination or to board any vessel moored at the facility.

Maintenance

§ 127.1401 General.

Each operator of a waterfront facility handling LHG shall ensure that all cargo handling equipment is operable, and that no equipment that may cause the release or ignition of LHG is used in the marine transfer area for LHG.

§ 127.1403 Inspections.

(a) Each operator of a waterfront facility handling LHG shall conduct a visual inspection for defects of each pressure relief device not capable of being tested.

(b) The operator shall conduct the inspection required by paragraph (a) of this section at least once each calendar year, with intervals between inspections not exceeding 15 months.

§ 127.1405 Repairs.

Each operator of a waterfront facility handling LHG shall ensure that—

(a) Equipment is repaired so that—

(1) The equipment continues to meet the applicable requirements in this subpart; and

(2) Safety is not compromised; and

(b) Welding and cutting meet NFPA 51B.

§ 127.1407 Tests.

(a) Each operator of a waterfront facility handling LHG shall conduct a static liquid-pressure test of the piping, hoses, and loading arms of the LHG-transfer system located in the marine transfer area for LHG, and shall verify the set pressure of the safety and relief valves—

(1) After the system or the valves are altered;

(2) After major repairs to the system or the valves;

(3) After any increase in the MAWP of the system; and

(4) At least once each calendar year, with intervals between tests not exceeding 15 months.

(b) The pressure for the test under paragraph (a) of this section must be at least 1.1 times the MAWP and last for at least 30 minutes.

(c) The operator shall conduct a test of each pressure gauge, to ensure that the displayed pressure is within 10 percent of the actual pressure, at least once each calendar year, with intervals between tests not exceeding 15 months.

(d) The operator shall conduct a test of each item of remote operating or indicating equipment, such as a remotely operated valve, at least once each calendar year, with intervals between tests not exceeding 15 months.

(e) The operator shall conduct a test of the emergency shutdown required by § 127.1205 at least once every two months, to ensure that it will perform as intended. If transfers of LHG occur less often than every two months, the operator may conduct this test before each transfer instead of every two months.

(f) The operator shall conduct a test of the warning alarm required by § 127.1207 at least once every six months, to ensure that it will perform as intended. If transfers of LHG occur less often than every six months, the operator may conduct this test before each transfer instead of every six months.

§ 127.1409 Records.

(a) Each operator of a waterfront facility handling LHG shall keep on file:

(1) A description of the components inspected or tested under § 127.1403 or 127.1407.

(2) The date and results of each inspection or test under § 127.1403 or 127.1407.

(3) A description of any repair made after the inspection or test.

(4) The date and a description of each alteration or major repair to the LHG transfer system or its valves.

(b) The operator shall keep this information on file for at least 24 months after the inspection, test, alteration, or major repair.

Firefighting Equipment

§ 127.1501 General.

(a) The number, kind, and place of equipment for fire detection, protection, control, and extinguishment must be determined by an evaluation based upon sound principles of fire-protection engineering, analysis of local conditions, hazards within the waterfront facility handling LHG, and exposure to other property. A description of the number, kind, place, and use of fire equipment determined by this evaluation must appear in the Emergency Manual for each facility. The evaluation for each new facility and for all new construction on each existing facility must be submitted to the COTP for review when the emergency manual is submitted under § 127.103.

(b) All fire equipment for each facility must be adequately maintained, and periodically inspected and tested, so it will perform as intended.

(c) The following must be red or some other conspicuous color and be in places that are readily accessible:

(1) Hydrants and standpipes.

(2) Hose stations.

(3) Portable fire extinguishers.

(4) Fire monitors.

(d) Fire equipment must bear the approval, if applicable, of Underwriters Laboratories, Inc., Factory Mutual Research Corporation, or other independent laboratory recognized by NFPA.

§ 127.1503 Portable fire extinguishers.

Each operator of a waterfront facility handling LHG must provide portable fire extinguishers of appropriate, number, size, and kind in the marine transfer area for LHG in accordance with NFPA 10.

§ 127.1505 Emergency response and rescue.

(a) Each waterfront facility handling LHG must arrange for emergency response and rescue pending the arrival of resources for firefighting or pollution control. Response and rescue may be performed by facility personnel or by an off-site organization.

(1) If response and rescue are performed by facility personnel, appropriate training and equipment for personnel protection must be furnished to those personnel. Training and equipment that meets 29 CFR 1910.120, hazardous-waste operations and emergency response, will be appropriate.

(2) If response and rescue are performed by an off-site organization, the organization must enter into a written agreement with the facility indicating the services it will perform and the time within which it will perform them to injured or trapped personnel.

(b) [Reserved]

§ 127.1507 Water systems for fire protection.

(a) Each waterfront facility handling LHG must have a supply of water and a means for distributing and applying the water to protect personnel; to cool storage tanks, equipment, piping, and vessels; and to control unignited leaks and spills in the marine transfer area for LHG except when the evaluation required by § 127.1501(a) indicates otherwise. The evaluation must address fire protection for structures, cargo, and vessels. Each water system must include on the pier or wharf at least one 2½-inch supply line, one 2½-inch fire hydrant, and enough 2½-inch hose to connect the hydrant to the vessel.

(b) Each water system must fully and simultaneously supply, for at least 2 hours, all fixed fire-protection systems, including monitor nozzles, at their designed flow and pressure for the worst single incident foreseeable, plus 63 L/s (1000 gpm) for streams from hand-held hoses.

§ 127.1509 Equipment for controlling and extinguishing fires.

(a) Within each marine transfer area for LHG of each waterfront facility handling LHG that transfers a flammable LHG, portable or wheeled fire extinguishers suitable for gas fires, preferably dry chemical extinguishers, must be available at strategic sites, as determined by the evaluation required by § 127.1501(a).

(b) Fixed systems for extinguishing or controlling fires may be appropriate for protection against particular hazards. The evaluation required by § 127.1501(a) may specify the use of one or more of the following fixed systems:

(1) Low-, medium-, or high-expansion foam.

(2) Dry chemicals.

(3) Water applied as deluge, spray, or sprinkle.

(4) Carbon dioxide.

(5) Other NFPA approved fire extinguishing media.

§ 127.1511 International shore connection.

Each marine transfer area for LHG that receives foreign flag vessels must have an international shore connection meeting the requirements of ASTM F–1121.

Fire Protection

§ 127.1601 Smoking.

Each operator of a waterfront facility handling LHG shall ensure that no person smokes in the marine transfer area for LHG unless—

(a) Neither flammable LHG nor its vapors are present in the area; and

(b) The person is in a place designated and marked in accordance with local law.

§ 127.1603 Hotwork.

Each operator of a waterfront facility handling LHG shall ensure that no person conducts welding, torch cutting, or other hotwork on the facility, or on a vessel moored to the facility, unless—

(a) The COTP has issued a permit for that hotwork; and

(b) The conditions of the permit are met.

§ 127.1605 Other sources of ignition.

Each operator of a waterfront facility handling LHG shall ensure that in the marine transfer are for LHG—

(a) There are no open fires or open flame lamps;

(b) Heating equipment will not ignite combustible material;

(c) Each chimney and appliance has a spark arrestor if it uses solid fuel or is located where sparks may ignite combustible material; and

(d) All rubbish, debris, and waste go into appropriate receptacles.

§ 127.605 Table I [Added]

19. A new Table 1 is added after new § 127.1605 to read as follows:

TABLE 1 TO PART 127.—LIST OF PRODUCTS AND HAZARDS

Product	Hazard
Acetaldehyde	F+T
Ammonia, anhydrous	T
Butadiene	F
Butanes	F
Butane and propane (mixtures)	F
Butylenes	F
Chlorine	T
Dimethylamine	F+T
Ethane	F
Ethyl chloride	F+T
Ethylene	F
Ethylene oxide	F+T
Methyl-acetylene and propadiene (mixtures).	F
Methyl bromide	F+T
Methyl chloride	F+T
Propane	F
Propylene	F
Sulphur dioxide	T
Vinyl chloride	F+T

Note: "F" indicates a flammable product. "T" indicates a toxic product. "F&T" indicates a product both flammable and toxic.

Dated: June 23, 1995.

J.C. Card,

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

[FR Doc. 95–18762 Filed 8–2–95; 8:45 am]

BILLING CODE 4910–14–M

federal register

Thursday
August 3, 1995

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 990

Natural Resources Damage Assessments; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 990

RIN 0648–AE13

Natural Resource Damage Assessments

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 1006(e)(1) the Oil Pollution Act of 1990 (OPA) requires the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, to promulgate regulations for the assessment of natural resource damages resulting from a discharge or substantial threat of a discharge of oil. By today's Notice, the National Oceanic and Atmospheric Administration (NOAA) is seeking comments concerning the proposed rule.

The proposed rule is for the use of authorized federal, state, Indian tribal, and foreign officials, referred to in OPA as ''trustees.'' Natural resource damage assessments are not identical to response or remedial actions addressed by the larger statutory scheme of OPA. Assessments are not intended to replace response actions, which have as their primary purpose the protection of human health, but to supplement them, by providing a process for making the public whole for injury to natural resources and/or services.

Reviewers of this proposed rule should be aware that NOAA is subject to a consent decree that requires NOAA to submit a final rule to the **Federal Register** by the end of December 1995 (*Natural Resources Defense Council* v. *United States Coast Guard,* No. CV–94–4892, Order for Partial Settlement (E.D.N.Y. June 26, 1995). Due to the short timeframe for development of a final rule, reviewers should not expect any extensions of the comment period.

DATES: Written comments should be received no later than October 2, 1995.

ADDRESSES: Written comments are to be submitted to Linda Burlington or Eli Reinharz, c/o NOAA/GCNR, 1315 East-West Highway, SSMC #3, Room 15132, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Linda Burlington (telephone (301) 713–1217) or Eli Reinharz (telephone (301) 713–3038, ext. 193), Office of General Counsel Natural Resources, FAX (301) 713–1229.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, provides for the prevention of, liability for, removal of, and compensation for the discharge, or substantial threat of discharge, of oil into or upon the navigable waters of the United States, adjoining shorelines, or the Exclusive Economic Zone (an incident). Section 1006(b) of OPA provides for the designation of federal, state, Indian tribal, and foreign natural resource trustees to determine if injury to, destruction of, loss of, or loss of use of natural resources and/or services has resulted from an incident, assess natural resource damages, present a claim for damages (including the reasonable costs of assessing damages), recover damages, and develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources and/or services under their trusteeship.

Section 1006(e)(1) of OPA requires the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, to promulgate regulations for the assessment of natural resource damages resulting from incidents. By today's Notice, NOAA is seeking comments concerning the proposed rule. The proposed rule is for use by designated trustees.

On January 7, 1994, NOAA published a proposed rule for assessing natural resource damages under OPA (59 FR 1061). NOAA received numerous comments on the January 1994 proposed rule. Based on these comments, NOAA is considering a fundamental restructuring of the rule to provide even greater emphasis upon restoration. To ensure that all interested parties have adequate opportunity to review and comment on this restructuring, NOAA is reproposing the rule.

There are several significant differences between today's proposed rule and the January 1994 proposed rule. First, today's proposed rule eliminates the need for the determination of ''compensable values'' as a separate component of a natural resource damage claim. However, this approach does not make the value of natural resources irrelevant. Value still plays an important role in designing restoration actions that will truly make the public and environment whole for the types of natural resource injuries and service losses resulting from an incident. Second, the proposed rule emphasizes that trustees will be seeking, on behalf of the public, restoration of what was lost—natural resources and/or services provided, both human and ecological. Third, the proposed rule brings selection of restoration actions clearly into the public planning process. The public process outlined in the proposed rule affords federal agencies compliance with the requirements of the National Environmental Policy Act and accomplishes the goal of public involvement that was sought in the January 1994 proposed rule. Finally, the proposed rule authorizes trustees to determine appropriate assessment methods on an incident-specific basis, from a range of procedures including simplified methods to complex field studies. The proposed rule removes the distinction between categories of approaches termed ''expedited'' or ''comprehensive,'' and provides guidance for choosing appropriate methods based on the incident and the particular natural resource injuries or service losses of concern. This proposed rule does, however, require that assessment methods be reliable and valid in the particular context, and that the methods be cost-effective.

Prior to issuing a proposed rule, NOAA published eight **Federal Register** Notices requesting information and comments on approaches to developing natural resource damage assessment procedures. 55 FR 53478 (December 28, 1990), 56 FR 8307 (February 28, 1991), 57 FR 8964 (March 13, 1992), 57 FR 14524 (April 21, 1992), 57 FR 23067 (June 1, 1992), 57 FR 44347 (September 25, 1992), 57 FR 56292 (November 27, 1992), and 58 FR 4601 (January 15, 1993). NOAA conducted a public meeting on March 20, 1991, for additional public participation into the process and held four regional workshops during 1991 in Rockville, Maryland; Houston, Texas; San Francisco, California; and Chicago, Illinois, to learn of regional concerns in coastal and inland waters. One workshop held in Alexandria, Virginia, in November, 1991, provided a forum for early discussions of various economic issues likely to be raised during the rulemaking process. In addition, on August 12, 1992, NOAA held a public hearing on the issue of whether constructed market methodologies, including contingent valuation (CV), can be used to calculate reliably passive use values for natural resources, and if so, under what circumstances and under what guidance. On January 15, 1993, NOAA published in full the report of the panel commissioned by NOAA to evaluate the reliability of CV in calculating passive use values for natural resources. 58 FR 4601.

NOAA published the proposed OPA rule on January 7, 1994 (59 FR 1061). The proposed rule contained a statement of issues of interest to

stimulate discussions on some of the more intriguing suggestions considered in developing the proposed rule. Immediately after publishing the proposed rule, NOAA held six regional meetings in January and February of 1994. A seventh workshop was held in March of 1994 in Washington, D.C., to summarize the discussions and results of the six regional meetings. NOAA published an informational notice to summarize the kinds of concerns raised in the discussions and refine some issues on which NOAA was particularly soliciting comments. 59 FR 32148 (June 22, 1994).

NOAA received numerous comments on the January 1994 proposed rule. Based on these comments, NOAA is considering a fundamental restructuring of the rule to provide even greater emphasis upon restoration. To ensure that all interested parties have adequate opportunity to review and comment on this restructuring, NOAA is reproposing the rule.

This preamble is organized in the following manner: the Introduction gives an overview of the proposed rule and is followed by a discussion of each of the subparts of this proposed rule. Subpart A provides a general introduction, subpart B describes trustee authorities, subpart C gives definitions pertinent to this proposed rule, subpart D describes the Preassessment Phase, subpart E describes the Restoration Planning Phase, and subpart F describes the Restoration Implementation Phase. Finally, the preamble provides a general summary of the comments on the January 1994 proposed rule.

INTRODUCTION

I. Goal of OPA: Focus on Restoration

The goal of OPA is to make the public and environment whole for injury to, destruction of, loss of, or loss of use (injury) of natural resources and/or services resulting from an actual or substantial threat of a discharge of oil (OPA sec. 1002(b)(2)(A)). This goal is achieved by planning and implementing appropriate actions to restore, rehabilitate, replace, or acquire the equivalent of injured natural resources and/or services (restore). The purpose of this proposed rule is to provide a framework for conducting sound natural resource damage assessments (NRDAs or assessments) that achieve restoration under OPA for incidents.

This proposed rule emphasizes several processes to achieve the goal of restoring injured natural resources and services: (1) Identification and evaluation of injuries to natural resources and/or services; (2) employing assessment methods relevant to the circumstances of a particular incident; (3) identification and evaluation of restoration alternatives; and (4) involvement of the public in the process of selecting restoration actions appropriate for a given incident.

NOAA believes that an NRDA process that meets the essential procedural elements of identifying and evaluating relevant injuries and restoration alternatives, and soliciting public input will accomplish three major goals: (1) Involve the public in the decision of what actions will make them whole; (2) ensure that appropriate scientific procedures and methods for determining restoration actions for a given incident are followed; and (3) reduce transaction costs.

NOAA recognizes that restoration planning by federal trustee agencies is subject to the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.), except when a categorical exclusion applies. However, NOAA believes that the process identified in this proposed rule mirrors the decisionmaking process embodied in NEPA, without requiring significantly different steps or products than those envisioned in OPA. Thus, compliance with the procedures set forth in the proposed rule would fulfill the requirements of NEPA. Steps and products that are analogous under OPA and NEPA are identified in a diagram in Appendix A at the end of the preamble.

Finally, NOAA has developed guidance documents on various aspects of the NRDA process. These guidance documents are available in draft on: Preassessment, injury assessment, restoration, compensation formulas, and NEPA compliance (citations for the documents are included in the Bibliography at the end of this preamble). These draft documents are available from the address at the front of this preamble. The guidance documents are being prepared in conjunction with this rulemaking to provide additional technical information to those performing assessments under OPA and other interested members of the public. These documents will not constitute regulatory guidance, nor will they have to be followed for a damage assessment to be conducted in accordance with these regulations. The documents, in their final form, will be made available through a public information distribution service.

II. Overview of the Restoration Planning Process: NRDA Under the Proposed Rule

Regardless of the scope or scale of the incident, the restoration planning process provided in this proposed rule is generally the same. In the Preassessment Phase, trustees must first determine threshold issues that establish their authority to begin the NRDA process, such as: (1) Whether OPA is applicable (e.g., did the incident involve oil?); (2) whether an exclusion from liability under the statute applies (e.g., natural resources were affected by a discharge from a public vessel); and (3) whether natural resources under their trustee authority were potentially affected by the incident. Trustees then assess whether injuries will be adequately addressed through response actions, or whether further action is warranted to consider the need for additional restoration.

If further action is justified, the trustees prepare a ''Notice of Intent to Conduct Restoration Planning,'' or ''Notice.'' Based on information available at this early stage of the assessment process, the Notice may also describe the trustees' proposed strategy for assessing injury and determining appropriate restoration actions. This proposed rule advocates using injury assessment procedures that directly provide information on restoration and are cost effective.

Once the Notice is published, trustees continue with the injury assessment component of the Restoration Planning Phase, in which trustees evaluate natural resource and/or service injuries. Following injury assessment, trustees determine the type and scale of restoration to address the injuries. Restoration under the proposed rule includes two components: (1) Primary restoration—actions taken to return the injured resources and services to baseline, including the natural recovery option, and (2) compensatory restoration—actions to make the environment and public whole for resource services lost from the date of the incident until recovery of the injured resources. The type and scale of compensatory restoration are related to the type and scale of primary restoration selected. Scaling of appropriate compensatory restoration actions is accomplished on a service-to-service comparison to services lost as a result of the incident, or through valuing the loss of the services and gains from compensatory restoration projects where service-based scaling is not feasible.

Trustees develop a Draft Restoration Plan, identifying and evaluating a

reasonable range of alternatives for restoring the injuries, including a no-action alternative, and describing the trustees' tentative preferred alternatives. The Draft Restoration Plan is subject to public review and comment, after which a Final Restoration Plan is developed. The Final Restoration Plan is then implemented during the Restoration Implementation Phase, either through an agreement by the parties responsible for the incident (responsible parties) to implement restoration with trustee oversight, through immediate payment of the demand for restoration costs by the responsible parties, or through litigation to collect restoration costs.

The timing and degree of public involvement in the assessment process, and the type of documents produced at various stages of the process, will be tailored to the scope and scale of the incident. For instance, for small incidents assessed with a model or compensation formula, it may be appropriate to compress the Notice and draft restoration documents into a single document that reports the inputs used and results of the model application, along with the alternate and preferred restoration actions. In contrast, larger incidents that require in-depth site-specific studies to identify and evaluate appropriate restoration may require a series of plans that would benefit from public notice and/or comment. In addition, when trustees propose to implement part of a regional restoration plan for a given incident and that plan has previously been available for public review and comment, trustees may choose only to notify the public of the decision to link a given incident to the regional plan.

III. Issues of Interest

A. Evaluating a Reasonable Range of Restoration Alternatives

Restoration actions under this proposed rule are defined to include activities designed to make the environment and public whole for natural resources and/or services injured as a result of an incident. Restoration is defined to include primary restoration actions that return injured natural resources and services to the conditions that would have existed in the absence of the incident, and compensatory restoration actions that make the public and the environment whole for interim service losses. Thus, throughout this proposed rule, ''restoration'' refers to any appropriate combination of primary and compensatory restoration actions designed to address natural resource and service injuries.

