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Tuesday
August 8, 1995

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Electronic Bulletin Board
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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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV95–948–2FIR]

Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that will generate funds to pay those expenses. Authorization of this budget enables the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: September 1, 1995, through August 31, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, Oregon 97204, telephone 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Colorado potatoes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1995–96 fiscal period, which begins September 1, 1995, and ends August 31, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 285 producers of Colorado Area II potatoes under the marketing order and approximately 118 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Colorado Area II potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II), the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Colorado Area II potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

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

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

The Committee met on May 18, 1995, and unanimously recommended a 1995–96 budget of $62,328, which is $3,596 less than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Audit fee, $975 ($900), other office, $625 ($500), and utilities, $3,000 ($2,000). Items which have decreased compared to those budgeted for 1994–95 (in parentheses) are: Assistant's salary, $8,256 ($10,320), part-time salary,

$3,640 ($3,822), major purchase, $2,125 ($2,250), and ($2,425) for property tax, for which no funding was recommended this year. All other items are budgeted at last year's amounts.

The Committee also unanimously recommended an assessment rate of $0.0030 per hundredweight, $0.0006 less than last season. This rate, when applied to anticipated potato shipments of 16,500,000 hundredweight, will yield $49,500 in assessment income. This, along with $12,828 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds of $101,064 in the Committee's authorized reserve at the beginning of the 1994–95 fiscal period were within the maximum permitted by the order of two fiscal periods' expenses.

An interim final rule was published in the **Federal Register** on June 21, 1995 (60 FR 32260). That interim final rule added § 948.214 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through July 21, 1995. No comments were received.

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

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

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal period begins on September 1, 1995. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Note: This section will not appear in the Code of Federal Regulations.

PART 948—IRISH POTATOES GROWN IN COLORADO

Accordingly, the interim final rule amending 7 CFR part 948, which was published at 60 FR 32260 on June 21, 1995, is adopted as a final rule without change.

Dated: August 1, 1995.

Martha B. Ransom,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 95–19460 Filed 8–7–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1126

[DA–95–16]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document continues the suspension of segments of the pool plant and producer milk definitions of the Texas order for a two-year period. Associated Milk Producers, Inc., a cooperative association that represents producers who supply milk to the market, requested continuation of the suspension. Continuation of this suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order without incurring costly and inefficient movements of milk.

EFFECTIVE DATE: August 1, 1995, through July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued May 26, 1995; published June 2, 1995 (60 FR 28745).

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

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

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Act, as amended, and the rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Notice of proposed rulemaking was published in the **Federal Register** (60 FR 28745) on June 2, 1995, concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of August 1, 1995, through July 31, 1997, the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In section 1126.7(d) introductory text, the words ''during the months of

February through July'' and the words ''under paragraph (b) or (c) of this section''.

2. In section 1126.7(e) introductory text, the words ''and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested''.

3. In section 1126.13(e)(1), the words ''and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant''.

4. In section 1126.13, paragraph (e)(2).

5. In section 1126.13(e)(3), the sentence ''The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;''.

Statement of Consideration

This rule continues the suspension of segments of the pool plant and producer milk provisions under the Texas order. This suspension will be in effect from August 1, 1995, through July 31, 1997. The current suspension will expire July 31, 1995. This rule continues the suspension of: (1) The 60 percent delivery standard for pool plants operated by cooperatives; (2) the diversion limitation applicable to cooperative associations; (3) the limits on the amount of milk that a pool plant operator may divert to nonpool plants; (4) the shipping standards that must be met by supply plants to be pooled under the order; and (5) the individual producer performance standards that must be met in order for a producer's milk to be eligible for diversion to a nonpool plant.

The order permits a cooperative association plant located in the marketing area to be a pool plant if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool distributing plants during the month. In addition, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received during the month at handlers' pool plants. The order also provides that the operator of a pool plant may divert to nonpool plants not more than one-third of the milk that is physically received during the month at the handler's pool plant. This suspension continues to inactivate the 60 percent delivery standard for plants operated by a cooperative association and removes the diversion limitations applicable to a cooperative association and to the operator of a pool plant.

The order also provides for regulating a supply plant each month in which it ships a sufficient percentage of its receipts to distributing plants. The order provides for pooling a supply plant that ships 15 percent of its milk receipts during August and December and 50 percent of its receipts during September through November and January. A supply plant that is pooled during each of the immediately preceding months of September through January is pooled under the order during the following months of February through July without making qualifying shipments to distributing plants. This suspension continues the current suspension of these performance standards for supply plants that were regulated under the Texas order during each of the immediately preceding months of September through January.

The order also specifies that the milk of each producer must be physically received at a pool plant in order to be eligible for diversion to a nonpool plant. During the months of September through January, 15 percent of a producer's milk must be received at a pool plant for diversion eligibility. This rule continues to suspend these requirements.

Renewal of the suspension was requested by Associated Milk Producers, Inc., a cooperative association that represents a substantial number of dairy farmers who supply the Texas market. The cooperative stated that marketing conditions have not changed since the provisions were suspended in 1993 or since March 1995 when the suspension was expanded to include all of paragraph (e)(2), and therefore should be continued until restructuring of the order can be achieved through the formal rulemaking process.

Continuation of the current suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from such pooling. In addition, the suspension will continue to provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the market.

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

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

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

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

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

List of Subjects in 7 CFR Part 1126

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7, part 1126, are amended as follows:

PART 1126—MILK IN THE TEXAS MARKETING AREA

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

Authority: 7 U.S.C. 601–674.

§ 1126.7 [Suspended in part]

2. In § 1126.7(d) introductory text, the words ''during the months of February through July'' and the words ''under paragraph (b) or (c) of this section'' are suspended.

3. In § 1126.7(e) introductory text, the words ''and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested'' are suspended.

§ 1126.13 [Suspended in part]

4. In § 1126.13(e)(1), the words ''and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant'' are suspended.

5. In § 1126.13, paragraph (e)(2) is suspended.

6. In § 1126.13(e)(3), the sentence ''The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;'' is suspended.

Dated: August 1, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–19461 Filed 8–7–95; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL TRADE COMMISSION

16 CFR Part 234

Guides for the Mail Order Insurance Industry

AGENCY: Federal Trade Commission.

ACTION: Elimination of guides.

SUMMARY: The Guides for the Mail Order Insurance Industry were adopted in 1964 to prevent deception of purchasers of insurance and maintenance of fair competition by out-of-state mail order sellers of insurance. Since issuance of the Guides, state insurance laws have changed significantly. The states, through their licensing powers, now regulate out-of-state mail order sellers of insurance. Those regulations cover most, if not all, of the substantive areas addressed by the Guides. These facts appear to make the Guides unnecessary. Because of these changed circumstances, the Commission has determined that it is in the public interest to eliminate the Guides for the Mail Order Insurance Industry. The Commission further has determined that, because the reasons to revoke the Guides are ample and not in controversy, it is unnecessary to seek comment. This action is not to be understood as a statement that the principles announced in the Guides do not reflect the requirements of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

EFFECTIVE DATE: August 8, 1995.

ADDRESSES: Requests for copies of this notice should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Daynard or Walter Gross, Division of Service Industry Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–3291 or (202) 326–3319.

SUPPLEMENTARY INFORMATION: The Guides for the Mail Order Insurance Industry were issued on May 15, 1964.[1] Designed to prevent deception and the maintenance of fair competition in the out-of-state mail order insurance industry, the Guides prohibit several forms of potential misrepresentation in advertising concerning the benefits, conditions, terms, identity, and claims paid for any insurance policy; the identity, standing in the industry, or financial condition of the insurer, and the disparagement of competitors or competitors' policies, services, or business methods.

As a part of its periodic review of the regulatory and economic impact of the Commission's rules and guides, the Commission reviewed the current status of state laws regulating mail order insurance sellers to determine whether there was a need to retain or remove the Guides. That review indicates that state insurance laws have changed substantially since the Guides were adopted in 1964.

All states have enacted some version of the model Unfair Trade Practices Act for insurance (National Ass'n of Insurance Commissioners). Those laws cover most, if not all, of the substantive areas covered by the Guides. In addition, at least 49 states have adopted the Nonadmitted Insurance Act (1983) (National Ass'n of Insurance Commissioners), or similar legislation, which: (1) Provides that no insurer shall transact business in the state, whether by mail or otherwise, without first obtaining a license; and (2) authorizes the state regulatory authority to require compliance with all state insurance laws as a condition of licensing. If licensing requirements, including compliance with the state's Unfair Trade Practices Act, are not met, the state can suspend or revoke the license.

These changes in state insurance laws appear to make the Guides' provisions unnecessary. Accordingly, the Commission has determined that it is in the public interest to eliminate the Guides.

List of Subjects in 16 CFR Part 234

Advertising, Insurance, Postal Service, Trade practices.

[1] 29 FR 6381 (1964).

PART 234—[REMOVED]

The Commission, under authority of sections 5 (a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of title 16 of the Code of Federal Regulations by removing Part 234.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in 16 CFR Part 14, Matter No. P954215; Repeal of Mail Order Insurance Guides, Matter No. P954903; Repeal of Guides Re: Debt Collection, Matter No. P954809; and Free Film Guide Review, Matter No. P959101

In a flurry of deregulation, the Commission today repeals or substantially revises several Commission guides and other interpretive rules.[1] The Commission does so without seeking public comment. I have long supported the general goal of repealing or revising unnecessary, outdated, or unduly burdensome legislative and interpretive rules, and I agree that the repeal or revision of these particular guides and interpretive rules appears reasonable. Nevertheless, I cannot agree with the Commission's decision not to seek public comment before making these changes.

Although it is not required to do so under the Administrative Procedure Act, 5 U.S.C. 553(b)(A), the Commission traditionally has sought public comment before issuing, revising, or repealing its guides and other interpretive rules. More specifically, the Commission adopted a policy in 1992 of reviewing each of its guides at least once every ten years and issuing a request for public comment as part of this review. *See* FTC Operating Manual ch. 8.3.8. The Commission decided to seek public comment on issues such as:

(1) The economic impact of and continuing need for the guide; (2) changes that should be made in the guide to minimize any adverse economic effect; (3) any possible conflict between the guide and any federal, state, or local laws; and (4) the effect on the guide of technological, economic, or other industry changes, if any, since the guide was promulgated.

Id. The Commission has sought public comment and has posed these questions concerning a number of guides since adopting its procedures for regulatory review in 1992.[2]

Notwithstanding its long-standing, general practice of seeking public comment and its

[1] Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements, 16 C.F.R. Part 14; Guides for the Mail Order Insurance Industry, 16 C.F.R. Part 234; Guides Against Debt Collection Deception, 16 C.F.R. Part 237; and Guide Against Deceptive Use of the Word ''Free'' In Connection With the Sale of Photographic Film and Film Processing Services, 16 C.F.R. Part 242.

[2] *See, e.g.,* Request for Comments Concerning Guides for the Hosiery Industry, 59 FR 18004 (Apr. 15, 1994); Request for Comment Concerning Guides for the Feather and Down Products Industry, 59 FR 18006 (Apr. 15, 1994).

specific policy of seeking public comment as part of its regulatory review process, the Commission has chosen not to seek public comment before repealing or revising these guides and interpretive rules. Why not? Has the Commission changed its view about the potential value of public comment? Perhaps the Commission knows all the answers, but then again, perhaps not. Although reasonable arguments can be made for repeal or revision of these guides and interpretive rules, public comment still might prove to be beneficial.

In addition, the relatively short period of time that would be required for public comment should not be problematic. The Commission has not addressed any of these guides or interpretive rules in the last ten years. Indeed, it has not addressed some of them for thirty years or more. For example, the Commission apparently has not addressed the interpretive rule concerning the use of the word ''tile'' in designation of non-ceramic products since it was issued in 1950.[3] The continued existence of these guides and interpretive rules during a brief public comment period surely would cause no harm because they are not binding and because, arguably, they are obsolete. I seriously question the need to act so precipitously as to preclude the opportunity for public comment.[4]

In 1992, the Commission announced a careful, measured approach for reviewing its guides and interpretive rules, and public comment has been an important part of that process. Incorporating public comment into the review is appropriate and sensible. Although I have voted in favor of repealing or revising these guides and interpretive rules, I strongly would have preferred that the Commission seek public comment before doing so.

[FR Doc. 95–19541 Filed 8–7–95; 8:45 am]

BILLING CODE 6750–01–M

[3] 16 C.F.R. 14.2.

[4] Unfortunately, seeking public comment would not permit the Commission to count the repeal and revision of these guides and interpretive rules in its tally of completed actions in the Regulatory Reinvention Initiative Report that will be sent to the President on August 1, 1995, but perhaps that harm could be mitigated by reporting to the President that the Commission is seeking public comment concerning repeal or revision.

16 CFR Part 237

Guides Against Debt Collection Deception

AGENCY: Federal Trade Commission.

ACTION: Elimination of guides.

SUMMARY: Because the Commission's Guides Against Debt Collection Deception have been superseded by, and submitted in, the Fair Debt Collection Practices Act (FDCPA), the Commission has determined that it is in the public interest to eliminate them.

The Guides were adopted in 1967 to codify the results of many debt collection cases brought by the Commission against debt collectors and creditors under Section 5(a)(1) of the Federal Trade Commission Act (FTCA). Although the Guides covered creditors and the FDCPA generally does not, proceedings still may be brought against creditors under Section 5 of the FTCA for engaging in unfair or deceptive debt collection practices, many of which are addressed in the FDCPA. Thus, the Commission would expect creditors and other parties whose collection activities are not covered by the FDCPA to look to the FDCPA for guidance in this regard.

EFFECTIVE DATE: August 8, 1995.

ADDRESSES: Requests for copies of this notice should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: John F. LeFevre, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–3209.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued its Guides Against Debt Collection Deception in 1967.[1] The Guides reflect principles enunciated in a number of prior debt collection cases brought by the Commission against debt collectors and creditors under Section 5 of the Federal Trade Commission Act.[2] Among other things, the Commission found that various misrepresentations made in connection with debt collection were Section 5 violations, including false claims that (1) Accounts had been referred to independent debt collection agencies and/or consumer reporting agencies; (2) debtors' credit ratings would be adversely affected if their debts remained unpaid; (3) legal action would be taken; (4) collection agencies had legal divisions; and (5) dunning letters were genuine legal documents, telegrams, or other ''official'' forms. The Guides served to inform the collection industry and the general public of the Commission's position on a number of ''deception'' issues in debt collection that were regarded as particularly pertinent at the time. However, they were never used as a basis for instituting formal action against a debt collector for violation of Section 5. On September 20, 1977, Congress enacted the FDCPA, which became effective on March 20, 1978. Since that time, all Commission debt collection cases against debt collectors have been based upon violations of the FDCPA.[3] Under the FDCPA, the Commission can obtain, not only an injunction and affirmative relief, but also a civil penalty, which is not obtainable under Section 5. The Guides have not been useful to the Commission's debt collection enforcement program since the enactment of the FDCPA.

II. Comparison of the Guides to the FDCPA

With few exceptions, the provisions of the FDCPA duplicate or expand upon the Guides, as demonstrated by the following comparisons.

A. Definitions [Section 237.0]

1. Industry Member [Section 237.0(a)]

The standards of conduct in the Guides are directed at ''industry members,'' which include all entities that collect debts or help others in collecting debts, including creditors and skip-tracers.[4]

The comparable provision in the FDCPA is the definition of the ''debt collector'' [Section 803(6)], which focuses mainly on the third-party debt collection industry. Generally, creditors are not included in the definition unless they (1) use a false name in their collection activities to convey the impression that third parties are involved in collecting debts or (2) sell deceptive forms. Congress also determined that a number of other entities should not be included within the scope of the definition, including government employees, non-profit organizations, mortgage servicers and other designated groups.

Although the coverage of the Guides is greater than coverage under the FDCPA, particularly with respect to creditors, it has been the Commission's experience in enforcing the FDCPA that creditors look not to the Guides but to

[1] 32 FR 15539 (Nov. 8, 1967), as amended at 33 FR 5661 (Apr. 12, 1968).

[2] Testimony before the Subcommittee on Consumer Affairs of the Senate Committee on Banking, Housing and Urban Affairs, on S. 918, a proposed Fair Debt Collection Practices Act, May 13, 1977. *See also Parents Magazine Enterprises, Inc.*, 68 F.T.C. 980 (1965); *State Credit Control Board*, 70 F.T.C. 1318 (1966).

[3] The Commission has also initiated a few debt collection cases against creditors as Section 5 matters, since the FDCPA generally does not cover creditors. *Aldens, Inc.*, 98 F.T.C. 790 (1981); *J.C. Penney Co., Inc.*, 109 F.T.C. 54 (1987); *American Family Publishers*, Docket No. 9240 (1991). If a creditor uses a deceptive third-party name or furnishes deceptive forms in collecting debts, however, it is covered by the FDCPA.

[4] ''Industry Member shall mean any person, firm, partnership, corporation, organization, association and any other legal entity engaged in the practice of collecting or attempting to collect any and all kinds of money debts for itself or others, or any person, firm, partnership, corporation, organization, association, or any other legal entity.''

the FDCPA for appropriate criteria to use in collecting their own debts. In addition, the Commission's jurisdiction under Section 5 has been sufficient to regulate the collection activities of creditors when necessary. Also, to the extent that the Commission has proceeded against creditors for violations of Section 5 in their debt collection activities, it has used the FDCPA as a model for appropriate standards of conduct—not the Guides. Thus, the Guides have not been useful to the Commission's debt collection enforcement program against either creditors or debt collectors.

2. Debt [Section 237.0(b)]

The Guides' definition of ''debt'' is similar to that in the FDCPA [Section 803(5)] except that it includes ''commercial'' as well as ''consumer'' debts.[5] Congress determined in enacting the FDCPA that there was no need to cover ''commercial'' debts. The Commission's experience in enforcing the FDCPA supports this decision. The Commission has received few complaints from commercial enterprises about debt collection abuse. If the Commission finds that there is a problem with the collection of ''commercial'' debts, the problem can be addressed adequately under Section 5.

3. Debtor [Section 237.0(c)]

The Guides define a ''debtor'' as one who owes or allegedly owes a money debt. The FDCPA's definition of ''consumer'' as ''any natural person obligated or allegedly obligated to pay any debt'' is analogous. From the Commissions standpoint, they are substantively identical. The absence of the Guides will have no effect upon who is considered a ''debtor.''

4. Creditor [Section 237.0(d)]

The Guides' definition of ''creditor'' includes all parties to whom money is owned or allegedly owed. Since creditors can also be ''industry members'' under the Guides, the definition does not affect the scope of the Guides' coverage. The FDCPA's definition of ''creditor'' is similar except that it excludes those who receive or are assigned debts in default for purposes of collection.

5. Credit Bureau [Section 237.0(e)]

There is no provision in the FDCPA that is analogous to the Guides' definition of ''credit bureau.''[6] Sections 806(3) and 807(16) of the FDCPA, however, make two references to the definition of a ''consumer reporting agency'' (credit bureau) contained in Section 603(f) of the Fair Credit Reporting Act (FCRA).[7] The FCRA definition of ''consumer reporting agency'' has rendered the Guides' definition of ''credit bureau'' obsolete; the FCRA definition is keyed to the concept of a ''consumer report'' in the FCRA and was obviously drafted in a credit reporting context. The FCRA definition governs insofar as the Commission's law enforcement activities are concerned.

6. Collection Agency [Section 237.0(f)]

The Guides define a ''collection agency'' as any entity that collects money debts for others. This is essentially the focus of the FDCPA's definition of ''debt collector'' in Section 803(6) as one ''who regularly collects or attempts to collect, directly or indirectly, debts owed * * * another.'' Thus, the Guides' definition has been subsumed by the FDCPA.

B. Deception (general), Guide 1 [Section 237.1]

Section 807(10) of the FDCPA is virtually identical to Guide 1.[8] Thus, elimination of Guide 1 will have no effect on the Commission's debt collection enforcement policy.

C. Disclosure of Purpose, Guide 2 [Section 237.2]

Section 807(11) of the FDCPA[9] paraphrases Guide 2(a) of the Guides,[10] requiring that all communications made to collect a debt contain a disclosure that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. Guide 2(b) prohibits placing communications in the hands of others that do not contain the required disclosure. Similarly, knowingly placing communications in the hands of others that violate the FDCPA is a violation of Section 807(10) as well as the preamble to Section 807 of the FDCPA with respect to ''debt collectors'' covered by the Act. Thus, Guide 2(b) is also subsumed by Section 807 of the FDCPA.

D. Government Affiliation, Guide 3 [Section 237.3]

Guide 3 prohibits false representations of government affiliation.[11] Section 807(1) of the FDCPA is virtually identical.[12] Thus, elimination of Guide 3 will have no effect on the Commission's debt collection enforcement policy.

E. Organizational Titles, Guide 4 [Section 237.4]

Guide 4 prohibits conveying a false impression that an ''industry member'' is a ''credit bureau.''[13] The analogous provision in the FDCPA is Section 807(16), which prohibits the same practice.[14] As a result, elimination of Guide 4 will have no effect on the Commission's debt collection enforcement policy.

F. Trade Status, Guide 5 [Section 237.5]

Guide 5 prohibits an ''industry member'' from creating the false impression that it is a collection agency.[15] Since the FDCPA principally regulates the activities of genuine collection agencies, it has no analogous provision. To the extent that it regulates the activities of ''creditors,'' Section

[5] ''Debt shall mean money which is due or alleged to be due from one to another.''

[6] ''Credit Bureau is any * * * legal entity engaged in gathering, recording, and disseminating favorable as well as unfavorable information relative to the credit worthiness, financial responsibility, paying habits and character of * * * any other legal entity being considered for credit extension, so that (the) prospective creditor may be able to make a sound decision in the extension of credit.''

[7] Consumer reporting agency is ''any person which, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages * * * in the practice of assembling or evaluating consumer credit information on consumers for the purpose of furnishing consumer reports to third parties.* * *''

[8] Guide 1 states that an industry member ''shall not use any deceptive representation or deceptive means to collect or attempt to collect debts or to obtain information concerning debtors.'' Section 807(10) states that a debt collector shall not ''use any false representation or deceptive means to collect or attempt to collect any debt or to obtain information about a consumer.''

[9] Section 807(11) requires that a debt collector ''disclose clearly in all communications made to collect a debt or to obtain information about a consumer that the debt collector is attempting to collect a debt and that any information will be used for that purpose.''

[10] ''An industry member shall not use or cause to be used in connection with the collection of or the attempt to collect a debt or * * * obtaining or attempting to obtain information concerning a debtor any * * * material printed or written which does not * * * disclose * * * the purpose of collecting or attempting to collect a debt or to obtain or attempt to obtain information concerning a debtor.''

[11] ''An industry member shall not use any trade name, address, insignia, picture, emblem or any other means which creates a false impression that such industry member is connected with or is an agency of government.''

[12] A debt collector may not falsely represent or imply that it is ''vouched for, bonded by or affiliated with the United States or any State, including the use of any badge, uniform or facsimile thereof.''

[13] ''An industry member which is not in fact a ''Credit Bureau * * * shall not use the term * * * in its corporate or trade name; nor shall it use any other term of similar import or meaning * * * as to create the false impression that such industry member is a credit bureau.''

[14] A debt collector may not falsely represent or imply that it ''operates or is employed by a consumer reporting agency. * * * ''

[15] ''In collecting debts * * * an industry member shall not, through the use of any designation or by other means, create the impression that he is a collection agency, unless he is such as defined in this part.''

803(6) prohibits creditors from using names other than their own that would create the false impression that a third party (presumably a collection agency) is involved. This addresses the problem highlighted by Guide 5. Section 812 of the FDCPA also prohibits furnishing forms creating a false impression of third-party collection agency involvement. In the main, the practices addressed by Guide 5 are addressed by the FDCPA.

G. Services, Guide 6 [Section 237.6]

Guide 6 prohibits an ''industry member'' from misrepresenting the services it renders in soliciting accounts.[16] Similarly, Section 807(2) of the FDCPA prohibits the false representation of ''any services rendered or compensation received by any debt collector for the collection of a debt.'' Thus, elimination of Guide 6 will have no effect on the Commission's debt collection enforcement policies.

III. Conclusion

The Commission's Guides Against Debt Collection Deception have been superseded by the FDCPA and are no longer needed. Few in the debt collection industry are even aware that the Guides exist. The Commission has never taken any enforcement action alleging violation of Section 5 because the conduct at issue violated the Guides. Since they are superfluous, the Commission has determined that it is in the public interest to eliminate the Guides.

List of Subjects in 16 CFR Part 237

Credit, Trade practices.

PART 237—[REMOVED]

The Commission, under authority of Sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of Title 16 of the Code of Federal Regulations by removing Part 237.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in 16 CFR Part 14, Matter No. P954215; Repeal of Mail Order Insurance Guides, Matter No. P954903; Repeal of Guides Re: Debt Collection, Matter No. P954809; and Free Film Guide Review, Matter No. P959101

In a flurry of deregulation, the Commission today repeals or substantially revises several Commission guides and other interpretive rules.[1] The Commission does so without seeking public comment. I have long supported the general goal of repealing or revising unnecessary, outdated, or unduly burdensome legislative and interpretive rules, and I agree that the repeal or revision of these particular guides and interpretive rules appears reasonable. Nevertheless, I cannot agree with the Commission's decision not to seek public comment before making these changes.

Although it is not required to do so under the Administrative Procedure Act, 5 U.S.C. 553(b)(A), the Commission traditionally has sought public comment before issuing, revising, or repealing its guides and other interpretive rules. More specifically, the Commission adopted a policy in 1992 of reviewing each of its guides at least once every ten years and issuing a request for public comment as part of this review. *See* FTC Operating Manual ch. 8.3.8. The Commission decided to seek public comment on issues such as:

(1) The economic impact of and continuing need for the guide; (2) changes that should be made in the guide to minimize any adverse economic effect; (3) any possible conflict between the guide and any federal, state, or local laws; and (4) the effect on the guide of technological, economic, or other industry changes, if any, since the guide was promulgated.

Id. The Commission has sought public comment and has posed these questions concerning a number of guides since adopting its procedures for regulatory review in 1992.[2]

Notwithstanding its long-standing, general practice of seeking public comment and its specific policy of seeking public comment as part of its regulatory review process, the Commission has chosen not to seek public comment before repealing or revising these guides and interpretive rules. Why not? Has the Commission changed its view about the potential value of public comment? Perhaps the Commission knows all the answers, but then again, perhaps not. Although reasonable arguments can be made for repeal or revision of these guides and interpretive rules, public comment still might prove to be beneficial.

In addition, the relatively short period of time that would be required for public comment should not be problematic. The Commission has not addressed any of these guides or interpretive rules in the last ten years. Indeed, it has not addressed some of them for thirty years or more. For example, the Commission apparently has not addressed the interpretive rule concerning the use of the word ''title'' in designation of non-ceramic products since it was issued in 1950.[3] The continued existence of these guides and interpretive rules during a brief public comment period surely would cause no harm because they are not binding and because, arguably, they are obsolete. I seriously question the need to act so precipitously as to preclude the opportunity for public comment.[4]

In 1992, the Commission announced a careful, measured approach for reviewing its guides and interpretive rules, and public comment has been an important part of that process. Incorporating public comment into the review is appropriate and sensible. Although I have voted in favor of repealing or revising these guides and interpretive rules, I strongly would have preferred that the Commission seek public comment before doing so.

[FR Doc. 95–19542 Filed 8–7–95; 8:45 am]

BILLING CODE 6750–01–M

[16] ''In the solicitation of accounts for collection or for ascertainment of credit status, an industry member shall not directly, or by implication, misrepresent the services he renders.''

[1] Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements, 16 C.F.R. Part 14; Guides for the Mail Order Insurance Industry, 16 C.F.R. Part 234; Guides Against Debt Collection Deception, 16 C.F.R. Part 237; and Guide Against Deceptive Use of the Word ''Free'' In Connection With the Sale of Photographic Film and Film Processing Services, 16 C.F.R. Part 242.

[2] *See, e.g.,* Request for Comments Concerning Guides for the Hosiery Industry, 59 FR 18004 (Apr. 15, 1994); Request for Comment Concerning Guides for the Feather and Down Products Industry, 59 Fed. Reg. 18006 (Apr. 15, 1994).

[3] 16 C.F.R. 14.2.

[4] Unfortunately, seeking public comment would not permit the Commission to count the repeal and revision of these guides and interpretive rules in its tally of completed actions in the Regulatory Reinvention Initiative Report that will be sent to the President on August 1, 1995, but perhaps that harm could be mitigated by reporting to the President that the Commission is seeking public comment concerning repeal or revision.

16 CFR Part 242

Guide Against Deceptive Use of the Word ''Free'' in Connection With the Sale of Photographic Film and Film Processing Service

AGENCY: Federal Trade Commission.

ACTION: Elimination of guide.

SUMMARY: The Guide Against Deceptive Use of the Word ''Free'' in Connection With the Sale of Photographic Film and Film Processing Service (''Free Film Guide'') sets forth industry guidance concerning offers of ''free'' film in connection with the sale of photographic processing services. The Commission's Guide Concerning Use of the Word ''Free'' and Similar Representations, which was adopted after the Free Film Guide and which applies to all industries, sets forth essentially the same guidance concerning offers of ''free'' merchandise or service in connection with the sale of some other merchandise or service. The Free Film Guide has thus been supplanted by the Guide Concerning Use of the Word ''Free'' and Similar Representations and is no longer needed. Accordingly, the Commission has determined that it is in the public interest to eliminate the Guide Against Deceptive Use of the Word ''Free'' in Connection With the Sale of Photographic Film and Film Processing Service.

Although the Commission is eliminating the Free Film Guide, proceedings still may be brought against businesses under section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), for engaging in unfair or deceptive acts or practices in or affecting commerce in the advertising and sale of these products and services.

EFFECTIVE DATE: August 8, 1995.

ADDRESSES: Requests for copies of this notice should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert J. Schroeder, Seattle Regional Office, Federal Trade Commission, 915 Second Avenue, Suite 2806, Seattle, Washington, 98174, (206) 220–6350.

SUPPLEMENTARY INFORMATION:

I. Introduction

As a part of its ongoing project to review all rules and guides, the Commission has evaluated the continued need for the Guide Against Deceptive Use of the Word ''Free'' in Connection With the Sale of Photographic Film and Film Processing Service. The same deceptive practices described in the Free Film Guide and the same industry guidance on how to avoid them in this specific industry also appear in the more general Guide Concerning Use of the Word ''Free'' and Similar Representations, 16 CFR part 251. Accordingly, the Commission has determined to repeal the Free Film Guide.

Because the industry guidance in the Free Film Guide is duplicated in the Guide Concerning Use of the Word ''Free'' and Similar Representations, the Commission has further determined that public comment is not necessary at this time.[1] Public comment on the issues raised by offers of ''free'' merchandise or services may be sought at a later date during regulatory review of the Guide Concerning Use of the Word ''Free'' and Similar Representations.

II. Background

On June 5, 1968, the Commission adopted the Guide Against Deceptive Use of the Word ''Free'' in Connection With the Sale of Photographic Film and Film Processing Service.[2] The Free Film Guide describes various deceptive practices that may be associated with offers of ''free'' film in connection with the sale of photographic processing services, and provides industry guidance on how to avoid these types of deception. On November 10, 1971, the Commission adopted the Guide Concerning Use of the Word ''Free'' and Similar Representations.[3] This guide describes various deceptive practices that may be associated with offers of ''free'' merchandise or services of any kind, and provides industry guidance on how to avoid these types of deception. The **Federal Register** Notice announcing it specifically states that ''provisions of all existing guides and trade practice rules that include coverage of use of the term ''Free'' or similar representations will be construed in the light hereof.''[4] The two guides describe essentially the same deceptive practices and give essentially the same guidance.

III. Review of the Guide

The content of the Guide Against Deceptive Use of the Word ''Free'' in Connection With the Sale of Photographic Film and Film Processing Service is repeated, in slightly different language but to the same effect, in the Guide Concerning Use of the Word ''Free'' and Similar Representations. Thus the Free Film Guide has been supplanted and is no longer needed.

The Free Film Guide generally proscribes representing that film is provided free with the purchase of processing service when that is not the case. The guide states:

> Film processors should avoid representing film as ''free'' [in connection with the purchase of processing service] when their quoted price for processing is not their regular price for such service. * * * A regular price is the price at which an article or service is openly and actively sold by the advertiser to the public on a regular basis for a reasonably substantial period of time in the recent and regular course of business.[5]

The Guide Concerning Use of the Word ''Free'' and Similar Representations contains the same general proscription in slightly different language:

> [W]hen the purchaser is told that an article is ''Free'' to him if another article is purchased, the word ''Free'' indicates that he is paying nothing for that article and no more than the regular price for the other. * * * The term ''regular'' when used with the term ''price'', means the price, in the same quantity, quality and with the same service, at which the seller or advertiser of the product or service has openly and actively sold the product or service * * * in the most recent and regular course of business, for a reasonably substantial period of time, i.e., a 30-day period.[6]

Both guides expound that consumers understand ''free'' offers to mean that the price of the processing, or other article that must be purchased, has not been increased to cover the cost of the ''free'' film or other article.[7] Both guides counsel that introductory offers should not include a representation of ''free'' film or other article unless the offeror expects, in good faith, to discontinue the offer after a limited time and commence selling the processing service, or other article that must be purchased, separately at the same price at which it was promoted with the ''free'' offer.[8] Both guides further provide that ''free'' offers should not be continuous or frequent.[9]

Two provisions of the Free Film Guide, while not having specific counterparts in the Guide Concerning Use of the Word ''Free'' and Similar Representations, are implicitly contained in the more general language of that guide. The first is the statement that a processor has no basis for a ''free'' film representation where it has not established a regular price for processing service by itself (except in the case of introductory offers).[10] This is implicit in the discussion of the regular price requirement in both guides. The second is the caveat that the Free Film Guide is not intended to preclude the use of nondeceptive ''combination'' offers of film and processing where there is no representation that one of the items is ''free''.[11] There is nothing in either guide to suggest that such offers would be precluded because the guides, by their terms, apply only to use of the word ''free'' and similar terms.

The Free Film Guide has been supplanted by the Guide Concerning Use of the Word ''Free'' and Similar Representations. Accordingly, the Commission has determined that it is in the public interest to eliminate the Free Film Guide.

List of Subjects in 16 CFR Part 242

Advertising, Photographic industry, Trade practices.

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[1] The Administrative Procedure Act requires that interpretive rules, such as guides, be published in their final form in the Federal Register. 5 U.S.C. 552(a)(1)(D). It does not require the opportunity for public participation in the issuance or repeal of interpretive rules. 5 U.S.C. 553(b). As a matter of discretion, however, the Commission generally seeks public comment on proposed actions involving industry guides. In this case, the Commission has determined such comment is unnecessary.

[2] 33 FR 8336.

[3] 36 FR 21517.

[4] Id.

[5] 16 CFR 242.1(b).

[6] 16 CFR 251.1(b)(1)–(b)(2).

[7] 16 CFR 242.1(c); 16 CFR 251.1(b)(1).

[8] 16 CFR 242.1(f); 16 CFR 251.1(f).

[9] 16 CFR 242.1(e); 16 CFR 251.1(h).

[10] 16 CFR 242.1(d).

[11] 16 CFR 242.1(g).

PART 242—[REMOVED]

The Commission, under authority of sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of title 16 of the Code of Federal Regulations by removing Part 242.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in 16 CFR Part 14, Matter No. P954215; Repeal of Mail Order Insurance Guides, Matter No. P954903; Repeal of Guides Re: Debt Collection, Matter No. P954809; and Free Film Guide Review, Matter No. P959101

In a flurry of deregulation, the Commission today repeals or substantially revises several Commission guides and other interpretive rules.[1] The Commission does so without seeking public comment. I have long supported the general goal of repealing or revising unnecessary, outdated, or unduly burdensome legislative and interpretive rules, and I agree that the repeal or revision of these particular guides and interpretive rules appears reasonable. Nevertheless, I cannot agree with the Commission's decision not to seek public comment before making these changes.

Although it is not required to do so under the Administrative Procedure Act, 5 U.S.C. § 553(b)(A), the Commission traditionally has sought public comment before issuing, revising, or repealing its guides and other interpretive rules. More specifically, the Commission adopted a policy in 1992 of reviewing each of its guides at least once every ten years and issuing a request for public comment as part of this review. *See* FTC Operating Manual ch. 8.3.8. The Commission decided to seek public comment on issues such as:

(1) The economic impact of and continuing need for the guide; (2) changes that should be made in the guide to minimize any adverse economic effect; (3) any possible conflict between the guide and any federal, state, or local laws; and (4) the effect on the guide of technological, economic, or other industry changes, if any, since the guide was promulgated.

Id. The Commission has sought public comment and has posed these questions concerning a number of guides since adopting its procedures for regulatory review in 1992.[2]

Notwithstanding its long-standing, general practice of seeking public comment and its specific policy of seeking public comment as part of its regulatory review process, the Commission has chosen not to seek public comment before repealing or revising these guides and interpretive rules. Why not? Has the Commission changed its view about the potential value of public comment? Perhaps the Commission knows all the answers, but then again, perhaps not. Although reasonable arguments can be made for repeal or revision of these guides and interpretive rules, public comment still might prove to be beneficial.

In addition, the relatively short period of time that would be required for public comment should not be problematic. The Commission has not addressed any of these guides or interpretive rules in the last ten years. Indeed, it has not addressed some of them for thirty years or more. For example, the Commission apparently has not addressed the interpretive rule concerning the use of the word ''tile'' in designation of non-ceramic products since it was issued in 1950.[3] The continued existence of these guides and interpretive rules during a brief public comment period surely would cause no harm because they are not binding and because, arguably, they are obsolete. I seriously question the need to act so precipitously as to preclude the opportunity for public comment.[4]

In 1992, the Commission announced a careful, measured approach for reviewing its guides and interpretive rules, and public comment has been an important part of that process. Incorporating public comment into the review is appropriate and sensible. Although I have voted in favor of repealing or revising these guides and interpretive rules, I strongly would have preferred that the Commission seek public comment before doing so.

[FR Doc. 95–19543 Filed 8–7–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements, 16 C.F.R. Part 14; Guides for the Mail Order Insurance Industry, 16 C.F.R. Part 234; Guides Against Debt Collection Deception, 16 C.F.R. Part 237; and Guide Against Deceptive use of the Word ''Free'' In Connection With the Sale of Photographic Film and Film Processing Services, 16 C.F.R. Part 242.

[2] *See, e.g.*, Request for Comments Concerning Guides for the Hosiery Industry, 59 Fed. Reg. 18004 (Apr. 15, 1994); Request for Comment Concerning Guides for the Feather and Down Products Industry, 59 Fed. Reg. 18006 (Apr. 15, 1994).

[3] 16 C.F.R. 14.2.

[4] Unfortunately, seeking public comment would not permit the Commission to count the repeal and revision of these guides and interpretive rules in its tally of completed actions in the Regulatory Reinvention Initiative Report that will be sent to the President on August 1, 1995, but perhaps that harm could be mitigated by reporting to the President that the Commission is seeking public comment concerning repeal or revision.

16 CFR Part 248

Guides for the Beauty and Barber Equipment and Supplies Industry

AGENCY: Federal Trade Commission.

ACTION: Elimination of guides.

SUMMARY: The Guides for the Beauty and Barber Equipment and Supplies Industry (the ''Beauty/Barber Guides'' or the ''Guides'') designate as unacceptable certain advertising and trade practices relating to the sale of products used by, and/or marketed through, ''industry members'' (as defined in Section 248.0 of the Guides) such as barber shops, barber schools, beauty parlors, beauty salons, beauty clinics, and organizations or corporations engaging in the manufacture or distribution of industry products. Such products embrace a wide range of beauty and barber preparations, as well as articles or items of equipment, furnishings, and supplies for such establishments.

The Commission believes that the Beauty/Barber Guides do not provide guidance substantially specific to the beauty and barber equipment and supply industry. In addition, the Commission believes that, in some instances, the Guides no longer accurately represent current Commission policy, and would require extensive revision to be made up-to date. Although such a revision and reissuance might be warranted if there were evidence of widespread marketing abuses of the type addressed by the Guides, the Commission has no such evidence. In addition, the Commission believes that likely abuses, if any, are adequately addressed under applicable antitrust, consumer protection, and commercial tort laws, which are matters of public record. Consequently, the Commission believes that there is no continuing need for the Guides, and that they should be repealed in their entirety.

Although the Commission is eliminating the Guides, proceedings still may be brought against businesses under Section 5(a)(1) of the Federal Trade Commission Act (the ''FTC Act''), 15 U.S.C. 45(a)(1), for engaging in unfair or deceptive acts or practices in or affecting commerce in the advertising and sale of beauty and barber equipment and supplies. Proceedings also may be brought under Section 5(a)(1) of the FTC Act against businesses engaging in unfair methods of competition.

EFFECTIVE DATE: August 8, 1995.

ADDRESSES: Requests for copies of this document should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Douglas J. Goglia, Attorney, Federal Trade Commission, New York Regional Office, 150 William Street, 13th Floor, New York, NY 10038, (212) 264–1229.

SUPPLEMENTARY INFORMATION:

I. Introduction

As a part of its ongoing project to review all rules and guides, the Commission invited comment on its Guides for the Beauty and Barber Equipment and Supplies Industry, 16

CFR Part 248, on April 4, 1995.[1] The notice contained, with minor modification, the standard regulatory review questions relating to the economic impact and continuing relevance of the Guides; burdens or costs related to adherence to the Guides; benefits conferred on industry members by the Guides; changes needed to minimize the economic impact of the Guides; their relation to other federal, state, or local laws or regulations; changes in relevant technology or economic conditions since the Guides were issued; and the effects of those changes on the Guides. The comment period ended on June 4, 1995, and only one comment was received before that date.[2] One additional comment was received on June 16, 1995, after the comment period expired.[3]

II. Background

The Beauty/Barber Guides were first published on August 23, 1968 under the authority of Sections 5(a)(1) and 6(g) of the FTC Act, 5 U.S.C. 45(a)(1) and 46(g). They were intended by the Commission to supersede trade practice rules for the Beauty and Barber Equipment and Supplies Industry, which had been promulgated on August 9, 1941. They designate as unacceptable certain advertising and trade practices relating to the sale of products used by, and/or marketed through, ''industry members'' (as defined in Section 248.0 of the Guides) such as barber shops, barber schools, beauty parlors, beauty salons, and beauty clinics. Such products embrace a wide range of beauty and barber preparations, as well as articles or items of equipment, furnishings, and supplies for such establishments.

Like other Commission guides, the Beauty/Barber Guides were ''intended to encourage voluntary compliance with the law by those whose practices are subject to the jurisdiction of the Commission, and were published in the belief that a businessman who is fully informed of the legal pitfalls he may encounter can conduct his affairs so as to avoid such difficulties.'' [4] The Guides provide instruction regarding the use of trade names, symbols, and depictions; the defamation of competitors or the false disparagement of their products; false invoicing; push money; discriminatory advertising or promotional allowances, or services or facilities; commercial bribery; enticing away employees of competitors as a means of restraining competition; inducing breach of contract; exclusive dealing arrangements; and price discrimination.

III. Discussion

The Commission has concluded that the Beauty/Barber Guides do not provide guidance substantially specific to the beauty and barber equipment and supply industry. In general, the Guides merely restate basic principles of consumer protection and commercial tort law. In addition, certain sections describe conduct that may be proscribed by Section 2 or 3 of the Clayton Act, as amended by the Robinson-Patman Act, and certain conduct that may, in limited circumstances, violate Section 5 of the FTC Act or Section 2 of the Sherman Act. However, in some instances, the Guides no longer accurately reflect Commission policy and enforcement standards. Consequently, the Commission believes that there is no continuing need for the Guides, and that they should be repealed.

Sections 248.1–248.4 and 248.6

Sections 248.1 of the Guides prohibits industry members from using, or causing or promoting the use of statements, representations, guarantees,[5] testimonials, or endorsements ''which ha[ve] a capacity and tendency or effect of misleading or deceiving purchasers. * * *'' Likewise, § 248.2 prohibits industry members from misrepresenting, directly or indirectly, the character of their businesses or the types of services they offer; § 248.3 prohibits the use of deceptive plaques and certificates in connection with the ''distribution, promotion or sale (including utilization in connection with services) of industry products''; § 248.4 proscribes deceptive pricing; an § 248.6 prohibits industry members from ''withhold[ing] from, or insert[ing] in, invoices or sales slips, any statements, or information by reason of which omission or insertion a false record is made * * * of the transactions represented on the face of such invoices or sales slips, with the capacity and tendency or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public in any material respect.'' Each of these Guide sections addresses trade practices which are actionable under Section 5 of the FTC Act pursuant to the Commission's general Policy Statement on Deception (''Deception Statement''), set forth in the appendix to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984) (Letter from FTC Chairman James C. Miller III to the Honorable John D. Dingell (October 14, 1993)), or the Commission's Unfairness Statement set forth in the appendix to *International Harvester, Inc.*, 104 F.T.C. 949, 1061, 1073–74 (1984) (Letter from Commission Chairman Michael Pertschuk and Commissioners Paul Rand Dixon, David A. Clanton, Robert Pitofsky, and Patricia P. Bailey to the Honorable Wendell H. Ford and the Honorable John C. Danforth (December 17, 1980)). Moreover, the conduct proscribed by the aforementioned Guide sections may be actionable under Section 43(a) of the Lanham Act, [6] applicable state unfair competition statutes, and the commonlaw of commercial torts.[7]

In addition, Sections 248.1, 248.6, and other sections of the Guides specifically refer to the Commission's former ''capacity and tendency or effect of misleading or deceiving'' standard for deception, which was superseded by the Commission's Deception Statement. Accordingly, these sections fall to reflect the Commission's current policy regarding deception.

Section 248.5

Section 248.5 of the Guides prohibits industry members from using or imitating a competitor's trade or corporate name, trademarks, or other trade designations, where such use ''has the tendency or effect of misleading purchasers or prospective purchasers as

[1] Request for Comments Concerning Guides for the Beauty and Barber Equipment and Supplies Industry, 60 FR 17032, (April 4, 1995). The record in this proceeding has been designated P 958803 in the Commission's Public Reference Branch.

[2] The National Cosmetology Association (''NCA''), a national association of cosmetologists, barbers, estheticians, nail technicians, and owners of independent salons, stated that (1) the Guides have been effective in protecting industry members from problematic conduct, and (2) ''[m]ost industry members do not have resources available to hire attorneys to counsel them with respect to [trade regulation] laws. Thus the Guides are *the* principal means by which the industry is continuously reminded of how those laws apply to the industry.'' Comment of Messrs. William W. Scott, J. Keith Ausbrook and Brian R. Henry, Counsel for the National Cosmetology Association (June 2, 1995).

[3] The Beauty and Barber Supply Institute, Inc. (''BBSI'') stated that: '' we have no objection to the recommendation that Part 248—Guides For The Beauty And Barber Equipment And Supplies Industry, be deleted in its entirety from the Code of Federal Regulations.'' Letter from Douglas A. Kash, Esq. to Douglas Goglia, Esq., June 22, 1995 (regarding Amendments to the Code of Federal Regulations).

[4] Statement by the Commission, 33 FR 11987 (August 23, 1968).

[5] The Commission has adopted Guides for the Advertising of Warranties and Guarantees which provide detailed guidance with respect to guarantee and warranty representations. *See* 16 CFR Part 239. Accordingly, to the extent Section 248.1 of the Beauty/Barber Guides relates to Guaratees, it is no longer necessary.

[6] 15 U.S.C. 1125(a).

[7] *See generally*, Restatement (Third) of Unfair Competition, Chapter 2 (1995) (hereinafter ''*Restatement*'').

to the character, name, nature, or origin of any product of the industry or is false or misleading in any other material respect.'' The conduct proscribed by Section 248.5—''passing off''—has been held to violate Section 5 of the FTC Act,[8] and Commission policy regarding such conduct is a matter of public record. Accordingly, there is no need for Section 248.5, which merely restates that policy and does not provide instruction specifically relevant to the beauty and barber equipment and supply industry. Moreover, the conduct prohibited by Section 248.5 is addressed by Section 43(a) of the Lanham Act, applicable state unfair trade statutes, and common law theories of trademark infringement.[9]

Section 248.7

Section 248.7 of the Guides proscribes the defamation of competitors and the disparagement of their products. This section prohibits conduct which may be addressed under Section 43(a) of the Lanham Act and common law theories of commercial tort.[10] There is no need for this section of the Guides, because it does not supplement this general authority with instruction specifically relevant to the beauty and barber equipment and supply industry.

Section 248.8

Section 248.8 of the Beauty/Barber Guides proscribes the payment by industry members of so-called ''push money.'' This section prohibits industry members from providing anything of value to a salesperson employed by a customer of the industry member as inducement to obtain greater effort in promoting the resale of the industry member's products when: (i) the agreement or payment is made ''without the knowledge and consent of the salesperson's employer''; (ii) the benefit to the salesperson or customer is dependent on lottery; (iii) ''any provision of the agreement or understanding requires or contemplates practices or a course of conduct unduly and intentionally hampering the sales of products of competitors * * *''; (iv) ''the effect may be to substantially lessen competition or tend to create a monopoly''; or (v) ''similar payments are not accorded to salespersons of competing customers on proportionally equal terms in compliance with Sections 2 (d) and (e) of the Clayton Act.''

To the extent that Section 248.8 prohibits industry members from surreptitiously compensating employees of their customers in exchange for greater effort on the part of those employees, it addresses commercial bribery, which may be prohibited under Section 2(c) of the Clayton Act[11] and is proscribed by many state criminal statutes.[12] To the extent that § 248.8 prohibits bonus plans dependent on lottery, it addresses business conduct which may be proscribed by Section 5 of the FTC Act and by state statutes relating to lotteries and similar promotions.[13] To the extent that it requires payments to salespersons of competing customers to be on proportionally equal terms, it restates general principles of competition law which are set forth in Section 2 of the Clayton Act and the Fred Meyer Guides. *See* Guides for Advertising Allowances and Other Merchandising Payments and Services, 16 CFR Part 240.

Section 248.9

Section 248.9 of the Guides prohibits industry members from ''willfully'' enticing away the employees of competitors ''with the intent and effect of thereby hampering or injuring competitors in their business or destroying or substantially lessening competition.''[14] Such conduct may constitute a commercial tort.[15] The Guides do not add substantial industry-specific analysis to this general authority.

Section 248.10

Section 248.10 of the Guides prohibits industry members from ''knowingly inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers. * * *'' The conduct described in this section may be a commercial tort.[16] There is no need for this section of the Guides, because it does not supplement this general authority with instruction specifically relevant to the beauty and barber equipment and supply industry.

Section 248.11

Section 248.11 proscribes exclusive dealing arrangements where the effect on such arrangements ''may be substantially to lessen competition or tend to create a monopoly in any line of commerce.'' This section recapitulates language contained in Section 3 of the Clayton Act and sets out a general principle of Sherman Act Section 2 jurisprudence—namely, that exclusive dealing may constitute an antitrust violation where it constitutes an attempt to monopolize or results in an actual monopolization of a relevant market.

Section 248.12

Section 248.12 prohibits commercial bribery. This conduct may be prohibited by Section 2(c) of the Clayton Act, and by many state criminal statutes.[17] There is no need for this section of the Guides, because it does not supplement this general authority with instruction specifically relevant to the beauty and barber equipment and supply industry.

Section 248.13–248.15

Sections 248.13, 248.14 and 248.15 of the Beauty/Barber Guides respectively proscribe discriminatory pricing, the provision of discriminatory promotional allowances, and inducing price discrimination. Section 248.13 and 248.15 recite almost verbatim language contained in Sections 2 (a), (b) and (f) of the Clayton Act. Section 248.14 is duplicative of the Fred Meyer Guides, which interpret Sections 2 (d) and (e) of the Clayton Act and Section 5 of the Federal Trade Commission Act. *See* Guides for Advertising Allowances and Other Merchandising Payments and Services, 16 CFR part 240.

IV. Conclusion

The Commission thus believes that the Beauty/Barber Guides do not provide guidance substantially specific to the beauty and barber equipment and supply industry. The Guides merely restate principles of consumer protection and commercial tort law found in statutes, case law, and other

[8] *See, e.g., Waltham Watch Co.* v. *FTC,* 318 F.2d 28 (7th Cir.), *cert. denied,* 375 U.S. 944 (1963) (''passing off'' products as those of a competitor violates Section 5); *Parke, Austin & Lipscomb, Inc.* v. *FTC,* 142 F.2d 437 (2d Cir.), *cert. denied,* 323 U.S. 753 (1944) (false claims of association with a better known company violate Section 5); *J. Merrell Redding,* 14 F.T.C. 32 (1930) (simulation of a competitor's advertising violates Section 5); *Lighthouse Rug Co.* v. *FTC,* 35 F.2d 163 (7th Cir. 1929) (imitation of a competitor's corporate name and trademark violates Section 5).

[9] *See generally, Restatement, supra* note 7, Chapter 3.

[10] *See generally, Restatement, supra* note 7, § 2, Comment C. *See also,* J.D. Lee, Modern Tort Law, § 36.09 (4th ed. 1990) (hereinafter ''*Lee*'').

[11] 15 U.S.C. 13(c).

[12] *See e.g.,* Cal. Penal Code § 641.3 *et seq.* (Deering 1995); Ill. Rev. Stat., Ch. 38, para. 29A–1 (1995); N.Y. Penal Law § 180.00 (McKinney 1976).

[13] *See e.g.,* Tex. Penal Code § 32.42 (West 1995); Cal. Bus. & Prof. Code § 17539.1 (Deering 1995); Cal. Penal Code § 319 *et seq.* (Deering 1995).

[14] As a caveat, section 248.9 provides:

nothing in this section shall be construed as precluding such persons from seeking more favorable employment, or as precluding employers from hiring or offering employment to employees of a competitor in good faith and not for the purpose of inflicting competitive injury.

[15] *See generally, Lee, supra* note 10, Ch. 45; William L. Prosser, *Prosser on Torts* § 129 (4th ed. 1971) (hereinafter ''*Prosser*'').

[16] *Lee, supra* note 10, at 45; *Prosser, supra* note 15, at § 129.

[17] *See supra* note 12.

regulations. The Guides also describe certain conduct that may, in some instances, violate Sections 2 (a), (b), (c) and (d) of the Clayton Act. In addition, to the extent that certain conduct described by the Guides may substantially lessen competition in a properly defined antitrust market, it may violate Section 5 of the FTC Act. To the extent such conduct may tend to create a monopoly, it may also violate Section 2 of the Sherman Act. The conduct described by the Guides must be examined on a case-by-case basis to determine whether an applicable provision of law has been violated. Furthermore, in some instances, the Guides do not accurately represent current Commission policy and enforcement standards. Accordingly, the Commission has determined to repeal the Guides.

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Part 248

Advertising, Cosmetics, Trade practices.

PART 248—[REMOVED]

The Commission, under authority of Sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of title 16 of the Code of Federal Regulations by removing Part 248.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–19544 Filed 8–7–95; 8:45 am]

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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Fraud Offenses That Involve Multiple Millions of Dollars in Losses

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is establishing a dollar amount range of $1 million to $5 million for Category Six fraud offenses in the paroling policy guidelines at 28 CFR 2.20. Frauds that cause losses of over $5 million will be rated Category Seven. At the present time, the Category Six offense severity rating is assigned to all frauds exceeding $1 million. In some cases, decisions above the Category Six guidelines are found warranted because the dollar losses greatly exceed those associated with ordinary cases of theft/forgery/fraud that are rated Category Six. The conversion of the open-ended dollar criterion for Category Six offenses into a range of $1 million to $5 million will provide the Commission with an appropriate benchmark to determine when dollar amount losses are so excessive as to require the offender to serve more prison time than indicated by the guidelines. This will permit increased consistency in the Commission's decisionmaking.

EFFECTIVE DATE: October 2, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, 5550 Friendship Blvd., Chevy Chase, Maryland 20815. Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: Public comment was solicited by publication of a proposed rule at 60 FR 18379 (April 11, 1995). Some public comment argued that the guidelines of the U.S. Sentencing Commission are significantly less severe for theft, forgery, and fraud offenses committed on or after November 1, 1987. (The U.S. Parole Commission's jurisdiction is limited to offenders whose crimes were committed prior to November 1, 1987. See Section 235 of the Sentencing Reform Act of 1984, which appears as an Editorial Note to 18 U.S.C. 3551.) According to this comment, the revision of the guidelines is a step in the right direction, but has the effect of creating two classes of accountability from the same government, because significantly larger dollar amounts would be required for the sentencing guidelines to match those of the U.S. Parole Commission.

The Commission has compared the operation of its guidelines for theft, forgery, and fraud cases with those of the U.S. Sentencing Commission, as applied in actual practice. The conclusion is that the guideline ranges are, contrary to the public comment, roughly equivalent. This is because the parole guideline ranges are determined solely by reference to the dollar amount, whereas the sentencing guidelines begin with dollar amount but require upward adjustments for such typical aggravating factors (in large-scale white collar crimes) as ''organizer or leader'', multiple victims, multiple counts, and refusal to accept responsibility. Frauds that cause losses of $1 million or more usually involve some degree of organizational leadership, multiplicity of schemes and victims, efforts to deny responsibility, etc., sufficient to produce several upward adjustments. In this manner, the total offense level produces a guideline range, in most cases, equal to or greater than the parole guidelines. For example, a conviction-offense fraud of $750,000 with upward adjustments reflecting persistent fraudulent investment schemes by an unrepentant first offender can produce a sentencing guideline range of 46–57 months, which is greater than the corresponding parole guideline, even if the Parole Commission includes additional losses exceeding $1 million (40–52 months).

Accordingly, the Commission decided to adopt its original proposal to set a range of $1 million to $5 million for Category Six offenses, and to rate fraud offenses exceeding $5 million in Category Seven.

The Commission intends that the practical effect of this guideline revision will be to preclude decisions above the Category Six guidelines when the relevant dollar amount does not exceed $5 million, except when non-monetary factors in aggravation (*e.g.*, unusually vulnerable victims) warrant a decision above the guideline range in individual cases. The Category Seven rating will, for the most part, include cases in which above-guideline decisions would otherwise have been expected.

Finally, the Commission decided to adopt conforming amendments to the other offense examples listed in the guidelines that are rated by dollar amount (i.e., property destruction, counterfeit currency, antitrust offenses, insider trading, tax evasion, and currency offenses).

Implementation

The revised guidelines will be applied at any initial parole hearing or revocation hearing conducted on or after the effective date set forth above. The revised guideline will also be applied retroactively to prisoners who were given parole or reparole decisions prior to that effective date, at the next statutory interim hearing conducted pursuant to 28 CFR 2.14, provided that application of the revised guideline results in a decision more favorable to the prisoner. For example, at a statutory interim hearing, a prisoner who was continued above the Category Six guidelines for a $4 million fraud offense could argue for a release date within the Category Six guidelines if he can show that no other factor continues to justify a departure from the guideline range.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this proposed rule is not a significant regulatory action for the purposes of Executive Order 12866, and the proposed rule has, accordingly,

not been reviewed by the Office of Management and Budget. The proposed rule, if adopted, will not have a significant economic impact upon a substantial number of small entities, within the meaning of the regulatory flexibility act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

The Final Rule

Accordingly, the Parole Commission adopts the following amendments to 28 CFR part 2:

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR part 2, § 2.20, Chapter 3, Subchapter A, Paragraph 303 (Property Destruction Other Than as Listed Above) is amended by deleting subparagraph (b); redesignating subparagraphs (c) through (g) as subparagraphs (d) through (h) respectively; and by adding new subparagraphs (b) and (c) to read as follows:

* * * * *

(b) if damage of more than $5,000,000 is caused, grade as Category Seven;

(c) if damage of more than $1,000,000 but not more than $5,000,000 is caused, grade as Category Six;

* * * * *

3. 28 CFR part 2, § 2.20, Chapter 3, Subchapter D, Paragraph 331 (Theft, Forgery, Fraud, Trafficking in Stolen Property, Interstate Transportation of Stolen Property, Receiving Stolen Property,* Embezzlement, and Related Offenses) is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (g) as subparagraphs (c) through (h) respectively; and to add new subparagraphs (a) and (b) to read as follows:

* * * * *

(a) If the value of the property * is more than $5,000,000, grade as Category Seven;

(b) If the value of the property * is more than $1,000,000 but not more than $5,000,000, grade as Category Six;

* * * * *

4. 28 CFR part 2, § 2.20, Chapter 3, Subchapter E, Paragraph 341 (Passing or Possession of Counterfeit Currency or Other Medium of Exchange*), is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (e) as subparagraphs (c) through (f) respectively; and to add new subparagraphs (a) and (b) as follows:

* * * * *

(a) If the face value of the currency or other medium of exchange is more than $5,000,000, grade as Category Seven;

(b) If the face value of the currency or other medium of exchange is more than $1,000,000 but not more than $5,000,000, grade as Category Six;

* * * * *

5. 28 CFR part 2, § 2.20, Chapter 3, Subchapter F, Paragraph 363 (Insider Trading), is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (f) as subparagraphs (c) through (g) respectively; and to add new subparagraphs (a) and (b) to read as follows:

* * * * *

(a) If the estimated economic impact is more than $5,000,000, grade as Category Seven;

(b) If the estimated economic impact is more than $1,000,000 but not more than $5,000,000, grade as Category Six;

* * * * *

6. 28 CFR part 2, § 2.20, Chapter 5, Subchapter A, Paragraph 501 (Tax Evasion), is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (f) as subparagraphs (c) through (g) respectively; and to add new subparagraphs (a) and (b) as follows:

* * * * *

(a) If the amount of tax evaded or evasion attempted is more than $5,000,000, grade as Category Seven;

(b) If the amount of tax evaded or evasion attempted is more than $1,000,000 but not more than $5,000,000, grade as Category Six;

* * * * *

7. 28 CFR part 2, § 2.20, Chapter 11, Subchapter G, Paragraph 1161 (Reports on Monetary Instrument Transactions), is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (d) as subparagraphs (c) through (e) respectively; and to add new subparagraphs (a) and (b) to read as follows:

* * * * *

(a) If extremely large scale (e.g., the estimated gross amount of currency involved is more than $5,000,000), grade as Category Seven;

(b) If very large scale (e.g., the estimated gross amount of currency involved is more than $1,000,000 but not more than $5,000,000), grade as Category Six;

* * * * *

Dated: July 26, 1995.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 95–19311 Filed 8–7–95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–103–FOR]

Virginia Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment includes changes to sections 480–03–19.816/817.102(e) of the Virginia program relative to the disposal of coal processing waste and underground development waste in mined-out areas. The amendment is intended to clarify what provisions of the coal mine waste disposal regulations apply when disposal of coal processing waste or underground development waste occurs in mined-out areas for the purpose of backfilling a disturbed area.

EFFECTIVE DATES: August 8, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Drawer 1217, Powell Valley Square Shopping Center, Room 220, route 23, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Amendment

By letter dated October 31, 1994 (Administrative Record No. VA–839), Virginia submitted a proposed amendment to its program pursuant to SMCRA. Virginia proposes to amend sections 480–03–19.816/817.102(e) to clarify the Virginia regulations that are applicable when coal processing waste and underground development waste is used as backfill material for mined-out areas. The proposed amendment is intended to settle interpretational differences between Virginia and OSM relative to how the coal mine waste regulations apply to waste materials placed in backfills.

The proposed amendment was published in the November 16, 1994, **Federal Register** (59 FR 59187), and in the same notice, OSM opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on December 16, 1994.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Virginia program.

VR 480–03–19.816/817.102(e), Backfilling and Grading: General Requirements

Virginia is amending subsections 102(e) to provide that the disposal of coal processing waste and underground development waste in the mined-out areas shall be in accordance with new subsections 102(e) (1) and (2).

a. New paragraphs 480–03–19.816/817.102(e)(1) provide that disposal of coal processing waste and underground development waste in the mined-out area to backfill disturbed areas shall be in accordance with 480–03–19.816/817.81 (coal mine waste: general requirements). This provision differs from the counterpart Federal regulations at 30 CFR 816/817.102(e) in that the Federal regulations require that the disposal of coal processing waste and underground development waste placed in the mined-out area shall be in accordance with both 30 CFR 816/817.81 and 816/817.83. In effect, the proposed amendment will eliminate compliance with section 480–03–19.816/817.83, the Virginia counterpart to 30 CFR 816/817.83, the performance standards for refuse piles, when refuse is used for backfill. Therefore, the Virginia program must assure the stability of the backfill material, and the prevention of acid or toxic drainage from the backfill.

In its submittal of this amendment, Virginia provided the following explanation of how the regulatory authority will interpret and implement Virginia Regulations (VR) 480–03–19.816/817.102(e) (1) to be as effective as the counterpart Federal regulations in providing environmental safeguards:

[i] As proposed, VR 480–03–19.816/817.102(e) (1), would apply when coal mine waste is placed in a mined-out area as part of the backfilling process to restore the approximate original contour (AOC) without a change in premining surface elevations. It clarifies that compliance with VR 480–03–19.816/817.81, but not VR 480–03–19.816/817.83, is required.

[ii] The Virginia proposed regulation distinguishes between those standards that are appropriate for a conventional refuse pile and those appropriate for areas conventionally backfilled with refuse. This is analogues to the way the Virginia program distinguishes between excess spoil fills and areas backfilled to AOC.

[iii] Section 480–03–19.816/817.102(f) requires that ''acid and toxic-forming material shall not be buried or stored in proximity to any drainage course.'' The Virginia Division of Mined Land Reclamation (DMLR) interprets this standard to be applicable to acid and toxi-forming refuse as well as acid and toxic-forming overburden/mine spoil.

[iv] Pursuant to 480–03–19.816/817.81(c) such backfill design is required to be certified by a qualified registered professional engineer (RPE) using prudent engineering practices and any criteria established by the Division. DMLR considers the determination of seeps, springs, or other discharges necessary in the designating of a backfill consistent with 480–0319.816/817.81. Thus, coal mine waste that is acid or toxic-forming could not be considered as suitable for backfill pursuant to proposed 816/817.102(e) unless the permittee is able to demonstrate that the material is isolated and hydrologically separated from a drainage course.

[v] The proposed regulation is intended to include the hydrologic protection standards of 480–03–19.816/817.41 and 480–03–19.816/817.102. Through DMLR's hydrologic impact assessment and the application of 480–03–19.816/817.102(a)(4), (c), (f), and (g), DMLR has ample authority to limit coal mine waste to suitable areas and to ensure that appropriate measures are taken to prevent erosion, acid/toxic drainage and adverse effects to the hydrologic balance. This standard is reinforced by 480–03–19.816/817.81(a)(1) which requires, ''Coal mine wastes shall be placed in a controlled manner to (1) minimize adverse effects of leachate and surface water runoff on surface and ground water quality and quantity.''

[vi] The Virginia program permits only ''suitable coal mine waste materials'' to be used as backfill. Other coal mine waste must be placed in a conventional ''refuse pile'' subject to the standards of 480–03–19.816/817.102(e), 480–03–19.816/817.81, and 480–03–19.816/817.83.

[vii] DMLR finds authority at 480–03–19.816/817.22(b) and (c) to require a demonstration of the suitability of coal mine waste both during and subsequent to the permitting process. DMLR has always been concerned that the characteristics of coal mine waste may change when produced over a large aerial extent, from different seams, or at different locations. DMLR interprets 480–03–19.816/817.22(c) as authority to require periodic testing as necessary to ensure compliance with the hydrologic protection and other performance standards. DMLR finds further support for its interpretation at 480–03–19.816/817.102(f). DMLR assures periodic testing by imposing a permit condition pursuant to 480–03–19.733.17 requiring a quarterly analysis of appropriate coal mine waste as it is placed in a refuse pile or in the area being backfilled. DMLR has regulations, policies, and procedures in place which require applicable operations to periodically analyze waste.

[viii] Since some coal mine waste is not suitable for the backfill of pre-existing benches or other mined-out areas, DMLR's proposed regulation can only be read to be consistent with the defined term ''reasonably available spoil'' which includes the use of ''suitable coal mine/waste,'' as backfill material. DMLR interprets suitable to be a measure of both chemical and physical characteristics. DMLR requires analyses for the chemical characteristics during the permitting process before it will determine that the material is suitable. DMLR also requires a design certified by a qualified RPE demonstrating that the material is suitable to achieve a static safety factor of 1.3.

[ix] DMLR finds authority to require the demonstration of suitability at 480–03–19.816/817.102(a)(3), 480–03–19.816/817.102(f), and 480–03–19.816/817.81(c).

[x] The proposed regulation still requires compliance with the general requirements of coal mine waste handling set forth by 480–03–19.816.81. These general requirements require among other things that waste be placed in a controlled manner to minimize adverse effects of leachate and surface water runoff on surface and ground water quality and quantity, and ensure mass stability and prevent mass movement during and after construction.

[xi] The regulation as proposed and read in context with the entire Virginia program also contains sufficient specificity appropriate for ''suitable coal mine waste.'' The material sampling, the hydrologic protection standards, and the design and stability standards give DMLR ample authority to ensure that backfilling operations use suitable material and meet the standards of the Virginia program.

Virginia's construction of the requirements of the Virginia program regulations and the explanation of the regulatory authority's interpretation of those regulations indicates that the stability of the backfill will be ensured. Only coal mine waste that is physically suitable for placement will be used in the backfill. The physical properties of the material will be determined upon the judgement of a qualified RPE. Quality control of these materials will

be ensured by periodic testing. All backfill must be certified by the RPE as obtaining a minimum safety factor of 1.3.

While the specifics of the sampling and analyzing program have not been described in detail, Virginia has reasonably explained its authority and procedures for ensuring that only non-toxic forming material will be placed in the backfill areas, or that the permittee must demonstrate that the placement of these materials will not result in toxic/acid mine drainage. In addition, Virginia also explained that the regulatory authority has ample authority to ensure that appropriate measures are taken to prevent acid and toxic drainage and adverse effects to the hydrologic balance. Such measures could reasonably include the addition of limestone or other alkaline materials to the backfill when the regulatory authority determined it necessary to provide an appropriate measure of safety.

b. Virginia is proposing to amend paragraph 480–03–19.816/817(e)(2) to provide that the disposal of coal processing waste and underground development waste in the mined-out area as a refuse pile and not to backfill disturbed areas to AOC shall be in accordance with 480–03–19,816/817.81 and 480–03–19.816/817.83. The Division, may approve a variance to 490–03–19.816/817.83(a)(2), concerning drainage controls, if the applicant demonstrates that the area above the refuse pile is small and that appropriate measures will be taken to direct or convey runoff across the surface area of the pile in a controlled manner.

The proposed language differs from the Federal regulations at 30 CFR 816/817.102(e) in that the Federal regulations do not provide for a variance from the requirements at 30 CFR 816/817.83(a)(2) concerning drainage controls. In effect, the proposed variance could eliminate an additional safeguard against erosion of the fill.

In its submittal of this amendment, Virginia provided the following explanation of how the regulatory authority will interpret and implement 480–0319.816/817.102(e)(2).

[i] Proposed 480–03–19.816/817.102(e)(2) requires compliance with 480–03–19.816/817.81, and 480–03–19.816/817.83 when a refuse pile is to be constructed in the mined-out area. In this respect, it is identical to the Federal requirements. However, this rule also provides for a variance from the surface runoff diversion requirements of 480–03–19.816/817.83(a)(2) under certain conditions.

[ii] The proposed rule at 480–03–19.816/817.102(e)(2) is applicable only to coal mine waste piles built in mined-out areas. Usually, when a permittee has ''suitable coal mine waste'' and the permit area includes previously mined benches, an opportunity exists to achieve two separate objectives of the Act. The suitable coal mine waste can be used to achieve AOC on the existing benches, thus reclaiming AML [abandoned mine lands] that would likely never be reclaimed otherwise. Also, by using the suitable coal mine waste on the pre-existing benches, the disturbance of off-site areas and construction of a conventional refuse pile becomes unnecessary. Thus, DMLR is able to minimize areas disturbed or affected by the mining operation.

[iii] It is DMLR's practice to require the placement of suitable coal mine waste on pre-existing benches as backfill when sufficient and suitable benches are available. However, when the volume of coal mine waste will exceed the AOC configuration of the available bench, DMLR still prefers placement of the coal mine waste on the bench rather than on undisturbed areas. In such cases, DMLR will require the construction of the refuse pile to be consistent with both 480–03–19.816/817.81 and 83.

[iv] DMLR proposes to grant the variance contained at proposed 480–03–19.817.102(e)(2) in such case, but only when certain conditions are met. DMLR will consider the area above the refuse pile as small if there are no channeled flows and if during storm events there is only sheet flow. However, DMLR will not grant the variance if the drainage area above the pile on any point excess 500 feet, measured along the slope.

[v] DMLR will accept only those appropriate measures that can be shown, using standard engineering practices to convey the flow across the pile safely and prevent erosion. Such practices may include sufficient vegetation to prevent erosion or the use of terrances that direct runoff from the areas above the refuse pile and runoff from the surface of the refuse pile into stabilized channels designed to safely pass runoff from the 100-year, 6-hour precipitation event.

As detailed above, Virginia has clarified those instances where a variance could be granted. In addition, Virginia has limited the size of areas which could qualify for an exemption to ''small'' areas. Virginia has defined ''small'' quantitatively as slopes less than 500 feet in length, and functionally, as zones where runoff during storm events is only sheet flow. Virginia has also reasonably explained how the Virginia program would safeguard refuse piles in mined-out areas from erosion despite an authorization of the proposed variance.

The Federal regulations at 30 CFR 732.15(a) require that the State's laws and rules, collectively, be in accordance with SMCRA and consistent with the Federal regulations. That is, the State's statutes, rules, policy statements, and similar materials are compared, collectively, with the Federal statute and rules, collectively, to ensure that the State's program, as a whole, meets the Federal requirements. Therefore, while Virginia's proposed provisions are not identical to the counterpart Federal regulations, OSM has reviewed the Virginia program, collectively, to determine consistency with the Federal regulations. The detailed explanation and scope of the proposed amendments which were submitted by Virginia on October 31, 1994, provide a clear explanation of Virginia's assertion that the Virginia program, with the proposed amendments, remains no less effective than the Federal regulations.

The Director concurs that the Virginia program will not be rendered less effective than the Federal regulations in controlling erosion, preventing acid and toxic drainage, and providing for the stability of fills of coal processing waste and underground development waste in mined-out areas if the program is implemented as discussed in the October 31, 1994, submittal, provided that the required amendments discussed below are added to the program.

The Federal regulations at 30 CFR 816/817.83(a) provide for drainage control at refuse piles. Specifically, the regulations require diversions and underdrains to control erosion, prevent water infiltration into the disposal facility, and to ensure stability if the area contains springs, natural or manmade watercourses, or wet weather seeps. These provisions pertain most appropriately to piles or deposits which, when placed, would interfere with the natural, preexisting drainage patterns. Directing drainage away from those refuse piles would help prevent the creation of impoundments and would help prevent excessive infiltration into the pile that could weaken the structure. Diversions and underdrains do not serve those purposes, however, when the refuse is used for backfill to return to AOC. That is because the AOC complements and assists the area's natural surface drainage patterns. Therefore, returning a site to AOC should itself prevent the creation of impoundments and other interferences with natural drainage patterns. Virginia will not require these diversions and underdrains for coal refuse disposals on benches that are only being returned to AOC. For the above stated reasons, the Director agrees that Virginia need not require placement of underdrains and diversions in coal refuse sites returned to AOC.