NOAA proposes that trustees identify a reasonable range of restoration alternatives and then evaluate those alternatives based on such factors as: (1) Extent to which each alternative can return the injured natural resources and services to baseline and make the environment and public whole for the interim service losses; (2) extent to which each alternative improves the rate of recovery; (3) extent to which each alternative will avoid additional injury; (4) level of uncertainty in the success of each alternative; (5) extent to which each alternative benefits more than one natural resource and/or service; (6) cost of each alternative; (7) effects of each alternative on public health and safety, and the environment; and (8) whether any alternative violates any laws or regulations.

Like NEPA, this proposed rule only requires that a reasonable range of restoration alternatives be considered. Under OPA, trustees are directed to return injured natural resources and services to the condition that would have existed in the absence of the incident. Thus, trustees must evaluate possible restoration actions in light of their effectiveness in returning natural resources and services to baseline. The lowest cost restoration alternative may not always represent the preferred alternative. Instead, the costs of restoration alternatives should be evaluated by comparing the costs of alternative actions to the relative effectiveness of each in returning injured natural resources and services to baseline taking interim service losses into account. Also like NEPA, trustees following this proposed rule are required to consider a no-action alternative.

B. Regional Restoration Planning

Regional restoration planning is encouraged under this proposed rule as a mechanism to plan and implement restoration for small incidents resulting in natural resource and/or service injury, where incident-specific restoration is impractical. The regional restoration planning process can pull together proposed or desired projects from numerous public entities, where such projects would be expected to restore the types of natural resource and service injuries anticipated from incidents in particular geographic areas. Regional restoration plans will shorten the assessment schedule and reduce overall costs, especially for small incidents. NOAA proposes the NEPA programmatic environmental impact analysis as a model for evaluating regional restoration plans.

C. Technical Adequacy of Assessment Procedures

Under this proposed rule, the type and scale of technical and scientific analyses should be focused on information requirements for determining restoration given the circumstances of a particular incident. In making the determination of technical adequacy, trustees should be guided by current understanding of best scientific practices. However, when choosing among assessment procedures and methods that could provide greater levels of certainty or precision in assessment variables, trustees should evaluate the costs and time requirements of more in-depth procedures, expected increase in precision, and likelihood that greater precision will result, relative to the expected total damages for the injury being evaluated. Thus, for a given set of circumstances, use of a model or extrapolation from the scientific literature may be more appropriate for determining restoration than generating site-specific field data. This analysis of increased costs associated with expected increases in amount and quality of assessment information provided by different methods will ensure that assessment procedures and methods chosen are reasonable.

D. Public Participation

OPA section 1006(c)(5) requires that the restoration process be open to the public before final decisions are made and actions taken. The restoration planning process should provide an adequate opportunity for public participation and addressing public concerns.

In light of this requirement, NOAA is proposing an open planning process. To prevent delays in the restoration process at the time of an incident, trustees should afford the public an opportunity to be involved in planning activities prior to an incident (i.e., pre-incident planning and regional restoration plan development). If pre-incident public planning is not possible, the public must, at a minimum, be invited to participate in the development of draft and final incident-specific restoration plans. The nature of public participation will depend on the issues and actions being considered; however, common elements include: (1) Notice of the decision to proceed with restoration planning; (2) notice and comment on a Draft Restoration Plan; and (3) notice of a Final Restoration Plan. Public meetings may be appropriate in certain circumstances.

In regard to the development of a restoration plan, NOAA believes that effective public participation enhances the probability that appropriate restoration actions will be implemented. Solicitation of comments from members of the scientific community, including natural resource injury, restoration, and economic experts, as part of a public participation program may supplement expert peer review of trustee strategies, plans, and tentative decisions. This type of public participation would also satisfy NEPA's requirement that the public be involved in assessing the environmental consequences of major federal actions. NOAA also believes that Restoration Plans developed under this proposed rule serve as Environmental Impact Statements (EIS) for purposes of NEPA. Examples of restoration plans that follow the NEPA EIS format are listed in the bibliography at the end of this preamble.

Cooperative participation by responsible parties in the restoration planning process is consistent with the goals of an open process. Thus, NOAA believes that responsible parties should be invited to participate in the NRDA process, where such participation will not impede fulfilling the trustees' mandate to restore expeditiously injured natural resources and services.

DISCUSSION

Subpart A—Introduction

I. Purpose

The purpose of this proposed rule is to promote expeditious restoration of natural resources and services injured as a result of an incident. To fulfill this purpose, this proposed rule provides an administrative process for involving interested parties, a range of assessment procedures for identifying and evaluating injuries to natural resources and/or services, and a process for selecting appropriate restoration actions from a range of alternatives.

II. Scope

This proposed rule is available for use by designated federal, state, Indian tribal, and foreign natural resource trustees to determine appropriate actions to restore natural resources and services injured by a discharge, or substantial threat of a discharge, of oil into or upon navigable waters or adjoining shorelines or the Exclusive Economic Zone.

The Secretaries of the Interior, Commerce, Agriculture, Defense, and Energy are the primary federal natural resources trustees. The roles and responsibilities of the various federal departments regarding NRDA vary according to their resource management responsibilities and the susceptibility of these natural resources and/or services to injury. Designation of federal trustees and broad guidelines describing trustee functions are addressed in subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300.600. For state trustees, most governors have delegated trustee responsibilities to specific state agencies, as provided under OPA.

III. Effect of Using These Regulations

Assessments performed by federal, state, or Indian tribal trustees in accordance with these regulations receive the evidentiary status of a rebuttable presumption provided by OPA section 1006(e)(2). In brief, this presumption means that the responsible parties have the burden of proving that the trustees' claim and determinations are incorrect. This presumption applies to all assessment procedures developed under this proposed rule. However, where trustees use procedures that are determined not to be in accordance with this proposed rule, trustees will not obtain a rebuttable presumption for that portion of the assessment. Assessments performed by foreign trustees in accordance with these regulations are not entitled to a rebuttable presumption.

IV. Coordination

A. General

Coordination among all parties affected by an incident is crucial to an efficient and effective assessment. Coordination, from pre-incident planning through joint and cooperative assessment, restoration planning and implementation, can assist in decreasing the time until restoration is implemented, preventing double recovery of damages, and ensuring that assessment costs are reasonable. More detailed discussion of some aspects of coordination appears in Appendix B at the end of this preamble.

B. Coordination Among Trustees

This proposed rule encourages trustees with shared or overlapping natural resource management and protection jurisdiction to coordinate their NRDA activities, including coordination in pre-incident planning. Coordination among trustees will avoid duplicative claims for damages, address shared trust resource concerns, and result in more effective funding of assessment work. Trustees must designate a Lead Administrative Trustee for each joint assessment under this proposed rule and the NCP. This rule encourages trustees to consider cooperation agreements such as memoranda of understanding, to structure both non-incident and incident-specific activities. Trustees may act independently when there is a reasonable basis for dividing NRDA responsibilities, so long as there is no double recovery of damages for the same incident and natural resource. However, independent assessments may not be in the best interests of the trustees, the responsible party, or in achieving prompt restoration of injured resources.

C. Coordination With Response Agencies

Coordination among trustees and response agencies can result in reducing or eliminating natural resource and/or service injuries residual to the cleanup. ''Response'' or ''cleanup'' refers to those actions taken under the NCP to protect public health and welfare or the environment when there is a discharge or a substantial threat of a discharge of oil, including actions to contain or remove discharged oil from water and shorelines.

D. Coordination With Responsible Parties

Active and early involvement of responsible parties may eliminate some of the problems trustees have encountered immediately following an incident, such as lack of funding, personnel and equipment. In addition, a joint trustee-responsible party assessment may be more cost-effective and avoid duplicate studies. Therefore, the proposed rule requires the trustees to invite the responsible parties to participate in the NRDA process.

The proposed rule leaves determination of the timing and extent of responsible party participation to the judgment of the trustees on an incident-specific basis. While active responsible party involvement is the preferred method of conducting assessments, it may not be appropriate for trustees to delay assessment activities while negotiating the terms of responsible party involvement.

In making a determination to allow responsible party participation in the assessment, trustees should consider factors including, but not limited to: (1) Whether responsible parties have been identified; (2) the willingness of responsible parties to participate in the assessment; (3) the willingness of responsible parties to fund assessment costs of the trustees; and (4) the willingness and ability of responsible parties to conduct assessment activities in a technically sound and timely manner.

E. Coordination With the Public

A major goal of OPA is to involve the public in the restoration planning process. The proposed rule requires trustees to provide public notice of their intent to conduct restoration planning, and allow for public review and comment on the Draft Restoration Plan. Depending on the nature of the incident and expected assessment activities, comment may be solicited at additional stages to ensure the best information base is available to trustee decisionmakers.

In highly complex incidents, or those incidents that are expected to involve multi-year efforts, trustees may have an opportunity to set up one or a series of public meetings to ensure opportunity for public input. Attendance should be encouraged by all parties that are involved, participating, or interested in the incident.

Trustees may also conduct public outreach on non-incident-specific restoration issues. Trustees are responsible for representing the public's interests in natural resources and/or services affected by incidents. Trustees can better fulfill this trust responsibility by informing the public about NRDA provisions in statutes and the processes trustees undergo in assessing injury and determining restoration actions.

To the fullest extent practicable, trustees should implement public outreach, which will:

(1) Encourage a broad understanding of restoration and build trust, thus allowing for quicker recognition and support of the restoration process overall;

(2) Provide opportunities for joint fact-finding, improving the collection of quality data; and

(3) Incorporate public concern, providing for more effective restoration planning.

V. Considerations for Facilitating Restoration

A. General

Pre-incident planning and regional restoration plan development are tools trustees should consider as means to enhance successful restoration planning and implementation. More extensive discussion on these topics is included in Appendix B at the end of this preamble.

B. Pre-Incident Planning

NOAA believes that commitment of time, funding, and personnel to planning prior to an incident will help ensure that the assessment process results in technically sound and cost-effective plans. Pre-incident plans may: identify natural resource damage assessment teams; establish trustee notification systems; identify support services; identify natural resources and/or services at risk; identify regional and area response agencies and officials; identify available baseline information; establish data management systems; and identify assessment funding issues and options. Potentially responsible parties should be included in the pre-incident planning process to the fullest extent practicable.

C. Regional Restoration Planning

OPA emphasizes making the environment and public whole for natural resource and/or service injuries. Where practicable, incident-specific restoration is the preferred alternative to accomplish this goal. However, for many incidents, including smaller incidents, such incident-specific action may be impractical. Yet, the impact of small incidents may still represent a significant concern for trustees. Thus, to achieve OPA's mandate to restore injured natural resources and services regardless of the type and scale of those injuries, trustees are encouraged to use or modify existing regional restoration plans, or develop new regional restoration plans. Planning in a regional (e.g., ecosystem or watershed) context is appropriate so long as natural resources and/or services comparable to those expected to be injured by an incident are addressed in the plans.

VI. Review of the Regulations

Although OPA does not contain a specific provision for the update of these regulations, NOAA believes that they should be reviewed on a regular basis to keep the procedures current with new developments. Thus, NOAA is proposing that these regulations be reviewed and revised, as appropriate, at least every five years.

Subpart B—Authorities

I. Relationship to Other NRDA Regulations

A. CERCLA Regulations

The Department of the Interior (DOI) has developed regulations for assessing natural resource damages resulting from hazardous substance releases under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 et seq.), and the Clean Water Act (33 U.S.C. 1321 et seq.). The CERCLA regulations are codified at 43 CFR part 11. The CERCLA regulations originally applied to natural resource damages resulting from oil discharges as well as hazardous substance releases. This proposed rule will supersede 43 CFR part 11 with regard to discharges of oil and substantial threats of a discharge of oil, when final. Assessments commenced under the CERCLA regulations before the effective date of the final OPA rule may be completed in compliance with the CERCLA regulations, and will be deemed conducted in accordance with the OPA regulations.

If natural resources and/or services are injured by a discharge or release of a mixture of oil and hazardous substances, trustees must use 43 CFR part 11 in order to obtain a rebuttable presumption.

B. State, local, and Indian tribal NRDA Procedures

Many states have developed their own NRDA statutes and regulations. When state, local, or Indian tribal NRDA procedures are determined to be in accordance with this proposed rule, use of these procedures will afford the trustees the evidentiary benefit of the rebuttable presumption. Under the proposed rule, state, local, or Indian tribal NRDA procedures are in accordance with the OPA regulations when the procedures:

(1) Require all recovered damages to be spent on restoration, subject to a plan made available for public review and comment, except for those damages recovered to reimburse trustees for past assessment and emergency restoration costs;

(2) Determine compensation based on injury and/or restoration;

(3) Are consistent with the standards for the technical procedures and methods outlined in § 990.51 of this part;

(4) Were developed through a public rulemaking process; and

(5) Do not conflict with OPA or this proposed rule.

II. Relationship to the NCP

The proposed rule would supplement the procedures established under the NCP for the response to an incident, and provide procedures by which trustees may determine appropriate restoration of injured natural resources and services that are not fully addressed by response actions conducted pursuant to the NCP.

III. Prohibition on Double Recovery

The proposed rule requires trustees to consider the actions of other trustees with respect to the same incident and natural resources and the effect of the prohibition on double recovery of damages in OPA section 1006(d)(3).

IV. Compliance With Other Applicable Laws and Regulations

NEPA applies to restoration planning by federal trustees, unless a categorical exclusion applies. NEPA is triggered when federal trustees issue a Notice of Intent to Conduct Restoration Planning, under § 990.43 of the proposed rule. NOAA believes that compliance with the procedures in the proposed rule would fulfill the requirements of NEPA.

When taking actions under this proposed rule, trustees must comply with all worker health and safety considerations specified in the NCP for response actions.

Where an incident implicates trustees' statutory or regulatory requirements in addition to those in OPA and this proposed rule, trustees should comply with those requirements. Compliance with all applicable laws and regulations will help to minimize duplicative and conflicting efforts. When following procedural requirements other than those specified by OPA and this proposed rule, trustees should identify those requirements in the restoration plan. Applicable requirements that may need to be considered include, but are not limited to the: Endangered Species Act; Coastal Zone Management Act; Migratory Bird Treaty Act; National Marine Sanctuaries Act; National Historic Preservation Act; Marine Mammal Protection Act; worker health and safety-related acts; and NCP. To the extent that federal trustees can legally comply with state, local, or Indian tribal procedural requirements, they should do so.

V. Settlement Authority

Trustees may settle claims for natural resource damages at any time, provided that the settlement is adequate in the judgment of the trustees to make the environment and public whole for the injury, destruction, loss of, or loss of use of natural resources and/or services that have or are likely to have occurred; with particular consideration of the adequacy of the compensation to provide for the restoration of such resources. Sums recovered in settlement of such claims may only be expended in accordance with a restoration plan that is made available for public review.

VI. Emergency Restoration

Emergency restoration actions should be considered in situations where immediate action is necessary to minimize continuing or prevent additional injury. Although emergency restoration actions may be considered and implemented by trustees at any time throughout the NRDA process if the above conditions are met, typically trustees begin evaluating the need for emergency restoration during response. If emergency restoration actions have the potential to interfere with the response, trustees must consult and/or coordinate with response agencies prior to implementing emergency restoration. Where emergency restoration actions are not expected to interfere with response activities, trustees must notify response agencies prior to implementation of emergency restoration to inform the latter of the trustees' intended actions and reasoning for believing that no interference with the response will result.

Trustees must provide notice to the responsible parties of any emergency restoration actions and invite their participation in the conduct of those actions within a reasonable timeframe.

Emergency restoration is an exception to the OPA section 1006(c)(5) requirement that actions be subject to prior public review and comment. Because of this exception, this proposed rule allows trustees to take emergency restoration action only if such action is feasible, likely to achieve the goal of minimizing or preventing injury, and is conducted at a cost that is not unreasonable. Notifying the public of the justification for, the nature and extent of, and the results of emergency restoration actions within a reasonable time following the actions is consistent with emergency action guidance under NEPA as well.

The costs associated with evaluating, planning, and implementing emergency restoration may be claimed as part of the damages claim.

Subpart C—Definitions

There are a number of fundamental terms and concepts that are not explicitly defined or described in OPA. Interpretation of these terms and concepts plays a critical role in the NRDA process under OPA.

Relevant definitions in OPA, CERCLA, the Clean Water Act, or other related laws, and associated regulations, are repeated in this proposed rule as a matter of reference. Other terms and concepts found in this proposed rule were developed to be consistent with current usage.

This section concentrates on some of the terms and concepts that are foundational to the NRDA process under this proposed rule, such as ''injury,'' or terms that do not possess a common meaning.

Baseline

As defined in this proposed rule, the term baseline refers to the condition of natural resources and/or services that would have existed had the incident not occurred. Although injury quantification requires comparison to a baseline condition, site-specific baseline information may not be required. In many cases, injuries can be quantified in terms of incremental changes, rather than in terms of absolute changes relative to a known baseline. For example, Type A models do not require site-specific baseline information to quantify injury. Rather, the injury is quantified in terms of incremental adverse changes resulting from the incident. Similarly, counts of oiled bird carcasses can be used as a basis for quantifying incremental bird mortality resulting from an incident.

This proposed rule does not distinguish between baseline, historical, reference or control data in terms of value and utility in determining the degree and spatial/temporal extent of natural resource and/or service injuries. To the extent that baseline data, historical data, reference data or control data can provide valid information on which to base a determination of the projected conditions of the natural resource and/or service in the absence of the incident, these forms of data may effectively serve as baseline information. Trustees are encouraged to collect information from the field, laboratory, literature, models, or any combination thereof.

Types of information that may be useful in determining baseline include:

(1) Information collected on a regular basis and for a period of time;

(2) Information identifying historical patterns or trends;

(3) Information from areas unaffected by the incident, that are judged sufficiently similar to the area of the incident with respect to the variable being measured; or

(4) Information from the area of the incident after the particular variable, e.g., interim lost use, has been judged to have recovered.

Exposure

Exposure documentation is required to determine injury under this proposed rule except when natural resource and/or service injuries are the result of response activities or the substantial threat of a discharge of oil. Exposure can be expressed broadly as direct or indirect contact with the discharged oil. Exposure may be determined, alone or in combination, through: field investigations; laboratory exposure studies; transport and fate modeling; or the literature.

Incident

An incident is any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil into or upon navigable waters or adjoining shorelines or the Exclusive Economic Zone. When a discharge of oil occurs, natural resources and/or services may be injured by the actual discharge of oil or response activities related to the discharge. When there is a substantial threat of a discharge of oil, natural resources and/or services may also be injured.

Injury

OPA authorizes trustees to recover damages for ''injury to, destruction of, loss of, or loss of use of'' natural resources (sec. 1002(b)(2)(A)). Trustees must establish that injury has resulted from an incident. Under this proposed rule, injury is defined as an observable or measurable adverse change in a natural resource or impairment of a natural resource service. Measurable adverse changes may be projected through use of models or extrapolation techniques.

There are two general bases for determining injury under this proposed rule. Trustees must either determine that: (1) The natural resource was exposed, there is a pathway connecting the incident with the resource, and an adverse change to the natural resource and/or service has occurred; or (2) for injuries resulting from response actions or incidents involving a substantial threat of a discharge, an injury to a natural resource or an impairment of use of a natural resource service has occurred as a result of the incident. Thus, under this proposed rule, injury may result from direct or indirect exposure to oil, as well as from response-related activities, and loss of services is explicitly included in the definition of injury.

Oil

Under OPA section 1001(23), ''oil'' includes:

> Oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of [CERCLA] and which is subject to the provisions of that Act.

If a component of a mixed spill is a hazardous substance under CERCLA, CERCLA and the CERCLA NRDA regulations apply. The definition of ''oil'' under OPA does not cover all petroleum-related products. For instance, substances whose properties or behavior are substantially different from oil (e.g., natural gas condensates) are excluded under OPA. However, substances that are relatively similar (e.g., non-petroleum oils such as vegetable oils and animal fats) are covered by OPA. Although the U.S. EPA and U.S. Coast Guard have recognized that animal fats and vegetable oils are substantially less harmful to the environment than petroleum-based oils, the preamble to the recent revisions to the NCP states that ''oil of any kind or in any form'' clearly suggests the inclusion of non-petroleum oils. 59 FR 47386 (Sept. 15, 1994). This conclusion is also consistent with U.S. Department of Transportation guidance, which states that ''oil'' includes ''petroleum, fuel oil, vegetable oil, animal oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include natural gas condensate.'' 49 CFR 194.5. While the mechanism of injuries by non-petroleum oils may be different than that of petroleum oils, it is evident, based on current literature, the nature of such injuries are similar (i.e., death) for both types of oils.

According to EPA guidance, ''oil'' covered by OPA includes: (1) Crude oil and fractions of crude oil including the hazardous substances, such as benzene, toluene, and xylene, which are indigenous to petroleum and its refined products; and (2) hazardous substances that are normally mixed with or added to crude oil or crude oil fractions during the refining process, including hazardous substances that have increased in level as a result of the refining process. (U.S. EPA Memorandum on the Petroleum Exclusion Under the Comprehensive Environmental Response, Compensation, and Liability Act, July 31, 1987; BNA, 1988) Hazardous substances added to petroleum that increase in concentration through any process other than refining, or added as a result of contamination of the petroleum during use (including waste oil), would not be excluded from CERCLA. For example, the presence of dioxin in oil used as a dust suppressant on highways would bring a discharge of such a mixture under the jurisdiction of CERCLA, not OPA.

Pathway

Pathways include the medium, mechanism, or route by which the incident has resulted in an injury. For discharges of oil, a pathway is the sequence of events by which: (1) The oil travelled through various components of an ecosystem and contacted the natural resource of concern; or (2) exposure to oil in one part of an ecosystem was transmitted to the natural resource of concern, without the oil directly contacting the natural resource.

Reasonable Assessment Costs

To evaluate the reasonableness of assessment costs, the incremental increase in assessment information must be reasonably related to the action's incremental cost. The scale of assessment efforts must be appropriate in the judgment of the trustees relative to the need for increased information, which is a highly incident-specific determination. The costs of an assessment or assessment actions that are focused on providing information required to determine restoration requirements must also be judged relative to the extent of injury and expected restoration costs for the incident. Reasonable assessment costs also include the administrative, legal, and enforcement costs necessary to carry out this part. Trustees may recover the reasonable assessment costs they incur under this proposed rule even if they ultimately determine not to pursue restoration, provided they establish jurisdiction under OPA during the Preassessment Phase.

Recovery

Recovery is defined in the proposed rule as the return of injured natural resources and services to baseline. This concept encompasses the inherent tendency for natural resource and/or service attributes to vary over space and time.

Projecting recovery involves determining the likelihood and rate at which natural resources and/or services will return to baseline. The availability and quality of baseline information can influence recovery projections. Trustees should use the best available information that can be gathered through field or laboratory studies, models, the literature, and other sources appropriate to the incident or injury to project recovery.

Restoration

Under this proposed rule, restoration is broadly defined as any action or combination of alternatives or actions to restore, rehabilitate, replace, or acquire the equivalent of injured natural resources and services.

This proposed rule includes the concepts of primary and compensatory restoration. Primary restoration is human intervention or natural recovery that returns injured natural resources

and services to baseline. Compensatory restoration is action taken to make the environment and the public whole for service losses that occur from the date of the incident until recovery of the injured natural resource.

Services

Natural resources are valued in terms of the services or functions they provide to other natural resources or the public. Thus, under this proposed rule, services refer to the ecological functions performed by natural resources or the public benefits derived therefrom. Such services can be classified as follows:

(1) Ecological services—the physical, chemical, and biological functions that one natural resource provides for another. Examples include provision of food, protection from predation, nesting habitat, and biodiversity, among others; and

(2) Public services—the functions that natural resources provide for the public. Examples include fishing, hunting, nature photography, education, and access, among others.

Value

An individual's value of a good is represented by the amount of other items that the individual is willing to give up to obtain or is willing to accept to forgo the good. The total value of a natural resource or service includes direct use values (e.g., values individuals derive from consuming or viewing a natural resource) and passive use values (values not linked to direct use, e.g., the value individuals derive from knowing a natural resource exists). In many contexts, particularly in markets, value is represented in terms of units of currency, the commonly accepted form of exchange. However, value can be measured using a variety of possible measures, including units of a resource service. In this proposed rule, value can be measured either in terms of units of resource services or dollar amounts.

Subpart D—Preassessment Phase

I. Purpose

During the Preassessment Phase, trustees make several critical determinations that shape the remainder of the assessment. Trustees must initially determine whether actions under OPA are justified, then proceed to make early estimates about the types of injury assessment and restoration actions that may be warranted, based on the circumstances of a given incident.

II. Determinations

A. Determination of Jurisdiction

In order for trustees to proceed with restoration planning under OPA, certain conditions must be met:

(1) An ''incident'' under OPA has actually occurred (i.e., there has been a discharge or substantial threat of a discharge of oil);

(2) The incident does not fall within exclusionary conditions set forth in section 1002(c) of OPA (e.g., the discharge was not allowed by federal permit); and

(3) Natural resources under the trusteeship of the trustees have or may be affected as a result of the incident.

Frequently, the first two conditions are determined by the response agency; USCG or EPA may have already made these determinations that OPA applies to the incident before notifying trustees. The third condition, however, is necessarily determined by each trustee. If any of these conditions is not met, the trustees may not take additional action under this proposed rule.

A determination that OPA applies and that a trustee has jurisdiction to act under OPA may trigger initiation of the NRDA process.

B. Determination to Conduct Restoration Planning

1. General

The key determination to be made by trustees in the Preassessment Phase is whether it appears likely that restoration actions should be pursued by the trustees. This determination depends on the following conditions:

(a) Injuries likely have resulted or will result from the incident;

(b) Response actions may not adequately address the potential injuries; and

(c) Feasible restoration actions exist to address the potential injuries.

If any of the above conditions is not met, trustees may not take additional action under this part. However, trustees may recover all reasonable assessment costs incurred up to the point when they determined that the conditions were not met. If all of the above conditions are met, the trustees must issue a ''Notice of Intent to Conduct Restoration Planning'' (Notice). The form and content of this Notice will vary depending on the circumstances of individual incidents, and is discussed below.

Other factors to consider during the Preassessment Phase include: funding, data collection, and opening the administrative record. Trustees may also need to consider the applicability of the defenses to liability provided in OPA section 1003 and the monetary caps on liability provided in OPA section 1004.

2. Identifying Natural Resources and/or Services at Risk

Determining whether natural resources and/or services are, or are likely to be, injured requires that trustees consider the:

(a) Circumstances of the incident. Factors to consider may include geographic location, source, type, time and duration, and volume of the discharge;

(b) Characteristics of the discharge or threatened discharge. Factors to consider may include physical parameters of the oil;

(c) Characteristics of the natural resources. Factors to consider may include the natural resources in the area of the incident, the services they provide, habitat and species types, seasonal implications on sensitive life stages, and unique ecological components; and

(d) Potential for injury. Factors to consider may include potential for exposure, plausible pathways, causal mechanisms, and availability of assessment procedures and data to analyze these factors.

3. Effectiveness of Response Actions in Eliminating Injury

Once trustees ascertain that trust resources and/or services are, or may be expected to be, injured as a result of the incident, trustees can make the determination whether these concerns are likely to be adequately addressed through response actions. If response actions will not alleviate residual natural resource and/or service injuries, trustees must determine whether there is a need and potential for restoration actions to address residual impacts, and begin identifying these actions, to facilitate the Restoration Planning Phase of the NRDA process.

4. Early Identification of Potential Restoration Actions

Whenever practicable, potential restoration actions need to be identified as early in the NRDA process as possible. Such identification is needed to help justify the decision to proceed with an assessment that will lead to restoration actions, and provide focus for designing injury assessment studies that will produce useful information on the type and scale of restoration needed for injured natural resources and services. Some considerations important to the early identification of restoration actions include:

(a) Potential nature, degree, and spatial/temporal extent of injury, with or without restoration;

(b) Need and potential for restoration;

(c) Potential scope and scale of restoration;

(d) Extent to which relevant information is known, or the time and money required to obtain such information; and

(e) Requirements imposed by other laws and regulations that would affect restoration.

If trustees determine that restoration actions are appropriate to the incident, the trustees should proceed to the Restoration Planning Phase.

III. Notice of Intent to Conduct Restoration Planning

If the trustees determine that there is a reasonable likelihood that injury has occurred as a result of the incident and restoration actions that would address these injuries should be pursued, the trustees may proceed with injury assessment. At this point, the trustee must prepare the Notice of Intent to Conduct Restoration Planning documenting the trustees' preassessment activities and the basis for the decision to proceed. Depending on information available at this early stage of the assessment process, the Notice may also include a description of the trustees' proposed strategy to assess injury and determine the scope and scale of restoration. The contents of a Notice may vary, but will typically discuss:

(a) The facts of the incident;

(b) Trustee authority to proceed with assessment;

(c) Natural resources and/or services that are, or are likely to be, injured as a result of the incident;

(d) Potential restoration actions relevant to the expected injuries; and

(e) If determined at the time, potential procedures to assess injuries, and determine the appropriate scope and scale of restoration for the affected natural resources and services.

The Notice must be made publicly available. The means by which it is made publicly available and whether public comments are solicited on the Notice will depend on the scope and scale of the incident, and the need to conduct further investigation to identify likely injury assessment and restoration actions, among other things. Trustees must also provide a copy of the Notice to the known responsible parties and invite their participation in the conduct of restoration planning.

IV. Administrative Record

The administrative record facilitates the restoration process by providing a central repository for all materials relied upon by trustees in making final determinations about restoration actions appropriate for an incident. The administrative record should be opened after trustees determine the need to conduct restoration planning. The Notice will identify a trustee representative to contact with questions regarding the administrative record.

The administrative record must contain sufficient information to support the public's review of the trustees' decisionmaking process. The administrative record must contain documents and other factual information considered by trustees in selecting assessment actions, including documents that support options the trustees ultimately rejected. Pertinent documents submitted in a timely manner by the responsible parties and public, including public comments, must be included in the administrative record.

The administrative record should be limited to final documents when possible. Where no final document is available at the time of selection of restoration actions, the draft may be included in the administrative record if the document contains information not found in other documents in the record, but which is considered by the trustees in selecting a restoration action. Pre-decisional, deliberative internal agency memoranda should be treated like draft documents, i.e., excluded from the record, unless relied upon in choosing restoration actions.

Ordinarily, the administrative record should include: the Notice, draft and final restoration plans, and public comments. Any relevant data, investigation reports, scientific studies, work plans, quality assurance plans, decision documents, and literature may be included in the administrative record. Any agreements among the participating trustees or with the responsible parties should also be included in the administrative record.

Although this proposed rule is silent on the standard of review for NRDA, NOAA expects that assessments and restoration selection based on an open administrative record will be afforded review on the record by the courts.

V. Data Collection During Preassessment

This proposed rule allows trustees to conduct limited data collection and analysis throughout the Preassessment Phase. The purpose of data collection at this stage is to facilitate the determination of whether natural resources and/or services have been injured by the incident and require some form of restoration. Ephemeral information (i.e., information that may be lost if not collected immediately) may also be collected during the Preassessment Phase if the information is necessary for any stage of the restoration planning process. In addition, information needed to design and implement anticipated assessment procedures may be collected during this phase. Data collection during this phase must be coordinated with response actions such that the collection does not interfere with or hinder the response actions.

Subpart E—Restoration Planning Phase

I. Purpose

The purpose of the Restoration Planning Phase is to evaluate information on potential injuries to natural resources and/or services (injury assessment), and use that information to determine the need for and scale of restoration actions (restoration selection). The NRDA process is essentially a restoration scoping exercise, and the various studies and analyses conducted during this phase should be viewed from the restoration perspective.

During the Restoration Planning Phase, trustees should focus on determining which natural resources and services need to be restored, and how to design and scale that restoration. Potential NRDA activities should be scrutinized closely to ensure that the results will be useful and relevant to restoration.

The Restoration Planning Phase integrates and provides the linkage between injury and restoration, through the injury assessment and restoration selection components of the phase. Development of a conceptual linkage between injury and restoration early in the NRDA process (i.e., in the Preassessment Phase) should both expedite the assessment process and minimize costs by assisting the trustees in: focusing on the most relevant injuries to be included in the assessment; designing studies that are relevant to restoration; and designing appropriate restoration projects.

II. General Criteria for Acceptable Procedures

In order to be in accordance with this proposed rule, any procedures for assessing injury and scaling restoration actions must be consistent with the following criteria:

(a) If available, injury determination and quantification procedures that provide information of use in determining the appropriate type and

level of restoration appropriate for a particular injury or loss shall be used;

(b) If a range of procedures providing the same type and quality of assessment information are available, the most cost-effective procedure will be used;

(c) The incremental cost of more complex studies must be reasonably related to the expected increase in relevant assessment information provided by the more complex study; and

(d) Procedures selected must be reliable and valid for the particular context.

III. Injury Assessment

A. Purpose

The goal of injury assessment, which includes determination and quantification of injury, is to determine the nature, degree, and spatial/temporal extent of injuries to natural resources and/or services, thus providing a technical basis for evaluating the need for and scale of restoration. While the basic steps discussed below are applicable to all assessments, selection of approaches for demonstrating exposure, pathway, and injury will be incident-specific. Thus, this proposed rule provides a range of possible procedures and methods for injury determination and quantification, including simplified (e.g., models, literature extrapolation) and more detailed procedures (e.g., generation of original data). Trustees are encouraged to use simplified procedures, when appropriate.

Under OPA, trustees must determine whether injuries ''resulted from'' the incident. Establishing that a specific injury has resulted from a particular incident may be accomplished through a number of procedures, alone or in combination. These include field investigations, laboratory studies, models, and the literature.

To determine injury under this proposed rule, trustees must determine if:

(1) The definition of ''injury'' is met; and

(2) The injured natural resource has been exposed to the discharged oil and a pathway links the incident and the injured natural resource and/or service, or,

for injuries resulting from response actions or incidents involving a substantial threat of a discharge, an injury or an impairment of use of a natural resource service has occurred as a result of the incident.

If any of the above conditions for determining injury provided in this section is not met, trustees may not take additional action under this part. However, trustees may recover all reasonable assessment costs incurred up to the point when they determined that the conditions were not met. If all the conditions are met, trustees may proceed with the assessment. These steps and concepts are described in more detail below.

B. Injury Determination

1. Definition of Injury

Under this proposed rule, trustees must determine if the definition of ''injury'' has been met. ''Injury'' is defined as an observable or measurable adverse change in a natural resource or impairment of a service.

Injury includes adverse changes in the chemical or physical quality or viability of a natural resource. The simplest example is death of an organism, but indirect, delayed, or sublethal effects may also be considered. Other potential categories of injuries include adverse changes in: survival, growth, and reproduction; health, physiology and biological condition; behavior; community composition; ecological processes and functions; physical and chemical habitat quality or structure; and services to the public.

Although injury often is thought of in terms of adverse changes in biota, the definition of injury under this rule is broader. Injuries to non-living resources (e.g., removal of oiled sand on a beach) as well as injuries to resource services (e.g., lost use associated with a fisheries closure to prevent harvest of tainted fish, even though the fish themselves may not be injured) may be considered.

This list of potential adverse changes is not intended to be inclusive of all injuries that trustees may evaluate.

2. Exposure

The purpose of the exposure portion of an injury assessment is to determine whether natural resources came into contact with the oil from the incident. Early consideration of exposure (i.e., ideally during the Preassessment Phase) should help to focus the assessment on those natural resources and/or services that are most likely to be affected by an incident.

Trustees must determine whether the natural resource came into contact, either directly or indirectly with the oil discharged from the incident. Under this proposed rule, exposure is broadly defined to include not only direct physical exposure to oil, but also indirect exposure (e.g., injury to a organism as a result of a food web disruption). Documenting exposure is a prerequisite to determining injury, except for response-related injuries and injuries from substantial threats of discharges. However, evidence of exposure alone may not be sufficient to conclude that injury to a natural resource has occurred (e.g., the presence of petroleum hydrocarbons in oyster tissues may not, in itself, constitute an injury).

Exposure can be demonstrated with either quantitative or qualitative methods. As with other elements of the NRDA process, selection of approaches for demonstrating oil exposure will depend on the type and volume of discharged oil, natural resources at risk, and nature of the receiving environment. For example, chemical analysis of oil in sediments, alone, may not be adequate to conclude that a benthic organism was otherwise exposed to the oil. Likewise, the presence of petroleum in fish tissue, alone, may not be adequate to link the exposure to the discharge because metabolism of the oil may blur the chemical characterization. The combination of the two approaches may, however, demonstrate exposure.

Typically, procedures for exposure analysis include: (a) Field observations or measurements; (b) laboratory exposure studies; (c) transport and fate modeling; and (d) the literature. This proposed rule emphasizes that these procedures may be used alone, or in combination, depending on the specific nature of the incident. Trustees must determine the most appropriate approach to evaluating exposure on an incident-specific basis. For example, for some types of incidents, visual observation in the field and/or modeling may be sufficient to evaluate exposure. For other incidents, more involved site-specific sampling, including chemical analysis and biological data collection, may be more appropriate.

3. Pathways

To determine whether an injury resulted from a specific incident, a plausible pathway linking the incident to the injury must be identified. As with exposure, demonstrating a pathway is a prerequisite to determining injury, but evidence of a pathway, alone, is not sufficient to conclude that injury has occurred (e.g., demonstrating that prey species are oiled can be used to document that a plausible pathway to a predator species exists. However, such data do not, in themselves, demonstrate that the predator species is injured).

Pathway determination can include evaluation of either:

(a) The sequence of events by which the discharged oil was transported from the incident and came into direct

physical contact with the exposed natural resource (e.g., oil transported from an incident by ocean currents, wind, and wave action to directly oil shellfish); or

(b) The sequence of events by which the discharged oil was transported from the incident and caused an indirect impact on a natural resource and/or service (e.g., oil transported from an incident by ocean currents, wind, and wave action cause reduced populations of bait fish, which in turn results in starvation of a fish-eating bird; or, oil transported from an incident by currents, wind, and wave action causes the closure of a fishery to prevent potentially tainted fish from being marketed).

Pathway determination does not require that injured natural resources and/or services be directly exposed to oil. In the example provided above, fish-eating birds are injured as a result of decreases in food availability. However, trustees must always determine the existence of a plausible pathway relating the incident to the injured natural resource and/or service, even if the injury is not caused by direct exposure to oil.

Pathways can include, but are not limited to, movement/exposure through the: water surface; water column; sediments, including bottom, bank, beach, floodplain sediments; groundwater; soil; air; direct accumulation; and food-chain uptake.

As with exposure determination, procedures for pathway analysis include field investigations, laboratory studies, modeling, and the literature. As noted above, this proposed rule emphasizes that these procedures may be used alone, or in combination, depending on the specific nature of the incident. Trustees must determine the most appropriate approach to determine whether a plausible pathway exists on an incident-specific basis.

Understanding the potential pathways will also help to narrow the scope of the NRDA investigation, and may be important in deciding which assessment procedures to use. For example, the Type A model does not address injuries that occur via air or terrestrial pathways, thus it would not be appropriate in such cases.

4. Selection of Injuries to Include in the Assessment

During the Preassessment Phase, trustees may collect information on a wide range of potential injuries. As a result, a long inventory of potential injuries resulting from the incident is often developed. Because the collection of information on injury must be directly related to the incident and consistent with restoration planning, developing scientific knowledge for its own sake is not appropriate under this rule.

To compile the inventory of potential injuries, trustees should determine the extent to which the following information is known or can be obtained for each injury:

(a) The natural resource/service of concern;

(b) The adverse change that constitutes injury;

(c) The potential degree, and spatial/temporal extent of the injury;

(d) The evidence indicating injury;

(e) The mechanism by which injury occurred;

(f) The evidence indicating exposure;

(g) The pathway from the incident to the natural resource/service of concern;

(h) The potential natural recovery period;

(i) The kinds of primary and/or compensatory restoration actions that are feasible; and

(j) The kinds of procedures available to evaluate the injury, and the time and money requirements.