The Federal regulations at 30 CFR 816/817.83(b) provide for the stabilization and revegetation of surface areas at refuse piles in order to minimize surface erosion. The Virginia

rules at 480–03–19.816/817.111–116 require the revegetation of all disturbed areas following backfilling. In addition, 480–03–19.816/817.102(a)(4) require that backfilling and grading be performed in a manner to minimize erosion and water pollution. These requirements serve as counterparts to and are no less effective than the Federal requirements at 30 CFR 816/817.83(b) concerning surface area stabilization of refuse piles.

The Federal regulations at 30 CFR 816/817.83(c)(1) require that all vegetation and organic materials be removed from the disposal area prior to placement of coal mine waste. Where coal mine waste will be placed on pre-existing mine benches, the Director is requiring that Virginia comply with the Virginia rules at 480–03–19.816/817.74 concerning placement of excess spoil on pre-existing mine benches. Those rules specifically require, at subsection (a), that all vegetative and organic materials be removed from the disposal area prior to placement. Where coal mine waste will be placed on recently mined-out benches, the Director expects that all vegetation and organic materials will already have been removed by the mining operations. Therefore, Virginia's rules (with the required amendment mentioned above) will provide counterparts to and will be no less effective than the Federal requirements at 30 CFR 816/817.83(c)(1).

The Federal regulations at 816/817.83(c)(2) provide that the final configuration of the pile shall be suitable for the approved post-mining land use. Terraces are permitted, but the grade of the outslope between terraces shall not be steeper than 2h:1v (50 percent). The Virginia rules at 480–03–19.816/817.102(a)(5) provide that disturbed areas shall be backfilled and graded to support the approved postmining land use. Virginia's rules at 480–03–19.816/817.102(g) allow the use of cut-and-fill terraces without imposing any grade limits on the outslope between the terraces. However, restricting outslopes to 2h:1v as the Federal rule requires for refuse piles may conflict with the requirement to return a site to AOC, since premining slopes might have exceeded 2h:1v. Furthermore, Virginia requires, at 480–03–19.816/817.102(a)(3), that postmining slopes not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides. Therefore, the Director concludes that the Virginia program contains adequate provisions to ensure the slope stability of any cut-and-fill terraces on a site returned to AOC without imposition of an unduly restrictive slope standard.

The Federal regulations at 30 CFR 816/817.83(c)(3) provide that no permanent impoundments shall be allowed on the completed refuse pile. Virginia has a counterpart to this Federal provision for coal waste which is piled to rise above AOC. However, this Federal provision doesn't appropriately apply in situations where the backfilled material doesn't exceed AOC. In such instances (AOC) the Federal regulations at 30 CFR 816/817.102(i) do allow the creation of permanent impoundments on backfilled areas. Therefore, where coal mine waste is used only to return a mined out area to AOC, Virginia need not require compliance with its counterparts to 30 CFR 816/817.83(c)(3).

The Federal regulations at 30 CFR 816/817.83(c)(4) provide for the covering of coal mine waste with four feet of the best available, nontoxic and noncumbustible material. Virginia has a counterpart to these requirements at 480–03–19.816/817.102(f), the general provisions for backfilling and grading. Virginia's provision pertains to all backfilling operations, and this would include backfilling with coal mine waste as Virginia proposes to do. Therefore, the Virginia program contains the requirements of 30 CFR 816/817.83(c)(4) and is, therefore, no less effective than those regulations.

The Federal regulations at 30 CFR 816/817.83(d) provide that refuse piles shall be inspected during construction by a qualified registered professional engineer. These Federal requirements pertain to critical periods during the construction of refuse piles. Virginia's use of coal refuse to achieve AOC will not result in a refuse pile to which the Federal regulations at 30 CFR 816/817.83(d) appropriately apply, since there will be no such critical construction periods. Therefore, the lack of an inspection requirement for coal refuse being used to achieve AOC does not render the Virginia program less effective.

However, OSM is concerned that key points of Virginia's explanation may not be enforceable because they are not currently part of the approved Virginia program. For example, Virginia stated that some coal mine waste is not ''suitable'' for the backfill of pre-existing benches or other mined-out areas. The term ''suitable'' is used several times in Virginia's explanation of the proposed amendments, but the term is not defined. The State did say, however, that the DMLR interprets ''suitable'' to be a measure of both chemical and physical characteristics. The term ''suitable'' needs to be defined. Such a definition should clarify ''suitable'' so that the regulatory authority can consistently apply the term appropriately. The definition should clarify the criteria, both physical and chemical, to be used to distinguish between materials which can and cannot be used for the backfilling of pre-existing benches or mined-out areas.

Virginia stated that the DMLR considers the determination of seeps, springs, or other discharges necessary in the designing of a backfill consistent with 480–03–19.816/817.81. Such a determination would be crucial to efforts to successfully prevent acid or toxic drainage. A requirement to provide this crucial information is not explicitly required by the Virginia program, but should be.

Virginia stated that the DMLR assures periodic testing by imposing a permit condition pursuant to 480–03–19.773.17 requiring a quarterly analysis of appropriate coal mine waste as it is placed in a refuse pile or in the area being backfilled. 480–03–19.773.17 does not, however, specifically require the imposition of such a permit condition. This important permit condition should be added to the Virginia program at 480–03–19.773.17.

In its discussion of the proposed amendment at 480–03–19.816/817.102(e)(2), Virginia stated that the proposed variance from the requirement to direct water around the refuse pile would only be granted if the area above the refuse pile is ''small.'' The term ''small'' was explained to mean that there are no channeled flows and that during storm events, there is only sheet flow. Additionally, the DMLR would not grant the variance if the drainage area above the pile on any point exceeds 500 feet, measured along the slope. These important criteria should be added to the Virginia program as a definition.

Both the Federal regulations at 30 CFR 816/817.83(a)(2) and the Virginia rules at 480–03–19.816/817.83(a)(2) prohibit the flow of uncontrolled surface drainage over the outslope of a refuse pile. Virginia will not grant a variance to the diversion requirements contained in this same subdivision, unless the operator can demonstrate that drainage over the outslope of the refuse pile will be controlled.

Further, the Director finds that runoff above the refuse pile need not be diverted around the surface of the pile so long as that runoff is not channeled flow (either natural or constructed) but is restricted to sheet flow only. Virginia has assured OSM that it will inspect these areas above the refuse piles until

final bond release to ensure that channeled flows do not form in those areas. Should such channeled flows subsequently develop, Virginia must require the operators to repair and revegetate the area to return to sheet flow, or construct diversions of that flow so that it goes around the pile rather than over the pile in channeled flow. The Director notes that limiting the area above the pile to 500 feet along the slope provides an additional restriction to approval of the variance.

Therefore, the Director finds, to the extent that the proposed amendments will be implemented as explained by Virginia in its October 31, 1994, submittal to OSM, that the proposed amendments at 480–03–19.816/817.102(e) (1) and (2) can be approved. However, in addition, the Director is requiring that Virginia further clarify the implementation of these amendments by amending the Virginia program as follows: (1) Define the term ''suitable.'' The definition should clarify the criteria, both physical and chemical, to be used to distinguish between materials which can and cannot be used for the backfilling of pre-existing benches or mined-out areas; (2) add a requirement to the Virginia rules to explicitly require the determination of the location of seeps, springs, or other discharges in the designing of a backfill; (3) add to 480–03–19.773.17 a specific requirement that a permit condition be imposed requiring a quarterly analysis of coal mine waste as it is placed in a refuse pile or in an area being backfilled; and (4) add a definition of ''small'' to mean that there are no channeled flows, that during storm events there is only sheet flow, and that no variance would be approved if the drainage area above the pile on any point exceeds 500 feet, measured along the slope.

Finally, the Director finds that where coal refuse will be placed on pre-existing benches (for the purpose of returning benches to OAC), Virginia must require compliance with its performance standards at 480–03–19.816/817.74 concerning the placement of excess spoil on pre-existing benches. Compliance with these performance standards is necessary because coal refuse presents at least as many stability problems as does the placement of excess spoil on pre-existing benches. While Virginia recognizes this need and currently requires that the placement of coal refuse on pre-existing benches (for the purpose of returning to AOC) meet the standards concerning the placement of excess spoil on pre-existing benches, those requirements are not codified in the Virginia program. Therefore, the Director is requiring that the State amend the Virginia program by adding a requirement that whenever coal refuse is placed on pre-existing benches for the purposes of returning the benches to AOC, the performance standards for the placement of excess spoil on pre-existing benches will be followed. This requirement can be in the form of either a regulation or an official policy statement.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The Fish and Wildlife Service (FWS) of the U.S. Department of the Interior expressed concern that the proposed amendments may negatively affect water quality, and thus potentially affect Federal listed threatened and endangered aquatic species in southwestern Virginia (Administrative Record Number VA–848). FWS further stated that on December 12, 1994, FWS met with DMLR to discuss the proposed amendments and visit active mine sites with ongoing backfill activities. FWS learned that despite the proposed amendments, all downgradient surface water runoff controls for all disturbed areas are still required by the Virginia program. Additionally, the ''suitability'' of the material for purposes of backfilling or disposing as a refuse pile must be demonstrated by tests for acidity, and the Virginia program continues to prohibit the burial or storage of acid- and toxic-forming materials in proximity to any drainage course. It is clear, FWS stated, that all current regulations will continue in force that require treatment of surface water runoff from the entire disturbed area. The FWS concluded that the proposed amendments are not likely to adversely affect listed species or critical habitat.

Public Comments

A public comment period and opportunity to request a public hearing was announced in the November 16, 1994, **Federal Register** (59 FR 59187). The comment period closed on December 16, 1994. No comments were received and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA. EPA responded on December 6, 1994 (Administrative Record Number VA–845), and on January 19, 1995 (Administrative Record Number VA–849). The EPA expressed concerns with potential pollution from the proposed coal refuse disposal on abandoned steep mining areas. In particular, EPA was concerned that the proposed allowance of hillside runoff from ''small'' drainage areas over the refuse pile could result in acid and toxic seepage and runoff.

Virginia indicated to EPA that construction of ditches along the top of the steep mined areas to divert the runoff around the disposal sites would be impractical due to the unstable nature of abandoned highwalls. Virginia also stated that acid and toxic refuse would not be regarded as suitable for such disposal unless isolated and hydrologically separated from drainage courses. Virginia also indicated to the EPA that refuse would be tested in the permitting stage for suitability as well assuring the placement stage.

The EPA stated that disposal of coal refuse on abandoned mine sites, such as proposed by Virginia or in any other manner, is subject to effluent guideline limits as described in 40 CFR 434 subpart B for Coal Preparation Plant Associated Areas during the active and reclamation stages. However, even if treatment during these stages results in compliance with effluent guideline limits and water quality standards, a major concern is the potential of perpetual acid and toxic drainage after closure. EPA stated that it is important to emphasize that any refuse disposal sites which will be exposed to any runoff or infiltration should be free of acid or toxic forming substances. Even where no such substances are initially evident, EPA said, diversion of runoff to the extent possible should be provided and limestone or other alkaline materials should be added to the refuse for added safety. The Director notes that Virginia explained in its October 31, 1994, submittal that the State regulatory authority has ample authority to ensure that appropriate measures are taken to prevent acid and toxic drainage and adverse affects to the hydrologic balance. Virginia also continues to

prohibit the burial or storage of acid- and toxic-forming materials in proximity to any drainage course.

V. Director's Decision

Based on the findings above, the Director is approving Virginia's amendment concerning coal refuse disposal as submitted by Virginia on October 31, 1994, to the extent that the proposed amendments will be implemented as explained by Virginia in its October 31, 1994, submittal to OSM.

In addition, the Director is requiring that Virginia further clarify the implementation of these amendments by amending the Virginia program as follows: (1) Define the term ''suitable.'' The definition should clarify the criteria, both physical and chemical, to be used to distinguish between materials which can and cannot be used for the backfilling of pre-existing benches or mined-out areas; (2) add a requirement to the Virginia rules to explicitly require the determination of the location of seeps, springs, or other discharges in the designing of a backfill; (3) add to 480–03–19.773.17 a specific requirement that a permit condition be imposed requiring a quarterly analysis of coal mine waste as it is placed in a refuse pile or in an area being backfilled; (4) add a definition of ''small'' to mean that there are no channeled flows, that during storm events there is only sheet flow, and that no variance would be approved if the drainage area above the pile on any point exceeds 500 feet, measured along the slope; and (5) add a requirement that whenever coal refuse is placed on pre-existing benches for the purpose of returning the benches to AOC, the performance standards for the placement of excess spoil on pre-existing benches will be followed.

The Federal regulations at 30 CFR Part 946 codifying decisions concerning the Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Virginia program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Virginia of only such provisions.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12778

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 27, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 946—VIRGINIA

1. The authority citation for Part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 946.15, paragraph (ii) is added to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(ii) The following amendment to the Virginia program at 480–03–19.816/817.102(e) (1) and (2) concerning coal refuse disposal as submitted to OSM on October 31, 1994, is approved to the extent that the proposed amendments will be implemented as explained by Virginia in its October 31, 1994, submittal to OSM, effective August 8, 1995.

3. In section 946.16, paragraph (a) is added to read as follows:

§ 946.16 Required regulatory program amendments.

* * * * *

(a) By September 1, 1995, or another date approved by the Office of Surface Mining Reclamation and Enforcement, Virginia shall further clarify the

implementation of 480–03–19.816/817.102(e) (1) and (2) by amending the Virginia program as follows:

(1) Define the term ''suitable.'' The definition should clarify the criteria, both physical and chemical, to be used to distinguish between materials which can and cannot be used for the backfilling of pre-existing benches or mined-out areas;

(2) Add a requirement to the Virginia rules to explicitly require the determination of the location of seeps, springs, or other discharges in the designing of a backfill;

(3) Add to 480–03–19.773.17 a specific requirement that a permit condition be imposed requiring a quarterly analysis of coal mine waste as it is placed in a refuse pile or in an area being backfilled;

(4) Add a definition of ''small'' to mean that there are no channeled flows, that during storm events there is only sheet flow, and that no variance would be approved if the drainage area above the pile on any point exceeds 500 feet, measured along the slope; and

(5) Add a requirement that whenever coal refuse is placed on pre-existing benches for the purpose of returning the benches to AOC, the performance standards for the placement of excess spoil on pre-existing benches will be followed.

* * * * *

[FR Doc. 95–19509 Filed 8–7–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 92

RIN 0790–AG18

Revitalizing Base Closure Communities and Community Assistance—Community Redevelopment and Homeless Assistance

AGENCY: Office of the Assistant Secretary of Defense for Economic Security, DoD.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule promulgates policies and procedures, developed by both the Departments of Defense and Housing and Urban Development, for implementing the Base Closure Community Redevelopment and Homeless Assistance Act (the ''Redevelopment Act''). The Department of Housing and urban Development will be making a similar publication in 24 CFR part 586.

DATES: This part is effective August 8, 1995. Comments must be received by October 10, 1995.

ADDRESSES: Comments must be forwarded to the Office of the Assistant Secretary of Defense (Economic Security), 3300 Defense Pentagon, Room 1D760, Washington, DC 20301–3300. This rule was written jointly by the Department of Defense and the Department of Housing and Urban Development. All public comments will be reviewed by both Departments and subsequent amendments will be drafted together.

FOR FURTHER INFORMATION CONTACT: Robert Hertzfeld, Office of Assistant Secretary of Defense (Economic Security), Department of Defense, 3300 Defense Pentagon, Room 1D–760, Washington, DC 20301–3300, (703) 695–1470 or Thelma Moore, Deputy Assistant Secretary for Planning/Community Viability, Office of Community Planning and Development, Room 7204, Department of Housing and urban Development, 451 7th Street, SW, Washington, DC 20410, (202) 708–2484 or, TDD number for hearing and speech-impaired, (202) 708–0738 (these telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION: The Redevelopment Act amends the Base Closure and Realignment Act of 1988 and the Defense Base Closure and Realignment Act of 1990, both as amended by the National Defense Authorization Act for Fiscal Year 1994.

I. Certification

It has been determined that this interim rule is not a significant regulatory action. This part is not subject to the Regulatory Flexibility Act because it would not have a significant economic impact on a substantial number of small entities. This interim rule doe not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980.

II. Other Matters

A. Justification for Interim Rulemaking

Although rulemaking procedures generally require the publication of a proposed rule before regulations are made final and effective, there exists good cause to publish this rule for effect without first soliciting public comment. Forty-five military installations from the 1988, 1991, or 1993 base closure/realignment rounds have elected to be included under this new process. HUD anticipates the receipt of applications in the very near future from the LRAs representing these closure/realignment sites. Moreover, a fourth round of military base closures and realignments was initiated with the Secretary of Defense submitting a list of proposed closures/realignments to the Defense Base Closure and Realignment Commission on February 28, 1995. The Commission submitted its recommendations to the President on June 30, 1995. Upon approval by the President and Congress, this rule will apply immediately to the installations on this 1995 closure/realignment list.

To delay the implementation of this law until publication of a final rule would mean that base reuse would be delayed until a final rule is published. LRAs are awaiting the guidance contained in this rule, necessitating implementation through this interim rule.

DoD and HUD invite public comment on this interim rule within the 60-day comment period. All comments will be considered during the development of the final rule.

B. Impact on the Environment

HUD has made a Finding of No Significant Impact with respect to the environment in accordance with HUD regulations in 24 CFR part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Department of Housing and Urban Development, Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

C. Impact on the Family

The General Counsel of HUD, as the Designated Official under Executive Order 12606, The Family, has determined that this interim rule would not have a potentially significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

III. Background

A. Legislative Summary

This interim rule promulgates policy and procedures for implementing the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (''Redevelopment Act'') (Pub. L. 103–421). The Redevelopment Act amends the Base Closure and Realignment Act of 1988 (Pub. L. 100–526) and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510) (both at 10 U.S.C. § 2687, note), both as amended by the National Defense

Authorization Act for Fiscal Year 1994 (Pub. L. 103–160).

B. Circumstances That Led to This New Law

Title V of the Stewart B. McKinney Homeless Assistance Act of 1987, as amended, 42 U.S.C. 11411 (''Title V''), granted first priority on use of all surplus federally-owned real and personal property, including former military installations, to the homeless. The Title V provisions have worked reasonably well for small parcels, however, in the base closure and realignment environment the processes for reuse planning and homeless use were independent and the timing incompatible. On October 25, 1994, the President signed the Redevelopment Act, which exempts base closure and realignment property from Title V and substitutes a new community-based process wherein representatives of the homeless will work directly with Local Redevelopment Authorities (LRAs) on the reuse of former military installations.

The Redevelopment Act provides a process which aims to balance the needs of the homeless with other development interests in the community in the vicinity of the installation. Congress recognized that in order to achieve this balance, all interests must be ''put on the table'' at the same time. Accordingly, the Redevelopment Act requires the LRA to accept notices of interest simultaneously from state and local governments and other interests that include development and public purpose uses, including public benefit uses pursuant to the federal surplus property disposal authorities.

C. Applicability

The Redevelopment Act applies to all bases that are approved for closure/realignment under Pub. L. 101–510 after October 25, 1994 as well as those installations approved for closure/realignment prior to October 25, 1994 under either Pub. L. 100–526 or Pub. L. 101–510 that have elected to come under the new process prior to December 24, 1994. All other installations approved for closure/realignment prior to October 25, 1994 that have not elected to come under the new process, are covered by the Title V process as amended by Pub. L. 103–160. The Title V process continues to apply to all other unutilized, underutilized, excess, or surplus property owned by the Federal government, including military properties that are not part of a base closure or realignment.

LRAs which have elected to come under the Redevelopment Act should pay particular attention to § 92.20(c)(1) of this part which extends the permissible time period within which an LRA can set its date for receipt of notices of interest. For LRAs which have adequately complied with the statutory time limitation prior to publication of this interim rule, HUD will not expect them to reopen their notice period; however, those which have not yet so complied will be expected to follow this requirement. For all installations selected for closure or realignment prior to 1995 that have elected this process, the LRA must complete the period for receiving notices of interest no later than 90 days from the later of the publication of this interim rule or HUD's publication of 24 CFR part 586.

The Redevelopment Act recognizes that installations approved for closure or realignment before enactment of this law are well into the planning process and should therefore be treated differently than installations approved for closure/realignment subsequent to enactment. As a result, § 92.20(c) of this part allows for greater flexibility concerning the commencement and requirements of the outreach efforts to representatives of the homeless, state and local governments, and other interested parties in those communities.

The Redevelopment Act includes special considerations for providers who had applications pending on closure or realignment and disposal properties under Title V at the time of enactment of the Redevelopment Act. LRAs must consider and specifically address any applications that were pending as of the date of enactment. In the case of providers whose applications have been approved (but the property applied for has not been transferred or leased), the LRA must accommodate the provider with substantially equivalent property on or off the installation, sufficient funding to acquire such equivalent property, services and activities that meet the needs identified in the application, or a combination of such property, funding, services, and activities.

D. Roles of DoD and HUD

DoD is responsible, through the Military Departments, for closing and disposing of the installations approved for closure or realignment. On July 20, 1995 (60 FR 37337), DoD published a final rule implementing other activities associated with the closure, realignment and disposal of military installations including the process whereby properties at an installation are screened for reuse by the Federal government. The actions undertaken by the Military Departments under that regulation precede the actions to be taken under this part. Interested parties should obtain copies of both.

DoD, through the Office of Economic Adjustment is responsible for recognizing the LRA. The LRA must, in accordance with § 92.30 of this part, submit to both HUD and DoD an application, which includes the redevelopment plan and the homeless assistance submission. HUD will review the application and notify DoD and the LRA of its findings. HUD's standards of review are described at § 92.35(b) of this part. Throughout its review, HUD will be in contact with the LRA for any clarifications or additional information it needs to complete the review.

Pursuant to § 92.25 of this part, representatives of HUD will be available to provide assistance to LRAs throughout the planning process. LRAs are encouraged to contact their HUD field office for technical assistance including lists of homeless providers operating in the vicinity of the installation. Representatives of HUD will be available to attend workshops held under § 92.20(c)(3)(ii) of this part and other meetings as requested by the LRA. The planning process created by The Redevelopment Act is community-based. HUD neither anticipates nor desires to mandate results, but will seek to expedite and assist all parties in arriving at an equitable balance between economic redevelopment and homeless needs. DoD and HUD anticipate that the reuse plans will be general land use plans for which HUD will be reviewing the balance made between homeless assistance and economic development needs rather than the suitability of a specific site for use by the homeless.

Although certain sites may be identified for use for the homeless, DoD and HUD recognizes that the environmental review process may show that certain properties are not suitable for the designated use. If such a finding is made, the LRA and the representative of the homeless should negotiate for alternate arrangements that would enable the same balance of interests that was made originally. If, because of the environmental condition, less property is available for reuse, it is possible that less property would be made available for homeless use. The frequency of this problem should be limited because of the extensive environmental review throughout the process, and with dialogue between the LRA and the Military Department and the Base Realignment and Closure Environmental Coordinator.

E. HUD's Approach

1. Need: Continuum of Care

In its review, HUD will consider whether the redevelopment plan promotes projects and activities that address the expressed needs within the current homeless service system. The homeless assistance submission should assess the current homeless service system in the vicinity of the installation and the extent to which the redevelopment plan may support those notices of interest that propose to address the critical gaps in the system.

A comprehensive homeless service system is called a continuum of care. The continuum of care model is predicated on the understanding that homelessness is not caused merely by a lack of shelter, but involves a variety of underlying, unmet needs—physical, economic, and social. Dealing effectively with the problems of homelessness requires a comprehensive system of housing and necessary services for each stage—from emergency shelter to housing with no established limitation on the amount of time of residence, as well as a strong prevention strategy.

A continuum of care system includes:

(a) A system of outreach and assessment for determining the needs and condition of an individual or family who is homeless, or whether assistance is necessary to prevent an individual or family from becoming homeless.

(b) Emergency shelters with appropriate supportive services to help ensure that homeless individuals and families receive adequate emergency shelter and referral to necessary service providers or housing finders;

(c) Transitional housing with appropriate supportive services to help those homeless individuals and families that are not prepared to make the transition to independent living;

(d) Housing with or without supportive services that has no established limitation on the amount of time of residence to help meet long-term needs of homeless individuals and families; and,

(e) Any other activity that clearly meets an identified need of the homeless and fills a gap in the continuum of care.

Supportive services are critical to all components of the continuum of care. These services include, but are not limited to case management, housing counseling, job training and placement, primary health care, mental health services, substance abuse treatment, child care, transportation, emergency food and clothing, family violence services, education services, moving services, assistance in obtaining entitlements and referral to veterans services and legal services. These services enable homeless persons and families to move through the continuum of care toward independent living.

2. Impact: Consolidated Plan and Other Local Plans

HUD will consider whether the homeless assistance submission is consistent with the Consolidated Plan or with any other existing economic, community and housing plans adopted by the jurisdictions in the vicinity of the installation and whether it furthers the overall goals and objectives of these plans.

The Consolidated Plan encompasses the planning, application, and reporting requirements of four formula grant programs administered by HUD's Office of Community Planning and Development: Community Development Block Grant, HOME Investment Partnerships, Housing Opportunities for Persons with AIDS, and Emergency Shelter Grants. The requirements of the Consolidated Plan can be found in the final rule published in the Federal Register on January 5, 1995 at 60 FR 1878 and codified at 24 CFR Part 91. Some communities in the vicinity of an installation are eligible for some or all of these programs, and if eligible, are required to submit to HUD a Consolidated Plan. LRA's that encompass non-entitlement areas, or those without a Consolidated Plan should refer to other long-range plans or alternative resources that exist and have been developed within the jurisdiction(s) they represent. LRAs should use the information in these plans in evaluating the notices of interest received from representatives of the homeless.

3. Balance in the Community Between the Need for Homeless Housing and Services, Economic Redevelopment and Other Development

HUD will consider how the LRA balances the community's homeless needs with the need for economic and other development. LRAs are encouraged to propose activities that advance economic and other development objectives which also address the needs of homeless persons and families.

For example, an LRA may propose that a large warehouse facility be targeted for use as a light manufacturing facility. The LRA estimates that this facility will employ many semi-skilled employees. In its redevelopment plan, the LRA proposes that prospective users of this property will be asked to notify the homeless job search agency, an organization being supported with property in the LRA's homeless assistance submission, of any available positions at the facility. The prospective users of the facility will be asked by the LRA to interview applicants referred by the agency and use its best efforts to hire qualified persons. Under this scenario, addressing the economic development needs of a community also addresses some of the needs of persons that are homeless. Solutions to diverse community problems need not be mutually exclusive.

4. Outreach to Representatives of the Homeless

HUD will examine efforts made by the LRA to both advertise the availability of property to representatives of the homeless and to help representatives of the homeless find a match between their needs and local resources, including the facilities at the installation. HUD will consider whether the advertisement requirements of § 92.20(c) of this part were met, but more importantly, HUD will focus on the quality of the contact. LRAs should design their submissions. While LRAs can emphasize particular needs, outreach efforts should not limit the possible range of expressions of interest.

5. Properties: Uniqueness of each Installation

The application requirements described at § 92.30 of this part apply to installations of any size, type or configuration. Although the regulation makes no distinction between small and large installations, HUD will work closely with the LRA for each installation to help it develop an application that makes sense for that particular installation. All LRAs must submit a complete application. HUD will then judge the application on its individual merits.

HUD recognizes that redevelopment plans and homeless assistance submissions developed by LRAs for major installations, which may encompass thousands of acres, will be more lengthy and complicated than those of 3 and 4 acre reserve facilities that contain few buildings. Moreover, an installation located in a small rural

community with a small homeless population will not be held to the same level of detail as will a large metropolitan area with a large homeless population.

F. Eligible Activities

The intent of the Redevelopment Act is to focus on a community-based process to address local homeless needs within the context of the base reuse and other community and economic needs. LRAs and representatives of the homeless are encouraged to be creative. Eligible activities may include:

1. Outreach services and assessment services;
2. Emergency shelter;
3. Transitional housing, social services tied to transitional housing or services located apart from housing units;
4. Housing that has no established limitation on the amount of time of residence; and,
5. Any other activity that clearly meets an identified need of the homeless and fills a gap in the continuum of care.

LRAs and representatives of the homeless are cautioned, however, that under the Redevelopment Act, no-cost transfers of former military properties are limited to transfers to representatives of the homeless. Redevelopment are limited to transfers to representatives of the homeless. Redevelopment plans proposing transfers of property from the Military Department to homeless individuals or families for free will not be accepted.

List of Subjects in 32 CFR Part 92

Community development, Government employees, Military personnel, Surplus government property.

Accordingly, title 32, chapter I, subchapter C, is amended by adding Part 92 to read as follows:

PART 92—REVITALIZING BASE CLOSURE COMMUNITIES AND COMMUNITY ASSISTANCE—COMMUNITY REDEVELOPMENT AND HOMELESS ASSISTANCE

Sec.
92.1 Purpose.
92.5 Definitions.
92.10 Applicability.
92.15 Waivers and extensions of deadlines.
92.20 Overview of the process.
92.25 HUD's negotiations and consultations with the LRA.
92.30 LRA application.
92.35 HUD's review of the application.
92.40 Adverse determinations.
92.45 Disposal of buildings and property.

Authority: 10 U.S.C. 2687 note.

§ 92.1 Purpose.

This part implements the Base Closure Community Redevelopment and Homeless Assistance Act (Pub. L. 103–421, approved October 25, 1994). It describes the roles and responsibilities of the Department of Defense (DoD), the Department of Housing and Urban Development (HUD), Local redevelopment Authorities (LRAs), and representatives of the homeless in planning and implementing the reuse of domestic military installations that are approved for closure or realignment. Specifically, this part describes the guidance DoD and HUD provide to the LRA, the planning documents the LRA develops and submits to DoD and HUD in planning the reuse of these installations, and the standards of review that HUD observes when reviewing the documents submitted by the LRA. Pub. L. 103–421 authorizes HUD to determine whether the plan for the reuse of the installation proposed by LRA balances the community development, economic redevelopment and other development needs of the communities in the vicinity of the installation with the needs of the homeless in those communities.

§ 92.5 Definitions.

As used in this part:

CERCLA. Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq*).

Communities in the vicinity of the installation. The communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the LRA for the installation.

Consolidated Plan. The plan prepared in accordance with the requirements of 24 CFR part 91.

Continuum of care system. (1) Comprehensive homeless assistance system that includes:

(i) A system of outreach and assessment for determining the needs and condition of an individual or family who is homeless, or whether assistance is necessary to prevent an individual or family from becoming homeless;

(ii) Emergency shelters with appropriate supportive services to help ensure that homeless individuals and families receive adequate emergency shelter and referral to necessary service providers or housing finders;

(iii) Transitional housing with appropriate supportive services to help those homeless individuals and families that are not prepared to make the transition to independent living;

(iv) Housing with or without supportive services that has no established limitation on the amount of time of residence to help meet long-term needs of homeless individuals and families; and

(v) Any other activity that clearly meets an identified need of the homeless and fills a gap in the continuum of care.

(2) Supportive services enable homeless persons and families to move through the continuum of care toward independent living. These services include, but are not limited to case management, housing counseling, job training and placement, primary health care, mental health services, substance abuse treatment, child care, transportation, emergency food and clothing, family violence services, education services, moving services, assistance in obtaining entitlements, and referral to veterans services and legal services.

Day. One calendar day including weekends and holidays.

DoD. Department of Defense.

HHS. Department of Health and Human Services.

Homeless person.

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual or family who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(3) This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

HUD. Department of Housing and Urban Development.

Installation. A base, camp, post, station, yard, center, homeport facility for any ship or other activity under the jurisdiction of DoD which is approved for closure or realignment under the Base Closure and Realignment Act of 1988 (Pub. L. 100–526) and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510) (both at 10 U.S.C. 2687, note), both as amended by the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160, 107 Stat. 1909).

Local redevelopment authority (LRA). Any authority or instrumentality established by state or local government

and recognized by the Secretary of Defense, through the Office of Economic Adjustment, as the entity responsible for developing the redevelopment plan with respect to the installation or for directing implementation of the plan.

NEPA. National Environmental Policy Act of 1969 (42 U.S.C. 4320).

OEA. Office of Economic Adjustment, U.S. Department of Defense.

Private nonprofit organization. An organization no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designed an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

Redevelopment plan. A conceptual land use plan prepared by the recognized LRA to guide local reuse of the former military installation.

Representative(s) of the homeless. A State or local government agency or private nonprofit organization, including a homeless assistance planning board, that provides or proposes to provide services to the homeless.

Substantially equivalent. Property that is functionally suitable for the approved Title V application. For example, if the representative of the homeless had an approved Title V application for a building that would accommodate 100 homeless persons in an emergency shelter, the replacement facility would also have to accommodate 100 at a comparable cost for renovation.

Substantially equivalent funding. Sufficient funding to acquire a substantially equivalent facility.

Surplus property. Any property not required for the needs and the discharge of the responsibilities of any Federal land holding agency as determined by the Secretary of Defense.

Title V. Title V of the Stewart B. McKinney Homeless Assistance Act of 1987 (42 U.S.C. 11411) as amended by the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160).

Urban county. A county within a metropolitan area as defined at 24 CFR 570.3.

§ 92.10 Applicability.

(a) *General.* This part applies to all installations that are approved for closure/realignment by the President and Congress under Pub. L. 101–510 after October 25, 1994.

(b) *Request for inclusion under this process.* This part also applies to installations that were approved for closure/realignment under either Pub. L. 100–526 or Pub. L. 101–510 prior to October 25, 1994 and for which an LRA submitted a request for inclusion under this part to DoD by December 24, 1994. A list of such requests was published in the **Federal Register** on May 30, 1995 (60 FR 28089–28091).

(1) *Installations with pending but not approved Title V applications as of October 25, 1994.* The LRA shall consider and specifically address any application for use of buildings and property to assist the homeless that were received by HHS prior to October 25, 1994 and were pending with the Secretary of HHS on that date. These pending requests shall be addressed in the LRA's homeless assistance submission.

(2) *Installations with approved Title V applications.* Where property has an approved Title V application, yet has not been assigned or otherwise disposed of by the Military Department, the LRA must insure that its homeless assistance submission provides the Title V applicant with:

(i) The property requested;

(ii) Properties, on or off the installation, that are substantially equivalent to those requested;

(iii) Sufficient funding to acquire such substantially equivalent properties;

(iv) Services and activities that meet the needs identified in the application; or

(v) A combination of the properties, funding and services and activities described previously.

(c) *Revised Title V process.* All other installations approved for closure or realignment under either Pub. L. 100–526 or Pub. L. 101–510 prior to October 25, 1994 for which there has been no request for consideration under this part, are covered by the process stipulated under Title V. Buildings or property that were transferred or leased for homeless use under Title V prior to October 25, 1994 may not be reconsidered under this part.

§ 92.15 Waivers and extensions of deadlines.

(a) After consultation with the LRA and HUD, DoD, through the Assistant Secretary of Defense (Economic Security), upon a finding that it is in the interest of the communities affected by the closure/realignment of the installation, may extend or postpone any deadline contained in this part.

(b) Upon completion of a determination and finding of good cause, and except for deadlines and actions required on the part of DoD, HUD may waive any provision of §§ 92.20 through 92.45 in any particular case, subject only to statutory limitations.

§ 92.20 Overview of the process.

(a) *Responsibilities of the Military Department.* The Military Department shall make installation properties available to other DoD components and Federal agencies pursuant to 32 CFR part 91. The Military Department will keep the LRA informed of other Federal interest in the property during this process. Upon completion of this process the Military Department will notify HUD and will notify either the LRA, or the Chief Executive Officer of the state, as appropriate, and publish a list of surplus property on the installation that will be available for reuse in the **Federal Register** and a newspaper of general circulation in the communities in the vicinity of the installation.

(b) *Recognition of the LRA.* As soon as practicable after the list of installations recommended for closure or realignment is approved, DoD, through OEA, will recognize an LRA for the installation. Upon recognition, DoD shall publish the name, address, and point of contact for the LRA in the **Federal Register** and in a newspaper of general circulation in the communities in the vicinity of the installation.

(c) *Responsibilities of the LRA.* The LRA should begin to conduct outreach efforts with respect to the installation as soon as is practicable after the date of approval of closure/realignment of the installation. Although the process may begin at any time after this date of approval, the local reuse planning process must begin no later than the completion of Federal screening procedures which is deemed to be the date of the DoD **Federal Register** publication of available property described at § 92.20(a). For those installations that have begun the process described in this part prior to publication of this rule, HUD will, on a case by case basis, determine whether the statutory requirements have been fulfilled and whether any additional requirements listed in this part should be required. Upon the **Federal Register** publication described in § 92.20(a), the LRA shall:

(1) Publish, within 30 days, in a newspaper of general circulation in the communities in the vicinity of the installation, the time period during which the LRA will receive notices of interest from state and local governments, representatives of the homeless, and other interested parties.

This publication shall include the name, address, telephone numbers and the point of contact for the LRA and information on the prescribed form and contents of the notice of interest. The LRA shall notify DoD of the deadline specified for receipt of notices of interest.

(i) For all installations selected for closure or realignment prior to 1995 that have elected to proceed under Pub. L. 103–421 and which have begun receiving notices of interest prior to publication of this rule, the LRA shall have accepted notices of interest for not less than 30 days and not more than 180 days from the date the LRA submitted a request for inclusion under this process as described at § 92.10(b). For installations selected for closure or realignment prior to 1995 for which the LRA has not begun or has not completed the acceptance of notices of interest prior to publication of this part, the LRA shall accept notices of interest for not less than 30 days and not more than 90 days from the later of the date of publication of this part or the date of HUD's publication of 24 CFR part 586.

(ii) For installations selected for closure or realignment in 1995 or thereafter, notices of interest shall be accepted for a minimum of 90 days and not more than 180 days.

(2) Prescribe the form and contents of notices of interest.

(i) The LRA may not release to the public any information submitted under this part without the consent of the representative of the homeless concerned unless such release is authorized under Federal law and under the law of the state and communities in which the installation concerned is located.

(ii) The notices of interest from representatives of the homeless must include:

(A) A description of the homeless assistance program proposed, including the purposes to which the property or facility will be put, which may include uses such as supportive services, job and skills training, employment programs, shelters, transitional housing or housing with no established limitation on the amount of time of residence, food and clothing banks, treatment facilities, or any other activity which clearly meets an identified need of the homeless and fills a gap in the continuum of care;

(B) A description of the need for the program;

(C) A description of the extent to which the program is or will be coordinated with other homeless assistance programs in the communities in the vicinity of the installation;

(D) Information about the physical requirements necessary to carry out the program including a description of the buildings and property at the installation that are necessary to carry out the program;

(E) A description of the representative of the homeless which is submitting the notice, its capacity to carry out the program and its financial plan for implementing the program; and

(F) An assessment of the time required in order to commence carrying out the program.

(iii) The notices of interest from entities other than representatives of the homeless should specify the name of the entity and specific interest in property or facilities, along with a description of the planned use.

(3) Undertake outreach efforts to representatives of the homeless by contacting local government officials and other persons or entities that may be interested in assisting the homeless within the vicinity of the installation.

(i) The LRA may invite persons and organizations identified on the HUD list of representatives of the homeless and any other representatives of the homeless with which the LRA is familiar, operating in the vicinity of the installation, to the workshop described in § 92.20(c)(3)(ii).

(ii) The LRA in coordination with the Military Department and HUD shall conduct at least one workshop where representatives of the homeless have an opportunity to:

(A) Learn about the closure/realignment and disposal process;

(B) Tour the buildings and properties available either on or off the installation;

(C) Learn about the LRA's process and schedule for receiving notices of interest as guided by § 92.20(c)(2); and

(D) Learn about any known land use constraints affecting the available property and buildings.

(iii) The LRA should meet with representatives of the homeless that express interest in discussing possible uses for these properties to alleviate gaps in the continuum of care.

(4) Consider various properties in response to the notices of interest. The LRA may consider property that is located off the installation.

(5) Develop an application, which includes the redevelopment plan and the homeless assistance submission. This application shall consider the notices of interest received from state and local governments, representatives of the homeless, and other interested parties. This shall include, but not be limited to, entities eligible for public benefit transfers under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 472); representatives of the homeless; commercial, industrial, and residential development interests; and, other interests. From the deadline date for receipt of notices of interest described at § 92.20(c)(1), the LRA shall have 270 days to complete and submit the LRA application to DoD and HUD. The application requirements are described at § 92.30.

(6) Make the draft application available to the public for review and comment throughout the process of developing the application. The LRA must conduct at least one public hearing on the application prior to its submittal to HUD and DoD, and a summary of these public comments shall be included in the application when it is submitted.

(d) *State, local, and public benefit screening.* The LRA should, while conducting its outreach efforts, work with the federal agencies that sponsor public benefit transfers under the Federal Property and Administrative Services Act of 1949. Those agencies can provide a list of parties in the vicinity of the installation that might be interested in and eligible for public benefit transfers. The LRA should make a reasonable effort to inform such parties of the availability of the property and incorporate their interests within the planning process. These requests are not required to be met, but must be considered.

§ 92.25 HUD's negotiations and consultations with the LRA.

HUD may negotiate and consult with the LRA before or during the course of preparation of the LRA application and during HUD's review thereof with a view toward avoiding any preliminary determination that the application does not meet any requirement of this part. HUD will provide the LRA with a list of persons and organizations that are representatives of the homeless operating in the vicinity of the installation.

§ 92.30 LRA application.

(a) *Redevelopment plan.* A copy of the redevelopment plan shall be part of the application.

(b) *Homeless assistance submission.* This component of the application shall include the following:

(1) *Information about homelessness in the communities in the vicinity of the installation.*

(i) A list of all the jurisdictions which comprise the LRA.

(ii) A description of the unmet need in the continuum of care system within each jurisdiction, which should include information about any gaps that exist in the continuum of care for particular homeless subpopulations The source for this information shall depend upon the size and nature of the jurisdiction(s) that comprise the LRA. LRAs representing:

(A) Jurisdictions that are required to submit a Consolidated Plan shall include a copy of their Homeless and Special Needs Population Table, Priority Homeless Needs Assessment Table, and narrative description thereof from that Consolidated Plan including the inventory of facilities and services that assist the homeless in the jurisdiction.

(B) Jurisdictions that are part of an urban county that is required to submit a Consolidated Plan shall include a copy of their Homeless and Special Needs Population Table, Priority Homeless Needs Assessment Table, and narrative description thereof from that Consolidated Plan including the inventory of facilities and services that assist the homeless in the jurisdiction. In addition, the LRA shall explain what portion of the homeless population and subpopulations described in the Consolidated Plan are attributable to the jurisdiction it represents.

(C) Jurisdictions not described by paragraph (b)(1)(ii)(A) or (b)(1)(ii)(B) of this section shall submit a narrative description of what it perceives to be the homeless population within the jurisdiction(s) it represents and a brief inventory of the facilities and services that assist homeless persons and families within each jurisdiction. LRAs that represent these jurisdictions are not required to conduct surveys of the homeless population.

(2) *Proposed assistance to homeless persons and families.* (i) A description of the proposed activities to be carried out on or off the installation and a discussion of how these activities meet the needs of the homeless by addressing the gaps in the continuum of care. The activities need not be limited to expressions of interest in property, but may also include discussion of how economic redevelopment may benefit the homeless;

(ii) A copy of each notice of interest from representatives of the homeless for use of building and property and a description of the manner in which the LRA application addresses the need expressed in each notice of interest. If the LRA determines that a particular notice of interest should not be awarded property, an explanation of why the LRA determined not to support that notice of interest, the reasons for which may include the impact of the program contained in the notice of interest on the community as described in paragraph (b)(2)(iii) of this section; and

(iii) A description of the impact that the implemented redevelopment plan will have on the community. This shall include information on how the LRA's redevelopment plan might impact the character of existing neighborhoods adjacent to the properties proposed to be used to assist the homeless and should discuss alternative plans. Impact on schools, social services, transportation, infrastructure, concentration of minorities and/or low income persons also shall be discussed.

(3) *Buildings and properties.* (i) A copy of the legally binding agreements that the LRA proposes to enter into with the representative(s) of the homeless selected by the LRA to implement homeless programs that fill gaps in the existing continuum of care. The legally binding agreements shall provide for a process for negotiating alternative arrangements that would enable the same balance of interests made originally in the event that an environmental review conducted under § 92.45(a) subsequent to HUD approval indicates that any property identified for transfer in the agreement is not suitable for the intended purpose. Legally binding agreements must also provide for the reversion or transfer, either to the LRA or to another entity or entities of the buildings and property in the event they cease to be used for the homeless;

(ii) A description of how buildings and properties either on or off the installation will be used to fill some of the gaps in the current continuum of care system and an explanation of the suitability of the buildings and property for that use; and

(iii) Information on the availability of general services such as transportation, police, fire, and a discussion of infrastructure such as water, sewer, and electricity in the vicinity of the proposed homeless activities.

(4) *Balance with economic and other development needs.* (i) An assessment of the manner in which the application balances the expressed needs of the homeless and the needs of the communities comprising the LRA for economic redevelopment and other development; and

(ii) An explanation of how the LRA application is consistent with the appropriate Consolidated Plan(s) or any other existing housing, social service, community, economic, or other development plans adopted by the jurisdictions in the vicinity of the installation.

(5) *Outreach.* The LRA shall explain how the outreach requirements described at § 92.20(c)(3) have been fulfilled. This explanation shall include a list of the representatives of the homeless with which the LRA consulted in preparing the application.

(c) *Public comments.* The LRA application shall include the materials described at § 92.20(c)(6). These materials shall be prefaced with an overview of the citizen participation process observed in preparing the application.

§ 92.35 HUD's review of the application.

(a) *Timing.* HUD shall complete a review of each application no later than 60 days after its receipt by HUD.

(b) *Standards of review.* The purpose of the review is to determine whether the application is complete and, with respect to the expressed interest and requests of representatives of the homeless, whether the redevelopment plan:

(1) *Need.* Takes into consideration the size and nature of the homeless population in the communities in the vicinity of the installation, the availability of existing services in such communities to meet the needs of the homeless in such communities, and the suitability of the buildings and property covered by the application for use and needs of the homeless in such communities.

(2) *Impact.* Takes into consideration any economic impact of the homeless assistance under the plan on the communities in the vicinity of the installation, including:

(i) Whether the plan is feasible in light of demands that would be placed on available social services, police and fire protection, and infrastructure in the community; and

(ii) Whether the application is consistent with the Consolidated Plan(s) or any other existing housing, social service, community, economic, or other development plans adopted by the jurisdictions in the vicinity of the installation.

(3) *Balance.* Balances in an appropriate manner the needs of the communities in the vicinity of the installation for economic redevelopment and other development with the needs of the homeless in such communities.

(4) *Outreach.* Was developed in consultation with representatives of the homeless and the homeless assistance planning boards, if any, in the communities in the vicinity of the installation.

(i) HUD will examine whether the outreach requirements described at § 92.20(c)(3) have been fulfilled by the

LRA. HUD will carefully review the outreach process to insure that the LRA advertised the availability of installation properties to representatives of the homeless.

(ii) HUD will compare the list of homeless representatives contacted by the LRA against contacts maintained by the local HUD Field Office.

(5) *Properties.* Specifies the manner in which buildings and property, resources, and assistance on or off the installation will be made available for homeless assistance purposes. HUD will be mindful of the uniqueness of each installation. HUD will review this process so that it is confident that the LRA will make these buildings and properties available to representatives of the homeless in a timely fashion.

(c) *Notice of determination.* (1) HUD shall, no later than the 60th day after its receipt of the application, unless such deadline is extended pursuant to § 92.15(a), send written notification both to DoD and the LRA of its preliminary determination that the application meets or fails to meet the requirements of paragraph (b) of this section. If the application fails to meet the requirements, HUD will send the LRA:

(i) A summary of the deficiencies in the application;

(ii) An explanation of the determination; and

(iii) A statement of how the LRA must address the determinations.

(2) In the event that no application is submitted and no extension is requested as of the deadline specified in § 92.20(c)(5), and the state turns down a DoD written request to become recognized as the LRA, the absence of such application will trigger an adverse determination by HUD effective on the date of the lapsed deadline. Under these conditions, HUD will follow the process described at § 92.40.

(d) *Opportunity to cure.* (1) The LRA shall have 90 days from its receipt of the notice of preliminary determination under paragraph (c)(1) of this section within which to submit to HUD a revised application which addresses the determinations listed in the notice. Failure to submit a revised application shall result in a final determination that the redevelopment plan fails to meet the requirements of paragraph (b) of this section.

(2) HUD shall, within 30 days of its receipt of the LRA's resubmission, send written notification of its final determination to both DOD and the LRA.

§ 92.40 Adverse determinations.

(a) *Solicitation of proposals.* If HUD determines that the LRA's resubmission fails to meet the requirements of § 92.35(b) or if no resubmission is received, HUD:

(1) Shall review the original application including the notices of interest submitted by representatives of the homeless;

(2) Shall consult with the representatives of the homeless, if any, for purposes of evaluating the continuing interest of such representatives in the use of buildings or property at the installation to assist the homeless; and

(3) May request that each homeless representative submit a proposal for use of buildings or property at the installation to assist the homeless, including:

(i) A description of the program of such representative to assist the homeless;

(ii) A description of the manner in which the buildings and property that the representative proposes to use for such purpose will assist the homeless;

(iii) Such information as HUD requires in order to determine the financial capacity of the representative to carry out the program and to ensure that the program will be carried out in compliance with Federal environmental law and Federal law against discrimination; and

(iv) A certification from the local community that police services, fire protection services, and water and sewer services available in the communities in the vicinity of the installation concerned are adequate for the program.

(b) *Review of proposals.* HUD shall review the proposal in accordance with the following criteria:

(1) The degree to which the proposal submitted by the representatives meets each of the four criteria listed in paragraph (a)(3) of this section.

(2) The extent to which the proposal fills a gap in the community's continuum of care system.

(3) The extent to which the proposal balances in an appropriate manner the needs for the communities in the vicinity of the installation for economic development and other development with the needs of the homeless.

(4) How the proposal specifies the manner in which buildings and property and resources and assistance on and off the installation will be made available for the homeless.

(c) *Environmental review.* HUD, in cooperation with DoD, shall complete an environmental review under NEPA and other applicable environmental laws and authorities listed in 24 CFR 50.4 before accepting a proposal under this part.

(d) *Notice of decision.* HUD shall notify DOD and the LRA, within 90 days of its receipt of the revised application, of its acceptance of a proposal and shall identify the buildings and property to be disposed of and the entities to which they should be transferred.

§ 92.45 Disposal of buildings and property.

(a) *Public benefit transfer screening.* After the local redevelopment plan is accepted for planning purposes by the Military Department and accepted by HUD, the Military Department will conduct an official public benefit transfer screening in accordance with the Federal Property Management Regulations (41 CFR 101–47.303–2) based upon the uses identified in the redevelopment plan. Federal sponsoring agencies shall notify eligible applicants that any request for property must be consistent with the uses identified in the redevelopment plan. At the request of the LRA, the Military Department may conduct the official state and local public benefit screening before the completion of the redevelopment plan.

(b) *Environmental review.* The Military Department shall complete an environmental review of the installation in compliance with NEPA and CERCLA prior to disposal of the property. The Military Department may adopt an environmental review completed under § 92.40(c).

(c) *Disposal.* Upon receipt of a notice of approval of an application from HUD under § 92.35(c) and § 92.40(d), DOD shall, without consideration, dispose of the subject buildings and property in compliance with the approved application, either to the LRA or directly to the representative(s) of the homeless.

(d) *LRA's responsibility.* The LRA shall be responsible for the implementation of and compliance with legally binding agreements under the application.

(e) *Reversions to the LRA.* If a building or property reverts to the LRA under a legally binding agreement under the application, the LRA shall take appropriate actions to secure, to the maximum extent practicable the utilization of the building or property by other homeless representatives to assist the homeless. An LRA may not be required to utilize the building or property to assist the homeless.

Dated: August 1, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19245 Filed 8–7–95; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 144–4–7041; FRL–5264–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Diego County Air Pollution Control District, South Coast Air Quality Management District, and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on March 28, 1995 and April 19, 1995. The revisions concern rules from the following districts: San Diego County Air Pollution Control District (SDCAPCD); South Coast Air Quality Management District (SCAQMD); and Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). This final action serves as a final determination that the deficiencies in the rules that started sanction clocks have been corrected and that any sanctions or Federal Implementation Plan (FIP) obligations triggered by those deficiencies are permanently stopped. The rules control VOC emissions from fixed and floating roof tanks at bulk plants and terminals; bakery ovens; and the coating of metal parts and products. Thus, EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on September 7, 1995.

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

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

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

Ventura County Air Pollution Control District, 669 County Square Drive, Second Floor, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 1995 in 60 FR 15891, EPA proposed to approve SDCAPCD's Rule 61.1, Receiving and Storing Volatile Organic Compounds at Bulk Plants and Bulk Terminals into the California SIP. On April 19, 1995 in 60 FR 19554, EPA proposed to approve the following rules into the California SIP: SCAQMD's Rule 1153, Commercial Bakery Ovens; and VCAPCD's Rule 74.12, Surface Coating of Metal Parts and Products. Rule 61.1 was adopted by SDCAPCD on January 10, 1995; Rule 1153 was adopted by SCAQMD on January 13, 1995; and Rule 74.12 was adopted by VCAPCD on January 10, 1995. These rules were submitted by the California Air Resources Board (CARB) to EPA on January 24, 1995 (SDCAPCD 61.1) and February 24, 1995 (SCAQMD 1153 and VCAPCD 74.12). These rules were submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A), which required that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amended Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the NPRMs cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and with EPA's regulations and interpretations of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRMs cited above. EPA has found that the rules meet the applicable requirements. A detailed discussion of the rule provisions and evaluations has been provided in 60 FR 15875 and 60 FR 19554 and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated March 7, 1995—Rule 61.1; and March 27, 1995—Rules 1153 and 74.12).

Response to Public Comments

A 30-day public comment period was provided in 60 FR 15891 and 60 FR 19554. No comments were received.

EPA Action

EPA is finalizing action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

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

Regulatory Process

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

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the state and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to

State, local, or tribal governments or to the private sector result from this action.

EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

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

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

Dated: July 14, 1995.

Felicia Marcus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (214)(i)(B) and (215)(i)(A)(*2*) and (215)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(214) * * *

(i) * * *

(B) San Diego County Air Pollution Control District.

(*1*) Rule 61.1 adopted on January 10, 1995.

* * * * *

(215) * * *

(i) * * *

(A) * * *

(*2*) Rule 1153 adopted on January 13, 1995.

(B) Ventura County Air Pollution Control District.

(*1*) Rule 74.12 adopted on January 10, 1995.

* * * * *

[FR Doc. 95–19504 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[FRL–5274–1]

Transportation Conformity; Approval of Petition for Exemption From Nitrogen Oxides Provisions, Transitional Ozone Nonattainment Area, Colorado

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a petition from the Denver Regional Council of Governments (DRCOG) requesting that the Denver metropolitan area, an ozone nonattainment area classified as transitional, be exempted from the requirements regarding the control of oxides of nitrogen (NO_X) imposed by the Federal conformity rules. The initial petition for exemption was submitted by DRCOG on May 25, 1994. Supporting documentation for the initial petition was submitted August 1, 1994.

EFFECTIVE DATE: This action is effective as of July 28, 1995.

ADDRESSES: Copies of the documents relevant to these actions are available for public inspection during normal business hours at the following location. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. U.S. Environmental Protection Agency, Region 8, Air Quality Branch (8ART–AP), 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Aundrey C. Wilkins, SIP Section (8ART–AP), Air Programs Branch, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, telephone (303) 294–1379. Fax: 303–293–1229.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X as are applied to major stationary sources of VOC. The new NO_X requirements are reasonably available control technology (RACT) and new source review (NSR). Section 182(f) also specifies circumstances under which the NO_X requirements would be limited or would not apply.

EPA's general and transportation conformity rules, as well as the Inspection and Maintenance (I/M) regulations, reference the section 182(f) exemption process as a means for exempting affected areas from certain NO_X conformity requirements. See 58 FR 62197, November 24, 1993, Transportation Conformity; and 58 FR 63240, November 30, 1993, General Conformity; and 57 FR 52989, I/M.

Under section 182(f)(1)(A), an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that ''additional reductions of NO_X would not contribute to attainment'' of the ozone NAAQS in those areas. EPA has indicated that in cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data, without having implemented the section 182(f) NO_X provisions, it is clear that this test is met since ''additional reductions of NO_X would not contribute to attainment'' of the NAAQS in that area.

This interpretation is discussed in a May 27, 1994 memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), entitled ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria.'' This memorandum revised relevant portions of previously-issued OAQPS guidance dated December, 1993, entitled ''Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f).'' Both documents address EPA's policy regarding NO_X exemptions for areas outside an ozone transport region that have air quality monitoring data showing attainment. The Enhanced I/M regulations, the section 182(f) NO_X RACT and NSR requirements and the guidance cited above apply only to marginal and above ozone nonattainment areas, but not nonclassifiable ozone nonattainment areas (i.e., submarginal, transitional, and incomplete/no data). However, a June 17, 1994, EPA document entitled ''Conformity; General Preamble for Exemption from Nitrogen Oxides Provisions'' (59 FR 31238) (''General Preamble''), among other things, provides guidance on the exemption of nonclassifiable ozone nonattainment areas, outside an ozone transport region, from the conformity rule's NO_X requirements based on air quality monitoring data showing attainment. As a transitional ozone nonattainment area, the Denver metropolitan area falls within the ''nonclassifiable'' category.

Under the general conformity rule, NO_X emissions that are caused by federal actions that exceed applicable threshold levels are required to demonstrate conformity to the applicable SIP. The transportation

conformity rule requires regional emissions analysis of motor vehicle NO_X emissions for ozone nonattainment and maintenance areas in order to determine the conformity of transportation plans and programs to implementation plan requirements. This analysis must demonstrate that the NO_X emissions which would result from the transportation system if the proposed transportation plan were implemented are within the total allowable level of NO_X emissions from highway and transit motor vehicles (''the emission budget'') as identified in a submitted (or approved) attainment demonstration or maintenance plan. Until an attainment demonstration (or for nonclassifiable areas a maintenance plan) is approved by the EPA, the regional emissions analysis of the transportation system must also satisfy the ''build/no-build'' test. That is, the analysis must demonstrate that emissions from the transportation system, if the proposed transportation plan and program were implemented, would be less than the emissions from the transportation system if only the previous applicable transportation plan and program were implemented. Furthermore, the regional emissions analysis must show that emissions from the transportation system, if the transportation plan or program were implemented, would be lower than 1990 levels.

With respect to the NO_X requirements of the conformity rules, DRCOG submitted a NO_X exemption petition on May 25, 1994 and submitted supporting documentation via a letter dated August 1, 1994. Ambient air quality data provided with the DRCOG petition showed no violations of the ozone NAAQS during the three-year period from 1991 through 1993. Further, the Colorado Air Pollution Control Division (APCD) provided additional air quality data for the same time period supporting DRCOG's position that there were no violations.

On March 23, 1995, EPA announced its proposed approval of the NO_X exemption request for the nonclassifiable ozone nonattainment area of the Denver metropolitan area (56 FR 15269). In that proposed rulemaking action, EPA described in detail its rationale for approving this NO_X exemption request, considering the specific factual issues presented. Rather than repeating that entire discussion in this document, it is incorporated by reference here. Thus, the public should review the notice of proposed rulemaking for relevant background on this final rulemaking action.

II. Response to Comments

The EPA requested public comments on all aspects of the proposed action to approve the section 182(f) petition for the Denver metropolitan area. The EPA received six letters of support.

The EPA received four adverse comment letters and one letter requesting a clarification. One of the adverse letters was signed by three environmental groups and contained comments objecting to the EPA's general policy on section 182(f) exemptions. This group of three requested that their letter be included in each EPA rulemaking action for section 182(f) petitions. One of the four adverse comment letters was received on August 5, 1994, prior to publication of the EPA proposed approval rulemaking. EPA also received one letter that was not adverse but asked that the impact of granting an ozone NO_X exemption be made clearer. EPA is responding to all of these comments in the final rulemaking.

Comment 1

Certain commenters argued that NO_X exemptions are provided for in two separate parts of the CAA, section 182(b)(1) and section 182(f). Because the NO_X exemption tests in subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place ''when [EPA] approves a plan or plan revision,'' these commenters conclude that all NO_X exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. These commenters also argue that even if the petition procedures of subsection 182(f)(3) may be used to relieve areas of certain NO_X requirements, exemptions from the NO_X conformity requirements must follow the process provided in subsection 182(b)(1), since this is the only provision explicitly referenced by section 176(c)(3)(A)(iii), the CAA's conformity provisions.

EPA Response

Section 182(f) contains very few details regarding the administrative procedure for acting on NO_X exemption requests. The absence of specific guidelines by Congress leaves EPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedure Act (APA).

The EPA disagrees with the commenters regarding the process for considering exemption requests under section 182(f), and instead believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO_X exemption requests. The language in subsection 182(f)(1), which indicates that the EPA should act on NO_X exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). And, while subsection 182(f)(3) references subsection 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) [and, by extension, paragraph (2)], not the procedural requirement that the EPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that ''person[s]'' (which section 302(e) of the CAA defines to include States) may petition for NO_X exemptions ''at any time,'' and requires the EPA to make its determination within six months of the petition's submission. These key differences lead EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

Section 182(f)(1) appears to contemplate that exemption requests submitted under these paragraphs are limited to States, since States are the entities authorized under the Act to submit plans or plan revisions. By contrast, section 182(f)(3) provides that ''person[s]'' [1] may petition for a NO_X determination ''at any time'' after the ozone precursor study required under section 185B of the Act is finalized,[2] and gives EPA a limit of 6 months after filing to grant or deny such petitions. Since individuals may submit petitions under paragraph (3) ''at any time'', this must include times when there is no plan revision from the State pending at EPA.

In regard to the comment concerning the appropriate Act authority for granting transportation-related NO_X waivers, the EPA agrees, with certain exceptions, that section 182(b)(1) is the appropriate authority under the Act for waiving the transportation conformity rule's NO_X ''build/no build'' and ''less-than-1990'' tests, and is in the process of amending the rule to be consistent with the statute. However, the EPA believes that this authority is only applicable with respect to those areas that are subject to section 182(b)(1).

[1] Section 302(e) of the Act defines the term ''person'' to include States.

[2] The final section 185B report was issued July 30, 1993.

Marginal and below ozone nonattainment areas (which includes nonclassifiable areas like Denver) are not subject to section 176(c)(3)(A)(iii) because they are not subject to section 182(b)(1). These areas, however, are still subject to the requirements of section 176(c)(1), which sets out criteria that, if met, will assure consistency with the SIP. The EPA believes it is reasonable and consistent with the Act to provide relief under section 176(c)(1) from the interim-period NO_X transportation conformity requirements where the Agency has determined that NO_X reductions would not be beneficial, and to rely, in doing so, on the NO_X exemption tests provided in section 182(f).

The basic approach of the Act is that NO_X reductions should apply when beneficial to an area's attainment goals, and should not apply when unhelpful or counterproductive. Section 182(f) reflects this approach, but also includes specific substantive tests which provide a basis for EPA to determine when NO_X requirements should not apply. Whether under section 182(b)(1) or section 182(f), where EPA has determined that NO_X reductions will not benefit attainment or would be counterproductive in an area, the EPA believes it would be unreasonable to insist on NO_X reductions for purposes of meeting RFP or other milestone requirements. Moreover, there is no substantive difference between the technical analysis required to make an assessment of NO_X impacts on attainment in a particular area, whether undertaken with respect to mobile source or stationary source NO_X emissions. Consequently, the EPA believes that granting relief from the NO_X conformity requirements of section 176(c)(1) under section 182(f) in these cases is appropriate.

Comment 2

Three years of ''clean'' data fail to demonstrate that NO_X reductions would not contribute to attainment. EPA's policy erroneously equates the absence of a violation for one three-year period with ''attainment.''

EPA Response

The EPA has separate criteria for determining if an area should be redesignated to attainment under section 107 of the CAA. The section 107 criteria are more comprehensive than the CAA requires with respect to NO_X exemptions under section 182(f).

Under section 182(f)(1)(A), an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that ''additional reductions of [NO_X] would not contribute to attainment'' of the ozone NAAQS in those areas. In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by 3 years of adequate monitoring data, without having implemented the section 182(f) NO_X provisions over that 3-year period. The EPA believes that, in cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_X provisions, it is clear that the section 182(f) test is met since ''additional reductions of [NO_X] would not contribute to attainment'' of the NAAQS in that area. The EPA's approval of the exemption, if warranted, would be granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

Comment 3

Some commenters argued that in Denver's case, the EPA has previously determined that the ozone monitoring network was insufficient and an ambient air station for the measurement of ozone in the southwest metropolitan area has not yet been established. Thus, approval of the NO_X exemption is based on an inadequate monitoring network and the health of Colorado residents will not be protected if a NO_X exemption is granted.

EPA Response

EPA disagrees with the commenter that approval of this NO_X exemption is based upon an inadequate monitoring network and that the health of Colorado residents will not be protected if an exemption is granted. Also, as explained below, an ambient air station has been established in the southwest metropolitan area. No exceedances have been recorded in 1994 at either the old or newer ozone ambient air monitoring stations. Although the commenter is correct in saying that there have been concerns expressed in the past about the monitoring network by EPA, as the proposal made clear, EPA believes that the major concerns have been corrected and any remaining concerns do not provide a significant enough basis to deny the NO_X exemption request. EPA's concerns about the network—conveyed initially to the APCD in 1989—primarily involved the adequacy of the system to monitor the maximum concentration areas, as required by 40 CFR part 58. Various actions have since been undertaken by the APCD to address EPA's primary concerns, and efforts are ongoing to address other, more general concerns. There are ten sites currently on the Denver ozone ambient monitoring network. These include two sites added in 1993 in the northwest portion of the nonattainment area at NREL (National Renewable Energy Lab site) and South Boulder Creek. One new site was recently added this year at the Chatfield Reservoir by Campground in the southwest. There have been no violations recorded by the Denver ozone ambient air monitoring network during the three years in review (1991, 1992, 1993) nor during 1994. Data in AIRS show only one exceedance (of 127 ppb) during this time, which occurred in 1993 at the South Boulder Creek site. Despite the lack of violations, additional analyses of the ozone ambient air monitoring network were undertaken, in part at EPA's urging, to ensure that future ozone pollution would continue to be adequately monitored. The commenter expressed concern about the adequacy of monitoring in the southwest, but the 1993 Denver Summer Ozone Study determined that higher ozone values—and perhaps the true maximum concentration sites—were appearing in the northwest, rather than the southwest, portion of the nonattainment area. And, thus, priority was given to placing new sites in the northwest. EPA believes the continued relatively higher values at the NREL and South Boulder Creek sites, as well as the exceedance at the latter site in 1993, tend to support that determination. The APCD has committed to continue reviewing the network and making necessary adjustments as promptly as feasible. In accord with these commitments, the APCD submitted to EPA in June, 1994 a summary of an ozone monitoring plan, showing a phased set of modifications to the network to be accomplished over the next five years. EPA believes, based on its evaluation of all the available information and analyses presented in support of this exemption request, that the data satisfactorily demonstrates that the Denver area's air quality has been ''clean'' for the requisite three years. Finally, an added precaution is built into EPA's policy in that approval of NO_X exemptions are granted on a contingent basis (i.e., the exemption lasts for only as long as the area's monitoring data continue to demonstrate attainment); if a violation occurs, the exemption would no longer be applicable.

Comment 4

Comments were received regarding the scope of exemption of areas from the NO_X requirements of the conformity

rules. Commenters argue that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO_X emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO_X emissions under the general conformity rules. The commenters admit that, in prior guidance, EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_X, but want EPA in actions on NO_X exemptions to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO_X increases is in place.

EPA Response

With respect to conformity, EPA's conformity rules[3 4] provide a NO_X waiver if an area receives a section 182(f) exemption. In its **Federal Register** Notice entitled ''Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions,'' 59 FR 31238, 31241 (June 17, 1994), EPA reiterated its view that, in order to conform, nonattainment and maintenance areas must demonstrate that the transportation plan and TIP are consistent with the motor vehicle emissions budget for NO_X, even where a conformity NO_X waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. As the commenters correctly note, EPA states in the June 17th notice that it intends to remedy the problem by amending the conformity rule. EPA has begun the process to do so. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO_X motor vehicle emissions budget, EPA also intends to require consistency with the attainment demonstration's NO_X motor vehicle emissions budget. The commenter suggests that EPA should delay action on the NO_X exemption request until the rulemaking that amends this portion of the transportation conformity rule has been finalized. However, EPA believes that, despite the error in the rule, it has consistently made it clear that the intent of the statute and of the rule requires the transportation plan and TIP to demonstrate consistency with the NO_X motor vehicle emissions budget, even where a waiver has been granted. Moreover, this exemption is being processed under section 182(f)(3), which requires EPA to act within 6 months on the petition. EPA does not believe it is appropriate to delay acting on petitions to wait for the rule to be amended, especially given the short timeframe within which that action is expected to occur.

Comment 5

Comments were received saying the CAA does not authorize any waiver of the NO_X reduction requirements until conclusive evidence exists that such reductions are counter-productive.

EPA Response

EPA does not agree with this comment since it ignores Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_X exemption policies, EPA has sought an approach that reasonably accords with that intent. Section 182(f), in addition to imposing control requirements on major stationary sources of NO_X similar to those that apply for such sources of VOC, also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, EPA determines that in certain areas NO_X reductions would generally not be beneficial. In subsection 182(f)(1), Congress explicitly conditioned action on NO_X exemptions on the results of an ozone precursor study required under section 185B. Because of the possibility that reducing NO_X in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f) but throughout the Title I ozone subpart, to avoid requiring NO_X reductions where it would be nonbeneficial or counterproductive. In describing these various ozone provisions (including section 182(f)), the House Conference Committee Report states in pertinent part: ''[T]he Committee included a separate NO_X/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO_X provisions. The Committee does not intend NO_X reduction for reduction's sake, but rather as a measure scaled to the value of NO_X reductions for achieving attainment in the particular ozone nonattainment area.'' H.R. Rep. No. 490, 101st Cong., 2d Sess. 257–258 (1990). As noted in response to an earlier comment by these same commenters, the command in subsection 182(f)(1) that EPA ''shall consider'' the 185B report, taken together with the timeframe the Act provides both for completion of the report and for acting on NO_X exemption petitions, clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for EPA to act on NO_X exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that EPA actions granting NO_X exemption requests must await ''conclusive evidence'', as the commenters argue, there is also nothing in the Act to prevent EPA from revisiting an approved NO_X exemption if warranted due to better ambient information.

In addition, the EPA believes (as described in EPA's December 1993 guidance) that section 182(f)(1) of the CAA provides that the new NO_X requirements shall not apply (or may be limited to the extent necessary to avoid excess reductions) if the Administrator determines that *any one* of the following tests is met:

(1) in any area, the net air quality benefits are greater in the absence of NO_X reductions from the sources concerned;

(2) in nonattainment areas not within an ozone transport region, additional NO_X reductions would not contribute to ozone attainment in the area; or

(3) in nonattainment areas within an ozone transport region, additional NO_X reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption.

Only the first test listed above is based on a showing that NO_X reductions are ''counter-productive.'' If one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

Comment 6

Commenters raised specific issues about the adequacy of the DRCOG 2015 Interim Regional Transportation Plan to ensure health standards when considered in relation to approval of the NO_X waiver. They further stated that

[3] ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act,'' November 24, 1993 (58 FR 62188).

granting an exemption would apparently last for the length of the transportation plan.

EPA Response

EPA disagrees with the commenters that the NO_X exemption would automatically last for the length of the transportation plan. EPA has already stated that it is amending the conformity rule to require that transportation plans and TIPs are consistent with the approved maintenance plan's and attainment demonstration's NO_X motor vehicle emissions budget, even where a conformity NO_X exemption has been granted. In addition, the exemption is being granted on a contingent basis (i.e. the exemption will last for only as long as the area's monitoring data continue to demonstrate attainment).

The specific arguments about what the 2015 Interim Regional Transportation Plan as a whole will or will not do in relation to the various air pollutants are beyond the scope of the EPA guidance for granting ozone NO_X exemptions. The effect of a NO_X exemption for Denver is limited solely to the issue of whether it may be exempted from meeting the applicable ozone NO_X requirements of the transportation and general conformity rules.

Comment 7

One commenter asked that EPA make clear the impact of granting a NO_X exemption from the conformity requirements. The commenter noted that the proposed rulemaking for this NO_X exemption request stated in Section V: ''As currently written, none of the transportation conformity rule's NO_X requirements would ever apply to an area once such an area had received a NO_X transportation conformity exemption''. The commenter believes that the rule should make it clear that transportation conformity NO_X requirements will continue to apply in Denver for wintertime NO_X emissions because the Denver metropolitan Nonattainment Area Element of the Colorado State Implementation Plan for Particulate Matter (PM–10) establishes emissions budgets for NO_X.

EPA Response

EPA agrees with the commenter that the impact of the ozone NO_X exemption is only whether the Denver area may be exempted from meeting the applicable ozone NO_X requirements. Applicable PM–10 NO_X requirements will still have to be met. Specifically, the transportation conformity rule's NO_X requirements will continue to apply in Denver for wintertime NO_X emissions for PM–10. In addition, EPA has already noted that it intends to amend the transportation conformity rule to ensure that areas are consistent with motor vehicle emissions budgets for ozone and PM–10 NO_X, even if an ozone NO_X exemption has been granted.

III. Effective Date

This rulemaking is effective as of July 28, 1995. The Administrative Procedure Act (APA) 5 U.S.C. 553(d)(1), permits the effective date of a substantive rule to be less than thirty days after publication of the rule if the rule ''relieves a restriction.'' Since the approval of the section 182(f) exemptions for the Denver metropolitan area is a substantive rule that relieves the restrictions associated with the CAA title I requirements to control NO_X emissions, the NO_X exemption approval may be made effective upon signature by the Regional Administrator.