The result of the above analysis will be a list of injuries to be evaluated in the assessment.

C. Injury Quantification

Injury quantification is the process by which trustees determine the degree and spatial/temporal extent of injuries. Thus, injury quantification is the means by which appropriate restoration is determined.

1. Conceptual Approaches to Quantification

Trustees may pursue one or more of several different conceptual approaches to injury quantification. Under these approaches, injury may be quantified in terms of: (a) The degree and spatial/temporal extent of injury to a natural resource; (b) the degree and spatial/temporal extent of injury to a natural resource with subsequent translation of that change to a reduction in services provided by the natural resource; or (c) the amount of services lost as a result of the incident. Examples of the first approach include quantifying the number of seabird mortalities caused by a discharge of oil, or measurement of the area of a river in which hydrocarbon concentrations exceed water quality standards. Examples of the second approach include quantifying reductions in fish populations with subsequent estimation of the number of recreational fishing days lost as a result of this injury, or quantifying the amount of lost spawning habitat as a result of oiling with subsequent estimation of the number of fish that would have been produced by that habitat. An example of the third approach includes direct measurement of the number of beach user days lost as a result of a beach closure. Trustees are encouraged to use whichever approach, or combination of approaches, is most appropriate to the circumstances of the incident.

For reasons indicated in subpart C under the definition of baseline in the preamble, site-specific baseline information may not be required.

2. Injury Quantification Information Needs

Because the purpose of injury quantification is to design and scale restoration actions, a large number of quantification measures may be adopted by trustees. In general, injury quantification should be designed to evaluate injury by addressing the following:

(a) Degree of the injury. Degree may be expressed in terms of percent mortality, proportion of a population, species, community, or habitat affected, extent of oiling, and availability of substitute services.

(b) Spatial extent of the injury. Spatial extent may include quantification of the total area or volume of injury.

(c) Temporal extent of the injury. Duration of injury may be expressed as the amount of time that the natural resource and/or service will be injured until natural recovery occurs, including past and interim injury periods.

In order to scale restoration actions, trustees may find it useful to develop an estimate of the total quantity of injury that integrates severity, and spatial and temporal extent of injury. For example, quantification of the total losses of wetland habitat injured by oil could be obtained by estimating the: (a) Total number of acres of severely oiled wetland in which vegetation is totally killed; (b) natural recovery time for severely oiled wetland; (c) total number of acres of moderately oiled wetland in which vegetation is not completely killed but the wetland has lower levels of productivity; and (d) natural recovery time for moderately oiled wetland. This information could be combined to quantify the total number of ‘‘acre-years’’ of wetland injury to scale restoration actions.

D. Analysis of Natural Recovery

Trustees must estimate the time for natural recovery without restoration, but including any response actions. Recovery is defined as a return of injured natural resources and services to baseline. Analysis of recovery times

may include evaluation of factors such as: (a) Degree and spatial/temporal extent of injury; (b) sensitivity of the injured natural resource and/or service; (c) reproductive potential; (d) stability and resilience of the affected environment; (e) natural variability; and (f) physical/chemical processes of the affected environment. Approaches to estimating recovery times include literature reviews of recovery at similar sites or for similar species, computer models, and professional judgement.

E. Injury Assessment Procedures and Methods

1. General

Whenever practicable, procedures should be chosen that provide information of use in determining the restoration appropriate for that injury. This proposed rule provides a range of assessment approaches, from simplified to more detailed. The technical and scientific adequacy of approaches will be judged based on the circumstances of the incident and injuries, and the information needed to determine restoration actions. Trustees should, however, first determine whether simplified assessment procedures are appropriate for a given incident. In general, more detailed assessment procedures may include, alone or in any combination, (a) field investigations; (b) laboratory methods; (c) model-based methods; and (d) literature-based methods.

2. Selection of Procedures

Trustees must base their selection of assessment procedures on an evaluation of the following factors:

(a) Potential nature, degree, and spatial/temporal extent of the injury;

(b) Potential restoration actions for the injury;

(c) Range of assessment procedures available, including the applicability of simplified assessment procedures;

(d) Time and cost necessary to implement the assessment procedures; and

(e) Relationship between the information generated by the assessment procedures and the information needed for restoration planning.

When trustees have made a determination that a simplified assessment procedure is the most appropriate procedure for a given incident or injury, the responsible parties may request that trustees use incident-specific assessment procedures instead of a simplified assessment procedure if the responsible parties, in a timeframe acceptable to the trustees:

(a) Identify the incident-specific assessment procedures to be used and the reasons supporting the technical appropriateness of such procedures for the incident or injury;

(b) Advance the costs of using such incident-specific assessment procedures; and

(c) Agree not to challenge the reasonableness of the costs of using such incident-specific assessment procedures.

3. Simplified procedures

a. Type A procedures. Trustees may use the Type A procedures identified in 43 CFR part 11, subpart D, that address oil discharges provided that conditions are sufficiently similar to those listed in 43 CFR 11.33 regarding use of the procedures. For further discussion, see Appendix C to this preamble.

b. Compensation Formulas. In the January 1994 proposed rule, NOAA proposed compensation formulas for use for small incidents in estuarine and marine environments and inland waters. NOAA is now considering temporarily reserving those formulas. For further discussion, see Appendix C to this preamble.

4. Incident-specific procedures

Trustees may also use incident-specific assessment procedures, provided they are cost-effective and relevant to determining the scope and scale of restoration appropriate for that injury. Incident-specific assessment procedures include, alone or in any combination:

(i) Field methods;

(ii) Laboratory methods;

(iii) Model-based methods; and

(iv) Literature-based methods.

IV. Restoration Selection

A. Purpose

Once injury assessment is completed, trustees must develop a plan for restoring the injured natural resources and services. Under the proposed rule, trustees must identify a reasonable range of restoration alternatives, evaluate those alternatives, select an alternative, develop a Draft Restoration Plan for public review, and produce a Final Restoration Plan that addresses public concerns.

B. Development of a Reasonable Range of Alternatives

1. General

Trustees must identify a reasonable range of alternative restoration actions for consideration, except as provided in § 990.58 regarding the use of a Regional Restoration Plan. Generally, trustees will identify a package of actions and/or services. However, if there is a reasonable basis for separately evaluating actions to restore separate natural resources and/or services, then trustees may do so. Acceptable restoration actions include any of the actions authorized under OPA (i.e. restoration, rehabilitation, replacement, or acquisition of the equivalent), any combination of those actions, and natural recovery.

Restoration alternatives may have two components: (a) Primary restoration, which is human intervention or natural recovery that returns injured natural resources and services to baseline; and (b) compensatory restoration, which is action taken to make the environment and the public whole for service losses that occur from the date of the incident until recovery of the injured natural resources.

What constitutes a reasonable range of alternatives will vary from case to case but must always include a no-action alternative. A no-action alternative is not the same as a natural recovery alternative. Under the no-action alternative, no human intervention would be taken for primary or compensatory restoration. In contrast, under a natural recovery alternative, human intervention could be taken for compensatory restoration action. A natural recovery alternative could also include minimal primary restoration actions by trustees to prevent interference with natural recovery (e.g., closing an area to human traffic).

2. Primary Restoration

Alternative primary restoration actions can range from natural recovery with no human intervention, to actions that prevent interference with natural recovery, to more intensive actions expected to return injured natural resources to baseline faster or with greater certainty than natural recovery.

When developing the primary restoration components of the restoration alternatives, trustees must define the desired outcome to be accomplished, and the criteria by which successful recovery will be judged. The goals and objectives should be clear and site-specific. The trustees should define the minimal acceptable criteria for recovery.

When identifying primary restoration alternatives to be considered, trustees should first consider whether activities exist that would limit the effectiveness of restoration actions (e.g., residual sources of contamination). Trustees should also consider whether any primary restoration actions are necessary or feasible to return the physical, chemical, and biological conditions necessary to allow recovery

or restoration of the injured resources (e.g., replacement of sand or vegetation). Trustees should consider whether restoration actions focusing on certain key species or habitats would be an effective approach to achieving baseline conditions.

3. Compensatory Restoration

In addition to primary restoration, trustees have the discretion to include a compensatory restoration action in some or all of the restoration alternatives. The service loss that must be addressed by a particular compensatory restoration action will vary depending on the nature of the primary restoration component of the overall restoration alternative.

a. Developing Types of Alternatives

When identifying the compensatory restoration components of the restoration alternatives, trustees must first consider compensatory restoration actions that provide services of the same type and quality as those lost. This is the preferred approach to identifying compensatory restoration actions. If, however, such actions are infeasible, or too few in number to provide a reasonable range of alternatives, trustees may then include other compensatory restoration actions among the alternatives, so long as the actions will provide services of at least comparable type and quality as those lost, in the judgment of the trustees.

b. Scaling Compensatory Restoration Actions

To ensure that a compensatory restoration action will appropriately compensate for the service loss, trustees must scale the action. The approaches that may be used to assess the appropriate scale of a compensatory restoration action include the service-to-service approach and the valuation approach.

i. Service-to-Service Approach

Under the service-to-service approach to scaling, the appropriate quantity of replacement services is determined by obtaining equivalency between lost and replacement services after discounting appropriately. Trustees must use the service-to-service approach for alternatives that provide services that are of the same type and quality, and are subject to comparable resource scarcity and demand conditions as those lost. The third criterion is being proposed to address situations where the public will no longer have the same level of need for services of the same type and quality as those lost by the time the compensatory restoration alternative could be implemented. In such situations, a strict equivalency between quantities of lost and replacement services may not adequately compensate the public. NOAA solicits comment on the proposed criteria for use of the service-to-service approach.

Under the service-to-service approach, NOAA recommends use of habitat equivalency analysis when lost resource services are primarily of indirect human use, for example, species habitat or biological resources. (See Appendix D at the end of this preamble for a description of habitat equivalency analysis.) If lost services are human uses, for example recreational services, then a behavioral model of human use may be used to determine the scale of project necessary to attract the appropriate level of human uses. For example, if the interim lost services are lost recreational beach days, then the restoration alternative may be designed to provide the requisite number of recreational beach days by, perhaps, improving access to existing public beaches.

NOAA is interested in receiving comments on these suggested methods as well as any additional methods that might be appropriate for use with the service-to-service approach.

ii. Valuation Approach

In situations where trustees must consider alternatives that provide services that are of a different type or quality, or are subject to non-comparable resource scarcity or demand conditions than those services lost, trustees may use the valuation approach to scaling.

The valuation approach requires that trustees determine the amount of services that must be provided to produce the same value lost to the public. The approach relies on the idea that lost value can be determined using one of a variety of possible units of exchange, including units of resource services or dollars. The valuation approach requires that the value of lost services be measured explicitly and that the compensatory restoration alternative provide services of equivalent value to the public. To properly scale the compensatory restoration alternative, the trustee might have to measure the values of varying sizes of the compensatory restoration alternative to determine the size of a project that will replace the value of lost services. For proper comparison, all values lost or provided over time should be converted into present value terms by discounting.

Measuring the value of lost services in terms of units of replacement services rather than dollars may be the most direct approach to scaling the compensatory restoration alternative. Although such procedures are currently not well-defined in the literature, it is likely that the method would use a form of conjoint analysis. Other valuation methods include the travel cost method, factor income approach, hedonic price models, models of market supply and demand, and contingent valuation. (See Appendix D at the end of this preamble for descriptions of these methods.) Trustees are not limited to these methods, and may use any reliable method suitable for calculating interim lost value. Where the circumstances are such that a site-specific application of one of these valuation methods does not meet the reasonable cost criterion, the trustees may consider estimating interim lost value using benefits transfer. The choice of approaches in a particular context will depend upon the types of injuries and the type of services provided by the compensatory restoration alternative.

Trustees should consider using similar methods for measuring the value of the lost services and the value of the services provided by the compensatory restoration alternatives. If different valuation methods are used, then trustees should take steps to ensure that the variation in methods does not introduce bias. NOAA seeks comment on possible approaches for assessing and adjusting for biases that may occur in this situation.

If valuation of the services provided by an alternative could not, in the judgment of the trustees, be performed consistent with the definition of reasonable assessment costs, the trustees may calculate the value of the lost services and then select the scale of a restoration alternative that has a cost equivalent to the lost value. The responsible parties will have the option of requesting that the trustees value the alternative, if the responsible parties, within a timeframe acceptable to the trustees, advance the costs of doing so and agree not to challenge the reasonableness of the costs of performing such valuation.

Because the reformulated unified restoration approach envisions a fundamentally different role for valuation methods from what was contained in the January 1994 proposed rule, NOAA has not included standards for utilization of such methods in today's proposed rule. However, NOAA is still considering, and seeks comment on, whether standards for the use of valuation methods, including contingent valuation, should be included in the final rule (or in accompanying guidance documents),

and, if so, what level of guidance would be appropriate.

c. Treatment of Uncertainty and Discounting

When scaling a compensatory restoration action, trustees should address the uncertainties associated with the predicted consequences of restoration projects and must discount to the present the interim lost services, or the value of interim lost services due to the injury as well as the gain in services or the gain in service value from the restoration project. The reference date for the discounting calculation is the date at which the demand is presented.

The choice of an appropriate discount rate is linked to the treatment of uncertainties associated with the losses due to the injury and the gains from the compensatory restoration alternative.

NOAA recommends that, where feasible, the trustees should use risk-adjusted measures of losses and gains, in conjunction with a riskless rate of discount serving as a proxy for the consumer rate of time preference. Alternatively, if the streams of losses and gains cannot be adequately adjusted for risks, then NOAA recommends use of a discount rate that incorporates a suitable risk adjustment to the riskless rate.

The periods of losses due to injury and, particularly, the period of gains from compensatory restoration projects potentially extend far into the future. Because the rates of return on financial instruments vary substantially through time and future rates can be predicted imperfectly, NOAA recommends use of a long-term average of the rates of return from the selected instrument. The analysis will be conducted either in nominal terms (i.e., in dollars of the year in which the losses or gains are incurred) or in real terms (e.g., in units of services, or in dollars of a specified base year). The nominal U.S. Treasury rate shall be used if the components of the claim are denominated in nominal terms. Otherwise, if components of the claim are denominated in real terms (of the discounting reference year), then real U. S. Treasury rates are to be used. To calculate the real rates, trustees should use an appropriate price index to remove expected inflation from the appropriate nominal U.S. Treasury rate.

NOAA seeks comment on various issues related to discounting the streams of consumer losses and gains. For what uncertainties is it most important for trustees to develop adjustments? What procedures are suitable for adjusting the streams of losses and gains for uncertainty? What is the appropriate price index to employ to adjust nominal discount rates for inflation (e.g., Gross Domestic Product deflator, or Consumer Price Index)? Should the discount rate be an after-tax rate, rather than a pre-tax rate? Is a long-term average of the rates of the selected instrument the best predictor of future rates? If so, over what period should the average be calculated?

U.S. Treasury bill and bond rates may be found in the Federal Reserve Bulletin, issued monthly, or the Treasury Bulletin, issued quarterly. The Gross Domestic Product fixed-weighted price index and the Consumer Price Index may be found in the Survey of Current Business, issued monthly, and the Economic Report of the President, issued annually. The Administration prediction for future Gross Domestic Product deflators is updated twice annually at the time the budget is published in January or February and at the time of the Mid-Session Review of the Budget in July. The current Treasury rates and inflation adjustment assumptions are reported in regular updates of Appendix C of Circular No. A–94, available from the OMB Publications Office (202–395–7332).

C. Restoration Alternatives for Simplified Assessment Procedures

Simplified assessment procedures, described in § 990.54(d) of the proposed rule, provide different types of results or output that can be used in designing and scaling incident-specific restoration actions. For example, when using the Type A model, trustees have several alternative approaches: (1) A restoration plan may be developed to address the injuries predicted by the model; (2) the restoration actions predicted by the Type A model may be implemented; or (3) the lost values resulting from a model run may be used to identify the scale of a project. As discussed below, the proposed rule also allows trustees to consider using a Regional Restoration Plan instead of developing an incident-specific restoration plan when they have used simplified assessment procedures.

D. Evaluation of Restoration Alternatives

1. General

Once trustees have developed the restoration alternatives, they must evaluate those alternatives. This evaluation is based on the:

(a) Extent to which each alternative can return the injured natural resources and services to baseline and make the environment and public whole for interim service losses;

(b) Extent to which each alternative improves the rate of recovery;

(c) Extent to which each alternative will avoid additional injury;

(d) Level of uncertainty in the success of each alternative;

(e) Extent to which each alternative benefits more than one natural resource and/or service;

(f) Cost of each alternative;

(g) Effects of each alternative on public health and safety, and the environment; and

(h) Whether any alternative violates any laws or regulations.

Based on evaluation of the listed factors, trustees select a preferred restoration alternative. If there are two or more preferred alternatives, trustees must select the most cost-effective alternative.

2. Other Considerations

a. Pilot Restoration Studies

If the range of restoration alternatives under consideration is limited or poorly developed, trustees may implement pilot studies.

b. Cost Benefit Analysis

When selecting a restoration alternative, trustees should consider the relationship between costs and benefits. However, reducing the selection process to a strict comparison of restoration costs to monetized natural resource values is not required and may not be appropriate. Instead, the proposed rule would require trustees to evaluate each alternative according to a number of factors, identify a preferred alternative, select the most cost-effective alternative if there is more than one preferred alternative, and provide the public and responsible parties with an opportunity to review and comment on the trustees' selection. NOAA believes this approach provides adequate protection against selection of an inappropriately costly alternative. NOAA seeks comment on alternative approaches to the restoration selection process.

E. Draft Restoration Plan

1. Purpose

After selecting a restoration alternative, trustees must prepare a Draft Restoration Plan. Development of a Draft Restoration Plan provides a vehicle for: (a) Informing the affected and interested public of the results of the trustees' analyses and decisions, and encouraging public comments; and (b) performing expert peer review, when comments are solicited from various professional communities or other knowledgeable persons.

2. Contents

A Draft Restoration Plan should reflect the restoration planning process

as provided above and must, at a minimum, contain: (a) A summary of injury assessment procedures and methods used; (b) a description of the nature, degree, and spatial/temporal extent of injuries to natural resources and/or services resulting from the incident; (c) the goals and objectives of restoration; (d) the range of restoration alternatives considered and a discussion of how such alternatives were identified and developed; (e) a discussion of the trustees' evaluation of the restoration alternatives; (f) a description of a monitoring plan for documenting restoration effectiveness and the need for corrective action and performance criteria for judging the success and completion of restoration and the need for corrective action; and (g) a description of the involvement of the responsible parties in the assessment process, and proposed involvement in the restoration process.

The types of parameters that should be addressed in the monitoring plan may include: (1) Duration; (2) frequency of monitoring needed to gauge progress and success; (3) the level of sampling needed to detect success or the need for corrective action; and (4) whether monitoring of a control or reference site is needed to determine progress and success.

Performance criteria include structural, functional, temporal, and other demonstrable goals that the trustees should determine with respect to all restoration actions. For example, an agreement to create new intertidal marsh habitat as compensation for marsh impacted by oil could be described by performance criteria including the number of acres to be created, the location, the elevation of new habitat, the species to be planted and details for planting such as density, and the timeframe in which identifiable stages of the project should be completed.

3. Public Review and Comment

The information provided in the Draft Restoration Plan must be adequate to allow the public to objectively assess the injuries resulting from the incident and restoration actions being considered to remedy those injuries. The Draft Restoration Plan must be made available for at least a thirty (30) calendar day public review and comment period.

The type of notice, review, and comment procedures may vary depending on the nature and scale of restoration actions proposed. For instance, notice may be accomplished through the **Federal Register**, local newspapers, state press releases, etc., and review and comment may be facilitated through written responses, advisory committees, public meetings, etc.

F. Final Restoration Plan

After reviewing public comments on the Draft Restoration Plan, trustees must develop a Final Restoration Plan. As part of the Final Restoration Plan, trustees must consider and respond to all comments on the Draft Restoration Plan. In response to the comments, the trustees may need to: (1) Modify the restoration alternatives being considered; (2) develop and evaluate alternatives that have not been given serious consideration by the trustees; (3) supplement, improve, or modify the analyses; (4) make factual corrections; or (5) explain why the comments do not warrant further trustee response, citing the reasons to support the trustee position, and possibly indicate the circumstances that would trigger reappraisal or further response. In the Final Restoration Plan, trustees indicate the restoration alternatives that will be implemented and include the information in the Draft Restoration Plan. The format of the Final Restoration Plan, which essentially follows that of the Draft Restoration Plan, must clearly indicate any changes to the Draft Restoration Plan.

If trustees plan to make significant changes to the Draft Restoration Plan in response to comments, revisions will be documented for public notice along with issuance of the Final Restoration Plan.

G. Use of Regional Restoration Plans

If trustees used a simplified assessment procedure, the proposed rule allows them to consider using a Regional Restoration Plan instead of developing an incident-specific restoration plan. Under the proposed rule, trustees may use an existing Regional Restoration Plan provided that the Plan:

(i) Was developed subject to public review and comment; and

(ii) Addresses and is currently relevant to the same or comparable natural resources and/or services as those identified during injury assessment as having been injured.

If these conditions are met, trustees may present the responsible parties with a demand for the damages calculated by the simplified assessment procedure and use the recovered sums to implement the Regional Restoration Plan.

If there is not an existing Regional Restoration Plan that meets these conditions and the information provided by the simplified assessment procedure does not support development of an incident-specific restoration plan, trustees may present the responsible parties with a demand for the damages calculated by the simplified assessment procedure and place the recovered funds into an account with other similar recoveries, until such time that sufficient funds to develop plan and implement a new Regional Restoration Plan are collected. Recoveries may only be commingled in this manner where natural resource and/or service injuries were similar for the incidents represented by pooled funds, and where the incidents were within the same region (i.e. ecosystem or watershed). New Regional Restoration Plans would then be developed subject to public review and comment.

Trustees should develop criteria and procedures governing pooling of funds and obligating portions of damages from simplified procedures to planning costs. Such criteria should address: (1) The length of time money should be maintained in an account before developing and implementing Regional Restoration Plans; and (2) suggested maximum percentages of recoveries that may be used for developing Regional Restoration Plans.

NOAA requests comments on the concepts and specific guidelines for pooling recoveries from simplified assessments and use of those monies.

If trustees use a Regional Restoration Plan, they must prepare a Notice of Intent to Use a Regional Restoration Plan. The Notice must include:

(1) A description of the nature, degree, and spatial/temporal extent of injuries to natural resources and/or services resulting from the incident;

(2) A description of the existing Regional Restoration Plan and an explanation of how the conditions for use of a Regional Restoration Plan are met; or a description of the anticipated process for developing a new Regional Restoration Plan and an explanation of why the information provided by the simplified assessment procedure does not support development of an incident-specific restoration plan; and

(3) Identification of the damage amount sought and the calculation of that amount.

Trustees must make a copy of the Notice publicly available.

Subpart F—Restoration Implementation Phase

I. Introduction

At the completion of the Restoration Planning Phase, the trustees must: (a) Close the administrative record that

incorporates the Restoration Planning Phase and open a new administrative record for the Restoration Implementation Phase; (b) present a demand for restoration costs or implementation to the responsible parties; (c) establish an account to receive any payments of sums to be received from the responsible parties; and (d) implement restoration. Additional actions that could occur during the Restoration Implementation Phase include litigating a claim for damages where the responsible parties refuse to pay for or implement restoration on receipt of the trustees' demand, or presenting a claim for damages to the Oil Spill Liability Trust Fund, so that restoration can be implemented.

II. Administrative Record

Once a Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan has been issued, the administrative record of the Restoration Planning Phase must be closed. Except as noted below, no additional documents will be placed in the record. The closed record will constitute the body of information supporting the trustees' decisions through restoration planning.

Once the record is closed, trustees may only add documents that:

(a) Are offered by an interested party that did not receive actual or constructive notice of the Draft Restoration Plan and the opportunity to comment on the Plan;

(b) Do not duplicate information already contained in the administrative record; and

(c) Raise significant issues regarding the Final Restoration Plan.

For practical reasons, it is likely that trustees will need to open and maintain an additional administrative record to document implementation of restoration. This record should document all Restoration Implementation Phase decisions, actions, and expenditures, including any modifications made to the Final Restoration Plan. This record is necessary to keep the public informed and potentially for use in any enforcement actions, such as seeking additional work from the responsible parties to comply with the restoration plan and implementing agreements.

The administrative record for restoration implementation should follow the same guidance for opening and maintaining the previous record, and for its availability.

III. Presenting a Demand for Damages to the Responsible Parties

If the trustees and responsible parties have successfully implemented a cooperative restoration planning process, the responsible parties will have thorough knowledge of the trustees' preferred restoration actions and associated costs. In the best circumstances, the responsible parties will already have entered into an enforceable agreement to either pay the costs associated with implementing the Final Restoration Plan, or to implement the Plan according to trustee performance criteria and with trustee oversight. Any such agreements with the responsible parties will have been described in the Draft and Final Restoration Plans reviewed by the public.

However, where a cooperative relationship with responsible parties has not been achieved, the trustees must follow some specific statutory requirements to recover natural resource damages, as described below.

After development of a Final Restoration Plan or a Notice of Intent to Use a Regional Restoration Plan, the trustees must present a demand in writing asking the responsible parties either to:

(a) Implement the Final Restoration Plan or portion of a Regional Restoration Plan subject to trustee oversight and reimburse the trustees for their assessment and oversight costs; or

(b) Advance to the trustees a specified sum representing all direct and indirect costs associated with developing and implementing the Final Restoration Plan or some portion of a Regional Restoration Plan.

The demand must also include: (a) Identification of the incident from which the claim arises; (b) identification of the trustees asserting the claim; (c) a brief description of the injuries for which the claim is being brought; (d) the index to the record; (e) the Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan; and (f) a request for reimbursement of:

(i) Reasonable assessment costs;

(ii) The cost, if any, of conducting emergency restoration; and

(iii) Interest on the amounts recoverable under OPA section 1005, which provides for prejudgment and post-judgment interest to be paid at a commercial paper rate, starting from 30 calendar days from the date a demand is presented until the date the claim is paid.

IV. Discounting and Compounding the Components of the Claim

A. General

Discounting and compounding are necessary for the trustees to be able to present a claim for a ''sum certain.'' The reference date for the discounting and compounding calculations is the date at which the demand is presented. Trustees must discount, or compound, the two components of the claim: (1) Future restoration costs; and (2) damage assessment and emergency restoration costs already incurred.

NOAA recommends that trustees use the U.S. Treasury borrowing rate on marketable securities of comparable maturity to the period of analysis for both calculations, with some qualifications noted below. Alternatively, for state or Indian tribal claims for past damage assessment and restoration costs, the state or Indian tribe may use the state or Indian tribal borrowing rate on marketable securities. The analysis should be conducted either in terms of nominal values (denominated in dollars of the year in which the losses or gains are incurred) or in constant dollars of a specified base year. For compounding forward past emergency restoration and assessment costs, it seems more straightforward to employ the nominal Treasury rate as the discount rate and to represent the costs in nominal terms, since the nominal interest is observed and past costs are likely to be denominated in nominal terms. Future restoration costs can be adjusted for inflation using an appropriate inflation index for the major categories of costs.

B. Estimated Future Restoration Costs

Most restoration projects will be carried out over a period of years. If funds are insufficient to cover the full costs of restoration, including post-construction maintenance and monitoring operations, natural resource recovery will be incomplete, and the public will be deprived of full compensation for the injuries. NOAA recommends that trustees use the nominal U.S. Treasury rate for marketable securities of comparable maturity to the period of analysis, when this rate of return is available to the trustees for investment of settlement monies. To denominate the future restoration costs in nominal terms, the trustees should employ the indices of projected inflation appropriate to the major components of the restoration costs (e.g., construction price indices for construction costs; the federal employee wage index for trustee monitoring costs).

If legal and/or institutional constraints prevent investment of settlement monies yielding the U.S. Treasury rate for marketable securities of comparable maturity to the period of analysis, then it is incumbent upon the trustees to structure the claim to ensure that sufficient funds will be available to fund the entire set of restoration activities. One option is to calculate the discounted value of this component of the claim using an alternative discount rate that represents the yield on settlement monies available to the trustees. An alternative option is to structure a multi-year schedule for claim payments to ensure it provides the cash flow for each year required for planned expenditures.

If the settlement is structured so that the responsible party carries out the restoration projects, the trustee restoration costs to be discounted will be substantially reduced, but not eliminated because trustee monitoring costs will still be included in the claim.

C. Past Assessment and Emergency Restoration Costs

Damage assessment and emergency restoration costs may have been accruing from the time of the incident. To calculate the present value of these costs at the time the demand is presented to the responsible parties, the trustees will compound forward the costs already incurred. Because the rate of interest employed as the discount rate for past costs incurred should reflect the opportunity cost of the money spent, NOAA suggests that the trustees use the actual U.S. Treasury rate for marketable securities of comparable maturity to the period of analysis for compounding this component of the claim. NOAA acknowledges that, at the discretion of the trustees, a state or Indian tribal borrowing rate may be used to compound the state or Indian tribal component of past costs. Where the costs are denominated in dollars of the year in which they were incurred (i.e., in nominal terms), the nominal interest rate should be employed.

D. Sources of Data

U.S. Treasury bill and bond rates may be found in the Federal Reserve Bulletin, issued monthly, or the Treasury Bulletin, issued quarterly. The Gross Domestic Product fixed-weighted price index and the Consumer Price Index may be found in the Survey of Current Business, issued monthly, and the Economic Report of the President, issued annually. The Administration prediction for future Gross Domestic Product deflators is updated twice annually at the time the budget is published in January or February and at the time of the Mid-Session Review of the Budget in July. The current Treasury rates and inflation adjustment assumptions are reported in regular updates of Appendix C of Circular No. A–94, available from the OMB Publications Office (202–395–7332).

V. Uncompensated Claims

If the responsible parties deny all liability for the claim or fail to settle the claim embodied in the demand within ninety (90) calendar days after they are presented with the demand, trustees may elect to commence an action in court against the responsible parties or guarantors, or to present the uncompensated claim to the Oil Spill Liability Trust Fund. Thus, delivery of the demand should be made in a manner that establishes the date of receipt by the responsible parties.

Judicial actions and claims must be filed within three years after the Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan is made publicly available, as provided in the statute of limitations for natural resource damages under OPA (33 U.S.C. 2717(f)(1)(B) and 2712(h)(2)).

VI. Accounts

OPA section 1006(f) requires that damages recovered by trustees be retained, without further appropriation, in a revolving trust account. Sums recovered for past assessment costs and emergency restoration costs may be used to reimburse the trustees. All other sums must be used to implement the Final Restoration Plan, implement an existing Regional Restoration Plan, or develop and implement a new Regional Restoration Plan.

Where multiple trustees are involved in a recovery, trustees may wish to establish a joint account. One acceptable mechanism would be an account under the registry of the applicable federal court when there is a joint recovery involving federal and non-federal trustees. The joint account should be managed by the trustees through an enforceable written agreement that specifies the parties authorized to endorse expenditures out of the account, and the agreed-upon procedures and criteria for such expenditures.

Although a joint trustee account may be the preferred approach, trustees also have the option of dividing the recoveries and depositing their respective amounts in their own separate accounts. These accounts should be interest-bearing, revolving trust accounts. These accounts may be incident-specific or funds that allow deposit of natural resource damages and expenditure in accordance with the limitations set forth in OPA.

Trustees may establish escrow accounts or any other investment accounts unless specifically prohibited by law. Funds in such accounts must only be used as specified in OPA section 1006(f).

Trustees must maintain appropriate accounting and reporting methods to keep track of the use of sums recovered. Brief reports on the status of the sums recovered and expenditures for particular incidents should be reported in the record for the Restoration Implementation Phase.

Any sums remaining in an account established under this section that are not used either to reimburse trustees for past assessment and emergency restoration costs or to implement restoration must be deposited in the Oil Spill Liability Trust Fund.

VII. Implementation of the Restoration Plan

A. General

As discussed throughout this proposed rule, the Final Restoration Plan may be implemented by the trustees, or by the responsible parties with trustee oversight. In either case, several common steps will characterize the Restoration Implementation Phase, including: (1) establishment of a trustee committee and/or MOU; (2) development of more detailed workplans for the conduct of restoration actions; (3) monitoring and oversight; and (4) evaluation of restoration success or need for corrective actions.

B. Trustee Committee and/or MOU

In many instances, it is likely that a trustee committee and/or MOU will have governed trustee involvement through the Restoration Planning Phase. However, it is critical that these agreements extend through the Restoration Implementation Phase, or that new agreements or committees are formed for the restoration implementation. At a minimum, representatives of each participating trustee agency should be appointed to an oversight committee. Functions of such a committee may include: (1) Authorizing expenditures from a joint account; (2) participating in monitoring of restoration actions; (3) evaluating performance criteria for restoration actions; and (4) making the determination that the goals and objectives of the Final Restoration Plan have been achieved or that corrective actions need to be pursued.

C. Detailed Workplans

Depending on the incident, detailed workplans for accomplishing restoration goals and objectives may or may not have been developed during the Restoration Planning Phase. Clearly, as many details to outline the restoration expectations, performance criteria, timelines, criteria for success, etc., should be included in the Final Restoration Plan and in agreements with the responsible parties as are practicable to determine prior to restoration implementation. Performance criteria are essential for meaningful trustee monitoring and oversight of restoration projects.

D. Monitoring and Oversight

Reasonable monitoring costs are included in recoverable damages. A well-designed and executed monitoring plan is required to assess progress toward the stated goals and objectives of a restoration plan. Reasonable monitoring costs cover those activities necessary to gauge the progress, performance, and success of the restoration actions, and not to generate purely scientific information.

E. Restoration Success and Corrective Actions

Restoration plans, particularly those including agreements for responsible parties to implement restoration, must identify criteria against which success and completion of restoration actions will be judged. Thus, trustees should, at a minimum, determine: (a) What criteria will constitute success, such that responsible parties are relieved of responsibility for further restoration actions; and (b) what criteria will necessitate corrective actions in order to comply with the terms of a restoration or settlement agreement. For example, in the intertidal marsh creation example used above, success may be defined as survival of planted marsh grass at a rate of 80% vegetative cover two years after completion of planting.

In some cases, pilot studies will lessen the need for corrective measures. In other cases, settlement agreements can include reopeners to deal with specific points of uncertainty, for instance, for significant injuries that could not be determined and/or quantified at the time of a settlement. Another possibility is for the responsible parties to deposit an agreed-upon amount of money in an escrow account to cover future corrective actions that could not be fully anticipated at the time of the settlement. These funds would then be used for future actions once defined, or revert to the responsible parties if not needed. In most cases, trustees should consider including a mechanism to deliberate the need for and type of corrective actions in a settlement agreement where the types of contingencies that suggest the need for corrective actions cannot be completely foreseen.

In all cases, the scope and scale of corrective actions must be determined relative to the restoration goals and objectives set out in the Final Restoration Plan. In addition, trustees must recognize that circumstances well beyond the control of any of the parties may not be the basis of requiring corrective actions, such as natural occurrences that would meet an ''Act of God'' standard.

General Summary of and Response to Comments on the January 1994 Proposed Rule

NOAA received numerous comments on the January 1994 proposed rule. NOAA appreciates the time and effort expended by the commenters. Commenters raised many thought-provoking points that have led NOAA to reconsider the overall approach of the rule. The bulk of the comments fell into eight general categories.

First, NOAA received many comments about the need to keep natural resource damage assessments focused on the ultimate goal of expeditious restoration rather than the abstract study of injuries, calculation of monetary damage figures, or time-consuming and expensive litigation. Today's proposed rule is designed to place even greater emphasis on early restoration planning.

Second, many commenters addressed the standards for calculating compensable value in the January 1994 proposed rule. Today's proposed rule eliminates the need for the determination of compensable values as a separate component of a damage claim. The proposed rule does not render the value of natural resources irrelevant; however, it does fundamentally change the role of valuation in assessments. Valuation is now used to determine the scale of appropriate restoration actions rather than a monetary damage figure.

Third, commenters raised concerns about coordination among trustees and with responsible parties and the level of trustee discretion afforded under the proposed January 1994 rule. Today's proposed rule provides for a public planning process designed to ensure that all interested parties have an opportunity for involvement and that the trustees' decisionmaking process is subject to public scrutiny. The proposed rule also redefines ''reasonable assessment costs'' to provide greater clarification of when trustees' assessment activities are appropriate.

Fourth, NOAA received voluminous comments on the various assessment procedures. In regard to the compensation formulas, as discussed in Appendix C to this preamble, NOAA has decided to reserve the compensation formulas for now. Some commenters expressed confusion over the distinction between expedited and comprehensive damage assessments. The proposed rule no longer categorizes assessments as expedited or comprehensive and instead authorizes trustees to determine appropriate assessment methods on an incident-specific basis from a range of procedures including simplified methods to complex field studies.

Fifth, other commenters raised concerns about use of Regional Restoration Plans. The proposed rule provides additional guidance on when and how Regional Restoration Plans may be used.

Sixth, NOAA received many comments on the standards for determining injury. Under today's proposed rule, the definition of ''injury'' has been modified to require demonstration of a measurable or observable adverse change. The proposed rule also provides new guidance on determining injury, including guidance on selecting injury studies that provide information that is relevant for restoration planning.

Seventh, NOAA received mixed comments on the provisions in the January 1994 proposed rule concerning administrative record review. This proposed rule continues to require development of an open administrative record containing documents relied upon by trustees in assessing and selecting restoration actions appropriate for particular incidents, including relevant comments and submissions received from responsible parties and other interested persons. Although this proposed rule is silent on the standard of review, NOAA continues to expect that courts will perform review on the administrative record.

Finally, many commenters expressed concern about the volume of guidance on preassessment activities contained in the January 1994 proposed rule. Today's proposed rule includes a streamlined Preassessment Phase.

Due to the extent of the changes in today's proposed rule, many of which render earlier comments inapplicable, NOAA is not providing a detailed treatment of all comments received. Instead, the proposed rule and preamble embody the response to the comments

received. After reviewing today's proposed rule, commenters should resubmit any comments that they think are still applicable, as well as provide any new comments.

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APPENDIX A—COMPARISON OF RELEVANT OPA/NRDA AND NEPA COMPONENTS

OPA/NRDA process	NEPA parallels
Facilitating Restoration	**Facilitating the NEPA Process**
• Pre-incident planning	
• Regional restoration planning	• Programmatic EIS.
• Cooperation and coordination	• Interagency cooperation.
• Public participation	• Public involvement.
Preassessment Phase	**Environmental Assessment**
• Procedural Components	• Procedural Components.
—Determine trustee jurisdiction	
—Determine need for restoration planning	—Need/purpose for restoration.
—Publish ''Notice of Intent to Conduct Restoration Planning''	—''Notice of Intent'' for NEPA scoping.
—Open administrative record	—Open Analysis File/Planning Record.
• Limited data collection	
• Emergency restoration actions	—Emergency actions.
Restoration Planning Phase	**NEPA Process**
• Procedural Components	• Procedural Parallels.
—Injury Assessment Component (Injury Determination/Quantification)	—NEPA scoping process begins.
—Restoration Planning Component	
—Develop Draft Restoration Plan	—Draft EIS.
—Public Review/Comment	—Public Review/Comment.
—Develop Final Restoration Plan	—Final EIS.
• Range of injury assessment procedures (simplified to more detailed)	—Affected Environment (before restoration).
• Range of restoration alternatives (primary/compensatory restoration; natural recovery/no action)	—Range of restoration alternatives (including proposed/no action) and Environmental Consequences.
• Evaluation of restoration alternatives	—Cost-benefit analysis.

APPENDIX A—COMPARISON OF RELEVANT OPA/NRDA AND NEPA COMPONENTS—Continued

OPA/NRDA process	NEPA parallels
Restoration Implementation Phase	**NEPA Process**
• Procedural Components • Close Administrative Record for Restoration Planning Phase • Opening administrative record for Restoration Implementation Phase • Present Demand • Establish account for recoveries • Implement Final Restoration Plan (includes monitoring/corrective actions)	• Procedural Parallels. —Close original Analysis File/Planning Record. —Open second Analysis File. —"Record of Decision". —Implement Final EIS.