IV. Final Action

The EPA has evaluated the DRCOG's exemption request for consistency with the CAA, EPA regulations, and EPA policy. The EPA believes that the exemption request and monitoring data qualifies the Denver metropolitan area as a ''clean data area''. Therefore, the EPA is granting Denver's section 182(f) exemption petition. The EPA has determined that the exemption petition, monitoring data, and other supporting data, meet the requirements and policy set forth in the General Preamble for Exemptions from the Transportation and General Conformity Nitrogen Oxides Provisions. The effect of this NO_X transportation and general conformity exemption is that Denver is relieved of the conformity rule's requirements for regional analysis for ozone NO_X emissions, as described earlier in section II, comment 7, of this notice. However, it should be noted that EPA's approval of the exemption is granted on a contingent basis, i.e., the exemption will last for only as long as the area's monitoring data continues to show no violations. If subsequently it is determined that the area has violated the standard, the exemption, as of the date of the determination, would no longer apply. EPA would notify the State that the exemption no longer applies, and would also provide notice to the public in the **Federal Register**. Existing transportation plans and TIPs and past conformity determinations will not be affected by the determination that the NO_X exemption no longer applies, but new conformity determinations would have to observe the NO_X requirements of the conformity rule. The State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied on for the above determinations must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

Regulatory Flexibility

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

This proposal does not create any new requirements. Therefore, I certify that it does not have a significant impact on any small entities affected.

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

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

Unfunded Mandates

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA's final action relieves requirements otherwise imposed under the CAA and, hence does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. This action also will not impose a mandate that may result in estimated costs of $100 million

or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 28, 1995.

Kerringan Clough,

Acting Regional Administrator.

PART 52—[AMENDED]

40 CFR part 52 is amended as follows:

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

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.326 is added to read as follows:

§ 52.326 Area-wide nitrogen oxides (NO_X) exemptions.

The Denver Regional Council of Governments (DRCOG) submitted a NO_X exemption petition to the EPA on May 25, 1994 and submitted supporting documentation via a letter dated August 1, 1994. This petition requested that the Denver metropolitan area, a transitional ozone nonattainment area, be exempted from the requirement to meet the NO_X provisions of the Federal transportation and general conformity rule with respect to ozone. The exemption request was based on monitoring data which demonstrated that the National Ambient Air Quality Standard for ozone had been attained in this area for the 3 years prior to the petition. The EPA approved this exemption request on July 28, 1995.

[FR Doc. 95–19480 Filed 8–7–95; 8:45 am]

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40 CFR Part 52

[FRL–5274–4]

Determination of Attainment of Ozone Standard by Nashville, Tennessee, and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On June 22, 1995, the EPA published a proposed rule (60 FR 32477) and a direct final rule (60 FR 32466) determining that the Ashland, Kentucky, Northern Kentucky (Cincinnati Area), Charlotte, North Carolina, and Nashville, Tennessee, ozone nonattainment areas were attaining the National Ambient Air Quality Standard (NAAQS) for ozone. Based on this determination, the EPA also determined that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of part D of Title 1 of the Clean Air Act (Act) are not applicable to the areas so long as the areas continue to attain the ozone NAAQS. The 30-day comment period concluded on July 24, 1995. During this comment period, the EPA received one comment letter in response to the June 22, 1995, rulemaking. That comment addressed only the Northern Kentucky (Cincinnati) area. Response to that comment and final action on the Northern Kentucky area will be addressed in a subsequent notice if warranted. Additionally, since publication of the original determination on June 22, 1995, the Ashland, Kentucky, and Charlotte, North Carolina, areas were redesignated to attainment on June 29, 1995 (60 FR 33748), and July 5, 1995 (60 FR 34859), respectively, making this finding for those areas no longer necessary. This rule finalizes the EPA's determination that the Nashville, Tennessee, area has attained the ozone standard and that certain reasonable further progress and attainment demonstration requirements as well as other related requirements of part D of the Act are not applicable to this area as long as the area continues to attain the ozone NAAQS.

EFFECTIVE DATE: This action will be effective August 8, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Kay Prince, Regulatory Planning & Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, Atlanta, Georgia 30365. The telephone number is (404) 347–3555, extension 4221.

SUPPLEMENTARY INFORMATION:

I. Background Information

On June 22, 1995, the EPA published a direct final rulemaking (60 FR 32466) determining that the Ashland, Kentucky, Charlotte, North Carolina, and Nashville, Tennessee, moderate ozone nonattainment areas have attained the NAAQS for ozone. In that rulemaking, the EPA also determined that the requirements of section 182(b)(1) concerning the submission of a 15 percent reasonable further progress plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to these areas so long as the areas do not violate the ozone standard. In addition, the EPA determined that the sanctions clocks started on January 28, 1994, for the Ashland, Kentucky, and Charlotte, North Carolina, areas for failure to submit the section 182(b)(1) 15 percent plan and attainment demonstration, and on April 1, 1994, for the Nashville, Tennessee, area for submittal of an incomplete 15 percent plan would be stopped since the deficiencies on which they are based no longer exist. The clocks started on January 28, 1994, for the Ashland, Kentucky, and Charlotte, North Carolina areas were subsequently stopped by the aforementioned redesignation actions.

At the same time that the EPA published the direct final rule, a separate notice of proposed rulemaking was published in the **Federal Register** (60 FR 32477). This proposed rulemaking specified that EPA would withdraw the direct final rule if adverse or critical comments were filed on the rulemaking. The EPA received one letter containing adverse comments regarding the direct final rule for Northern Kentucky within 30 days of publication of the proposed rule and withdrew the direct final rule on [insert date of withdrawal notice]. Any further action deemed necessary for the Northern Kentucky area will be taken in a separate notice.

The specific rationale and air quality analysis the EPA used to determine that the Nashville, Tennessee, moderate ozone nonattainment area has attained the ozone NAAQS and is not required to submit SIP revisions for reasonable further progress, attainment demonstration and related requirements are explained in the direct final rule and will not be restated here.

II. Final Rulemaking Action

The EPA is making a final determination that the Nashville, Tennessee, moderate ozone nonattainment area has attained the ozone standard and continues to attain the standard at this time. No comments were received regarding the proposal as it concerned Nashville. As a

consequence of this determination, the requirements of section 182(b)(1) concerning the submission of the 15 percent reasonable further progress plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the area so long as the area does not violate the ozone standard.

The EPA emphasizes that this determination is contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected area. When and if a violation of the ozone NAAQS is monitored in the Nashville, Tennessee, nonattainment area (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS), the EPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

As a consequence of the determination that the Nashville area has attained the NAAQS and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and contingency measure requirement of section 172(c)(9) do not presently apply, these are no longer requirements within the meaning of 40 CFR 52.31(c)(1). Consequently, the sanctions clock started by EPA on April 1, 1994, for submittal of an incomplete 15 percent plan, is hereby stopped.

The EPA finds that there is good cause for this action to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of this action, which is a determination that certain Act requirements do not apply for so long as the areas continue to attain the standard. The immediate effective date for this action is authorized under both 5 U.S.C. Section 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and Section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.''

Under section 307(b)(1) of the Act, petitions for judicial review of this final action determining that the Nashville, Tennessee, ozone nonattainment area has attained the NAAQS for ozone and that certain reasonable further progress and attainment demonstration requirements of sections 182(b)(1) and 172(c)(9) no longer apply must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's determination does not create any new requirements, but suspends the indicated requirements. Therefore, because this notice does not impose any new requirements, I certify that it does not have a significant impact on small entities affected.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rulemaking that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements.

The EPA has determined that today's final action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: July 31, 1995.

R.F. McGhee,

Acting Regional Administrator.

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2235 is added to read as follows:

§ 52.2235 Control strategy: Ozone.

(a) Determination—EPA is determining that, as of August 8, 1995, the Nashville ozone nonattainment area has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Nashville ozone nonattainment area, these determinations shall no longer apply.

(b) [Reserved]

[FR Doc. 95–19503 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[PA 54–1–6941a; FRL–5256–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Source-Specific VOC and NO_X RACT and Synthetic Minor Permit Conditions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires reasonably available control technology (RACT) on eight major sources and establishes permit conditions to limit one source's emissions to below major source levels. The intended effect of this action is to approve source-specific plan approvals and operating permits, which establish

the above-mentioned requirements in accordance with the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective October 10, 1995 unless adverse comments are received on or before September 7, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, EPA Region III, (215) 597–9337.

SUPPLEMENTARY INFORMATION: On January 6, 1995, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a group of plan approvals and operating permits for individual sources of volatile organic compounds and/or nitrogen oxides located in Pennsylvania. This rulemaking addresses those plan approvals and operating permits pertaining to the following sources: ESSROC Materials, Inc., Pennsylvania Power and Light—Brunner Island SES, PPG Industries, Inc., Stroehmann Bakeries, Inc., General Electric Transportation Systems—Erie, J.E. Baker/DBCA Refractory facility, Lafarge Corporation, West Penn Power Company—Armstrong Power Station, and Plain n' Fancy Kitchens, Inc. The other plan approvals and operating permits submitted with this group will be addressed in another rulemaking notice.

Pursuant to section 182(b)(2) and (182(f) of the Clean Air Act (CAA), Pennsylvania is required to implement RACT for all major VOC and NO_X sources by no later than May 31, 1995. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR), which is established by the CAA. The Pennsylvania portion of the Philadelphia ozone nonattainment area consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties and is classified as severe. The remaining counties in Pennsylvania are classified as either moderate or marginal nonattainment areas or are designated attainment for ozone. However, under section 184 of the CAA, at a minimum, moderate ozone nonattainment area requirements (including RACT as specified in section 182(b)(2) and 182(f)) apply throughout the OTR. Therefore, RACT is applicable statewide in Pennsylvania. The January 6, 1995 Pennsylvania submittal that is the subject of this notice, is meant to satisfy the RACT requirements for eight sources in Pennsylvania and to limit the potential VOC emissions at a source to below the major source size threshold in order to avoid RACT.

Summary of SIP Revision

The details of the RACT requirements for the source-specific plan approvals and operating permits can be found in the docket and accompanying technical support document and will not be reiterated in this notice. Briefly, EPA is approving seven plan approvals and four operating permits as RACT and one plan approval as a revision to the Pennsylvania SIP to limit a source's emissions to below the major source threshold. Several of the plan approvals and operating permits contain conditions irrelevant to the determination of VOC or NO_X RACT. Consequently, these provisions are not being included in this approval for VOC or NO_X RACT. In addition, several of the plan approvals and operating permits contain a provision that would allow compliance date extensions at the request of the source and approval by Pennsylvania without EPA approval. While EPA does not automatically rule out the possibility of compliance date extensions, EPA cannot pre-approve compliance date extensions through a general provision such as that which occurs in those plan approvals and operating permits.

RACT

EPA is approving the plan approval (PA 48–0004A) for ESSROC Materials, Inc., located in Northampton County. ESSROC Materials, Inc. is a portland cement manufacturing facility and is considered a major source of NO_X emissions. EPA is approving the plan approval (PA 67–2005) for Pennsylvania Power and Light—Brunner Island Steam Electric Station, located in York County. PP&L—Brunner Island is a steam electric station and is considered a major source of VOC and NO_X emissions. EPA is approving the operating permit (OP 21–2002) for PPG Industries, Inc., located in Cumberland County. PPG Industries, Inc. is a flat glass manufacturing facility and is considered a major source of NO_X emissions. EPA is approving the plan approval (PA 22–2003) for Stroehmann Bakeries, Inc., located in Dauphin County. Stroehmann Bakeries, Inc. is a bread and roll bakery with some small miscellaneous printing operations and is considered a major source of VOC emissions. EPA is approving the operating permit (OP 25–025) for General Electric Transportation Systems, located in Erie County. GE Transportation Systems is a coal-fired power generating station and is considered a major source of VOC and NO_X emissions. EPA is approving the operating permit (OP 67–2001) for J.E. Baker/DBCA Refractory Facility located in York County. J.E. Baker/DBCA Refractory Facility is a dolomitic refractory facility, producing specialty refractory products, agricultural limestone, mineral fillers, etc. and is considered a major source of NO_X emissions. EPA is approving the plan approval (PA 39–0011A) and the operating permit (OP 39–0011) for Lafarge Corporation, located in Lehigh County. Lafarge Corporation is a cement manufacturing facility and is considered a major source of NO_X emissions. EPA is approving three plan approvals (PA 03–000–023, PA 03–306–004, PA 03–306–006) for West Penn Power Company—Armstrong Power Station, located in Armstrong County. West Penn Power Company is an electric generating station with two coal-fired boilers and is considered a major source of NO_X emissions and a minor source of VOC emissions. The specific emission limitations and other RACT requirements for these sources are summarized in the accompanying technical support document, which is available from the EPA Region III office. Several of the plan approvals/operating permits contain a provision that allows for future changes to the emission limitations based on CEM or other monitoring data. Since EPA cannot approve emission limitations that are not currently before it, any changes to the emission limitations as submitted on January 6, 1995 to EPA must be resubmitted to and approved by EPA in order for these changes to be incorporated into the Pennsylvania SIP. Consequently, the source-specific RACT

emission limitations that are being approved into the Pennsylvania SIP are those that were submitted on January 6, 1995. These emission limitations will remain unless and until they are replaced pursuant to 40 C.F.R. part 51 and approved by the U.S. EPA.

Synthetic Minor Source Permit

EPA is approving the plan approval (PA 38–318–019C) for Plain n' Fancy Kitchens, Inc., located in Lebanon County. Plain n' Fancy Kitchens, Inc. is a kitchen cabinet surface coating facility and had potential VOC emissions greater than 50 TPY. The approval of these conditions will limit the emissions at this facility to less than 50 TPY and would allow Plain n' Fancy Kitchens, Inc. to avoid being considered a major VOC source, subject to the major source RACT requirements of the Clean Air Act and the Pennsylvania regulation.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 10, 1995 unless, within 30 days of publication, adverse or critical comments are received.

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

Final Action

EPA is approving the seven plan approvals and four operating permits as RACT and one plan approval to limit emissions at Plain n' Fancy Kitchens to below major source levels.

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

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

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section (insert) of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The sources affected by the rules being approved by this action are already subject to these regulations under State law; therefore, this rulemaking action does not impose any new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to the RACT approval of eight sources and the synthetic minor permit conditions for Plain n' Fancy Kitchens, Inc., must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 23, 1995.

W. T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52, subpart NN of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(98) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(98) Revisions to the Pennsylvania Regulations Chapter 129.91 submitted on January 6, 1995 by the Pennsylvania Department of Environmental Resources:

(i) Incorporation by reference.

(A) Two letters both dated January 6, 1995 from the Pennsylvania Department of Environmental Resources transmitting source-specific VOC and/or NOx RACT determinations in the form of plan approvals and/or operating permits for the following sources: ESSROC Materials, Inc. (Northampton Co.)—cement manufacturer; Pennsylvania Power & Light—Brunner Island SES (York Co.)—utility, PPG Industries, Inc. (Cumberland Co.)—glass manufacturer; Stroehmann Bakeries, Inc. (Dauphin Co.)—bakery; GE Transportation Systems (Erie Co.)—utility; J.E. Baker/DBCA Refractory Facility (York Co.)—dolomitic refractory facility; Lafarge Corp. (Lehigh Co.)—cement manufacturer; West Penn Power Company—Armstrong Power Station (Armstrong Co.), utility. In addition, the plan approval for Plain n' Fancy

Kitchens, Inc. (Lebanon Co., kitchen cabinet surface coating) containing provisions limiting this source as a synthetic minor source (below RACT threshold level of 50 TPY potential VOC emissions) is being approved.

(B) Plan approvals (PA), Operating permits (OP):

(*1*) ESSROC Materials, Inc.—PA 48–0004A, effective December 20, 1994, except conditions (7)(a), (7)(b), (7)(d), (8)(a), (8)(b), (8)(d), (10), (16) through (19) pertaining to particulate matter or SO_2 requirements and condition (25)(d) and (e) pertaining to compliance date extensions, and the expiration date of the plan approval.

(*2*) Pennsylvania Power & Light—Brunner Island SES—PA 67–2005, effective December 22, 1994, except condition 2.d. and e. pertaining to compliance date extensions, and the expiration date of the plan approval.

(*3*) PPG Industries, Inc.—OP 21–2002, effective December 22, 1994, except the expiration date of the operating permit.

(4) Stroehmann Bakeries, Inc.—PA 22–2003, effective December 22, 1994, except condition 9.d. and e. pertaining to compliance date extensions and the expiration date of the plan approval.

(5) GE Transportation Systems—Erie—OP 25–025, effective December 21, 1994, except for condition 9 pertaining to pollutants other than VOC and NO_X.

(6) J.E. Baker/DBCA Refractory Facility—OP 67–2001, effective December 22, 1994, except the expiration date of the operating permit.

(7) Lafarge Corp.—PA 39–0011A, effective December 23, 1994, except for condition (4)(d) and (e) pertaining to compliance date extensions, condition (8) pertaining to sulfur in fuel requirements, those in condition (9) not pertaining to VOC or NO_X, and the expiration date of the plan approval, and OP 39–0011, effective December 23, 1994, except conditions (8), (9), and (13) through (15), pertaining to sulfur in fuel requirements, and the expiration date of the operating permit.

(8) West Penn Power Company—Armstrong Power Station—PA 03–000–023, effective December 29, 1994, except for the expiration date of the plan approval and condition 5. pertaining to VOC and condition 9. pertaining to a facility-wide NO_X cap, PA 03–306–004 (for unit 2), effective March 28, 1994, except for condition 12. (d) and (e), pertaining to compliance date extensions, and the expiration date of the plan approval, and PA 03–306–006 (for unit 1), effective November 22, 1994, except for condition 13. (d) and (e), pertaining to compliance date extensions, and the expiration date of the plan approval.

(9) Plain n' Fancy Kitchens, Inc.—PA 38–318–019C, effective December 23, 1994, except for condition 2.d. and e., pertaining to compliance date extensions, and the expiration date of the plan approval.

[FR Doc. 95–19505 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 75

[FRL–5274–5]

Acid Rain Program: Continuous Emission Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of removal of provisions of direct final rule and extended public comment period.

SUMMARY: On May 17, 1995, EPA published direct final amendments to the Continuous Emission Monitoring (CEM) rule in the Acid Rain Program for the purpose of making implementation of the program simpler, streamlined, and more efficient. The amendments to the original January 11, 1993 rule became final and effective on July 17, 1995. During the public comment period on the direct final rule and its companion proposed rule, EPA received significant, adverse comments on those amended provisions that related to alternative monitoring systems and opacity monitoring for a bypass stack. EPA is removing those amended provisions in the direct final rule and republishing the corresponding provisions from the original January 11, 1993 rule. EPA will address the removed, amended provisions in a future final rule. EPA is also extending the public comment period on the removed, amended provisions for 15 days to allow the public to respond to the significant, adverse comments. All other provisions of the direct final rule remain final.

DATES: *Comment date:* Comments in response to the significant, adverse comments on the direct final rule must be received on or before August 23, 1995.

Effective date: The effective date of the republished provisions from the original January 11, 1993 rule is September 7, 1995.

ADDRESSES: Any written comments in response to the significant, adverse comments on the direct final rule must be identified as being in response to such comments in Docket No. A–94–16 and must be submitted in duplicate to: EPA Air Docket (6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the above address. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 233–9180.

SUPPLEMENTARY INFORMATION: EPA received significant, adverse comments on certain provisions of the direct final rule amending part 75 from Pavilion Technologies, Inc. The comments are found in Docket No. A–94–16, item V–D–03. Pavilion Technologies, Inc. made significant, adverse comments on the following amended provisions: 75.20(f); 75.41(a)(1), (b)(1)(i), (b)(2)(iv)(A) and (C), (c)(1)(i) and (ii), and (c)(2)(ii); 75.47; and 75.48(a) introductory text, (a)(1), (b), and (c). Therefore, those amended provisions in the direct final rule are being removed and the corresponding provisions in the original January 11, 1993 rule will be effective until EPA addresses the comments in a future final rule.

The Agency notes that, although the commenter requested withdrawal of all direct final amendments pertaining to alternative monitoring systems, the commenter also indicated that it supported the amendment of § 72.20(f)(2) providing for provisional certification of an alternative monitoring system after the system has been approved by the Administrator. However, the commenter objected to the public notice and comment procedure that the direct final rule requires prior to such approval. The direct final rule allows for provisional certification because the alternative monitoring system has already undergone public notice and comment and EPA review. See Docket No. A–94–16, item II–F–2. Consequently, EPA is removing all of the interrelated direct final provisions.

EPA also received one significant, adverse comment on the direct final rule provision, § 75.18(b)(3), from Monitor Labs, Inc. The comment is found in Docket No. A–94–16, item V–D–18 (comment 4). Monitor Labs, Inc. objected to the provision allowing the use of a noncontinuous monitoring method (i.e., Method 9 of appendix A of part 60), in lieu of a continuous opacity monitoring system, for bypass stacks. EPA is therefore removing the direct final provision at § 75.18(b)(3). The

remaining provisions in the direct final § 75.18(b) remain in effect.

No other significant, adverse comments were received by EPA on the direct final rule. Thus, all other provisions of the direct final rule became final on July 17, 1995 and remain in effect.

EPA is merely reinstating a few provisions of the original January 11, 1993 rule pending response to adverse comments on proposed amendments of those provisions. The requirements of Executive Orders 12866 and 12875, the Regulatory Flexibility Act, the Unfunded Mandates Act, and the Paperwork Reduction Act are therefore not applicable to this notice. All applicable administrative requirements will be met when the proposed amendments are addressed in a future final rule.

For additional information, see the direct final rule. 60 FR 26510 (May 17, 1995).

List of Subjects in 40 CFR Part 75

Environmental protection, Air pollution control, Carbon dioxide, Continuous emission monitors, Electric utilities, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: August 2, 1995.

Brian J. McLean,

Director, Acid Rain Division.

1. The authority citation for part 75 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

2. Section 75.18 is amended by removing paragraph (b)(3) and by revising paragraph (b)(2) to read as follows:

§ 75.18 Specific provisions for monitoring emissions from common and by-pass stacks for opacity.

* * * * *

(b) * * *

(2) A continuous opacity monitoring system is already installed and certified at the inlet of the add-on emissions controls.

3. Section 75.20 is amended by revising paragraph (f) to read as follows:

§ 75.20 Certification and recertification procedures.

* * * * *

(f) Certification/recertification procedures for alternative monitoring systems. The designated representative representing the owner or operator of each alternative monitoring system approved by the Administrator as equivalent to or better than a continuous emission monitoring system according to the criteria in subpart E of this part shall apply for certification to the Administrator prior to use of the system under the Acid Rain Program, and shall apply for recertification to the Administrator following a replacement, modification, or change according to the procedures in paragraph (c) of this section. The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification or recertification according to the procedures specified in paragraphs (a) and (b) of this section.

(1) The Administrator will publish each request for initial certification of an alternative monitoring system in the **Federal Register** and, following a public comment period of 60 days, will issue a notice of approval or disapproval.

(2) No alternative monitoring system shall be authorized by the Administrator in a permit issued pursuant to part 72 of this chapter unless approved by the Administrator in accordance with this part.

4. Section 75.41 is amended by revising paragraphs (a)(1), (b)(1)(i), (b)(2)(iv)(A), (b)(2)(iv)(C), (c)(1)(i), (c)(1)(ii), and (c)(2)(ii) to read as follows:

§ 75.41 Precision criteria.

(a) * * *

(1) Data from the alternative monitoring system and the continuous emission monitoring system shall be collected and paired in a manner that ensures each pair of values applies to hourly average emissions during the same hour.

* * * * *

(b) * * *

(1) * * *

(i) Apply the log transformation to each measured value of either the certified continuous emissions monitoring system or certified flow monitor, using the following equation:

$l_v = \ln e_v$

(Eq. 11)

where,

e_v=Hourly value generated by the certified continuous emissions monitoring system or certified flow monitoring system

l_v=Hourly lognormalized data values for the certified monitoring system

and to each measured value, e_p, of the proposed alternative monitoring system, using the following equation to obtain the lognormalized data values, l_p:

$l_p = \ln e_p$

(Eq. 12)

where,

e_p=Hourly value generated by the proposed alternative monitoring system.

l_p=Hourly lognormalized data values for the proposed alternative monitoring system.

* * * * *

(2) * * *

(iv) * * *

(A) The set of measured hourly values, e_v, generated by the certified continuous emissions monitoring system or certified flow monitoring system.

* * * * *

(C) The set of hourly differences, $e_v - e_p$, between the hourly values, e_v, generated by the certified continuous emissions monitoring system or certified flow monitoring system and the hourly values, e_p, generated by the proposed alternative monitoring system.

* * * * *

(c) * * *

(1) * * *

(i) Calculate the variance of the certified continuous emission monitoring system or certified flow monitor as applicable, S_v^2, and the proposed method, S_p^2, using the following equation.

$$S^2 = \frac{\sum_{i=1}^{n} (e_i - e_m)^2}{n-1}$$

(Eq. 23)

where,

e_i=Measured values of either the certified continuous emission monitoring system or certified flow monitor, as applicable, or proposed method.

e_m=Mean of either the certified continuous emission monitoring system or certified flow monitor, as applicable, or proposed method values.

n=Total number of paired samples.

(ii) Determine if the variance of the proposed method is significantly different from that of the certified continuous emission monitoring system or certified flow monitor, as applicable, by calculating the F-value using the following equation.

$$F = \frac{S_p^2}{S_v^2}$$

(Eq. 24)

Compare the experimental F-value with the critical value of F at the 95-percent confidence level with n–1 degrees of freedom. The critical value is obtained from a table for F-distribution. If the calculated F-value is greater than the critical value, the proposed method is unacceptable.

(2) * * *

(ii) Use the following equation to calculate the coefficient of correlation, r, between the emissions data from the alternative monitoring system and the continuous emission monitoring system using all hourly data for which paired values were available from both monitoring systems.

$$r = \frac{\sum e_p e_v - \left(\sum e_p\right)\left(\sum e_v\right) \; n}{\left(\left[\sum e_p^2 - \left(\sum e_p\right)^2 \; n\right]\left[\sum e_p^2 - \left(\sum e_v\right)^2 \; n\right]\right)^{(1\ 2)}}$$

(Eq. 27)

* * * * *

5. Section 75.47 is revised to read as follows:

§ 75.47 Criteria for a class of affected units.

(a) The owner or operator of an affected unit may represent a class of affected units for the purpose of applying to the Administrator for a class-approved alternative monitoring system.

(b) The owner or operator of an affected unit representing a class of affected units shall provide the following information:

(1) A description of the affected unit and how it appropriately represents the class of affected units;

(2) A description of the class of affected units, including data describing all the affected units which will comprise the class; and

(3) A demonstration that the magnitude of emissions of all units which will comprise the class of affected units are *de minimis.*

(c) If the Administrator determines that the emissions from all affected units which will comprise the class of units are *de minimis,* then the Administrator shall publish notice in the **Federal Register**, providing a 30-day period for public comment, prior to granting a class-approved alternative monitoring system.

6. Section 75.48 is revised to read as follows:

§ 75.48 Petition for an alternative monitoring system.

(a) The designated representative shall submit the following information in the application for certification or recertification of an alternative monitoring system.

(1) Source identification information.

(2) A description of the alternative monitoring system.

(3) Data, calculations, and results of the statistical tests, specified in § 75.41(c) of this part, including:

(i) Date and hour.

(ii) Hourly test data for the alternative monitoring system at each required operating level and fuel type.

(iii) Hourly test data for the continuous emissions monitoring system at each required operating level and fuel type.

(iv) Arithmetic mean of the alternative monitoring system measurement values, as specified in Equation 24 in § 75.41(c) of this part, of the continuous emission monitoring system values, as specified on Equation 25 in § 75.41(c) of this part, and of their differences.

(v) Standard deviation of the difference, as specified in Equation A–8 in appendix A of this part.

(vi) Confidence coefficient, as specified in Equation A–9 in appendix A of this part.

(vii) The bias test results as specified in § 7.6.4 in appendix A of this part.

(viii) Variance of the measured values for the alternative monitoring system and of the measured values for the continuous emissions monitoring system, as specified in Equation 22 in § 75.41(c) of this part.

(ix) F-statistic, as specified in Equation 23 in § 75.41(c) of this part.

(x) Critical value of F at the 95-percent confidence level with n–1 degrees of freedom.

(xi) Coefficient of correlation, r, as specified in Equation 26 in § 75.41(c) of this part.

(4) Data plots, specified in §§ 75.41(a)(9) and 75.41(c)(2)(i) of this part.

(5) Results of monitor reliability analysis.

(6) Results of monitor accessibility analysis.

(7) Results of monitor timeliness analysis.

(8) A detailed description of the process used to collect data, including location and method of ensuring an accurate assessment of operating hourly conditions on a real-time basis.

(9) A detailed description of the operation, maintenance, and quality assurance procedures for the alternative monitoring system as required in appendix B of this part.

(10) A description of methods used to calculate heat input or diluent gas concentration, if applicable.

(11) Results of tests and measurements (including the results of all reference method field test sheets, charts, laboratory analyses, example calculations, or other data as appropriate) necessary to substantiate that the alternative monitoring system is equivalent in performance to an appropriate, certified operating continuous emission monitoring system.

[FR Doc. 95–19527 Filed 8–7–95; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 81

[MI39–01–6921a; FRL–5272–9]

Designation of Areas for Air Quality Planning Purposes; Correction of Designation of Nonclassified Ozone Nonattainment Areas; State of Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: This action announces the USEPA decision to correct erroneous ozone designations made in 1980 for the Allegan County (Allegan County), Barry County (Barry County), Battle Creek (Calhoun County), Benton Harbor (Berrien County), Branch County (Branch County), Cass County (Cass County), Gratiot County (Gratiot County), Hillsdale County (Hillsdale County), Huron County (Huron County), Ionia County (Ionia County), Jackson (Jackson County), Kalamazoo (Kalamazoo County), Lapeer County (Lapeer County), Lenawee County (Lenawee County), Montcalm (Montcalm County), Sanilac County (Sanilac County), Shiawassee County (Shiawassee County), St. Joseph County (St. Joseph County), Tuscola County (Tuscola County), and Van Buren County (Van Buren County) nonattainment nonclassified/incomplete data areas and the Lansing-East Lansing (Clinton County, Eaton County, and Ingham County) nonattainment nonclassified/transitional area. Pursuant to section 110(k)(6) of the Act, which allows the USEPA to correct its actions, the USEPA is publishing the designation correction of these areas to attainment/unclassifiable for ozone. The

rationale for this approval is set forth in this final rule; additional information is available at the address indicated below. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this action. If adverse comments are received on this direct final rule, USEPA will withdraw this direct final rule and address the comments received in a subsequent final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. No additional opportunity for public comment will be provided. Unless this direct final rule is withdrawn no further rulemaking will occur on this action.

DATES: This action will be effective October 10, 1995 unless notice is received by September 7, 1995 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the USEPA's analysis are available for inspection at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Telephone Jacqueline Nwia at (312) 886–6081 before visiting the Region 5 Office.

FOR FURTHER INFORMATION CONTACT: Jacqueline Nwia, Air Toxics and Radiation Branch, Regulation Development Section (AT–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois, 60604, (312) 886–6081.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the 1977 amendments to the Clean Air Act (Act), the States identified and the USEPA designated nonattainment areas with respect to the 0.08 parts per million (ppm) photochemical oxidant National Ambient Air Quality Standard (NAAQS). For such areas, States submitted State Implementation Plans (SIP) to control emissions and achieve attainment of the NAAQS. On December 30, 1977, Michigan submitted an analysis which included, pursuant to section 107(d) of the 1977 Act, designations of areas for photochemical oxidants as nonattainment, attainment, or unclassifiable. The State concluded that the 37 county area in southern Michigan, which was designated by the State to be the target area for the photochemical oxidants SIP revision and implementation of the Federal Emission Offset Policy (December 21, 1976), should be designated as nonattainment for photochemical oxidants. The nonattainment designations were based on sparse monitoring data from 1974, 1975, and 1976 (monitoring in the Bay, Kent, Genesee, Oakland, Port Huron and Wayne Counties) showing violations of the 0.08 ppm photochemical oxidant NAAQS in those counties, the States' knowledge of volatile organic compound emission sources in the areas and comparison of the areas with other similar monitored areas. These areas were originally designated as nonattainment for photochemical oxidants on March 3, 1978 (43 FR 8962).

On February 8, 1979 (44 FR 8202), the USEPA revised the NAAQS from 0.08 ppm to 0.12 ppm and the regulated pollutant from photochemical oxidants to ozone. On November 8, 1979, Michigan submitted a revised analysis which considered the change in the NAAQS and its affect on designations. The State concluded that changes to the status of the designated nonattainment areas were not warranted and noted that this position would be re-evaluated as more data on rural ozone levels became available. Monitoring data recorded in Bay, Genesee, Kent, Macomb, Muskegon, Oakland, St. Clair and Wayne Counties for 1975–1978 showed violations of the 0.12 ppm NAAQS. The State retained the nonattainment designation for these areas based on the available monitoring data and the remainder of the southern Michigan counties on the basis of their proximity to urban nonattainment areas. The revised analysis and conclusion to retain the prior designations were approved by the USEPA on June 2, 1980 (45 FR 37188).

Under the 1990 amendments to the Act, these areas retained their designation of nonattainment by operation of law pursuant to section 107(d) upon the date of enactment of the Act. Nonattainment areas were further classified based on their monitored design value, pursuant to section 181(a), as marginal, moderate, serious or severe. The nonattainment areas in Michigan were classified as follows: the Detroit-Ann Arbor area, Muskegon area and Grand Rapids area were classified as moderate; the Flint area and Lansing-East Lansing area were classified as nonclassifiable/transitional pursuant to section 185B of the Act, since they had 3 complete years of air quality data demonstrating attainment of the ozone NAAQS for the period 1987–1989; and, the remainder of the nonattainment areas were classified as nonclassifiable/incomplete data, since ozone monitoring data for these areas was either not available or incomplete. See 56 FR 56694 (November 6, 1991).

II. Summary of This Action

Section 110(k)(6) of the Act provides the USEPA with the authority to correct designation determinations that it determines were in error. It states:

> Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

Twenty-three counties were designated nonclassifiable/transitional or nonclassifiable/incomplete data. They are: Allegan County (Allegan County), Barry County (Barry County), Battle Creek (Calhoun County), Benton Harbor (Berrien County), Branch County (Branch County), Cass County (Cass County), Gratiot County (Gratiot County), Hillsdale County (Hillsdale County), Huron County (Huron County), Ionia County (Ionia County), Jackson (Jackson County), Kalamazoo (Kalamazoo County), Lapeer County (Lapeer County), Lenawee County (Lenawee County), Montcalm (Montcalm County), Saginaw-Bay City-Midland (Bay County, Midland County, and Saginaw County), Sanilac County (Sanilac County), Shiawassee County (Shiawassee County), St. Joseph County (St. Joseph County), Tuscola County (Tuscola County), and Van Buren County (Van Buren County) as nonattainment nonclassified/incomplete data areas and Flint (Genesee County), and Lansing-East Lansing (Clinton County, Eaton County, and Ingham County) as nonattainment nonclassified/transitional areas.

The USEPA's June 2, 1980 action approving the retention of the nonattainment designations for 21 of the 23 nonclassifiable areas was in error. That action was based on the State's November 9, 1979 submittal. The USEPA believes that the information submitted by Michigan was inappropriately used to designate 21 of the 23 nonclassifiable areas nonattainment for ozone due to the lack

of in-county ozone monitoring data showing violations of the 0.12 ppm NAAQS. Accordingly, in this action, the USEPA is correcting this error by correcting the designations for these areas to attainment/unclassifiable.

In order to demonstrate a violation of the ozone NAAQS, the average annual number of expected exceedances of the NAAQS must be greater than 1.0 per calendar year, pursuant to 40 CFR § 50.9. The USEPA reviewed the basis of the original ozone designation for these areas. Ambient air quality monitoring data for ozone was retrieved from the Aerometric Information Retrieval System (AIRS) as well as the docket containing Michigan's 1977 SIP. The USEPA found that of the 23 nonattainment nonclassifiable areas in Michigan, only Ingham, Bay and Genesee Counties had established ambient photochemical oxidant monitors in the mid-1970's. Of these three counties, only Ingham did not record levels of photochemical oxidants above 0.12 ppm to constitute a violation of the NAAQS. The AIRS ozone data report for Michigan is located in the docket for this rulemaking. Therefore, 21 of the nonclassified areas did not violate the 0.12 ppm NAAQS during the years pertinent to the June 2, 1980 final rulemaking. In fact, none of these areas had in-county ozone monitors during these timeframes except for those discussed above.

Furthermore, available in-county monitoring data for some of these areas since 1978 demonstrates that violations of the 0.12 ppm NAAQS have not been recorded in these areas with the exceptions of Allegan and possibly Lenawee counties. Allegan County recorded a violation of the ozone NAAQS in 1990–1991 at a monitor established as a special purpose monitor for the Lake Michigan Ozone Study. Monitoring data collected during 1992–1994 in Allegan County demonstrated attainment of the ozone NAAQS. More recently, preliminary data for 1995 (which has not yet been quality assured) indicates that violations of the ozone NAAQS in Allegan and Lenawee counties have probably occurred in the period 1993–1995. The USEPA believes, however, that this data does not alter the conclusion regarding the erroneous retention of the nonattainment designation for these counties in 1980. If these two areas had been correctly designated as attainment/unclassifiable at that time they would be treated, today, as would any other attainment area that violates the ozone NAAQS. The USEPA is including these two areas in this designation correction and will decide what appropriate actions, if necessary, should be taken once this preliminary data is quality assured. The USEPA may utilize its authority under section 110 of the Act to require the State to correct the inadequacy of the SIP, or designate such areas to nonattainment pursuant to section 107 to address violations of the ozone NAAQS in areas designated as attainment.

III. Rulemaking Action

In this action, the USEPA is promulgating a correction to the designation status of the Allegan County (Allegan County), Barry County (Barry County), Battle Creek (Calhoun County), Benton Harbor (Berrien County), Branch County (Branch County), Cass County (Cass County), Gratiot County (Gratiot County), Hillsdale County (Hillsdale County), Huron County (Huron County), Ionia County (Ionia County), Jackson (Jackson County), Kalamazoo (Kalamazoo County), Lapeer County (Lapeer County), Lenawee County (Lenawee County), Montcalm (Montcalm County), Sanilac County (Sanilac County), Shiawassee County (Shiawassee County), St. Joseph County (St. Joseph County), Tuscola County (Tuscola County), and Van Buren County (Van Buren County) nonattainment nonclassified/incomplete data and the Lansing-East Lansing (Clinton County, Eaton County, and Ingham County) nonattainment nonclassified/transitional area to attainment/unclassifiable pursuant to section 110(k)(6). The public should be advised that this action will be effective 60 days from the date of this final rule. However, if notice is received within 30 days that someone submits adverse or critical comments, this action will be withdrawn, and a subsequent final notice will be published that addresses the comments received.

The USEPA is publishing a separate document in today's issue of the **Federal Register** publication, which constitutes a ''proposed approval'' of the requested SIP revisions and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The ''direct final'' approval shall be effective on October 10, 1995, unless the USEPA receives adverse or critical comments by September 7, 1995.

If the USEPA receives comments adverse to or critical of the approval discussed above, the USEPA will withdraw this approval before its effective date by publishing a subsequent **Federal Register** document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking notice. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the USEPA hereby advises the public that this action will be effective on October 10, 1995.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 1995. Filing a petition for reconsideration by the Administrator of this final rule neither affects the finality of this rule for the purposes of judicial review nor extends the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2).

Under Executive Order (EO) 12291, the USEPA is required to judge whether an action is ''major'' and therefore subject to the requirements of a regulatory impact analysis. The Agency has determined that the correction would result in none of the significant adverse economic effects set forth in section 1(b) of the EO as grounds for a finding that an action is ''major.'' The Agency has, therefore, concluded that this action is not a ''major'' action under EO 12291.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Correction of designation status of these nonattainment areas to attainment under section 110(k)(6) of the Act does not create any new requirements and therefore will not have a significant impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from

and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Hydrocarbons, National parks, Ozone, Volatile organic compounds, Wilderness areas.

Dated: July 25, 1995.

Carol M. Browner,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PURPOSES

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

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.323 the ozone table is amended by revising the entries for the Allegan County Area, Barry County Area, Battle Creek Area, Benton Harbor Area, Branch County Area, Cass County Area, Gratiot County Area, Hillsdale County Area, Huron County Area, Ionia County Area, Jackson Area, Kalamazoo Area, Lapeer County Area, Lenawee County Area, Montcalm Area, Sanilac County Area, Shiawassee County Area, St. Joseph County Area, Tuscola County Area, Van Buren County Area and Lansing-East Lansing Area to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN—OZONE

Designated Areas	Designation		Classification	
	Date [1]	Type	Date	Type
* *	*	*	*	* *
Allegan County:				
Allegan County	October 10, 1995	Unclassifiable/Attainment.		
Barry County Area:				
Barry County	October 10, 1995	Unclassifiable/Attainment.		
Battle Creek Area:				
Calhoun County	October 10, 1995	Unclassifiable/Attainment.		
Benton Harbor Area:				
Berrien County	October 10, 1995	Unclassifiable/Attainment.		
Branch County Area:				
Branch County	October 10, 1995	Unclassifiable/Attainment.		
Cass County Area:				
Cass County	October 10, 1995	Unclassifiable/Attainment.		
* *	*	*	*	* *
Gratiot County Area:				
Gratiot County	October 10, 1995	Unclassifiable/Attainment.		
Hillsdale County Area:				
Hillsdale County	October 10, 1995	Unclassifiable/Attainment.		
Huron County Area:				
Huron County	October 10, 1995	Unclassifiable/Attainment.		
Ionia County Area:				
Ionia County	October 10, 1995	Unclassifiable/Attainment.		
Jackson Area:				
Jackson County	October 10, 1995	Unclassifiable/Attainment.		
Kalamazoo Area:				
Kalamazoo County	October 10, 1995	Unclassifiable/Attainment.		
Lansing-East Lansing Area:				
Clinton County	October 10, 1995	Unclassifiable/Attainment.		
Eaton County	October 10, 1995	Unclassifiable/Attainment.		
Ingham County	October 10, 1995	Unclassifiable/Attainment.		
Lapeer County Area:				
Lapeer County	October 10, 1995	Unclassifiable/Attainment.		
Lenawee County Area:				
Lenawee County	October 10, 1995	Unclassifiable/Attainment.		
Montcalm Area:				
Montcalm County	October 10, 1995	Unclassifiable/Attainment.		
* *	*	*	*	* *
Sanilac County Area:				
Sanilac County	October 10, 1995	Unclassifiable/Attainment.		

MICHIGAN—OZONE—Continued

Designated Areas	Designation		Classification	
	Date [1]	Type	Date	Type
Shiwassee County Area:				
Shiwassee County	October 10, 1995	Unclassifiable/Attainment.		
St. Joseph County Area:				
St. Joseph County	October 10, 1995	Unclassifiable/Attainment.		
Tuscola County Area:				
Tuscola County	October 10, 1995	Unclassifiable/Attainment.		
Van Buren County Area:				
Van Buren County	October 10, 1995	Unclassifiable/Attainment.		
* *	*	*	*	* *

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

[FR Doc. 95–19507 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–259; RM–8341 and RM–8421]

Radio Broadcasting Services; Earle, Pocohantas and Wilson, AR, and Como and New Albany, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: After the *Notice of Proposed Rule Making*, 58 Fed. Reg. 52735, published October 12, 1993, the Commission grants the counterproposal of Broadcasters & Publishers, Inc., licensee of station WWKZ(FM), Channel 278C, New Albany, Mississippi, requesting a change of community to Como, Mississippi, as that community's first local aural transmission service (coordinates N 34, 32, 56 and W 89, 17, and 04. To accommodate this reallotment, it substitutes Channel 234A for Channel 279A at Wilson, Arkansas (coordinates N 35, 29, 46 and W 90, 10, 04). The Commission also allots Channel 280C3 to Earle as that community's first local aural transmission service (coordinates N 35, 15, 20 and W 90, 38, 52, and, to accommodate this allotment, substitutes Channel 281A for Channel 280A at Pocohantas, Arkansas (coordinates N 36, 18, 02 and W 90, 53, 55).

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Paul R. Gordon, Mass Media Bureau, (202) 776–1653.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 93–259, adopted July 28, 1995, and released August 3, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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 reads 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 Mississippi, is amended by removing Channel 278C at New Albany and adding Como, Channel 278C.

3. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Earle, Channel 280C3; removing Channel 279A and adding Channel 234A at Wilson; and removing Channel 280A and adding Channel 281A at Pocohantas.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 95–19492 Filed 8–7–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR 2

RIN 1018–AD40

Update of Regional Office Addresses

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) amends the Field Organization regulations. The Service's Boston regional office has relocated to Hadley, Massachusetts, the Atlanta regional office moved from Spring Street to Century Boulevard in Atlanta, and the Portland regional office moved from Multnomah Street to 11th Avenue in Portland.

EFFECTIVE DATE: September 7, 1995.

FOR FURTHER INFORMATION CONTACT: James E. Pinkerton, Policy and Directives Management Staff, 4401 North Fairfax Drive, Room 224, Arlington, Virginia 22203 at (703) 358–1943.

SUPPLEMENTARY INFORMATION: The purpose of this rule is to update three Service regional office addresses. The Service relocated its regional office from Boston to Hadley, Massachusetts in December, 1993. The Service's regional offices in Portland and Atlanta also relocated within these cities in May, 1989 and December, 1993 respectively.

This document was not subject to Office of Management and Budget Review under Executive Order 12866. It has no potential takings implications for private property as defined in Executive Order 12630. This action does not contain any federalism impacts as described in Executive Order 12612. This rule does not contain any information collection requirements which require approval by the Office of Management and Budget under the

Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* Since this rule merely reflects changes made to regional office addresses, impacts on small business entities is nominal, as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This is an agency organization matter that reflects the physical and mailing addresses of our administrative offices in the regions, therefore, proposed rulemaking is not necessary as provided for in 5 U.S.C. 553(b).

List of Subjects in 50 CFR Part 2

Organization and functions (Government agencies).

For the reasons set forth in the preamble, part 2 of chapter I, of title 50 of the Code of Federal Regulations is amended to read as follows:

PART 2—FIELD ORGANIZATION

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301.

2. Section 2.2 is amended by revising paragraphs (a), (d), and (e) to read as follows:

§ 2.2 Locations of regional offices.

* * * * *

(a) Portland Regional Office (Region 1—comprising the States of California, Hawaii, Idaho, Nevada, Oregon, Washington, America Samoa, and Guam), Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181.

* * * * *

(d) Atlanta Regional Office (Region 4—comprising the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and Puerto Rico and the Virgin Islands), 1875 Century Boulevard, Atlanta, Georgia 30345.

(e) Hadley Regional Office (Region 5—comprising the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia; and the District of Columbia), 300 West Gate Center Drive, Hadley, Massachusetts 01035.

* * * * *

Dated July 25, 1995.

George T. Frampton, Jr.

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 95–19481 Filed 8–7–95; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 950426116–5116–01; I.D. 080295A]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Adjustment of Coho Salmon Quotas

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

ACTION: Inseason adjustment of quotas.

SUMMARY: NMFS announces inseason increases to the non-treaty and treaty Indian coho salmon ocean fishery quotas north of Cape Falcon, OR. The increase to the non-treaty quota is apportioned between the commercial troll and recreational fisheries and among recreational subareas according to the coho salmon allocation provisions contained in the Fishery Management Plan for the Ocean Salmon Fisheries off Washington, Oregon, and California (FMP).

DATES: Effective at 2400 hours local time, August 3, 1995. Comments must be submitted by August 23, 1995.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this action has been compiled in aggregate form and is available for public review during business hours at the office of the Director, Northwest Regional, NMFS (Regional Director).

FOR FURTHER INFORMATION CONTACT: William L. Robinson 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at section III.B. of the appendix to 50 CFR part 661, the standards and procedures for inseason changes to annual management measures. Specifically, the Regional Director may adjust management measures inseason provided that any inseason adjustment in management measures is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the FMP. In addition, all inseason adjustments must be based on consideration of the following factors: (a) Predicted sizes of salmon runs; (b) harvest quota and hooking mortality limits for the area and total allowable impact limitations if applicable; (c) amount of the recreational, commercial, and treaty Indian catch for each species in the area to date; (d) Amount of recreational, commercial, and treaty Indian fishing effort in the area to date; (e) Estimated average daily catch per fisherman; (f) Predicted fishing effort for the area to the end of the scheduled season; and (g) other factors as appropriate.

The annual management measures for ocean salmon fisheries (60 FR 21746, May 3, 1995), that NMFS may make inseason adjustments to fisheries north of Cape Falcon that are consistent with and complementary to Pacific Fishery Management Council (Council) spawner escapement objectives in the event that management agreements or understandings with Canada warrant reevaluation of the Council's assumptions about prior interceptions (60 FR 21753, 21756).

Annual management measures for the ocean salmon fisheries are recommended to NMFS by the Council under the authority of the framework FMP. During development of the 1995 annual management measures, the Council made certain assumptions regarding the harvest of coho salmon in Canadian fisheries off the West Coast of Vancouver Island (WCVI). These assumptions regarding Canadian harvest are an important factor in developing U.S. harvest quotas, since over one-half of the coho salmon harvested off Canada are of U.S. origin, and, absent interception, would return to U.S. waters. The Council's recommendations for U.S. ocean fisheries for coho salmon north of Cape Falcon were based, in part, on the assumption that Canada would harvest 1.78 million coho off WCVI, consistent with recent years' harvest levels.

Subsequent to the implementation of the U.S. 1995 annual management measures, the Government of Canada announced that it will reduce the Canadian harvest off WCVI to 1.2 million coho salmon for 1995. This reduction in Canadian harvest is expected to return several hundred thousand additional coho salmon to U.S. waters, most of which will return as spawning escapement to U.S. rivers and hatcheries, and some of which will be available for harvest.

The Council provided for the inseason adjustment of the annual management measures, based on revised assumptions for Canadian interceptions, in anticipation of providing some economic relief to ocean salmon

fishermen who have been severely restricted (no fishing in 1994) during the last few years. At the same time, the Council assumed that the majority of benefits would accrue to spawning escapements, especially for wild coho salmon stocks.

Before taking any action, the Regional Director consulted, as required by the implementing regulations, with the Council Chairman, the States of Washington and Oregon, and most of the affected northwest treaty Indian tribes. Under the authority of 50 CFR part 661, NMFS is increasing the non-treaty coho salmon ocean quota north of Cape Falcon, OR, by 25,000 fish, from 75,000 to 100,000 fish, and the treaty Indian coho salmon ocean quota by 5,000 fish, from 25,000 to 30,000 fish. The overall non-treaty increase is distributed between the commercial troll and recreational fisheries, with the troll fishery quota increasing from 18,750 to 25,000 fish, and the recreational fishery quota increasing from 56,250 to 75,000 fish. The recreational quota increases are further distributed between the four subareas north of Cape Falcon, with the quota in the subarea from Cape Falcon, OR, to Leadbetter Point, WA, increasing from 28,125 to 37,500 fish; the quota in the subarea from Leadbetter Point to the Queets River, WA, increasing from 20,800 to 28,600 fish; the quota in the subarea from the Queets River to Cape Alava, WA, increasing from 1,460 to 1,800 fish; and the quota in the subarea from Cape Alava to the U.S.-Canadian border increasing from 5,850 to 7,100 fish.

The best available analysis of impacts on wild coho salmon escapements in Puget Sound and Washington coastal rivers indicated that, compared with assumptions and predictions made when the annual management measures were approved, wild coho salmon spawning escapements will increase significantly in all major streams, and all escapement floors for Washington coastal streams will be exceeded, even with these and other modest increases to U.S. fisheries in State waters. In addition, overall harvest impacts on Oregon coastal natural coho salmon, which have been proposed for listing as ''threatened'' under the Endangered Species Act and which make up a small portion of the harvest north of Cape Falcon, have decreased slightly.

The States of Oregon and Washington will manage the fisheries in State waters adjacent to this area of the exclusive economic zone in accordance with this Federal action.

Because of the need for immediate action to relieve a restriction, NMFS has determined that good cause exists for this action to be issued without affording a prior opportunity for public comment and without a delayed effectiveness period. This action does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is exempt from review under E.O. 12866.

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

Dated: August 2, 1995.

Richard W. Surdi,

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

[FR Doc. 95–19524 Filed 8–3–95; 3:49 pm]

BILLING CODE 3510–22–F

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50 CFR Part 662

[Docket No. 950801198–5198–01; I.D. 072795B]

RIN 0648–XX26

Northern Anchovy Fishery; Quotas for the 1995–96 Fishing Year

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

ACTION: Final quotas.

SUMMARY: NMFS announces the estimated spawning biomass and final harvest quotas for the northern anchovy fishery in the exclusive economic zone south of Point Reyes, CA, for the 1995–96 fishing season. These quotas may only be adjusted if inaccurate data were used or if errors were made in the calculations. Comments on these two points are invited. The intended effect of this action is to establish allowable harvest levels of Pacific anchovy.

DATES: Effective on August 1, 1995. Comments will be accepted until September 5, 1995.

ADDRESSES: Submit comments on the final quotas to Ms. Hilda Diaz-Soltero, Regional Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Administrative Report LJ–95–11 is available from this same address.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, (310) 980–4036.

SUPPLEMENTARY INFORMATION: In consultation with the California Department of Fish and Game and the NMFS Southwest Fisheries Science Center, the Director of the Southwest Region, NMFS, (Regional Director) has estimated that the 1995–96 spawning biomass of the central subpopulation of northern anchovy, *Engraulis mordax*, is 388,000 mt. The biomass estimate is derived from a stock assessment model using spawning biomass estimated by five indices of abundance. Documentation of the spawning biomass is contained in Administrative Report LJ–95–11, published by the Southwest Fisheries Science Center, NMFS (see ADDRESSES). This report and the determination of harvest quotas were provided to the Pacific Fishery Management Council (Council).

According to the formula in the Fishery Management Plan for the Northern Anchovy Fishery (FMP), the U.S. optimum yield (OY) is 61,600 mt (70 percent of the biomass above 300,000), which is allocated to reduction fisheries, plus 4,900 mt for non-reduction fisheries. There is no agreement with Mexico on the management of northern anchovy; a portion of the biomass (30 percent) above 300,000 mt is designated as the amount to account for this unregulated harvest. Any portion of the U.S. OY not used by U.S. fishermen is identified as total allowable level of foreign fishing (TALFF) and available to foreign fishing.

Estimates for the amount of anchovy that will be used by the U.S. fishing industry is based, usually, on the largest amount of reduction and non-reduction processing in the previous 3 years; however, the spawning biomass has been below 300,000 mt for the last 3 years and no reduction fishing has been permitted by the FMP. At a meeting of the Council's Coastal Pelagics Planning Team and Advisory Subpanel held in Long Beach, CA, on June 21, 1995, NMFS requested estimates of domestic processing needs from the fishing industry so that a basis could be established for setting annual quotas. Comments also were received at the June 26–29 meeting of the Council. From the information available, NMFS estimates that approximately 13,000 mt will be used by the U.S. reduction fishery in the 1995–96 season. Future estimates of domestic processing will be based on performance during the 1995–96 season.

The TALFF depends on that portion of the U.S. OY that will not be used by U.S. fishermen, minus the amount of harvest by Mexican vessels that is in excess of the average Mexican harvest (calculated according to the formula in the FMP), like the estimates of U.S. harvest. The estimates of Mexican excess harvest is based, generally, on the largest harvest in the last 3 years; however, the biomass has been so low

during this time that there has been no significant fishery off Mexico. Historically, the Mexican fishery has been based on availability and not on abundance. When the biomass was of a similar level in 1987, Mexico harvested 124,475 mt. The biomass dropped approximately 45 percent the next year and another 26 percent the following year, yet Mexico harvested approximately 80,000 mt in each of those 2 years. Recent harvests are not a reliable predictor of Mexican harvest under conditions of sudden increased abundance. The issue of uncertainty about the performance of the domestic industry and the intent of Mexican harvesters was discussed by the Council, which recommended that the portion allocated to TALFF be held in reserve. This action would have protected the domestic industry and helped assure that OY will not be exceeded; however, the FMP does not allow for a deviation from the designated formula.

The Regional Director has made the following determinations for the 1995–96 fishing season by applying the formulas in the FMP and in 50 CFR Part 662.20.

1. The total U.S. OY for northern anchovy is 66,500 mt, plus an unspecified amount for use as live bait.

2. The total U.S. harvest quota for reduction purposes is 13,000 mt.

a. Of the total reduction harvest quota, 1,300 mt is reserved for the reduction fishery in Subarea A (north of Pt. Buchon). The FMP requires that 10 percent of the U.S. reduction quota or 9,072 mt, whichever is less, be reserved for the northern fishery. This is not a special quota, but only a reduction in the amount allocated to the southern fishery south of Pt. Buchon (Subarea B). After the northern fishery has harvested 1,300 mt, any unused portion of the Subarea B allocation may also be harvested north of Pt. Buchon.

b. The reduction quota for subarea B (south of Pt. Buchon) is 11,700 mt.

3. The U.S. harvest quota for non-reduction fishing (i.e., fishing for anchovy for use as dead bait or human consumption) is 4,900 mt (as set by § 662.20).

4. There is no U.S. harvest limit for the live bait fishery.

5. The domestic annual processing capacity (DAP) is 13,000 mt.

6. The amount allocated to joint venture processing (JVP) is zero, because there is no history of, nor are there applications for, joint ventures.

7. Domestic annual harvest capacity (DAH) is 13,000 mt. DAH is the sum of DAP and JVP.

8. The TALFF is 48,600 mt.

The fishery will be monitored during the year and evaluated with respect to the OY and the estimated needs of the fishing industry. Adjustments may be made to comply with the requirements of the FMP and its implementing regulations.

This action is authorized by 50 CFR part 662 and is exempt from review under E.O. 12866.

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

Dated: August 2, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–19499 Filed 8–3–95; 3:49 pm]

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50 CFR Parts 672, 675, and 676

[Docket No. 950414104–5183–02; I.D. 110194B]

RIN 0648–AF53

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Maximum Retainable Bycatch Amounts

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

ACTION: Final rule and correcting amendments.

SUMMARY: NMFS is revising the regulations setting forth the standards for determining when a fishing vessel operator is engaged in directed fishing in the groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands management area (BSAI). This rule replaces the existing species-, gear-, and management-goal specific standards with specific retainable percentages for deriving the maximum amount of fish species or species group that may be retained as bycatch in fisheries that are closed to directed fishing. Retention of more than this amount constitutes directed fishing. The changes made by this rule are expected to promote compliance with groundfish regulations and to facilitate enforcement efforts. This action is intended to further the objectives of the fishery management plans (FMPs) for the groundfish fisheries of Alaska.

EFFECTIVE DATE: August 2, 1995.

ADDRESSES: Individual copies of the environmental assessment/regulatory impact review prepared for this action may be obtained from Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone (EEZ) of the GOA and the BSAI are managed by NMFS in accordance with the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations that appear at 50 CFR parts 672, 675, and 676. General regulations that also govern the groundfish fisheries appear at 50 CFR part 620.

This rule revises regulations at 50 CFR 672.20(g) and 675.20(h), which specify a large number of species-, area-, gear-, and management goal-specific standards for the GOA and BSAI, respectively, for determining when a vessel operator is engaged in directed fishing in the groundfish fisheries of GOA and BSAI. These directed fishing standards were intended to reduce harvest rates of groundfish species when their total allowable catch (TAC) limits are being approached, while, at the same time, reducing waste and minimizing the need to discard fish at sea by allowing retention of incidental groundfish bycatch, after closure of the directed fishery until the TAC limit is achieved.

In spite of increased specificity, the directed fishing standards often failed to prevent overharvest or underharvest of groundfish. Furthermore, the standards have not resulted in eliminating undesirable fishing practices, such as covert targeting on high value species after fishery closures or wasteful discarding.

A proposed rule addressing these concerns was published in the **Federal Register** on April 28, 1995 (60 FR 20952). Public comment was invited through May 30, 1995. Three letters of comments supporting the proposed rule, with some modifications, were received within the comment period and are summarized and responded to below in the ''Response to Comments'' section.

The final rule implements the following modifications to the directed fishing standards:

1. Usage of the term directed fishing standards is eliminated. Instead, ''directed fishing'' is defined as any fishing activity that results in the retention of an amount of fish species or species subgroup on board a vessel that

is greater than the maximum retainable bycatch amount for that species or species group as calculated under the regulations as modified. The maximum retainable bycatch amount is the amount, in round-weight equivalents, of a species or species group that a vessel may retain on board at any time during a fishing trip. For purposes of calculating the maximum retainable bycatch amount, the regulations as modified specify, in tabular form, retainable percentages for each bycatch species/basis species combination.

2. A single, retainable percentage for each bycatch species/basis species combination is set forth, regardless of gear type or management area. Thus, the same retainable percentages are established for trawl, hook-and-line, pot, and other gear types. Similar retainable percentages are specified for the GOA and BSAI by separate tables reflecting differences in species groupings in the two areas.

3. Directed fishing standards based on groupings of fishery categories are eliminated (except for rockfish). Retainable percentages are established that are species-specific, except for rockfish. Consistent with existing regulations at §§ 672.20(g)(2) and 675.20(h)(3)(iii), rockfish, except demersal shelf rockfish, continues to be aggregated to prevent ''topping off'' of individual rockfish species that are closed to directed fishing.

4. The separate directed fishing standard for vessels using pelagic trawl gear is eliminated.

5. Closures are eliminated for fisheries for species in the aggregate under § 675.21 (c) and (d) when a prohibited species bycatch allowance is reached.

6. Retainable percentages for some species are specified that represent a more accurate estimation of the observed bycatch rates than the previous standards.

Details of the specific changes to the directed fishing standards are outlined in the preamble to the proposed rule.

Response to Comments

Comment 1: Pacific ocean perch (POP) should be separated from the aggregated rockfish group and a retainable percentage of 10 percent should be established for POP against other deep-water species in the GOA.

Response: Separating POP from an aggregation of other rockfish species could reduce the incentive for retaining some of the more valuable species and permit more POP to be taken; however, much of the discard associated with the POP fishery is due to a lack of market for this species. If the discard of POP is market-driven, separating POP would not likely reduce discards.

Establishing a different percentage for POP than is established for the other rockfish and making that percentage applicable only to the GOA would not conform to the Council's intent for consistency of the retainable percentages among species and between management areas.

Comment 2: The proposed rule perpetuates the current method of calculating bycatch of rockfish in the aggregate. This results in vessel operators discarding lower-valued rockfish species when they have bycatch of higher-valued rockfish species. Rockfish need to be separated into target fishery management groups to solve this problem.

Response: NMFS recognizes that aggregating rockfish could lead to discarding of lower-valued rockfish; however, separating the various rockfish management groups would allow an increase in the total amount of all rockfishes to be taken through ''topping off'' activities for the more valuable species. Of particular concern is the potential for some rockfish groups to reach overfishing status resulting in other fisheries being closed. If the rockfish were separated into distinct groups, the likelihood of reaching overfishing would increase.

Separating the rockfish groups could further reduce rockfish directed fisheries as greater amounts of the total allowable bycatch would have to be reserved to support bycatch needs. It could also result in more prohibited species closures for rockfish, forcing discard of additional catch.

Comment 3: The proposed rule is supported, including the proposed treatment of rockfish. Retainable percentages based on separate rockfish species would most likely result in an increase in the amount of ''topping off,'' because fishermen would be allowed to target and retain the allowable percentage of each marketable rockfish species.

Response: NMFS agrees.

Upon reviewing the reasons for, and the comments on, this action, no substantive changes are made to the final rule from the proposed rule. Two editorial changes are made. In Table 2 to § 672.20, a spelling error is corrected in the second footnote and the management of demersal shelf rockfish is clarified. The corrected footnote reads ''Aggregated rockfish of the genera *Sebastes* and *Sebastolobus*, except in the Southeast Outside District where demersal shelf rockfish (DSR) is a separate category''.

The final rule makes a minor correction to a final regulation that was published in the **Federal Register** on May 17, 1993 (58 FR 28799). That regulation established mandatory careful release procedures for Pacific halibut taken incidental to the hook-and-line gear fisheries for groundfish in the BSAI and GOA. These procedures prohibited the release of halibut caught on groundfish hook-and-line gear outboard of the vessel's rails by one of three methods, one of which included ''cutting the gangion''. However, in § 672.7(l)(2)(i) and § 675.7(m)(2)(i), the phrase ''cutting and gangion'' was used instead of the phrase ''cutting the gangion.'' This document corrects the phrase.

Classification

The Director, Alaska Region, NMFS, determined that the regulatory amendment is necessary for the conservation and management of the GOA and BSAI management area fisheries and that it is consistent with the Magnuson Act and other applicable laws.

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 rule would not have a significant economic impact on a substantial number of small entities. The reasons were published in the notice of proposed rule (60 FR 20952, April 28, 1995). As a result a regulatory flexibility analysis was not prepared.

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

This action relieves a restriction on the flatfish fishery, the most active groundfish fishing during the next 30 days. Immediate effectiveness of the rule would allow the flatfish fishery to retain more of the bycatch of certain groundfish species in fisheries that will be conducted in early August. This action confers a benefit to the flatfish fishery and reduce the overall groundfish waste. The revised retainable percentages will have no adverse effect on other groundfish fisheries operating during this period. Accordingly, as a rule relieving a restriction, under U.S.C. 553(d)(1), this final rule is made effectively immediately.

List of Subjects

50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 676

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 1, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672, 675, and 676 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

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

2. In § 672.2, the definition of ''Directed fishing'' is revised to read as follows:

§ 672.2 Definitions.

* * * * *

Directed fishing means any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable bycatch amount for that species or species group as calculated under § 672.20 (g) and (h).

* * * * *

3. In § 672.7, paragraph (l)(2)(i) is revised to read as follows:

§ 672.7 Prohibition.

* * * * *

(1) * * *

(2) * * *

(i) Cutting the gangion;

* * * * *

4. In § 672.20, the last sentence of paragraphs (c)(2)(i) and (c)(2)(ii), and paragraph (g) are revised, and new Table 2 is added at the end of this section to read as follows:

§ 672.20 General limitations.

* * * * *

(c) * * *

(2) * * *

(i) * * * If directed fishing for a species or species group is prohibited, any amount of that species or species group greater than the maximum retainable bycatch amount, as calculated under paragraph (g) of this section, may not be retained and must be treated as a prohibited species under paragraph (e) of this section.

(ii) * * * If directed fishing for a species or species group is prohibited, any amount of that species or species group greater than the maximum retainable bycatch amount, as calculated under paragraph (g) of this section, may not be retained and must be treated as a prohibited species under paragraph (e) of this section.

* * * * *

(g) *Maximum retainable bycatch amounts.* (1) The maximum retainable bycatch amount for a bycatch species or species group is calculated as a proportion of the basis species retained on board the vessel using the retainable percentages in Table 2 to this section. As used in this paragraph (g), ''bycatch species'' means any species or species group for which a maximum retainable bycatch amount is being calculated. As used in this paragraph (g), ''basis species'' means any species or species group that is open to directed fishing that the vessel is authorized to harvest.

(2) If a fishery is closed to directed fishing, a vessel may not retain a bycatch species in an amount that exceeds that maximum retainable bycatch amount, as calculated under this paragraph (g), at any time during a fishing trip.

(3) To calculate the maximum retainable bycatch amount for a specific bycatch species, an individual retainable bycatch amount must be calculated with respect to each basis species that is retained on board that vessel. To obtain these individual retainable bycatch amounts, the appropriate retainable percentage for the bycatch species/basis species combination, set forth in Table 2 to this section, is multiplied by the amount of that basis species, in round-weight equivalents. The maximum retainable bycatch amount for that specific bycatch species consists of the sum of the individual retainable bycatch amounts.

* * * * *

TABLE 2 TO § 672.20—GULF OF ALASKA RETAINABLE PERCENTAGES

Basic species[1]	Bycatch species[1]					
	Pollock	Pacific cod	Deep flatfish	Rex sole	Flathead sole	Shallow flatfish
Pollock	[3]na	20	20	20	20	20
Pacific cod	20	[3]na	20	20	20	20
Deep-water flatfish	20	20	[3]na	20	20	20
Rex sole	20	20	20	[3]na	20	20
Flathead sole	20	20	20	20	[3]na	20
Shallow-water flatfish	20	20	20	20	20	[3]na
Arrowtooth	0	0	0	0	0	0
Sablefish	20	20	20	20	20	20
Pacific Ocean Perch	20	20	20	20	20	20
Shortraker/rougheye	20	20	20	20	20	20
Other rockfish	20	20	20	20	20	20
Northern rockfish	20	20	20	20	20	20
Pelagic rockfish	20	20	20	20	20	20
DSR-Southeast Outside	20	20	20	20	20	20
Thornyhead	20	20	20	20	20	20
Atka mackerel	20	20	20	20	20	20
Other species	20	20	20	20	20	20
Aggregated amount non-groundfish species	20	20	20	20	20	20

TABLE 2 to § 672.20—GULF OF ALASKA RETAINABLE PERCENTAGES

Basis species[1]	Bycatch species[1]					
	Arrowtooth	Sablefish	Aggregated rockfish[2]	DSR south-east outside	Atka mackerel	Other species
Pollock	35	1	5	10	20	20
Pacific cod	35	1	5	10	20	20
Deep-water flatfish	35	15	15	1	20	20
Rex sole	35	15	15	1	20	20
Flathead sole	35	15	15	1	20	20
Shalow-water flatfish	35	1	5	10	20	20
Arrowtooth	[3] NA	0	0	0	0	0
Sablefish	35	[3] NA	15	1	20	20
Pacific Ocean Perch	35	15	15	1	20	20
Shortraker/rougheye	35	15	15	1	20	20
Other rockfish	35	15	15	1	20	20
Northern rockfish	35	15	15	1	20	20
Pelagic rockfish	35	15	15	1	20	20
DSR-Southeast Outside	35	15	15	[3] NA	20	20
Thornyhead	35	15	15	1	20	20
Atka mackerel	35	1	5	10	[3] NA	20
Other species	35	1	5	10	20	[3] NA
Aggregated amount non-groundfish species	35	1	5	10	20	20

[1] For definition of species see Table 1 of the Gulf of Alaska groundfish specifications.
[2] Aggregated rockfish means rockfish of the genera Sebastes and Sebastolobus except in the Southeast Outside District where demersal shelf rockfish (DSR) is a separate category.
[3] NA = not applicable.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for part 675 continues to read as follows:

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

6. In § 675.2, the definition of ''Directed fishing'' is revised to read as follows:

§ 675.2 Definitions.

* * * * *

Directed fishing means any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable bycatch amount for that species or species group as calculated under § 675.20 (h) and (i).

* * * * *

7. In § 675.7, paragraph (m)(2)(i) is revised to read as follows:

§ 675.7 Prohibition.

* * * * *

(m) * * *

(2) * * *

(i) Cutting the gangion;

* * * * *

8. In § 675.20, the last sentence of paragraph (a)(8) and paragraph (h) are revised, and new Table 1 is added at the end of the section to read as follows:

§ 675.20 General limitations.

(a) * * *

(8) * * * If directed fishing for a species or species group is prohibited, any amount of that species or species group greater than the maximum retainable bycatch amount, as calculated under paragraph (h) of this section, may not be retained and must be treated as a prohibited species under paragraph (c) of this section.

* * * * *

(h) *Maximum retainable bycatch amounts.* (1) The maximum retainable bycatch amount for a bycatch species or species group is calculated as a proportion of the basis species retained on board the vessel using the retainable percentages in Table 1 to this section. As used in this paragraph (h), ''bycatch species'' means any species or species group for which a maximum retainable bycatch amount is being calculated. As used in this paragraph (h), ''basis species'' means any species or species group that is open to directed fishing that the vessel is authorized to harvest.

(2) If a fishery is closed to directed fishing, a vessel may not retain a bycatch species in an amount that exceeds that maximum retainable bycatch amount, as calculated under this paragraph (h), at any time during a fishing trip.

(3) To calculate the maximum retainable bycatch amount for a specific bycatch species, an individual retainable bycatch amount must be calculated with respect to each basis species that is retained on board the vessel. To obtain these individual amounts, the appropriate retainable percentage for the bycatch species/basis species combination, set forth in Table 1 to this section, is multiplied by the amount of that basis species, in round-weight equivalents. The maximum retainable bycatch amount for that specific bycatch species consists of the sum of the individual retainable bycatch amounts.

* * * * *

TABLE 1 to § 670.20—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES

Basis species [1]	Bycatch species [1]					
	Pollock	P. cod	Atka mack	Arrowtooth	Yellowfin sole	Other flatfish
Pollock	[3] NA	20	20	35	20	20
Pacific cod	20	[3] NA	20	35	20	20
Atka mackerel	20	20	[3] NA	35	20	20
Arrowtooth	0	0	0	[3] NA	0	0
Yellowfin sole	20	20	20	35	[3] NA	35
Other flatfish	20	20	20	35	35	[3] NA
Rocksole	20	20	20	35	35	35
Flathead sole	20	20	20	35	35	35
Greenland turbot	20	20	20	35	20	20
Sabelfish	20	20	20	35	20	20
Other rockfish	20	20	20	35	20	20
Other red rockfish—BS	20	20	20	35	20	20
Pacific Ocean Perch	20	20	20	35	20	20
Sharpchin/ Northern—AI	20	20	20	35	20	20
Shortraker/ Rougheye—AI	20	20	20	35	20	20
Squid	20	20	20	35	20	20
Other species	20	20	20	35	20	20
Aggregated amount nongroundfish species	20	20	20	35	20	20

[1] For definition of species see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.
[2] Aggregated rockfish of the general Sebastes and Sebastolobus.
[3] NA=not applicable.

TABLE 1 TO § 675.20—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES

Basis species [1]	Bycatch species [1]			
	Rocksole	Flathead sole	Grld turbot	Sablefish
Pollock	20	20	1	1
Pacific cod	20	20	1	1
Atka mackerel	20	20	1	1
Arrowtooth	0	0	0	0
Yellowfin sole	35	35	1	1
Other flatfish	35	35	1	1
Rocksole	[3] NA	35	1	1
Flathead sole	35	[3] NA	35	15
Greenland turbot	20	20	[3] NA	15
Sablefish	20	20	35	[3] NA
Other rockfish	20	20	35	15
Other red rockfish—BS	20	20	35	15
Pacific Ocean Perch	20	20	35	15
Sharpchin/Northern—AI	20	20	35	15
Shortraker/Rougheye—AI	20	20	35	15
Squid	20	20	1	1
Other species	20	20	1	1
Aggregated amount non-groundfish species	20	20	1	1

[1] For definition of species see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.
[2] Aggregated rockfish of the genera Sebastes and Sebastolobus.
[3] NA=not applicable.

TABLE 1 to § 675.20.—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES

Basis species [1]	Aggregated rockfish [2]	Squid	Other species
Pollock	5	20	20
Pacific cod	5	20	20
Atka mackerel	5	20	20
Arrowtooth	0	0	0
Yellowfin sole	5	20	20
Other flatfish	5	20	20
Rocksole	5	20	20
Flathead sole	15	20	20
Greenland turbot	15	20	20
Sablefish	15	20	20
Other rockfish	15	20	20
Other red rockfish—BS	15	20	20

TABLE 1 to § 675.20.—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES—Continued

Basis species [1]	Aggregated rockfish [2]	Squid	Other species
Pacific Ocean Perch	15	20	20
Sharpchin/Northern—AI	15	20	20
Shortraker/Rougheye—AI	15	20	20
Squid	5	[3] NA	20
Other species	5	20	[3] NA
Aggregated amount non-groundfish species	5	20	20

[1] For definition of species see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.
[2] Aggregated rockfish of the genera Sebastes and Sebastolobus.
[3] NA=not applicable.