EIS = Environmental Impact Statement.

Appendix B—Considerations to Facilitate the Restoration Process

I. Pre-incident Planning

General

NOAA believes that commitment of time, funding, and personnel to up-front planning prior to an incident will help ensure that the NRDA process results in appropriate restoration plans. Thus, trustees are encouraged to develop pre-incident plans.

Pre-incident Plan Contents

NOAA suggests that pre-incident plans:

(a) Identify natural resource assessment teams. The restoration process needs a systematic, interdisciplinary approach to insure the integrated use of science, economics, and law required in planning and implementing restoration. Trustees are encouraged to identify appropriately experienced personnel needed for natural resource assessment teams at the area and regional levels.

Personnel required for natural resource assessment teams should be appropriate to the scope and scale of the incident and natural resources and/or services affected. For instance, for incidents with complicated or long-term ecological impacts, the core team could include a natural resource trustee coordinator, restoration expert, resource biologist, environmental (petroleum) chemist, resource economist, quality assurance specialist, data manager/sample custodian, statistician, resource attorney, and administrative support specialist. If at all possible, the team should not be *ad hoc*; members should be knowledgeable about relevant statutes and regulations, and be able to establish a working relationship with the various parties likely to be involved in incidents.

(b) Establish trustee notification systems. Prompt notification is essential for efficient and effective initiation of the restoration process. Response personnel are required under the NCP to notify trustees whenever natural resources under their jurisdiction or management have been, or are likely to be, injured or lost as a result of an incident involving oil.

Thus, each trustee should establish emergency notification protocols so that the process can be initiated on a 24-hour basis. Notification could be coordinated to minimize the number of calls response personnel must make to the trustees. Notification protocols are also needed within the trustee agencies so that appropriate regional and local personnel can be informed of an incident. Area and Regional Contingency Plans should include contact information for each trustee and clear, unambiguous criteria for trustee notification (e.g., all spills, spills over a certain size, location, etc.).

(c) Identify likely support services. In many circumstances, the trustees may require specialized contractor support. For example, research vessels may be necessary for sample collection, or outside experts may be necessary to design and conduct studies. If, as part of pre-incident planning, the trustees can identify appropriate support services and pursue contracting procedures that will expedite incident-specific hiring of contractors, potentially detrimental delays in the assessment process can be avoided during actual incidents.

The types of support and expertise expected, as well as potential contractor and expert names, should be identified as part of pre-incident planning. Contracts should be established to allow rapid acquisition of contractor services. Identified contractors may even be called on to participate in pre-incident planning so that all parties are familiar with the specific needs of the restoration process.

Backup services should also be identified since the needs of both response and natural resource activities can exceed even regional capabilities.

(d) Identify natural resources and/or services at risk. In the NCP, regional and area planning committees are responsible for the identification of natural resources under their jurisdiction that are potentially vulnerable to oil spill incidents for given geographic areas. The plans may, for example, identify wetland habitats near oil terminals or bird rookeries near shipping routes. If there is an incident, the response teams will focus their efforts on protection of these natural resources and/or services considered most vulnerable.

Trustees should actively participate in such planning committees to identify natural resources and/or services at risk. Further, trustees should identify and evaluate possible assessment procedures for these natural resources and/or services. In addition to participating actively in regional and area planning activities, trustees should develop a working relationship with response agencies and officials.

(e) Identify available baseline and other relevant information. Trustees should identify and catalogue sources of baseline information as part of pre-incident planning, including seeking input on sources of information. Types of information that may be important include: (1) Petroleum hydrocarbon contamination in indicator organisms; (2) species census and inventory; (3) baseline data on species populations; (4) recreational use statistics; (5) values for selected natural resources and/or services; and (6) restoration measures applicable to injured natural resources and services. Familiarity with the types of baseline information and identification of data gaps and needs will allow the trustees to formulate better study designs and restoration approaches;

(f) Establish data management systems. Data management and record keeping are critical throughout the restoration process. Data management systems may best be designed during pre-incident planning to minimize the possibility of losing critical information during an incident. For small incidents, this may be a relatively simple filing system, but for large incidents, a centralized computer-based system may be essential.

Trustees may decide to develop consistent data management formats, such as field, laboratory and quality assurance forms, to facilitate data management. At a minimum, data management should address the: (1) Type and volume of data; (2) uses and users of the data; (3) availability of existing data management structures; (4) quality assurance needs; (5) reporting requirements; and (6) access to the data. Data management should also include provisions for distribution of updates for the trustees and others on a timely basis; and

(g) Identify assessment funding issues and options. Funding of trustee activities should be addressed during pre-incident planning because of the need to initiate actions expeditiously after an incident. Trustees may have several sources of potential funding, the: (1) Responsible parties; (b) Oil Spill Liability Trust Fund; and (c) agency funding. Trustees should consult the most up-to-date guidance available from the U.S. Coast Guard for access to the Fund and incorporate these procedures into pre-incident planning.

II. Regional Restoration Planning

General

OPA emphasizes making the public whole for injuries to natural resource and/or services. Where practicable, incident-specific restoration is the preferred alternative to compensate the public for their losses. However, for many incidents, such incident-

specific planning may be impractical because, for instance, injuries are not extensive or are short-term. For small incidents, incident-specific planning costs may be high compared to the estimated damages.

Thus, to achieve OPA's mandate to restore injured natural resources and services regardless of the scope and scale of those injuries, trustees are strongly encouraged to use or modify existing restoration plans, or develop new regional restoration plans. Such regional planning is appropriate so long as natural resources and/or services comparable to those expected to be affected by an incident are addressed in the plans.

Availability of Regional Restoration Plans

Trustees may rely on or adjust existing regional restoration plans, so long as they have followed or can be modified to meet the planning requirements under this proposed rule. Lacking existing regional plans, trustees should seek to develop such plans. The trustees may organize these plans based on such factors as geography (e.g., ecosystems or watersheds), injuries anticipated from incidents, or restoration alternatives.

Regional restoration plans must be developed or annotated in such a way that trustees are able to justify linking the injuries from a particular incident or set of incidents with a specific restoration project or set of projects within the plan. This may be facilitated by describing the types of injuries anticipated from oil incidents to specific resources within a region, and describing these injuries in terms of the types and importance of functions and services, ecological and human use.

III. Coordination

General

Trustee coordination is crucial to an efficient and effective assessment and restoration planning process because of the need to address shared trustee interests in natural resources and/or services affected by incidents. OPA prohibits double recovery of damages, which strongly suggests that, where multiple trustees are involved in an incident, they actively coordinate their activities from as early in the process as possible, as well as through pre-incident planning activities.

Incentives for Coordination

Incentives for cooperation include:

(a) Access to funding—requests for reimbursement of the costs of initiating natural resource damage assessment from the Fund require that trustees attempt to coordinate their assessments and their funding requests;

(b) Conflict resolution—lack of coordination among the trustees or with the responsible parties will likely produce an adversarial, litigation-charged atmosphere. A joint trustee-responsible party effort will help resolve legal, administrative and technical conflicts; and

(c) Pooling limited resources—a joint trustee-responsible party effort will allow the pooling of financial and human resources for more efficient and effective restoration planning and implementation.

Trustees will benefit greatly if coordination procedures can be established well before an incident occurs. It must be emphasized that all cooperative arrangements are subject to trustee oversight because of their fiduciary responsibility to the public.

Agreements

Trustees should consider Memoranda of Understanding (MOU) to formalize their cotrustee relationships. The MOU or similar agreements may be prepared either in anticipation of an incident or shortly after an incident. It is important that trustee agreements address, at a minimum: the purpose of the agreement; trustee participants; trustee organization; trustee responsibilities; and a decisionmaking process.

Trustee agreements may serve as the foundation for building pre-incident plans for natural resource activities as discussed above. Of special importance is the selection of a Lead Administrative Trustee (LAT).

Lead Administrative Trustee (LAT)

When conducting joint assessments under this rule, trustees must designate a Lead Administrative Trustee (LAT). The LAT serves as the contact for trustee interaction with response agencies, responsible parties and the public, and provides general administrative support to the restoration process.

This proposed rule also does not require that a LAT be a federal agency. However, when more than one federal trustee(s) is involved, the federal trustees must select a federal LAT (FLAT) if the trustees wish to access the Fund to initiate natural resource activities. In such cases, the FLAT will coordinate federal efforts with the selected LAT. In addition, if a federal agency is participating in the NRDA, NEPA is applicable, and a federal trustee must serve as the lead agency for NEPA planning purposes. Where appropriate, the trustees may designate co-LATs, consisting of a federal LAT and the state, tribal, or foreign trustees.

A LAT should be selected by mutual agreement of the trustees. In designating a LAT, trustees may want to consider such factors as: Jurisdictional oversight; capability and willingness to address trust resources; and sequence and duration of involvement in the incident or similar incidents. Selection of a LAT should be made as soon as practicable after notification of an incident.

Cotrustee Responsibilities

Cotrustees should be prepared to participate fully in the restoration process by: Participating in or conducting those studies or analyses for which they have special expertise or management authority; make staff available to participate in other NRDA activities, in particular, to represent the trustee in decisions requiring cotrustee unanimity; and committing financial resources. Each trustee may limit this participation based on the extent of injury to its natural resources as well as legal and financial constraints.

Coordination With Response Agencies

To the fullest extent practicable without interfering with response activities, natural resource concerns should be integrated with response activities before pursuing a NRDA; liability for natural resource damages is limited to damages for injuries or losses residual to the response phase, plus any injuries related to the response. NOAA strongly encourages trustees to coordinate natural resource injury assessment activities, such as gathering ephemeral data related to an oil spill incident, with response actions. Mechanisms to coordinate response and trustee data gathering needs and processes may also be addressed in pre-incident planning.

Coordination With the Responsible Parties

Under OPA, trustees have the responsibility to determine appropriate actions to restore injured natural resources and services. However, NOAA strongly encourages trustees to include the responsible parties as full or partial participants in the restoration process, whenever it can be achieved without compromise of the trustees' statutory obligations to act on behalf of the public trust. In determining whether, when and how to invite the responsible parties to participate, trustees may consider factors including, but not be limited to, the: willingness of the responsible parties to participate; capability of the responsible parties to participate (e.g., knowledge, expertise, and personnel); and (c) willingness of the responsible parties to pay for the restoration process.

Enforceable Agreements

Trustees are encouraged to enter into enforceable agreements with cooperative responsible parties. Enforceable agreements may have several benefits, including keeping trustees and responsible parties dealing openly with each other, and reducing transaction costs associated with separate assessment studies. Enforceable agreements may address any or all parts of the restoration process, but should contain, at a minimum, provisions for: the type and level of participation, joint or independent; deliverables; funding; public review; and termination.

NOAA encourages the trustees and responsible parties to conduct joint assessment activities. For joint activities, enforceable agreements should stipulate that the trustees and responsible parties are: obligated to use jointly-collected data; barred from collecting new or different data that challenges jointly-collected data; obligated to document such jointly-collected data; barred from challenging the scientific or technical adequacy of methods agreed upon under the agreement; and encouraged to develop binding stipulations regarding the interpretation and use of joint study results.

Negotiations with the responsible parties should not prevent the trustees from proceeding with their obligations to develop the restoration plan in a timely fashion.

Coordination Among the Responsible Parties

While it is obviously not as easy to identify the mix of potential responsible parties that will participate in a given incident, there are issues that can be addressed in general terms by the potential responsible parties in advance, that will enable them to enter the cooperative restoration process more

efficiently and effectively. In an incident with a single well-identified responsible party, the ability to assess the situation, identify the appropriate course of action and most effectively implement a cooperative response will be improved by pre-incident planning. In an incident with multiple potential responsible parties, the need for pre-incident planning is more apparent. In this latter situation, the potential responsible parties need to consider the efficacy of a cooperative restoration process, and the terms under which they would consider entering into such a process.

Appendix C—Simplified Injury Assessment Procedures

I. Type A Models

The Department of the Interior (DOI) is responsible for developing simplified ''Type A'' NRDA procedures under CERCLA. These procedures were originally intended to cover both hazardous substance releases as well as oil discharges. This proposed rule would allow trustees to use any final Type A procedure incorporated into DOI's regulations that addresses oil discharges, so long as the conditions of an incident under OPA are sufficiently similar to the conditions set forth at 43 CFR 11.33 for use of the Type A procedures.

Only one final Type A procedure has been incorporated into DOI's regulations. That procedure is a computer model applicable to minor discharges in coastal and marine environments, known as the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME) Version 1.2.

The NRDAM/CME Version 1.2 is composed of three submodels that predict the physical fate of the spilled substance, the biological effects, and the economic damages caused by the incident. The physical fates submodel database predicts the dispersion, concentration, and eventual fate of the discharged oil. The model accounts for mechanical removal of oil from the environment and the normal weathering, degradation, and evaporation process. The biological effects submodel uses the output from the physical fates submodel, user-supplied information on habitat type and fishing closures, and a regionally and seasonally specific database of marine and estuarine fish, invertebrates, and birds to predict biological injury. The economic damages submodel determines the monetary compensation necessary for the lost use of the injured resources. The economic database includes values for commercially and recreationally harvested species, beach use, and bird watching.

DOI has issued a proposed rule to revise the NRDAM/CME Version 1.2 to comply with the decision in *Colorado* v. *U.S. Department of the Interior,* 880 F.2d 481 (D.C. Cir. 1989) and as part of the statutorily-mandated review and update of DOI's NRDA regulations. 59 FR 63300 (Dec. 8, 1994). The updated version of the model (Version 2.2) includes significantly more detailed data and more sophisticated computer technology. The revised model also includes a fourth submodel focusing on restoration costs. Interior has also proposed a Type A procedure for minor discharges in the Great Lakes, known as the Natural Resource Damage Assessment Model for Great Lakes Environments (NRDAM/GLE) Version 1.31. 59 FR 40319 (August 8, 1994). When final, trustees may use the revised NRDAM/CME and the NRDAM/GLE for assessments under OPA.

II. Compensation Formulas

As part of the proposed regulations, NOAA proposed a compensation formula that could be used for small incidents in both the estuarine and marine environments and the Great Lakes (and other inland waters). The purpose of the formula is to readily estimate impacts based on the amount of oil discharged and several simple data inputs.

To maintain consistency with existing procedures and facilitate public review of the estuarine and marine formula, the NRDAM/CME Version 1.2 was used to estimate damages in a representative range of hypothetical spill scenarios. Those results were the basis of the estuarine and marine compensation formula. The basic algorithms of the physical fates and biological submodels within the NRDAM/CME Version 1.2 were deemed appropriate for this approach. However, to use more recently-developed information, revised databases were substituted for both the current biological and economic databases in the NRDAM/CME Version 1.2. A restoration submodel was also added to allow the use of average restoration costs to the extent possible.

The inland waters compensation formula was proposed before DOI published a proposed rule incorporating the NRDAM/GLE Version 1.31. Therefore, NOAA used an earlier draft of the NRDAM/GLE to develop the formula and provided that earlier version for public review with the January 1994 proposed rule.

DOI is currently scheduled to issue the final revised NRDAM/CME and the final NRDAM/GLE in early 1996. One option NOAA has considered is to wait until those models are final and reissue the compensation formulas. However, to repeat the formula development after the models are final would require an additional three to five months, thereby delaying interested parties' use of the formulas until late 1996. Trustees need some simple method available for at least an order of magnitude estimate of impacts that, ''on average,'' are likely to result from relatively small discharges of oil. Thus, a guidance document has been developed to provide an interim tool for such a purpose.

The compensation formula guidance document is intended to provide instructions on how, using the proposed NRDAM/CME Version 2.2 to recreate the spill scenarios used to develop the 1994 proposed estuarine/marine compensation formulas. This guidance will allow interested parties to recreate the scenarios with the proposed models, which are significantly different in some ways from the draft models used to develop the proposed formulas. This approach also will allow reviewers to comment on the possibility of NOAA recreating the formulas once the NRDAM/CME and the NRDAM/GLE are promulgated as final rules. This approach should allow an evaluation of how the compensation formulas might change from that proposed in January 1994 and provide approximate estimates of damages for hypothetical spills based on the formula if it is developed using the versions of the NRDAM/CME and NRDAM/GLE that are promulgated as final rules in the future.

Using the data in the guidance document, trustees will have a simplified, cost-effective tool to use in estimating expected impacts of most discharges of oil. This information may prove to be useful in early decisionmaking in a NRDA or in settlement discussions. In order to use this guidance, trustees must have the proposed computer models developed by DOI. Computer diskettes containing the NRDAM/CME Version 2.2 and the NRDAM/GLE Version 1.31 can be obtained from the Office of Environmental Policy and Compliance, Room 2340, Department of the Interior, 1849 C Street, NW, Washington, DC 20240, telephone: (202) 208–3301.

Appendix D—Compensatory Restoration Scaling Methods

The following is a list of methods that are mentioned in this preamble as potential approaches to scaling compensatory restoration alternatives. The trustees are not limited to these methods and may use any method that are deemed to be appropriate to the particular situation.

A. Habitat Equivalency Analysis

This method may be used to scale restoration projects that replace entire habitats that support multiple species or that replace individual species that provide a variety of resource services. To ensure that the scale of the compensatory restoration project does not over- or under-compensate the public for injuries incurred, the trustees must establish an equivalency between the present value of the quantity of lost services and the present value of the quantity of services provided by the compensatory restoration project(s) over time.

B. Travel Cost Method

The travel cost method is principally employed to model demand for recreational experiences. This measurement technique evolved from the insight that the travel costs an individual incurs to visit a site are like a price for the site visit. In essence, the travel cost method assesses an individual's willingness to travel further (thereby incurring higher travel costs) in order to recreate at more highly valued sites. It is important to take into account the availability and quality of substitute recreation sites. Multiple-site models of recreational demand, such as the random utility model, focus attention on the recreationist's choice among alternative recreational sites. This version of the travel cost model is particularly appropriate where many substitutes are available to the individual and when the discharge has affected quality at multiple sites. For this reason, multiple-site models of recreational demand are preferred to single-site models, unless it is feasible to include in the single-site model price and quality information

about the relevant substitute sites (or there are no substitute sites). If a single-site model is employed without full accounting for substitutes, an appropriate adjustment should be made to the estimate of trip value.

In cases where the change in resource services to be analyzed is out of the range of data on actual travel behavior, trustees may choose to collect contingent behavior data. Contingent behavior refers to the behavior of users or potential users of a resource service under hypothetical conditions presented to them in the travel cost survey.

C. Factor Income Approach

This approach relies upon the production function model that relates the contribution of inputs to the production of an output. (Inputs are also referred to as factors of production.) Changes in the availability or price of inputs will affect the availability and price of the output and hence the level of income accruing to the producer. Where unpriced natural resources are an input in the production process, producer income will include both economic profit (the amount of profit a producer requires to keep capital in this use in the long run) and economic rent (the income accruing to a producer as a result of access to an unpriced resource). A discharge may decrease the quality and/or quantity of a resource and thereby effectively increase the cost of acquiring the natural resource input. As a result, the injury may reduce the economic rent accruing to the producer from use of the public trust resource. The change in economic rent attributable to a discharge can be evaluated by calculating the change in surplus either in the product market or in the input markets. Where the output price is not affected, the change in economic rent is simply the sum of the change in factor costs (or factor income) for each affected input.

D. Hedonic Price Model

The hedonic price model relates the price of a marketed commodity to its various attributes. In the natural resource damage assessment context, it may be used to determine the change in value of some nonmarket services from public trust resources (for example, environmental amenities such as water or air quality) where they function as attributes of private market goods, such as property. For example, the value of beach front property may be directly related to the quality and accessibility of the adjacent coastline. Reduction in the quality or accessibility, as may occur due to a discharge, will be captured in the value of the property. All else equal, the decrease in property values as a result of a discharge measures the change in use value of the injured coastline resources accruing to local property owners. This measure of the reduction in value of coastline resources will not capture any loss in value of the resources that may accrue to members of the public who own no property in the area.