9. In § 675.21, paragraphs (c)(1)(i) through (c)(1)(iii), (c)(2) introductory text, and paragraph (d) are revised to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

* * * * *

(c) * * *

(1) * * *

(i) *Zone 1 red king crab or C. bairdi Tanner crab bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (b)(1)(iii) (B) through (F) of this section will catch the Zone 1 bycatch allowance, or seasonal apportionment thereof, of red king crab or *C. bairdi* Tanner crab specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of Zone 1 to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season, except that when a bycatch allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/''other species'' fishery category is reached, only directed fishing for pollock is closed to trawl vessels using nonpelagic trawl gear.

(ii) *Zone 2 red king crab or C. bairdi Tanner crab bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (b)(1)(iii) (B) through (F) of this section will catch the Zone 2 bycatch allowance, or seasonal apportionment thereof, of red king crab or *C. bairdi* Tanner crab specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of Zone 2 to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season, except that when a bycatch allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/''other species'' fishery category is reached, only directed fishing for pollock is closed to trawl vessels using nonpelagic trawl gear.

(iii) *Halibut bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (b)(1)(iii) (B) through (F) of this section in the Bering Sea and Aleutian Islands management area will catch the halibut bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of the entire Bering Sea and Aleutian Islands management area to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season, except that when a bycatch allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/''other species'' fishery category is reached, only directed fishing for pollock is closed to trawl vessels using nonpelagic trawl gear.

(2) *Attainment of a trawl bycatch allowance for Pacific herring.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (b)(1)(iii) (A) through (F) of this section in the Bering Sea and Aleutian Islands management area will catch the herring bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of the Herring Savings Area to directed fishing for each species and/or species group in that fishery category, except that:

* * * * *

(d) *Attainment of a Pacific halibut nontrawl fishery bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the nontrawl fishery categories listed in paragraphs (b)(2)(ii) (A) through (C) of this section will catch the Pacific halibut bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of the entire Bering Sea and Aleutian Islands management area to directed fishing with the relevant gear type for each species and/or species group in that fishery category.

10. In § 675.22, paragraph (g) introductory text is revised to read as follows:

§ 675.22 Time and area closures.

* * * * *

(g) Catcher vessel operational area (applicable through December 31, 1995). Processor vessels in the ''offshore component,'' defined at § 675.2, may not catch pollock in excess of the maximum retainable bycatch amount for pollock during the second seasonal allowance of pollock, defined at § 675.20(a)(2)(ii), in the Bering Sea subarea south of 56°00′ N. lat., and between 163°00′ and 168°00′ W. long.

* * * * *

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

11. The authority citation for part 676 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

12. In § 676.23, paragraph (b) is revised to read as follows:

§ 676.23 IFQ fishing season.

* * * * *

(b) Directed fishing for sablefish using fixed gear in any IFQ regulatory area may be conducted in any fishing year during the period specified by the Regional Director through notification published in the **Federal Register**. The Regional Director will take into account the opening date of the Pacific halibut

season when determining the opening date for sablefish for the purposes of reducing bycatch and regulatory discards between the two fisheries. Catches of sablefish by fixed gear during other periods may be retained up to and including the maximum retainable bycatch amount specified at §§ 672.20(g) and 675.20(h) of this chapter if an individual is aboard when the catch is made who has a valid IFQ card and unused IFQ in the account on which the card was issued. Catches of sablefish in excess of the maximum retainable bycatch amounts and catches made without IFQ must be treated in the same manner as prohibited species.

[FR Doc. 95–19439 Filed 8–2–95; 3:59 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 60, No. 152
Tuesday, August 8, 1995

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

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Part 273

[Amendment No. 369]

RIN: 0584–AC08

Food Stamp Program: Failure to Comply With Federal, State, or Local Welfare Assistance Program Requirements

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend Food Stamp Program regulations to prohibit an increase in food stamp benefits when a household's Federal, State or local welfare assistance payment decreases as a result of a penalty for failure to comply with a Federal, State or local welfare program requirement. The revision is necessary to more fully implement congressional intent that the Food Stamp Program should reinforce, not mitigate, another program's penalties.

DATES: Comments must be received on or before September 22, 1995, to be assured of consideration.

ADDRESSES: Comments should be submitted to Margaret Thiel, Acting Supervisor, Eligibility and Certification Regulation Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be datafaxed to the attention of Mrs. Thiel at (703) 305–2454. All written comments will be open to public inspection at the offices of the Food and Consumer Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed rulemaking should be addressed to Mrs. Thiel at the above address or by telephone at (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant for purposes of Executive Order 12866, and therefore, has been reviewed by the Office of Management and Budget.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-Quality Control liabilities) or Part 283 (for rules related to Quality Control liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR 3105, subpart V (48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rule has also been reviewed with respect to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). William E. Ludwig, Administrator of the Food and Consumer Service (FCS), has certified that this proposal would not have a significant economic impact on a substantial number of small entities. The changes would affect food stamp applicants and recipients who intentionally fail to comply with other Federal, State or local welfare assistance program requirements. The proposal would also affect State and local welfare agencies which administer the Food Stamp Program. State welfare agencies are reimbursed at a 50/50 matching rate for Food Stamp Program administrative costs.

Paperwork Reduction Act

This proposed rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

The Food Stamp Act Amendments of 1982 (Pub. L. 97–2253, Subtitle E, Sec. 164, Sept. 8, 1982) amended the Food Stamp Act of 1977, as amended, (Act) to add a new provision (Section 8(d)) which prohibits increases in food stamp benefits which are due to decreases in household income resulting from a penalty levied by a Federal, State, or local welfare assistance program for intentional failure to comply with the other program's requirements. 7 U.S.C. 2017(d). As currently written in the Food Stamp Program regulations at 7 CFR 273.11(k), the prohibition only applies to penalty situations in which overissued benefits resulting from such intentional noncompliance are being recouped from the household's public assistance benefits which would otherwise result in a reduction in countable income for Food Stamp Program purposes.

The Department is proposing to expand the current regulations to include all situations in which a decrease in public assistance income occurs as a result of a penalty being imposed for intentional failure to comply with a Federal, State, or local welfare program requirement. This proposal stems from several incidents in recent years when States, working with the Department in developing welfare reform proposals, have asked that we not allow food stamp benefits to rise

when work sanctions are imposed on recipients of other benefits for failure to comply with work requirements. Also, any other sanctions for an intentional failure to comply with welfare program requirements could not be used to allow food stamp benefits to rise.

When a recipient of the Aid to Families with Dependent Children (AFDC) Program, for example, fails to comply with a Jobs Opportunity and Basic Skills (JOBS) program requirement, the assistance unit is sanctioned by excluding the individual's needs in determining the unit's need for AFDC benefits and the amount of the payment. Unless the JOBS requirement is ''comparable'' to a Food Stamp Employment and Training (E&T) requirement, the household's food stamp allotment will increase as a result of the decrease in income it sustains because of the JOBS sanction. Raising the food stamp benefit level lessens the impact of the penalty imposed by AFDC. If a comparable E&T requirement exists, failure to comply with JOBS is treated the same as if the individual failed to comply with an E&T requirement, and the individual (or household) is ineligible for food stamp benefits for 60 days.

Because the Department does not have the authority to waive the current restrictive provision at 7 CFR 273.11(k), the Department has had to deny State requests to hold food stamp benefits constant when sanctioning a person for noncompliance with another program's requirements. The Department believes the current policy should be broadened to more fully reflect Congressional intent which indicates that the Food Stamp Program should reinforce, not mitigate, another program's penalties (Sen. Rpt. No. 97–504, July 26, 1982, p. 44).

Accordingly, the Department proposes to amend 7 CFR 273.11(k) to provide that when a recipient's benefit under a Federal, State, or local means-tested welfare assistance program (such as but not limited to Supplemental Security Income, Aid to Families with Dependent Children, General Assistance) is decreased due to a penalty for intentional noncompliance with a requirement under such program, food stamp allotments will not increase as a result. This proposal more fully reflects the Food Stamp Amendments of 1982. A penalty for purposes of this provision is the amount by which a welfare assistance payment has been decreased. The Department intends that the term decrease for the purposes of this rule means a reduction, suspension or termination. The language of the Food Stamp Act specifically addresses a penalty which results in a decrease in income (termination or reduction of benefits) as a result of a penalty.

It is important to note that some State welfare reform projects have policies that cause the benefits of other programs to be held constant even though changes in household circumstances occur that would otherwise cause a rise in benefits. The Department is clarifying in this proposed rulemaking that situations which result in a freeze on the other program's current benefit level do not constitute a penalty subject to the provisions of this proposal. Also, changes in household circumstances which are not related to the penalty and result in an increase in food stamp benefits shall likewise not be affected by the provisions of this paragraph. For example, a household may be receiving a reduced level of general assistance benefits for a 6-month period as the result of a penalty imposed because one of its members refused to comply with a work requirement of that program. The household's food stamp benefits would not go up as a result of the decreased benefits. However, if during the 6-month period another member of the household suffered a reduction in nonassistance income, the food stamp benefits could go up even though the penalty was still in effect. This is because the factors resulting in the increase in food stamp benefits were unrelated to the penalty.

This proposal does not imply that Food Stamp Program administrators take a role in determining whether an individual's failure to comply with another programs' requirements was intentional or not. That determination is left to those responsible for administering those other programs. Under this proposal, Food Stamp Program administrators would only determine if a decrease in public assistance benefits is the result of a penalty being levied for intentional noncompliance. If so, Food Stamp Program eligibility workers would calculate food stamp benefits in such situations by using the assistance payment which would have been issued by the other assistance program if no penalty had been imposed for the violation.

Implementation

The provisions of this rulemaking are proposed to be effective and to be implemented by State welfare agencies on the first day of the month following 120 days from the publication date of the final rule.

List of Subjects in 7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR part 273 is proposed to be amended as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

1. The authority citation of part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. In § 273.11, paragraph (k) is revised to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(k) *Failure to comply with another assistance program's requirements.* The State agency shall ensure that there is no increase in food stamp benefits to a household as the result of a penalty imposed for intentional failure to comply with a Federal, State, or local means-tested welfare program which distributes publicly funded benefits. When a recipient's current benefit level under a Federal, State, or local means-tested welfare assistance program (such as but not limited to SSI, AFDC, GA) is decreased (by reduction, suspension or termination) due to a penalty for intentional noncompliance with a requirement under such program, the State agency shall identify that portion of the decrease which is the penalty. The penalty for purposes of this provision shall be that portion of the decrease attributed to the repayment of benefits overissued as a result of the household's intentional noncompliance or the amount by which the other program's benefits have been otherwise decreased as the result of the intentional noncompliance. The State agency shall calculate the food stamp benefits using the benefit amount which would be issued by that program if no penalty had been applied against the benefit amount. A situation which results in the benefits of the other program being frozen at the current level shall not constitute a penalty subject to the provisions of this paragraph. Changes in household circumstances which are not related to the penalty and result in an increase in food stamp benefits shall likewise not be affected by the provisions of this paragraph.

Dated: August 2, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 95–19525 Filed 8–7–95; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Marketing Service

7 CFR Part 1280

[No. LS–95–008]

Sheep Promotion, Research, and Information Program: Procedures for the Conduct of Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Sheep Promotion, Research, and Information Act of 1994 (Act) authorizes a program of promotion, research, and information to be developed through the promulgation of the Sheep and Wool Promotion, Research, Education, and Information Order (Order). The Act requires that after the issuance of the final Order, the Secretary shall conduct an initial referendum among sheep producers, sheep feeders, and importers of sheep and sheep products to determine whether the Order will go into effect. For the program to become operational, the final Order must be approved by sheep producers, sheep feeders, and importers of sheep and sheep products voting in the initial referendum. Importers who only import raw wool are not eligible to participate in the referendum. This proposed rule sets forth the procedures for conducting the initial referendum to determine if producers, feeders, and importers approve the final Order. These rules would also apply to any additional referendum conducted pursuant to the Act.

DATES: Written comments must be received by September 7, 1995.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456. Comments hours at the above address in room 2606 South Agriculture Building, 14th and Independence Avenue SW., Washington, D.C. Comments on the information collection requirements contained in the proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Attention: Desk Officer for the Agricultural Marketing Service, USDA.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION: This proposed rule is authorized under the Act (7 U.S.C. 7101–7111).

Regulatory Impact Analysis

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

This proposal has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

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

The Act provides that any person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law, and requesting a modification of the Order or an exemption from certain provisions or obligations of the Order. The petitioner will have the opportunity for a hearing on the petition. Thereafter the Secretary will issue a decision on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or carries on business has jurisdiction to review a ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's decision. The petitioner must exhaust his or her administrative remedies before he or she can initiate any such proceedings in the district court.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Administrator of AMS has considered the economic impact of this proposed action on small entities.

According to the January 27, 1995, issue of ''Sheep and Goats,'' published by the U.S. Department of Agriculture's (Department) National Agricultural Statistics Service, there are approximately 87,350 operations with sheep in the United States that may be eligible to vote in the referendum. To obtain the estimated number of importers of sheep and sheep products who would be subject to an assessment and who may be eligible to vote in the referendum, the Department consulted with major importer organizations whose members import sheep and sheep products into the United States. Based on its consultations with these organizations, the Department estimates that the number of sheep and sheep product importers in the United States who would be subject to these rules and regulations is approximately 9,000. Nearly all of the sheep operations in the United States and nearly all of the importers of sheep and sheep products would be classified as small entities by the Small Business Administration (13 CFR 121.601).

This action has also been reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This proposed rule would establish procedures for the conduct of a referendum to determine whether an Order promulgated under the Act becomes operational. Such procedures would permit all eligible sheep producers, sheep feeders, and importers of sheep and sheep products, excluding importers who import only raw wool, who have been engaged in sheep production, sheep feeding, or the importation of sheep and sheep products to vote in the referendum. Participation in the referendum is voluntary. Votes may be cast either by mail ballots or in-person at polling places. Casting votes by mail or in-person would not impose a significant economic burden on participants. Accordingly, the Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), we have submitted the information collection requirements contained in this proposed rule to OMB for approval. OMB has assigned OMB control number 0581–0093. The information collection requirements in this proposed rule include the following:

(a) For in-person voting:

(1) Each sheep producer, sheep feeder, or importer of sheep and sheep products, except an importer who imports only raw wool, who vote in person in the referendum, must sign the Voter Registration List (Form LS–61–3) and complete a Ballot (Form LS–61) at the county Cooperative Extension Service (CES) office of the Department. The voter must complete the ballot and insert the ballot into the SHEEP BALLOT envelope (Form LS–61–1).

(2) Each producer, feeder, and importer must complete the Certification and Registration Form that

is printed on the SHEEP REFERENDUM envelope (Form LS–61–2), and insert the SHEEP BALLOT envelope, with the enclosed ballot, in the SHEEP REFERENDUM envelope (Form LS–61–2). The estimated average time burden for completing the forms for in-person voting is 6 minutes per voter.

(b) For absentee voting: Each sheep producer, sheep feeder, and importer of sheep and sheep products, except an importer who imports only raw wool, who wants to cast an absentee vote instead of an in-person vote, must complete, in a legible manner, a combined registration and absentee ballot form (Form LS–62). The voting producer, feeder, or importer must complete the form and insert the ballot portion in a SHEEP BALLOT envelope (Form LS–61–1) (same as for in-person voting) and then insert the sealed SHEEP BALLOT envelope and the registration form in the SHEEP REFERENDUM envelope (Form LS–62–1). The estimated average time burden for completing this procedure is 6 minutes per voter.

(c) The proposed rule requires each sheep producer, sheep feeder, or importer of sheep and sheep products who votes in person to record on the Voter Registration List (Form LS–61–3) his or her name and the name of the entity he or she represents. The estimated average time burden for registering to vote in person is 0.5 minutes per voter. For absentee voters, the county CES agent shall enter on the Absentee Voter Request List (Form LS–62–2) the date the ballot was requested, the name, the address, the name of the represented entity, if any, and the date the ballot was mailed from the county CES office. This information may be used to validate ballots and to challenge potentially ineligible voters. Each county CES agent will fill out one or more of the Absentee Voter Request Lists (Form LS–62–2) per referendum. Because only county CES agents will complete the Absentee Voter Request List, the estimated average reporting burden would not apply to the producer, feeder or importer voting in the referendum.

The estimated number of producers, feeders, and importers who will vote in the referendum is 25,000, with each voting once.

Please send comments concerning the information collection requirements contained in this proposed rule to the Office of Information and Regulatory Affairs, Office Management and Budget, Washington, DC 20503. Attention: Desk Officer for the Agricultural Marketing Service, USDA.

Background

The Act (7 U.S.C. 7101–7111) provides for the establishment of a coordinated program of promotion, research, education, consumer information, industry information, and producer information designed to strengthen the sheep industry's position in the marketplace, maintain and expand existing markets, and develop new markets and uses for sheep and sheep products.

The program will be funded by a mandatory assessment on domestic producers, feeders, and exporters of live sheep and greasy wool of 1-cent-per-pound on live sheep sold and 2-cents-per-pound on greasy wool sold. Importers will be assessed 1-cent-per-pound on live sheep, the equivalent of 1-cent-per-pound of live sheep for sheep products as well as 2-cents-per-pound of degreased wool or the equivalent of degreased wool for wool and wool products. Imported raw wool would be exempt from assessments. Each person who processes or causes to be processed sheep and sheep products of that person's own production, and who markets the processed products, would be assessed the equivalent of 1-cent-per-pound of live sheep sold or 2-cents-per-pound of greasy wool sold. All assessments may be adjusted in accordance with the applicable provisions of the Act.

The Act requires that a referendum be conducted after the issuance of the final Order to determine whether the Order will go into effect. The referendum would be conducted among persons who were sheep producers, sheep feeders, or importers of sheep and sheep products, during a representative period specified by the Secretary. Importers who import only raw wool are not eligible to participate in the referendum because raw wool is exempt from assessments under the act. The Order would become operational only if it is approved by a majority of the producers, feeders, and importers voting in the referendum or by producers, feeders, and importers voting in the referendum who account for at least two-thirds of the production represented by persons voting in the referendum. If the final Order is not approved by persons voting in the referendum, the program will not become operational.

To vote in the referendum, eligible persons will be required to complete the combined registration form, mark their ballots and record their volume of production on the ballot. The volume of production will be recorded as the number of live sheep or live sheep equivalents a person owned or imported during the representative period. As in past sheep or wool referendums conducted by the Department, the domestic volume of production includes the largest number of head of domestic sheep 6 months old or older owned for any single consecutive 30-day period during the representative period. The number of live sheep equivalents for imported sheep products will be calculated using published data on the amount of such products imported during the representative period. Producers, feeders and importers will be required to determine their volume of production before they register and vote in the referendum.

The Act specifies that the Secretary shall determine a method of allocating, by a pro rate percentage of annual projected or actual assessments from importers, the volume of production represented by importers in a referendum conducted pursuant to this subpart. Because an Order implementing the provisions of the Act has not been in effect, imported sheep and sheep products have not been subject to the assessments described in the proposed Order (60 FR 28747). Consequently, there are no projected or actual annual assessments available to use in calculating the volume of production for importers during the representative period. In the absence of that information on annual assessments, the Department proposes that importers of sheep and sheep products determine their volume of production by converting the volume of those imported products that would have been subject to assessment if an Order had been in effect during the representative period. Imported sheep, sheep meat and wool and wool products that would have been subject to assessment during the representative period are identified by the Harmonized Tariff Schedule (HTS) classification numbers listed in Table 1—HTS Classification Numbers and Conversion Factors for Imported Sheep and Sheep Products—contained herein, which includes sheep, sheep meat and wool and wool products. Because the Act exempts imported raw wool from assessments, HTS numbers and corresponding conversion factors are not included for imported raw wool. For the purpose of this initial referendum, the Department proposes that importers use the 1994 HTS classification numbers and conversion factors in Table 1. These HTS numbers for imported sheep and sheep products are published in the Harmonized Tariff Schedule of the United States. To enable importers to convert sheep meat and

wool and wool products identified by the HTS numbers for 1994 listed in Table 1, the Department proposes to use the conversion factors listed in the same table that correspond to each listed HTS number. The Department's Economic Research Service (ERS) has developed these conversion factors and maintains them in an import library. For sheep meat, these conversion factors take into account removal of bone, weight lost in processing or cooking, and nonsheep components of the sheep products. The conversion factors for wool products are used to determine the raw fiber content of imported wool products, and take into account fiber loss during processing, fabric trim loss, and cutting loss for wool.

Factors in determining the number of live sheep equivalents include (1) The weight of the imported sheep meat, the weight of imported wool and wool product and the corresponding conversion factors, (2) the average carcass weight of 57 pounds for domestic mature sheep as published by the Department's National Agricultural Statistics Service in the March 1995 edition of the 1994 Livestock Slaughter Summary, (3) a dressing percentage of 50 percent, and (4) an equivalent live weight of 114 pounds for domestic mature sheep (57 lbs. ÷ 50% = 114 lbs.). The dressing percentage of 50 percent is widely recognized as the average dressing percentage for sheep in the United States. The formula for calculating importer volume of production for imported wool and wool products will use the listed conversion factors and a clean wool yield of 52.8 percent, as published by ERS in the 1992 Weight, Measures, and Conversion Factors for Agricultural Commodities and Their Products, to convert clean wool to a greasy wool basis. In the absence of official data for carcass weights, live weights, dressing percentage and wool yield percentages of sheep from importing countries, the Department believes that the proposed carcass weight, the dressing percentage, the live weight, and the percentage of clean wool yield will, on the average, be most representative of carcass weights, dressing percentages, live weights and clean wool yield percentages of sheep from which imported sheep products are derived.

Imported live sheep require no conversion and each head of imported live sheep would be counted in determining total volume of production for importers. Calculation procedures for both imported sheep meat and imported wool and wool products follow:

Imported Sheep Meat

To calculate the live sheep equivalents of imported sheep meat, an importer would first multiply the total weight of imported sheep meat for each applicable HTS number by the specified conversion factor to determine the total carcass weight equivalent. The importer would then divide the total carcass weight equivalent by the average carcass weight of 57 pounds to determine the equivalent number of live sheep. Because the carcass weight of 57 pounds represents the equivalent live weight of 114 pounds (57 lbs. ÷ 50% = 114 lbs.), it is not necessary to convert the carcass weight to a live weight equivalent. The Department proposes that the number of live animal equivalents be rounded to the nearest whole number. If the decimal is less than 0.5, or greater, the number of head of sheep would be rounded upward i.e., 7.5 = 8.0). If the decimal is less than 0.5, the number of head of sheep would be rounded downward (i.e. 7.49 = 7.0). The following examples illustrate two typical calculations:

Example I

Sheep Meat (Bone-in)
HTS Classification Number: 0204100000
Item Name: Carcasses and half carcasses of lamb, fresh or chilled
Assume: Company X imports 1,000 pounds of bone-in sheep meat
Conversion factor: 1.00
Average carcass weight: 57 pounds
1,000 pounds × 1.00 = 1,000 pounds of carcass weight equivalent.
1,000 pounds carcass weight equivalent ÷ 57 pounds per carcass = 17.5 or 18 live sheep equivalents.

Example II

Sheep Meat (Boneless)
HTS Classification Number: 0204232000
Item Name: Other meat of sheep, fresh or chilled: Boneless: lamb
Assume: Company X imports 1,000 pounds of boneless sheep meat
Conversion factor: 1.52
Average carcass weight: 57 pounds
1,000 pounds × 1.52 = 1,520 pounds of carcass weight equivalent.
1,520 pounds carcass weight equivalent ÷ 57 pounds per carcass = 26.6 or 27 live sheep equivalents.

Imported Wool and Wool Products

To calculate the number of live sheep equivalents of imported wool products, the imported would first multiply the total weight of imported wool products for each applicable HTS number by the corresponding conversion factor to determine the total weight of clean wool. The importer would then divide the total weight of the clean wool equivalent by 52.8 percent, to convert the clean wool to a greasy wool basis. Finally, the importer would divide the total pounds of greasy wool by the calculated average live weight of 114 pounds to determine the number of live sheep equivalents. The Department proposes that the number of live animal equivalents be rounded to the nearest whole number. If the decimal is 0.5 greater, the number of head of sheep would be rounded upward (i.e., 7.5 = 8.0). If the decimal is less than 0.5, the number of head of sheep would be rounded downward (i.e., 7.49 = 7.0). The following example illustrates a typical calculation:

Example

Wool and Wool Products
HTS No. 6201110010
—Item Name: Mens or boys overcoats of wool or fine animal hair
Assume: Company X imports 1,000 overcoats weighing 2,000 pounds into the United States.
Conversion factor: 0.9774
2,000 pounds × 0.9774 = 1954.8 pounds clean wool content
1954.8 pounds of clean wool content ÷ 52.8 percent = 3702.3 pounds of greasy wool.
3702.3 pounds of greasy wool ÷ 114 pounds = 32.5 or 33 live sheep equivalents.

The HTS numbers, the conversion factors, and other information used to calculate number of live sheep equivalents apply only to the initial referendum described herein.

The 1994 HTS classification numbers and conversion factors for imported sheep and sheep products and wool and wool products are as follow:

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS

HTS	CF
Live Sheep	
0104100000	1.00
Sheep Meat	
0204100000	1.00
0204210000	1.00
0204222000	1.00
0204224000	1.00
0204232000	1.52
0204234000	1.52
0204300000	1.00
0204410000	1.00
0204422000	1.00
0204424000	1.00
0204432000	1.52
0204434000	1.52

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
Wool and Wool Products	
5107106030	0.5315
5007906030	0.5315
5103100000	1.0417
5103200000	1.0417
5105100000	1.0309
5105210000	1.1111
5105290000	1.1111
5106100010	1.0417
5106100090	1.0417
5106200000	0.5208
5107100000	1.0417
5107200000	0.5208
5109102000	1.0417
5109902000	1.0417
5111112000	1.0629
5111113000	1.0629
5111117030	1.0629
5111117060	1.0629
5111191000	1.0629
5111192000	1.0629
5111196020	0.5315
5111196040	0.5315
5111196060	1.0629
5111196080	1.0629
5111200500	0.5315
5111201000	0.5315
5111209000	0.5315
5111300500	0.5315
5111301000	0.5315
5111309000	0.5315
5111903000	0.5315
5111904000	0.7972
5111905000	0.5315
5111906000	0.7972
5111909000	0.7972
5112110030	0.5315
5112110060	0.9566
5112111000	0.9566
5112112030	1.0629
5112112060	0.9566
5112192000	1.0629
5112199010	1.0629
5112199020	1.0629
5112199030	1.0629
5112199040	1.0629
5112199050	1.0629
5112199060	1.0629
5112201000	0.5315
5112202000	0.5315
5112203000	0.5315
5112301000	0.5315
5112302000	0.5315
5112303000	0.5315
5112903000	0.6378
5112904000	0.7972
5112905000	0.7972
5112909010	0.5315
5112909090	0.5315
5212111010	0.4783
5212111020	0.4783
5212116010	0.2126
5212121010	0.4783
5212121020	0.4783
5212126010	0.2126
5212131010	0.4783
5212131020	0.4783
5212136010	0.2126

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
5212141010	0.4783
5212141020	0.4783
5212146010	0.2126
5212151010	0.4783
5212151020	0.4783
5212156010	0.2126
5212211010	0.4783
5212211020	0.4783
5212216010	0.2126
5212221010	0.4783
5212221020	0.4783
5212226010	0.2126
5212231010	0.4783
5212231020	0.4783
5212236010	0.2126
5212241010	0.4783
5212241020	0.4783
5212246010	0.2126
5212251010	0.4783
5212251020	0.4783
5212256010	0.2126
5309212000	0.5315
5309292000	0.5315
5311002000	0.2126
5407910510	0.4783
5407910520	0.4783
5407911000	0.2126
5407920510	0.4783
5407920520	0.4783
5407921010	0.2126
4307921020	0.2126
5407930510	0.4783
5407930520	0.4783
5407931000	0.2126
5407940510	0.4783
5407940520	0.4783
5407941000	0.2126
5408310510	0.4783
5408310520	0.4783
5408311000	0.2126
5408320510	0.4783
5408320520	0.4783
5408321000	0.2126
5408330510	0.4783
5408330520	0.4783
5408331000	0.2126
5408340510	0.4783
5408340520	0.4783
5408341000	0.2126
5509520000	0.3646
5509610000	0.1563
5509910000	0.3646
5510200000	0.3646
5515130510	0.4783
5515130520	0.4783
5515131010	0.2126
5515131020	0.2126
5515220510	0.4783
5515220520	0.4783
5515221000	0.2126
5515920510	0.4783
5515220520	0.4783
5515921010	0.2126
5515921020	0.2126
5516310510	0.4783
5516310520	0.4783
5516311000	0.2126
5516320510	0.4783
5516320520	0.4783
5516321000	0.2126

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
5516330510	0.4783
5516330520	0.4783
5516331000	0.2126
5516340510	0.4783
5516340520	0.4783
5516340520	0.4783
5516341000	0.2126
5601290020	0.9035
5602109010	1.0629
5602109010	1.0629
5602109090	0.5315
5602210000	1.0629
5602903000	0.2657
5603001010	1.0629
5701101300	0.9479
5701101600	0.9479
5702101000	1.0156
5702109010	1.0156
5702311000	0.7708
5702311000	0.7708
5702312000	0.6563
5702411000	0.6979
5702412000	0.5729
5702512000	0.9531
5702514000	0.9010
5702912000	0.9531
5702913000	0.9531
5702914000	0.9010
5703100000	0.6313
5704100010	0.2630
5704900010	0.2630
5705002010	0.6313
5801100000	1.0629
5810990010	1.0629
5811001000	1.0629
5903203010	0.5315
5903903010	0.5315
6001290000	1.0629
6002209000	1.0851
6002410000	1.0851
6002490000	1.0851
6002910000	1.0851
6101100000	1.0094
6101301500	0.5047
6101900020	0.5678
6102100000	1.0094
6102301000	0.5047
6102900010	0.5678
6103110000	0.8439
6103121000	0.4823
6103122000	0.1808
6103191000	0.4823
6103191500	0.2411
6103194010	0.1206
6103194020	0.1206
6103194030	0.1206
6103194040	0.4823
6103194050	0.1206
6103194060	0.0603
6103194080	0.2411
6103210010	0.9645
6103210020	0.8439
6103210030	0.9645
6103210050	0.9645
6103210060	0.9645
6103210070	0.9645
6103230005	0.4823
6103230007	0.4823
6103230010	0.4823
6103230025	0.3167

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
6103230030	0.4823
6103230035	0.4823
6103292060	0.5425
6103292066	0.1206
6103292068	0.1206
6103310000	0.9864
6103331000	0.4932
6103332000	0.1233
6103391000	0.4932
6103392020	0.5549
6103411010	0.8256
6103411020	0.8256
6103412000	0.8256
6103431010	0.4718
6103431020	0.4718
6103432010	0.4718
6103491010	0.4823
6103493012	0.5425
6103493036	0.5425
6103493060	0.6028
6104110000	0.8631
6104131000	0.4932
6104132000	0.1233
6104191000	0.4932
6104191500	0.1233
6104192050	0.5549
6104210010	0.8439
6104210030	0.8439
6104210040	0.9645
6104210060	0.9645
6104210070	0.8439
6104210080	0.9645
6104230010	0.4823
6104230014	0.4823
6104230016	0.4823
6104230020	0.4823
6104230022	0.4823
6104230024	0.4823
6104230026	0.1206
6104230030	0.1206
6104230040	0.1206
6104230042	0.1206
6104291010	0.1206
6104291020	0.1206
6104291060	0.1206
6104291070	0.1206
6104292012	0.5425
6104292024	0.5425
6104292036	0.5425
6104292051	0.5425
6104292067	0.5425
6104292073	0.1206
6104292075	0.1206
6104292083	0.5425
6104310000	0.8631
6104331000	0.4932
6104332000	0.1233
6104391000	0.1233
6104392020	0.5549
6104410010	0.9645
6104410020	0.9645
6104431010	0.4823
6104431020	0.4823
6104432010	0.1206
6104432020	0.1206
6104441000	0.4823
6104442010	0.1206
6104442020	0.1206
6104490020	0.5425
6104510000	0.9978

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
6104531000	0.4989
6104532010	0.1247
6104532020	0.1247
6104591005	0.4989
6104591030	0.1247
6104591060	0.1247
6104592020	0.5612
6104610010	0.8256
6104610020	0.8256
6104610030	0.8256
6104631510	0.4718
6104631520	0.4718
6104692005	0.4823
6104693012	0.5425
6104693024	0.5425
6105201000	0.4617
6105901000	0.8080
6105903020	0.5194
6106201010	0.4617
6106201020	0.4617
6106901010	0.8080
6106901020	0.8080
6106902020	0.4040
6106903020	0.4040
6107190020	0.7077
6107292000	0.8256
6107992000	0.8256
6108391000	0.8167
6108992000	0.8167
6109901510	0.8080
6109901520	0.8080
6109901530	0.8080
6109901540	0.8080
6109902035	0.5772
6110101010	1.2330
6110101020	1.2330
6110101030	1.2330
6110101040	1.2330
6110101050	1.2330
6110101060	1.2330
6110102010	0.8631
6110102020	0.8631
6110102030	0.8631
6110102040	0.8631
6110102050	0.8631
6110102060	0.8631
6110102070	0.8631
6110102080	0.8631
6110301510	0.4932
6110301520	0.4932
6110301530	0.4932
6110301540	0.4932
6110301550	0.4932
6110301560	0.4932
6110303005	0.1850
6110303010	0.1850
6110303015	0.1850
6110303020	0.1850
6110303025	0.1850
6110303030	0.1850
6110303035	0.1850
6110303040	0.1850
6110303045	0.1850
6110303050	0.1850
6110303055	0.1850
6110900012	0.5549
6110900028	0.5549
6110900048	0.5549
6110900050	0.5549
6110900072	0.5549

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
6110900074	0.5549
6111100010	1.0615
6111100030	1.0615
6112202020	0.8631
6114100020	0.8439
6114100040	0.8439
6114100050	0.8439
6114100060	0.8439
6114100070	0.8439
6114302030	0.4823
6114303012	0.6028
6114303042	0.4823
6114303052	0.4823
6114900050	0.5425
6115190020	1.0851
6115910000	0.8681
6115931010	0.4340
6115932010	0.4340
6115991410	0.4340
6115991810	0.4340
6116109040	0.0800
6116910000	0.9137
6116936400	0.4569
6116937400	0.4569
6116938800	0.1713
6116939400	0.1713
6116998020	0.4569
6116998030	0.3427
6117101000	1.0280
6117102010	0.4569
6117106020	0.2284
6117200019	1.1422
6117200070	0.1713
6117800019	0.9747
6117800025	0.5711
6117800070	0.1713
6117900013	1.1422
6117900023	1.1422
6117900033	1.1422
6117900043	1.1422
6117900055	1.1422
6201110010	0.9774
6201110020	0.9774
6201122010	0.0611
6201122020	0.0611
6201133010	0.4398
6201133020	0.4398
6201134015	0.0489
6201134020	0.0489
6201134030	0.0977
6201134040	0.0977
6201190020	0.5498
6201911000	0.9554
6201912011	0.9554
6201912021	0.9554
6201932511	0.5374
6201932521	0.5374
6201990021	0.5374
6202110010	0.8455
6202110020	0.8455
6202122010	0.0604
6202122020	0.0604
6202133010	0.5562
6202133020	0.5562
6202134005	0.0618
6202134010	0.0618
6202134020	0.1236
6202134030	0.1236
6202190020	0.5562
6202911000	0.9663

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
6202912011	0.9663
6202912021	0.9663
6202934011	0.5435
6202934021	0.5435
6202990021	0.5435
6203111000	0.6039
6203112000	0.6039
6203121000	0.5435
6203192000	0.5435
6203194040	0.5435
6203210010	0.8455
6203210015	0.8455
6203210020	0.8455
6203210030	0.8455
6203210060	0.8455
6203230010	0.5435
6203230015	0.5435
6203230020	0.5435
6203230030	0.5435
6203230040	0.5435
6203310000	1.0267
6203331010	0.5435
6203331020	0.5435
6203391000	0.4831
6203394020	0.5435
6203411010	0.9448
6203411020	0.9448
6203411030	0.8858
6203412000	1.1810
6203433010	0.5199
6203433020	0.5199
6203433030	0.5199
6203493025	0.5199
6204110000	0.9059
6204131000	0.5435
6204132010	0.1812
6204132020	0.1812
6204191000	0.5435
6204192000	0.1812
6204193050	0.5435
6204210010	0.8455
6204210030	0.8455
6204210040	0.8455
6204210060	0.8455
6204210070	0.8455
6204230015	0.5435
6204230020	0.5435
6204230025	0.5435
6204294012	0.5435
6204294024	0.5435
6204294036	0.5435
6204294072	0.5435
6204294084	0.5435
6204312010	1.0267
6204312020	1.0267
6204332000	0.0604
6204334010	0.4831
6204334020	0.4831
6204335010	0.0604
6204335020	0.0604
6204392010	0.4831
6204392020	0.4831
6204393010	0.0604
6204393020	0.0604
6204398020	0.5549
6204398030	0.1850
6204411000	0.6496
6204412010	1.0039
6204412020	1.0039
6204433010	0.4724

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
6204433020	0.4724
6204434010	0.4724
6204434020	0.4724
6204434030	0.2953
6204434040	0.2953
6204443010	0.4831
6204443020	0.4831
6204444010	0.4831
6204444020	0.4831
6204495020	0.5435
6204495030	0.1812
6204510010	0.9888
6204510020	0.9888
6204532010	0.4944
6204532020	0.4944
6204592010	0.4944
6204592020	0.4944
6204593010	0.4944
6204593020	0.4944
6204594020	0.5562
6204594030	0.1845
6204610010	0.9243
6204610020	0.9243
6204610030	0.9243
6204610040	0.9243
6204632510	0.4621
6204632520	0.4621
6204692010	0.4621
6204692020	0.4621
6204692030	0.4621
6204693020	0.5199
6204699020	0.5199
6204699030	0.1733
6204699050	0.1733
6205101000	1.1554
6205102010	0.9243
6205102020	0.9243
6205301510	0.4621
6205301520	0.4621
6205902020	0.5777
6205902050	0.0578
6205904020	0.5777
6205904040	0.1155
6206100020	0.5777
6206100050	0.0578
6206201000	1.1554
6206202010	0.6932
6206202020	0.6932
6206203010	0.9243
6206203020	0.9243
6206402510	0.5199
6206402520	0.5199
6206900020	0.5199
6206900030	0.1733
6207290010	0.8572
6207922010	0.5315
6207992000	0.8267
6207994000	0.8267
6208290012	0.9243
6208920010	0.0591
6208920020	0.0591
6208920030	0.0591
6208920040	0.0591
6208992010	0.9448
6208992020	0.9448
6209100000	0.7915
6211202020	0.8455
6211203020	0.8455
6211204030	0.8455
6211205020	0.8455

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
6211206020	0.8455
6211207030	0.8455
6211310010	0.9059
6211310020	0.9059
6211310030	0.9059
6211310040	0.9059
6211310045	0.9059
6211310051	0.9059
6211330052	0.6039
6211410010	0.9663
6211410020	0.9663
6211410030	0.9663
6211410040	0.9059
6211410050	0.9663
6211410055	0.9663
6211410061	0.9663
6211430064	0.6039
6211430074	0.6039
6212900020	0.7161
6214102000	0.3357
6214200000	0.8951
6214300000	0.1119
6214400000	0.1119
6214900010	0.5559
6215900010	1.1189
6216005410	0.5035
6216005810	0.5035
6216008000	1.1189
6217100020	0.8267
6217100030	0.1181
6217900005	0.8267
6217900010	0.1181
6217900030	0.8267
6217900035	0.1181
6217900055	0.8267
6217900060	0.1181
6217900080	0.8267
6217900085	0.1181
6301200010	0.9219
6301200020	0.9219
6301900030	0.1085
6302390010	0.9219
6304193040	0.8677
6304910050	0.7592
6304991000	1.0846
6304991500	1.0846
6304994000	1.0846
6304996010	1.0846
6501009000	1.3424
6503009000	1.3424
6505903030	0.9965
6505903045	0.5530
6505903090	0.8470
6505904030	0.8297
6505904045	0.4881
6505904090	0.8297
6505906040	0.4429

The Act also requires the Secretary to hold additional referendums if so requested by a representative group comprised of 10 percent or more of the producers, feeders, and importers who, during a representative period as determined by the Secretary, have been engaged in the production, feeding, importation, or processing of sheep or sheep products. In any such

referendum, if the continuation of the Order is not approved by a majority of producers, feeders, and importers voting in the referendum, or by producers, feeders, and importers voting in the referendum who account for at least two-thirds of the production represented by the persons voting in the referendum, the Order will be suspended or terminated. These rules would also apply to any additional referendum conducted pursuant to the Act.

The Act specifies that the initial referendum and any subsequent referendum be conducted on a date and location established by the Secretary, under a procedure by which sheep producers, sheep feeders, and importers of sheep and sheep products intending to vote in the referendum shall certify that they were engaged in sheep production, sheep feeding, or the importation of sheep and sheep products during the representative period and, on the same day, would have an opportunity to vote in the referendum. In addition, the Act provides that the Secretary must provide absentee ballots on request made either in-person or by mail. The Department proposes that the initial referendum be conducted at county Cooperative Extension Service (CES) offices. The CES of the U.S. Department of Agriculture will coordinate with State and County CES offices concerning their roles in conducting the initial referendum.

The proposed rule sets forth procedures to be followed in conducting the referendum under the Act, including definitions, supervision of the referendum, registration, voting procedures, reporting referendum results, and disposition of the ballots and records. The Department proposes that the Consolidated Farm Service Agency (CFSA) of the Department assist in the conduct of the referendum by;

(1) counting ballots;

(2) determining the eligibility of challenged voters; and

(3) reporting referendum results.

List of Subjects in 7 CFR Part 1280

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Sheep and sheep products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1280 as proposed to be added at 60 FR 28751 (June 2, 1995), be amended as follows:

PART 1280—SHEEP PROMOTION, RESEARCH, AND INFORMATION

1. The authority citation for 7 CFR Part 1280 continues to read as follows:

Authority: 7 U.S.C. 7101–7111.

2. Part 1280 as proposed to be added at 60 FR 28751 (June 2, 1995), is amended by adding Subpart E to read as follows:

Subpart E—Procedures for the Conduct of Referendum

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1280.604 Consolidated Farm Service Agency.
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Subpart E—Procedures for the Conduct of Referendum

Definitions

§ 1280.601 Act.

The term ''Act'' means the Sheep Promotion, Research, and Information Act of 1994, 7 U.S.C. 7101–7111; Public Law 103–407; 108 Statute 4210; as approved October 22, 1994, and any amendments thereto.

§ 1280.602 Administrator.

The term ''Administrator'' means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated the authority to act in the Administrator's stead.

§ 1280.603 Carbonized wool.

The term ''Carbonized wool'' means wool that has been immersed in a bath, usually of mineral acids or acid salts, that destroys vegetable matter in the wool, but does not affect the wool fibers.

§ 1280.604 Consolidated Farm Service Agency.

The term ''Consolidated Farm Service Agency''—formerly Agricultural Stabilization Conservation Service (ASCS)—also referred to as ''CFSA,'' means the Consolidated Farm Service Agency of the Department.

§ 1280.605 Consolidated Farm Service Agency County Committee.

The term ''Consolidated Farm Service Agency County Committee,'' also referred to as the ''CFSA County Committee or COC,'' means the group of persons within a county elected to act as the Consolidated Farm Service Agency County Committee.

§ 1280.606 Consolidated Farm Service Agency County Executive Director.

The term ''Consolidated Farm Service Agency County Executive Director'' also referred to as the ''CFSA County Executive Director,'' means the person employed by the CFSA County Committee to execute the policies of the CFSA county committee and be responsible for the day-to-day operations of the county CFSA office, or the person acting in such capacity.

§ 1280.607 Cooperative Extension Service.

The term ''Cooperative Extension Service,'' also referred to as ''CES'' means the State partner in the Cooperative Extension Service system.

§ 1280.608 Cooperative Extension Service Agent.

The term ''Cooperative Extension Service Agent,'' also referred to as the

''CES Agent,'' means an employee of the Cooperative Extension Service.

§ 1280.609 Cooperative Extension Service of the U.S. Department of Agriculture.

The term ''Cooperative Extension Service of the U.S. Department of Agriculture,'' also referred to as ''CES,'' means the Federal component of the Cooperative Extension Service.

§ 1280.610 Degreased wool.

The term ''Degreased wool'' means wool from which the bulk of impurities has been removed by processing.

§ 1280.611 Department.

The term ''Department'' means the U.S. Department of Agriculture.

§ 1280.612 Deputy Administrator.

The term ''Deputy Administrator'' means the Deputy Administrator for Program Delivery and Field Operations, CFSA, U.S. Department of Agriculture or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated the authority to act in the Deputy Administrator's stead.

§ 1280.613 Feeder.

The term ''Feeder'' means a person who feeds lambs until the lambs reach slaughter weight.

§ 1280.614 Greasy wool.

The term ''Greasy wool'' means wool that has not been washed or otherwise cleaned.

§ 1280.615 Importer.

The term ''Importer'' means any person who imports sheep and sheep products into the United States.

§ 1280.616 Order.

The term ''Order'' means the Sheep and Wool Promotion, Research, Education, and Information Order.

§ 1280.617 Person.

The term ''Person'' means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1280.618 Producer.

The term ''Producer'' means any person, other than a feeder, who owns or acquires ownership of sheep.

§ 1280.619 Public notice.

The term ''Public notice'' means information regarding a referendum which shall be provided by the Secretary, without advertising expenses, through press releases and by State and county CES offices and county CFSA offices, by means of newspapers, electronic media, county newsletters, and the like. Such notice shall contain the referendum date and location, registration and voting requirements, rules regarding absentee voting, and other pertinent information.

§ 1280.620 Pulled wool.

The term ''Pulled wool'' means wool that is pulled from the skin of slaughtered sheep.

§ 1280.621 Raw wool.

The term ''Raw wool'' means greasy wool, pulled wool, degreased wool, or other carbonized wool.

§ 1280.622 Referendum.

The term ''Referendum'' means any referendum to be conducted by the Secretary pursuant to the Act where producers, feeders, and importers of sheep and sheep products, except an importer of only raw wool, shall be given the opportunity to vote.

§ 1280.623 Registration period.

The term ''Registration period'' means a 1 day period to be announced by the Secretary for registration of producers, feeders, and importers desiring to vote in a referendum. The registration period shall be the same day as the voting period.

§ 1280.624 Representative period.

The term ''Representative Period'' means 12 consecutive month of calendar year 1994.

§ 1280.625 Secretary.

The term ''Secretary'' means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has been delegated or to whom authority may hereafter be delegated to act in the Secretary's stead.

§ 1280.626 Sheep.

The term ''Sheep'' means ovine animals of any age, including lambs.

§ 1280.627 Sheep products.

The term ''Sheep products'' means products produced, in whole or in part, from sheep, including wool and products containing wool fiber.

§ 1280.628 State.

The term ''State'' means each of the 50 States.

§ 1280.629 Unit.

The term ''Unit'' means each State, group of States, or class designation that is represented on the Board.

§ 1280.630 United States.

The term ''United States'' means the 50 States and the District of Columbia.

§ 1280.631 Volume of production.

The term ''Volume of production'' means the largest number of head of domestic sheep at least 6 months old or older that a domestic sheep producer or sheep feeder entity continuously owned and that were located in the United States during any single consecutive 30-day period during the representative period. The term ''volume of production'' also means the number of head of imported live sheep or the number of live sheep equivalents that an importer imported into the United States during the representative period, excluding imported raw wool.

§ 1280.632 Voting period.

The term ''Voting period'' means a 1-day period to be announced by the Secretary for voting in the referendum.

§ 1280.633 Wool.

The term ''Wool'' means the fiber from the fleece of a sheep.

§ 1280.634 Wool products.

The term ''Wool products'' means products produced, in whole or in part, from wool and products containing wool fiber.

Referendum

§ 1280.650 General.

(a) A referendum to determine whether eligible sheep producers, sheep feeders, and importers of sheep and sheep products approve the Order. Importers who only import raw wool are not eligible to vote in the referendum.

(b) The Order shall become operational only if the Secretary determines that the Order is approved by a majority of sheep producers, sheep feeders, and importers of sheep and sheep products voting in the referendum or by sheep producers, sheep feeders, and importers of sheep and sheep products voting in the referendum who account for at least two-thirds of the production represented by those voting in the referendum.

(c) The initial referendum shall be conducted at the county CES offices.

(d) The CFSA of the Department shall assist in the conduct of the initial referendum.

§ 1280.651 Supervision of referendum.

The Administrator shall be responsible for conducting the referendum in accordance with this subpart.

§ 1280.652 Eligibility.

(a) Eligibility producers, feeders, and importers. Each person who was a sheep producer, sheep feeder, or importer of

sheep and sheep products during the representative period is entitled to register and vote in the referendum. Each producer, feeder, and importer entity shall be entitled to cast only one ballot in the referendum. Importers who only import raw wood are not eligible to register and vote in the referendum.

(b) Proxy registration and voting. Proxy registration and voting is not authorized, except that an officer or employee of a corporate producer, feeder or importer, or any guardian, administrator, executor, or trustee of a producers, feeder's, or importer's estate, or an authorized representative of any eligible producer, feeder, or importer entity (other than an individual producer, feeder, or importer), such as a corporation or partnership, may register and cast a ballot on behalf of that entity. Any individual who registers to vote in the referendum on behalf of any producer, feeder, or importer entity shall certify that he or she is authorized by such entity to take such action.

(c) Joint and group interest. A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation engaged in sheep production, sheep feeding or the importation of sheep and sheep products as a producer, feeder, or importer, entity, shall be entitled to only one vote, provided, however, that any member of a group may register to vote as a producer, feeder, or importer if he or she is an eligible producer, feeder, or importer separate from the group.

§ 1280.653 Time and place of registration and voting.

The referendum shall be held for one day on a date to be determined by the Secretary. Eligible persons shall register and vote following the procedures in § 1280.656 of this Subpart. Except for absentee ballots, registration and voting shall take place during the normal business hours of each county CES office.

§ 1280.654 Facilities for registering and voting.

Each county CES office shall provide:

(1) adequate facilities and space to permit producers, feeders, and importers to register and to mark their ballots in secret,

(2) a sealed box or other suitable receptacle for registration forms and ballots that is kept under observation during office hours and secured at all times, and

(3) copies of the Order for review.

§ 1280.655 Registration form and ballot.

A ballot (Form LS–61) and combined registration form (Form LS–61–2) shall be used for voting in person. The information required on the registration form includes name, address, county of voter residence, and volume of production. The form also contains the certification statement referenced in § 1280.656(a)(1) of this Subpart. The ballot requires producers, feeders and importers to check a ''yes'' or ''no'' and record their volume of production. A combined registration and voting form (Form LS–62) shall be used for absentee voting. The information required on the combined registration and voting form includes name, address, telephone number, and county of voter residence, and volume of production. The form also contains the certification statement referenced in § 1280.656(b)(1) of this Subpart. The ballot requires producers, feeders and importers to check ''yes'' or ''no'' and record their volume of production

§ 1280.656 Registration and voting procedures.

(a) Registering and voting in-person.

(1) Each producer, feeder, and importer, except importers who import only raw wool, who wants to vote in a referendum shall register on the day of voting at the county CES office in which the producer's, feeder's, or importer's residence is located, or at the county CES office that serves the county in which the producer's, feeder's, or importer's residence is located. Producer, feeder, or importer entities other than individuals shall register at the county CES office in the county in which their headquarters office or business is located, or at the county CES office that serves the county in which the entities' headquarters office or business is located. Producers, feeders, and importers will be required to record on the voter registration list (Form LS–61–3) their names and, if applicable, the name of the entity they can represent before they receive a registration form and ballot. To register, producers, feeders, or importers shall complete the registration form (Form LS–61–2) and certify that:

(i) they or the entity they represent were producers, feeders, or importers during the specified representative period;

(ii) the person voting on behalf of an entity referred to in § 1280.652 is authorized to do so; and

(iii) the volume of production listed is a true and accurate representation.

(2) Each eligible producer, feeder, or importer who has not voted by means of an absentee ballot may cast a ballot in-person at the location and time set forth in § 1280.653 of this Subpart and on a date to be announced by the Secretary. Eligible persons who record their name and the entity they represent on the voter registration list (Form LS–61–3) will receive a registration form/envelope (Form LS–61–2) and a ballot (Form LS–61). Voting shall be conducted under the supervision of the local county CES agent or designee. Voters would enter the information requested on the registration form (Form LS–61–2) as indicated above. Producers, feeders, and importers would then mark their ballots to indicate ''yes'' or ''no'' and record their volume of production in the space provided on the ballot. Voters shall place their completed ballots in an envelope marked SHEEP BALLOT,'' (Form LS–61–1) seal and place it in the completed and signed registration form/envelope marked ''SHEEP REFERENDUM,'' (Form LS–61–2) seal that envelope and personally place it in a box marked ''Ballot Box'' or other suitable receptacle. A copy of the applicable voter registration list (Form LS–61–3) prepared by the county CES office shall be provided to each CFSA county office for in-person voter verification.

(b) Absentee voting.

(1) Eligible producers, feeders, and importers who are unable to vote in person may request a combined registration and absentee ballot form (Form LS–62) and two envelopes—one marked ''SHEEP BALLOT'' (Form LS–61–1) and the other marked ''SHEEP REFERENDUM''(LS–62–1), by mail or in person from the county CES office in the county in which they reside or the county CES office that serves the county in which they reside, if individuals, or in which their main office is located, if a corporation or other entity. These forms and envelopes will be mailed by the county CES agent or designee to the address provided by the prospective voter. Only one absentee registration form and absentee ballot will be provided to each eligible producer, feeder, or importer. The forms must be requested during a specified time period which will be announced by the Secretary. The county CES office shall enter on the absentee voter request list (Form LS–62–2) the name, address and entity requesting an absentee ballot and the date the forms were requested. A copy of the applicable absentee voter request list (Form LS–62–2) prepared by the county CES office shall be provided to each CFSA county office for absentee voter verification.

(2) To register, eligible producers, feeders, and importers must complete and sign the combined registration form

and absentee ballot (Form LS–62) and certify that:

(i) they or the entity they represent were producers, feeders, or importers during the specified representative period,

(ii) if voting on behalf of an entity referred to in subsection § 1280.652, they are authorized to do so; and

(iii) the volume of production listed is a true and accurate representation.

(3) A producer, feeder, or importer, after completing the absentee voter registration form and the ballot, shall remove the ballot portion of the combined registration and absentee ballot form (Form LS–62) and seal the completed ballot in a separate envelope marked ''SHEEP BALLOT'' (Form LS–61–1) and place the sealed envelope in a second envelope marked ''SHEEP REFERENDUM'' (Form LS–62–1) along with the signed registration form.

Producers, feeders, and importers shall legibly print their names on the envelope marked ''SHEEP REFERENDUM'' (Form LS–62–1), and mail or hand deliver it to the local county CES office of the county in which they reside or the county CES office serving the county in which they reside. In the case of a partnership, corporation, estate, or other entity, the registration form and ballot must be mailed or hand delivered to the county CES office in the county in which its main office is located or the county CES office in the county serving the county in which its main office is located.

(4) Absentee ballots must be received in the county CES office by the close of business, 2 business days before the date of the referendum. Absentee ballots received after that date shall be counted as invalid ballots. Upon receiving the ''SHEEP REFERENDUM'' envelope containing the registration form and ballot, the county CES agent or designee shall place it, unopened, in a secure ballot box. The county CES agent or designee shall record receipt of the absentee vote on the absentee voter request list (Form LS–62–2).

(5) A person who casts an absentee ballot that is not recorded as being received or that is received after the deadline specified in this section may vote in person at the appropriate county CES office on the day of the referendum.

§ 1280.657 List of registered voters.

The voter registration list (Form LS–61–3) and the absentee voter request list (Form LS–62–2) shall be available for inspection on the day of the referendum at the county CES office and subsequently at the CFSA county office. They shall be posted during regular office hours in a conspicuous public location at the CFSA county office on the second business day following the date of the referendum.

§ 1280.658 Challenge of voters.

(a) Challenge period. On the day of the referendum, the names of voters challenged shall be reported to the CES county agent, who will refer them to the CFSA county office. After that, the names of the challenged voters shall be referred directly to the CFSA county office. A challenge may be made no later than the close of business on the second business day after the date of the referendum.

(b) Who may challenge. Any person may challenge a voter. Any person who wants to challenge must do so in writing and must include the full name of the individual or other entity being challenged. Each challenge of a voter must be made separately and each challenge must be signed by the challenger. The Secretary may issue other guidelines as the Secretary deems necessary.

(c) Determination of challenges. The CFSA County Committee or its representative, acting on behalf of the Administrator, shall make a determination concerning the challenge and shall notify challenged producers, feeders, or importers as soon as practicable, but no later than five business days after the date of the referendum. If the CFSA County Committee or its representative, acting on behalf of the Administrator, is unable to determine whether a person was a producer, feeder, or importer during the representative period, or verify a voter's recorded volume of production, it may require the person to submit records such as sales documents, import documents or other similar documents to prove that the person was a producer, feeder, or importer for the representative period and to verify that the recorded volume of production was accurately stated.

(d) Challenged ballot. The registration form/envelope (Form LS–61–2) containing the ballots cast by producers, feeders, or importers voting in person who are challenged shall be removed from the ballot box and placed in a separate box until the challenge has been resolved. The SHEEP REFERENDUM envelopes (Form LS–62–1) containing absentee voter registration forms and absentee ballots of challenged absentee voters also shall be removed from the ballot box and placed in the box containing ballots of challenged producers, feeders, and importers. A challenge to a ballot shall be deemed to have been resolved if the determination of the CFSA County Committee or its representative is not appealed within the time allowed for appeal or there has been a determination by CFSA after an appeal.

(e) Appeal. A person declared to be ineligible to register and vote or whose recorded volume of production has been questioned by the CFSA County Committee or its representative, acting on behalf of the Administrator, may file an appeal at the CFSA county office within three business days after notification of such decision. Such person may be required to provide documentation such as sales documents, import documents, or similar documents in order to demonstrate his or her eligibility or verify the recorded volume of production. An appeal shall be determined by the CFSA County Committee as soon as practicable, but in all cases not later than the ninth business day after the date of the referendum. The CFSA County Committee's determination on an appeal is final.

§ 1280.659 Receiving ballots.

A ballot shall be considered to have been received during the voting period if:

(a) it was cast in person in the county CES office prior to the close of business on the day of the referendum; or

(b) it was cast as an absentee ballot, and was received in the county CES office not later than the close of business within two business days before the date of the referendum.

§ 1280.660 Canvassing ballots.

(a) Counting the ballots. The county CES agent or designee shall deliver the sealed ballot box, the voter registration list (Form LS–61–3) and the absentee voter request list (Form LS–62–2) to the CFSA county office by the close of business on the first business day following the date of the referendum. CFSA county Executive Director and the county CES agent or designee shall check the registration forms and ballots for all voters against the voter registration list (Form LS–61–3) and the absentee voter request list (Form LS–62–2) to determine properly registered voters. The ballots of producers, feeders, and importers voting in person whose names are not on the voter registration list (Form LS–61–3), shall be declared invalid. Likewise, the ballots of producers, feeders, and importers voting absentee whose names are not on the absentee voter request list (Form LS–62–2) shall be declared invalid. All ballots of challenged voters declared ineligible or invalid shall be kept separate from the other ballots and the envelopes

containing these ballots shall not be opened. The valid ballots shall be counted on the tenth business day after the referendum date. CFSA county office employees shall remove the sealed ''SHEEP BALLOT'' envelope from the registration form/envelopes or absentee ballot envelopes of all eligible voters and all challenged voters determined to be eligible. After removing all ''Sheep Ballot'' envelopes, CFSA county employees shall open them and count the ballots. The ballots shall be counted as follows:

(1) Number of eligible producers, feeders, and importers casting valid ballots;

(2) number of producers, feeders and importers favoring the Order;

(3) number of producers, feeders and importers not approving the Order;

(4) volume of production recorded by producers, feeders and importers approving the Order;

(5) volume of production of producers, feeders and importers not approving the Order;

(6) number of challenged ballots;

(7) number of challenged ballots deemed ineligible;

(8) number of invalid ballots; and

(9) number of spoiled ballots.

(b) Invalid Ballots. Ballots shall be declared invalid if a producer, feeder, or importer voting in-person has failed to sign the voter registration list (Form LS–61–3) or an absentee voter's name is not recorded on the absentee voter request list (Form LS–62–2), or the registration form or ballot was incomplete or incorrectly completed.

(c) Spoiled Ballots. Ballots shall be considered spoiled if they are mutilated or marked in such a way that either the voter's volume of production or the ''yes'' or ''no'' vote is illegible. Spoiled ballots shall not be considered as approving or disapproving the Order, or as a ballot cast in the referendum.

(d) Confidentiality. All ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the votes but may not interfere with the process.

§ 1280.661 CFSA county office report.

The CFSA county office shall notify the CFSA State office of the results of the referendum. Each CFSA county office shall transmit the results of the referendum in its county to the CFSA State office. Such report shall include the information listed in § 1280.660(a) of this Subpart. The results of the referendum in each county may be made available to the public. A copy of the report of results shall be posted for thirty days in the CFSA county office in a conspicuous place accessible to the public, and a copy shall be kept on file in the CFSA county office for a period of at least twelve months after the referendum.

§ 1280.662 CFSA State office report.

Each CFSA State office shall transmit to the Deputy Administrator, CFSA, a written summary of the results of the referendum received from all the CFSA county offices within the State. The summary shall include the information on the referendum results contained in the reports from all county offices within each State, and shall be certified by the CFSA State Executive Director. The CFSA State office shall maintain a copy of the summary where it shall be available for public inspection for a period of not less than 12 months.

§ 1280.663 Results of the referendum.

(a) The Deputy Administrator, CFSA, shall submit the results of the referendum to the Administrator. The Administrator shall prepare and submit to the Secretary a report of the results of the referendum. The results of any referendum shall be issued by the Department in an official press release and published in the **Federal Register**. State reports and related papers shall be available for public inspection in the office of the Marketing Programs Branch, Livestock and Seed Division, AMS, USDA, Room 2606, South Agriculture Building, 14th and Independence Avenue, SW., Washington, D.C.

(b) If the Secretary deems it necessary, the report of any State or county shall be re-examined and checked by such persons as may be designated by the Deputy Administrator, CFSA, or the Secretary.

§ 1280.664 Disposition of ballots and records.

Each CFSA county Executive Director shall place in sealed containers marked with the identification of the referendum the voter registration list, absentee voter request list, voted ballots, challenged registration forms/envelopes, challenged absentee voter registration forms, challenged ballots found to be ineligible, invalid ballots, spoiled ballots, and county summaries. Such records shall be placed under lock in a safe place under the custody of the CFSA county Executive Director for a period of not less than twelve months after the referendum. If no notice to the contrary is received from the Deputy Administrator, CFSA, by the end of such time, the records shall be destroyed.

§ 1280.665 Instructions and forms.

The Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

Dated: August 3, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–19605 Filed 8–7–95; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF ENERGY

10 CFR Part 600

RIN 1991AB23

Financial Assistance Rules; Regulatory Reduction

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) today is proposing to amend its Financial Assistance Rules (Rules) to streamline, simplify, and improve the DOE financial assistance process. The rules have been rewritten to eliminate coverage that is unnecessary, to present clear coverage, and to retain only that coverage that is considered suitable for a regulation. The proposed changes primarily affect internal DOE procedures and will give greater authorities to program and field contracting offices in soliciting, reviewing, and processing applications and making awards. The patent, data and copyright provisions have been streamlined and updated to reflect the recent changes in the Department of Energy Acquisition Regulations. The Governmentwide uniform administrative requirements for grants and cooperative agreements to higher education institutions, hospitals, and other nonprofits and to governmental recipients are not changed by this proposed rulemaking. The Governmentwide requirements pertaining to audits of State and local governments remain unchanged.

DATES: Comments should be submitted on or before September 7, 1995.

ADDRESSES: Comments should be addressed to: Cherlyn Seckinger, Business and Financial Policy Division (HR–51), Office of Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8192.

SUPPLEMENTARY INFORMATION:

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I. Introduction and Purpose

The Department of Energy is proposing to amend Subpart A of its Financial Assistance Rules to simplify and streamline the financial assistance process in keeping with Departmental and Governmentwide initiatives to improve the way the Department does business. The proposed changes primarily affect DOE internal procedures contained in Subpart A pertaining to the solicitation, evaluation, and award processes, and will have little or no impact on requirements applicable to recipients of DOE financial assistance. In most instances, the proposed rule will not contain detailed internal procedures for DOE officials, but instead establish standards or basic requirements. For example, the section on objective merit review for financial assistance applications would be reduced to the essential elements required for an adequate merit review system. In other sections, decision making would be delegated to the lowest appropriate level which in many cases is at the contracting activity where the financial assistance awards are made and administered. One new section has been added to give DOE the flexibility in appropriate circumstances to make small dollar awards on a fixed obligation basis. In a fixed obligation award, a fixed amount of funds are issued in support of a project without a requirement for Federal monitoring of actual costs subsequently incurred. These awards are intended for use in support of projects where there is certainty about the costs and project accomplishments.

In DOE's implementation of the uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations on October 21, 1994 (59 FR 53260), DOE chose to continue to extend the administrative requirements for grants and agreements to commercial entities. In doing this streamlining review of the rule, we found the patent and data provisions of the uniform administrative requirements in Section 600.136 on Intangible Property needed modifications to clarify how Section 600.136 applied to commercial organizations with respect to patent, data, and copyright coverage and to cross-reference the specific DOE patent, data, and copyright coverage of the existing Section 600.33. This proposed rule attempts to make clear DOE patent and data provisions for all recipients including large businesses and foreign entities. The appropriate changes to the uniform administrative requirements of Section 600.136 to the new Section 600.27 are included in this proposed rule.

II. Overview of Organization of DOE Financial Assistance Rules

When DOE implemented the uniform administrative requirements of OMB Circular A–110 for Grants and Cooperative Agreements With Institutions of Higher Education, Hospital, Other Non-Profit Organizations and Commercial Organizations in October, 1994, DOE also reordered the subparts of the Financial Assistance Rules.

The rules as changed in October of 1994 consist of five subparts: Subpart A, General; Subpart B, Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, Other Non-Profit Organizations and Commercial Organizations; Subpart C, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Subpart D, Cooperative Agreements; and Subpart E, Audits of State and Local Governments. As part of our streamlining efforts, we decided we no longer needed a separate subpart for Cooperative Agreements because many of the requirements pertinent to cooperative agreements such as the application, funding, and administrative requirements were the same as for grants. The few areas that were different (such as the substantial involvement and patent and data provisions) we decided to integrate into the general coverage in Subpart A.

III. Changes to 10 CFR Part 600

Section 600.2 *Applicability* would be rewritten in simpler language to state that the DOE financial assistance rules apply to financial assistance applications and new, continuation and renewal awards.

Section 600.3 *Definitions* would be reduced to cover only those terms which are not defined elsewhere in the rule; therefore, the definitions sections in Subparts B and C, are still needed.

Section 600.4 *Deviations* would be changed to update citations only.

Sections 600.5 *Selection of award instrument* would be expanded to cover in greater detail what DOE means by substantial involvement under cooperative agreements. This definition of substantial involvement is consistent with the existing coverage in Subpart D and the Federal Grant and Cooperative Agreement Act.

Section 600.6 *Discretionary awards* would be eliminated since it is primarily internal guidance. Special solicitation instruments called Program Opportunity Notices and Program Research and Development Announcements would be eliminated. In keeping with the simplification objective, it was decided these special instruments are no longer necessary and the general coverage under solicitations would meet our needs. The policy statement regarding competition in financial assistance has been retained, but would be moved to the new Section 600.6 Eligibility.

Section 600.7 *Eligibility* would be renumbered 600.6 and changed to increase the threshold requiring Assistant Secretary or designee approval of restricted eligibility and noncompetitive determinations from $250,000 to $1,000,000. This would provide for greater decision-making authority at the local level where the financial assistance awards are being made and administered.

The requirement of the existing rule for a **Federal Register** notice for noncompetitive awards which has been waived by a class deviation would be eliminated by this rulemaking.

Section 600.8 *Small and disadvantaged business participation* would be renumbered 600.7 and rewritten as a policy statement to encourage the participation of small and disadvantaged businesses in DOE financial assistance and contracts awarded under financial assistance and to include in the policy women-owned businesses and historically black colleges and universities.

Section 600.9 *Solicitation* would be renumbered 600.8 and changed to give program offices the authority to issue solicitations. The current rule requires solicitations to be issued by a contracting officer unless the solicitation is issued under a program rule. To ensure uniformity and compliance with the fundamental requirements of the solicitation process, any solicitation would have to meet the requirements contained in this section regardless of who issues it. Any solicitation issued by a program office

would require coordination with the contracting office prior to issuance.

Section 600.10 *Form and content of applications* would be amended to eliminate the requirements pertaining to preapplication content because DOE programs rarely require preapplication submissions. If needed by DOE, the solicitation itself would describe to potential applicants the information required in a preapplication based on specific program needs.

Section 600.11 *Intergovernmental review* would be remain the same.

Section 600.12 *Generally applicable requirements* would be revised for simplicity and clarity.

Section 600.13 *Application deadlines* would be deleted as being too rigid as a general rule covering all financial assistance applications. Instead, the simplified requirement covered in 600.8 under solicitations specifies that a solicitation must include information specifying due dates and a statement describing the consequences of late submission.

Section 600.14 *Unsolicited applications* would be deleted and the procedures for noncompetitive financial assistance covered in Section 600.6 procedures will be used. The criteria for acceptance of an unsolicited application would not be changed.

Section 600.15 *Notice of program interest* would be renumbered 600.10 and the coverage revised to eliminate the requirement that a notice contain all the information included in a solicitation.

Section 600.16 *Objective merit review* would be renumbered 600.13 and revised to allow more program office discretion in setting up a system provided the basic standards of a merit review system are met.

Section 600.17 *Conflict of interest* would be renumbered 600.14.

Section 600.18 *Authorized uses of information* would be renumbered 600.15 and the definitions section deleted as unnecessary.

Section 600.19 *Application evaluation and selection* would be eliminated since the process is covered under objective merit review.

Section 600.20 *Legal authority and effect of an award* would be renumbered 600.16 and paragraph (b) eliminated since it is an internal administrative material and not a regulatory requirement.

Section 600.21 *Contents of award* would be renumbered 600.17 and the essential parts of an award document summarized in a short paragraph.

Section 600.22 *Recipient acknowledgement of award* would be renumbered 600.18 and reduced to the basic requirements.

Section 600.23 *Notification to unsuccessful applicants* would be renumbered 600.19 and the requirement stated more concisely.

Section 600.24 *Maximum DOE obligation* would be renumbered 600.20.

Section 600.25 *Access to records* would be renumbered 600.21 and changed to cross-reference the Governmentwide coverage contained in Subparts B and C.

Section 600.26 *Disputes and appeals* would be renumbered 600.22 and language added to cover alternative dispute resolution.

Section 600.27 *Debarment and suspension* would be renumbered 600.23.

Section 600.28 *Noncompliance* would be renumbered 600.24.

Section 600.29 *Suspension and termination* would be renumbered 600.25.

Section 600.30 *Responsible applicant* would be deleted since it doesn't add requirements that are not covered elsewhere.

Section 600.31 *Funding* would be renumbered 600.26 and the limitations related to 12-month budget periods removed so that budget periods can be more easily tied to meaningful performance phases or activities. Also, provisions regarding retroactive extensions would be deleted since they establish an unnecessary restriction on actions which are within a contracting officer's authority to approve or disapprove on a case-by-case basis.

Section 600.32 *Calculation of award* would be eliminated since it provides instructions to DOE contracting officials which do not need to be in a regulation. Provisions of interest to recipients pertaining to excess funds notifications and unobligated balances are already covered under the Governmentwide requirements in Subparts B and C.

Section 600.33 *Patents, data and copyrights* would be renamed ''Patent and Data Provisions'' and renumbered as 600.27. The patent, data and copyrights requirements for grant and cooperative agreement awards have been streamlined and have been revised to be consistent with the Department's recent updating of patent regulations for contracts (60 *FR* 11812).

Section 600.34 *New restrictions on lobbying* would be renumbered 600.28, renamed, and cross-reference the lobbying rules at 10 CFR 601.

A new Section 600.29 *Fixed obligation awards* would be added to give DOE the flexibility to make small dollar ($100,000 or less) financial assistance awards on a fixed amount basis where there is certainty about the costs and the project accomplishments are readily discernable such as, conferences, workshops, equipment, and travel. This type of award would reduce the administrative requirements placed on recipients and reduce the administrative burden for both DOE and recipients. Fixed obligation awards have been previously authorized by a class deviation from 10 CFR Part 600 which is now being superseded by these provisions.

In Section 600.112 *Forms for applying for Federal assistance* of Subpart B, paragraph (c) would be revised by changing the cross-references in the parenthetical phrase ''(See Section 600.31 (b) and (c))'' to read ''(See Section 600.26 (b) and (c)).''

Section 600.136 *Intangible property* of Subpart B would be revised to cross-reference the new Section 600.27 and to clarify the coverage for commercial organizations.

Section 600.306 *Cost sharing* of Subpart D would be renumbered 600.30 and applied to grants as well as cooperative agreements since choice of financial assistance instrument is irrelevant to the basic policy of requiring cost sharing for research, development, and demonstration projects.

Subpart D *Cooperative Agreements* would be removed and Subpart E *Audits of State and Local Governments* would be redesignated as Subpart D.

Sections 600.402, 600.403, 600.405, and 600.415 of Subpart E would be amended to correct the references resulting from the proposed streamlining changes.

IV. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's proposed rule would revise certain policy and procedural requirements. However, DOE has determined that this rulemaking will not have a substantial direct effect on the institutional interests or traditional functions of States.

V. Regulatory Review

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

VI. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub.L. 96–354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses, small organizations, and small governmental jurisdictions. DOE has concluded that the proposed rule would only affect small entities as they apply for and receive financial assistance, and does not create additional economic impact on small entities as a whole. DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

VII. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 USC 3501, et. seq., or OMB implementing regulations at 5 CFR Part 1320.

VIII. Review Under the National Environmental Policy Act

DOE has concluded that this rule falls into a class of actions (categorical exclusions A5) that are categorically excluded from National Environmental Policy Act (NEPA) review because they would not individually or cumulatively have significant impact on the human environment, as determined by the Department's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331–4335, 4341–4347 (1976)). Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

IX. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any revisions for the exhaustion of such administrative proceedings, and defines the terms. DOE certifies that today's rule meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

X. Public Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the changes set forth in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date given in the **DATES** section will be fully considered. Any information considered to be confidential must be so identified and submitted in writing, one copy only. The DOE reserves the right to determine the confidential status of the information and to treat it according to our determination.

XI. Public Hearing Determination

DOE has concluded that this proposed rule does not involve any significant issues of law or fact. Therefore, consistent with 5 U.S.C. 553, DOE has not scheduled a public hearing.

List of Subjects in 10 CFR Part 600

Accounting; Administrative practice and procedure; Government contracts; Grant programs, Indians, Intergovernmental relations; Loan programs, Lobbying; Penalties; Reporting and recordkeeping requirements.

Issued in Washington, D.C., on July 31, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Part 600 of Chapter II, Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for Part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1005 (31 U.S.C. 6301–6308), unless otherwise noted.

Subparts D and E—[Amended]

2. The existing Subpart D ''Cooperative Agreements'' is removed and Subpart E ''Audits of State and Local Governments'' is redesignated as Subpart D, and §§ 600.400 through 600.417 are redesignated as §§ 600.300 through 600.317.

§ 600.112 [Amended]

3. Section 600.112(c) is amended by revising the parenthetical phrase ''(See Section 600.31(b) and (c))'' to read ''(See Section 600.26(b) and (c)).''

4. Section 600.136 is revised to read as follows:

§ 600.136 Intangible property.

(a) Recipients that are institutions of higher education, hospitals, and other non-profit organizations are subject to the following:

(1) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.

(2) Recipients are subject to applicable regulations governing patents and inventions. (See 10 CFR 600.27)

(3) DOE has the right to:

(i) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(ii) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(4) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the

property without approval of DOE. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of Section 600.134(g).

(b) Recipients that are commercial entities shall follow the provisions set forth at 10 CFR 600.27.

§ 600.302 [Amended]

5. Newly redesignated § 600.302 is amended in paragraph (d) by revising ''Sections 600.25, 600.153, 600.242, and 600.305'' to read ''Sections 600.21, 600.153, and 600.242''.

§ 600.303 [Amended]

6. In paragraph (c), of newly redesignated § 600.303 revise ''Sections 600.126, 600.226, and 600.305'' to read ''Sections 600.126 and 600.226''.

§ 600.305 [Amended]

7. In newly redesignated § 600.305(b)(2)(ii)(C), revise ''Section 600.424 of subpart E'' to read ''Section 600.324 of subpart D''.

§ 600.315 [Amended]

8. Newly redesignated § 600.315 is amended, in the first sentence, by revising ''Section 600.436 of subpart E'' to read ''Section 600.336 of subpart D''.

9. Subpart A is revised to read as follows:

Subpart A—General

Sec.

600.1 Purpose.
600.2 Applicability.
600.3 Definitions.
600.4 Deviations.
600.5 Selection of award instrument.
600.6 Eligibility.
600.7 Small and disadvantaged and women-owned business participation.
600.8 Solicitation.
600.9 Notice of program interest.
600.10 Form and content of applications.
600.11 Intergovernmental review.
600.12 Generally applicable requirements.
600.13 Objective merit review.
600.14 Conflict of interest.
600.15 Authorized uses of information.
600.16 Legal authority and effect of an award.
600.17 Contents of award.
600.18 Recipient acknowledgement of award.
600.19 Notification to unsuccessful applicants.
600.20 Maximum DOE obligation.
600.21 Access to records.
600.22 Disputes and appeals.
600.23 Debarment and suspension.
600.24 Noncompliance.
600.25 Suspension and termination.
600.26 Funding.
600.27 Patent and data provisions.
600.28 New restrictions on lobbying.
600.29 Fixed obligation awards.
600.30 Cost sharing.

Subpart A—General

§ 600.1 Purpose.

This part implements the Federal Grant and Cooperative Agreement Act, Pub. L. 95–224, as amended by Public Law 97–258 (31 U.S.C. 6301–6308), and establishes uniform policies and procedures for the award and administration of DOE grants and cooperative agreements. This subpart (Subpart A) sets forth the policies and procedures applicable to the award and administration of grants and cooperative agreements.

§ 600.2 Applicability.

(a) Except as otherwise provided by Federal statute or program rule, this part applies to applications, solicitations, and new, continuation, and renewal awards (and any subsequent subawards).

(b) Any new, continuation, or renewal award (and any subsequent subaward) shall comply with any applicable Federal statute, Federal rule, Office of Management and Budget (OMB) Circular and Governmentwide guidance in effect as of the date of such award.

(c) Financial assistance to foreign entities is governed by this part and by the administrative requirements and cost principles applicable to their respective recipient type, e.g, governmental, non-profit, commercial, to the extent appropriate.

§ 600.3 Definitions.

Amendment means the written document executed by a DOE contracting officer that changes one or more terms or conditions of an existing financial assistance award.

Assistance means the transfer of money, property, services or anything of value to a recipient to accomplish a public purpose of support or stimulation authorized by Federal statute, as differentiated from financial assistance which covers the transfer of money or property only. Financial assistance instruments are grants and cooperative agreements and subawards.

Award means the written document executed by a DOE Contracting Officer, after an application is approved, which contains the terms and conditions for providing financial assistance to the recipient.

Budget period means the interval of time, specified in the award, into which a project is divided for budgeting and funding purposes.

Continuation award means an award for a succeeding or subsequent budget period after the initial budget period of either an approved project period or renewal thereof.

Contract means a written procurement contract executed by a recipient or subrecipient for the acquisition of property or services under a financial assistance award.

Contracting Officer means the DOE official authorized to execute awards on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

DOE Patent Counsel means the Department of Energy Patent Counsel assisting the Contracting Officer in the review and coordination of patents and data related items.

Nonprofit organization means any corporation, trust, foundation, or institution which is entitled to exemption under section 501(c)(3) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual (except that the definition of ''nonprofit organization'' at 48 CFR 27.301 shall apply to the use of the patent clause at Section 600.27).

Objective merit review means a thorough, consistent and independent examination of applications based on pre-established criteria by persons knowledgeable in the field of endeavor for which support is requested.

Program rule means a rule issued by a DOE program office for the award and administration of financial assistance which may describe the program's purpose or objectives, eligibility requirements for applicants, types of program activities or areas to be supported, evaluation and selection process, cost sharing requirements, etc. These rules usually supplement the generic policies and procedures for financial assistance contained in this part.

Project period means the total period of time indicated in an award during which DOE expects to provide financial assistance. A project period may consist of one or more budget periods and may be extended by DOE.

Recipient means the organization, individual, or other entity that receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

Renewal award means an award which adds one or more additional budget periods to an existing project period.

Research and development means all research activities, both basic and applied, and all development activities that are supported at universities,

colleges, and other non-profit institutions and commercial organizations. ''Research'' is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. ''Development'' is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

§ 600.4 Deviations.

(a) General. (1) A deviation is the use of any policy, procedure, form, standard, term, or condition which varies from a requirement of this part, or the waiver of any such requirement, unless such use or waiver is authorized or precluded by Federal statute. The use of optional or discretionary provisions of this part, including special restrictive conditions used in accordance with Sections 600.114 and 600.212, are not deviations. The waiver provisions of the patent requirements of Section 600.27 and awards to foreign entities are not subject to the requirements of this section.

(2) A single-case deviation is a deviation which applies to one financial assistance transaction and one applicant, recipient, or subrecipient only.

(3) A class deviation is a deviation which applies to more than one financial assistance transaction, applicant, recipient, or subrecipient.

(b) The DOE officials specified in paragraph (c) of this section may authorize a deviation only upon a written determination that the deviation is—

(1) Necessary to achieve program objectives;

(2) Necessary to conserve public funds;

(3) Otherwise essential to the public interest; or

(4) Necessary to achieve equity.

(c) Approval procedures. (1) A deviation request must be in writing and must be submitted to the responsible DOE Contracting Officer. An applicant for a subaward or a subrecipient shall submit any such request through the recipient.

(2) Except as provided in paragraph (c)(3) of this section—

(i) A single-case deviation may be authorized by the responsible Head of Contracting Activity (HCA). Any proposed single-case deviation from the requirements of Section 600.27 concerning patents or data shall be referred to the DOE Patent Counsel for review and concurrence prior to submission to the HCA.

(ii) A class deviation may be authorized by the Deputy Assistant Secretary for Procurement and Assistance Management or his or her designee.

(3) Whenever the approval of OMB, other Federal agency, or other DOE office is required to authorize a deviation, the proposed deviation must be submitted to the Deputy Assistant Secretary for Procurement and Assistance Management or designee for concurrence prior to submission to the authorizing official. Any proposed class deviation from the requirements of Section 600.27 concerning patents or data shall be forwarded through the Assistant General Counsel for Technology Transfer and Intellectual Property or designee.

(d) Notice. Whenever a request for a class deviation is approved, DOE shall publish a notice in the **Federal Register** at least 15 days before the class deviation becomes effective. Whenever a class deviation is contained in a proposed program rule, the preamble to the proposed rule shall describe the purpose and scope of the deviation.

(e) Subawards. A recipient may use a deviation in a subaward only with the prior written approval of a DOE Contracting Officer.

§ 600.5 Selection of award instrument.

(a) If DOE has administrative discretion in the selection of the award instrument, the DOE decision as to whether the relationship is principally one of procurement or assistance shall be made pursuant to the Federal Grant and Cooperative Agreement Act as codified at 31 U.S.C. 6301–6306. A grant or cooperative agreement shall be the appropriate instrument, in accordance with this part, when the principal purpose of the relationship is the transfer of money or property to accomplish a public purpose of support or stimulation authorized by Federal statute. DOE shall limit involvement between itself and the recipient in the performance of a project to the minimum necessary to achieve DOE program objectives.

(b) When it is anticipated that substantial involvement will be necessary between DOE and the recipient during performance of the contemplated activity, the award instrument shall be a cooperative agreement rather than a grant. Substantial involvement exists if:

(1) Responsibility for the management, control, or direction of the project is shared by DOE and the recipient, or

(2) Responsibility for the performance of the project is shared by DOE and the recipient, or

(3) DOE has the right to intervene in the conduct or performance of project activities for programmatic reasons. Intervention includes the interruption or modification of the conduct or performance of project activities. Suspension or termination of the cooperative agreement under Sections 600.162 and 600.243 does not constitute intervention in the conduct or performance of project activities.

(4) Providing technical assistance or guidance of a programmatic nature to a recipient does not constitute substantial involvement if the recipient is not required to follow such guidance or if the technical assistance or guidance is not expected to result in continuing DOE involvement in the performance of the project.

(5) Technical assistance or guidance which pertains to the administrative requirements of the award does not constitute substantial involvement.

(c) Every cooperative agreement shall explicitly state the substantial involvement anticipated between DOE and the recipient during performance of the project.

§ 600.6 Eligibility.

(a) General. DOE shall solicit applications for financial assistance in a manner which provides for the maximum amount of competition feasible.

(b) Restricted eligibility. If DOE restricts eligibility, an explanation of why the restriction of eligibility is considered necessary shall be included in the solicitation, program rule, or published notice. If the aggregate amount of DOE funds available for award under such a solicitation or published notice is $1,000,000 or more such restriction of eligibility shall be supported by a written determination initiated by the program office and approved by an official no less than two levels above the initiating program official and concurred in by the Contracting Officer and legal counsel. If the amount of DOE funds is less than $1,000,000, the cognizant HCA and the Contracting Officer may approve the determination.

(c) DOE may award a grant or cooperative agreement on a noncompetitive basis only if the

application satisfies one or more of the following selection criteria.

(1) The activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another Federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity.

(2) The activity is being or would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity.

(3) The applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

(4) The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

(5) The award implements an agreement between the United States Government and a foreign government to fund a foreign applicant.

(6) Time constraints associated with a public health, safety, welfare or national security requirement preclude competition.

(7) The proposed project represents a unique or innovative idea, method, or approach which would not be eligible for financial assistance under a recent, current, or planned solicitation, and if, as determined by DOE, a competitive solicitation would not be appropriate.

(8) The responsible program Assistant Secretary (or official of equivalent authority), with the approval of the Deputy Assistant Secretary for Procurement and Assistance Management, determines that a noncompetitive award is in the public interest. This authority may not be delegated.

(d) Documentation requirements. A determination of noncompetitive financial assistance (normally prepared by the responsible program official (project officer)) is required to explain the basis for the proposed noncompetitive award and shall be placed in the award file.

(e) Approval requirements. Determinations of noncompetitive awards shall be approved, prior to award, by the initiating program official, by the responsible program Assistant Secretary (or official of equivalent authority) or designee, who shall be not less than two organizational levels above that of the project officer, by the Contracting Officer and shall be concurred in by local legal counsel. Where the amount of DOE funds is less than $1,000,000 for a noncompetitive financial assistance award, the determination shall be approved by the cognizant HCA and the Contracting Officer. Concurrence may be waived by local legal counsel.

§ 600.7 Small and disadvantaged and women-owned business participation.

(a) DOE encourages the participation in financial assistance awards of small businesses, including those owned by socially and economically disadvantaged individuals and women, of historically black colleges, and of colleges and universities with substantial minority enrollments.

(b) For definitions of the terms in paragraph (a) of this section, see the Higher Education Act of 1965, and 15 U.S.C. 644, as amended by the Federal Acquisition Streamlining Act, and implementing regulations under FASA issued by the Office of Federal Procurement Policy.

(c) DOE shall require recipients and subrecipients to take affirmative action with respect to such entities in contracts under financial assistance awards and subawards as required under Sections 600.144 and 600.236.

§ 600.8 Solicitation.

(a) General. A solicitation for financial assistance applications shall be in the form of a program rule or other publicly available document which invites the submission of applications by a common due date or within a prescribed period of time.

(1) A Program Assistant Secretary (or official of equivalent authority) may annually issue a program notice describing research areas in which financial assistance is being made available. Such notice shall also state whether the research areas covered by the notice are to be added to those listed in a previously issued program rule. If they are to be included, then applications received as a result of the notice may be treated as having been in response to that previously published program rule. If they are not to be included, then applications received in response to the notice are to be treated as unsolicited applications. Solicitations may be issued by a DOE Contracting Officer or program office with prior concurrence of the contracting office.

(2) DOE shall publish either a copy or a notice of the availability of a financial assistance solicitation in the **Federal Register**. DOE shall publish solicitations or notices in the Commerce Business Daily when potential applicants include for-profit organizations or when there is the potential for significant contracting opportunities under the resulting financial assistance awards.

(b) Subawards. In accordance with the provisions of the applicable statute and program rules, if a DOE financial assistance program involves the award of financial assistance by a recipient to a subrecipient, the recipient shall provide sufficient advance notice so that potential subrecipients may prepare timely applications and secure prerequisite reviews and approvals.

(c) Contents of solicitation. Each solicitation shall include the following types of information and such other information as may be necessary to allow potential applicants to decide whether to submit an application, to understand how applications will be evaluated, and to know what the obligations of a recipient would be.

(1) A control number assigned by the issuing DOE office;

(2) The amount of money available for award and, if appropriate, the expected size of individual awards broken down by areas of priority or emphasis, and the expected number of awards;

(3) The type of award instrument or instruments to be used;

(4) Catalog of Federal Domestic Assistance number for the program;

(5) Who is eligible to apply;

(6) The expected duration of DOE support or the period of performance;

(7) Application form or format to be used, location for application submission, and number of copies required;

(8) The name of the responsible DOE Contracting Officer (or, for program notices or solicitations issued by the program office, the program office contact) to contact for additional information, and, as appropriate, an address where application forms may be obtained;

(9) Whether loans are available under the DOE Minority Economic Impact (MEI) loan program, 10 CFR part 800, to finance the cost of preparing a financial assistance application, and, if MEI loans are available, a general description of the eligibility requirements for such a loan, a reference to Catalog of Federal Domestic Assistance Number 81.063, and the name and address of the DOE office from which additional information and loan application forms can be obtained;

(10) Appropriate periods or due dates for submission of applications and a statement describing the consequences

of late submission. If programs have established a series of due dates to allow for the comparison of applications against each other, these dates shall be indicated in the solicitation;

(11) The types of projects or activities eligible for support;

(12) Evaluation criteria and the weight or relative importance of each, which may include one or more of the following or other criteria, as appropriate:

(i) Qualifications of the applicant's personnel who will be working on the project;

(ii) Adequacy of the applicant's facilities and resources;

(iii) Cost-effectiveness of the project;

(iv) Adequacy of the project plan or methodology;

(v) Management capability of the applicant;

(vi) Sources of financing available to the project. Any expectation concerning cost sharing shall be clearly stated. While cost sharing is generally encouraged, it shall not be considered in the evaluation process and shall be considered only at the time the award is negotiated, unless the cost sharing expectation is addressed in the solicitation.

(vii) Relationship of the proposed project to the objectives of the solicitation;

(13) A listing of program policy factors, if any, indicating the relative importance of each, if appropriate. Examples of program policy factors are:

(i) Geographic distribution;

(ii) Diverse types and sizes of applicant entities;

(iii) A diversity of methods, approaches, or kinds of work; and

(iv) Projects which are complementary to other DOE programs or projects;

(14) References to or copies of:

(i) Statutory authority for the program;

(ii) Applicable rules, including the appropriate subparts of this part;

(iii) Other terms and conditions applicable to awards to be made under the solicitation, including allowable and unallowable costs and reporting requirements;

(iv) Policies and procedures for patents, data, copyrights, audiovisual productions and exhibits;

(v) Any required assurances not included in the application form;

(15) The deadline for submission of required or optional preapplications;

(16) Date, time, and location of any briefing for applicants;

(17) Required presubmission reviews and clearances, including a statement as to whether review under E.O. 12372, ''Intergovernmental Review of Federal Programs'', is required.

(18) Dates by which selections and awards are expected to be made and whether unsuccessful applications will be returned to the applicant or be retained by DOE and for what period of time;

(19) A statement that DOE is under no obligation to pay for any costs associated with preparation or submission of applications if an award is not made. If an award is made, such costs may be allowable as provided in the applicable cost principles (See Sections 600.127 and 600.222);

(20) A statement that DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to the solicitation; and

(21) Any other relevant information, including explanatory information or factual basis for justifications required by this part.

§ 600.9 Notice of program interest.

(a) General. (1) DOE may publish periodic Notices of Program Interest in the **Federal Register** and other media, as appropriate, which describes broad, general, technical problems and areas of investigation for which DOE may award grants or cooperative agreements.

(2) DOE shall evaluate any application submitted under a Notice of Program Interest as an unsolicited application.

(b) Contents. The notice shall include the following:

(1) A brief description of the areas of interest for which DOE may provide financial assistance.

(2) A statement about how resulting applications will be evaluated and the criteria for selection and funding.

(3) An expiration date with an explanation that such a date does not represent a common deadline for applications but rather that applications may be submitted at any time before the notice expires.

(4) The location for application submission.

§ 600.10 Form and content of applications.

(a) General. Applications shall be required for all financial assistance projects or programs.

(b) Forms. Applications shall be on the form or in the format and in the number of copies specified by DOE. (See Sections 600.112 and 600.210)

(c) Contents of an application. In general, a financial assistance application shall include:

(1) A facesheet containing basic identifying information. The facesheet shall be the Standard Form (SF) 424;

(2) A detailed narrative description of the proposed project, including the objectives of the project and the applicant's plan for carrying it out;

(3) A budget with supporting justification

(4) Any required preaward assurances.

(d) Incomplete applications. DOE may return an application which is not signed by an authorized official and does not include all information and documentation required by statute, program rule, and the solicitation, if the nature of the omission precludes review of the application.

(e) Supplemental information. During the review of a complete application, DOE may request the submission of additional information only if the information is essential to evaluate the application.

§ 600.11 Intergovernmental review.

Intergovernmental review of DOE financial assistance shall be conducted in accordance with 10 CFR part 1005.

§ 600.12 Generally applicable requirements.

(a) Generally applicable requirements means Federal policies or administrative requirements that apply to more than one DOE financial assistance award, or a DOE financial assistance program and one or more other Federal assistance programs. Generally applicable requirements include, but are not limited to, the requirements of this part, Federal statutes, the OMB Circulars and other Governmentwide guidance implemented by this part, Executive Orders, and the requirements identified in appendix A of this subpart.

(b) Except as expressly exempted by Federal statute or program rule, recipients and subrecipients of DOE financial assistance shall comply with all generally applicable requirements to which, by the terms of such requirements, they are subject.

(c) Provisions shall be made to design and construct all buildings, in which DOE funds are used, to meet appropriate seismic design and construction standards. Seismic codes and standards meeting or exceeding the provisions of each of the model codes listed in this paragraph are considered to be appropriate for purposes of this part. The model codes are as follows:

(1) 1991 Uniform Building Code, of the International Council of Building Officials,

(2) 1992 Supplement to the National Building Code, of the Building Official and Code Administrators International.

(3) 1992 Amendments to the Standard Building Code, of the Southern Building Code Congress International.

These codes provide a level of seismic safety that is substantially equivalent to

the National Earthquake Hazards Reduction Program (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Buildings, 1988 Edition (Federal Emergency Management Administration 222 and 223). Revisions of these model codes that are substantially equivalent to or exceed the then current or immediately preceding edition of the NEHRP Recommended Provisions (which are updated triennially) shall be considered to be appropriate standards.

§ 600.13 Objective merit review.

(a) General. (1) It is the policy of DOE that any financial assistance be awarded through a merit-based selection process. Objective merit review means a thorough, consistent and independent examination of applications based on pre-established criteria by persons knowledgeable in the field of endeavor for which support is requested.

(2) Each program office must establish an objective merit review system covering the financial assistance programs it administers. Objective merit review of financial assistance applications is intended to be advisory and is not intended to replace the authority of the program official with responsibility for deciding whether an award will be made. It is expected that the cognizant project/program officer who normally also reviews the proposals for technical/scientific merit, will review it from a program policy perspective. The objective merit review system must set forth the relationship between the reviewing individuals, or the review committees or groups, and the official who has the final decision-making authority. In defining this relationship, the system must set out, as a minimum, the decision-making and documentation processes to be followed by the authorized official responsible for selection when an adverse recommendation has been received through the objective merit review process.

(b) Each formal review system must contain the elements listed below.

(1) Basic review standards. Each application may be assessed from a policy/programmatic perspective prior to undergoing merit review. Those that meet policy and programmatic considerations shall generally be reviewed by at least three qualified persons in addition to the official responsible for selection.

(ii) The reviewers of any particular application may be any mixture of federal or non-federal experts, including individuals from within the cognizant program office, except those involved in approving/disapproving the application. The DOE shall select external (non-DOE Federal or non-federal) reviewers on the basis of their professional qualifications and expertise.

(c) Review summary. Upon request, applicants are to be provided with a written summary of the evaluation of their application.

(d) Reviewers with interest in application being reviewed. Reviewers must comply with the requirements for the avoidance of conflict of interest established in Section 600.14.

(e) Outside reviewers. An outside reviewer shall be required to sign a written statement agreeing to use the application information only for review and to treat it in confidence except to the extent that the information is available to the general public without restriction as to its use from any source, including the applicant. Further, the reviewer shall be required to agree to comply with any notice or restriction placed on the application. Upon completion of the review the reviewer shall return all copies of the application (or abstracts, if any) to DOE; and unless authorized by DOE, the reviewer shall not contact the applicant concerning any aspect of the application.

§ 600.14 Conflict of interest.

Any person who participates in the review of applications for DOE financial assistance or in the administration of DOE financial assistance shall comply with 1010.101(a) and 1010.302(a)(1) of the DOE rules on the conduct of employees and special employees (consultants) at 10 CFR part 1010. Current and former DOE employees who participate in any aspect of the financial assistance process shall comply with all applicable requirements of 10 CFR part 1010.

§ 600.15 Authorized uses of information.

(a) General. Information contained in applications shall be used only for evaluation purposes unless such information is generally available to the public or is already the property of the Government. DOE employees may not disclose confidential information under the provisions of 18 U.S.C. 1905 including trade secrets, technical data, and or privileged or confidential commercial or financial information.

(b) Treatment of application information. (1) An application may include technical data and other data, including trade secrets and/or privileged or confidential commercial or financial information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than application evaluation. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies.

Notice of Restriction on Disclosure and Use of Data

The data contained in pages ____ of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data herein to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

(2) Unless a solicitation specifies otherwise, DOE shall not refuse to consider an application solely on the basis that the application is restrictively marked.

(3) Data (or abstracts of data) marked with the Notice under paragraph (b)(1) of this section shall be retained in confidence and used by DOE or its designated representatives as specified in Section 600.13 solely for the purpose of evaluating the proposal. The data so marked shall not be disclosed or used for any other purpose except to the extent provided in any resulting award, or to the extent required by law, including the Freedom of Information Act (5 U.S.C. 552) (10 CFR part 1004). The Government shall not be liable for disclosure or use of unmarked data and may use or disclose such data for any purpose.

(4) The Government shall obtain unlimited rights in the technical data contained in any application which results in an award except those portions of the technical data which the applicant asserts and properly marks as proprietary data, or which are not directly related to or will not be utilized in the project and are deleted from the application with the concurrence of DOE.

(5) The clause at 48 CFR 52.227–23, which applies only to technical data and not to other data such as privileged or confidential commercial or financial information shall apply to every award.

§ 600.16 Legal authority and effect of an award.

(a) A DOE financial assistance award is valid only if it is in writing and is signed by a DOE Contracting Officer.

(b) DOE funds awarded under a grant or cooperative agreement shall be

obligated as of the date the DOE Contracting Officer signs the award; however, the recipient is not authorized to incur costs under an award prior to the beginning date of the budget period shown in the award except as may be authorized in accordance with Sections 600.125(e) or 600.230 of this part. The duration of the DOE financial obligation shall not extend beyond the expiration date of the budget period shown in the award unless authorized by a DOE Contracting Officer by means of a continuation or renewal award or other extension of the budget period.

§ 600.17 Contents of award.

Each financial assistance award shall be made on a Notice of Financial Assistance Award (DOE F 4600.1) which contains basic identifying and funding information together with attachments including a budget, any special terms and conditions, and any other provisions necessary to establish the respective right, duties, obligation, and responsibilities of DOE and the recipient, consistent with the requirements of this part.

§ 600.18 Recipient acknowledgement of award.

(a) After signature by the DOE Contracting Officer, the award shall be sent to the applicant. The applicant shall be required to return a signed copy of the award acknowledging acceptance. No DOE funds shall be disbursed until the award document signed by the recipient is received by DOE.

(b) In the event an applicant declines an award or fails to acknowledge acceptance of an award, DOE shall deobligate the funds obligated by the award after providing the applicant with at least two weeks written notice of DOE's intention to deobligate.

(c) After the recipient acknowledges the award, the terms and conditions of the award may be amended only upon the written request or with the written concurrence of the recipient unless the amendment is one which DOE may make unilaterally in accordance with a program rule or this part.

§ 600.19 Notification to unsuccessful applicants.

DOE shall promptly notify in writing each applicant whose application has not been selected for award or whose application cannot be funded because of the unavailability of appropriated funds. If the application was not selected, the written notice shall briefly explain why the application was not selected and, if for grounds other than unavailability of funds, shall offer the unsuccessful applicant the opportunity for a more detailed explanation upon request.

§ 600.20 Maximum DOE obligation.

The maximum DOE obligation to the recipient is—

(a) For monetary awards, the amount shown in the award as the amount of DOE funds obligated, and

(b) Any designated property.

(c) DOE shall not be obligated to make any additional, supplemental, continuation, renewal, or other award for the same or any other purpose.

§ 600.21 Access to records.

(a) In addition to recipient and subrecipient responsibilities relative to access to records specified in Sections 600.153 and 600.242, for any negotiated contract or subcontract in excess of $10,000 under a grant or cooperative agreement, DOE, the Comptroller General of the United States, the recipient and the subrecipient (if the contract was awarded under a financial assistance subaward), or any of their authorized representatives shall have the right of access to any books, documents, papers, or other records of the contractor or subcontractor which are pertinent to that contract or subcontract, in order to make audit, examination, excerpts, and copies.

(b) The right of access may be exercised for as long as the applicable records are retained by the recipient, subrecipient, contractor, or subcontractor.

§ 600.22 Disputes and appeals.

(a) Informal dispute resolution. Whenever practicable, DOE shall attempt to resolve informally any dispute over the award or administration of financial assistance. Informal resolution, including resolution through an alternative dispute resolution mechanism, shall be preferred over formal procedures available 10 CFR Part 1024, to the extent practicable.

(b) Alternative dispute resolution (ADR). Before issuing a final disposition in any dispute in which informal resolution has not been achieved, the Contracting Officer shall suggest that the other party consider the use of voluntary consensual methods of dispute resolution, such as mediation. The DOE dispute resolution specialist is available to provide assistance for such disputes, as are trained mediators of other federal agencies. ADR may be used at any stage of a dispute.

(c) Final determination. Whenever a dispute is not resolved informally or through an alternative dispute resolution process, DOE shall mail (by certified mail) a brief written determination signed by a Contracting Officer, setting forth DOE's final disposition of such dispute. Such determination shall contain the following information:

(1) A summary of the dispute, including a statement of the issues and of the positions taken by the Department and the party or parties to the dispute; and

(2) The factual, legal and policy reasons for DOE's disposition of the dispute.

(d) Right of appeal. (1) Except as provided in paragraph (f)(1) of this section, the final determination under paragraph (c) of this section may be appealed to the Financial Assistance Appeals Board (the Board) in accordance with the procedures set forth in 10 CFR part 1024.

(2) If the final determination under paragraph (c) of this section involves a dispute over which the Board has jurisdiction as provided in paragraph (f)(2) of this section, the Contracting Officer's determination shall state that, with respect to such dispute, the determination shall be the final decision of the Department unless, within 60 days, a written notice of appeal is filed.

(3) If the final determination under paragraph (c) of this section involves a dispute over which the Board has no jurisdiction as provided in paragraph (f)(1) of this section, the Contracting Officer's determination shall state that, effective immediately or on a later date specified therein, the determination shall, with respect to such dispute, be the final decision of the Department.

(e) Effect of appeal. The filing of an appeal with the Board shall not stay any determination or action taken by DOE which is the subject of the appeal. Consistent with its obligation to protect the interests of the Federal Government, DOE may take such authorized actions as may be necessary to preserve the status quo pending decision by the Board, or to preserve its ability to provide relief in the event the Board decides in favor of the appellant.

(f) Review on appeal. (1) The Board shall have no jurisdiction to review:

(i) Any preaward dispute (except as provided in paragraph (f)(2)(ii) of this section), including use of any special restrictive condition pursuant to Sections 600.114 or 600.212;

(ii) DOE denial of a request for a deviation under Sections 600.4, 600.103, or 600.205 of this part;

(iii) DOE denial of a request for a budget revision or other change in the approved project under Sections 600.125, 600.127, 600.222, or 600.230 of this part or under another term or condition of the award;

(iv) Any DOE action authorized under Sections 600.162(a) (1), (2), (3) or (5); or

Sections 600.243 (a)(1), (a)(3) for suspensions only; or Sections 600.162 (a)(4) or Section 600.243(a)(4) for actions disapproving renewal applications or other requests for extension of time or additional funding for the same project when related to recipient noncompliance, or such actions authorized by program rule;

(v) Any DOE decision about an action requiring prior DOE approval under Section 600.144, or Section 600.236 of this part or under another term or condition of the award;

(vi) A DOE decision not to make a continuation award, which decision is based on the insufficiency of available appropriations;

(vii) Any matter which is under the jurisdiction of the Patent Compensation Board (10 CFR 780.3);

(viii) Any matter which may be heard by the Invention Licensing Appeals Board (10 CFR 781.65 and 781.66); or

(ix) Any other dispute not described in paragraph (f)(2) of this section.

(2) In addition to any right of appeal established by program rule, or by the terms and conditions (not inconsistent with paragraph (f)(1) of this section) of an award, the Board shall have jurisdiction to review:

(i) A DOE determination that the recipient has failed to comply with the applicable requirements of this part, the program statute or rules, or other terms and conditions of the award;

(ii) A DOE decision not to make a continuation award based on any of the determinations described in paragraph (f)(2)(i) of this section;

(iii) Termination of an award for cause, in whole or in part, by DOE;

(iv) A DOE determination that an award is void or invalid;

(v) The application by DOE of an indirect cost rate; and

(vi) DOE disallowance of costs.

(3) In reviewing disputes authorized under paragraph (f)(2) of this section, the Board shall be bound by the applicable law, statutes, and rules, including the requirements of this part, and by the terms and conditions of the award.

(4) The decision of the Board shall be the final decision of the Department.

§ 600.23 Debarment and suspension.

Applicants, recipients, subrecipients, and contractors under financial assistance awards may be debarred and suspended for the causes and in accordance with the procedures set forth in 10 CFR part 1036.

§ 600.24 Noncompliance.

(a) Except for noncompliance determinations under 10 CFR part 1040, whenever DOE determines that a recipient has not complied with the applicable requirements of this part, with the requirements of any applicable program statute or rule, or with any other term or condition of the award, a DOE Contracting Officer shall provide to the recipient (by certified mail, return receipt requested) a written notice setting forth:

(1) The factual and legal bases for the determination of noncompliance;

(2) The corrective actions and the date (not less than 30 days after the date of the notice) by which they must be taken.

(3) Which of the actions authorized under Section 600.122(n), Section 600.162(a) or Section 600.243(a) of this part DOE may take if the recipient does not achieve compliance within the time specified in the notice, or does not provide satisfactory assurances that actions have been initiated which will achieve compliance in a timely manner.

(b) DOE may take any of the actions set forth in Section 600.121(n,), Section 600.162(a), or Section 600.243(a) of this part concurrent with the written notice required under paragraph (a) of this section or with less than 30 days written notice to the recipient whenever:

(1) There is evidence the award was obtained by fraud;

(2) The recipient ceases to exist or becomes legally incapable of performing its responsibilities under the financial assistance award; or

(3) There is a serious mismanagement or misuse of financial assistance award funds necessitating immediate action.

§ 600.25 Suspension and termination.

(a) Suspension and termination for cause. DOE may suspend or terminate an award for cause on the basis of—

(1) a noncompliance determination under Section 600.24, Section 600.122(n), Section 600.162(a), or Section 600.243(a);

(2) an immediate debarment or debarment of the awardee under Section 600.23.

(b) Notification requirements. Except as provided in Section 600.24, Section 600.162(a), or Section 600.243(a) before suspending or terminating a award for cause, DOE shall mail to the awardee (by certified mail, return receipt requested) a separate written notice in addition to that required by Section 600.24(a), Section 600.162(a), or Section 600.243(a) at least ten days prior to the effective date of the suspension or termination. Such notice shall include, as appropriate—

(1) The factual and legal bases for the suspension or termination;

(2) The effective date or dates of the DOE action;

(3) If the action does not apply to the entire award, a description of the activities affected by the action;

(4) Instructions concerning which costs shall be allowable during the period of suspension, or instructions concerning allowable termination costs, including in either case, instructions concerning any subgrants or contracts;

(5) Instructions concerning required final reports and other closeout actions for terminated awards (see Sections 600.170 through 600.173 and Sections 600.250 through 600.252);

(6) A statement of the awardee's right to appeal a termination for cause pursuant to Section 600.22; and

(7) The dated signature of a DOE Contracting Officer.

(c) Suspension. (1) Unless DOE and the awardee agree otherwise, no period of suspension shall exceed 90 days.

(2) DOE may cancel the suspension at any time, up to and including the date of expiration of the period of suspension, if the awardee takes satisfactory corrective action before the expiration date of the suspension or gives DOE satisfactory evidence that such corrective action will be taken.

(3) If the suspension has not been cancelled by the expiration date of the period of suspension, the awardee shall resume the suspended activities or project unless, prior to the expiration date, DOE notifies the awardee in writing that the period of suspension shall be extended consistent with paragraph (c)(1) of this section or that the award shall be terminated.

(4) As of the effective date of the suspension, DOE shall withhold further payments and shall allow new obligations incurred by the awardee during the period of suspension only if such costs were authorized in the notice of suspension or in a subsequent letter.

(5) If the suspension is cancelled or expires and the award is not terminated, DOE shall reimburse the awardee for any authorized allowable costs incurred during the suspension and, if necessary, may amend the award to extend the period of performance.

(d) Termination by mutual agreement. In addition to any situation where a termination for cause pursuant to Section 600.24, Sections 600.160 through 600.162 or Sections 600.243 through 600.244 is appropriate, either DOE or the awardee may initiate a termination of a award (or portion thereof) as described in this paragraph. If the awardee initiates a termination, the awardee must notify DOE in writing and specify the awardee's reasons for requesting the termination, the proposed effective date of the termination, and, in the case of a partial

termination, a description of the activities to be terminated, and an appropriate budget revision. DOE shall terminate a award or portion thereof under this paragraph only if both parties agree to the termination and the conditions under which it shall occur. If DOE determines that the remaining activities under a partially terminated award would not accomplish the purpose for which the award was originally awarded, DOE may terminate the entire award.

(e) Effect of termination. The awardee shall incur no new obligations after the effective date of the termination of a award (or portion thereof), and shall cancel as many outstanding obligations as possible. DOE shall allow full credit to the awardee for the DOE share of noncancellable obligations properly incurred by the awardee prior to the effective date of the termination.

(f) Subgrants. Awardees shall follow the policies and procedures in this section and in Section 600.24, Sections 600.160 through 600.162 or Sections 600.243 through 600.244 for suspending and terminating subgrants.

§ 600.26 Funding.

(a) General. The project period during which DOE expects to provide award support for an approved project shall be specified on the Notice of Financial Assistance Award (DOE Form 4600.1).

(b) Budget period and continuation awards. If the project period is 12 months or less, the budget period and the project period shall be coextensive. Except as provided in paragraph (e) of this section, multiyear awards, including formula awards, shall be funded annually within the approved project period. Funding for each budget period within the project period shall be contingent on DOE approval of a continuation application submitted in accordance with a schedule specified by DOE. A continuation application shall include—

(1) A statement of technical progress or status of the project to date.

(2) A detailed description of the awardee's plans for the conduct of the project during the coming year; and

(3) A detailed budget for the upcoming budget period, including an estimate of unobligated balances. A detailed budget need not be submitted if the new or renewal application contained future-year budgets sufficiently detailed to allow DOE to review and approve the categories and elements of cost. Should the award have a change in scope or significant change in the budget, DOE may request a detailed budget. DOE shall review a continuation application for the adequacy of the awardee's progress and planned conduct of the project in the subsequent budget period. DOE shall not require a continuation application to compete against any other application. The amount and award of continuation funding is subject to the availability of appropriations.

(c) Renewal awards. Discretionary renewal awards may be made either on the basis of a solicitation or on a noncompetitive basis. If DOE proposes to restrict eligibility for a discretionary renewal award to the incumbent grantee, the noncompetitive award must be justified in accordance with 600.6(b)(2). Renewal applications must be submitted no later than 6 months prior to the scheduled expiration of the project period unless a program rule or other published instruction establishes a different application deadline.

(d) Extensions. Unless otherwise specified in the award terms and conditions, recipients of financial assistance awards, except recipients of SBIR awards (See Section 600.181), may extend the expiration date of the final budget period of the project (thereby extending the project period) if additional time beyond the established expiration date is needed to assure adequate completion of the original scope of work within the funds already made available. A single extension, which shall not exceed twelve (12) months, may be made for this purpose, and must be made prior to the originally established expiration date. The recipient must notify the cognizant DOE Contracting Officer in the awarding office in writing within ten (10) days of making the extension.

§ 600.27 Patent and data provisions.

(a) General. Financial assistance shall be awarded and administered by DOE in compliance with the patent and data provisions of this section. (See also Sections 600.136 and 600.234.) To the extent not otherwise provided in this part, the policies, procedures and clauses referenced for contracts in 48 CFR part 927 and 41 CFR part 9–9 shall normally be applicable to the award and administration of Departmental grants and cooperative agreements. Copies of 41 CFR part 9–9 are available by contacting the DOE Patent Counsel.

(b) Required clauses. In all solicitations and awards both for the support of research, development, and demonstration and for other efforts, the DOE Contracting Officer shall consult the DOE Patent Counsel for applicable patent and data clauses from those listed below and/or for modifications thereto. In reading each 48 CFR part 27 and 48 CFR part 952 patent and data clause selected for inclusion in a solicitation or award, the term ''contract'' when referring to a prime contract shall be read as ''award.'' The term ''contractor'' shall be read as referring to the ''awardee.'' The term ''subcontract'' shall be read as ''subaward or a procurement contract under an award or subaward and/or a procurement subcontract under an awardee's or subawardee's contract.'' The term ''Acquisition'' with respect to the Long Form Patent Rights Clause shall be read as ''Retention.'' The terms ''offerors'' and ''quoters'' shall be read as ''applicants,'' and ''proposal'' and ''quotation'' shall be read as ''application.''

(1) Patent clauses.

(i) (Short Form Patent Clause). Incorporate the clause at 48 CFR 952.227–11 for awards to a domestic small business firm or nonprofit organization as defined at 48 CFR 27.301. In accordance with 35 USC 202(a)(ii), the DOE may issue an exceptional circumstances determination. To implement any exceptional circumstances determination, DOE will modify 48 CFR 952.227–11 to retain greater rights in subject inventions. Such modifications will be only to the extent necessary to implement the exceptional circumstances determination.

(ii) (Long Form Patent Clause). For awards to a large business firm or other organization, other than a domestic small business firm or nonprofit organization as set forth in 48 CFR 27.301, incorporate the clause at 48 CFR 952.227–13.

(iii) The notice of Right to Request Patent Waiver at 48 CFR 952.227–84 shall also be inserted in all solicitations to advise applicants of their rights to request in advance of, or within 30 days after the award is signed, a waiver of all or any part of the rights of the United States with respect to subject inventions. For unsolicited applications, DOE shall provide this notice to the applicant prior to award.

(2) Data Clauses (includes copyright provisions)

(i) Rights in Data—General. (A) Incorporate 48 CFR 52.227–14 with Alternates I and V. Solicitations shall also include the Representation of Limited Rights Data and Restricted Computer Software clause at 48 CFR 52.227–15.

(B) In awards for grants and cooperative agreements with institutions of higher education, hospitals, and other non-profit organizations, the following paragraph (c) will be used in lieu of the provisions in 48 CFR 52.227–14(c):

(c) Copyright. (1) Data first produced in the performance of the award. Except as otherwise specifically provided in this award, the recipient may establish claim to copyright subsisting in any data first produced in the performance of this award. When claim to copyright is made, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgement of Government sponsorship (including award number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The recipient grants to the Government a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. The right to publish includes the right to publicly distribute. The right to use the work for Federal purposes includes the right to prepare derivative works.

(C) For grants and cooperative agreements with commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations, the provisions the following paragraph (d)(3) shall be used in addition to the provisions in 48 CFR 52.227–14:

(d)(3) The Recipient agrees not to establish claim to copyright in computer software first produced in the performance of this award without prior written permission of the Contracting Officer. When such permission is granted, the Contracting Officer shall specify appropriate terms to assure dissemination of the software. The recipient shall promptly deliver to the Contracting Officer or to the DOE Patent Counsel designated by the Contracting Officer a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled, and other terms pertaining to the computer software to which claim to copyright is made.

(D) If programmatic needs on a particular award require the delivery to the Government of limited rights data or restricted computer software, Alternates II or III of 48 CFR 52.227–14 shall also be added.

(ii) Restriction on Disclosure and Use of Data. Insert the Notice at 600.15(b)(1) in all solicitations.

(iii) Rights to Application Data. As discussed at 600.15(b)(5), incorporate 48 CFR 52.227–23.

(iv) Additional data requirements. Incorporate 48 CFR 52.227–16. In the event all technical data requirements are known in advance of and are set forth in the agreement or, the award is for the performance of basic or applied research and is to be performed solely by a university or college as discussed in 48 CFR 27.406(b), 48 CFR 52.227–16 does not need to be incorporated.

(3) Authorization and consent. Incorporate 48 CFR 52.227–1 or Alternates I or II, as appropriate, in accordance with the guidance in 48 CFR 927.201–1 and 48 CFR 27.201.

(4) Patent indemnity. Incorporate the clause set forth in 48 CFR 52.227–3, as appropriate, in accordance with the guidance in 48 CFR 27.203–1 and 48 CFR 27.203–3.

(5) Filing of Patent Applications-Classified Subject Matter. Incorporate the following paragraph in any solicitation or award which covers, or is likely to cover, classified subject matter:

Classified Inventions

(a) The recipient shall not file or cause to be filed on any invention or discovery conceived or first actually reduced to practice in the course of or under this award in any country other than the United States, an application or registration for a patent without first obtaining written approval of the Contracting Officer.

(b) When filing a patent application in the United States on any invention or discovery conceived of or first actually reduced to practice in the course of or under this award, the subject matter of which is classified for reasons of security, the awardee shall observe all applicable security regulations covering the transmission of classified subject matter. When transmitting the patent application to the United States Patent and Trademark Office, the awardee shall, by separate letter, identify by agency and agreement number the award(s) which require security classification markings to be placed on the application.

(6) Notice and Assistance Regarding Patent and Copyright Infringement. Incorporate the clause at 48 CFR 52.227–2, in accordance with the guidance in 48 CFR 27.202, in all awards in excess of $100,000 for construction, research, development, and demonstration work which is to be performed within the United States, its possessions, or Puerto Rico.

(7) Royalty Information. Incorporate 10 CFR 52.227–6.

(8) Refund of Royalties. As discussed in 48 CFR 927.206, incorporate the clause at 48 CFR 952.227–9 in solicitations and awards where the Contracting Officer believes royalties will have to be paid by the awardees or subawardee or contractor at any tier.

(9) Subawards and contracts under award. The recipient shall include the applicable clauses of this section in any subaward or contract awarded under the award and assure that the applicable clauses are also included by subrecipients in contracts.

§ 600.28 New restrictions on lobbying.

Procedures regarding restrictions on lobbying activities of applicants and recipients are contained in 10 CFR 601.110.

§ 600.29 Fixed obligation awards.

(a) General. This section contains provisions applicable to the award of financial assistance instruments on a fixed amount basis. Under a fixed obligation award, funds are issued in support of a project without a requirement for Federal monitoring or actual costs subsequently incurred.

(b) Provisions applicable to fixed obligation awards. Financial assistance awards may be made on a fixed obligation basis subject to the following requirements:

(1) Each fixed obligation award may not exceed $100,000 or exceed one year in length.

(2) Programs which require mandatory cost sharing are not eligible.

(3) Proposed costs must be analyzed in detail to ensure consistency with applicable cost principles;

(4) Although budgets are submitted by an applicant and reviewed for purposes of establishing the amount to be awarded, budget categories are not stipulated in making an award;

(5) Payments will be made in the same manner as other financial assistance awards, except that when determined appropriated by the cognizant program official and contracting officer a lump sum payment may be made;

(6) Recipients must certify in writing to the contracting officer at the end of the project that the activity was completed or the level of effort was expended, however should the activity or effort not be carried out, the recipient would be expected to make appropriate reimbursements;

(7) Requirements for periodic reports may be established for each award so long as they are not more frequently than quarterly;

(8) Changes in principal investigator or project leader, scope of effort, or institution, require the prior approval of the Department.

§ 600.30 Cost sharing.

In addition to the requirements of Section 600.123 or Section 600.224, the following requirements apply to research, development, and demonstration projects:

(a) When DOE awards financial assistance for research, development, and demonstration projects where the primary purpose of the project is the ultimate commercialization and utilization of technology by the private sector and when there are reasonable expectations that the participant will receive significant present or future economic benefits beyond the instant award as a result of the performance of the project, cost sharing shall be

required unless waived by the cognizant Program Assistant Secretary or designee.

(b) Except as provided in statute such as the Energy Policy Act, 42 U.S.C. 13525, DOE will decide, on a case-by-case basis, the amount of cost sharing required for a particular project.

(c) Factors in addition to those specified in Section 600.123 or Section 600.224, which may be considered when negotiating cost sharing for research, development, and demonstration projects include the potential benefits to a participant resulting from the project and the length of time before a project is likely to be commercially successful.

[FR Doc. 95–19149 Filed 8–7–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 950710174–5174–01]

RIN 0691–AA26

International Services Surveys: BE–82 Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed rules relating to international services surveys to institute a new mandatory survey, the BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, to be conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce. The survey will update information collected on the quinquennial BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, which was first conducted for 1994. Together, the two surveys will produce continuous annual time series of data on financial services that are out of scope of other international services surveys. The information is needed, among other purposes, to support trade policy initiatives, including trade negotiations, on financial services and to compile the U.S. balance of payments and national income and product accounts.

The survey will be conducted under the International Investment and Trade in Services Survey Act and the Omnibus Trade and Competitiveness Act of 1988.The first survey will cover 1995.

DATES: Comments on these proposed rules will receive consideration if submitted in writing on or before September 22, 1995.

ADDRESSES: Comments may be mailed to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to Room M–100, 1441 L Street, N.W., Washington, DC 20005. Comments will be available for public inspection in Room 7006, 1441 L Street, N.W., between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9805.

SUPPLEMENTARY INFORMATION: These proposed rules will amend existing 15 CFR 801.9 to set forth reporting requirements for the BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons. The survey will be conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (P.L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended) and the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418, 15 U.S.C. 4908). Section 3103(a) of the International Investment and Trade in Services Survey Act provides that ''The President shall, to the extent he deems necessary and feasible— . . . (1) conduct a regular data collection program to secure current information . . . related to international investment and trade in services . . .; and (5) publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection * * *'' In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated the authority under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA. The Omnibus Trade and Competitiveness Act of 1988 directs that ''The Secretary (of Commerce) shall ensure that * * * there is included in the Data Bank information on service sector activity that is as complete and timely as information on economic activity in the merchandise sector. The Secretary shall undertake a new benchmark survey of services transactions, including transactions with respect to * * * banking services; (and) brokerage services. * * * The Secretary shall (also) provide, not less than once a year, comprehensive information on the service sector of the economy.''

The major purposes of the survey are to provide the information on financial services needed in monitoring U.S. services trade, analyzing its effects on the U.S. economy, formulating U.S. international trade policy, supporting bilateral and multilateral trade negotiations, compiling the U.S. balance of payments and national income and product accounts, developing U.S. international price indexes for services, assessing U.S. competitiveness in international trade in services, and improving the ability of U.S. businesses to identify and evaluate foreign market opportunities.

As proposed, the BE–82 survey will be conducted in years in which a BE–80 benchmark survey, or census, is not conducted; the first BE–80 survey was for 1994 and the first BE–82 survey would be for 1995. The BE–82 survey will update the data provided on the universe of financial services transactions between U.S. financial services providers and unaffiliated foreign persons derived from the BE–80 survey. It covers the same types of financial services that are covered by the BE–80 survey, but the exemption level below which reporting is not required has been raised to $5 million compared with $1 million in the BE–80 survey. Reporting in the BE–82 is required from U.S. financial services providers who have sales to or purchases from unaffiliated foreign persons in all covered financial services combined in excess of $5 million during the reporting year. Those financial services providers meeting this criteria must supply data on the amount of their sales or purchases of each covered type of service, disaggregated by country. U.S. financial services providers that have covered transactions of less than $5 million during the reporting year are asked to provide, on a voluntary basis, estimates only of their total sales or purchases of each type of financial service.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

These proposed rules have been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act. A request for review of the forms has been submitted to the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act.

Public reporting burden for this collection of information is estimated to vary from 4 to 150 hours, with an overall average burden of 7.5 hours. This includes time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Commerce.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The exemption level for the survey excludes most small businesses from mandatory reporting. Reporting is required only if total sales or total purchases transactions in financial services with unaffiliated foreign persons by U.S. persons who are financial services providers, or by U.S. persons whose consolidated enterprise includes a separately organized subsidiary or part that is a financial services provider, exceed $5 million during the year. In addition, international business tends to be conducted mainly by the larger companies in a given industry; in the financial services industry, this is particularly true, because of the high degree of consolidation that has occurred in that industry in the United States during the past several years. In any event, small businesses tend to have specialized operations and activities, so those with reportable transactions will likely not have significant amounts of data to report; therefore, the burden on them will be relatively small.

List of Subjects in 15 CFR Part 801

Economic statistics, Balance of payments, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: July 3, 1995.

J. Steven Landefeld,

Acting Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801, as follows:

PART 801—[AMENDED]

1. The authority citation for 15 CFR part 801 is revised to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961, (3 CFR, 1977 Comp., p. 86 as amended by E.O. 12013, 3 CFR, 1977 Comp., p. 147, E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

2. Section 801.9 is amended by adding paragraph (b)(7) to read as follows:

§ 801.9 Reports required.

* * * * *

(b) *Annual surveys.* * * *

(7) BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons:

(i) A BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, will be conducted covering companies' 1995 fiscal year and every year thereafter except when a BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Service Providers and Unaffiliated Foreign Persons, is conducted (see § 801.11). All legal authorities, provisions, definitions, and requirements contained in § 801.1 through § 801.8 are applicable to this survey. Additional rules and regulations for the BE–82 survey are given in paragraphs (b) (7)(i) (A) through (D) of this section. More detailed instructions are given on the report form itself.

(A) *Who must report.* (*1*) *Mandatory reporting.* Reports are required from each U.S. person who is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary or part that is a financial services provider or intermediary, and who had transactions (either sales or purchases) directly with unaffiliated foreign persons in all financial services combined in excess of $5,000,000 during its fiscal year covered by the survey. The $5,000,000 threshold should be applied to financial services transactions with unaffiliated foreign persons by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the $5,000,000 threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases.

(*i*) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(*ii*) Reporters who file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types of financial services transactions and must disaggregate the totals by country.

(*2*) *Voluntary reporting.* If, during the fiscal year covered, sales or purchases of financial services by a firm that is a financial services provider or intermediary, or by a firm's subsidiaries or parts combined that are financial services providers or intermediaries, are $5,000,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service. Provision of this information is voluntary. Because the $5,000,000 threshold applies separately to sales and purchases, this voluntary reporting option may apply only to sales, only to purchases, or to both sales and purchases.

(B) *BE–82 definition of financial services provider.* The definition of a financial services provider used for this survey is the same as that used for the BE–80 benchmark survey, as defined in § 801.11(b).

(C) *Covered types of services.* The BE–82 survey covers the same types of financial services transactions that are covered by the BE–80 benchmark survey, as listed in § 801.11(c).

(D) *What to file.* (*i*) The BE–82 survey consists of Forms BE–82(A) and BE–82(B). Before completing a Form BE–82(B), a consolidated U.S. enterprise (including the top parent and all of its subsidiaries and parts combined) must complete Form BE–82(A) to determine its reporting status. If the enterprise is

subject to the mandatory reporting requirement, or if it is exempt from the mandatory reporting requirement but chooses to report data voluntarily, either a separate Form BE–82(B) may be filed for each separately organized financial services subsidiary or part of the consolidated U.S. enterprise, or a single BE–82(B) may be filed, representing the sum of covered transactions by all financial services subsidiaries or parts of the enterprise combined.

(*ii*) Reporters that receive the BE–82 survey from BEA, but that are not reporting data in either the mandatory or voluntary section of any Form BE–82(B), must return the Exemption Claim, attached to Form BE–82(A), to BEA.

(ii) [Reserved].

* * * * *

[FR Doc. 95–18803 Filed 8–7–95; 8:45 am]

BILLING CODE 3510–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 54–1–6941b; FRL–5256–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Source-Specific VOC and NO_X RACT and Synthetic Minor Permit Conditions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires reasonably available control technology (RACT) on eight major sources and establishes permit conditions to limit one source's emissions to below major source levels. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the accompanying technical support document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 7, 1995.

ADDRESSES: Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: June 23, 1995.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 95–19506 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 81

[MI39–01–6921b; FRL–5273–1]

Designation of Areas for Air Quality Planning Purposes; Correction of Designation of Nonclassified Ozone Nonattainment Areas; State of Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to correct erroneous ozone designations made in 1980 for the Allegan County (Allegan County), Barry County (Barry County), Battle Creek (Calhoun County), Benton Harbor (Berrien County), Branch County (Branch County), Cass County (Cass County), Gratiot County (Gratiot County), Hillsdale County (Hillsdale County), Huron County (Huron County), Ionia County (Ionia County), Jackson (Jackson County), Kalamazoo (Kalamazoo County), Lapeer County (Lapeer County), Lenawee County (Lenawee County), Montcalm (Montcalm County), Sanilac County (Sanilac County), Shiawassee County (Shiawassee County), St. Joseph County (St. Joseph County), Tuscola County (Tuscola County), and Van Buren County (Van Buren County) nonattainment nonclassified/incomplete data areas and the Lansing-East Lansing (Clinton County, Eaton County, and Ingham County) nonattainment nonclassified/transitional area. Pursuant to section 110(k)(6) of the Act, which allows the USEPA to correct its actions, the USEPA is proposing to correct their designations to attainment/unclassifiable for ozone.

In the Final Rules Section of this **Federal Register**, the USEPA is correcting the designations in a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the correction is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. Please be aware that the USEPA will institute another comment period on this action only if warranted by significant revisions to the rulemaking based on any comments received in response to the direct final rule. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed action must be received in writing by September 7, 1995. Public comments on this document are requested and will be considered before taking final action on this reclassification.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Jacqueline Nwia, Air Toxics and Radiation Branch, Regulation Development Section (AT–18J), United States Environmental Protection

Agency, Region 5, Chicago, Illinois, 60604, (312) 886–6081.

SUPPLEMENTARY INFORMATION: For additional information, see the information provided in the Direct Final notice which is located in the Rules Section of this **Federal Register**. Copies of the USEPA's analysis are available for inspection at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Telephone Jacqueline Nwia at (312) 886–6081 before visiting the Region 5 Office.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 25, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–19508 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90–Day Finding for a Petition to List the Kootenai River Population of the Interior Redband Trout as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the Kootenai River population of the interior redband trout (*Oncorhynchus mykiss gairdneri*) under the Endangered Species Act of 1973, as amended. The Service finds that the petition did not present substantial scientific or commercial information indicating that the petitioned actions may be warranted, because it fails to substantiate that the interior redband trout of the Kootenai River are a distinct population segment.

DATES: The finding announced in this document was made on July 11, 1995.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho, 83705. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Patricia Klahr, staff biologist (refer to **ADDRESSES** section or telephone 208–334–1931).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U. S. C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**.

The Service has made a 90-day finding on a petition to list the Kootenai River population of the interior redband trout (*Oncorhynchus mykiss gairdneri*). The petition, dated April 4, 1994, was submitted by Brendan M. McManus of the Biodiversity Legal Foundation of Boulder, Colorado, and Donald Kern of Kalispell, Montana, and was received by the Service on April 8, 1994. The petitioner requested the Service list the Kootenai River drainage population of interior redband trout within the contiguous United States as threatened or endangered and designate critical habitat concurrently with the listing. The petitioners state that the best scientific data available indicates that interior redband trout residing in the Kootenai River drainage of Montana, and possibly Idaho, constitutes a separate and distinct vertebrate population segment, appropriate for listing as threatened or endangered according to the Act. The petitioners submitted information about threats to the Kootenai River interior redband trout, including hybridization and competition with non-native trout species, loss of habitat from land and water use practices, and inadequacy of existing regulatory mechanisms. The petitioners state that hybridization with non-native or introduced trout may be the most serious threat to the long-term persistence of the interior redband trout in the Kootenai River drainage.

The interior redband trout is currently classified as a category 2 candidate species by the Service (59 FR 58982; November 15, 1994). Category 2 includes taxa for which information in the Service's possession indicates that listing is possibly appropriate but for which the Service lacks substantial information upon which to base a proposal to list as endangered or threatened.

The Service has reviewed the petition, the literature cited in the petition, and other literature and information available in the Service's files. On the basis of the best scientific and commercial information available, the Service finds the petition does not present substantial information indicating that the petitioned action may be warranted because information is lacking to show that the interior redband trout of the Kootenai River are a distinct population segment under the Act.

There has been confusion regarding the taxonomic classification of interior redband trout (Behnke 1986, Behnke 1992). This confusion may be a result of similar morphological and meristic characteristics with other rainbow and cutthroat trout species (Berg 1987). It is further complicated by their diversity and adaptability, as ''redband trout'' are found in high mountain streams as well as in hot, arid desert drainages. Behnke (1992) refers to the interior redband trout as the Columbia River redband trout and describes their distribution as the Columbia River basin east of the Cascades to barrier falls on Kootenai, Pend Oreille, Spokane, and Snake Rivers; the upper Fraser River basin above Hell's Gate; and Athabasca River headwaters of the Mackenzie River basin.

The subspecies *gairdneri* includes resident stream populations, populations adapted to lakes (kamloops trout), and anadromous steelhead populations. Resident populations of Columbia River redband trout are found throughout the Columbia River basin east of the Cascades. The native trout of the Oregon and southern Idaho desert basins are considered to be a primitive form of redband trout derived from the Columbia River basin. Kamloops trout occur in lakes in the upper Columbia and upper Fraser basins. Anadromous steelhead populations ascending the Columbia River east of the Cascade Range and into the Salmon and Clearwater River drainages are also currently classified with redband trout (Behnke 1992).

The interior redband trout of the Kootenai River drainage exhibits two distinct life histories, a resident stream form of generally smaller fish and the larger lake dwelling kamloops form (Huston 1994; Behnke 1986; Behnke 1992). The Kootenai River drainage interior redband trout is on the northeastern periphery of the subspecies' range and is believed to be important as a potential source of diversity and adaptability (Doug

Perkinson, Kootenai National Forest, *in litt.* 1993).

The petitioners state that based on genetic analysis of trout samples from 60 sites in the Kootenai River drainage, researchers have identified five remaining pure strain populations of interior redband trout in Montana. These five stream populations presently occupy approximately 56 kilometers (35 miles) of stream (Doug Perkinson, Kootenai National Forest, *in litt.* 1994). The petitioners assert that these populations have a high likelihood of being the only native populations remaining in Montana. The petitioners also state there are no documented stream populations of interior redband trout in the State of Idaho.

Any species that is in danger of extinction throughout all or a significant portion of its range may be declared an endangered species under the Act (50 CFR 424.02(e)). The term ''species'' is defined in 50 CFR 424.02(k) as ''any species or subspecies * * * and any distinct population segment of any vertebrate species that interbreeds when mature.'' Thus the first deliberation is whether the Kootenai River population of interior redband trout is a recognized subspecies or distinct population that interbreeds.

Following receipt of the petition the Service found additional evidence of native redband trout, both pure populations and the presence of genetic material, in other tributaries in the Kootenai drainage. These data indicate that interior redband trout in the Kootenai drainage may be more widely distributed than previously assumed (Perkinson 1994A). The Idaho Conservation Data Center, *in litt.* 1994, cites populations of interior redband trout in the following drainages in Idaho—Weiser, Payette, Boise, Bruneau, Owyhee, and Wood, and numerous tributaries to the Snake River. The Service examined evidence of additional pure redband trout populations above Kootenai Falls, a presumed isolating barrier for the Kootenai River redband trout (Leary 1994). This evidence indicates nearly pure populations of redband trout outside the subspecies presumed home-range (Perkinson 1994C). The literature also indicates interior rainbow trout genetic material in numerous fish populations upstream from Kootenai Falls in the Kootenai River drainage (Huston 1994, Perkinson 1994A). A Service review of the literature and discussions with regional fisheries biologists reveals an ongoing debate about the definition of interior redband trout. Presently there appears to be general agreement that the interior rainbow trout ''complex'' includes redband trout of the Columbia basin east of the Cascade Range up to barrier falls, and including anadromous steelhead, making the distribution of this subspecies wide and diverse.

The petitioners did not provide supporting data or literature to substantiate the claim that the interior redband trout residing in the Kootenai River drainage of Montana, and possibly Idaho, constitute a separate and distinct vertebrate population segment that is genetically, physically, or is othewise distinct from other redband trout populations, or that these fish are significant to the survival of redband trout populations that occupy hundreds of miles of habitat in the inland northwest. In addition these fish do not constitue a significant portion of the range of the interior redband trout.

The Service concludes that the data contained in the petition, referenced in the petition, and otherwise available to the Service does not present substantial information that the petitioned actions may be warranted. The Service will retain the interior redband trout as a category 2 candidate, and will continue to seek information regarding the status or threats to the subspecies. If additional data becomes available in the future, the Service may reassess the listing priority for this subspecies or the need for listing.

References cited: A complete list of all references cited herein are available upon request from the Boise Field Office (see **ADDRESSES** section).

Author: The primary author of this document is Patricia Klahr, U.S. Fish and Wildlife Service, (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: July 11, 1995.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 95–19550 Filed 8–7–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter VI

[I.D. 073195A]

Coral Reef Resources of Puerto Rico and the U.S. Virgin Islands

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

ACTION: Notice of availability of a fishery management plan; and request for comments.

SUMMARY: NMFS announces that the Caribbean Fishery Management Council has submitted a Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands (FMP) for review by NMFS. Written comments are requested form the public.

DATES: Written comments must be received on or before October 10, 1995.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the FMP, which includes an environmental impact statement and a regulatory impact review, should be sent to the Caribbean Fishery Management Council, 268 Mũnoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577, 809–766–5926.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–570–5305.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a council-prepared fishery management plan be submitted to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon receiving a fishery management plan, immediately publish a notice that it is unavailable for public review and comment.

This FMP proposes to (1) Prohibit the use of chemicals, plants, plant-derived toxins, and explosives to take coral reef resources in the exclusive economic zone (EEZ) around Puerto Rico and the U.S. Virgin Islands; (2) limit allowable harvest in the EEZ to dip nets and slurp guns or by hand; and (3) prohibit the possession or sale of stony corals, gorgonians, and live rock (prohibited species) taken in the EEZ.

The Director, Southeast Region, NMFS, based on a preliminary evaluation of the FMP, has disapproved the proposed adoption of certain state permit systems for harvesters and dealers of coral reef resources and for the taking of prohibited species for scientific, educational, or restoration purposes. His action was based on a determination that the state permit systems for coral reef resources are not yet fully developed and that state regulations authorizing such permits, where they exist, do not satisfy the Administrative Procedure Act, the Magnuson Act, and other applicable laws.

Proposed regulations to implement those measures of the FMP that were not disapproved based on the preliminary evaluation are scheduled for publication within 15 days.

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

Dated: August 3, 1995.

Richard W. Surdi,

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

[FR Doc. 95–19523 Filed 8–3–95:3:49 pm]

BILLING CODE 3510–22–M

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50 CFR Parts 649, 650, and 651

[I.D. 072695B]

New England Fishery Management Council; Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will begin on Thursday, August 10, 1995, at 9:30 a.m. and on Friday, August 11, 1995, at 8:30 a.m.

ADDRESSES: The meeting will be held at the King's Grant Inn, Route 128 and Trask Lane, Danvers, MA 01923; telephone: (508) 774–6800. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01096–1097; telephone: (617) 231–0422.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, (617) 231–0422.

SUPPLEMENTARY INFORMATION:

August 10, 1995

The August 10, 1995, session will begin with a report from the Northeast Fisheries Science Center on the scallop and haddock assessments developed at the 20th Stock Assessment Workshop. During the afternoon session, the Council will discuss the projected timetable for development of Amendment 7 to the Fishery Management Plan for the Northeast Multispecies Fishery (Multispecies FMP), a proposed change (Framework Adjustment 12) in the multispecies regulations relating to harbor porpoise mitigation and the status of work on Amendment 5 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery. There will also be Monkfish Subcommittee reports on gear conflict issues and discussion on progress toward development of a fishery management plan for monkfish.

Abbreviated Rulemaking Action—Northeast Multispecies

The Council will consider initial action to adjust the Multispecies FMP under the framework for abbreviated rulemaking contained in 50 CFR 651.40. The Council will accept comments on the framework adjustment that would reconfigure the midcoast time/area closure to reduce harbor porpoise bycatch in the sink gillnet fishery. The Council is considering a change in area and duration of the closure and the possibility of incorporating the use of acoustic alarms to reduce harbor porpoise mortality. This will be the first Council meeting under the process for framework adjustments. A second discussion will occur at a subsequent meeting, as yet, unspecified. If the Director, Northeast Region NMFS (Regional Director), concurs with the Council's recommendation, he will publish the changes as a proposed or final rule in the **Federal Register**.

August 11, 1995

At 8:30 a.m., the Council will convene to elect officers for 1995–96. Following elections, the Council's State Department member will report on international issues, including Northwest Atlantic Fisheries Organization implementing legislation (Senate bill #267). The Council will then address the contents of a public hearing document on a proposed amendment to the Fishery Management Plan for the American Lobster Fishery, which contains goals for reducing fishing effort, preventing and eliminating overfishing, and rebuilding the lobster stocks. The Council may approve the substance of the public hearing document at this meeting.

The Council will then hear reports from the Chairman, Council Executive Director, Regional Director, Northeast Fisheries Science Center liaison, Mid-Atlantic Fishery Management Council liaison, and representatives from the Coast Guard, the Atlantic States Marine Fisheries Commission, and the State Department. Other items of business may be added to the agenda as necessary.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: August 2, 1995.

Richard W. Surdi,

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

[FR Doc. 95–19552 Filed 8–7–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 152
Tuesday, August 8, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Special Committee to Review the Government in the Sunshine Act

ACTION: Notice of public hearing regarding the Government in the Sunshine Act.

SUMMARY: The ACUS Special Committee to Review the Government in the Sunshine Act will conduct a public hearing to take testimony and statements from agency officials and members of the public concerning the effectiveness of the Government in the Sunshine Act, as it is now implemented by federal boards and commissions. This notice is pursuant to the Federal Advisory Committee Act (Pub. L. 92–463).

DATES: September 12, 1995, 9 a.m.

LOCATION: Washington, DC (venue to be announced).

FOR FURTHER INFORMATION: Jeffrey Lubbers, (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Chair of the Administrative Conference of the US (ACUS) was asked by letter, signed by over one dozen current and former commissioners of multi-member agencies and several private organizations, to review the effectiveness of the Government in the Sunshine Act. The signatories of the letter stated strong support for the Act's underlying goal of enhancing public understanding of agency decisionmaking, but expressed concern as to whether the Act is, in fact, meeting this goal as well as it might. They also suggested that the Act may have a detrimental effect on collegial deliberation among agency members, thereby reducing the overall quality of decisionmaking at multi-member agencies. The Chair established the Special Committee to study issues raised by the letter.

The Committee, in its open meetings, has heard from some agency officials and reviewed articles written for ACUS and others to the effect that public meetings under the Act often lack substantive exchange of ideas and collective deliberation on issues being decided. In addition, the Committee has been informed that the restrictions imposed by the Act make spontaneous collegial discussions difficult or impossible as a general matter, adversely affecting the establishment of agency agendas and promoting inefficient practices within agencies. As a result, the Committee is concerned that the public does not receive the information or access to the governmental decisionmaking process that the Act was intended to provide. The Committee has determined that a public hearing is warranted to address proposed suggestions for changes in the Act (or in agency behavior) that will increase collegial decisionmaking among the members of multi-member agencies, and at the same time improve the public's access to the agency's deliberative process.

Toward that end, the Special Committee hereby provides notice of the public hearing and invites the participation of agency officials and other interested persons. It would be helpful if participants would be prepared to discuss or suggest specific proposals for improving public access to agency decisionmaking processes and the quality of agency decisionmaking in agencies subject to the Sunshine Act.

The following proposals are under preliminary consideration by the Committee and are suggested for the purpose of framing the discussion at the public hearing. It should be noted that the order of the proposals is of no particular significance. It may be appropriate to consider some proposals in combination or partial combination with others, or to consider recommending some or all of them on a pilot basis.

(1) The Act could be amended to cover only meetings of the full board or commission.

(2) The Act could be amended to allow subgroups of the full membership of the board or commission to discuss matters in closed session, provided that these matters would later be the subject of open meetings.

(3) The Act could be amended by (1) expanding the current definition of ''meeting'' to include all get-togethers of a quorum of agency members to discuss any agency business, (i.e., without regard to whether they ''determine'' agency business) while also (2) permitting any such meeting to be held in closed session if minutes of the meeting were released to the public shortly after the meeting. (However, decisions by the members of an agency would either have to be voted on in public meetings or pursuant to seriatim or notation voting.)

(4) The Act could be amended to allow the closing of additional categories of meetings without notice (or with shorter notice), provided that minutes or transcripts of closed meetings are released soon thereafter.

(5) The Act could be amended to include additional exemptions, such as for agency consideration of legislative and/or budgetary matters—or where the agency certifies that such matters involve especially sensitive issues.

(6) The Act could be amended so that the open meeting requirements do not apply to discussions of agency actions that will be later embodied in a published opinion and order or similar form of agency determination in which the agency members set forth their individual votes and the rationale and basis for their determination (collectively and/or individually to the extent that individual views may differ from the collective determination).

(7) The Act could be amended to remove from coverage any discussion of a proposed rulemaking proceeding so long as the discussion occurs before the publication of a notice of proposed rulemaking [with or without release of minutes or summaries soon thereafter].

(8) The Act could be amended to allow closed meetings (if no votes are taken) on pending rulemaking proceedings, so long as the discussions occur during the comment period, or only up to some specified time before the proposed rule is subject to a vote [with or without release of minutes or summaries soon thereafter].

(9) The Act could be amended to require that any votes taken through notation voting, that would otherwise be required to be taken at an open meeting, be subject to discussion, upon the request of an agency member, in a subsequent open meeting.

(10) Agencies could be encouraged to develop regulations (or policies) that maximize the amount of information

provided before, during and after agency meetings. Meeting notices could be published further in advance of the meetings where feasible; such notices could provide more complete summaries of upcoming agenda items; relevant non-privileged documents could be provided before or during meetings; closed circuit television coverage of meetings could be provided; and minutes, summaries, and decisional opinions could be provided as soon as feasible after meetings.

The above list of possible recommendations is only tentative and your creative ideas are encouraged.

If you are interested in participating in this public hearing, please send your written request to Jeffrey Lubbers, ACUS, 2120 L Street NW., Suite 500, Washington, DC 20037. You should indicate why you are interested, what organization, if any, you represent, and give a very brief summary of the points to be covered in your testimony. Please also indicate whether you have any special needs. Requests should be submitted by August 25, 1995.

ACUS reserves the right to limit participation to a feasible number of participants, to group participants on panels, to ask participants with similar views to select a group representative, and to limit the time for participation. Generally, participants should expect to limit their prepared remarks to no more than 10 minutes. Shortly after August 25, ACUS will notify requesters of the proposed hearing schedule and of the list of participants.

Written submission from participants and others are welcomed. Unless it is a financial hardship, participants should provide 20 copies of such submissions to Jeffrey Lubbers at the above address by September 5, 1995. Others wishing to provide written comments should provide a single copy to Mr. Lubbers by September 12. Attendance at the public hearing is open to the public.

Dated: August 2, 1995.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 95–19478 Filed 8–7–95; 8:45 am]

BILLING CODE 6110–01–W

Special Committee to Review the Government in the Sunshine Act

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Special Committee to Review the Government in the Sunshine Act, of the Administrative Conference of the United States.

DATES: Wednesday, September 20, 1995, 2:00 PM.