E. Market Models of Demand and Supply

For those goods and services regularly traded in markets, economists typically rely upon market transactions to reveal the values that individuals place on the goods and services and the costs of producing them. When the quality of the resource directly affects the value individual consumers place on a good or service, the correct measure of damage is the change in consumer surplus, or individuals' willingness-to-accept compensation plus the economic rent component of producer surplus, if any, for the injuries associated with the discharge.

F. Contingent Valuation

The contingent valuation (CV) method determines the value of goods and services based on the results of carefully designed surveys. The CV methodology obtains an estimate of the total value, including both direct and passive use values of a good or service by using a questionnaire designed to objectively collect information about the respondent's willingness to pay for the good or service. A CV survey contains three basic elements: (1) A description of the good/service to be valued and the context in which it will be provided, including the method of payment; (2) questions regarding the respondent's willingness to pay for the good or service; and (3) questions concerning demographics or other characteristics of the respondent to interpret and validate survey responses.

G. Conjoint Analysis

A conjoint analysis is a survey technique that is used to derive the values of particular attributes of goods or services. Information is collected about individuals' choices between different goods that vary in terms of their attributes or service levels. With this information, it is possible to derive values for each particular attribute or service. If price is included as an attribute in the choice scenarios, values can be derived in terms of dollars which can be used with the valuation approach.

Alternatively, it is possible to value attributes in terms of units of replacement services. Survey respondents would be presented with choices between two or more options that may represent resource projects with varying levels of services. The goal is to obtain the value of the injured services in terms of alternative resource services so that restoration projects can be scaled directly using the service-to-service approach.

H. Benefits Transfer Approach

Benefits (or valuation) transfer involves the application of existing value estimates or valuation functions and data that were developed in one context to address a sufficiently similar resource valuation question in a different context.

Where resource values have been developed through an administrative or legislative process and are relevant and reliable under the circumstances, the trustees may use these values, as appropriate, in a benefits transfer context. NOAA solicits comment on the type of administratively and legislatively established values that would be appropriate for this purpose. Other values may be used so long as three basic issues are considered in determining the appropriateness of their use: the comparability of the users and of the natural resource and/or service being valued in the initial studies and the transfer context; the comparability of the change in quality or quantity of resources and/or services in the initial study and in the transfer context (where relevant); and the quality of the studies being transferred.

National Environmental Policy Act, Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

The National Oceanic and Atmospheric Administration has determined that this rule does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, no further analysis pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) has been prepared. The Assistant General Counsel for Legislation and Regulation, in accordance with the Regulatory Flexibility Act, certifies to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule will not have a significant economic effect on a substantial number of small entities. The proposed rule is intended to make more specific, and easier to apply, the standards set out in OPA and CERCLA for assessing damages for injury to natural resources as a result of actual or threatened discharges of oil. The rule is not intended to change the balance of legal benefits and responsibilities among any parties or groups, large or small. To the extent any are affected by the rule, it is anticipated that all will benefit by increased ease of application of law in this area.

It has been determined that this document is a significant rule under Executive Order 12866. The rule provides optional procedures for the assessment of damages to natural resources. It does not directly impose any additional cost.

It has been determined that this rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 15 CFR part 990

Coastal zone, Endangered and threatened species, Energy, Environmental protection, Estuaries, Fish, Fisheries, Fishing, Gasoline, Historic preservation (archeology), Hunting, Incorporation by reference, Indian lands, Marine pollution, Migratory birds, National forests, National parks, National Wild and Scenic Rivers System, Natural resources, Navigable waters, Oil, Oil pollution, Petroleum, Plants, Public lands, Recreation and recreation areas, Rivers, Seashores, Shipping, Waterways, Water pollution control, Water

resources, Water supply, Water transportation, Wetlands, Wildlife.

Dated: July 28, 1995.

Douglas K. Hall,

Assistant Secretary for Oceans and Atmosphere.

Under the authority of the Oil Pollution Act of 1990, 33 U.S.C. 2706(a), and for the reasons set out in this preamble, title 15 of the Code of Federal Regulations, chapter IX is proposed to be amended to add a new Subchapter E-Oil Pollution Act Regulations and a new part 990 as set forth below.

SUBCHAPTER E—OIL POLLUTION ACT REGULATIONS

PART 990—NATURAL RESOURCE DAMAGE ASSESSMENTS

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Subpart A—Introduction

§ 990.10 Purpose.

The purpose of this part is to promote expeditious restoration of natural resources and services injured as a result of an incident involving the discharge or substantial threat of a discharge of oil. To fulfill this purpose, this part provides a natural resource damage assessment process for developing a plan for the restoration of the injured natural resources and services and pursuing implementation or funding of the plan by responsible parties. This part provides an administrative process for involving interested parties, a range of assessment procedures for identifying and evaluating injuries to natural resources and/or services, and a process for selecting appropriate restoration actions from a range of alternatives.

§ 990.11 Scope.

The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 et seq., provides for the designation of federal, state, Indian tribal, and foreign officials to act on behalf of the public as trustees for natural resources. This part is available for use by these officials in conducting natural resource damage assessments when natural resources and/or services are injured as a result of an incident involving an actual or substantial threat of a discharge of oil.

§ 990.12 Overview.

This part describes three phases of a natural resource damage assessment. The Preassessment Phase, during which trustees determine whether to pursue restoration, is described in subpart D of this part. The Restoration Planning Phase, during which trustees evaluate information on potential injuries and use that information to determine the need for and type of restoration, is described in subpart E of this part. The Restoration Implementation Phase, during which trustees ensure implementation of restoration, is described in subpart F of this part.

§ 990.13 Effect of using this part.

(a) *Rebuttable presumption for claims.* If federal, state, or Indian tribal trustees act in accordance with this part and file a judicial or administrative claim for natural resource damages, then the claim and all determinations made by the trustees during the development of the claim will be presumed correct unless the responsible parties present evidence adequate to rebut the presumption.

(b) *Use of other assessment procedures and methods.* Trustees may use other natural resource damage assessment procedures and methods in lieu of or in addition to the process described in this part. However, any component of a natural resource damage claim based on use of another process will only be given a rebuttable presumption if such process is in accordance with this part.

§ 990.14 Coordination.

(a) *Other trustees.* (1) If an incident affects the interests of multiple trustees, the trustees may act jointly under this part. Trustees must designate a lead administrative trustee to act as coordinator and contact point for joint assessments.

(2) If there is a reasonable basis for dividing the natural resource damage assessment, trustees may act independently under this part, so long as there is no double recovery of damages for the same incident and natural resource.

(3) Trustees may develop pre-incident or incident-specific memoranda of understanding to coordinate their activities.

(b) *Response agencies.* Trustees must coordinate their activities with response agencies consistent with the NCP and any pre-incident plans developed under § 990.15(a) of this part. Trustees may develop pre-incident memoranda of understanding to coordinate their activities with response agencies.

(c) *Responsible parties.* Trustees must invite the responsible parties to participate in the NRDA process, including preassessment and emergency restoration activities, where appropriate and such participation will not interfere with trustees fulfilling their responsibilities under these regulations and OPA.

(d) *Public.* Trustees may provide opportunities for public involvement in addition to those specified in subparts D through F of this part. Such opportunities may include solicitation of public comment at additional stages of the process, public meetings on trustee activities concerning specific incidents, and public outreach on non-incident-specific restoration issues.

§ 990.15 Considerations to facilitate restoration.

In addition to the procedures provided in subparts D through F of this part, trustees may take other actions to further the goal of expeditious restoration of injured natural resources and services, including:

(a) *Pre-incident planning.* Trustees may engage in pre-incident planning activities. Pre-incident plans may: identify natural resource damage assessment teams; establish trustee notification systems; identify support services; identify natural resources and/or services at risk; identify regional and area response agencies and officials; identify available baseline information; establish data management systems; and identify assessment funding issues and options.

(b) *Regional Restoration Plans.* Trustees may develop Regional Restoration Plans. These plans may be used to support a claim as provided in § 990.58 of this part.

§ 990.16 Review and revision of this part.

This part will be reviewed and revised as appropriate as often as necessary, but no less than once every five years.

Subpart B—Authorities

§ 990.20 Relationship to other natural resource damage assessment regulations.

(a) *CERCLA regulations*—(1) *General.* The Department of the Interior has developed regulations for assessing natural resource damages resulting from hazardous substance releases and discharges of oil under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq., and the Clean Water Act, 33 U.S.C. 1321 et seq. Those regulations are codified at 43 CFR part 11. Those regulations originally applied to natural resource damages resulting from oil discharges as well as hazardous substance releases. This part supersedes 43 CFR part 11 with regard to oil discharges under OPA.

(2) *Assessments commenced before the effective date of this part.* If trustees commenced a natural resource damage assessment for an oil discharge under 43 CFR part 11 prior to the effective date of this part, they may complete the assessment in compliance with 43 CFR part 11 and obtain a rebuttable presumption, or they may elect to use this part.

(3) *Oil and hazardous substance mixtures.* If natural resources are injured by a discharge or release of a mixture of oil and hazardous substances, trustees must use 43 CFR part 11 in order to obtain a rebuttable presumption.

(b) *State, local, or tribal procedures.* Trustees may use state, local, or tribal natural resource damage assessment procedures in lieu of this part and obtain a rebuttable presumption provided that the state, local, or tribal procedures are in accordance with this part. State, local, or tribal procedures are in accordance with this part when the procedures:

(1) Require all recovered damages to be spent on restoration, subject to a plan made available for public review and comment, except for those damages recovered to reimburse trustees for past assessment and emergency restoration costs;

(2) Determine compensation based on injury and/or restoration;

(3) Are consistent with the standards for the technical methods described in § 990.51 of this part;

(4) Were developed through a public rulemaking process; and

(5) Do not conflict with OPA or this part.

§ 990.21 Relationship to the NCP.

This part supplements the procedures established under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, for the response to an incident. This part provides procedures by which trustees may determine appropriate restoration of injured natural resources and services that are not fully addressed by response actions conducted pursuant to the NCP.

§ 990.22 Prohibition on double recovery.

When taking actions under this part, trustees must consider the actions of other trustees with respect to the same incident and natural resources and the effect of the prohibition on double recovery of damages in 33 U.S.C 2706(d)(3).

§ 990.23 Compliance with other applicable laws and regulations.

(a) *NEPA.* The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., applies to restoration planning by federal trustees, unless a categorical exclusion applies. NEPA is triggered when federal trustees issue a Notice of Intent to Conduct Restoration Planning under § 990.43 of this part. Compliance with the procedures set forth in subparts E and F of this part fulfills the requirements of NEPA.

(b) *Worker health and safety.* When taking action under this part, trustees must comply with all worker health and safety considerations specified in the NCP for response actions.

(c) *Resource protection.* When acting under this part, trustees must ensure compliance with any applicable federal consultation or review requirements, including but not limited to: the Endangered Species Act of 1973, 16 U.S.C. 1531 et seq.; the Coastal Zone Management Act of 1972, 16 U.S.C. 1451 et seq.; the Migratory Bird Treaty Act, 16 U.S.C. 703; the National Marine Sanctuaries Act, 16 U.S.C. 1431 et seq.; the National Historic Preservation Act, 12 USC 470; and the Marine Mammal Protection Act, 16 U.S.C. 1361 et seq.

(d) *State, local, and tribal procedural requirements.* To the extent that federal trustees can legally comply with state, local, and tribal procedural requirements they should do so.

§ 990.24 Settlement.

Trustees may settle claims for natural resource damages at any time, provided that the settlement is adequate in the judgment of the trustees to make the environment and public whole for the injury, destruction, loss of, or loss of use of natural resources and/or services that have or are likely to have occurred; with particular consideration of the adequacy of the compensation to provide for the restoration of such resources. Sums recovered in settlement of such claims may only be expended in accordance with a restoration plan that is made available for public review.

§ 990.25 Emergency restoration.

(a) Trustees may take emergency restoration action before completing the process established under this part, provided that:

(1) The action is needed to minimize continuing injury or prevent additional injury to natural resources and/or services;

(2) The action is feasible and likely to minimize continuing or prevent additional injury; and

(3) The costs of the action are not unreasonable.

(b) If response actions are still underway and emergency restoration actions have the potential to interfere with such response actions, trustees must coordinate with the On-Scene Coordinator (OSC) before taking any emergency restoration actions. Where emergency restoration actions are not expected to interfere with ongoing response actions, trustees must notify the OSC of the their intended actions prior to implementation and explain their reasons for believing that no interference with the response will result.

(c) Trustees must provide notice to the responsible parties of any emergency restoration actions and invite their participation in the conduct of those actions within a reasonable timeframe.

(d) Trustees must provide public notice of any emergency restoration actions within a reasonable timeframe after completion of such actions. The notice must include a description of the justification for, the nature and extent of, and the results of emergency restoration actions.

Subpart C—Definitions

§ 990.30 Definitions.

Baseline means the condition of the natural resource and/or service that would have existed had the incident not occurred. Baseline data include historical data, reference data, control data, and data on incremental changes (e.g., number of dead animals).

Cost-effective means the least costly activity among two or more activities that provide the same or comparable level of benefits.

Discharge means any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

Exclusive Economic Zone means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983, including the ocean waters of the areas referred to as ''eastern special areas'' in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990.

Exposure means direct or indirect contact with the discharged oil.

Incident means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil into or upon navigable waters or adjoining shorelines or the Exclusive Economic Zone.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and has governmental authority over lands belonging to or controlled by the tribe.

Injury means an observable or measurable adverse change in a natural resource or impairment of a natural resource service. Injury may occur directly or indirectly to a natural resource and/or service. Injury incorporates ''destruction,'' ''loss,'' and ''loss of use'' as provided in OPA.

National Contingency Plan (NCP) means the National Oil and Hazardous Substances Pollution Contingency Plan codified at 40 CFR part 300, which addresses the identification, investigation, study, and response to incidents.

Natural resources means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the Exclusive Economic Zone), any state or local government or Indian tribe, or any foreign government.

Navigable waters means the waters of the United States, including the territorial sea.

Oil means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. However, the term does not include petroleum, including crude oil or any fraction thereof, that is specifically listed or designated as a hazardous substance under 42 U.S.C. 9601(14) (A) through (F).

Oil Spill Liability Trust Fund means the Oil Spill Liability Trust Fund, established by section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509).

On-Scene Coordinator or *OSC* means the federal official predesignated by the U.S. Environmental Protection Agency or the U.S. Coast Guard to coordinate and direct response actions under the NCP, or the government official designated by the lead response agency to coordinate and direct removal actions under the NCP.

OPA means the Oil Pollution Act of 1990, 33 U.S.C. 2701 et seq.

Pathway means a nexus between the incident and a natural resource and/or service.

Person means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

Public vessel means a vessel owned or bareboat chartered and operated by the United States, or by a state or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce.

Reasonable assessment costs for assessments performed under this part means those costs that:

(1) Are incurred by trustees in accordance with this part;

(2) Are proportionate to the restoration costs, except in cases where assessment costs are incurred but trustees do not pursue restoration, provided that trustees have determined they have jurisdiction under § 990.41 of this part; and

(3) Result from use of procedures for which the incremental cost is reasonably related to the incremental increase in assessment information.

Reasonable assessment costs also include the administrative, legal, and enforcement costs necessary to carry out this part.

Recovery means the return of injured natural resources and/or services to baseline.

Response means actions taken under the NCP to protect public health and welfare, or the environment when there is a discharge or a substantial threat of a discharge of oil, including actions to contain or remove discharged oil from water and shorelines.

Responsible party means:

(1) *Vessels.* In the case of a vessel, any person owning, operating, or demise chartering the vessel.

(2) *Onshore facilities.* In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(3) *Offshore facilities.* In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable state law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301–1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(4) *Deepwater ports.* In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524), the licensee.

(5) *Pipelines.* In the case of a pipeline, any person owning or operating the pipeline.

(6) *Abandonment.* In the case of an abandoned vessel, onshore facility,

deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

Restoration means any action, or combination of actions, to restore, rehabilitate, replace, or acquire the equivalent of injured natural resources and services. Restoration includes:

(1) Primary restoration, which is either human intervention or natural recovery that returns injured natural resources and services to baseline; and

(2) Compensatory restoration, which is action taken to make the environment and the public whole for service losses that occur from the date of the incident until recovery of the injured natural resource.

Services or *natural resource services* means the functions performed by a natural resource for the benefit of another natural resource or the public.

State means any of the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, or any other territory or possession of the United States.

Trustees or *natural resource trustees* means those officials of the federal and state governments, of Indian tribes, and of foreign governments, designated under 33 U.S.C. 2706(b).

Value means the amount of items an individual is willing to give up to obtain a good or is willing to accept to forgo a good. Under this part, value may be measured either in terms of units of natural resource services or dollar amounts. The total value of a natural resource or service is equal to the sum of all individuals' values.

Vessel means every type of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel.

Subpart D—Preassessment Phase

§ 990.40 Purpose.

The purpose of this subpart is to provide a process by which trustees determine if they have jurisdiction to pursue restoration under OPA and, if so, whether it is appropriate to do so.

§ 990.41 Determination of jurisdiction.

(a) Upon learning of an incident, trustees must determine whether there is jurisdiction to pursue restoration under OPA. To make this determination, trustees must decide if:

(1) An incident as defined in § 990.30 of this part has occurred;

(2) The incident involves a discharge or a substantial threat of a discharge that is neither:

(i) Permitted under a permit issued under federal, state, or local law;

(ii) From a public vessel; nor

(iii) From an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651, et seq.; and

(3) Natural resources under the trusteeship of the trustees have or may be affected as a result of the incident.

(b) If any of the conditions listed in paragraph (a) of this section are not met, trustees may not take additional action under this part. If all of these conditions are met, trustees may proceed under this part.

§ 990.42 Determination to conduct restoration planning.

(a) If trustees determine that there is jurisdiction to pursue restoration under OPA, trustees must determine, based on readily available information, if:

(1) Injuries likely have resulted or will result from the incident;

(2) Response actions may not adequately address the potential injuries; and

(3) Feasible restoration actions exist to address the potential injuries.

(b) If any of the conditions listed in paragraph (a) of this section are not met, trustees may not take additional action under this part. However, trustees may recover all reasonable assessment costs incurred up to the point when they determined that the conditions were not met. If all the conditions are met, trustees may proceed under this part.

§ 990.43 Notice of Intent to Conduct Restoration Planning.

(a) If trustees determine that all the conditions in § 990.42(a) of this part are met, they must prepare a Notice of Intent to Conduct Restoration Planning. The Notice will include a discussion of the trustees' analysis under §§ 990.41 and 990.42 of this part.

(b) Trustees must make a copy of the Notice publicly available.

(c) Trustees must send a copy of the Notice to the known responsible parties and invite their participation in the conduct of restoration planning.

§ 990.44 Administrative record.

If trustees make a determination to conduct restoration planning, they must open a publicly available administrative record. Trustees must include in the administrative record: the Notice of Intent to Conduct Restoration Planning; documents and other factual information considered by the trustees when assessing injury and selecting a restoration action under subpart E of this part, including studies performed by the trustees; and documents that are submitted in a timely fashion by the responsible parties or other members of the public.

§ 990.45 Data collection.

Trustees may conduct limited data collection during the Preassessment Phase. Data collection during the Preassessment Phase must be coordinated with response actions such that the collection does not interfere with or hinder the response actions. Trustees may collect the following types of data during the Preassessment Phase:

(a) Data reasonably expected to be necessary to make a determination of jurisdiction under § 990.41 of this part or a determination to conduct restoration planning under § 990.42 of this part;

(b) Ephemeral data; and

(c) Information needed to design or implement anticipated assessment procedures under subpart E of this part.

Subpart E—Restoration Planning Phase

§ 990.50 Purpose.

The purpose of this subpart is to provide a process by which trustees evaluate information on potential injuries to natural resources and/or services (injury assessment), and use that information to determine the need for and scale of restoration actions (restoration selection).

§ 990.51 Criteria for acceptable procedures.

In order to be in accordance with this part, any procedures for assessing injury under §§ 990.52 and 990.53 of this part and scaling compensatory restoration actions under § 990.55(c)(3) of this part must meet the following criteria:

(a) If available, injury determination and quantification procedures that provide information of use in determining the type and level of restoration appropriate for a particular injury must be used;

(b) If a range of procedures providing the same type and quality of assessment information is available, the most cost-effective procedure must be used;

(c) The incremental cost of a more complex study must be reasonably related to the expected increase in relevant assessment information provided by the more complex study; and

(d) The procedures used must be reliable and valid for the particular context.