LOCATION: Office of the Chairman, Administrative Conference, 2120 L Street, NW., Suite 500 (Library, 5th Floor), Washington, DC.

FOR FURTHER INFORMATION: Jeffrey S. Lubbers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Special Committee to Review the Government in the Sunshine Act will meet to consider the results of the public hearing to be held on September 12, 1995.

Attendance at the meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The chairman of the committee, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: August 2, 1995.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 95–19477 Filed 8–7–95; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–95–009]

Sheep Promotion, Research, and Information: Certification of Organizations for Eligibility to Make Nominations to the Proposed National Sheep Promotion, Research, and Information Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is accepting applications from State sheep producer organizations, national sheep feeder organizations, as well as organizations representing importers of sheep or sheep products who desire to be certified as eligible to nominate sheep producers, sheep feeders, or importers of sheep or sheep products for appointment to the proposed National Sheep Promotion, Research, and Information Board (Board). Importer organizations representing importers of only raw wool are not eligible for certification. To nominate a sheep producer or alternate producer member, a sheep feeder or importer member to the Board, organizations must first be certified by the Secretary of Agriculture (Secretary). Each eligible organization must submit an official application form to AMS. Notice is also given that upcoming appointments are anticipated and that during a period to be established, nominations will be accepted from eligible organizations.

DATES: Applications for certification must be received by close of business September 7, 1995.

ADDRESSES: Certification forms as well as copies of the certification procedures may be requested from Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; AMS, USDA; Room 2606–S; P.O. Box 96456; Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp on 202/720–1115.

SUPPLEMENTARY INFORMATION: The Sheep Promotion, Research, and Information Act of 1994 (Act), (7 U.S.C. 7101 *et seq.*), approved October 22, 1994, authorizes the establishment of a sheep and wool promotion, research, education, and information program. The Act provides for the establishment of a Board. The 120-member Board will consist of 85 sheep producers, 10 sheep feeders, and 25 importers of sheep and sheep products appointed by the Secretary. The duties and responsibilities of the Board are provided for under the Act.

The Secretary shall certify any State sheep producer, national sheep feeder, or importer organization that meets the eligibility criteria established under the Act. Those organizations that meet the eligibility criteria specified under the Act will be certified as eligible to nominate members for appointment to the Board to ensure that nominees represent the interests of sheep producers, feeders, and importers.

The Act provides that the members of the Board shall serve for terms of 3 years, except that appointments to the initially established Board shall be proportionately for 1-, 2-, and 3-year terms. No person may serve more than two consecutive 3 year terms, except that an elected officer of the Board shall not be subject to term limits while they hold office. USDA will announce when nominations will be due from eligible

organizations and when any subsequent nominations are due when a vacancy does or will exist. The Board positions to be filled are as follows:

State or unit vacancies	Number of representatives
Alabama	1
Alaska	1
Arizona	1
Arkansas	1
California	5
Colorado	4
Connecticut	1
Delaware	1
Florida	1
Georgia	1
Hawaii	1
Idaho	2
Illinois	1
Indiana	1
Iowa	2
Kansas	1
Kentucky	1
Louisiana	1
Maine	1
Maryland	1
Massachusetts	1
Michigan	1
Minnesota	2
Mississippi	1
Missouri	1
Montana	5
Nebraska	1
Nevada	1
New Hampshire	1
New Jersey	1
New Mexico	2
New York	1
North Carolina	1
North Dakota	2
Ohio	1
Oklahoma	1
Oregon	2
Pennsylvania	1
Rhode Island	1
South Carolina	1
South Dakota	4
Tennessee	1
Texas	10
Utah	3
Vermont	1
Virginia	1
Washington	1
West Virginia	1
Wisconsin	1
Wyoming	5
Feeders	10
Importers	25

In addition, each State with only one producer Board member is authorized to have an alternate producer member so that the State may have representation at Board meetings when the producer member cannot attend.

Any eligible State sheep producer, national feeder, or importer organization that is interested in being certified to nominate producers, feeders, or importers for appointment to the Board, must complete and submit an official ''Application for Certification of Organization,'' form which must be received by close of business September 7, 1995.

Only those organizations that meet the criteria for certification of eligibility specified under section 5(c)(1)(B) and section 5(c)(3) (B) and (C) under the Act are eligible for certification. Those criteria are:

(a) Feeder and Importer Organizations. Requirements for certification.

(1) The active membership of the organization includes a significant number of feeders or importers in relation to the total membership of the organization;

(2) There is evidence of stability and permanency of the organization; and

(3) The organization has a primary and overriding interest in representing the feeder or importer segment of the sheep industry.

(b) For State sheep producer organizations:

(1) The geographic territory covered by the active membership of the organization;

(2) The nature and size of the active membership of the organization, including the proportion of the total number of active producers represented by the organization;

(3) Evidence of stability and permanency of the organization;

(4) Sources from which the operating funds of the organization are derived;

(5) The functions of the organization; and

(6) The ability and willingness of the organization to further the aims and objectives of the Act.

A primary consideration in determining the eligibility of a State producer organization shall be whether;

(1) The membership of the organization consists primarily of producers who own a substantial quantity of sheep; and

(2) An interest of the organization is in the production of sheep.

All certified organizations will be notified simultaneously in writing of the beginning and ending dates of the established nomination period and will be provided with required forms.

The names of qualified nominees received by the established due date will be submitted to the Secretary for consideration as appointees to the Board.

The information collection requirements referenced in this notice have been submitted to by the Office of Management and Budget (OMB) for approval under the provisions of 44 U.S.C., chapter 35 and have been assigned OMB No. 0581–0093.

Authority: 7 U.S.C. 7101 *et seq.*

Dated: August 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–19462 Filed 8–7–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080195A]

North Pacific Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Bering Sea/Aleutian Islands Crab Plan Team will meet by teleconference.

DATES: The teleconference will be held on August 30, 1995, beginning at 9:00 a.m. (Alaska Standard Time).

ADDRESSES: Listening stations for the public will be made available in Seattle, Juneau and Anchorage, AK. Please contact the Council office for more information.

Council address: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Chris Oliver, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and approve the crab Annual Area Management Report (also called the SAFE) and other developments with regard to crab management.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: August 1, 1995.

Richard W. Surdi,

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

[FR Doc. 95–19443 Filed 8–7–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 072895C]

Endangered Species; Permits

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

ACTION: Issuance of modification 1 to permit 844 (P503I), an amendment of permit 908 (P503K), and a denial of modification 1 to permit 908 (P503K).

SUMMARY: Notice is hereby given that NMFS has issued a modification and an amendment to permits authorizing takes of listed species incidental to sport-fishing and fish-stocking activities, subject to certain conditions set forth therein, to the Idaho Department of Fish and Game (IDFG) and has denied a permit modification request from IDFG.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, F/NWO3, NMFS, 525 NE Oregon Street, Portland, OR 97232–4169 (503–230–5400).

SUPPLEMENTARY INFORMATION: Modification 1 to permit 844 and the amendment of permit 908 were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

On July 14, 1995, modification 1 to permit 844 was issued to IDFG (P503I). Permit 844 authorizes an incidental take of adult and juvenile, listed, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and adult, listed, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with the State of Idaho's sport-fishing activities.

For modification 1, IDFG is authorized for an incidental take of residual, listed, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with a kokanee fishery in Redfish Lake in July 1995 only. The fishery is being allowed as a kokanee control measure. Although kokanee are not part of the Snake River sockeye salmon Evolutionarily Significant Unit, angler retention of Redfish Lake kokanee has not been allowed since 1992 because of the potential incidental harvest of listed residual sockeye, visually indistinguishable from kokanee. Possibly due to the lack of harvest and competition with juvenile sockeye salmon, the Redfish Lake kokanee population is estimated to have approximately doubled since 1991.

A reduction of the kokanee population in Redfish Lake is desirable, because kokanee compete directly with listed sockeye salmon for food and habitat. The abundant kokanee population in Redfish Lake threatens IDFG's effort to re-establish the listed sockeye salmon's productivity in the lake. Re-opening the kokanee fishery was determined to be the most effective and the only feasible way to reduce the kokanee population in 1995. Juvenile, listed, Snake River sockeye salmon produced from IDFG's captive broodstock program are not expected to be taken as a result of the kokanee fishery, because they are too small to be captured by angling. Modification 1 is valid in 1995 only. Permit 844 expires on April 30, 1998.

On July 26, 1995, an amendment of Permit 908 was issued to IDFG (P503K). Permit 908 authorizes an incidental take of listed Snake River salmon associated with IDFG's fish-stocking activities to support recreational fisheries in Idaho.

For the amendment, a condition in the permit was revised to describe the procedure that IDFG must follow when trout-stocking is proposed in a Stanley Basin lake where listed sockeye salmon are being reintroduced. The condition was revised in response to the issuance of modification 6 to permit 795 on June 23, 1995, which authorized releases of juvenile, listed, artificially-propagated, Snake River sockeye salmon (*Oncorhynchus nerka*) into Pettit Lake in Idaho in 1995 approximately 3 weeks after the last rainbow trout have been stocked in the lake. The revised condition also describes the monitoring requirements of any dual fish-stocking scenario of this kind. The amendment is valid for the duration of the permit. Permit 908 expires on December 31, 1998.

Notice was published on March 9, 1995 (60 FR 12913) that an application had been filed by IDFG for modification 1 to permit 908. IDFG requested authorization to stock Redfish Lake with hatchery rainbow trout in 1995 and beyond to provide a recreational fishing opportunity in the lake. With the modification request, IDFG submitted data that support the assertion that hatchery rainbow trout releases in Redfish Lake would not undermine endangered sockeye salmon recovery efforts.

On July 26, 1995, NMFS denied the modification request of permit 908, because, given the importance of Redfish Lake in listed sockeye salmon recovery efforts, and given the existing data gaps regarding interactions between stocked trout and listed sockeye salmon (i.e. predation and competition), the potential risk of planting catchable trout in Redfish Lake is too great.

Issuance of these permit actions, as required by the ESA, was based on the finding that such actions: (1) Were applied for in good faith, (2) will not operate to the disadvantage of the listed species that are the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing listed species permits.

Dated: July 28, 1995.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–19554 Filed 8–7–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 073195F]

Marine Mammals

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

ACTION: Issuance of Permit No. 841 (P129J).

SUMMARY: Notice is hereby given that a request for modification of Permit No. 841 submitted by Bruce R. Mate, Oregon State University, Newport, OR 97365–5296 has been granted.

ADDRESSES: Documents submitted in connection with this permit are available for review in the following offices:

Permits Division, Office of Protected Resources, NMFS, NOAA, 1315 East-West Hwy., Silver Spring, MD 20910 (301/713–2289);

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE BIN C15700, Seattle, WA 98115 (206/526–6150);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4015); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (907/586–7221).

SUPPLEMENTARY INFORMATION: On June 21, 1995, notice was published in the **Federal Register** (60 FR 32304) that a modification of Permit No. 841 issued on June 24, 1993, had been requested by the above-named individual. The modification has been granted under authority of the Marine Mammal

Protection Act of 1972 (MMPA) (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 *et seq.*), and the regulations governing endangered fish and wildlife (50 CFR part 217–222).

The Permit authorized the harassment of up to 200 each of blue whales (*Balaenoptera musculus*), fin whales (*B. physalus*), humpback whales (*Megaptera novaeangliae*), and gray whales (*Eschrichtius robustus*) of which 50 would be tagged with an Argos satellite-monitored radio transmitter and biopsy sampled over a 5-year period. No more than 15 whales of each species will be tagged in a single year.

The modification authorized up to 55 blue whales to be tagged over a 5-year period and the restriction to limit the number of whales to be tagged in any one year was removed.

Issuance of this Permit, as required by the ESA of 1973, is based on a finding that the Permit: (1) Was applied for in good faith; (2) does not operate to the disadvantage of the endangered species which is the subject of this Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA of 1973.

Dated: July 31, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–19553 Filed 8–7–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 073195G]

Marine Mammals

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

ACTION: Issuance of modification no. 1 to permit no. 934 (P281C).

SUMMARY: Notice is hereby given that the request for modification submitted by Mr. S. Jonathan Stern, of the Marine Mammal Research Program, Texas A&M University, Galveston, TX, has been granted.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001);

Director, Northwest Region, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150); and,

Director, Alaska Region, P.O. Box 21688, Juneau, AK; 99802–1668 (907/586–7221).

SUPPLEMENTARY INFORMATION: On June 21, 1995, notice was published in the **Federal Register** (60 FR 32304) that a request to modify scientific research permit no. 934 had been received. The modification was issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), and the regulations governing endangered species permits 50 CFR parts 217–222).

The Permit authorized the Holder to photo-identify and biopsy dart minke whales (*Balaenoptera acutorostrata*), blue whales (*B. musculus*), fin whales (B. *physalus*), sei whales (*B. borealis*), humpback whales (*Megaptera novaeangliae*), gray whales (*Eschrictius robustus*), and killer whales (*Orcinus orca*).

The Permit, as modified, authorized additional harassment and biopsy darting of killer whales (*Orcinus orca*) in the inland waters of Washington State for purposes of scientific research.

Dated: July 31, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–19441 Filed 8–7–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 072895F]

Marine Mammals and Endangered Species

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

ACTION: Receipt of application for a scientific research permit (P523A).

SUMMARY: Notice is hereby given that Dr. Adam Frankel, Bioacoustics Research Program, 159 Sapsucker Woods Rd., Ithaca, NY 14850 has applied in due form for a permit to take several species of marine mammals and sea turtles for purposes of scientific research.

DATES: Written comments must be received on or before September 7, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (301/980–4016).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Gary Barone, Permits Division, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–222).

The permit application requests authorization to harass marine mammals and sea turtles by a low frequency sound source which would be located near Kohala, HI, at a depth of 20 m. The proposed research would be conducted over a 5-year period.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 31, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–19442 Filed 8–7–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the

following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Part 215, Contracting by Negotiation, and Related Clauses at 252.215–7001 and 252.215–7002; OMB Control Number 0704–0232.

Type of Request: Extension.

Number of Respondents: 199,440.

Responses Per Respondent: 1.

Annual Responses: 199,515.

Average Burden Per Response: 5 hours.

Annual Burden Hours: 910,500.

Needs and Uses: This requirement provides for the collection of information necessary for the negotiation of contracts, and to perform cost estimating system surveys.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 3, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19534 Filed 8–7–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Forms, and OMB Control Number: DoD FAR Supplement, Part 242, Contract Administration, and Related Clauses at 252.242–7003 and 252.242–7004; DD Forms 375, 375C, and 1659; OMB Control Number 0704–0250.

Type of Request: Extension.

Number of Respondents: 154,550.

Responses per Respondent: 1.

Annual Responses: 199,500.

Average Burden per Response: 3 hours.

Annual Burden Hours (Including Recordkeeping): 676,500.

Needs and Uses: This requirement provides for the collection of information necessary in the support of the administration of contracts. It is used by contract administration personnel to determine contractor progress and to identify factors that may delay performance, to provide Government bills of lading to contractors, to determine the reasonableness of insurance and pension costs in Government contracts, and to determine the standard of contractors' material management and accounting systems.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 3, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19535 Filed 8–7–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and OMB Control Number: Department of Defense Application for Priority Rating for Production or Construction Equipment; DD Form 691; OMB Control Number 0704–0055.

Type of Request: Expedited Processing—Approval date requested: Thirty days following publication in the **Federal Register**.

Number of Respondents: 655.

Responses Per Respondent: 1.

Annual Responses: 655.

Average Burden Per Response: 1 hour.

Annual Burden Hours: 655.

Needs and Uses: Executive Order 12919 delegates to DoD the authority to require certain contracts and orders relating to approved Defense program to be accepted and performed on a preferential basis. This program assists contractors in more expeditiously acquiring industrial equipment, thereby providing vital weapons systems to the Government with a shorter time frame.

Submission of DD Form 691 provides contractors the means to apply for the necessary rating.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 3, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19536 Filed 8–7–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Part 251, Use of Government Sources by Contractors, and Related Clauses at 252.251–7000 and 252.251–7001; OMB Control Number 0704–0252.

Type of Request: Reinstatement, without change.

Number of Respondents: 3,500.

Responses Per Respondent: 3.

Annual Responses: 10,500.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 5,250.

Needs and Uses: This requirement provides for the collection of necessary information from contractors relating to contractor authorization to order under Federal Supply Schedules, and contractor requests for use of Government vehicles. It is used by contracting officers to verify that contractors are authorized to place such orders and to use such vehicles.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 3, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19537 Filed 8–7–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Forms, and OMB Control Number: DoD FAR Supplement, Part 235, Research and Development Contracting, and Related Clauses in Part 252; DD Forms 2222, and 2222–2; OMB Control Number 0704–0262.

Type of Request: Extension.

Number of Respondents: 751.

Responses Per Respondent: 1.

Annual Responses: 751.

Average Burden Per Response: 1 hour 56 minutes.

Annual Burden Hours: 1,451.

Needs and Uses: This requirement provides for the collection of necessary information relating to Research and Development (R&D) contracting, to include short form R&D contracting. It is used by the contracting officer to determine the amount of indemnification under fixed-price and cost-type R&D contracts, to keep track of radio frequency authorizations required under R&D contracts when electronic equipment is being used, and to identify property exceeding $1,000 dollars acquired under R&D contracts, when title does not vest in the contractor.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 3, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19538 Filed 8–7–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Part 237, Service Contracting, and Related Clause at 252.237–7019; OMB Control Number 0704–0331.

Type of Request: Expedited Processing—Approval date requested: Thirty days following publication in the **Federal Register**.

Number of Respondents: 15,925.

Responses Per Respondent: 1.

Annual Responses: 15,925.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 7,963

Needs and Uses: This requirement provides for the collection of necessary information from offerors pertaining to uncompensated overtime. Offerors submitting proposals in response to solicitations of $100,000 or higher, for services being acquired on the basis of the number of hours to be provided, must identify uncompensated overtime hours, as well as the uncompensated overtime rate for direct charge Fair Labor Standards Act—exempt personnel included in their proposals, and in subcontractor proposals. The information collected hereby, will be utilized by the Government to ascertain cost realism of proposed labor rates for professional employees.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 3, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19539 Filed 8–7–95; 8:45 am]

BILLING CODE 5000–04–P

Office of the Secretary

Privacy Act of 1974; Notice to Amend a Record System

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Notice to amend a record system.

SUMMARY: Due to the administrative transfer of the Defense Prisoner of War/Missing in Action Office from the Defense Intelligence Agency to the Office of the Secretary of Defense, the system of records notice LDIA 1728, entitled Southeast Asia Operational Casualty Records will become the

responsibility of the Under Secretary of Defense for Policy.

The Office of the Secretary of Defense proposes to amend its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, by adding this transferred system of records notice. The transferred system notice is being amended to reflect the change of responsibility and address. The system identifier will be DUSDP 11, Southeast Asia Operational Casualty Records.

DATES: The amendment will be effective on September 7, 1995, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Chief, Records Management and Privacy Act Branch, Washington Headquarter Services, Correspondence and Directives, Directives and Records Division, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

Due to the administrative transfer of the Defense Prisoner of War/Missing in Action Office from the Defense Intelligence Agency to the Office of the Secretary of Defense, the system of records notice LDIA 1728, entitled Southeast Asia Operational Casualty Records will become the responsibility of the Under Secretary of Defense for Policy.

The Office of the Secretary of Defense proposes to amend its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, by adding this transferred system of records notice. The transferred system notice is being amended to reflect the change of responsibility and address. The system identifier will be DUSDP 11, Southeast Asia Operational Casualty Records.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notice, as amended, published in its entirety.

Dated: July 31, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

LDIA 1728

SYSTEM NAME:

Southeast Asia Operational Casualty Records *(February 22, 1993, 58 FR 10630).*

CHANGES

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with 'DUSDP 11'.

SYSTEM LOCATION:

Delete entry and replace with 'Defense Prisoner of War/Missing in Action Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals having knowledge of persons identified as casualties during the period of United States military involvement in Vietnam and Southeast Asia. These include, but are not limited to, returnees, confidential sources, representatives of concerned organizations, resident aliens, and foreign sources.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Records included in the system are operational and information reports, biographic records, personal statements and correspondence, returnee debriefings, interviews and media reports, and other relevant materials.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 135, 'Assistant Secretaries of Defense', and E.O. 9397.'

PURPOSE:

Following 'detailed' delete remainder of the paragraph and replace with 'and comprehensive body of information concerning Southeast Asian casualties. Data is used to produce studies and analytical reports furnished as background material to offices and agencies that enunciate and promulgate National policy with respect to casualties in past wars in which the United States has become involved.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDINGCATEGORIES OF USERS AND THE PURPOSES OF EACH SUCH USE:

Following 'beginning of the' substitute 'OSD's' for 'DIA's'.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with 'Paper files in folders maintained in filing cabinets and automated files on magnetic media.'

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by any or a combination of individual's name, Social Security Number, or source reference number (in the case of a classified source).'

SAFEGUARDS:

Delete 'restricted access building protected by security guards' and replace with 'controlled access office'.

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records in this system will be retained for one year after the President and/or the Secretary of Defense announces that the accounting for the missing in Southeast Asia has been satisfactorily completed and the POW/MIA issue is resolved. Following classification review, case files will be retired to the National Archives.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Defense Prisoner of War/Missing in Action Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.'

NOTIFICATION PROCEDURE:

Delete 'Freedom of Information Office' and remainder of paragraph and replace with 'Defense Prisoner of War/Missing in Action Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.'

Replace second paragraph with 'Individual should provide full name, Social Security Number, and date of birth.'

RECORD ACCESS PROCEDURES:

Delete 'Freedom of Information Office' and remainder of paragraph and replace with 'Defense Prisoner of War/Missing in Action Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.'

Replace second paragraph with 'Requesting individual must submit full

name, Social Security Number, date of birth, branch of military service, if applicable, as well as the requester's current address, and telephone number.'

CONTESTING RECORD PROCEDURES:

Replace with 'The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction No. 81; 32 CFR part 311; or may be obtained from the system manager.'

RECORD SOURCE CATEGORIES:

Replace with 'Sources for the information are the DoD and other Federal agencies, interviews and debriefings of returnees, confidential sources and other individuals; representatives of concerned organizations; resident aliens; foreign sources; and open publications.'

* * * * *

DUSDP 11

SYSTEM NAME:

Southeast Asia Operational Casualty Records.

SYSTEM LOCATION:

Defense Prisoner of War/Missing in Action Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals having knowledge of persons identified as casualties during the period of United States military involvement in Vietnam and Southeast Asia. These include, but are not limited to, returnees, confidential sources, representatives of concerned organizations, resident aliens, and foreign sources.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records included in the system are operational and information reports, biographic records, personal statements and correspondence, returnee debriefings, interviews and media reports, and other relevant materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 135, Assistant Secretaries of Defense and E.O. 9397.

PURPOSE(S):

Information is collected to develop a detailed and comprehensive body of information concerning Southeast Asian casualties. Data is used to produce studies and analytical reports furnished as background material to offices and agencies that enunciate and promulgate National policy with respect to casualties in past wars in which the United States has become involved.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files in folders maintained in filing cabinets and automated files on magnetic media.

RETRIEVABILITY:

Retrieved by any or a combination of: individual's name, Social Security Number, or source reference number (in the case of a classified source).

SAFEGUARDS:

Records are maintained in a controlled access office and are stored in a secured vaulted work area. Records are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

RETENTION AND DISPOSAL:

Records in this system will be retained for one year after the President and/or the Secretary of Defense announces that the accounting for the missing in Southeast Asia has been satisfactorily completed and the POW/MIA issue is resolved. Following classification review, case files will be retired to the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Prisoner of War/Missing in Action Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Prisoner of War/Missing in Action Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.

Individual should provide full name, Social Security Number, and date of birth.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Defense Prisoner of War/Missing in Action Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.

Requesting individual must submit full name, Social Security Number, date of birth, branch of military service, if applicable, as well as the requester's current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction No. 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Sources for the information are the DoD and other Federal agencies, interviews and debriefings of returnees, confidential sources and other individuals; representatives of concerned organizations; resident aliens; foreign sources; and open publications.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–19548 Filed 8–7–95; 8:45 am]

BILLING CODE 5000–04–F

Department of the Air Force

Privacy Act of 1974; Amend and Delete Systems of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Amend and delete systems of records.

SUMMARY: The Department of the Air Force proposes to delete one and amend five systems of records notices in its inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deletion is effective August 8, 1995. The amendments will be effective on September 7, 1995 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Assistant Air Force Access Programs Officer, SAF/AAIQ, 1610 Air Force Pentagon, Washington, DC 20330–1610.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Gibson at (703) 697–3491 or DSN 227–3491.

SUPPLEMENTARY INFORMATION: The complete inventory of Department of the

Air Force system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report. The specific changes to the systems of records notices are set forth below followed by the systems notices, as amended, published in their entirety.

Dated: July 27, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION
F075 AA A

SYSTEM NAME:

Secretary of the Air Force Travel Files *(February 22, 1993, 58 FR 10417).*

Reason: System is no longer needed. There are no plans to reinstate this system in the future. Records maintained in this system have been destroyed.

AMENDMENTS
F030 AF LE A

SYSTEM NAME:

Equal Opportunity in Off-Base Housing *(February 22, 1993, 58 FR 10298).*

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete last sentence.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director of Housing, Office of The Civil Engineer, Headquarters United States Air Force, 1260 Air Force Pentagon, Washington DC 20330–1260.'

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EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with 'None.'

* * * * *

F030 AF LE A

SYSTEM NAME:

Equal Opportunity in Off-Base Housing.

SYSTEM LOCATION:

Each base level Housing Referral Office; Major Command (MAJCOM)/ Assistant for Family Housing Management. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military member, Department of Defense (DOD) civilian employee, and adult dependent acting for military member submitting a housing discrimination complaint.

CATEGORIES OF RECORDS IN THE SYSTEM:

Consists of Complaint in Discrimination of off base housing and supporting documents submitted to the base level housing referral office alleging a housing discrimination complaint, case files, reports of investigation, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; 42 U.S.C. 1982, Property rights of citizens; and 10 U.S.C. 133, Secretary of Defense: Appointment; powers and duties; delegation by.

PURPOSE(S):

Information copies held at base, MAJCOM, and Headquarters United States Air Force (HQ USAF) as a historical record of all actions taken in response to each housing discrimination complaint. Information used by Air Force officials, at all levels, to respond to Congressional, HUD, Department of Justice (DOJ), or related inquiries pertaining to the housing discrimination complaint.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/ cabinets.

RETRIEVABILITY:

By installation and name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Housing, Office of the Civil Engineer, Headquarters United States Air Force, 1260 Air Force Pentagon, Washington, DC 20330–1260.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Director of Housing, Office of the Civil Engineer, Headquarters United States Air Force, 1260 Air Force Pentagon, Washington, DC 20330–1260.

Individuals may contact agency officials at the respective base level housing referral office in order to exercise their rights under the Act.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Director of Housing, Office of the Civil Engineer, Headquarters United States Air Force, 1260 Air Force Pentagon, Washington, DC 20330–1260.

Individuals may contact agency officials at the respective base level housing referral office in order to exercise their rights under the Act.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual's voluntary application, witnesses of alleged incident, and other sources pertinent to alleged incident.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 AF MP H

SYSTEM NAME:

Air Force Enlistment/Commissioning Records System *(May 25, 1993, 58 FR 30030).*

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with 'Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703; Headquarters United States Air Force Recruiting Service, 550 D Street W, Randolph Air Force Base, TX 78150–4527; recruiting offices; Military Entrance Processing Stations, and Liaison Noncommissioned Officer offices in all states. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 31, Enlistments, implemented by Air Force Instruction 36–2002, Regular Air Force and Special Category Accessions; 10 U.S.C. 34, Appointment as reserve officers; 10 U.S.C. 103, Senior reserve officer's training corps; 10 U.S.C. 8358, Commissioned officers; original appointment; service credit, and 10 U.S.C. 904, Schools and camps, as implemented by Air Force Instruction 36–2005, Appointment in Commissioned Grades and designation and Assignment in Professional Categories -- Reserve of the Air Force and United States Air Force (temporary); Air Force Instruction 36–2013, Officer Training School (OTS) and Airman Commissioning Program, and E.O. 9397.'

PURPOSE(S):

Add 'or commissioning' to end of third sentence.

* * * * *

RETENTION AND DISPOSAL:

Delete first sentence and replace with 'Commissioning records at Headquarters Air Force Military Personnel Center and Headquarters United States Air Force Recruiting Service (USAFRS/RS) are maintained for one year.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Headquarters Air Force Military Personnel Center; 550 C Street W, Randolph Air Force Base, TX 78150–4703; and Commander, Headquarters United States Air Force Recruiting Service, 550 D Street W, Randolph Air Force Base, TX 78150–4527.

* * * * *

F035 AF MP H

SYSTEM NAME:

Air Force Enlistment/Commissioning Records System.

SYSTEM LOCATION:

Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703; Headquarters United States Air Force Recruiting Service, 550 D Street W, Randolph Air Force Base, TX 78150–4527; recruiting offices; Military Entrance Processing Stations, and Liaison Noncommissioned Officer offices in all states. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for enlistment or commissioning programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application, personal interview record (PIR) and supporting documents containing name, Social Security Number, finger prints, historical background, education, medical history, physical status, employment, religious preferences (optional), marital and dependency status, linguistic abilities, aptitude test results, parental consent for minors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 31, Enlistments, implemented by Air Force Instruction 36–2002, Regular Air Force and Special Category Accessions; 10 U.S.C. 34, Appointment as reserve officers; 10 U.S.C. 103, Senior reserve officer's training corps; 10 U.S.C. 8358, Commissioned officers; original appointment; service credit, and 10 U.S.C. 904, Schools and camps, as implemented by Air Force Instruction 36–2005, Appointment in Commissioned Grades and designation and Assignment in Professional Categories -- Reserve of the Air Force and United States Air Force (temporary); Air Force Instruction 36–2013, Officer Training School (OTS) and Airman Commissioning Program, and E.O. 9397.

PURPOSE(S):

Information is collected by recruiters to determine enlistment/commissioning eligibility, and process qualified applicants. Personnel managers use a hard copy documentation of data entered in Personnel Data Systems (PDS). Personnel managers also use certain documents to determine classification and assignment actions after enlistment or commissioning. All documents are source documents in determining benefits/entitlement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Commissioning records at Headquarters United States Air Force Recruiting Service (USAFRS/RS) are maintained for one year. Files of applicants not enlisted are retained in the local recruiting office and destroyed after two years. Records of commissioned officers and enlistees that are not forwarded to Master and Unit Personnel Records files are destroyed after two years. Records are destroyed by tearing into pieces, burning, shredding, macerating or pulping.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Force Military Personnel Center; 550 C Street W, Randolph Air Force Base, TX 78150–4703; and Commander, Headquarters United States Air Force Recruiting Service, 550 D Street W, Randolph Air Force Base, TX 78150–4527

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the system manager or contact recruiting officials at respective recruiting office location. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the system manager or contact recruiting officials at respective recruiting office location. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual provides through written application or personal interview.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F205 AFSCO A

SYSTEM NAME:

Special Security Case Files *(February 22, 1993, 58 FR 10505).*

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with 'Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330. Decentralized segments at the Washington National Records Center, Washington, DC 20409.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330.'

* * * * *

F205 AFSCO A

SYSTEM NAME:

Special Security Case Files.

SYSTEM LOCATION:

Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330. Decentralized segments at the Washington National Records Center, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force civilian employees and applicants, and Air Force military members and prospective members, including Air Force Reserve and Air National Guard, Air Force contractor employees requiring unescorted access, Air Force Academy and ROTC Cadets and applicants, overseas educators involved in the education and orientation of military personnel, Nonappropriated Fund Instrumentality personnel and applicants for sensitive positions, personnel requiring DOD building passes, whose personnel security investigations contain significant unfavorable information, whose cases were previously processed or adjudicated under the Air Force Military or Civilian Security Programs, or who are the subject of Special Security Files initiated by commanders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files may include (1) requests for clearance, investigation, or waiver of investigative requirements, (2) determinations of eligibility for assignment to sensitive or nonsensitive positions, (3) medical records checks and evaluations, (4) personnel records information, (5) personnel security questionnaires, (6) correspondence between the Air Force Security Clearance individual, the individual, office of assignment, commanders, medical facilities and installations, personnel offices, investigative agencies, Air Staff offices, or offices of the Secretary of the Air Force, (7) clearance records, and (8) summaries, evaluations, recommendations and records of adjudication.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7531, Definitions; 7532, Suspension and removal; 7533, Effect on other statutes; 10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; E.O. 10450, Security requirements for government employment; implemented by Department of Defense Regulation 5200–2R, DOD Personnel Security Program.

PURPOSE(S):

Files are established to evaluate the security acceptability of Air Force military and civilian and contractor personnel, applicants, enlistees and nominees for appointment, assignment or retention in sensitive positions with access to classified defense information or to restricted areas and locations in the interest of national security.

Files are used to record clearance adjudicative actions, eligibility determinations and investigative data.

Investigative case file information may be reviewed by Air Force installation commanders, supervisors, personnel officers, medical, security, and investigative personnel, personnel of Air Staff offices and offices of the Secretary of the Air Force.

Case files and cards are also used to answer inquiries from other Air Force offices and agencies, and from investigative, security and personnel representatives of other Federal agencies concerning the clearance status of individuals.

Case records are maintained to prepare statistical accounting and to measure the effectiveness of the adjudicative programs and procedures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and microfiche maintained in file folders, card files, visible file binders/cabinets and notebooks/binders.

RETRIEVABILITY:

Retrieved alphabetically by name.

SAFEGUARDS:

Records are stored in vaults, safes and security file containers/cabinets. All records are stored, processed, transmitted and protected as the equivalent of classified information. Records are accessed by the custodian of the records system, by persons responsible for servicing the system in the performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know.

RETENTION AND DISPOSAL:

Case files which result in a final, favorable adjudicative determination are retained in the office files for one year after annual cut-off then are destroyed by tearing into pieces, shredding, pulping, or burning. Case files resulting in an adverse adjudicative determination are retained in office files for two years after annual cut-off, then are retired to the Washington National Records Center, Washington, DC 20409.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Detachment 1, 11 Security Police Squadron, 1330 Air

Force Pentagon, Washington DC 20330–1330.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit Commander, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington DC 20330–1330.

Individual should provide full name, including any former names, grade, date of birth and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Commander, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington DC 20330–1330.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from investigative reports from federal investigative agencies, personnel and medical records, board reports, correspondence from offices and organizations of assignment, and from commanders, supervisors, witnesses and individuals, from security, and investigative personnel and from Air Staff offices, offices of the Secretary of the Air Force.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt from section 552a(k)(5). For additional information, contact the system manager.

F205 AFSCO B

SYSTEM NAME:

Presidential Support Files *(February 22, 1993, 58 FR 10506).*

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with 'Primary location: Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330.

Decentralized locations: Security police offices for units having a Presidential Support mission and those units from which personnel are nominated or assigned to Presidential support duties. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330.'

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F205 AFSCO B

SYSTEM NAME:

Presidential Support Files.

SYSTEM LOCATION:

Primary location: Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330.

Decentralized locations: Security police offices for units having a Presidential Support mission and those units from which personnel are nominated or assigned to Presidential support duties. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those Air Force military and civilian personnel who are nominated or assigned to authorized, designated positions involving Presidential Support duties on either a full or part-time basis.

CATEGORIES OF RECORDS IN THE SYSTEM:

Nomination Files include reports of investigation by the Defense Investigative Service and by other Federal investigative agencies; correspondence between the Air Force Security Clearance Office and units, installations, contractors and major commands, investigative agencies, security offices, Air Staff offices and offices of the Secretary of the Air Force, the office of the Military Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense, the Office of the Director, White House Military Office, medical evaluations, statements by nominees, summaries and evaluations of investigative information. Assignment Record Files include letters of notification of selection and quarterly rosters of all assigned personnel listed alphabetically by organization.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; implementing Department of Defense Directive 5210.55, Selection of DOD Military and Civilian Personnel and Contractor Employees for Assignment duties; and Department of Defense Regulation 5200–2R, DOD Personnel Security Program.

PURPOSE(S):

Nomination files are temporary files used to evaluate the background, character, suitability and qualifications of nominees being considered for selection to positions requiring regular or frequent contact with the President or access to Presidential facilities or modes of transportation.

Files are reviewed and evaluated by staff members at each level in the selection process, by medical facility staff members, by the Air Force Security Clearance Office, and other appropriate Air Staff office, by the Office of the Administrative Assistant to the Secretary of the Air Force, and by the Office of the Military Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense.

Files are reviewed by the Office of the Director, White House Military Office and contractor personnel files may be reviewed by the contractor and by the U.S. Secret Service.

Assignment Record Files are originated from data in the Nomination Files to locate, identify, control, manage, and administer individuals selected for assignment to Presidential Support duties, to initiate assignment actions after final selection, to notify medical facilities, and to prepare the quarterly listing of individuals assigned to the program for submission to the Office of the Military Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense, to major command and units and Security Police offices having a Presidential support mission, and submission to the Office of the Director, White House Military Office and to contractors. Presidential Support mission. Assignment Record Files at locations other than the Air Force Security Clearance Office are merely duplicate copies of the file copy. File copies are retained at the Air Force Security Clearance Office to permit record access and to record the accountability of disclosures of the Nomination Files.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's

compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders and on computer paper output products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system, by person responsible for servicing the record system in performance of their official duties, and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets, in safes and vaults.

RETENTION AND DISPOSAL:

Upon completion of final favorable determination of selection, Nomination Files are destroyed by tearing into pieces, shredding, pulping, or burning and are replaced by Assignment Record Files. Assignment Record Files for individuals are retained during the period of assignment or for five years, whichever is longer, as the disclosure accountability record, then are destroyed by tearing into pieces, shredding, pulping, or burning except for the file copy which is kept by the system manager for five years for disclosure accounting. Assignment Record Files in quarterly roster listing form are destroyed when superseded by the next quarterly roster by tearing into pieces, shredding, pulping, or burning. Nomination Files for personnel not selected are retained in the office of nonselection or at the Air Force Security Clearance Office for one year after the date of nonselection, at which time they are destroyed by tearing into pieces, shredding, pulping, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Presidential Support Security Specialist, Air Force Security Clearance Office, Washington, DC 20330.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Presidential Support Security Specialist, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington DC 20330–1330.

Request should contain the full name, military or civilian grade, date of birth, position in unit or contracting firm, the date of nomination or nonselection, or the unit or organization to which assigned, location and period of assignment.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Presidential Support Security Specialist, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington DC 20330–1330.

Request should contain the full name, military or civilian grade, date of birth, position in unit or contracting firm, the date of nomination or nonselection, or the unit or organization to which assigned, location and period of assignment.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from the individual, from reports from Federal investigative agencies, military and civilian contractor personnel records, and military medical records, correspondence from military and civilian law enforcement and Security Police offices, major command staff offices, Air Staff offices, offices of the Secretary of the Air Force, the Office of the Military Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense, Office of the Director, White House Military Office and other Federal agencies and office of the Executive and Legislative Branches.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F205 AFSCO C

SYSTEM NAME:

Personnel Security Clearance and Investigation Records *(February 22, 1993, 58 FR 10507).*

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with 'Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330;

Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703;

United States Air Force Academy, 2304 Cadet Drive, Suite 233, USAF Academy CO 80840–5035; and

Air Force Reserve Officer Training Corps (AFROTC), 20 North Pine Street, Maxwell Air Force Base, AL 36112–6110.

Air Force units, personnel offices, Security Police elements at all Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330.'

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F205 AFSCO C

SYSTEM NAME:

Personnel Security Clearance and Investigation Records.

SYSTEM LOCATION:

Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330;

Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703;

United States Air Force Academy, 2304 Cadet Drive, Suite 233, USAF Academy CO 80840–5035; and

Air Force Reserve Officer Training Corps (AFROTC), 20 North Pine Street, Maxwell Air Force Base, AL 36112–6110.

Air Force units, personnel offices, Security Police elements at all Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force military and civilian personnel and applicants including Air Force Reserve and Air National Guard personnel, Air Force Academy and Air Force ROTC Cadets, Air Force contractors requiring unescorted entry or special access, Nonappropriated Fund Instrumentality personnel at Air Force installations and overseas educators at Air Force installations.

CATEGORIES OF RECORDS IN THE SYSTEM:

System includes clearance status and eligibility records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O.s 9838; 10450; and 11652; 10 U.S.C. 8013 Secretary of the Air Force:

Powers and duties; delegation by; as implemented by DOD Regulation 5200–2R, DOD Personnel Security Program.

PURPOSE(S):

Records are used to grant access to classified information or unescorted entry to restricted areas; to record completion of investigative requirements for enlistment, induction, appointment, commissioning, assignment to sensitive positions, duty or training; to grant special access for special programs or projects; to determine investigative requirements needed for assignment; to record status of investigative actions; to record date of separation; to record adjudicative determinations of ineligibility for enlistment, induction, commissioning, retention, appointment, assignment, clearance or access.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on computer and computer output products.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms or in security file containers/cabinets or vaults, and controlled by computer system software and personnel screening.

RETENTION AND DISPOSAL:

Records are retained in computer systems for two years after separation, deleted. A Reserve commitment are retained until commitment is fulfilled, then Computer printouts are temporary records and are destroyed when replaced by more recent listing. Paper records are destroyed by tearing into pieces, shredding, pulping or burning. Computer storage devices are overwritten or erased.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Commander, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330.

Provide full name, including maiden name if applicable, and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Commander, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330.

Provide full name, including maiden name if applicable, and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual, investigative reports, medical facilities, police and law enforcement offices, personnel documents, Air Force Special Security Files and Special Security Case Files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–18819 Filed 8–7–95; 8:45 am]

BILLING CODE 5000–04–F

Defense Intelligence Agency

Privacy Act of 1974; Notice to Delete a Record System

AGENCY: Defense Intelligence Agency, DOD.

ACTION: Notice to delete a record system.

SUMMARY: Due to the administrative transfer of the Defense Prisoner of War/Missing in Action Office from the Defense Intelligence Agency (DIA) to the Office of the Secretary of Defense, DIA is deleting the system of records notice LDIA 1728, entitled Southeast Asia Operational Casualty Records. This notice has been transferred to the Office of the Secretary of Defense inventory of system of records notices under the system identifier DUSDP 11, entitled Southeast Asia Operational Casualty Records.

DATES: The deletion will be effective on September 7, 1995, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Ms. Melissa L. Folz, Privacy Act Officer, ATTN: DA-A, Defense Intelligence Agency, Washington, DC 20340. Telephone (202) 373–4291 or DSN 243–4291.

FOR FURTHER INFORMATION CONTACT: Mr. Robert P. Richardson, PA/FOIA Office, at (202) 373–3916.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

Dated: July 31, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

LDIA 1728

SYSTEM NAME:

Southeast Asia Operational Casualty Records *(February 22, 1993, 58 FR 10630).*

REASON: System was transfered to the Office of the Secretary of Defense. System of records notice DUSDP 11, Southeast Asia Operational Casualty Records.

[FR Doc. 95–19532 Filed 8–7–95; 8:45 am]

BILLING CODE 5000–04–F

Defense Logistics Agency

Privacy Act of 1974; Notice to Amend a Record System

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to amend a record system.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on September 7, 1995, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Defense Logistics Agency, DASC-RP, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Christensen at (703) 617–7583.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report. The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety.

Dated: July 31, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.01 DMDC

SYSTEM NAME:

Defense Outreach Referral System (DORS) *(April 28, 1993, 58 FR 25819).*

CHANGES:

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

After 'former Defense' insert 'and U.S. Coast Guard'. After 'Pub. L. 102–484' insert 'and 103–337,'.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

After 'Pub. L. 102–484' insert 'and 103–337;'.

PURPOSE(S):

After 'civilian Defense' insert 'and U.S. Coast Guard'; after 'downsizing of the Department of Defense' insert 'and the Department of Transportation'; after 'Pub. L. 102–484' insert 'and Pub. L. 103–337,'; after 'for DOD' insert 'and DoT'.

* * * * *

RECORD SOURCE CATEGORIES:

After DOD Components insert 'the U.S. Coast Guard'.

* * * * *

S322.01 DMDC

SYSTEM NAME:

Defense Outreach Referral System (DORS).

SYSTEM LOCATION:

W.R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93940–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Defense and U.S Coast Guard military and civilian personnel and their spouses, who have applied for participation in the job placement program.

Individuals covered under Pub. L. 102–484 and 103–337, who have applied for public employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized records consisting of name, Social Security Number, correspondence address, branch of service, date of birth, separation status, travel availability, U.S. citizenship, occupational interests, geographic location work preferences, pay grade, rank, last unit of assignment, educational levels, dates of military or civilian service, language skills, flying status, security clearances, civilian and military occupation codes, and self reported personal comments for the purpose of providing prospective employers with a centralized system for locating potential employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, 1143, 1144, 2358; Pub. L. 102–484 and 103–337; and E.O. 9397.

PURPOSE(S):

The purpose of this system is to facilitate the transition of military and civilian Defense and U.S. Coast Guard personnel, and their spouses, to private industry and public employment in the event of a downsizing of the Department of Defense and the Department of Transportation.

For former military members covered under Pub. L. 102–484 and Pub. L. 103–337, the information will be used to track the participants public employment and to verify the participant's public employment history for DOD and DoT retirement and pay eligibility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage.

RETRIEVABILITY:

Retrieved by Social Security Number or occupational or geographic preference of the individual.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, guards, administrative procedures (e.g., fire protection regulations).

Access to personal information is restricted to those who require the records in the performance of their official duties, and to the individuals who are the subject of the record or their authorized representative. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

Records are maintained on-line for five years and then are archived as an historical data base.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209–2593.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209–2593.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this record system should address written inquiries to the Director, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209–2593.

Written requests for information should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license, or military or other identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the Privacy Act Officer.

RECORD SOURCE CATEGORIES:

The Military Services, DOD Components, the U.S. Coast Guard, and from the subject individual via application into the program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–19549 Filed 8–7–95; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Granting of NORDYNE's Application for Interim Waiver from the Department of Energy's Central Air Conditioner and Central Air Conditioning Heat Pump Test Procedure and Publication of the Petition for Waiver. (Case No. CAC–007)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to NORDYNE from the existing Department of Energy central air conditioner and central air conditioning heat pump test procedure for the company's Powermiser line of heat pumps with integrated domestic water heating.

Today's notice also publishes a ''Petition for Waiver'' from NORDYNE. The Petition for Waiver requests the Department to modify the heat pump test procedure for the NORDYNE Powermiser line of heat pumps which include special design characteristics to incorporate domestic water heating. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: The Department will accept comments, data, and information not later than September 7, 1995.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. CAC–007, Mail Stop EE–43, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7574.

FOR FURTHER INFORMATION CONTACT:

Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9611

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPACT), Public Law 102–486, 106 Stat. 2776, which requires the Department to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including heat pumps. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. The test procedures for central air conditioners and central air conditioning heat pumps appear at 10 CFR Part 430, Subpart B, Appendix M.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. The Department further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned the Department for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to temporarily waive test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days, or until the Department issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On January 24, 1995, NORDYNE filed a Petition for Waiver and an Application for Interim Waiver regarding the heat pump tests. NORDYNE's Petition seeks a Waiver from the Department's test procedure because, using the test procedure, the company cannot account for the energy savings associated with integrated water heating. NORDYNE has submitted a modified test procedure to be used for rating its Powermiser heat pumps. NORDYNE proposes to calculate, in addition to the standard SEER and HSPF, a Combined Cooling Performance Factor (CCPF) and a Combined Heating Performance Factor (CHPF). These performance factors reflect the energy efficiency of the heat pump when providing both space conditioning and domestic water heating. The heating and cooling mode test procedures are essentially the same as the current Department central air conditioner test procedures found in 10 CFR Part 430, Subpart B, Appendix M. The NORDYNE test procedures for the heating and cooling modes differ from the Department's in their use of a bin analysis for SEER, and the use of seasonal hours rather than fractional hours for HSPF. NORDYNE states in its Petition that the modified test procedure for SEER and HSPF ''yields a nearly identical result and provides a directly comparable base for use in determining

energy savings associated with water heating.'' In addition, NORDYNE submitted tests and a rating procedure to determine the performance of the heat pump when it heats domestic water (whether or not space heating or cooling is also being provided).

NORDYNE also applied for an Interim Waiver, stating:

- The current test procedure does not account for the total energy savings of the Powermiser;
- Carrier Corporation has been granted a similar waiver for its Hydrotech product;
- For public policy reasons, the widespread use of this type of integrated appliance would be in direct support of the President's Climate Change Action Plan, which lists heating and cooling and home appliances as key targets for improvement; and
- Absent a favorable determination on the Application for Interim Waiver, NORDYNE would experience an economic hardship, as discussed in the confidential statement filed simultaneously.

The Department agrees that the current test procedure does not account for the total energy savings of the Powermiser. A previous waiver for this type of equipment was granted by the Department to Carrier Corporation for its HydroTech 2000, 55 FR 13607, April 11, 1990. Thus, it appears likely that the Petition for Waiver will be granted.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon the Department having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Further, NORDYNE has supplied evidence of economic hardship if the Interim Waiver is not granted. NORDYNE's confidential statement claims a substantial investment in the Powermiser for research and development, tooling, production, sales and marketing. The Powermiser investment represents a large fraction of NORDYNE's annual income. Until the Interim Waiver is granted, NORDYNE is not able to realize any return on its investment.

Based on the statements above, the Department is granting an Interim Waiver to NORDYNE for its Powermiser series integrated heat pumps. Pursuant to paragraph (e) of Section 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to NORDYNE was issued.

Pursuant to paragraph (b) of 10 CFR Part 430.27, the Department is hereby publishing the ''Petition for Waiver.'' The Petition contains confidential company information; thus, the confidential attachment submitted by NORDYNE is not being published. Due to its length (39 pages), NORDYNE's proposed alternate test procedure is not being published in the **Federal Register**. It is, however, available upon request at the address provided at the beginning of today's notice. NORDYNE has sent a copy of the Petition for Waiver and a copy of the Application for Interim Waiver to all known manufacturers of domestically marketed units of the same product type . A summary of the NORDYNE alternate test procedure is included in the letter to NORDYNE granting the Application for Interim Waiver, which is published with this **Federal Register** Notice.

The Department solicits comments, data, and information respecting the Petition.

Issued in Washington, DC., July 10, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

July 10, 1995.

Mr. Wayne R. Reedy, Vice President—Engineering

NORDYNE, 1801 Park 270 Drive, P.O. Box 46911, St. Louis, MO 63146–6911.

Dear Mr. Reedy: This is in response to your letter of January 24, 1995, submitting an Application for Interim Waiver and Petition for Waiver from the Department of Energy's central air conditioner and central air conditioning heat pump test procedure for NORDYNE's Powermiser line of heat pumps, which include special design characteristics to incorporate domestic water heating.

The current test procedure does not account for the energy savings associated with integrated water heating. A previous waiver for this type of equipment has been granted to Carrier Corporation, 55 FR 13607, April 11, 1990. Thus, it appears likely that the Petition for Waiver will be granted.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon the Department having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Further, NORDYNE's Application for Interim Waiver provides sufficient information to determine that NORDYNE has and will continue to experience a severe negative economic impact absent a favorable determination on its Application. NORDYNE's confidential statement claims a substantial investment in the Powermiser for research and development, tooling, production, sales and marketing. The Powermiser investment represents a large fraction of NORDYNE's annual income, and NORDYNE is not able to realize any return on this investment until the Interim Waiver is granted.

Therefore, based on the above, NORDYNE's Application for an Interim Waiver to modify the Department's test procedure for its Powermiser line of heat pumps with integrated domestic water heating is granted.

NORDYNE shall be required to test its Powermiser line of heat pumps on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix M, as modified by additional tests and ratings described in its proposed alternate test procedure, to determine the performance of the heat pump when it operates for the heating of domestic water, either concurrently with or separate from the space heating and cooling modes.

The alternate test procedure is summarized in Attachment A, attached hereto.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days, or until the Department acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Best regards,

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Attachment A

Type of Equipment To Be Covered

The test procedure described herein applies to electrically-driven, single-speed compressor air-to-air heat pumps having a nominal cooling capacity of 65,000 BTU/Hr or less that include an integral heat exchanger and water pump for the heating of domestic water, either concurrent with or separate from the space heating and cooling modes.

Test Points and Procedures

Standard ratings shall be established in accordance with 10 CFR Part 430, Subpart B, Appendix M, ''Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners.'' Procedures will also be compatible with ''Methods of Testing for Efficiency of Space-Conditioning Water Heating Appliances that include a Desuperheater Water Heater'' ASHRAE Standards Project Committee 137P (under development).

In addition to the standard ratings, tests and a rating procedure are described to determine the performance of the heat pump when it operates for the heating of domestic water, either concurrently with or separate from the space heating and cooling modes.

Table 1 specifies the operating conditions for all of the tests covered by

the present test plan, along with their operating and water draw schedules as Tables 2, 3 and 4. These tests are summarized as follows:

Space Cooling Mode, Tests 1, 5, 6 and 7

Test 1 (required) is identical to the Department Test A, Test 5 (required) is identical to Department Test B, Test 6 (optional) is identical to Department Test C, and Test 7 (optional) is identical to Department Test D, except for the following: The refrigerant-to-water heat exchanger is filled with water. In order to not have the water pump cycle on during tests 1 and 5, it may be necessary to disable the water pump. If natural convection within the water system proves significant, it will be necessary to close an isolation valve between the heat pump and the water heater tank.

Space Heating Mode, Tests 11, 12, 13 and 15

Test 11 (required) is identical to the Department High Temperature Test, Test 12 (optional) is identical to the Department Cyclic Test, Test 13 (required) is identical to Department Frost Accumulation Test, and Test 15 (required) is identical to the Department Low Temperature Test, except for the following: the refrigerant-to-water heat exchanger is filled with water. In order to not have the water pump cycle on during tests 11, 13 and 15, it may be necessary to disable the water pump. If natural convection within the water system proves significant, it will be necessary to close an isolation valve between the heat pump and the water heater tank.

Space Cooling/Domestic Water Heating Mode, Tests 2 and 4

Test 2 is the Department Test A, combined with water heating. Air side conditions are held constant and the system runs continuously, while a series of water draws are imposed as outlined in Table 2.

Test 4 is the Department Test D, which involves cyclic operation of the heat pump, with a series of water draws imposed as outlined in Table 3.

The system cyclic schedule is for energizing of the compressor and indoor blower control terminal. Actual system operation will be controlled by the system internal controls. Depending on internal controls, the compressor and one of the system fans may start or continue to run irrespective of the compressor terminal being energized. There shall be no air flow through the coil with the idle fan. When the indoor blower is off, the duct shall be blocked.

Space Heating/Domestic Water Heating Mode, Tests 10 and 14

Test 10 is the Department Cyclic Test with a series of water draws imposed, as outlined in Table 3.

Test 14 is the Department Low Temperature Test combined with water heating. Air side conditions are held constant and the system runs continuously, while a series of water draws are imposed, as outlined in Table 2.

The system cyclic schedule is for energizing of the compressor and indoor blower control terminal. Actual system operation will be controlled by the system internal controls. Depending on internal controls, the compressor and one of the system fans may start or continue to run irrespective of the compressor terminal being energized. There shall be no air flow through the coil with the idle fan. When the indoor blower is off, the duct shall be blocked.

Domestic Water Heating Modes, Tests 3, 8 and 9

Tests 3, 8 and 9 involve cyclic operation of the heat pump in self-controlled response to a series of water draws, as outlined in Table 4.

Test 3 (required) uses the same conditions as the Department Test D, and will result in a cooling effect on the indoor room.

The conditions of Tests 8 and 9 (both required) are specified in Table 1. Their temperatures do not correspond to any Department tests, but, with the exception of the temperatures specified in Table 1, they shall follow the requirements of Department Test D.

Tests 8 and 9 will result in a cooling effect on the outdoor room (''O'' terminal de-energized). When the indoor blower is off, the ductwork shall be blocked.

In addition to the normal components required for indoor space heating and cooling, the unit shall be connected, as specified by the heat pump manufacturer, to a conventional electric domestic hot water storage tank. The hot water storage tank shall have a nominal rated volume of 52 gallons, with an actual internal volume of 47±1 gallons. The hot water storage tank shall have an Energy Factor (EF) rating that is within ±.02 of the EF specified as the Federal Energy Conservation Standard for 52 gallon electric water heaters, (presently 0.87), as determined by the Department test and rating standards, contain two electric heater elements each rated at nominal 4500 Watts and be connected to a source of supply water having a temperature of 58±2 °F. The electrical voltage supplied to the water heater shall be adjusted such that the measured electrical power input is 4275±75W when the lower resistive element is heating water. The water heater instrumentation: six internal thermocouples plus entering and leaving water temperature measurements and energy use, is to be installed according to the standard Department test and rating procedure. The water heater thermostats are to be replaced with manual controls operated to turn off the upper element at 135 °F and on at 115 °F based on the internal thermocouple located closest to the upper thermostat location. The lower element shall be operated, as specified by the heat pump manufacturer, but to turn off and on at not lower than 110 °F and 100 °F respectively (unless a new thermostat is supplied specifically for the purpose) based on the internal thermocouple located closest to the lower thermostat. The lower element shall also be controlled to not operate coincident with the upper element. The purpose of the manual controls is to simulate the normal thermostats, but with improved repeatability. The heat pump system shall be installed per the manufacturers installation instructions. Unless otherwise specified by the manufacturer, the water heater is to be installed in the indoor room, as is the compressor section, if it is separate from the outdoor unit. The water heater is to be connected to the compressor section with 15 feet of interconnecting tubing (30 feet total for two lines), insulated (both) with R4 insulation. The refrigerant sections are to be connected with a total of 25 feet of ¾″ insulated vapor line and 25 feet of ⅜″ uninsulated liquid line. The line lengths between the compressor section and the indoor coil shall be between 5 and 10 feet, with the balance of the 25 feet connected between the compressor section and the outdoor unit, with 10 feet located in the outdoor room.

Calculation of Seasonal Performance Factors

The overall performance of the integrated heat pump system shall be expressed in terms of seasonal performances. In addition to the Seasonal Energy Efficiency Ratio (SEER) and Heating Seasonal Performance Factor (HSPF) currently required by the Department, a Combined Cooling Performance Factor (CCPF) shall be calculated for the cooling season and a Combined Heating Performance Factor (CHPF) shall be calculated for the heating season. These two combined performance factors reflect the energy efficiency of the heat pump when providing both space conditioning and

domestic water heating. The CCPF reflects the system's performance during the portion of the year that the outdoor air temperature is above 65 °F and the system will be providing space cooling and/or water heating. CHPF deals with the other portion of the year when the outdoor air temperature is below 65 °F and the system will be providing space heating and/or water heating. Both combined performance factors shall be calculated by means of a bin analysis as used for calculating the Heating Seasonal Performance Factor as described in 10 CFR Part 430, Subpart B, Appendix M, ¶ 5.2. The only changes to the actual referenced bin analysis are to extend it to account for the water heating functions, and to have it reflect calendar hours in addition to cooling and heating load hours, so that the water heating load can be fully accounted for.

The Seasonal Energy Efficiency Ratio (SEER) shall also be calculated by means of the bin analysis used for the Heating Seasonal Performance Factor, the CCPF and the CHPF. This is a slight departure from the referenced procedures method for calculating a SEER for units with single-speed compressors, but yields a nearly identical result and provides a directly comparable base for use in determining energy savings associated with water heating.

The Heating Seasonal Performance Factor (HSPF) shall also be calculated in the manner referenced above, with the exception that it is based on seasonal hours as opposed to fractional hours.

The Combined Cooling Performance Factor (CCPF) shall be calculated using the same general approach as presented in the Department/ARI/ASHRAE standards for non-water-heating equipment. The procedure relates the space cooling and water heating loads and the performance of the heat pump to outdoor air temperature. The output of the heat pump is balanced against the building and water heating load at each outdoor temperature bin above 65 °F to determine: (a) The fractional heat pump operating time spent in each temperature bin performing space cooling only; (b) the fractional heat pump operating time spent in each temperature bin performing combined space cooling and water heating; (c) the fractional heat pump operating time spent in each temperature bin performing dedicated water heating; and (d) the heat pump energy consumption rate for each mode of operation for each temperature bin.

The energy input to the domestic water is assumed to be distributed by temperature bin in proportion to the total hours of occurrence per bin. The performance of the heat pump by bin, and by mode of operation, is based on interpolation of test data taken at representative operating conditions. The total energy consumption of the heat pump will be increased as a result of the domestic water heating load. There will, however, be a net energy savings, which is expressed in terms of a Combined Cooling Performance Factor for space cooling and water heating, designated CCPF. CCPF is the sum of the total space cooling load and the total domestic water heating load during the cooling season, divided by the sum of the total energy consumption used for space cooling and water heating over the same period, expressed in Btu/Wh.

The Combined Cooling Performance Factor for space cooling and water heating shall be calculated similarly to the SEER:

$$CCPF = \frac{\sum_{j=1}^{8} Q(T_j)}{\sum_{j=1}^{8} E(T_j)}$$

The terms *Q(Tj)* and *E(Tj)* are the system energy outputs and inputs respectively for the jth outdoor temperature bin as defined in the cited Department regulations, and are composed of the various building and water heating loads and system energy inputs as follows:

$$Q(T_j) = BL(T_j) \times n_j + \dot{Q}_{kw}(T_j) \times n_j + \dot{Q}_{kw}(T_j) \times n_{dwcj}$$

Where *BL(Tj)* is the building space cooling load at the jth outdoor bin temperature. $\dot{Q}_{hw}(T_j)$ is the water heating load in Btu/hr at the jth outdoor bin temperature and is calculated from the hot water drawn from the water heater tank. It does not include the tank standby losses. The term n_{dwcj} is the number of extra hours for dedicated water heating with the outdoor temperature above 65 °F, distributed among the first three outdoor temperature bins inversely proportional to the building load. In equation form:

$$n_{dwcj,j=1,3} = N_{dwc} \times \frac{BL(T_{j,j=3,1})}{\sum_{j=1}^{3} BL(T_j)}$$

where N_{dwc} is the number of extra hours for dedicated water heating with the outdoor temperature above 65 °F. *E(Tj)* is the total system energy input for the jth outdoor bin temperature, and is made up of the individual energy inputs for the applicable operating modes as follows:

$$E(T_j) = \frac{\left(X_1(T_j) \times \dot{E}_c(T_j) + X_2(T_j) \times \dot{E}_{ccw}(T_j) + X_3(T_j) \times \dot{E}_{wdc}(T_j)\right) \times n_j}{PLF(T_j)} + E_{auxw} - E_{sav} + E_{dwehc}$$

where:

$\dot{E}_c(T_j)$ = Heat pump steady-state power input in the space cooling only mode for outdoor temperature bin j.
$\dot{E}_{ccw}(T_j)$ = Heat pump steady-state power input in the combined cooling and water heating mode for outdoor temperature bin j.
$\dot{E}_{wdc}(T_j)$ = Heat pump steady-state power input in the dedicated water heating mode during the cooling season for outdoor temperature bin j.
E_{auxw} = Auxiliary energy input for water heating.
E_{sav} = Energy saved due to cooling effect during dedicated water heating.
E_{dwehc} = Energy input for water heating during the dedicated water heating extra hours period above 65 °F.
$X_1(Tj)$ = Load factor for space conditioning only mode for outdoor temperature bin j.
$X_2(Tj)$ = Load factor for combined space conditioning/water heating mode for outdoor temperature bin j.
$X_3(Tj)$ = Load factor for dedicated water heating mode for outdoor temperature bin j.
$PLF(T_j) = 1 - C_d \times (1 - X_1(T_j) \times X_2(T_j) - X_3(T_j))$ = the overall part-load factor for outdoor temperature bin j.
Cd = the coefficient of cyclic degradation for cooling.
n_j = the number of hours in the jth outdoor temperature bin.

The steady-state electrical power input to the heat pump in the space cooling only mode is determined according to:

$$\dot{E}_c\left(T_j\right) = \dot{E}_c(82°F) + \frac{\dot{E}_c(95°F) - \dot{E}_c(82°F)}{(95-82)°F} \times \left(T_j - 82°F\right)$$

The steady-state heat pump space cooling capacity in the space cooling only mode is determined according to:

$$\dot{Q}_c\left(T_j\right) = \dot{Q}_c(82°F) + \frac{\dot{Q}_c(95°F) - \dot{Q}_c(82°F)}{(95-82)°F} \times \left(T_j - 82°F\right)$$

The steady-state heat pump space cooling capacity and water heating capacity in the combined cooling/water heating mode is determined according to:

$$\dot{Q}_{ccw}\left(T_j\right) = \dot{Q}_{ccw}(82°F) + \frac{\dot{Q}_{ccw}(95°F) - \dot{Q}_{ccw}(82°F)}{(95-82)°F} \times \left(T_j - 82°F\right)$$

$$\dot{Q}_{wcc}\left(T_j\right) = \dot{Q}_{wcc}(82°F) + \frac{\dot{Q}_{wcc}(95°F) - \dot{Q}_{wcc}(82°F)}{(95-82)°F} \times \left(T_j - 82°F\right)$$

The total steady-state electrical power input to the heat pump in the combined cooling/water heating mode is determined according to:

$$\dot{E}_{ccw}\left(T_j\right) = \dot{E}_{ccw}(82°F) \times PLF(Test4) + \frac{\dot{E}_{ccw}(95°F) - \dot{E}_{ccw}(82°F) \times PLF(Test4)}{(95-82)°F} \times \left(T_j - 82°F\right)$$

where:

$$PLF(Test4) = 1 - C_d \times (1 - LF(Test4))$$

with:

C_d = the cooling season coefficient of cyclic degradation.

LF(Test 4) = 0.5 = the load factor during the 82 °F combined cooling/water heating cyclic test.

The electrical power input to the heat pump at the 82°F cyclic test point is corrected (decreased) by the actual test part load factor (PLF) in order to make it consistent with the 95°F test point which is steady-state. Later bin analysis of energy use will interpolate between the 82°F and 95°F points and have the energy use for each bin increased by that bins' calculated PLF. This approach of the 95°F test being continuous compressor operation and the 82°F test being cyclic is most representative of actual field operation and provides the most representative water side conditions.

The steady-state heat pump water heating capacity in the dedicated water heating mode during the cooling season is determined according to:

$$\dot{Q}_{wdc} = \dot{Q}_{wdc}\left(82°F\right)$$

The steady-state electrical power input to the heat pump in the dedicated water heating mode during the cooling season is determined according to:

$$\dot{E}_{wdc}\left(T_j\right) = \dot{E}_{wdc}\left(82°F\right) \times PLF(Test3)$$

The performance of the heat pump in dedicated water heating during the cooling season is assumed constant because the heat source is the constant temperature indoor air. Because the test is cyclic, the actual test results are again corrected from the PLF of the test to the PLF of each temperature bin in the analysis.

$$PLF(Test3) = 1 - C_d \times \left(1 - \frac{t_{on}82°F}{t_{total}82°F}\right)$$

with:

C_d=the cooling season coefficient of cyclic degradation.

$t_{on}82°F$=the total compressor on time during the 82°F dedicated water heating cyclic test.

$t_{total}82°F$=the total time to conclusion of the 82°F dedicated water heating cyclic test.

The load factors for each mode of operation are determined as follows:

$$X_2(T_j) = \left\{ \begin{array}{c} \dfrac{BL(T_j)}{\dot{Q}_{ccw}(T_j)} \\ \text{or} \\ \dfrac{WL(T_j)}{\dot{Q}_{wcc}(T_j)} \end{array} \right\} \text{whichever is least.}$$

Following determination of $X_2(Tj)$,$X_1(Tj)$ and $X_3(Tj)$ are determined as follows:

$$X_1(T_j) = \left\{ \begin{array}{c} \dfrac{BL(T_j) - X_2(T_j) \times \dot{Q}_{ccw}(T_j)}{\dot{Q}_c(T_j)} \\ \text{or} \\ 1 - X_2(T_j) \end{array} \right\} \text{whichever is least.}$$

$$X_3(T_j) = \left\{ \begin{array}{c} \dfrac{WL(T_j) - X_2(T_j) \times \dot{Q}_{wcc}(T_j)}{\dot{Q}_{wdc}(T_j)} \\ \text{or} \\ 1 - X_2(T_j) \end{array} \right\} \text{whichever is least.}$$

The auxiliary energy input for water heating is then determined from:

$$E_{auxw} = \frac{WL(T_j) - X_2(T_j) \times \dot{Q}_{wcc}(T_j) - X_3(T_j) \times \dot{Q}_{wdc}(T_j)}{3.413 \times 0.98} \times n_j$$

Because the dedicated water heating mode during the cooling season removes heat from the space, there is a beneficial cooling effect. The energy saved by this cooling is calculated as:

$$E_{sav} = X_3(T_j) \times \dot{Q}_{cdw}(T_j) \times n_j \times \frac{\dot{E}_c(T_j)}{\dot{Q}_c(T_j)}$$

Lastly, the energy input for water heating during the dedicated water heating extra hours period above 65°F is calculated as:

$$E_{dwehc} = \frac{X_4(T_j) \times \dot{E}_{wdc}(T_j)}{PLF(T_j)} \times n_{dwcj} + E_{auxwehc}$$

where:

$$X_4(T_j) = \frac{WL(T_j)}{\dot{Q}_{wdc}(T_j)}$$

=Load factor for dedicated water heating mode for outdoor temperature bin j.

$\dot{E}_{wdc}(T_j)$=heat pump steady-state power input in the dedicated water heating mode during the cooling season for outdoor temperature bin j.

n_{dwcj}=the number of hours in the jth outdoor temperature bin for the dedicated water heating extra hours period above 65°F.

$PLF(T_j)=1-C_d\times(1-X_4(T_j))$=the part-load factor for outdoor temperature bin j.

C_d=the coefficient of cyclic degradation for cooling.

$$E_{auxwehc} = \frac{WL(T_j) - X_4(T_j) \times \dot{Q}_{wdc}(T_j)}{3.413 \times 0.98} \times n_{dwcj}$$

=the auxiliary energy input for water heating during the extra hours period above 65°F.

$\dot{Q}_{wdc}(T_j)$=the cyclic heat pump water heating capacity in the dedicated water heating mode during the cooling season.

The Combined Heating Performance Factor (CHPF) shall be calculated utilizing the same approach as for the CCPF. For the CHPF the building and water heating loads and heat pump performance are evaluated at each outdoor temperature bin below 65°F. CHPF is the sum of the total space heating load and the domestic water heating load during the heating season, divided by the sum of the total energy consumption used for space heating and water heating over the same period, expressed in Btu/Wh.

The Combined Heating Performance Factor for space heating and water heating is calculated as follows:

$$CHPF = \frac{\sum_{j=1}^{15} Q(T_j)}{\sum_{j=1}^{15} E(T_j)}$$

The terms $Q(T_j)$ and $E(T_j)$ are the system energy outputs and inputs, respectively, for the jth outdoor temperature bin as defined in the cited Department regulations and are composed of the various building and water heating loads and system energy inputs as follows:

$$Q(T_j) = BL(T_j) \times n_j + \dot{Q}_{kw}(T_j) \times n_j + \dot{Q}_{kw}(T_j) \times n_{dwhj}$$

where $BL(Tj)$ is the building space heating load at the jth outdoor bin temperature and evaluated for each heating temperature bin Tj, as described in subsection 10.2.2 of ASHRAE Standard 116–83.

$\dot{Q}_{hw}(T_j)$ is the water heating load for the jth outdoor bin temperature.

$E(T_j)$ is the total system energy input for the jth outdoor bin temperature and is made up of the individual energy inputs for the applicable operating modes as follows:

$$E(T_j) = \frac{\left(X_1(T_j) \times \dot{E}_h(T_j) + X_2(T_j) \times \dot{E}_{hcw}(T_j) + X_3(T_j) \times \dot{E}_{wdh}(T_j)\right) \times n_j}{PLF(T_j)} + E_{auxw} + E_{auxs} + E_{dweh}$$

where:

$\dot{E}_h(T_j)$ = Heat pump steady-state power input in the space heating only mode for outdoor temperature bin j.

$\dot{E}_{hcw}(T_j)$ = Heat pump steady-state power input in the combined space heating and water heating mode for outdoor temperature bin j.

$\dot{E}_{wdh}(T_j)$ = Heat pump steady-state power input in the dedicated water heating mode during the heating season for outdoor temperature bin j.

E_{auxw} = Auxiliary energy input for water heating.

E_{auxs} = Auxiliary energy input for space heating.

E_{dwehh} = Energy input for water heating during the dedicated water heating extra hours period below 65 °F

$X_1(Tj)$ = Load factor for space conditioning only mode for outdoor temperature bin j.

$X_2(Tj)$ = Load factor for combined space conditioning/water heating mode for outdoor temperature bin j.

$X_3(Tj)$ = Load factor for dedicated water heating mode for outdoor temperature bin j.

$PLF(T_j) = 1 - C_d \times (1 - X_1(T_j) - X_2(T_j) - X_3(T_j))$ = the overall part-load factor for outdoor temperature bin j.

Cd = the coefficient of cyclic degradation for heating.

n_j = the number of hours in the jth outdoor temperature bin.

The steady-state heat pump space heating capacity in the space heating only mode is determined according to:

$$\dot{Q}_h(T_j) = \begin{cases} \dot{Q}_h(17°F) + \dfrac{\dot{Q}_h(47°F) - \dot{Q}_h(17°F)}{(47-17)°F} \times (T_j - 17°F), \text{ for } T_j \geq 45°F \text{ or } T_j \leq 17°F \\ \text{or} \\ \dot{Q}_h(17°F) + \dfrac{\dot{Q}_h(35°F) - \dot{Q}_h(17°F)}{(35-17)°F} \times (T_j - 17°F), \text{ for } 17°F < T_j < 45°F \end{cases}$$

The steady-state electrical power input to the heat pump in the space heating only mode is determined according to:

$$\dot{E}_h(T_j) = \begin{cases} \dot{E}_h(17°F) + \dfrac{\dot{E}_h(47°F) - \dot{E}_h(17°F)}{(47-17)°F} \times (T_j - 17°F), \text{ for } T_j \geq 45°F \text{ or } T_j \leq 17°F \\ \text{or} \\ \dot{E}_h(17°F) + \dfrac{\dot{E}_h(35°F) - \dot{E}_h(17°F)}{(35-17)°F} \times (T_j - 17°F), \text{ for } 17°F < T_j < 45°F \end{cases}$$

The steady-state heat pump space heating capacity and water heating capacity in the combined heating/water heating mode is determined according to:

$$\dot{Q}_{hcw}(T_j) = \begin{cases} \dot{Q}_{hcw}(17°F) + \dfrac{\dot{Q}_{hcw}(47°F) - \dot{Q}_{hcw}(17°F)}{(47-17)°F} \times (T_j - 17°F), \text{ for } T_j \geq 45°F \text{ or } T_j \leq 17°F \\ \text{or} \\ \dot{Q}_{hcw}(17°F) + \dfrac{\dot{Q}_{hcw}(35°F) - \dot{Q}_{hcw}(17°F)}{(35-17)°F} \times (T_j - 17°F), \text{ for } 17°F < T_j < 45°F \end{cases}$$

$$\dot{Q}_{wch}(T_j) = \begin{cases} \dot{Q}_{wch}(17°F) + \dfrac{\dot{Q}_{wch}(47°F) - \dot{Q}_{wch}(17°F)}{(47-17)°F} \times (T_j - 17°F), \text{ for } T_j \geq 45°F \text{ or } T_j \leq 17°F \\ \text{or} \\ \dot{Q}_{wch}(17°F) + \dfrac{\dot{Q}_{wch}(35°F) - \dot{Q}_{wch}(17°F)}{(35-17)°F} \times (T_j - 17°F), \text{ for } 17°F < T_j < 45°F \end{cases}$$

Where:

$$\dot{Q}_{hcw}(35°F) = \left[\dot{Q}_{hcw}(17°F) + \frac{\dot{Q}_{hcw}(47°F) - \dot{Q}_{hcw}(17°F)}{(47-17)°F} \times (35-17)°F \right] \times \frac{\dot{Q}_h(35°F)}{\dot{Q}_h(17°F) + \dfrac{\dot{Q}_h(47°F) - \dot{Q}_h(17°F)}{(47-17)°F} \times (35-17)°F}$$

and:

$$\dot{Q}_{wch}(35°F) = \left[\dot{Q}_{wch}(17°F) + \frac{\dot{Q}_{wch}(47°F) - \dot{Q}_{wch}(17°F)}{(47-17)°F} \times (35-17)°F \right] \times \frac{\dot{Q}_h(35°F)}{\dot{Q}_h(17°F) + \dfrac{\dot{Q}_h(47°F) - \dot{Q}_h(17°F)}{(47-17)°F} \times (35-17)°F}$$

The total steady-state electrical power input to the heat pump in the combined heating/waterheating mode is determined according to:

$$\dot{E}_{hcw}(T_j) = \begin{cases} \dot{E}_{hcw}(17°F) + \dfrac{\dot{E}_{hcw}(47°F) \times PLF(Test10) - \dot{E}_{hcw}(17°F)}{(47-17)°F} \times (T_j - 17°F), \text{ for } T_j \geq 45°F \text{ or } T_j \leq 17°F \\ \text{or} \\ \dot{E}_{hcw}(17°F) + \dfrac{\dot{E}_{hcw}(35°F) - \dot{E}_{hcw}(17°F)}{(35-17)°F} \times (T_j - 17°F), \text{ for } 17°F < T_j < 45°F \end{cases}$$

where:

$$\dot{E}_{hcw}(35°F) = \left[\dot{E}_{hcw}(17°F) + \frac{\dot{E}_{hcw}(47°F) - \dot{E}_{hcw}(17°F)}{(47-17)°F} \times (35-17)°F\right] \times \frac{\dot{E}_h(35°F)}{\dot{E}_h(17°F) + \frac{\dot{E}_h(47°F) - \dot{E}_h(17°F)}{(47-17)°F} \times (35-17)°F}$$

and:

PLF (Test10) = 1 − (Cd × (1 − LF (Test10)))

With:

C_d = the heating season cyclic degradation coefficient.

LF (Test 10) = 0.5 = the load factor during the 47 °F combined heating/water heating cyclic test.

The electrical power input to the heat pump at the 47 °F cyclic test point is corrected (decreased) by the actual test part load factor (PLF) in order to make it consistent with the 17 °F test point which is steady-state.

Later bin analysis of energy use will interpolate between the 17 °F and 47 °F points and have the energy use for each bin increased by that bins calculated PLF. This approach of the 17 °F test being continuous compressor operation and the 47 °F test being cyclic is most representative of actual field operation and provides the most representative water side conditions.

The cyclic heat pump water heating capacity in the dedicated water heating mode during the heating season is determined according to:

$$\dot{Q}_{wdh}(T_j) = \dot{Q}_{wdh}(47°F) + \frac{\dot{Q}_{wdh}(67°F) - \dot{Q}_{wdh}(47°F)}{(67-47)°F} \times (T_j - 47°F)$$

The steady-state electrical power input to the heat pump in the dedicated water heating mode during the heating season is determined according to:

$$\dot{E}_{wdh}(T_j) = \dot{E}_{wdh}(47°F) \times PLF(Test9) + \left[\frac{\dot{E}_{wdh}(67°F) \times PLF(Test8) - \dot{E}_{wdh}(47°F) \times PLF(Test9)}{(67-47)°F} \times (T_j - 47°F)\right]$$

Because the tests are cyclic, the actual test results are again corrected from the PLF of the specific test to the PLF of each temperature bin in the analysis, where:

$$PLF(Test9) = 1 - C_d \times \left(1 - \frac{t_{on}\,47°F}{t_{total}\,47°F}\right)$$

$$PLF(Test8) = 1 - C_d \times \left(1 - \frac{t_{on}\,67°F}{t_{total}\,67°F}\right)$$

with:

C_d = the heating season cyclic degradation coefficient.

t_{on}47 °F = the total compressor on time during the 47 °F dedicated water heating cyclic test.

t_{total}47 °F = the total time to conclusion of the 47 °F dedicated water heating cyclic test.

t_{on}67 °F = the total compressor on time during the 67 °F dedicated water heating cyclic test.

t_{total}67 °F = the total time to conclusion of the 67 °F dedicated water heating cyclic test.

The load factors for each mode of operation are determined as follows:

$$X_2(T_j) = \left\{\begin{array}{c} \frac{BL(T_j)}{\dot{Q}_{hcw}(T_j)} \\ \text{or} \\ \frac{WL(T_j)}{\dot{Q}_{wch}(T_j)} \end{array}\right\} \text{whichever is least.}$$

or

$$X_2(T_j) = 0 \text{ if } \frac{BL(T_j)}{\dot{Q}_h(T_j)} > 1.0$$

Following determination of $X_2(T_j)$, $X_1(T_j)$ and $X_3(T_j)$ are determined as follows:

$$X_1(T_j) = \left\{ \begin{array}{c} \dfrac{BL(T_j) - X_2(T_j) \times \dot{Q}_{hcw}(T_j)}{\dot{Q}_h(T_j)} \\ \text{or} \\ 1 - X_2(T_j) \end{array} \right\} \text{whichever is least.}$$

$$X_3(T_j) = \left\{ \begin{array}{c} \dfrac{WL(T_j) - X_2(T_j) \times \dot{Q}_{wch}(T_j)}{\dot{Q}_{wdh}(T_j)} \\ \text{or} \\ 1 - X_2(T_j) \end{array} \right\} \text{whichever is least.}$$

The auxiliary energy input for water heating is then determined from:

$$E_{auxw} = \frac{WL(T_j) - X_2(T_j) \times \dot{Q}_{wch}(T_j) - X_3(T_j) \times \dot{Q}_{wdh}(T_j)}{3.413 \times 0.98} \times n_j$$

The auxiliary energy input for space heating is then determined from:

$$E_{auxs} = \frac{BL(T_j) - X_1(T_j) \times \dot{Q}_h(T_j) - X_2(T_j) \times \dot{Q}_{hcw}(T_j)}{3.413} \times n_j$$

Lastly, the energy input for water heating during the dedicated water heating extra hours period below 65 °F is calculated as:

$$E_{dwehh} = \frac{X_4(T_j) \times \dot{E}_{wdh}(T_j)}{PLF(T_j)} \times n_{dwhj} + E_{auxwehh}$$

where:

$$X_4(T_j) = \frac{WL(T_j)}{\dot{Q}_{wdh}(T_j)}$$

= Load factor for dedicated water heating mode for outdoor temperature bin j.

$\dot{E}_{wdh}(T_j)$ = heat pump steady-state power input in the dedicated water heating mode during the heating season for outdoor temperature bin j.

n_{dwhj} = the number of hours in the jth outdoor temperature bin for the dedicated water heating extra hours period below 65 °F.

$PLF(T) = 1 - C_d \times (1 - X_4(T_j))$ = the part-load factor for outdoor temperature bin j.

C_d = the heating season cyclic degradation coefficient.

$$E_{auxwehh} = \frac{WL(T_j) - X_4(T_j) \times \dot{Q}_{wdh}(T_j)}{3.413 \times 0.98} \times n_{dwhj}$$

= the auxiliary energy input for water heating during the extra hours period below 65 °F.
$\tilde{Q}_{wdh}(T_j)$ = the cyclic heat pump water heating capacity in the dedicated water heating mode during the heating season.

TABLE 1.—TEST SUMMARY—INTEGRATED HEAT PUMP SYSTEM TESTS

Test	Description	Test type		Air temperatures (F)				Water draw	Data reduction notes
				ODDB	ODWB	IDDB	IDWB		
1	COOLING	STEADY-STATE.	REQUIRED	95		80	67		1
2	COOLING + WH.	STEADY-STATE.	REQUIRED	95		80	67	TABLE 2	1,2,3,6
3	WH (COOLING)	CYCLIC	REQUIRED	82		80	67	TABLE 4	1,2,5,6
4	COOLING + WH.	CYCLIC	REQUIRED	82		80	67	TABLE 3	1,2,4,6
5	COOLING	STEADY-STATE.	REQUIRED	82		80	67		1
6	COOLING	STEADY-STATE.	OPTIONAL	82		80	57		1
7	COOLING CYCLIC.	CYCLIC	OPTIONAL	82		80	57		1
8	WH (HEATING)	CYCLIC	REQUIRED	67	61	70		TABLE 4	1,2,7
9	WH (HEATING)	CYCLIC	REQUIRED	47	43	70		TABLE 4	1,2,7
10	HEATING + WH	CYCLIC	REQUIRED	47	43	70		TABLE 3	1,2,4,6
11	HEATING	STEADY-STATE.	REQUIRED	47	43	70			1
12	HEATING CYCLIC.	CYCLIC	OPTIONAL	47	43	70			
13	HEATING DEFROST.	STEADY-STATE.	REQUIRED	35	33	70			1
14	HEATING + WH	STEADY-STATE.	REQUIRED	17	15	70		TABLE 2	1,2,3,6
15	HEATING	STEADY-STATE.	REQUIRED	17	15	70			1

Data Reduction Notes for Table 1

1. Data recorded per ASHRAE Standard 116–83.

2. Water heating capacity is calculated as the net water energy withdrawn plus the tank standby loss during the test duration, divided by the length of time that the water pump and/or auxiliary water heater elements operate and expressed as BTU/hr. Test duration is defined as starting at t=0 and ending at the conclusion of water heating from all sources. Makeup and supply water temperatures are to be recorded every 5 seconds during water draws.

3. The steady-state cooling or heating capacity coincident with water heating is calculated as the total air side capacity delivered during the period of time that the water pump and/or auxiliary water heater elements operate, divided by the length of time that the water pump and/or auxiliary water heater elements operate and expressed as BTU/hr.

4. The cyclic cooling or heating capacity coincident with water heating is calculated as the air side capacity delivered during the period of time that both the water pump and indoor blower and/or both the auxiliary water heater elements and indoor blower operate, divided by the length of time that both the water pump and indoor blower and/or both the auxiliary water heater elements and indoor blower operate and expressed as Btu/hr.

5. The cyclic cooling capacity associated with dedicated water heating is calculated as the air side capacity delivered during the period of time that the indoor blower operates, divided by the length of time that the indoor blower operates, and expressed as Btu/hr.

6. The power used with the cooling or heating capacity associated with water heating is calculated as the total energy consumed by all components, including the heat pump, water pump, and auxiliary water heater elements, etc., during the length of time that the air side capacity is integrated, divided by the same length of time, and expressed as Watts.

7. The power used with the dedicated water heating capacity is calculated as the total energy consumed by all components, including the heat pump, water pump, and auxiliary water heater elements, etc., during the duration of the test, divided by the period of time used in determining the associated water heating capacity determination.

TABLE 2.—STEADY-STATE COMBINED OPERATION & WATER DRAW SCHEDULE

Sequence	
1	FILL WATER HEATER (or draw until both upper and lower thermostat water temperatures are below their turn on points).
2	RESISTIVE OPERATION TO CONCLUSION.
3	HEAT PUMP OPERATION TO CONCLUSION OF WATER HEATING (heat pump continues to operate in space conditioning mode).
4	CONDITION WITH 11 GALLON DRAW.
5	HEAT PUMP AND/OR RESISTIVE OPERATION TO CONCLUSION OF WATER HEATING.
6	HEAT PUMP CONTINUES TO OPERATE IN SPACE CONDITIONING MODE FOR 10 MINUTES.
7	t=0 , DRAW 5.4 GALLONS.

TABLE 2.—STEADY-STATE COMBINED OPERATION & WATER DRAW SCHEDULE—Continued

Sequence	
8	HEAT PUMP AND RESISTIVE OPERATE ON INTERNAL CONTROLS (heat pump continues to operate in space conditioning mode).
9	t=68 MINUTES, DRAW 16.1 GALLONS.
10	HEAT PUMP AND RESISTIVE OPERATE ON INTERNAL CONTROLS (heat pump continues to operate in space conditioning mode).
11	t=118 MINUTES, DRAW 10.7 GALLONS.
12	HEAT PUMP AND RESISTIVE OPERATE ON INTERNAL CONTROLS TO CONCLUSION OF WATER HEATING.

TABLE 3.—CYCLIC COMBINED OPERATION & WATER DRAW SCHEDULE

Sequence	
1	FILL WATER HEATER (or draw until both upper and lower thermostat water temperatures are below their turn on points).
2	RESISTIVE OPERATION TO CONCLUSION.
3	HEAT PUMP OPERATION TO CONCLUSION OF WATER HEATING.
4	CONDITION WITH 11 GALLON DRAW.
5	HEAT PUMP AND/OR RESISTIVE OPERATION TO CONCLUSION OF WATER HEATING.
6	COMPRESSOR OFF FOR 10 MINUTES.
7	t=0 , DRAW 5.4 GALLONS.
8	t=10 MINUTES, Tstat ON; @ t=20 MINUTES, Tstat OFF.
9	t=30 MINUTES, Tstat ON; @ t=40 MINUTES, Tstat OFF.
10	t=50 MINUTES, Tstat ON; @ t=60 MINUTES, Tstat OFF.
11	t=68 MINUTES, DRAW 16.1 GALLONS.
12	t=70 MINUTES, Tstat ON; @ t=80 MINUTES, Tstat OFF.
13	t=90 MINUTES, Tstat ON; @ t=100 MINUTES, Tstat OFF.
14	t=110 MINUTES, Tstat ON.
15	t=118 MINUTES, DRAW 10.7 GALLONS.
16	t=120 MINUTES, Tstat OFF.
17	t=130 MINUTES, Tstat ON; @ t=140 MINUTES, Tstat OFF.
18	t=150 MINUTES, Tstat ON; @ t=160 MINUTES, Tstat OFF.
19	t=170 MINUTES, Tstat ON TO CONCLUSION OF WATER HEATING.

Note: Tstat refers to indoor space thermostat.

TABLE 4.—DEDICATED WATER HEATING OPERATION & WATER DRAW SCHEDULE

Sequence	
1	FILL WATER HEATER (or draw until both upper and lower thermostat water temperatures are below their turn on points).
2	RESISTIVE OPERATION TO CONCLUSION.
3	HEAT PUMP OPERATION TO CONCLUSION OF WATER HEATING.
4	CONDITION WITH 11 GALLON DRAW.
5	HEAT PUMP AND/OR RESISTIVE OPERATION TO CONCLUSION OF WATER HEATING.
6	COMPRESSOR OFF FOR 10 MINUTES.
7	t=0 , DRAW 5.4 GALLONS.
8	HEAT PUMP AND RESISTIVE OPERATE ON INTERNAL CONTROLS.
9	t=68 MINUTES, DRAW 16.1 GALLONS.
10	HEAT PUMP AND RESISTIVE OPERATE ON INTERNAL CONTROLS.
11	t=118 MINUTES, DRAW 10.7 GALLONS.
12	HEAT PUMP AND RESISTIVE OPERATE ON INTERNAL CONTROLS TO CONCLUSION OF WATER HEATING.

January 24, 1995.

The Assistant Secretary for Conservation and Renewable Energy,
United States Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585.

Subject: Petition For Waiver and Application for Interim Waiver.

Gentlemen: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to Title 10 CFR 430.27, as amended November 14, 1986. Waiver is requested from the existing Test Method for Measuring the Energy Consumption of Central Air Conditioners, including heat pumps as found in Appendix M to Subpart B of Part 430.

Under the existing Test Procedure, heat pump energy consumption is measured relative only to space heating and cooling. NORDYNE requests a waiver to the existing test procedure as detailed in the attached ''Requested Test and Rating Procedure Modifications for Electrically Driven, Single-Speed Compressor, Air-to-Air Heat Pumps With Integrated Water Heating'', for use in the testing and rating of its Powermiser line of heat pumps which include special design characteristics to incorporate domestic water heating.

The current test procedure clearly cannot account for the energy savings associated with integrated water heating.

NORDYNE is confident that a waiver will be granted and requests that an interim waiver be granted. NORDYNE's confidence is based on:

(1) The current test procedure does not account for the total energy savings of the Powermiser.

(2) Carrier Corporation has been granted a similar waiver for its Hydrotech product.

(3) For public policy, the widespread use of this type of integrated appliance would be in direct support of the President's Climate Change Action Plan, which lists heating and cooling and home appliances as key targets for improvement.

(4) Absent a favorable determination on the Application for Interim Waiver, NORDYNE would experience an economic hardship, as discussed in the confidential attachment.

Known manufacturers of domestically marketed units of the same product type are being notified in writing of this Petition for Waiver and Application for Interim Waiver. A list of the names and addresses of each person to whom a notice is being sent is attached.

Sincerely,

Wayne Reedy,

Vice President Engineering.

WRR:pdr
Enclosure

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Federal Energy Regulatory Commission

[Docket No. EF95–2011–000, et al.]

United States Department of Energy—Bonneville Power Administration, et al.; Electric Rate and Corporate Regulation Filings

August 2, 1995.

Take notice that the following filings have been made with the Commission:

1. United States Department of Energy—Bonneville Power Administration

[Docket Nos. EF95–2011–000, EF95–2101–001, EF95–2021–000 and EF95–2041–000]

Take notice that on August 1, 1995, the Bonneville Power Administration of the United States Department of Energy (BPA) tendered for filing proposed rate adjustments for its wholesale power and transmission rates pursuant to Section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e(a)(2). BPA seeks interim approval of its proposed rates effective October 1, 1995, pursuant to Commission Regulation, 18 CFR 300.20. BPA further states that pursuant to Commission Regulation, 18 CFR 300.21, BPA seeks final confirmation of the proposed rates for the periods set forth in this notice.

According to BPA, its wholesale power and transmission rates are proposed to be increased, with BPA's wholesale power rates designed to increase revenues over the 1-year test period by approximately $61.0 million (excluding the residential exchange), which represents an increase of approximately 3.2 percent. BPA further states that its transmission rates are designed to increase revenues by approximately $19 million, or 3.45 percent. BPA states that with these increases its total test period revenues (excluding the residential exchange) will be approximately $2.5 billion. BPA states that these revenue increases are achieved through a 4 percent increase in its current, adjustable power and transmission rates.

BPA requests approval effective October 1, 1995 through September 30, 1996 for the following proposed wholesale power rates and their associated General Rate Schedule Provisions: PF–95 Priority Firm Power Rate; IP–95 Industrial Firm Power Rate; SI–95 Special Industrial Firm Power Rate; CE–95 Emergency Capacity Rate; NR–95 New Resource Firm Power Rate; NF–95 Nonfirm Energy Rate; SS–95 Share-the-Savings Energy Rate; RP–95 Reserve Power Rate; PS–95 Power Shortage Rate; and VI–95 Variable Industrial Rate. BPA requests final approval for amended Pacific Northwest Coordination Agreement charges granted interim approval by the Commission on July 21, 1995 in Docket No. EF95–2101–000.

BPA requests approval October 1, 1995 through September 30, 1996 for the following proposed transmission rate schedules and their associated General Transmission Rate Schedule Provisions: FPT–95.1 Formula Power Transmission; IR–95 Integration of Resources; IS–95 Southern Intertie Transmission; IN–95 Northern Intertie Transmission; IE–95 Eastern Intertie Transmission; ET–95 Energy Transmission; MT–95 Market Transmission; FPT–95.3 Formula Power Transmission; UFT–95 Use-of-Facilities Transmission; TGT–95 Townsend-Garrison Transmission. BPA requests approval for the AC–95 Southern Intertie Annual Costs rate for the term of the contracts which is life of facilities.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Empresa Guaracachi S.A.

[Docket No. EG95–61–000]

On July 28, 1995, Empresa Guaracachi S.A. (''Applicant'') filed with the Federal Energy Regulatory Commission (the ''Commission'') an application for determination of exempt wholesale generator status pursuant to 18 CFR Part 365 of the Commission's Regulations. Applicant states that its sole business purpose is to own and operate one or more electric generating facilities in the Republic of Bolivia. Fifty (50) percent of the capital stock of Applicant is owned by Guaracachi America, Inc., an indirect wholly-owned subsidiary of General Public Utilities Corporation, a registered holding company as defined in Section 2(a)(7) of the Public Utility Holding Company Act of 1935.

Comment date: August 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. PMDC Energia Ltd.

[Docket No. EG95–66–000]

PMDC Energia Ltd. (''Energia'') (c/o Richard F. Allen, PMDC Energia Ltd. 11350 Random Hills Road, Suite 800 Fairfax, VA 22030) filed with the Federal Energy Regulatory Commission an application on July 28, 1995, for determination of exempt wholesale generator status pursuant to 18 CFR Part 365 of the Commission's Regulations.

Energia is a Cayman Islands company formed to develop, own, and/or operate eligible facilities. Energia will own an interest in two electric generating facilities in Bolivia. Energia states that is also may engage in project development activities associated with its development or acquisition of operating or ownership interests in additional as-yet unidentified eligible facilities and/or exempt wholesale generators that meet the criteria in Section 32 of the Public Utility Holding Company Act.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. OPDB, Ltd.

[Docket No. EG95–67–000]

On July 28, 1995, OPDB, Ltd. (''OPDB''), with its address at 40 Lane Road, Fairfield, NJ 07007–2615 filed with the Federal Energy Regulatory Commission (''FERC'' or the ''Commission'') an application for determination of exempt wholesale generator status pursuant to 18 CFR Part 365 of the Commission's Regulations.

OPDB is a Cayman Island limited liability company that will be engaged indirectly through one or more affiliates as defined in Section 2(a)(11)(b) of the Public Utility Holding Company Act of 1935, as amended (''PUHCA'') and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities located in Bolivia. The eligible facilities consist of approximately 87.2 MW of existing gas fired generation units and related interconnection facilities and approximately 126 MW of gas fired electric generation units and related interconnection facilities that are currently under construction. The output of the eligible facilities is, or will be, sold at wholesale except that to the extent permitted by Bolivian law retail power sales will be made to consumers located in Bolivia.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Ogden Power Development of Bolivia, Inc.

[Docket No. EG95–68–000]

On July 28, 1995, Ogden Power Development of Bolivia, Inc. (''Ogden Bolivia''), with its address at 40 Lane Road, Fairfield, New Jersey 07007–2615, filed with the Federal Energy Regulatory Commission (''FERC'' or the ''Commission'') an application for determination of exempt wholesale generator status pursuant to 18 CFR Part 365 of the Commission's Regulations. Ogden Bolivia is a Delaware corporation that will be engaged indirectly, through one or more affiliates as defined in Section 2(a)(11)(b) of the Public Utility Holding Company Act of 1935, as amended (''PUHCA''), and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities located in Bolivia. The eligible facilities consist of approximately 87.2 MW of existing gas fired generation units and related interconnection facilities and approximately 126 MW of gas fired electric generation units and related interconnection facilities that are currently under construction. The output of the eligible facilities is, or will be, sold at wholesale except that to the extent permitted by Bolivian law retail power sales will be made to consumers located in Bolivia.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. The Bolivian Generating Group, L.L.C.

[Docket No. EG95–69–000]

On July 28, 1995, The Bolivian Generating Group, L.L.C. (''BGG''), with its address c/o Constellation Energy International Investment, Ltd., 250 West Pratt Street, 23rd Floor, Baltimore, MD 21201–2324, filed with the Federal Energy Regulatory Commission (''FERC'' or the ''Commission'') an application for determination of exempt wholesale generator status pursuant to 18 CFR Part 365 of the Commission's Regulations.

BGG is a Cayman Island limited life company that will be engaged indirectly, through one or more affiliates as defined in Section 2(a)(11)(b) of the Public Utility Holding Company Act of 1935, as amended (''PUHCA''), and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities located in Bolivia. The eligible facilities consist of approximately 87.2 MW of existing gas fired generation units and related interconnection facilities and approximately 126 MW of gas fired electric generation units and related interconnection facilities that are currently under construction. The output of the eligible facilities is, or will be, sold at wholesale except that to the extent permitted by Bolivian law retail power sales will be made to consumers located in Bolivia.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. C&O Bolivia

[Docket No. EG95–70–000]

On July 28, 1995, C&O Bolivia (''C&O''), with its address c/o OPDB, Ltd., 40 Lane Road, Fairfield, NJ 07007–2615, filed with the Federal Energy Regulatory Commission (''FERC'' or the ''Commission'') an application for determination of exempt wholesale generator status pursuant to 18 CFR Part 365 of the Commission's Regulations.

C&O is a Cayman Island limited life company that will be engaged indirectly, through one or more affiliates as defined in Section 2(a)(11)(b) of the Public Utility Holding Company Act of 1935, as amended (''PUHCA''), and exclusively in the business of owning and or operating, or both owning and operating, all or part of one or more eligible facilities located in Bolivia. The eligible facilities consist of approximately 87.2 MW of existing gas fired generation units and related interconnection facilities and approximately 126 MW of gas fired electric generation units and related interconnection facilities that are currently under construction. The output of the eligible facilities is, or will be, sold at wholesale except that to the extent permitted by Bolivian law retail power sales will be made to consumers located in Bolivia.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Union Electric Company

[Docket No. ER84–560–038]

Take notice that on July 17, 1995, Union Electric Company tendered for filing its refund report in the above-referenced docket.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Citizens Power & Light Corporation

[Docket No. ER89–401–023]

Take notice that on July 27, 1995, Citizens Power & Light Corporation, filed certain information as required by the Commission's August 8, 1989, order in Docket No. ER89–401–000. Copies of Citizens Power & Light Corporation's informational filing are on file with the Commission and are available for public inspection.

10. Louis Dreyfus Electric Power, Inc.

[Docket No. ER92–850–012]

Take notice that on July 27, 1995, Louis Dreyfus Electric Power, Inc., filed certain information as required by the Commission's December 2, 1992, order in Docket No. ER92–850–000. Copies of Louis Dreyfus Electric Power, Inc.'s informational filing are on file with the Commission and are available for public inspection.

11. Illinova Power Marketing, Inc.

[Docket No. ER94–1475–001]

Take notice that on July 27, 1995, Illinova Power Marketing Inc., filed certain information as required by the Commission's May 18, 1995, order in Docket No. ER94–1475–000. Copies of Illinova Power Marketing Inc.'s informational filing are on file with the Commission and are available for public inspection.

12. Destec Power Services, Inc.

[Docket No. ER94–1612–004]

Take notice that on July 27, 1995, Destec Power Services, Inc. tendered for filing certain information as required by the Commission's letter order dated January 20, 1995. Copies of Destec's informational filing are on file with the Commission and are available for public inspection.

13. Imprimis Corporation

[Docket No. ER94–1672–002]

Take notice that on July 21, 1995, Imprimis Corporation filed certain information as required by the Commission's December 14, 1994, order in Docket No. ER94–1672–000. Copies of Imprimis Corporation's informational filing are on file with the Commission and are available for public inspection.

14. Tenneco Energy Marketing Company

[Docket No. ER95–428–002]

Take notice that on July 21, 1995, Tenneco Energy Marketing Company (Tenneco) filed certain information as required by the Commission's order issued March 30, 1995, order in Docket No. ER95–428–000. Copies of Tenneco's informational filing are on file with the Commission and are available for public inspection.

15. Phibro Division of Salomon Inc.

[Docket No. ER95–430–001]

Take notice that on July 20, 1995, Phibro Division of Salomon Inc. (Phibro) filed certain information as required by the Commission's order issued June 9, 1995, order in Docket No. ER95–430–000. Copies of Phibro's informational filing are on file with the Commission and are available for public inspection.

16. Central Illinois Public Service Company

[Docket No. ER95–502–000]

Take notice that on July 14, 1995, Central Illinois Public Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: August 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. CNB/Olympic Gas Services

[Docket No. ER95–964–001]

Take notice that on July 18, 1995, CNB/Olympic Gas Services (CNB/Olympic) filed certain information as required by the Commission's July 10, 1995, order in Docket No. ER95–964–000. Copies of CNB/Olympic's informational filing are on file with the Commission and are available for public inspection.

18. Niagara Mohawk Power Corporation

[Docket No. ER95–1230–000]

Take notice that on July 31, 1995, Niagara Mohawk Power Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: August 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Alliance Strategies

[Docket No. ER95–1381–000]

Take notice that on July 17, 1995, Alliance Strategies tendered for filing an application, including a rate schedule, for certain waivers and authorizations under the Federal Power Act and the Commission's Regulations to enable Alliance Strategies to make wholesale sales of electric power at market based rates.

Comment date: August 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Utility Trade Corporation

[Docket No. ER95–1382–000]

Take notice that on July 17, 1995, Utility Trade Corporation tendered for filing an application for certain waivers and authorizations under the Federal Power Act and the Commission's Regulations to enable Utility-Trade Corporation to make wholesale sales of electric power at market based rates.

Comment date: August 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Orange and Rockland Utilities, Inc.

[Docket No. ER95–1412–000]

Take notice that on July 19, 1995, Orange and Rockland Utilities, Inc. (O&R), tendered for filing an amendment to its agreement with the New York Power Authority (NYPA) executed June 28, 1985, whereby O&R provides for the transmission of NYPA hydropower and related energy to Public Service Electric and Gas for transmission to the New Jersey Board of Public Utilities' agents in New Jersey.

By this amendment, the parties hereby revise Article V replacing the words ''until June 30, 1995'' with the words ''unless terminated by either party on 90 days notice, through provision of written notice to the other party by first class mail.''

O&R states that a copy of this filing has been served by mail upon NYPA.

Comment date: August 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Central Power and Light Company; West Texas Utilities Company

[Docket No. ER95–1413–000]

Take notice that on July 21, 1995, Central Power and Light Company (CPL) and West Texas Utilities Company (WTU) submitted for filing an executed Transmission Service Agreement between CPL and Brazos Electric Power Cooperative (Brazos) and an executed Transmission Service Agreement between WTU and Brazos (Service Agreements). Under the Service Agreements, CPL and WTU will transmit power and energy purchased by Brazos from the Lower Colorado River Authority. CPL and WTU request that the Service Agreements be accepted to become effective as of June 1, 1995.

Copies of the filing were served on Brazos and the Public Utility Commission of Texas.

Comment date: August 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Maine Public Service Company

[Docket No. ER95–1414–000]

Take notice that on July 21, 1995, Maine Public Service Company submitted an agreement under its Umbrella Power Sales tariff.

Comment date: August 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Arizona Public Service Company

[Docket No. ER95–1419–000]

Take notice that on July 21, 1995, Arizona Public Service Company (APS) tendered for filing an amendment to Service Schedule D to the existing Power Sale Agreement between APS and Citizens Utilities Company (Citizens).

Copies of this filing have been served on the Arizona Corporation Commission and Citizens Utilities Company.

Comment date: August 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Norman Robertson

[Docket No. ID–2199–001]

Take notice that on July 6, 1995, Norman Robertson tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions: Director, Pennsylvania Power & Light Company; Director, Mellon Bank (MD).

Comment date: August 16, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19519 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–1393–000, et al.]

PECO Energy Company, et al.; Electric Rate and Corporate Regulation Filings

August 1, 1995.

Take notice that the following filings have been made with the Commission:

1. PECO Energy Company

[Docket No. ER95–1393–000]

Take notice that on July 18, 1995, PECO Energy Company (PECO), filed a Service Agreement dated June 19, 1995 with Carolina Power & Light Company (CP&L) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement with CP&L as a customer under the Tariff.

PECO requests an effective date of June 19, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to CP&L and to the Pennsylvania Public Utility Commission.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER95–1391–000]

Take notice that on July 18, 1995, Northern States Power Company-Minnesota (NSP–M) and Northern States Power Company-Wisconsin (NSP–W) jointly tendered and request the Commission to accept a Transmission Service Agreement which provides for 10 MW of Reserved Transmission Service to Wisconsin Power and Light Company. The source party is Basin Electric Power Cooperative and the recipient party is Wisconsin Power and Light Company.

NSP requests that the Commission accept for filing the Transmission Service Agreement effective as of June 1, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to 18 CFR Part 35 so the Agreement may be accepted for filing effective on the date requested.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER95–1392–000]

Take notice that on July 18, 1995, Northern States Power Company-Minnesota (NSP–M) and Northern States Power Company-Wisconsin (NSP–W) jointly tendered and request the Commission to accept two Transmission Service Agreements which provide for Limited and Interruptible Transmission Service to NorAm Energy Services, Inc.

NSP requests that the Commission accept for filing the Transmission Service Agreements effective as of August 16, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to 18 CFR Part 35 of the Agreements may be accepted for filing effective on the date requested. Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Electric Power Company

[Docket No. ER95–1395–000]

Take notice that on July 19, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement between itself and Marguette Board of Light and Power (MBLP). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff (CST).

Wisconsin Electric requests waiver of the Commission's notice requirements and requests an effective date of June 30, 1995 in order to facilitate economic transactions under the CST. Copies of the filing have been served on MBLP, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. San Diego Gas & Electric Company

[Docket No. ER95–1396–000]

Take notice that on July 19, 1995, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and Koch Power Services Inc. (KPSI).

SDG&E requests that the Commission allow the Agreement to become effective on the 29th day of September, 1995 or at the earliest possible date.

Copies of the filing were served upon the Public Utilities Commission of the State of California and KPSI.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER95–1397–000]

Take notice that on July 19, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and National Electric Associates, LP, date July 14, 1995. This Service Agreement specifies that National Electric Associates, LP has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume NO. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and National Electric Associates, LP to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of July 14, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power Corporation

[Docket No. ER95–1398–000]

Take notice that on July 19, 1995, Florida Power Corporation (FPC), tendered for filing a service agreement for transmission service resale with Tennessee Valley Authority (TVA), under Florida Power's existing T–1 Transmission Tariff. This allows transmission service to be provided to TVA at all existing and future interconnections of FPC.

FPC requests a waiver of the Commission's 60 day notice requirement to allow FPC and TVA's Agreement to become effective July 20, 1995. FPC submits that waiver is appropriate because this filing does not change the rates under the T–1 Transmission Tariff, which has already been accepted for filing.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. ElecTech, Inc.

[Docket No. ER95–1399–000]

Take notice that on July 19, 1995, ElecTech, Inc. tendered for filing pursuant to Rule 205, 18 CFR 385.205, a position for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective on the date of the order.

ElecTech, Inc. intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where ElecTech, Inc. sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. ElecTech, Inc. is not in the business of generating, transmitting, or distributing electric power.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER95–1401–000]

Take notice that on July 20, 1995, Northern States Power Company-Minnesota (NSP–M) and Northern States Power Company-Wisconsin (NSP–W) jointly tendered and request the Commission to accept two Transmission Service Agreements which provide for Limited and Interruptible Transmission Service to Madison Gas and Electric Company.

NSP requests that the Commission accept for filing the Transmission Service Agreements effective as of August 21, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to 18 CFR Part 35 of the Agreements may be accepted for filing effective on the date requested.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Virginia Electric and Power Company

[Docket No. ER95–1406–000]

Take notice that on July 20, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Electric Clearinghouse, Inc. and Virginia Power, dated August 31, 1994, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Electric Clearinghouse, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER95–1407–000]

Take notice that on July 20, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between LG&E Power Marketing Inc. and Virginia Power, dated December 31, 1994 under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services LG&E Power Marketing Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER95–1408–000]

Take notice that on July 20, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between City of Tallahassee, Florida and Virginia Power, dated April 28, 1995 under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services City of Tallahassee, Florida under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER95–1409–000]

Take notice that on July 20, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), filed amendments to two wholesale power sales agreements. Specifically, Niagara Mohawk seeks to amend the Capacity and Energy Sales Agreement between Niagara Mohawk and Vermont Public Power Supply Authority, the Town of Hardwick Electric Department, the Village of Hyde Park Electric Department, the Village Ludlow Electric Light Department, the Village of Stowe Water & Light Department dated July 28, 1993 and the System Energy Sales Agreement between Niagara Mohawk and Pennsylvania Power & Light Company dated December 6, 1983. The purpose of this abbreviated filing and these amendments is to provide an explanation of the treatment of the cost of emission allowances.

Niagara Mohawk has served copies of the filing on the New York Public Service Commission and affected customers.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER95–1410–000]

Take notice that on July 20, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk) filed the First Supplemental Agreement with New England Power Company (NEPCO). The purpose of this abbreviated filing is to amend an existing sales agreement dated October 4, 1983 in order to provide an explanation of the treatment of the cost of emission allowances.

Niagara Mohawk has served copies of the filing on the New York Public Service Commission and NEPCO.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Northeast Utilities Service Company

[Docket No. ER95–1411–000]

Take notice that on July 21, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with New York Power Authority (NYPA) under the NU System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to NYPA.

NYPA also filed a Certificate of Concurrence as it relates to exchange transactions under the Tariff.

NUSCO requests that the Service Agreement become effective sixty (60) days after receipt of this filing by the Commission.

Comment date: August 15, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19465 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 1051–008 Alaska]

Alaska Power & Telephone Co.; Notice of Availability of Environmental Assessment

August 2, 1995.

An environmental assessment (EA) is available for public review. The EA reviews an application to amend the Skagway Dewey Lakes Hydroelectric Project. The project's description would be amended to show current project features. The EA also reviews plans to repair Dewey Reservoir Dam which requires lowering Dewey Reservoir Lake for about one month. The EA finds that approving the application would not constitute a major Federal action significantly affecting the quality of the human environment.The Skagway Dewey Lakes Hydroelectric Project is located on Reid Falls, Dewey Creek, Icy Creek, and Snyder Creek near the City of Skagway, Alaska.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19464 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Filed With the Commission

August 2, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

Notice of Filing (Tendering) of Application

a. *Type of Application:* Major License (Notice of Tendering).

b. *Project No.:* 11554–000.

c. *Date filed:* July 25, 1995.

d. *Applicant:* Nez Perce Tribe.

e. *Name of Project:* Dworshak Small Hydro.

f. *Location:* On the existing water conveyance system providing water from Dworshak Dam to two fish hatcheries. North Fork Clearwater River, Clearwater County, Idaho. Section 34, Township 37 North, Range 1 East, Boise Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)-825(r).

h. *Applicant Contact:* Rebecca Craven, Deputy Counsel, Nez Perce Tribal Executive Committee, Office of Legal Counsel, P.O. Box 305, Lapwai, ID 83540–0305, (208) 843–7355.

i. *FERC Contact:* James Hunter, (202) 219–2839

j. *Brief Description of Project:* The proposed project will consist of one 2.5-megawatt and one 0.4-megawatt generating unit connected to existing water lines at the system's distribution tank and a transmission line connecting to an existing Clearwater Power Company distribution line. The project would occupy lands of the United States under the jurisdiction of the Corps of Engineers and the Bureau of Land Management.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at § 800.4.

l. In accordance with section 4.32(b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days from the filing date and serve a copy of the request on the Applicant.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19466 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–408–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 2, 1995.

Take notice that on August 1, 1995, Columbia Gas Transmission Corporation (Columbia), pursuant to Section 4 of the Natural Gas Act (NGA) and Section 154.63 of the Commission's Rules and Regulations thereunder, tendered for filing revised tariff sheets containing proposed changes to its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 as set forth on Appendices A, B, and C, attached to the filing, to be effective as discussed below. Columbia states that the proposed changes in the Appendix A tariff sheets would increase revenues by approximately $147 million based on the 12-month period ending April 30, 1995, adjusted for known and measurable changes anticipated to occur on or before January 31, 1996.

Columbia states that the tariff sheets identified in Appendix A bear an issue date of August 1, 1995, and a proposed effective date of September 1, 1995. Columbia anticipates that the Appendix A tariff sheets will be suspended by the Commission for the full 12 months permitted by the NGA and moved into effect as of February 1, 1996. These tariff sheets reflect a general increase in rates based upon an updated cost of service and billing determinants. This cost of service reflects increases in operation and maintenance costs, revised depreciation rates, and additions to rate base since Columbia's last general rate case. Columbia is also proposing an electric power costs tracking mechanism, a mechanism for recovery of its stranded investment in gathering and products extraction facilities, and has developed unbundled gathering and products extraction rates.

Columbia states that the tariff sheets identified in Appendix B also bear an issue date of August 1, 1995, and a proposed effective date of September 1, 1995. With regard to the Appendix B tariff sheets, however, Columbia is requesting the Commission grant any necessary waivers so that they may become effective on September 1, 1995. These tariff sheets contain clarifications and corrections as well as changes intended to address inadequacies in certain provisions in Columbia's Rate Schedules and General Terms and Conditions including Sections 4, 6, 7, 14, 16, 18, 19, 35 and 36 of the General Terms and Conditions, and the FSS, IPP and SIT Rate Schedules. Columbia is also proposing a new emergency

interruption provision to provide relief from interruption for customers with high-priority needs in emergency situations.

Columbia also states that the Appendix C tariff sheets are pro forma tariff sheets that propose market-based rates for short-term firm transportation services, interruptible transportation and storage services, and temporary capacity release transactions.

Columbia requests that the Commission set these tariff sheets for hearing along with the other issues that may be set for hearing as a result of this filing. Unless otherwise resolved as part of this proceeding, Columbia will not propose to move these tariff sheets into effect prior to the date of a final Commission order in Docket No. RM95–6.

Columbia states that its proposals are more fully described in the filing and supported by Statement P testimony to be filed.

Columbia states that a copy of the filing is being served on all of its firm customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 9, 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 Columbia's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19467 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–221–048]

Frontier Gas Storage Company; Notice of Sale Pursuant to Settlement Agreement

Editorial Note: This document was inadvertently omitted from the issue of July 25, 1995. It is published at the request of the agency.

July 19, 1995.

Take notice that on July 13, 1995, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Avenue NW., Suite 800, Washington, DC 20004, in compliance with the provisions of the Commission's February 13, 1985, Order in Docket No. CP82–487–000, *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of 100,000 MMBtu of frontier's gas storage inventory on an ''in place'' basis to The Western Sugar Company.

Under Subpart (b) of Ordering Paragraph (G) of the Commission's February 13, 1985, Order, Frontier is ''authorized to consummate the proposed sale in place unless the Commission issues an order within 20 days after expiration of such notice period either directing that the sale not take place and setting it for hearing or permitting the sale to go forward and establishing other procedures for resolving the matter. Deliveries of gas sold in place shall be made pursuant to a schedule to be set forth in an exhibit to the executed service agreement.''

Any person desiring to be heard or to make a protest with reference to said filing should, within 10 days of the publication of such notice in the **Federal Register**, file with the Federal Energy Regulatory Commission (825 North Capitol Street NE., Washington, DC 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–19644 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–406–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Change in FERC Gas Tariff

August 2, 1995.

Take notice that on July 31, 1995, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1 the following revised tariff sheets:

First Original Sheet No. 86 Original Sheet No. 86A

The proposed effective date for the tariff revision is July 31, 1995.

Iroquois states that the proposed tariff revision would obligate Iroquois to refund demand charges collected from firm shippers on days in which service is interrupted, if and to the extent Iroquois is reimbursed through insurance proceeds and the shipper is not recompensed through other primary insurance. Iroquois states that the revised tariff provision reflects an extension of its insurance coverage as contemplated by Article 5.3 of the March 30, 1995 Stipulation and Agreement approved in Iroquois' Docket Nos. RP94–72–000, et al.

Iroquois states that copies of its filing were served on all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19468 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–399–000]

Koch Gateway Pipeline Company; Notice of Petition for Waiver of Regulations

August 2, 1995.

Take notice that on July 27, 1995, Koch Gateway Pipeline Company, (Koch Gateway) tendered for filing a petition for a limited waiver of Section 154.16 of the Commission's Regulations and Rule 2010 of the Commission's Rules of Practice and Procedure so as to permit Koch Gateway to serve an abbreviated copy of future tariff filings made by Koch Gateway on customers that so elect.

Koch Gateway states that many customers find the exhaustive detail and voluminous paperwork, which accompanies such filings, burdensome and of limited interest to them. As a result, so that customers can more effectively manage the inflow of filings and reduce the volume of undesired paper received, Koch Gateway requests

this limited waiver of the Commission's service regulations to send abbreviated copies of Koch Gateway's future tariff filings.

Koch Gateway states that those customers that select the abbreviated version of its tariff filings, Koch Gateway proposes to serve only the transmittal letter, the proposed tariff sheets, and the statement of nature, reason and basis (if not included in the transmittal letter).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such notices or protests should be filed on or before August 9, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19469 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–401–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Tariff

August 2, 1995.

Take notice that on July 28, 1995, Mississippi River Transmission Corporation (MRT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Twelfth Revised Sheet No. 5
Twelfth Revised Sheet No. 6

MRT states that the purpose of this filing is to adjust its rates to reflect additional Gas Supply Realignment Costs (GSRC) of $1,200,000, plus applicable interest, pursuant to Section 16.3 of the General Terms and Conditions of MRT's Tariff. MRT states that its filing includes the GSRC Buyout/Buydown costs incurred during the period June 15, 1995 through July 21, 1995.

MRT requests an effective date of August 1, 1995, for these tariff sheets.

MRT states that copies of its filing have been mailed to all of its affected customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 C*FR 385.211 and 385.214). All such motions and protests should be filed on or before August 9, 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 available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19470 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–407–000]

Questar Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 2, 1995.

Take notice that on July 31, 1995, Questar Pipeline Company (Questar), tendered for filing and acceptance tariff sheets to First Revised Volume No. 1 and Original Volume No. 3 of its FERC Gas Tariff to implement revised base rates for jurisdictional transportation and storage services, to become effective September 1, 1995.

Questar states that the proposed changes would increase revenues from jurisdictional transportation and storage service by $23.3 million based on the 12-month period ended March 31, 1995, as adjusted. Questar tendered for filing and acceptance the following tariff sheets:

Primary Tariff Sheets

First Revised Volume No. 1

Original Sheet Nos. 98A, 98B and 99
First Revised Sheet Nos. 7, 13, 92A and 98
Second Revised Sheet Nos. 14 and 92
Third Revised Sheet Nos. 6A and 40
Fifth Revised Sheet Nos. 5 and 6

Original Volume No. 3

Fifteenth Revised Sheet No. 8
Alternate Tariff Sheets
Alternate Fifth Revised Sheet No. 5
Fifth Revised Sheet No. 5A

Concurrent with this filing to increase rates for transmission and storage services, Questar has filed a request with the Commission to ''spin down'' its current gathering operations to a wholly owned subsidiary, Questar Gas Management Company (QGM), effective January 1, 1996. This would be effected by a transfer of the facilities that Questar currently uses to provide gathering services and the corresponding termination of any gathering service obligation of Questar. In addition, QGM is requesting a declaratory order from the Commission declaring that the facilities to be transferred to QGM are non-jurisdictional gathering facilities and that QGM is not subject to FERC jurisdiction.

The proposed tariff sheets in this filing do not contain any stated rates for gathering, as Questar will not be providing gathering service after December 31, 1995, if the Commission approves the gathering-transfer requests sought by Questar and QGM. For this reason, it is important that rates in this proceeding be made effective no later than January 1, 1996.

Questar states that the primary reasons for the proposed change is to incorporate into base rates (1) the transition costs associated with its Order No. 636 restructuring in Docket No. RS92–9, (2) the elimination of Questar's 90/10 interruptible transportation revenue-crediting provision, (3) a rate of return on equity that more appropriately measures the cost of equity funds for a pipeline that faces the business risks attendant to today's competitive markets, (4) increased accruals associated with changes in financial accounting standards, (5) increased gas plant in service, (6) depreciation rates that better reflect the economic life of electronic flow measurement and computer equipment, (7) increased labor costs, (8) the reclassification of gathering and transmission facilities associated with the transfer of gathering facilities to QGM and (9) costs associated with certain certificated facilities that have been placed ''at risk'' by the Commission.

Questar states that copies of the proposed tariff sheets and the application letter describing the nature of the application were served upon the Company's jurisdictional customers (including customers receiving service under a capacity-release arrangement) and upon the Utah and Wyoming Public Service Commissions. The Company has offered to provide a complete set of supporting schedules, tables and testimony to such parties upon request.

Any person desiring to be heard or to protest this 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 385.214). All such motions or protests should be filed on or before August 9, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19471 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–402–000]

Southern Natural Gas Company; Notice of GSR Revised Tariff Sheets

August 2, 1995.

Take notice that on July 31, 1995, Southern Natural Gas Company (Southern) submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a decrease in its FT/FT–NN GSR Surcharge effective August 1, 1995 due to a revision in the contract level for Mississippi Valley Gas Company:

Twentieth Revised Sheet No. 15
Twentieth Revised Sheet No. 17
Fourteenth Revised Sheet No. 29
Fourteenth Revised Sheet No. 30
Fourteenth Revised Sheet No. 31

Southern states that copies of the filing were served upon Southern's intervening customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 9, 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 Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19472 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–403–000]

Southern Natural Gas Company; Notice of Revised Tariff Sheets for Transition Cost Recovery

August 2, 1995.

Take notice that on July 31, 1995, Southern Natural Gas Company (Southern) submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a decrease in its T & C Surcharge effective August 1, 1995, due to a revision in the contract level for Mississippi Valley Gas Company:

Twenty-first Revised Sheet No. 15
Twenty-first Revised Sheet No. 17

Southern states that copies of the filing were served upon Southern's intervening customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 9, 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 Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19473 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–404–000]

Southern Natural Gas Company; Notice of Filing

August 2, 1995.

Take notice that on July 31, 1995, Southern Natural Gas Company (Southern) submitted a filing pursuant to Section 31.4 of the General Terms and Conditions of its FERC Gas Tariff, Seventh Revised Volume No. 1. Section 31.4 of the Tariff provides that Southern shall file not later than three months prior to the second anniversary of the effective date of its Order No. 636 restructuring to support continuation of its pricing differential mechanism (PDM) for recovery of gas supply realignment costs. The second anniversary of Southern's Order No. 636 restructuring will be November 1, 1995, and Southern anticipates that it will be unable to obtain reformation of all of its gas supply contracts prior to that date. Accordingly, Southern made this filing in support of a two-year continuation of its PDM.

Southern states that copies of the filing were served upon Southern's shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 9, 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 Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19474 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–405–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 2, 1995.

Take notice that on July 31, 1995, Texas Gas Transmission Corporation (Texas Gas) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

Tenth Revised Sheet No. 10
Seventh Revised Sheet No. 11
Second Revised Sheet No. 11A
Twelfth Revised Sheet No. 12

Texas Gas states that the revised tariff sheets are being filed pursuant to Section 33.3 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, to recover ninety percent (90%) of its Gas Supply Realignment costs incurred March–May 1995 from its firm transportation customers and ten percent (10%) of its Gas Supply Realignment Costs from its IT customers. The GSR costs, including applicable interest, proposed to be recovered by Texas Gas's seventh GSR recovery filing total $1,994,681.

Texas Gas requests an effective date of September 1, 1995, for the proposed tariff sheets.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected jurisdictional customers, those appearing on the applicable service lists, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 9, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19475 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–11–001]

Williams Natural Gas Company; Notice of Refund Report

August 2, 1995.

Take notice that on July 28, 1995, Williams Natural Gas Company (WNG) tendered for filing a report of additional refunds of Kansas ad valorem taxes made to customers, pursuant to Commission Order on Court Remand in Docket Nos. GP83–11–002 and RI83–9–003. Colorado Interstate Gas Company, 65 FERC ¶ 61,292 (1993).

WNG states that a copy of its filing was served on all customers receiving a refund, all participants listed on the service lists maintained by the Commission in the docket referenced above, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 9, 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19476 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5274–7]

Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Black and Veatch Waste Science (BVWS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice request for comments.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.301(h) and 40 CFR 2.310(h) for authorization to disclose to its contractor, BVWS, Kansas City, Missouri, cost recovery support documentation for the Des Moines TCE Superfund Site. This disclosure includes Confidential Business Information (CBI) which has been submitted to EPA Region VII, Superfund Division. BVWS's principal office is at 6601 College Blvd., Overland Park, Kansas 66211.

FOR FURTHER INFORMATION CONTACT: Glenn Curtis, Superfund Division, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7726.

Notice of Required Determinations, Contract Provisions and Opportunity to Comment: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended (commonly known as ''Superfund''), requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records. EPA has entered into ARCS Contract No. 68–W8–0064 for management of those records. EPA Region VII has determined that disclosure of CBI to BVWS is necessary in order that the contractor may carry out the work requested under the above contract with EPA. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii) and 40 CFR 2.310(h). EPA Region VII will require that each BVWS employee working on cost recovery work sign a written agreement that he or she:

(1) Shall use the information only for the purpose of carrying out the work required by the contract;

(2) Shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA regional office; and

(3) Shall return to EPA all copies of the information and any contracts or extracts therefrom (a) upon completion of the contract, (b) upon request of the EPA, or (c) whenever the information is no longer required by BVWS for performance of work requested under the contract. These non-disclosure statements shall be maintained on file with the EPA Region VII Project Officer for BVWS. BVWS employees will be provided technical direction from their respective EPA contract management staff.

EPA hereby advises affected parties that they have ten (10) working days to comment pursuant to 40 CFR 2.301(h)(2)(ii) and 40 CFR 2.310(h). Comments should be sent to: Glenn Curtis, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Dated: July 26, 1995.

William Rice,

Acting Regional Administrator.

[FR Doc. 95–19489 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5274–8]

Availability of Draft Department of Energy Petition to Grant the Waste Isolation Pilot Plant (WIPP) a Variance From the Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency announces the availability for public comment of a draft no-migration variance petition submitted to the Agency by the Department of Energy (DOE) for its Waste Isolation Pilot Plant (WIPP) on May 31, 1995. The WIPP is a geological repository intended for the disposal of transuranic mixed hazardous and radioactive wastes generated by DOE in the production and decommissioning of nuclear weapons. The hazardous portion of the waste is subject to the land disposal restrictions of the Resource Conservation and Recovery Act (RCRA), as codified at 40 CFR Part 268. DOE's no-migration petition is intended to show that the WIPP will comply with the land

disposal restrictions by demonstrating that hazardous constituents will not migrate out of the WIPP disposal unit for as long as the wastes remain hazardous (a regulatory period of up to 10,000 years).

DATES: Public comments on the draft no-migration petition should be submitted on or before October 10, 1995.

ADDRESSES: Copies of the draft petition are available to the public at the following address: U.S. Environmental Protection Agency, RCRA Docket (5305) 401 M Street SW., Washington, DC 20460. Comments on the petition also should be sent to this address. One original and two copies should be submitted and should be identified by the regulatory docket reference number F–95–WIPA–FFFFF. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Docket materials may be reviewed by appointment by calling (202) 260–9327. Up to 100 pages of material from the docket may be copied at no cost. Additional copies are $0.15 per page.

Copies of the draft petition also are available to the public at RCRA dockets that EPA has opened in New Mexico. These dockets are in the same locations as the currently existing dockets for the EPA Office of Radiation and Indoor Air (ORIA). ORIA is responsible for regulating the radioactive portion of the WIPP waste through 40 CFR Part 191. Petition locations are: (1) EPA's docket in the Governmental Publications Department of the Zimmerman Library of the University of New Mexico located in Albuquerque, New Mexico (open from 8:00 a.m. to 9:00 p.m. on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); (2) EPA's docket in the Fogelson Library of the College of Santa Fe in Santa Fe, New Mexico, at 1600 St. Michaels Drive (open from 8:00 a.m. to 12:00 midnight on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); and (3) EPA's docket in the Municipal Library of Carlsbad, New Mexico, 101 South Halegueno (open from 10:00 a.m. to 9:00 p.m. on Monday through Thursday, 10:00 a.m. to 6:00 p.m. on Friday and Saturday, and 1:00 p.m. to 5:00 p.m. on Sunday). Up to 100 pages of material from the docket may be copied at no cost. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information about the no-migration and RCRA permitting process, contact the RCRA/Superfund Hotline, U.S Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (800) 424–9346 (toll-free) or (703) 412–9810 in the Washington, DC metropolitan area. The TDD number for hearing-impaired callers is (800) 553–7672. For information on the specific aspects of the petition, and issues discussed in this notice, contact Reid Rosnick (703–308–8758) or Chris Rhyne (703–308–8658), Office of Solid Waste (5303W) U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of 40 CFR 268.6, EPA granted a conditional no-migration variance to DOE on November 14, 1990 (55 *FR* 47709). This variance allowed DOE to place hazardous waste subject to the land disposal restrictions of the Resource Conservation and Recovery Act (RCRA) in the WIPP for the limited purposes of below-ground testing and experimentation over a ten year period. In 1993, DOE cancelled the proposed test period, after a determination that the tests and experiments could be done faster and more cheaply above ground. As a result, the 1990 determination was made moot, and DOE was informed that a new petition for a long-term demonstration would need to be submitted and approved before any waste could be accepted at the facility. The draft petition made available today is the first step in that approval process.

EPA is aware that this draft petition is not complete, in that all of the required information for a long-term demonstration is not contained in the document. This petition covers only the disposal phase of the project (the first twenty five years of operation of the facility), and does not address the long-term post-closure performance of the repository. DOE has noted that it intends to submit the portion of the petition that addresses the long-term migration potential in June, 1996. EPA has provided guidance to DOE on the requirements for submitting a complete petition through the Agency's guidance document entitled ''No-Migration Variance to the Hazardous Waste Land Disposal Prohibitions: A Guidance Manual for Petitioners,'' and by encouraging pre-submission discussions with DOE. The Agency will also provide comments on DOE's submitted draft petition to provide early guidance to DOE. By today's **Federal Register** notice, the EPA encourages the public to provide comments that will inform its review of DOE's draft petition.

EPA also emphasizes that after the June, 1996 submission, EPA will review the full petition and determine, through a formal rulemaking, whether to issue the variance or deny the no-migration petition. Interested members of the public will have a full opportunity to comment on the petition and EPA's review as part of the rulemaking process.

Dated: July 26, 1995.

Elliott P. Laws,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 95–19490 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 1622
Name: Carlos Martinez and Company, Inc.
Address: 44 South Second St., Philadelphia, PA 19106
Date Revoked: July 15, 1995
Reason: Failed to furnish a valid surety bond.

License Number: 2361
Name: ISC Transport, Ltd.
Address: 71–08 51st Ave., Woodside, NY 11377
Date Revoked: July 22, 1995
Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–19485 Filed 8–7–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Roger Berglund, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal

Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 22, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Roger Berglund, Bowman, North Dakota; to acquire an additional 8.40 percent, for a total of 27.80 percent, and Susan Berglund, Bowman, North Dakota; to acquire an additional 9 percent, for a total of 30 percent, of the voting shares of Dakota Western Bankshares, Inc., Bowman, North Dakota, and thereby indirectly acquire Dakota Western Bank, Bowman, North Dakota.

2. Hershell R. Page, Plankinton, South Dakota; to acquire an additional 10.94 percent, for a total of 59.50 percent; Thomas R. Page, Plankinton, South Dakota; to acquire an additional 6.87 percent, for a total of 64.69 percent; both serving as cotrustees for the Ruth Ann Page Trust, Plankinton, South Dakota; which will acquire 28.82 percent of the voting shares of Page Holding Company, Plankinton, South Dakota, and thereby indirectly acquire Farmers & Merchants State Bank, Plankinton, South Dakota.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Lenard C. Briscoe, Kingfisher, Oklahoma; to acquire 100 percent of the voting shares of Dewey County Bancorporation, Inc., Taloga, Oklahoma, and thereby indirectly acquire Dewey County State Bank, Taloga, Oklahoma.

2. Ward H. Reesman, Falls City, Nebraska; to acquire an additional 30.18 percent, for a total of 54.18 percent, of the voting shares of Admire Bancshares, Inc., Emporia, Kansas, and thereby indirectly acquire Admire Bank and Trust, Emporia, Kansas. This transaction represents the acquisition of shares and a redemption.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Homer Lee Bryce, Henderson, Texas; to acquire an additional .68 percent, for a total of 10.65 percent, of the voting shares of Fredonia Bancshares, Inc., Nacogdoches, Texas, and thereby indirectly acquire Fredonia State Bank, Nacogdoches, Texas.

Board of Governors of the Federal Reserve System, August 2, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19493 Filed 8–7–95; 8:45 am]

BILLING CODE 6210–01–F

First Union Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are 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 each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 1, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Union Corporation, Charlotte, North Carolina; to acquire First Union Corporation of New Jersey, Newark, New Jersey, which will become a bank holding company by merging with First Fidelity Bancorporation, Newark, New Jersey, and Philadelphia, Pennsylvania, and thereby indirectly acquire First Fidelity Bank, N.A., Elkton, Maryland; First Fidelity Bank, Stamford, Connecticut; First Fidelity Bank, Delaware, Wilmington, Delaware; First Executive Bank, Philadelphia, Pennsylvania (24.4 percent of the voting shares).

In connection with this application, Applicant also has applied to acquire Broad & Lombardy Associates, Inc., Newark, New Jersey, and thereby engage in acting as insurance agent or broker for credit life and health insurance in conjunction with credit transactions; acting as an insurance agent or broker for the sale of credit-related property and casualty insurance protecting real and personal property which serves as collateral for a credit transaction and liability coverage as part of a package on home, automobile and business policies; and acting as an insurance agent or broker for insurance for affiliates, pursuant to § 225.25(b)(8)(i) and (iv) of the Board's Regulation Y.

In connection with this application, Applicant also has applied to acquire First Fidelity Community Development Corp., Newark, New Jersey, and thereby engage in community development activities, including: debt and equity investments in residential, commercial and industrial projects; the acquisition, ownership, renovation, development, leasing, managing or exchanging, selling or promoting of real and/or personal property; financial counseling to all sectors of the community, especially the small business sector; and coordination and arrangement of joint ventures or participations to provide financial assistance to low and moderate income areas of the States of New Jersey and Pennsylvania, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

In connection with this application, Applicant also has applied to acquire Fidelcor Life Insurance Company, Phoenix, Arizona, and thereby engage in reinsurance of credit life, disability and health insurance written by an outside insurance carrier in connection with loans extended by bank affiliates,

pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

In connection with this application, Applicant also has applied to acquire Waller House Corporation, Philadelphia, Pennsylvania, and thereby engage in community development activities, pursuant § 225.25(b)(6) of the Board's Regulation Y. Comments on this application must be received not later than Septmber 1, 1995.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. The Berens Corporation, Houston, Texas; has applied to become a bank holding company by acquiring 100 percent of the voting shares of Berens Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire First National Bank of Dayton, Dayton, Texas.

In connection with this application, Berens Delaware, Inc., Wilmington, Delaware, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Dayton, Dayton, Texas.

Also, in connection with this application, Applicant has applied to engage *de novo*, through its subsidiary, Berens Credit Corporation, Houston, Texas, and engage *de novo* in mortgage leasing, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y; commercial finance, pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y; and leasing, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 2, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19494 Filed 8–7–95; 8:45 am]

BILLING CODE 6210–01–F

NBD Bancorp, Inc.; 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 22, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. NBD Bancorp, Inc., Detroit, Michigan; to expand the geographic scope of its subsidiary, NBD Real Estate Services, Inc., Indianapolis, Indiana, and thereby engage in mortgage lending and servicing, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y; real property leasing, pursuant to § 225.25(b)(5) of the Board's Regulation Y; credit insurance, pursuant to § 225.25(b)(8) of the Board's Regulation Y; management consulting, pursuant to § 225.25(b)(11) of the Board's Regulation Y; and real estate appraising, pursuant to § 225.25(b)(13) of the Board's Regulation Y. NBD Real Estate Services, Inc. seeks to expand the current geographic scope from Indiana, Ohio and Kentucky, to nationwide.

Board of Governors of the Federal Reserve System, August 2, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19495 Filed 8–7–95; 8:45 am]

BILLING CODE 6210–01–F

Norwood Associates II, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 1, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Norwood Associates II, Hackensack, New Jersey (Norwood II), to acquire all of the outstanding shares of Adwildon Corporation, Hackensack, New Jersey (Adwildon); and (2) Midland Bancorporation, Inc., Paramus, New Jersey (Midland), to merge Adwildon with and into Midland (Norwood II and Adwildon together, the ''Applicants''). Midland is a bank holding company with respect to Midland Bank and Trust Company, Paramus, New Jersey (Bank). Norwood II and Adwildon are bank holding companies with respect to their ownership of 30.8 and 23.5 percent, respectively, of Midland.The applications are made in the context of a corporate reorganization in which Adwildon will be dissolved and its 23.5 percent interest in Midland will be acquired by Norwood II, thereby increasing Norwood II's interest in Midland to 54.3 percent.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Farmers Bancshares, Inc., Cheneyville, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers Bank & Trust of Cheneyville, Cheneyville, Louisiana.

2. Hibernia Corporation, New Orleans, Louisiana; to merge with FNB

Bancshares, Inc., Lake Providence, Louisiana, and thereby indirectly acquire The First National Bank of Lake Providence, Lake Providence, Louisiana.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Kensington Bancorp, Inc., Kensington, Minnesota; to become a bank holding company by acquiring 87.60 percent of the voting shares of First State Bank of Kensington, Kensington, Minnesota.

Board of Governors of the Federal Reserve System, August 2, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19496 Filed 8–7–95; 8:45 am]

BILLING CODE 6210–01–F

Withee Bank Shares, 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 22, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Withee Bank Shares, Inc., Withee, Wisconsin; proposes to form a community development corporation, tentatively named The Hometown Development Corporation, Withee, Wisconsin; and thereby engage *de novo* in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; proposes to establish through its wholly-owned indirect subsidiary, Norwest Ventures, Inc., Des Moines, Iowa, a joint venture named subsidiary, Southeastern Residential Mortgage, Raleigh, North Carolina, and thereby engage *de novo* in residential mortgage lending business, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The joint venture partner is Howard Perry & Walston Realty, Inc., Raleigh, North Carolina.

Board of Governors of the Federal Reserve System, August 2, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19497 Filed 8–7–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 071795 AND 072895

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
James P. McCready, Brenlin Corporation, McCready Brenlin-Holdco, Inc	95–2130	07/17/95
Trilon Financial Corporation, Harry T. Dozer, PBL Corporation	95–1933	07/18/95
Glenn R. Jones, Benchmark/Manassas Investors Corp., Benchmark/Manassas Cable Fund Limited Partnership	95–2014	07/18/95
Charterhouse Equity Partners II, L.P., Masada Cable Partners II, L.P., Masada Cable Partners II, L.P	95–2040	07/18/95
Sumner M. Redstone, David J. Harris, Broadcast Corporation of Georgia	95–2058	07/18/95
Marcus Cable Company, L.P., Cencom of Alabama, L.P., Cemcom of Alabama, L.P	95–2116	07/18/95
CenConn Health Corporation, B.M.H. Corporation, B.M.H. Corporation	95–2152	07/18/95
Peter J. Callahan, T/SF Communications Corporation, BMT Communications, Inc	95–1978	07/20/95
De La Rue plc, Brandt, Inc., Brandt, Inc	95–2067	07/20/95
Sybron International Corporation, BTR plc, a UK company, Nunc, Inc	95–2098	07/20/95
Castle Harlan Partners II, L.P., Euclid Services Corporation, Euclid Services Corporation	95–2105	07/20/95
Team Rental Group, Inc., The Mirkin Partnership, BRAC–OPCO, Inc	95–1803	07/21/95
Enserch Corporation, Jonathan Carroll, DGS Holdings Corp	95–2079	07/21/95
Wendy's International, Inc., Wendy's of Greater Pittsburgh, Inc., Wendy's of Greater Pittsburgh, Inc	95–2094	07/21/95
Wolseley plc, Inter-State Lumber Company 1989 Restated ESOP and Trust, Inter-State Lumber Company 1989 Restated ESOP and Trust	95–2118	07/21/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 071795 AND 072895—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
CRH plc, Val Staker, Staker Paving and Construction Company, Inc	95–2120	07/21/95
Northwestern Healthcare Network, Midwest Community Health Service, Inc., Midwest Community Health Service, Inc	95–2123	07/21/95
US Province of the Congregation of Bon Secours of Paris, Gulf Area Medical Programs, Inc., Venice Hospital, Inc	95–2127	07/21/95
Morgan Stanley Capital Partners III, L.P., Enron Corp., Transwestern Gathering Company	95–2136	07/21/95
American International Group, Inc., Burlington Resources Inc., Meridian Oil Production Inc. and Southland Royalty Co	95–2137	07/21/95
Bergen Brunswig Corporation, Colonial Healthcare Supply Co., Colonial Healthcare Supply Co	95–2139	07/21/95
Allergan, Inc., Equilease Holding Corp., Herald Pharmacal, Inc	95–2142	07/21/95
Community Health Systems, Inc., David M. Wilds, Kentucky River Company	95–2143	07/21/95
Community Health System, Samuel W. Owen, Kentucky River Company	95–2144	07/21/95
Phoenix Home Life Mutual Insurance Company, First Spring Financial Associates, Kalvin-Miller Holdings Ltd	95–2145	07/21/95
Mitsubishi Chemical Corporation, Kamilche Company, Pacific Western Extruded Plastics Company	95–2146	07/21/95
Apollo Real Estate Investment Fund, L.P., Insignia Financial Group, Inc., Insignia Financial Group, Inc	95–2150	07/21/95
The Goldman Sachs Group, L.P., ITT Corporation, ITT Federal Savings Bank, FSB	95–2151	07/21/95
Valmont Industries, Inc., Microflect Company, Inc., Microflect Company, Inc	95–2154	07/21/95
Dort A. Cameron, III, Random Access, Inc., Random Access, Inc	95–2155	07/21/95
Alan B. Miller, Baptist Hospitals and Health Systems, Inc., Manatee Hospitals and Health Systems, Inc	95–2156	07/21/95
Kemper Corporation, Starmanager Investment, L.P., Dreman Value Management, L.P	95–2159	07/21/95
SunAmerica Inc., The Mutual Life Insurance Company of New York, Hilton Pavilion Hotel—Mesa, Arizona	95–2165	07/21/95
Deposit Guaranty Corp., Del K. Bowden, First Mortgage Corp	95–2166	07/21/95
Finanziaria De Agostini s.r.l., K–III Communications Corporation, Newfield Publications, Inc	95–2179	07/21/95
Deposit Guaranty Corp., Larry J. Richling, First Mortgage Corp	95–2198	07/21/95
Kelso Investment Associates V, L.P., Harris Specialty Chemicals, Inc., Harris Specialty Chemicals, Inc	95–2081	07/25/95
Zapata Corporation, Envirodyne Industries, Inc., Envirodyne Industries, Inc	95–2135	07/25/95
Saratoga Partners III, L.P., Thomas E. Wood, Inc., Thomas E. Wood, Inc	95–2157	07/25/95
Ben Weider, c/o Weider Health and Fitness, Bernard Sherman, National Institute of Nutrition, Inc	95–2163	07/25/95
The Chase Manhattan Corporation, J.P. Morgan & Co., Incorporated, Morgan Guaranty Trust Company of New York	95–2172	07/25/95
George P. Mitchell, Mobil Corporation, Mobil Producing Texas & New Mexico, Inc	95–2176	07/25/95
Western Gas Resources, Inc., Enron Corp., Transwestern Gathering Company	95–2185	07/25/95
First Chicago Corporation, Seagull Energy Corporation, Seagull Energy E&P Inc	95–2188	07/25/95
Casino America, Inc., Edward J. DeBartolo, Jr., Louisiana Riverboat Gaming Partnership	95–2195	07/25/95
Casino America, Inc., Casino America, Inc., Louisiana Riverboat Gaming Partnership	95–2196	07/25/95
Triarc Companies, Inc., Joseph Umbach, Joseph Victori Wines, Inc	95–2107	07/26/95
Welsh, Carson, Anderson & Stowe VI, L.P., EJV Partners, L.P., EJV Partners, L.P	95–2173	07/26/95
NEXTEL Communications, Inc., Tele-Communications, Inc., American Mobile Systems Incorporated	93–1828	07/27/95
NEXTEL Communications, Inc., PowerFone Holdings, Inc., PowerFone Holdings, Inc	94–0496	07/27/95
Newco c/o CenCall Communications Corp., NEXTEL, Inc., NEXTEL, Inc	94–0574	07/27/95
NEXTEL Communications, Inc., Newco c/o CenCall Communications Corp., Newco c/o CenCall Communications Corp	94–0575	07/27/95
CenCall Communications Corp., Motorola, Inc., Motorola, Inc	94–0623	07/27/95
Motorola, Inc., CenCall Communications Corp., CenCall Communications Corp	94–0624	07/27/95
Nextel Communications, Inc., Motorola, Inc., Motorola, Inc	94–0714	07/27/95
Motorola, Inc., Nextel Communications, Inc., Nextel Communications, Inc	94–0715	07/27/95
Dean Foods Company, John Hancock Capital Growth Fund III, Limited Partners, Norcal Crosetti Foods, Inc	95–2042	07/27/95
The Coca-Cola Company, Barq's, Inc., Barq's, Inc	95–0866	07/28/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–19547 Filed 8–7–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95F–0244]

Union Carbide, Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Union Carbide, Corp. has filed a petition proposing that the food additive regulations be amended to redefine the limitations for *n*-butoxypolyoxyethylenepolyoxypro- pylene glycol intended for use as a defoaming agent in sugar beet processing by viscosity.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3083.

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 5A4473) has been filed by Union Carbide, Corp., P.O. Box 670, Bound Brook, NJ 08805. The petition proposes to amend the food additive regulations in § 173.340 *Defoaming agents* (21 CFR 173.340) to redefine

limitations for *n*-butoxypolyoxyethylenepolyoxypropylene glycol intended for use as a defoaming agent in sugar beet processing by viscosity.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: July 24, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–19540 Filed 8–7–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–95–1230–00; SRP NV050–95–001]

Temporary Closure of Public Lands; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure of certain public lands and/or roads during the 1995 ACERBIS Nevada Rally.

SUMMARY: Certain public lands within the State of Nevada will be temporarily closed during the 1995 ACERBIS Nevada Rally for the protection of participants, resources, and the public. Certain roads will be closed to public access during August 13 to August 20, 1995.

EFFECTIVE DATES: August 12 to 20, 1995.