§ 990.52 Injury assessment—injury determination.

(a) *General.* After issuing a Notice of Intent to Conduct Restoration Planning under § 990.43 of this part, trustees must determine if any injuries to natural resources and/or services have resulted from the incident. To make this determination, trustees must determine if:

(1) The definition of ''injury'' has been met; and

(2) Natural resources have been exposed to the discharged oil, and a pathway links the injured natural resource and/or service to the incident; or, for injuries resulting from response actions or incidents involving a substantial threat of a discharge, an injury to a natural resource or an impairment of use of a natural resource service has occurred as a result of the incident.

(b) *Injury.* Trustees must determine whether an injury, as defined in § 990.30 of this part, has occurred and, if so, identify the nature of the injury. Potential categories of injury include, but are not limited to, adverse changes in: survival, growth, and reproduction; health, physiology and biological condition; behavior; community composition; ecological processes and functions; physical and chemical habitat quality or structure; and public services.

(c) *Exposure and pathway.* Except for injuries resulting from response actions or incidents involving a substantial threat of a discharge of oil, trustees must determine whether natural resources were exposed, either directly or indirectly, to the discharged oil from the incident, and estimate the amount or concentration and spatial/temporal extent of the exposure. Trustees must also determine whether there is a plausible pathway linking the incident to the injuries. Pathways include, but are not limited to: the sequence of events by which the discharged oil was transported from the incident and came into direct physical contact with a natural resource; or the sequence of events by which the discharged oil was transported from the incident and caused an indirect injury.

(d) *Injuries resulting from response actions or incidents involving a substantial threat of a discharge.* For injuries resulting from response actions or incidents involving a substantial threat of a discharge of oil, trustees must determine whether an injury or an impairment of use of a natural resource service has occurred as a result of the incident.

(e) *Selection of injuries to include in the assessment.* When selecting potential injuries to assess, trustees must consider:

(1) The natural resource/service of concern;

(2) The adverse change that constitutes injury;

(3) The potential degree, and spatial/temporal extent of the injury;

(4) The evidence indicating injury;

(5) The mechanism by which injury occurred;

(6) The evidence indicating exposure;

(7) The pathway from the incident to the natural resource/service of concern;

(8) The potential natural recovery period;

(9) The kinds of primary and/or compensatory restoration actions that are feasible; and

(10) The kinds of procedures available to evaluate the injury, and the time and money requirements.

(f) *Procedures.*

Trustees perform injury determination using the assessment procedures described in § 990.54 of this part.

(g) *Proceeding with the assessment.* If any of the conditions for determining injury provided in paragraph (a) of this section is not met, trustees may not take additional action under this part. However, trustees may recover all reasonable assessment costs incurred up to the point when they determined that the conditions were not met. If all the conditions are met, trustees may proceed under this part.

§ 990.53 Injury assessment—quantification.

(a) *General.* In addition to determining whether injuries have resulted from the incident, trustees must quantify the degree and spatial/temporal extent of such injuries. Trustees perform injury quantification using the assessment procedures described in § 990.54 of this part.

(b) Trustees may quantify injuries in terms of:

(1) The degree and spatial/temporal extent of injury to a natural resource;

(2) The degree and spatial/temporal extent of injury to a natural resource relative to baseline with subsequent translation of that change to a reduction in services provided by the natural resource; or

(3) The amount of services lost as a result of the incident.

(c) Trustees must estimate the time for natural recovery without restoration, but including any response actions. Analysis of recovery times may include evaluation of factors such as:

(1) Degree and spatial/temporal extent of injury;

(2) Sensitivity of the injured natural resource and/or service;

(3) Reproductive potential;

(4) Stability and resilience of the affected environment;

(5) Natural variability; and

(6) Physical/chemical processes of the affected environment.

§ 990.54 Injury assessment—selecting assessment procedures.

(a) *General.* When performing injury assessment, trustees must select appropriate assessment procedures. Trustees may use simplified or incident-specific assessment procedures as described in paragraphs (d) and (e) of this section. Trustees may also use more than one assessment procedure provided there is no double recovery.

(b) *Selection of assessment procedures.* When selecting assessment procedures, trustees must consider:

(1) Potential nature, degree, and spatial/temporal extent of the injury;

(2) Potential restoration actions for the injury;

(3) Range of assessment procedures available, including the applicability of simplified assessment procedures;

(4) Time and cost necessary to implement the assessment procedures; and

(5) Relevance between the information generated by the assessment procedures and the information needed for restoration planning.

(c) *Request for incident-specific assessment procedures.* When trustees have made a determination that a simplified assessment procedure is the most appropriate procedure for a given incident or injury, the responsible parties may request that trustees use incident-specific assessment procedures instead of a simplified assessment procedure if the responsible parties, in a timeframe acceptable to the trustees:

(1) Identify the incident-specific assessment procedures to be used and the reasons supporting the technical appropriateness of such procedures for the incident or injury;

(2) Advance the costs of using such incident-specific assessment procedures; and

(3) Agree not to challenge the reasonableness of the costs of using such incident-specific assessment procedures.

(d) *Simplified assessment procedures.*

(1) *Type A procedures.* Trustees may use type A procedures identified in 43 CFR part 11, subpart D, that address oil discharges provided that conditions are sufficiently similar to those listed in 43 CFR 11.33 regarding use of the procedures.

(2) *Compensation Formulas.* [Reserved]

(e) *Incident-specific assessment procedures.* Trustees may use incident-

specific assessment procedures including, alone or in any combination:

(1) Field methods;

(2) Laboratory methods;

(3) Model-based methods; and

(4) Literature-based methods.

§ 990.55 Restoration selection—development of a reasonable range of alternatives.

(a) *General.* After trustees have determined and quantified injury under §§ 990.52 and 990.53 of this part, they must identify a reasonable range of restoration alternatives for consideration, except as provided in § 990.58 of this part regarding use of a Regional Restoration Plan. Each alternative may identify an overall package of actions for addressing the injured natural resources and/or services of concern, or actions to restore individual injured natural resources and services, where there is reasonable basis for separately evaluating actions to restore separate natural resources and/or services. The range of alternatives must include a no-action alternative under which no human intervention would be taken either for primary restoration or for compensatory restoration.

(b) *Primary restoration.* (1) *General.* Each alternative must include a primary restoration component.

(2) *Types of alternatives.* When identifying primary restoration alternatives to be considered, trustees must consider whether:

(i) Conditions exist that would limit the effectiveness of primary restoration actions (e.g., residual sources of contamination);

(ii) Primary restoration actions are necessary or feasible to return the physical, chemical, and biological conditions necessary to allow recovery or restoration of the injured resources (e.g., replacement of sand or vegetation); and

(iii) Primary restoration actions focusing on certain key species or habitats would be an effective approach to achieving baseline conditions.

(c) *Compensatory restoration.* (1) *General.* In addition to primary restoration, trustees have the discretion to include a compensatory restoration component in some or all of the restoration alternatives.

(2) *Types of alternatives.* When identifying the types of compensatory restoration alternatives to be considered, trustees must first identify compensatory restoration actions that, in the judgment of the trustees, provide services of the same type and quality as those injured. If such actions are infeasible or too few in number to provide a reasonable range of alternatives, trustees may identify other actions provided that those actions provide services of comparable type and quality as those injured.

(3) *Scaling compensatory restoration actions.*

(i) *General.* After trustees have identified the types of compensatory restoration alternatives that will be considered, they must determine the scale of those alternatives that will make the environment and the public whole.

(ii) *Service-to-service scaling approach.* When determining the scale of a compensatory restoration alternative that provides services that are of the same type and quality, and are subject to comparable resource scarcity and demand conditions as those lost, trustees must use the service-to-service scaling approach. Under the service-to-service scaling approach, trustees determine the scale of the compensatory restoration alternative that will produce services equal in quantity to those lost.

(iii) *Valuation scaling approach.* (A) When determining the scale of a compensatory restoration alternative that provides services that are of a different type or quality, or are subject to non-comparable resource scarcity or demand conditions as those lost, trustees may use the valuation scaling approach. Under the valuation scaling approach, trustees determine the amount of services that must be provided to produce the same value lost to the public. Trustees must explicitly measure the value of lost services and then determine which scale of the compensatory restoration alternative will produce services of equivalent value to the public.

(B) If valuation of the services provided by the compensatory restoration alternative cannot, in the judgment of the trustees, be performed at a reasonable assessment cost, as defined in § 990.30 of this part, the trustees may estimate the dollar value of the lost services and select the scale of the alternative that has a cost equivalent to the lost value. The responsible parties may request that trustees value the services provided by the alternative if the responsible parties, within a timeframe acceptable to the trustees, advance the costs of doing so and agree not to challenge the reasonableness of the costs of performing such valuation.

(iv) *Discounting and uncertainty.* When scaling a compensatory restoration alternative, trustees must address the uncertainties associated with the predicted consequences of the alternative and must discount all service quantities and/or values to the date the demand is presented. Where feasible, trustees should use risk-adjusted measures of losses due to injury and gains from the compensatory restoration alternative, in conjunction with a riskless rate of discount. If the streams of losses and gains cannot be adequately adjusted for risks, then trustees may use a discount rate that incorporates a suitable risk adjustment to the riskless rate. When discounting future service quantities or values, trustees may use the appropriate inflation index to adjust nominal rates of discount into real terms.

(d) *Restoration alternatives for simplified assessments.* If trustees used a simplified assessment procedure under § 990.54(d) of this part, they may develop a reasonable range of restoration alternatives for addressing the injuries assessed by that simplified assessment procedure based on consideration of any combination of:

(1) Injury predictions, if any, provided by the simplified assessment procedure;

(2) Restoration recommendations, if any, provided by the simplified assessment procedure; and

(3) Lost values, if any, calculated by the simplified assessment procedure.

§ 990.56 Restoration selection—evaluation of alternatives.

(a) Once trustees have developed a reasonable range of restoration alternatives under § 990.55 of this part, they must evaluate the alternatives based on:

(1) Extent to which each alternative can return the injured natural resources and services to baseline and make the environment and the public whole for interim service losses;

(2) Extent to which each alternative improves the rate of recovery;

(3) Extent to which each alternative will avoid additional injury;

(4) Level of uncertainty in the success of each alternative;

(5) Extent to which each alternative benefits more than one natural resource and/or service;

(6) Cost of each alternative;

(7) Effects of each alternative on public health and safety, and the environment; and

(8) Whether any alternative violates any laws or regulations.

(b) Based on the evaluation of the factors listed in paragraph (a) of this section, trustees must select a preferred restoration alternative. If there are two or more preferred alternatives, trustees must select the most cost-effective alternative.

(c) Where additional information is needed to identify and evaluate the restoration alternatives, trustees may implement pilot studies.

§ 990.57 Restoration selection—preparation of a Draft and Final Restoration Plan.

(a) *Draft Restoration Plan.* After selecting a preferred restoration alternative under § 990.56 of this part, the trustees must prepare a Draft Restoration Plan. The Draft Restoration Plan must include:

(1) A summary of injury assessment procedures and methods used;

(2) A description of the degree, nature, and spatial/temporal extent of injuries to natural resources and/or services resulting from the incident;

(3) The goals and objectives of restoration;

(4) The range of restoration alternatives considered and a discussion of how such alternatives were identified and developed under § 990.55 of this part;

(5) A discussion of the trustees' evaluation of the restoration alternatives under § 990.56 of this part;

(6) A description of a monitoring plan for documenting restoration effectiveness and the need for corrective action and performance criteria for judging the success and completion of restoration and the need for corrective action; and

(7) A description of the involvement of the responsible party in the assessment process, and proposed involvement in the restoration process.

(b) *Public review and comment.* The Draft Restoration Plan must be made available for public review and comment for at least 30 calendar days. The type of notice, review, and comment procedures used will depend on the nature of the incident and the restoration actions being proposed.

(c) *Final Restoration Plan.* After reviewing public comments on the Draft Restoration Plan, trustees must develop a Final Restoration Plan. The Final Restoration Plan must include: the information specified in paragraph (a) of this section; a response to public comments; and an indication of any changes made to the Draft Restoration Plan. Trustees must make the Final Restoration Plan publicly available.

§ 990.58 Restoration selection—use of a Regional Restoration Plan.

(a) *General.* If trustees used a simplified assessment procedure under § 990.54(d) of this part, they may consider using a Regional Restoration Plan instead of developing an incident-specific restoration plan.

(b) *Existing Regional Restoration Plan.* (1) Trustees may use an existing Regional Restoration Plan provided that the Plan:

(i) Was developed subject to public review and comment; and

(ii) Addresses and is currently relevant to the same or comparable natural resources or services as those identified during injury assessment as having been injured.

(2) If the conditions set forth in paragraph (b)(1) of this section are met, trustees may present the responsible parties with a demand under § 990.62 of this part for the damages calculated by the simplified assessment procedure and use the recovered sums to implement the Regional Restoration Plan as provided in § 990.65 of this part.

(c) *New Regional Restoration Plan.* (1) If there is not an existing Regional Restoration Plan that meets the conditions of paragraph (b)(1) of this section and the information provided by the simplified assessment procedure does not support development of an incident-specific restoration plan, trustees may present the responsible parties with a demand under § 990.62 of this part for the damages calculated by the simplified assessment procedure and place the recovered funds into an account with other similar recoveries under § 990.65 of this part, until such time that sufficient funds to develop and implement a new Regional Restoration Plan are collected. Recoveries may only be commingled in this manner where injuries to natural resources and/or services were similar for the incidents represented by pooled funds, and where the incidents were within the same region (i.e. ecosystem or watershed).

(2) New Regional Restoration Plans must be developed subject to public review and comment.

(d) *Notice of Intent to Use a Regional Restoration Plan.* If trustees intend to use a Regional Restoration Plan instead of developing an incident-specific restoration plan, they must prepare a Notice of Intent to Use a Regional Restoration Plan. Trustees must make a copy of the Notice publicly available. The Notice must include:

(1) A description of the nature, degree, and spatial/temporal extent of injuries to natural resources and/or services resulting from the incident;

(2) A description of the existing Regional Restoration Plan and an explanation of how the conditions set forth in paragraph (b)(1) of this section are met; or a description of the anticipated process for developing a new Regional Restoration Plan and an explanation of why the information provided by the simplified assessment procedure does not support development of an incident-specific restoration plan; and

(3) Identification of the damage amount sought and the calculation of that amount.

Subpart F—Restoration Implementation Phase

§ 990.60 Purpose.

The purpose of this subpart is to provide a process for implementing restoration.

§ 990.61 Administrative record.

(a) *Closing the administrative record for restoration planning.* After the trustees prepare the Final Restoration Plan or the Notice of Intent to Use a Regional Restoration Plan, they must close the administrative record. Trustees may not add documents to the record once it is closed. However, trustees may add documents relating to a Final Restoration Plan if such documents:

(1) Are offered by an interested party that did not receive actual or constructive notice of the Draft Restoration Plan and the opportunity to comment on the Plan;

(2) Do not duplicate information already contained in the administrative record; and

(3) Raise significant issues regarding the Final Restoration Plan.

(b) *Opening an administrative record for restoration implementation.* Trustees may open an administrative record for implementation of restoration.

§ 990.62 Presenting a demand.

(a) *General.* After closing the administrative record for restoration planning, trustees must present a written demand to the responsible parties. Delivery of the demand should be made in a manner that establishes the date of receipt by the responsible party.

(b) *When a Final Restoration Plan has been developed.* Except as provided in paragraph (c) of this section, the demand must ask the responsible parties to either:

(1) Implement the Final Restoration Plan subject to trustee oversight and reimburse the trustees for their oversight costs; or

(2) Advance to the trustees a specified sum representing all costs associated with implementing the Final Restoration Plan, discounted as provided in § 990.63(a) of this part.

(c) *When a Regional Restoration Plan is used.* If the trustees intend to use a Regional Restoration Plan under § 990.58 of this part, the demand must ask the responsible parties to pay damages in the amount calculated by the simplified assessment procedure under § 990.54(d) of this part. Depending on the circumstances, it may

also be feasible for the responsible parties to implement selected portions of the Regional Restoration Plan.

(d) *Additional contents of demand.* The demand must also include:

(1) Identification of the incident from which the claim arises;

(2) Identification of the trustees asserting the claim;

(3) A brief description of the injuries for which the claim is being brought;

(4) The index to the administrative record;

(5) The Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan; and

(6) A request for reimbursement of:

(i) Reasonable assessment costs, as defined in § 990.30 of this part, compounded as provided in § 990.63(b) of this part;

(ii) The cost, if any, of conducting emergency restoration under § 990.25 of this part, compounded as provided in § 990.63(b) of this part; and

(iii) Interest on the amounts recoverable under 33 U.S.C. 2705, which provides for prejudgment and post-judgment interest to be paid at a commercial paper rate, starting from 30 calendar days from the date a demand is presented until the date the claim is paid.

§ 990.63 Discounting and compounding.

(a) *Estimated future restoration costs.* When determining estimated future costs of implementing a Final Restoration Plan, trustees must discount such future costs back to the date the demand is presented. Trustees may use a discount rate that represents the yield on recoveries available to trustees. The price indices used to project future inflation must reflect the major components of the restoration costs.

(b) *Past assessment and emergency restoration costs.* When calculating the present value of assessment and emergency restoration costs already incurred by trustees, trustees must compound the past costs forward to the date the demand is presented. To perform the compounding, trustees may use the actual U.S. Treasury borrowing rate on marketable securities of comparable maturity to the period of analysis. For costs incurred by state or tribal trustees, trustees may compound using parallel state or tribal borrowing rates.

(c) Trustees are referred to Appendices B and C of OMB Circular A–94 for information about nominal and real U.S. Treasury rates of various maturities and for further guidance in calculation procedures. Copies of Appendix C, which is regularly updated, and of the Circular are available from the OMB Publications Office (202–395–7332).

§ 990.64 Uncompensated claims.

(a) If the responsible parties do not agree to the demand within 90 calendar days after trustees present the demand, the trustees may either file a judicial action for damages or file a claim for uncompensated damages with the Oil Spill Liability Trust Fund.

(b) Judicial actions and claims must be filed within three years after the Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan is made publicly available, as provided in 33 U.S.C. 2717(f)(1)(B) and 2712(h)(2).

§ 990.65 Opening an account for recovered damages.

(a) *General.* Sums recovered by trustees in satisfaction of a natural resource damage claim must be placed in a revolving trust account. Sums recovered for past assessment costs and emergency restoration costs may be used to reimburse the trustees. All other sums must be used to implement the Final Restoration Plan, implement an existing Regional Restoration Plan, or develop and implement a new Regional Restoration Plan.

(b) *Joint trustee recoveries.* (1) *General.* Trustees may establish a joint account for damages recovered pursuant to joint assessment activities, such as an account under the registry of the applicable federal court.

(2) *Management.* Trustees may develop enforceable agreements to govern management of joint accounts, including agreed-upon procedures and criteria and personnel for authorizing expenditures out of such joint accounts.

(c) *Interest-bearing accounts.* Trustees may place recoveries in interest-bearing revolving trustee accounts.

(d) *Escrow accounts.* Trustees may establish escrow accounts or other investment accounts unless specifically prohibited by law.

(e) *Records.* Trustees must maintain appropriate accounting and reporting methods to document expenditures from accounts established under this section.

(f) *Oil Spill Liability Trust Fund.* Any sums remaining in an account established under this section that are not used either to reimburse trustees for past assessment and emergency restoration costs or to implement restoration must be deposited in the Oil Spill Liability Trust Fund.

§ 990.66 Additional considerations.

Upon settlement of a claim, trustees should consider the following actions to facilitate implementation of restoration:

(a) Establishment of a trustee committee or memorandum of understanding to coordinate among affected trustees;

(b) Development of more detailed workplans to implement restoration;

(c) Monitoring and oversight of restoration; and

(d) Evaluation of restoration success and the need for corrective action.

[FR Doc. 95–19128 Filed 8–2–95; 8:45 am]

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