SUPPLEMENTARY INFORMATION: Certain public lands, roads, and trails utilized for the 1995 ACERBIS Nevada Rally in Clark, Lincoln, Esmeralda, Nye, Mineral, Churchill, Pershing, Lander, Humboldt, Eureka, Elko, and White Pine Counties of Nevada, will be temporarily closed, during the Rally, to public access for up to 12 hours, from 6 a.m. until 6 p.m. to protect persons, property, and public lands resources. The public lands to be closed are those lands within 50 feet of the centerline of roads and trails of the proposed course. Maps of the rally are available for inspection at the Bureau of Land Management Offices in Las Vegas, Elko, Ely, Tonopah, Winnemucca, Battle Mountain, and Carson City in Nevada. Specific roads used for the rally will only be closed the date of that stage of the Rally.

This closure does not apply to Federal or State highways but does apply to County maintained roads on public lands.

The authority for this action is 43 CFR 8364.1. Persons who violate or fail to comply with this closure order are subject to penalties provided in 43 CFR 8360.7.

Dated: August 2, 1995.

Gary Ryan,

Acting District Manager, Las Vegas.

[FR Doc. 95–19555 Filed 8–7–95; 8:45 am]

BILLING CODE 1230–HC–M

[NV–930–5700–10; N–60068]

Notice of Realty Action; Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The following land in Elko County, Nevada is being considered for disposal by direct sale, including the mineral estate with no known value, under Section 203 and Section 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713 and 1719) at no less than fair market value:

Mount Diablo Meridian, Nevada

T. 47 N., R. 64 E.,
Sec. 12, NE¼NE¼SW¼, NW¼NE¼SW¼, NE¼NW¼SW¼.

Comprising of 30 acres, more or less.

The above described land is being offered as a direct sale to Elko County. Final determination on disposal will be made after completion of an environmental analysis. Another Notice of Realty Action will be issued at that time.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Bureau of Land Management, Wells Resource Area, 3900 E. Idaho Street, Elko, Nevada.

Upon publication of this Notice of Realty Action in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or disposals pursuant to Sections 203 and 209 of FLPMA. The segregation shall terminate upon issuance of a patent or other document of conveyance, upon publication in the **Federal Register** of a Notice of Termination of Segregation, or 270 days from date of this publication, which ever occurs first.

Interested parties may submit comments to the Elko District Office, Bureau of Land Management, P.O. Box 831, Elko, NV 89803. Comments shall be submitted by September 22, 1995.

Dated: July 28, 1995.

Nancy Phelps,

Acting District Manager.

[FR Doc. 95–19440 Filed 8–7–95; 8:45 am]

BILLING CODE 4310–HC–P

[CO–930–1920–00–4357; COC–58514]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy proposes to withdraw approximately 322 acres of public lands for 5 years to protect lands needed for the construction process for the Maybelle Disposal Site. This order closes these lands to operation of the public land laws and to location and entry under the mining laws for up to two years. The lands remain open to mineral leasing subject to approval by Secretary of Energy, the Secretary of the Interior, and the Atomic Energy Commission.

DATES: Comments on this proposed withdrawal or requests for public meetings must be received on or before November 6, 1995.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On August 31, 1995, the Department of Energy filed an application to withdraw the following described public lands from operation of the public land laws, including location and entry under the United States mining laws (30 U.S.C. Ch 2) to protect construction operations for the Maybelle Disposal Site:

Sixth Principal Meridian

T. 7 N., R. 94 W.,
Sec. 18, lot 8 and SE¼SW¼;
Sec. 19, lots 9, 11, 13, and 15, E½NE¼¼, E½E½NE¼SW¼NE¼, E½SE¼SW¼NE¼, E½NE¼NW¼SE¼, E½W½NE¼NW¼SE¼, and SE¼NW¼SE¼;
Sec. 30, a corridor 1,000 feet wide along Johnson Wash in the E½NE¼ and the SE¼.

The areas described aggregate approximately 322 acres of public lands in Moffat County.

The purpose of this withdrawal is to protect the construction process for the

Maybelle Uranium Mill Tailings construction site. For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR 2310.

For a period of two years from the date of publication in the **Federal Register**, these lands will be segregated from operation of the public land laws, including the mining laws, as specified above, unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Bureau of Land Management, in conjunction with the Department of Energy, will continue to manage these lands.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 95–19445 Filed 8–7–95; 8:45 am]

BILLING CODE 4310–JB–P

Fish and Wildlife Service

Notice of Availability of the Final Sharon Steel Damage Settlement: A Conceptual Restoration Plan and Request for Project Proposals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and request for project proposals.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the Final Conceptual Restoration Plan for restoration of migratory bird resources injured by the release of hazardous materials from the Sharon Steel and Midvale Slag Superfund sites, along the Jordan River in Salt Lake County, Utah. The Conceptual Restoration Plan outlines a process for preparing, identifying and selecting cooperative riparian habitat restoration projects and includes application requirements. Project proposals are due by November 1, 1995.

DATES: Cooperative project proposals will be accepted until November 1, 1995.

ADDRESSES: Requests for copies of the Final Conceptual Restoration Plan and submission of project proposals or materials may be made to: U.S. Fish and Wildlife Service, Salt Lake City Field Office, Lincoln Plaza, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Assistant Field Supervisor, or Brandt Gutermuth, environmental contaminants program, Salt Lake City Field Office (see **ADDRESSES** section) telephone 801–524–5001 ext. 139.

SUPPLEMENTARY INFORMATION: In 1991, the Department of the Interior and the Fish and Wildlife Service received a $2.3 million damage settlement in compensation for injuries to migratory birds and endangered species along the Jordan River, Utah, caused by the release of hazardous substances from the Sharon Steel and Midvale Slag Superfund sites. Under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) guidelines, the Service must use this money to restore, replace, or acquire the equivalent of the trust resources injured on site and/or by contaminants released from the site.

The Final Conceptual Restoration Plan was developed in cooperation and coordination with the State of Utah under authority of a 1991 Memorandum of Understanding and was developed in accordance with Natural Resource Damage Assessment regulations promulgated by the Department and codified at 43 CFR part 11. Announcement of the Draft Conceptual Restoration Plan was published in the **Federal Register** on January 24, 1995, and a public review period extended from that date to March 31, 1995. The Final Conceptual Restoration Plan has been revised to reflect comments received during this review period.

The Conceptual Restoration Plan for the Sharon Steel and Midvale Slag Superfund sites in Salt Lake County proposes natural resource restoration through Service partnerships with Federal, State, and local governments, as well as the environmental community. The Plan provides background on injuries to trust resources in the Jordan River system, identifies priority restoration activities, and presents a process for preparing, identifying, and selecting specific cooperative restoration projects. Once specific projects have been selected, a draft Restoration Plan will be prepared and made available for public review and comment. Project implementation will begin after this Restoration Plan is finalized and National Environmental Policy Act (NEPA) requirements are met.

Interested members of the public and potential project applicants are invited to review the Final Conceptual Restoration Plan and to submit proposals. In Utah, copies are available at the Service's Ecological Services Office in Salt Lake City (see **ADDRESSES** section), the Utah Department of Environmental Quality, Division of Environmental Response and Remediation (168 North 1950 West, Salt Lake City, 84116), and the Salt Lake City Library.

Dated: August 1, 1995.

Terry T. Terrell,

Acting Regional Director, Region 6, Denver, Colorado.

[FR Doc. 95–19444 Filed 8–7–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Final Environmental Impact Statement for Elwha River Ecosystem Restoration, Olympic National Park, WA

ACTION: Notice of availability on the final environmental impact statement.

SUMMARY: This notice announces the availability of a final environmental impact statement (FEIS) for the restoration of the Elwha River Ecosystem in Olympic National Park, Washington.

LOCATIONS: Public reading copies of the FEIS will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: 202–208–6843.

Olympic National Park, National Park Service, 600 E. Park Avenue, Port Angeles, WA 98362, Telephone: 206–452–4501.

North Olympic Library System, Port Angeles Branch, 207 S. Lincoln Street, Port Angeles, WA, Telephone: 206–452–9253.

Government Documents, Seattle Public Library, 1000 4th Avenue, Seattle, WA 98104–1193, Telephone: 206–386–4686.

Government Publications, Suzzallo Library, University of Washington, Seattle, WA 98195, Telephone: 206–543–1937.

Pacific West Field Office, Columbia/Cascades Systems Support Office, 909 First Avenue, Seattle, WA 98104–1060, Telephone: 206–220–4070.

FOR FURTHER INFORMATION CONTACT: Brian Winter, Elwha River Restoration Coordinator, Olympic National Park, 600 E. Park Avenue, Port Angeles, WA 98362, Telephone: 206–452–0302. A limited number of copies of the FEIS are available on request. All who submitted

substantive comments on the Draft EIS will receive a copy of the FEIS.

SUPPLEMENTARY INFORMATION: The National Park Service has prepared a Final Environmental Impact Statement, Elwha River Ecosystem Restoration, Olympic National Park, Washington, The FEIS presents the proposed action and alternatives for restoration of the Elwha River Ecosystem and its native anadromous fish runs. The proposed action calls for the removal of the Elwha and Glines Canyon Dams to accomplish the Secretary of the Interior's objectives, as directed by Public Law 102–495, the Elwha River Ecosystem and Fisheries Restoration Act of 1992, to restore the river's ecosystem and its native anadromous fish runs.

The draft environmental impact statement (DEIS) for this action was released for public review in October 1994 **Federal Register** Vol. 59, No. 213), and the public comment period closed on December 23, 1994. Both the DEIS and FEIS analyze the proposed action and four alternatives for restoring the Elwha River ecosystem. The four alternatives include no action—continuing to operate the dams without anadromous fish mitigation; dam retention—operating the dams with addition of mitigation; remove only Elwha Dam; and remove only Glines Canyon Dam.

The FEIS contains all letters received during the public comment period and responses to substantive comments are contained in a question and answer format. A summary of comments received during public workshops on the DEIS is also contained in the FEIS.

The no action period on the FEIS will expire 30 days after the Notice of Availability of this FEIS. This programmatic FEIS is connected to a second, implementation EIS currently being prepared which will analyze site-specific alternatives for removal of the dams and the management of sediment.

The DEIS and FEIS have been completed by the National Park Service in cooperation with the U.S. Fish and Wildlife Service, Bureau of Reclamation, Bureau of Indian Affairs, and the Lower Elwha S'Klallam Tribe.

Dated: July 26, 1955.

Kenneth Naser,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 95–19451 Filed 8–7–95; 8:45 am]

BILLING CODE 4310–70–M

Notice of Realty Action; Proposed Exchange of Federal Property for Private Property, Chattahoochee River National Recreation Area

FOR FURTHER INFORMATION CONTACT: Superintendent, Chattahoochee River National Recreation Area, 1978 Island Ford Parkway, Dunwoody, Georgia 30350.

SUPPLEMENTARY INFORMATION: Public comments will be accepted for a period of 45 days from the date of this notice.

I. The following described Federally-owned lands which were acquired by the National Park Service have been determined to be suitable for disposal by exchange. The authority of this exchange is the Act of August 15, 1978 (16 U.S.C. 460ii, et. seq.) which established Chattahoochee River National Recreation Area (CRNRA).

The selected Federal lands lie within the boundaries of the Gold Branch unit of the CRNRA and are generally described as follows:

A parcel of land containing 26.65 acres of land located on Lower Roswell Road and Surrey Trail, Cobb County, Georgia.

The lands have been surveyed for cultural resources and endangered and threatened species. An Environmental Assessment has been prepared that indicates this property be exchanged as the preferred alternative.

Both the surface and the mineral estates are to be exchanged. There are no leases or permits affecting these lands.

II. In exchange for the lands identified in Paragraph I the United States of America will acquire two parcels lying within the boundary of CRNRA. Acquisition of these lands will consolidate three non-contiguous tracts in the Gold Branch Unit and will facilitate access to the Chattahoochee River and property already owned by the United States in the Holcomb Bridge Unit. Both the surface and mineral estates are to be exchanges and these lands will be administered by the National Park Service as a part of the CRNRA upon completion of the exchange. The lands are being acquired in fee simple subject only to rights-of-way and easements of records.

The lands to be acquired by the United States of America are generally described as follows: A parcel containing 4.45 acres located on Lower Roswell Road, Cobb County, Georgia identified as Tract 105–11 and a parcel containing 2.63 acres located on Holcomb Bridge Road, Gwinnett County, Georgia identified as Trace 108–16.

The value of the properties to be exchanged shall be determined by a current fair market value appraisal and if they are not approximately equal, the values shall be equalized by payment of cash and/or donation as circumstances require.

Detailed information concerning this exchange including precise legal description, Land Protection Plan, environmental assessment, and cultural reports are available at the address identified above.

For a period of 45 calendar days from the date of this notice, interested parties may submit comments to the above address. Comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of the Interior.

Dated: July 20, 1995.

Frank Catroppa,

Field Director, Southeast Area.

[FR Doc. 95–19452 Filed 8–7–95; 8:45 am]

BILLING CODE 4310–10–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32036 (Sub-No. 2)]

Wisconsin Central Transportation Corporation, et al.—Continuance in Control—Fox Valley and Western Ltd.

By decision served February 11, 1993, we presented an oversight plan which allowed us to monitor effectively the competitive results of Wisconsin Central Transportation Corporation's (WCTC) continuance in control of Fox Valley and Western Ltd. (FV&W).[1] As detailed in the decision, the oversight covers 5 years and contains five elements: notification of shippers, reporting by applicants, discussion with selected parties, a proceeding, and a staff report. We have been actively monitoring the transaction since its consummation on August 28, 1993.

This notice initiates one element of the oversight function—the proceeding. In our February 1993 decision, we stated that a proceeding would be conducted annually during which applicants, shippers, and other interested parties may express their views on the competitive impacts of the transaction and on appropriate conditions to remedy any substantial

[1] This transaction was approved by decision served December 10, 1992, which was corrected by a decision served December 22, 1992. *See Wisc. Central Transportation Corporation, et al.*, 9 I.C.C.2d 233 (1992).

anticompetitive effects. This proceeding is a fact-finding mechanism and will not necessarily result in a formal ruling.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Applicants, shippers, and other interested parties may file written comments with the Commission regarding the competitive impacts of WCTC's continuance in control of FV&W. Participants are asked to address: (1) whether substantial competitive harm has resulted from the transaction; and (2) if so, whether appropriate and workable conditions can be formulated.

2. Comments will be accepted no later than September 7, 1995. An original and 10 copies of the comments, referencing Finance Docket No. 32036 (Sub-No. 2), must be mailed to: Office of the Secretary, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423. Comments need not be served on other persons.[2]

3. This decision is being simultaneously published in the **Federal Register**.

4. This decision is being served on all persons appearing on the service list in Finance Docket No. 32036.

5. This decision is effective on August 8, 1995.

Decided: July 28, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19513 Filed 8–7–95; 8:45 am]

BILLING CODE 7035–01–P

[2] For further information contact Thomas McNamara of the Commission's Office of Economic and Environmental Analysis at (202) 927–6201. TDD for the hearing impaired is (202) 927–5721.

[Docket No. AB–414 (Sub-No. 1X)]

Iowa Interstate Railroad, Ltd.—Abandonment Exemption—in Cass and Audubon Counties, IA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by the Iowa Interstate Railroad, Ltd., of the line of railroad between milepost 445 near Atlantic, IA, and milepost 465.20 near Audubon, IA, subject to standard employee protective, interim trail use, public use and environmental conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 7, 1995. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by August 18, 1995, petitions for stay must be filed by August 23, 1995, and petitions to reopen must be filed by September 5, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–414 (Sub-No. 1X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Petitioner's representative: T. Scott Bannister, 1300 Des Moines Building, 6th and Locust, Des Moines, IA 50309.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. (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 Avenue NW., 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 28, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19515 Filed 8–7–95; 8:45 am]

BILLING CODE 7035–01–P

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[Docket No. AB–57 (Sub-No. 39X)]

Soo Line Railroad Company—Abandonment Exemption—in St. Louis County, MN

Soo Line Railroad Company (Soo) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a .5-mile portion of its line of railroad, known as the Rice's Point Trackage, from milepost 288.17+/− to milepost 288.70+/−, at Duluth, in St. Louis County, MN.

Soo has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic previously routed over this line has been rerouted to alternative lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 7, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by August 18, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 28, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Larry D. Starns, Office of the U.S. Regional Counsel, 1000 Soo Line Building, 105 South 5th Street, Minneapolis, MN 55402.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request prior to the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

Soo filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 11, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 28, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19516 Filed 8–7–95; 8:45 am]

BILLING CODE 7035–01–P

LEGAL SERVICES CORPORATION

Grant Award for the Analysis & Study of Legal Needs of Low Income Native Americans

AGENCY: Legal Services Corporation.

ACTION: Announcement of intent to award grant.

SUMMARY: The Legal Services Corporation (LSC or Corporation) hereby announces its intention to award a one-time, nonrecurring grant to Michigan Indian Legal Services for the purpose of conducting an analysis of the population, characteristics and legal needs of low income Native Americans. The Corporation plans to award a grant in the amount of $47,730.

This grant is being made pursuant to authority conferred by section 1006(a)(1)(B) and 1006(a)(3) of the LSC Act of 1974, as amended.

This public notice is issued pursuant to section 1007(f) of the LSC Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. This grant award will not become effective, and grant funds will not be distributed prior to the expiration of this 30-day public comment period.

DATES: All comments and recommendations must be received by 5 p.m. on or before September 7, 1995.

ADDRESSES: Comments should be sent to the Office of Program Services, Legal Services Corporation, 750 First Street N.E., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Merceria L. Ludgood, Director, Office of Program Services, (202) 336–8800.

Date issued: August 2, 1995.

Merceria L. Ludgood,

Director, Office of Program Services.

[FR Doc. 95–19423 Filed 8–7–95; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–070)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Alan Neuman Productions, Inc. of 8170 Laurel View Drive, Los Angeles, California 90069, has applied for an exclusive license to practice the invention described and claimed in: U.S. Patent Application 08/247,187 entitled ''Method and Apparatus for Collection, Storage, and Analysis of Blood and Other Bodily Fluids,'' which was filed on May 19, 1994, by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license to Alan Neuman Productions, Inc. should be sent to Mr. Hardie R. Barr, NASA Johnson Space Center.

DATES: Responses to this Notice must be received by October 10, 1995.

FOR FURTHER INFORMATION CONTACT: Hardie R. Barr, NASA Johnson Space Center, Mail Code HA, Houston, Texas 77058–3696; (713) 483–1003.

Dated: July 3, 1995.

Edward A. Frankie,

General Counsel.

[FR Doc. 95–19551 Filed 8–7–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Media Arts Advisory Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Media Arts Centers/Services to the Field Section) to the National Council on the Arts will be held on August 22–24, 1995. The panel will meet from 9 a.m. to 6:30 p.m. on August 22, 23 and from 9 a.m. to 5:30 p.m. on August 24. This meeting will be held in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4 p.m. to 5:30 p.m. on August 24 for a policy discussion.

The remaining portions of this meeting from 9 a.m. to 6:30 p.m. on August 22–23 and from 9 a.m. to 4 p.m. on August 24 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 1995, 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 202/682–5788.

Dated: August 3, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–19517 Filed 8–7–95; 8:45 am]

BILLING CODE 7537–01–M

Presenting Advisory Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Presenting Advisory Panel (Overview

Section) to the National Council on the Arts will be held on August 28–29, 1995 from 9 a.m. to 5 p.m. This meeting will be held in Room 730, at the Navy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting 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, TYY/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, Advisory Committee Management Office, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: August 3, 1995.

Yvonne M. Sabine,

Director, Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 95–19518 Filed 8–7–95; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–160]

Georgia Institute of Technology (Georgia Tech) Georgia Tech Research Reactor; Issuance of Partial Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission (NRC) has issued a Partial Director's Decision Under 10 CFR 2.206 regarding the Georgia Tech Research Reactor in response to a Petition received from Ms. Pamela Blockey-O'Brien (Petitioner), dated October 23, 1994. The Partial Director's Decision also considered subsequent letters from the Petitioner dated November 12, and December 4, 1994, February 21, February 23, March 6, March 28, April 19, May 18, June 27, and July 18, 1995.

On October 23, 1994, the Petitioner requested (1) the shutdown and decontamination of the Georgia Institute of Technology (Georgia Tech) Research Reactor, (2) the revocation of liquid radioactive material release authority to all licensees, (3) the revocation of licenses that use the principle of as low as reasonably achievable, (4) the termination of transportation of radioactive material by mail, and (5) the modification to posting requirements for radioactive material. With regard to request (1), the enclosed Partial Director's Decision addressed the Petitioner's issues which are not currently being considered as part of a license renewal proceeding. The remaining Petitioner's issues relating to request (1) will be addressed under separate cover upon completion of the ongoing adjudicatory proceedings and NRC staff review. The Partial Director's Decision also addresses requests (2) through (5). The Director of the Office of Nuclear Reactor Regulation found that the Petitioner's concerns, addressed to date, do not raise a substantial health and safety concern warranting the requested actions. The reasons for this denial are explained in the ''Partial Director's Decision Under 10 CFR 2.206'' (DD–95–15), the complete text of which follows this notice, and which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

A copy of this Partial Director's Decision will be filed with the Secretary of the Commission for review in accordance with 10 CFR 2.206(c). As provided in that regulation, the Decision will constitute the final action of the Commission 25 days after the date of the issuance of the Decision, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 31st day of July 1995.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

Appendix

Partial Director's Decision Under 10 CFR 2.206

I. Introduction

On October 23, 1994, Ms. Pamela Blockey-O'Brien (the Petitioner) filed a Petition with the U.S. Nuclear Regulatory Commission (NRC) staff pursuant to 10 CFR 2.206, that requested that the NRC staff revoke the license of the Georgia Institute of Technology (Georgia Tech) Research Reactor, shut down this research reactor and its support facilities, and remove all radioactive material and contamination offsite to a government created ''National Sacrifice [A]rea'' such as the Savannah River or Oak Ridge facilities. In addition, the Petitioner requested that the NRC staff withdraw all license authority nationwide involving the discharging or dumping of any quantity of radioactive material to all the sewers or waters in the United States or oceans of the world, and withdraw all licenses to all nuclear facilities, including nuclear power plants (NPPs), which operate under as low as reasonably achievable (ALARA) principles. Finally, the Petitioner requested both that the NRC staff modify every license issued to transporters of radioactive materials and builders of NPPs so that these parties must put two foot high letters on everything transported or built stating ''DANGER–RADIOACTIVE'' and in smaller letters ''there is no safe level of radiation, any exposure can [a]ffect health,'' and prohibit the transportation of radioactive material by mail. The NRC staff received additional letters dated November 12, December 4, 1994, February 21, February 23, March 6, March 28, April 19, May 18, June 27, and July 18, 1995, from the Petitioner and also considered these letters in this Partial Director's Decision. All letters related to this Petition have been placed in the Public Document Room and docketed under the Georgia Tech Research Reactor Docket No. 50–160, in accordance with NRC Management Directive 8.11, ''Review Process for 10 CFR 2.206 Petitions.''

As bases for the request to shut down and decontaminate the Georgia Tech Research Reactor, the Petitioner asserted that (1) a water flume comes out of the ground ''destabilizing the reactor and the ground in some way;'' (2) ''(r)adiation levels in soil and vegetation climb markedly in GA EPD documents'' around the Georgia Tech Research Reactor; (3) there is no record of air monitoring ever having been done; (4) heavy rainfall causes water to back up in the sewer and drainage lines causing flooding of the reactor parking lot and campus, as well as causing sinkholes, ''puff-ups'' on campus ground, and welded-shut manhole covers to be blown off; (5) radioactive contaminants have been routinely discharged into the sanitary sewer from the Georgia Tech Research Reactor's waste water holding tank and contamination spread by backup of the sewage system; (6) should the Georgia Tech Research Reactor be further destabilized, the reactor and the tank holding cobalt-60 could ''break apart,'' causing radioactive contaminants to ''drain into groundwater/down sewers/into the runoff ditch;'' (7) the Georgia Tech Research Reactor is in an earthquake

zone; (8) there is absolutely no reason to keep the Georgia Tech Research Reactor operating; (9) security at the Georgia Tech Research Reactor is extremely lax; and (10) in case of an accident or terrorist attack, evacuation of the campus and downtown Atlanta would be impossible both now and during the Olympics.[1]

As the bases for the request to withdraw all license authority nationwide involving the discharging or dumping of any quantity of radioactive material to all the sewers or waters in the United States, to withdraw all licenses for all nuclear facilities, including NPPs, which operate under ALARA principles, and to change labeling requirements for radioactive material, the Petitioner asserted that there is no safe level of radiation, that storage and disposal of radioactive waste is inadequate, and that the NRC's new sewage dumping guidelines are totally inadequate. The Petitioner also asserted that the request to restrict mailing of radioactive materials relates to the occurrence of transportation accidents.

II. Discussion

A. Revocation of Georgia Tech Research Reactor License

The following discussion relates to the request that the NRC staff revoke the license of the Georgia Tech Research Reactor, shut down this research reactor and its support facilities, and remove all radioactive materials and contamination offsite. This Partial Director's Decision addresses NRC licensed activities.[2]

(1) A water flume comes out of the ground ''destabilizing the reactor and the ground in some way.'' The Petitioner stated that ''(d)etailed maps show that a water flume comes out of the ground directly next to and west of the reactor.'' On request, the Petitioner identified the ''detailed maps'' as City of Atlanta, Department of Public Works (DPW) Sheets I–11 and H–11, which show ''flumes'' or ''storm drain inventory.''

The NRC staff reviewed these drawings. Drawing I–11 did not show a flume indication. Drawing H–11 does indicate a ''flume'' to the west of the Georgia Tech Research Reactor. The NRC staff discussed this drawing and indication of a ''flume'' with DPW, the agency responsible for the sewer system and the drawings. The DPW indicated that the word ''flume'' in the drawing means a surface drainage path. Physical onsite examination of this location showed a surface drainage path consisting of a concrete lined channel extending along the back retaining wall of the Georgia Tech Research Reactor facility site, approximately where the ''flume'' was indicated on the drawing.

Furthermore, physical examination of the Georgia Tech Research Reactor facility and site have found no evidence of an underground water flume or destabilization of the Georgia Tech Research Reactor facility or ground. Additional factors related to stability of the Georgia Tech Research Reactor are addressed under issues (4), (6), and (7).

The NRC staff finds no reason to conclude that there is an underground water flume destabilizing the Georgia Tech Research Reactor and surrounding ground. The Petitioner provided no facts to conclude otherwise. Therefore, the NRC staff concludes that the Petitioner's concerns do not present a substantial health or safety issue warranting the action requested by the Petitioner.

(2) ''Radiation levels in soil and vegetation climb markedly in GA EPD documents'' around the reactor. The State of Georgia (GA) Environmental Protection Division (EPD) provided the NRC staff with its environmental radiation monitoring results as compiled on November 23, 1994. These results included data from environmental monitoring for radioactivity with thermoluminescent dosimeters (TLDs), and from soil and vegetation sampling around the Georgia Tech Research Reactor.

The NRC staff discussed the results with EPD. EPD stated that its monitoring found no evidence of release of radioactive material from the Georgia Tech Research Reactor. EPD further indicated that the values and variations in monitored radiation exposures and concentrations were typical of environmental monitoring results and showed no increasing trend.

The NRC staff has concluded based on the types, quantities and relative concentrations of the isotopes measured by EPD that they are not from the Georgia Tech Research Reactor. Some of the isotopes measured by EPD are naturally occurring. Specifically, beryllium-7 is from reactions of cosmic rays with air, potassium-40 is from primordial sources, radium-226 is from the decay of naturally occurring uranium-238, and radium-228 is from decay of naturally occurring thorium-232.[3] Additionally, radiation monitoring of effluents from the Georgia Tech Research Reactor and of areas within the research reactor containment by Georgia Tech, as required by the Technical Specifications 3.2.a and 3.5.b, provided further evidence that the measurements by EPD of other isotopes (i.e., cesium-137, cerium-141, cerium-144, ruthenium-103, zirconium-95, and niobium-95) were not from the Georgia Tech Research Reactor. Rather, EPD indicated that the radioisotopes were from other sources, such as fallout from nuclear weapons testing around the world. Furthermore, as measured by EPD, there is no indication of other radioisotopes, which would be expected if the radioactivity were from the Georgia Tech Research Reactor.

The conclusion, that there is no evidence that the release of radioactive material from the Georgia Tech Research Reactor has contributed to the monitored radiation levels in the soil and vegetation, is also corroborated by the Georgia Tech environmental monitoring program. This environmental monitoring program has used film badges, and currently uses TLDs, at various locations around the Georgia Tech Research Reactor. The film badges were provided by a National Voluntary Laboratory Accreditation Program certified vendor. The TLDs meet American National Standards Institute Standards. One monitored location in the Georgia Tech Research Reactor stack measured the direct radiation for airborne releases from operation of the Georgia Tech Research Reactor. This monitor has indicated airborne effluent releases generally below detectable levels and always well below the limits of 10 CFR part 20, ''Standards for Protection Against Radiation,'' as verified most recently in NRC staff Inspection Report Nos. 50–160/95–01, 50–160/94–02, and 50–160/93–02[4]. These results are consistent with the EPD data and further confirmed the conclusions of the State of Georgia EPD that its monitoring

[1] Issue (8) includes concerns that substantial management deficiencies persist. Issue (9) involves concerns on general security and, particularly, security during the period of the 1996 Olympics. Issue (10) includes concerns on evacuation in case of a terrorist attack. Since these concerns are the subject of an ongoing license renewal proceeding before an Atomic Safety and Licensing Board, these concerns will be addressed in a Final Director's Decision at an appropriate time after considering the decisions reached in the license renewal process. All other issues related to this 2.206 Petition were considered in this Partial Director's Decision.

[2] The 10 CFR 2.206 Petition included some mention of the cobalt-60 irradiation facility which is not licensed by the NRC and is, therefore, not covered in this discussion except as it may affect research reactor safety. The 2.206 Petition and this Partial Director's Decision have been transmitted to the State of Georgia, the licensing authority for the cobalt-60 facility and for other state licensed material also mentioned in the Petition.

[3] Kathren, R. L., ''Radioactivity in the Environment: Sources, Distribution, and Surveillance.''

[4] These, and the other inspection reports referenced in this Partial Director's Decision are available from the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20037.

found no evidence of release of radioactive material from the Georgia Tech Research Reactor which has contributed to the monitored radiation levels in soil and vegetation.

The NRC staff evaluation of the data confirmed the EPD conclusion that the EPD data showed no increasing trend in radiation levels around the Georgia Tech Research Reactor. The values and variations of all monitored locations around the Georgia Tech Research Reactor were typical of environmental monitoring results at other locations, were attributable to non-reactor sources, and showed no record of an increasing trend. Further corroboration of this conclusion was provided in the discussion addressing issues (3) and (5) in this Partial Director's Decision in that releases of radioactive isotopes from the Georgia Tech Research Reactor are well within NRC regulatory limits and do not correspond to the radioisotopes found in the soil or vegetation samples.

The NRC staff finds no reason to conclude that the Georgia Tech Research Reactor is contributing to radiation levels in soil or vegetation. The Petitioner provided no facts to conclude otherwise. Therefore, the NRC staff concludes that the Petitioner's concern does not present a substantial health or safety issue warranting the action requested by the Petitioner.

(3) There is no record of air monitoring ever having been done. The Petitioner asserted that monitoring for airborne radioactive releases from the Georgia Tech Research Reactor is inadequate. However, in addition to the environmental monitoring programs previously discussed, the Georgia Tech Research Reactor is required by its Technical Specifications 3.2.a and 3.5.b to monitor and restrict radioactive releases, including airborne releases. The monitoring system includes instruments to monitor gaseous and particulate radioactivity and to initiate safety related functions (e.g., containment isolation). All radioactive releases are required to be within the limits established in 10 CFR Part 20. NRC staff inspections, as documented most recently in Inspection Report Nos. 50–160/95–01, 50–160/94–02, and 50–160/93–02 related to the Georgia Tech Research Reactor, have found that the effluent releases have been within 10 CFR Part 20 limits. Therefore, there is neither a technical need nor a regulatory requirement for additional monitoring of air samples outside the Georgia Tech Research Reactor, since all releases are controlled, as required by Technical Specifications and in accordance with NRC regulations.

The Petitioner also raised a concern related to the storage of waste at the Georgia Tech Research Reactor. The concern is that there is a large amount of waste material stored at the facility and this storage is generally unsafe. Inspection Report Nos. 50–160/95–01, 50–160/94–02, and 50–160/93–02 have verified that storage of radioactive waste has been maintained in accordance with applicable regulatory requirements (10 CFR part 20) at the Georgia Tech Research Reactor.

The Petitioner also raised concerns about various health effects around the Atlanta area and in other localities (e.g., around the Three Mile Island nuclear power plant near Harrisburg, Pennsylvania), but did not provide correlation to conditions related to the Georgia Tech Research Reactor. Therefore, the Petitioner did not provide bases for further action based on these concerns. Further, the data and information from EPD, the licensee, the Oak Ridge Institute for Science and Education (ORISE) and the Idaho National Engineering Laboratory (INEL), as evaluated by the NRC staff in this issue and on issues (2) and (5), indicate little potential for the Georgia Tech Research Reactor to have contributed to such health effects.

The NRC staff finds no reason to conclude that the Georgia Tech Research Reactor radiation monitoring program is unacceptable. The Petitioner provided no facts to conclude otherwise or bases to conclude that additional monitoring should be required. Therefore, the NRC staff concludes that the Petitioner's concern does not present a substantial health or safety issue warranting the action requested by the Petitioner.

(4) Heavy rainfall causes water to back up in the sewer and drainage lines causing flooding of the reactor parking lot and campus, as well as causing sinkholes, ''puff-ups'' on campus ground, and welded-shut manhole covers to be blown off. The Petitioner indicated that a major sinkhole of the Orme Street line (a major sewer line in the area) caused a backup and flooding in 1993 on the Georgia Tech Campus at the North parking lot at the Georgia Tech Research Reactor facility site. This flooding had no effect on the Georgia Tech Research Reactor, since the research reactor structures, systems and components are isolated from the sewer by a series of valves. Further, the containment steel-reinforced concrete floor is approximately 8 feet thick.[5] This structure supports containment internals and provides weight to protect against the buoyancy of ground water. The structure is designed to withstand the effects of buoyancy due to ground water which has been found on test borings at levels ranging from 11 to 40 feet.[6] Further, DPW stated that the work that is being done on the Orme Street line and related construction activities minimize the potential for such future flooding or other problems associated to that line.

As also indicated by the Petitioner, there is a 72 inch diameter storm drain/sanitary sewer line that could be a potential source of flooding or a sinkhole near the Georgia Tech Research Reactor. This sewer line is approximately 100 feet from the containment.[7] By letter,[8] DPW confirmed that the line had been inspected to ensure integrity and was found in ''very good condition'' on a May 24, 1994, walk-through. The DPW was ''not aware of any problems with this storm sewer'' and did not ''anticipate any problem with the maintenance or operation of this sewer in the foreseeable future.'' This conclusion was reverified with DPW, including consideration of the construction (e.g., blocks and concrete pipe) and configuration (e.g., on old drainage paths) of the sewer. DPW also indicated that this drain line is considered to be a private sewer and is not part of the City system, although DPW also indicated that they have been involved in the inspection and maintenance of such lines and there is no plan to discontinue that practice.

The Petitioner raised related issues on the structural capability of the foundation bearing material and water intrusion around the containment foundation potentially causing destabilization of the structure. This concern referenced three Georgia Geologic Survey documents.[9] The Georgia Geologic Survey was requested to evaluate the Petitioner's references to these reports with respect to the geology and seismology related to the Georgia

[5] ''Safety Analysis Report for the 5 MW Georgia Tech Research Reactor,'' Georgia Institute of Technology, Atlanta, Georgia 30332–0425, April 1994 (hereinafter SAR), Section 4.3, *Description of Reactor Containment Building*, page 43.

[6] SAR, Section 2.3, *Hydrology and Geology*, page 23.

[7] SAR, Figure 4.3, page 30.

[8] Letter dated January 9, 1995, from L. Chambers of the Department of Public Works for the City of Atlanta to R. Karam of Georgia Tech.

[9] ''Geology of the Greater Atlanta Area'' McConnell and Abrams, Georgia Geologic Survey Bulletin 96, ''Groundwater in the Greater Atlanta Region'' by Cressler, Thurmond and Hester, Georgia Geologic Survey, Bulletin Information Circular 63 and ''Geology and Groundwater Resources of the Atlanta Area, Georgia,'' Herrick and Legrand, Georgia Geological Survey Bulletin 55.

Tech Research Reactor. By letter dated May 11, 1995, the State Geologist responded to the NRC staff.[10] The letter stated, in part, that:

I have reviewed the letters from a petition to shut down the Georgia Tech Research Reactor. The letters suggest (1) that the reactor overlies the Wahoo Creek Formation, which is not a suitable nor a stable foundation material; (2) that there is an earthquake risk, particularly from the Brevard Zone; (3) that unique geologic fractures, particularly horizontal fractures, might cause large quantities of ground water to seep into the reactor and cause problems. My review indicates that the petition's suggestions are specious.

The Wahoo Creek formation is one of many geologic formations of the Piedmont Physiographic Province. The fact that the Wahoo Creek Formation weathers into ''slabs'' is not relevant; in situ, it is a competent rock adequate to provide suitable foundation for the reactor. Comparison of the foundation characteristics of weathered and in situ rock material is not reasonable nor appropriate.

Georgia is a relatively aseismic state and earthquakes are rare. The Brevard Zone should not be considered as an ''earthquake fault''.

The proximity of the Brevard Zone to the reactor is not relevant. Fractured rock, which is ubiquitous to the Piedmont, underlies the reactor. There are no data to suggest that horizontal fractures having high water yielding characteristics underlie or are even near the reactor. From a hydrogeological point of view, there are no known unique features of the reactor site to suggest that ground water would affect reactor safety.

The Piedmont extends from Alabama to New Jersey and occupies many tens of thousands of square miles. The comments made in the petition would apply at virtually any location in the Piedmont. In addition, the petition cites several reports published by the Geologic Survey Branch of The Georgia Environmental Protection Division. The reports cited were prepared under my direction; I personally reviewed and approved them. There are no data in these reports that indicate the reactor at Georgia Tech is not safe or poses an environmental threat.

These findings confirm the NRC staff geologic and seismic conclusions presented in issue (7), and further support the related data and design for the Georgia Tech Research Reactor as discussed under this issue. These findings confirm that further analysis or testing is not needed for hydrogeological conditions at the Georgia Tech Research Reactor.

The Petitioner also indicated that ''* * * a sinkhole appeared next to the reactor years ago and was filled in. A [w]itness to that is still very much alive.'' The Petitioner provided the NRC staff with information to contact the witness. This individual said that while he and two other individuals were walking from the facility, one of the individuals fell into a sinkhole to the armpits or so, and the two other individuals helped him get out. This individual also stated that the sinkhole was near the waste storage tank facility and that the time frame was somewhere between the late 1960s and middle 1970s. The area near the waste storage tank facility was physically examined while going over the area on foot at about 3 feet intervals. No sinkhole was observed.

In addition, the NRC staff questioned several members of the Georgia Tech Research Reactor staff. One of these Georgia Tech Research Reactor staff members recalled the sinkhole referred to by the Petitioner. However, none of the questioned Georgia Tech staff members recalled any other sinkholes at the research reactor facility. This was further confirmed by discussions with selected NRC staff members with experience related to the Georgia Tech Research Reactor. These NRC staff members were not aware of any sinkholes at the facility other than the one of concern to the Petitioner.

Additionally, drawings of the research reactor site[11] and physical examination of the research reactor facility and site showed no major drainage paths (other than the 72 inch storm drain line previously discussed) that could impact the Georgia Tech Research Reactor.

Construction drawings and records[12] were also reviewed and selected portions of the installation examined by the NRC staff to determine the vulnerability of the foundation structure for the Georgia Tech Research Reactor to the phenomena that were raised in the Petition. The drawings showed the bottom of the Georgia Tech Research Reactor containment building steel shell about 25 feet below finished grade. The drawings indicated that the Georgia Tech Research Reactor containment building is anchored by bolts to a steel-reinforced concrete pad about 1 foot thick and to a ring foundation that extends approximately another 12 feet down under the concrete pad. Further, examination of selected portions of the foundation and containment structure found the structure consistent with the construction and drawing details. Construction test boring records also showed that the pad and ring foundation rest on material that meets or exceeds construction specifications for safe bearing capacity. The construction test boring records showed the material at the bottom of the foundation ring to be moderately hard to hard gray gneiss. As previously discussed in issue (4) and in this issue, no information has been provided by the Petitioner or is known to the NRC staff to suggest that this foundation and support structure are not as designed or are not acceptable.

Sinkholes develop in soils or in limestone as solution cavities. Although sinkholes could develop in the soil fill material surrounding the Georgia Tech Research Reactor facility, there is no credible source for sinkhole development. Sinkholes cannot develop in or significantly affect gneiss such as that on which the Georgia Tech Research Reactor foundation is built. Therefore, the development of sinkholes near or underneath the Georgia Tech Research Reactor is not a credible event.

Even in the unlikely event of failures of the 72 inch storm drain line or the Orme Street line previously mentioned, erosion or sinkhole effects could not be expected to affect the Georgia Tech Research Reactor, since the lines are far from the research reactor containment relative to these potential effects, and the design of the reactor facility is such that it would not be impacted by such phenomena. The 72 inch storm drain is about 100 feet from the reactor containment and passes below the northwest corner of the laboratory and office building which is adjacent to the containment building. The footings for the office building, which measures approximately 90 by 130 feet, were founded on the partially weathered rock. Assuming the 72 inch line did collapse where it passes under the building, approximately a 20 feet square section of the northwest corner of the building could be affected. This section of the building houses laboratories, offices, and storage areas. Radioactive materials are not stored in this area. The remaining portion of the facility, particularly the research reactor containment building, would not be affected because of the design characteristics of the foundation and support material as previously discussed.

DPW verified that the Orme Street line is 10 to 12 feet in diameter and is about 1200 feet from the Georgia Tech Research Reactor. The sinkhole that resulted from the failure of the Orme Street line was a sinkhole approximately 50 feet in radius, which is at the upper limit of sinkhole size in the Atlanta area based on DPW experience. Based on this experience

[10] Letter from William H. McLemore, State Geologist, Georgia Department of Natural Resources, to Marvin M. Mendonca, NRC Staff, May 11, 1995.

[11] SAR, Figures 4.2 and 4.3, pages 29 and 30.

[12] Letter from R. A. Karam, Georgia Tech, to D. M. Collins, U.S.N.R.C., dated October 22, 1993.

(which is consistent with NRC staff information on such phenomena) it is not credible to consider that a sinkhole from the Orme Street line, at a distance of 1200 feet, could affect the Georgia Tech Research Reactor.

The containment foundation for the Georgia Tech Research Reactor is considered to be impervious to the effects of sinkholes as the foundation rests on relatively hard material to depths and distances well beyond the credible influence of any potential source for a sinkhole.

Puff-ups are heaves, or upward expansion, which occur when locked-in stress in soil, usually clay, exceeds the load above it. The most common occurrence of puff-ups is in regions that were overlain by glaciers and the soils beneath (till, lake beds, etc.) were over-consolidated. When the glaciers melted there was still enough material over these clays to lock-in the stress. Removal of some of this overlying material, either by erosion or excavation, allows the clays to expand. Puff-ups can occur in unglaciated regions generally soon after either erosion or excavation removes the overlying material. Research reactor construction was completed in the 1960s, and considering this time interval, occurrence of a puff-up at the facility is highly unlikely. Further, puff-ups are near surface, soil deformation phenomena. As discussed above, the relatively hard, relatively deep foundation structure and gray gneiss bearing material of the Georgia Tech Research Reactor could not be expected to be affected by the geologic phenomenon of puff-ups.

With regard to the welded manhole covers that were thrown up to 8 feet as alleged by the Petitioner by sewer backup problems, the distance from the containment to the nearest manhole cover has been verified by physical examination of the site to be greater than 50 feet. This physical examination found no other potential impact point related to the Georgia Tech Research Reactor that was closer than 50 feet. The Petitioner has neither provided nor does the NRC staff possess any information or experience which would suggest that a manhole cover could be thrown the distance and have the force necessary to damage the Georgia Tech Research Reactor. Therefore, the potential for damage to the Georgia Tech Research Reactor due to this asserted phenomenon is not credible.

Based on the above, these design features and conditions provide assurance that the Georgia Tech Research Reactor would not be adversely affected by flooding, sinkholes, ''puff-ups'' or thrown welded manhole covers. These phenomena could not be expected to affect the Georgia Tech Research Reactor given the design and configuration of the facility. Therefore, the NRC staff concludes that the Petitioner's concern does not present a substantial health or safety issue warranting the action requested by the Petitioner.

(5) Radioactive contaminants have been routinely discharged into the sanitary sewer from the Georgia Tech Research Reactor's waste water holding tank and contamination spread by backup of the sewage system. Radioactive materials can be released to the sanitary sewer system from the Georgia Tech Research Reactor in accordance with 10 CFR 20.2003.[13] The Georgia Tech Research Reactor licensee monitors releases to the sewage system, and NRC staff inspections (e.g., Inspection Report Nos. 50–160/95–01, 50–160/94–02, and 50–160/93–02) have confirmed that the radioactive releases (primarily cobalt-60 and tritium) to the sanitary sewer have met NRC discharge limits.[14]

The Petitioner expressed a concern that the release to the sanitary sewer system could expose individuals, including sewer workers, to radiation. The releases from the Georgia Tech Research Reactor to the sanitary sewer have generally been several orders of magnitude less than NRC regulatory limits. Further, the assumption in the regulation of ingestion directly at the point of release from the campus provides considerable conservatism to ensure that individuals, such as sewer workers or other individuals, would be exposed to a lesser degree even in the event of a potential backup of the sewer system with large quantities of water.

Furthermore, in response to a request from the State of Georgia, the NRC staff had ORISE perform an independent analysis for radioisotopes in process sludge and ash samples from the City of Atlanta's R. M. Clayton sewer treatment facility. The samples were taken from the sewer treatment facility on March 13, 1995. This analysis detected naturally occurring and accelerator produced radioisotopes (used primarily for medical diagnostic and therapeutic treatments). There were no detected radioisotopes from the Georgia Tech Research Reactor. Similarly, the NRC staff had an independent analysis performed by INEL of liquid waste samples from the Georgia Tech Research Reactor. This analysis found no indication of the contamination suggested by the Petitioner (e.g., plutonium or uranium).

Georgia EPD and Georgia Tech analysis on waste water are consistent with these results. This sampling and analysis verified that a relatively small amount of radioactive material has been released from the Georgia Tech Research Reactor facility to the sanitary sewer system, and any material that has been released is well within NRC regulatory limits. These facts, and the regulatory conservatism and monitoring results, as previously discussed, establish that no further sampling of the sewer releases or system is necessary to ensure that the health and safety of the public is protected.

An issue was also raised by the Petitioner regarding the need for the Georgia Tech Research Reactor to have a sewer discharge permit from the City of Atlanta. The City of Atlanta does not deal with radiological health and safety issues over which NRC has regulatory authority (See 10 CFR 8.4). The City of Atlanta is responsible for the release of materials to the sanitary sewer system for other than radiological health and safety reasons. With regard to the concern about compliance with city ordinances, the City of Atlanta is the appropriate regulatory body to deal with the implementation of its requirements.

Since there is no evidence of the spread of unacceptable contamination from the Georgia Tech Research Reactor effluents to the sewage system, the NRC staff finds no reason to conclude that unacceptable radioactive contamination was released or could be spread by the backup of the sewage system. The Petitioner provided no facts to conclude otherwise. Therefore, the NRC staff concludes that the Petitioner's concern does not present a substantial health or safety issue warranting the action requested by the Petitioner.

(6) Should the Georgia Tech Research Reactor be further destabilized, the reactor and the tank holding cobalt-60 could ''break apart,'' causing radioactive contaminants to ''drain into groundwater/down sewers/into the runoff ditch.''[15] From the evaluations and inspections to date, there is no evidence that the Georgia Tech Research

[13] Radioactive releases to the sanitary sewer was previously permitted in accordance with 10 CFR 20.303, which was superseded by 10 CFR 20.2003 on January 1, 1994.

[14] It should also be noted that revisions to the NRC's regulations with regard to release to sewage systems are under consideration (Advanced Notice of Proposed Rulemaking, ''Disposal of Radioactive Material by Release Into Sanitary Sewer Systems,'' 59 FR 9146, February 25, 1994).

[15] ''Destabilized'' in the context of this Petition issue has been defined as some condition that would result in the uncontrolled release of radioactive material.

Reactor has been ''destabilized'' in any manner. The Georgia Tech Research Reactor is designed to reduce the likelihood and mitigate the consequences of uncontrolled releases of radiation. For example, the design and configuration features as discussed for issue (4) provides considerable assurance that the Georgia Tech Research Reactor has not and will not be ''destabilized'' due to the previously postulated concerns expressed by the Petitioner.

A recent safety evaluation of the Georgia Tech Research Reactor by the NRC staff is associated with the Order to Convert from High Enriched Uranium (HEU) to Low Enriched Uranium (LEU).[16] The associated safety evaluation considered all potential safety analyses that are effected by the change out of the fuel, including potential design basis accident scenarios. This safety evaluation was issued on the bases that the pertinent reactor design features (1) continue to acceptably ensure that the health and safety of the public is protected for the HEU fuel and (2) have also been demonstrated to be acceptable for the LEU fuel.

The Petitioner raised concerns on various structures, systems and components at the research reactor. First, the ability of the containment building steel structure at the Georgia Tech Research Reactor to control releases of radioactive material was questioned. In this regard, the containment leak rate is tested, in accordance with Technical Specification 4.3.b, for at least 2.0 pounds per square inch gauge (psig), which is the design basis pressure. Technical Specification 4.3.b requires that leakage from the containment building shall not exceed 1.0 percent of the building air volume in 24 hours at 2.0 psig over-pressure. Actual test results show that leakage is about one-half of that value. Containment building structural requirements based on expected external pressures have been estimated capable of withstanding internal pressures of at least 7.5 psig.[17] This leakage integrity, and the testing and design margin, provide assurance that radioactive materials will not be released in an uncontrolled manner from the Georgia Tech Research Reactor containment.

The design function of the shield and crane support wall to mitigate potential radiation exposures was also questioned by the Petitioner. The steel-reinforced concrete wall inside the containment extends about 34 feet above the outside ground level. A safety function of the steel-reinforced concrete wall is shielding during potential design basis accident conditions.[18] The design calculations for this shielding function have been reviewed and independently verified. This review finds that the calculations conservatively modeled radioactive source terms and containment configuration.

The Petitioner also raised an issue of a potential ''runaway chain reaction.'' The Georgia Tech Research Reactor is designed with two independent and diverse shut down systems: the reactor scram system and the top reflector drain system. These systems have significant shut down capability and have been shown, both analytically and experimentally, capable of withstanding any excess reactivity condition.[19] These analyses show that the Georgia Tech Research Reactor can meet (with substantial margin) the Technical Specification 3.1.a requirements to be shut down (i.e., subcritical by at least 1.0 percent delta k/k with both the highest reactivity worth shim-safety blade and the regulating rod fully withdrawn). Further, specific design features of the Georgia Tech Research Reactor prevent or mitigate reactivity and power increase conditions. Analyses[20] show that both the HEU and LEU fuels are designed to withstand maximum credible reactivity worth/power excursion conditions without damage, including maximum reactivity addition conditions. As indicated in SAR, this analysis technique has been verified by test data.[21] This degree of shut down capability and provisions for mitigation of design basis accidents is consistent with other U.S. research reactor designs, has been verified by data and NRC staff review, and provides assurance that the Georgia Tech Research Reactor can be safely shut down for any credible condition, including analyzed accident conditions.

The Petitioner also raised concern that a previous accident analysis assumed a fuel loading accident that was considered ''incredible'' and no analysis of this scenario was performed in the current SAR.[22] The SAR states: During refueling operations, all control elements are required to be fully inserted and the top D_2O reflector drained to storage. Following the refueling operation, the reactor startup will be accomplished with standard practice. Under these conditions, a sudden introduction of reactivity is impossible.''[23] Although the NRC staff agrees with the licensee that this accident is not credible, the NRC staff did verify that the results would be acceptable in the unlikely event of such an accident. Specifically, in the safety evaluation for the Order to Convert from HEU to LEU,[24] the NRC staff found that (1) the previous safety evaluation[25] remained valid in that the HEU fuel would not be damaged by the fuel loading accident and (2) the reactivity characteristics of the LEU compared to the HEU fuel are such that the maximum fuel temperatures of the LEU fuel would be less than the temperature for the HEU fuel during the potential fuel loading accident. Therefore, the NRC staff finds that, although the fuel loading accident analysis was not and need not be performed in the current SAR for the Georgia Tech Research Reactor, the potential results, if the analysis were to be performed in the current SAR, would remain acceptable for both fuel types.

The Petitioner also raised a concern regarding the emergency cooling capabilities at the Georgia Tech Research Reactor. The research reactor is designed with an emergency cooling system.[26] The system, as required by Technical Specification 3.7, consists of a passive tank capable of providing cooling for 30 minutes, and two separate long term supplies, only one of which is required for a total of 12 hours of cooling. (It should be noted that in the SAR the licensee assumed that (1) the long term cooling supply connections are prevented or interrupted, (2) a complete core meltdown and conservative fission product release occurred, and (3) conservative radiological exposure conditions existed. These assumptions were used in a calculation to demonstrate

[16] ''Georgia Institute of Technology, (Georgia Tech Research Reactor); Order Modifying Facility Operating License No. R–97,'' 60 FR 32516, June 22, 1995.

[17] SAR, Section 4.3.2, *Provisions for Insuring Leak-Tightness,* page 49.

[18] SAR, Section 4.3 *Description of Reactor Containment Building,* Section 4.3.1 *General Layout,* pages 42–9.

[19] SAR, Section 5.6, *Shutdown Margins.*

[20] SAR, Section 5.10, *Accident Analyses,* page 139–144.

[21] SAR, Section 5.9.1 *Comparison of Calculations with SPERT–II Experiments,* pages 137–8.

[22] SAR, Section 5.10.3 *Fuel Loading Accident.*

[23] SAR, Section 8.4.2 *Fuel Loading Accidents.*

[24] Letter from Marvin M. Mendonca, NRC, to Dr. Ratib A. Karam, Georgia Institute of Technology, ''Issuance of Order Modifying License No. R–97 to Convert from High- to Low-Enriched Uranium—Georgia Institute of Technology (TAC No. M85896),'' Enclosure 3 Safety Evaluation, Section 2.14.5 Fuel Loading Accident.

[25] U.S. Atomic Energy Commission, Safety Evaluation by the Directorate of Licensing, Docket No. 50–160, Georgia Institute of Technology, Section 6.0 *Accident Analysis,* page 12, dated December 19, 1972.

[26] SAR, Section 4.4.8.3, *Emergency Cooling System,* pages 87–90.

acceptable design bases for the Georgia Tech Research Reactor containment, that is leakage rate and shielding functions, as previously discussed.) The Petitioner's concern relates to the time required to make the manual connections to the backup water supplies and potential radiation exposures during this process. These connections are made outside the containment structure. The 30 minutes cooling period flow is designed to be provided by gravity flow from the previously mentioned passive tank through two redundant fast acting, fail safe valves. This cooling ensures no fuel damage or radiation release effect in the event of the loss of coolant accident in that 30 minute time period. The NRC staff concludes, based on a walk through with the licensee, that 30 minutes continues to be an acceptable time to make the connections. The long term emergency cooling connections could be accomplished within the 30 minute time period and there would be no increased radiation exposure while making these connections. Therefore, the previous NRC staff conclusion in licensing the Georgia Tech Research Reactor remains valid, that is, there will be acceptable emergency cooling of the core in the event of the loss of coolant accident.

The Petitioner also raised a concern on the reduction in shielding for the cobalt-60 storage pool, caused by the use of water from this storage pool to provide one of the two alternate long term water supplies for emergency cooling of the research reactor. The emergency cooling function effect on radiation levels from the cobalt-60 pool was reviewed and independently verified. This evaluation has found that the reduction in water above the cobalt-60 sources for the long term reactor emergency cooling function would not significantly affect the shielding of the cobalt-60 source, i.e., there will remain sufficient water for shielding. This was confirmed with the Georgia EPD, the licensing authority for the cobalt-60 source, and the Georgia Tech Research Reactor licensee. Therefore, the use of the cobalt-60 pool for emergency cooling of the Georgia Tech Research Reactor would not adversely impact that function or radiation safety.

The Petitioner raised a concern regarding the use of hot channel factors and engineering uncertainty factors. The SAR analyzed the fuel design to establish safety limits considering power peaking conditions (hot channel factors) and conservative fuel manufacturing tolerance (engineering uncertainty factors). Consistent with research reactor regulatory policy, the SAR verified that these safety limits would not be exceeded or even approached, so that no fuel damage would occur.[27] The NRC staff finds that these conclusions remain valid for both the current HEU fuel and for the LEU fuel as documented in the Order to convert from HEU fuel.[28]

The Petitioner also had a concern related to the reasonableness of assuming a scram after pump failures in the SAR. The SAR paragraph in question states: ''The loss of the primary D_2O pump or the secondary cooling water pump can result in undesirable reactor operating conditions. These systems are therefore provided with high temperature and low flow interlocks with the reactor scram circuitry. Of the two pump failures, the loss of the D_2O pump is the more serious. Two independent low D_2O flow scram interlocks, and loss of electrical power interlocks have been provided in the reactor safety instrumentation. It is therefore acceptable to assume that the reactor will scram because of low flow shortly after an electrical power failure or the more serious case of pump seizure.'' [29] These interlocks provide redundant and diverse scram functions for the Georgia Tech Research Reactor. The NRC staff concludes that in the unlikely event that one of the independent low D_2O flow scram interlocks were to fail or be inoperable, the other low D_2O flow scram interlock would scram the reactor. These redundant scram interlocks are required by Technical Specification 3.2.a. Additionally, the high D_2O temperature and loss of electrical power scram interlocks provide additional assurance that the reactor will scram on potential pump failure events. Based on the redundancy of the low D_2O flow scram interlocks and the additional redundancy from diverse scram interlocks such as the high D_2O temperature scram interlocks, the NRC staff concludes that it is acceptable to assume that the reactor will scram for the potential pump failure analysis.

The Petitioner also asserted that plutonium and cesium-137 were not included in the core burnout analysis. For the core burnout analysis, data show that the assumed release fractions from the fuel of isotopes in the SAR are conservative and that plutonium, cesium, or other particulate isotopes would not be released.[30] Furthermore, page 196 of the SAR states that the source term includes daughter products of the released volatile fission products, which would include cesium-137 as a daughter product of released isotopes. Based on the above quoted data and consideration of volatile fission product decay daughters, the release assumptions are acceptable.

The Petitioner also indicated that there were errors in the Georgia Tech Research Reactor SAR. These alleged errors include the following: That the half-life of iodine-131 was incorrectly specified; that the geologic data are inadequate; that population data are outdated; that the radiation exposure calculational technique and data used to estimate design basis accident radiological doses are outdated; that incorrect names were used for State of Georgia organizations; and that a 30 year wind rose was needed.

Regarding the half-life of iodine-131, there was a typographical error where 1.92 hours was typed instead of 192 hours. This has been corrected by the licensee in a January 1995 SAR revision.

The geologic data presented by the licensee in the SAR, along with other data and information that were provided by the Petitioner, DPW, the Georgia Geologic Survey and the licensee, have been evaluated and discussed by the NRC staff in issues (4) and (7) of this Partial Director's Decision. Based on these evaluations by the NRC staff, the geologic data do not change the previous staff conclusions in licensing the Georgia Tech Research Reactor and the NRC staff does not possess any information which would suggest that the geologic information for the research reactor is not acceptable.

The population data presented by the licensee were from the 1990 census rather than from current City of Atlanta or other estimates on population as stated by the Petitioner. The use of the 1990 census data are acceptable because it is the latest official U.S. census data. The use of such data as implemented in the Georgia Tech Research Reactor SAR and the Technical Specifications is consistent with reactor licensing practices for restricted area, exclusion area and low population zones.

The radiation exposure calculational technique and data used to estimate design basis accident radiological doses (SAR Appendices B and C) were reviewed and found to be conservative and therefore acceptable for use.

Regarding the use of incorrect names for State of Georgia organizations, this was a failure of the licensee to

[27] SAR, Section 5.7, *Thermal—Hydraulic Safety Parameters,* pages 127–135.

[28] Letter from Marvin M. Mendonca, NRC, to Dr. Ratib A. Karam, Georgia Institute of Technology, Enclosure 3 Safety Evaluation, Section 2.11 *Thermal-Hydraulics.*

[29] SAR, Section 8.2.2 *Pump Failures*

[30] SAR, page 196 and Reference B.1.

completely update its SAR and will be corrected in the license renewal process.

Finally, the use of a 5 year wind rose, rather than a 30 year wind rose, is not significant to the Georgia Tech Research Reactor safety analysis or emergency planning because, conservative assumptions, which are independent of the wind rose data, are used for dose assessments in the SAR.[31] In addition, the Georgia Tech emergency preparedness plan uses actual measurements, rather than wind rose assumptions, to determine necessary protective actions.[32] Also, as previously discussed in issues (2) and (3), the environmental, effluent, and area radiation monitoring for the Georgia Tech Research Reactor, provides acceptable verification of compliance to Technical Specification and 10 CFR Part 20 requirements, and further wind direction data or wind rose accuracy for environmental monitoring is not required.

The design and analysis features, as documented in the SAR and appropriately required and verified in the Technical Specifications for the Georgia Tech Research Reactor, reduce the potential for or mitigate the consequences of design basis accidents and provide acceptable assurance that there will be no uncontrolled release of radioactive material. Therefore, the NRC staff finds no reason to conclude that the radioactive contaminants would be spread by any credible event or condition at the Georgia Tech Research Reactor. The Petitioner provided no facts to conclude otherwise. Therefore, the NRC staff concludes that the Petitioner's concern does not raise a substantial health or safety issue warranting the action requested by the Petitioner.

(7) *The Georgia Tech Research Reactor is in an earthquake zone.* The NRC staff has continued to closely follow the seismic and geologic developments in the tectonic province in which the Georgia Tech Research Reactor is located. The site is located in the southeastern Piedmont, which, along with the Blue Ridge, comprises the southern portion of the broad region designated by the NRC staff as the ''New England-Piedmont Tectonic Province.'' The New England-Piedmont Province is bounded on the northwest by the Southern Valley and Ridge Tectonic Province and on the southeast by the Coastal Plain Tectonic Province.

The NRC staff has extensively reviewed the geology and seismology of this region (e.g., the Safety Analysis Reports for McGuire, Catawba, North Anna, Shearon Harris, Vogtle, and Summer Nuclear Power Plants). These studies include considerations of the New Madrid, Charleston, east Tennessee, and Brevard seismic zones that were mentioned in the Petition. These evaluations by the NRC staff, as documented in the safety evaluations for the McGuire, Catawba, North Anna, Shearon Harris, Vogtle, and Summer Nuclear Power Plants, and other, nuclear and non-nuclear-related evaluations during the last two decades, have identified no capable faults[33] in this region.

The NRC also has supported regional seismic networks in the southeast.[34] In 1990, the NRC began to transfer support from these regional networks to the National Seismic Network operated by the United States Geological Survey. The NRC staff continues to review the results from these networks, and finds no new information which would change previous conclusions on the seismicity of the southeastern Piedmont (i.e., there are no capable faults and the potential for a damaging earthquake is very remote).

Seismology has been considered in the licensing of the Georgia Tech Research Reactor. The New Madrid, Missouri and the Charleston, South Carolina earthquakes (that were mentioned in this Petition issue) were considered, as were lesser magnitude earthquakes in and near Georgia. The Petitioner has presented no new seismic information for the region. The NRC staff evaluation continues to support the conclusion that the seismology for the Georgia Tech Research Reactor has been acceptably considered in the licensing of this facility.

A study of seismic hazards has been performed for Georgia Tech and referenced in the Petition.[35] This study reviewed seismic history, performed probabilistic and deterministic seismic ground motion studies, and made estimates of potential ground motion. The report validated Standard Building Code seismic coefficient requirements for the Georgia Tech campus, and did not change the conclusion on the acceptability of the Georgia Tech Research Reactor.

The above conclusions, as previously discussed in issue (4), are further supported by the Georgia State Geologist in a letter dated May 11, 1995.

The NRC staff finds no reason to conclude that the seismic characteristics for the site are unacceptable for the Georgia Tech Research Reactor. The Petitioner provided no facts to conclude otherwise. Therefore, the NRC staff concludes that the Petitioner's concern does not raise a substantial health or safety issue warranting the action requested by the Petitioner.

(8) *There is absolutely no reason to keep the Georgia Tech Research Reactor operating.* The license for the Georgia Tech Research Reactor was issued in accordance with all applicable requirements. The licensee programs in education, research and development are consistent with the Georgia Tech Research Reactor license. Specifically, the Georgia Tech license renewal request dated April 19, 1994, discussed activities at the research reactor, including nuclear education in nuclear engineering and health physics. It also discussed contributions to the community, such as plant irradiation experiments for high school science classes and use by the Boy Scouts of America for nuclear merit badges at the Georgia Tech Research Reactor. The Georgia Tech Research Reactor has capability for bio-medical irradiation research and development, isotope production, neutron diffraction, and activation analysis. The license renewal request specified programs evaluating radiation decomposition of chemicals, characterizing neutron absorbing materials, and characterizing soil samples.

The Petitioner also raised concerns on the monitoring and calibration of neutron beams for medical therapy. At this time, the Georgia Tech Research Reactor is not authorized to conduct medical therapy,[36] so the specific concern is not applicable.

[31] SAR, Appendix B.

[32] Letter from R. A. Karam, Georgia Tech, to U.S. Nuclear Regulatory Commission, dated April 19, 1994, Attachment 6, Emergency Preparedness Plan.

[33] Capable faults are defined in 10 CFR Part 100, ''Seismic and Geologic Siting Criteria for Nuclear Power Plants,'' Appendix A, Section III ''Definitions.''

[34] These Networks include, the Charleston network, first operated in 1973 by the U.S. Geological Survey (USGS). Others were added during the mid and late 1970's and early 1980's, which were operated by Virginia Polytechnic and State University (Central Virginia and Giles County Seismic Zones), the University of Memphis (Southern Appalachians and New Madrid Seismic Zones), Georgia Institute of Technology (Georgia and Alabama), and St. Louis University (New Madrid Seismic Zone).

[35] ''Seismic Hazard Study for the Georgia Institute of Technology Campus, Atlanta, Georgia,'' Law Engineering Project No. 57704495.01, March 16, 1993.

[36] The Georgia Tech Research Reactor cannot perform medical therapy without specific authorization under the provisions of the Atomic Energy Act Section 104(a). Georgia Tech may perform experiments, such as the characterization of irradiation conditions for potential, future medical therapy as long as the experiments and research reactor are within the provisions of the

Continued

The Petitioner has asserted that substantial management deficiencies persist, including concerns on the problems related to the 1987/1988 time frame. This concern on the persistence of substantial management deficiencies may be addressed in the pending license renewal proceeding. As previously outlined in the Introduction to this Partial Director's Decision, the Final Director's Decision will take into account any relevant findings from this license renewal proceeding at an appropriate time after completion of the NRC staff review.

The NRC staff finds no reason at this time to conclude that the Georgia Tech Research Reactor is not continuing to conduct research and development activities in accordance with the Atomic Energy Act and NRC regulations. The Petitioner provided no facts to conclude otherwise. Therefore, the NRC staff concludes that no information has been provided on this issue to conclude that a substantial health or safety issue exists warranting the action requested by the Petitioner.

(9) *Security at the Georgia Tech Research Reactor is extremely lax.* The concerns on security issues, as previously outlined in the Introduction to this Partial Director's Decision, may be addressed in a pending license renewal proceeding. These issues will be addressed in a Final Director's Decision at an appropriate time after taking into account any relevant findings from this license renewal proceeding and after completion of the NRC staff reviews.

(10) *In case of an accident or terrorist attack, evacuation of the campus and downtown Atlanta would be impossible both now and during the Olympics.*[37] With respect to potential accident conditions for the Georgia Tech Research Reactor, the Emergency Planning Zone (EPZ), the area within which predetermined protective actions are established, is a 100 meters radius from the facility. This EPZ is in accordance with NRC emergency preparedness guidance applicable to research reactors.[38] The Georgia Tech Research Reactor accident analyses[39] demonstrates that this 100 meter EPZ is conservative for the Georgia Tech Research Reactor. These analyses have been found acceptable most recently in the safety evaluation for the Order to convert from HEU fuel.[40] These analyses demonstrate that the potential need for protective actions outside the EPZ is highly unlikely. The specification of emergency classifications (e.g., no general emergency classification) for the Georgia Tech Research Reactor has also been reviewed by the NRC staff and found to be consistent with the NUREG–0849 guidance. The Georgia Tech Research Reactor emergency plan has been previously verified by the NRC staff to be acceptable in accordance with this regulatory guidance and applicable regulations.

The Georgia Tech Research Reactor has conducted emergency response drills in accordance with its emergency plan (the last three drills were on October 19, 1994, November 4, 1993, and November 9, 1992). The drills have included involvement of onsite or offsite agencies, such as the Georgia Tech Police Department, the Atlanta Fire Department, the Atlanta/Fulton County Emergency Management Agency, the Georgia Emergency Management Agency, the Georgia Environmental Protection Division, and the Grady Memorial Hospital. Training, equipment, and contingency planning for onsite and offsite personnel have been acceptably in accordance with emergency plan requirements, as verified most recently in NRC staff Inspection Reports 50–160/94–04, 50–160/93–03, and 50–160/92–04. Police, fire, and medical personnel have been observed by NRC staff to acceptably perform their responsibilities. Other recent discussions with these emergency response organizations demonstrate that they acceptably understand and feel capable of discharging their responsibilities under emergency conditions at the Georgia Tech Research Reactor.

With regard to emergency preparedness during the Olympics,[41] the NRC staff and the licensee have been discussing the necessary steps to take for reactor safety during this event for some time before this Petition was raised. The licensee has decided to not operate the research reactor during the 1996 Olympics and to remove the spent fuel from the facility prior to the Olympics.[42] This would eliminate the potential for radiological releases during the Olympics related to the presence of such fuel onsite, and would reduce the potential for any emergency response to be taken due to radiological conditions for the Georgia Tech Research Reactor during the Olympics.

Georgia Tech has indicated that there are no events or additional resident population that are planned to be within the EPZ, and that the entire campus is to be controlled for access such that increased transient population through the EPZ is not expected. Further, supplemental emergency provisions for the Olympics are being planned by Georgia Tech in coordination with the Atlanta Committee for the Olympic Games, the U.S. Department of Defense, the Federal Bureau of Investigation, the Georgia State Patrol, Georgia Department of Transportation, City of Atlanta Police, and City of Atlanta Fire Department.

Additionally, the Petitioner in her July 18, 1995 letter, raised a concern on emergency preparedness for power reactor licenses, including emergency preparedness during the Olympics. NRC regulations require the development of emergency preparedness plans for all reactor licenses. The Petitioner presented no information and the NRC staff does not know of any information which would suggest that reactor emergency preparedness is not acceptable, including emergency preparedness during the Olympics.

The Petitioner also raised an issue addressing the location of the emergency command center within the Georgia Tech Research Reactor building. However, the emergency command center is outside the containment structure in which the Georgia Tech Research Reactor is housed. The emergency command center is isolated from the containment structure, which, as previously discussed on issue (6), is capable of withstanding pressures greater than would result from any analyzed accident. The discussions on

current license and other NRC regulatory requirements. In order to perform medical therapy at the Georgia Tech Research Reactor, an associated license under the provisions of 10 CFR 50.21(a) would be required, as well as associated modifications to the Technical Specifications from the NRC.

[37] That portion of the issue that deals with potential terrorist attacks will be included in issue (9) on security.

[38] ''Standard Review Plan for Review and Evaluation of Emergency Plans for Research and Test Reactors,'' NUREG–0849, Appendix II.

[39] SAR, Section 5.10 *Accident Analyses*, pages 139–144 and Section 8, *Reactor Hazards Evaluation*, and Appendices A, B, and C, pages 176–214.

[40] Letter from Marvin M. Mendonca, NRC, to Dr. Ratib A. Karam, Georgia Institute of Technology, Enclosure 3 Safety Evaluation, Section 2.14 *Potential Accident Scenarios.*

[41] As previously noted, the implications of terrorist acts during the Olympics relative to emergency preparedness may be addressed in a pending license renewal proceeding. These issues will be addressed in a Final Director's Decision at an appropriate time after taking into account any relevant findings from this license renewal proceeding and after completion of the NRC staff reviews.

[42] Georgia Institute of Technology's Response to Commission's Order Issuing Housekeeping Stay, dated June 21, 1995, and letter from Patricia Guilday, Assistant Attorney General, State of Georgia, Department of Law, to the Secretary of the NRC dated July 25, 1995.

the preceding issues also demonstrate that there is little likelihood that the emergency command center could be affected by a radiological event related to the Georgia Tech Research Reactor. The emergency command center is monitored for radiation so that in the unlikely event of an indication of unacceptable radiation in the emergency command center, or if it were to otherwise become unavailable, alternative actions could be taken (e.g., relocation of emergency response personnel). The above is consistent with the Georgia Tech Research Reactor emergency plan and previous NRC acceptance of the emergency plan, continues to acceptably implement the requirements of NUREG–0849, and, therefore, provides acceptable emergency preparedness for the Georgia Tech Research Reactor.

Based on the above, the 100 meter EPZ at the Georgia Tech Research Reactor is acceptable as a planning basis to ensure the protection of the public health and safety both now and during the Olympics, and the likelihood of evacuation or other protective action beyond the EPZ is acceptably low. During the Olympics, Georgia Tech's plans to not operate and to remove spent fuel ensure that there will be minimal potential of radiological related emergencies arising in connection with the NRC license for the Georgia Tech Research Reactor. Further, during the Olympics, the conditions around the research reactor, access controls to the campus, and planning for supplementary emergency provisions ensure that the provisions of the emergency plan will not be adversely affected by the Olympics.

The NRC staff finds no reason to conclude that the emergency planning zone for the Georgia Tech Research Reactor is not acceptable, including during the time period of the Olympics. The Petitioner provided no facts to conclude otherwise. Therefore, the NRC staff concludes that no information has been presented to conclude that a substantial health or safety issue exists warranting the action requested by the Petitioner.

B. Revocation of Liquid Radioactive Material Release Authority; Revocation of Licenses Using the Principle of As Low As Reasonably Achievable; Prohibition of Transportation of Radioactive Material by Mail; and Modification to Posting Requirements for Radioactive Material

The following are general requests by the Petitioner for actions related to various categories of licenses:

1. The request to withdraw all license authority nationwide involving the discharging or dumping of any quantity of radioactive material to all the sewers or waters in the United States;

2. The request to withdraw all licenses to all nuclear facilities, including nuclear power plants, which operate under as low as reasonably achievable (ALARA) principles;

3. The request that the NRC staff prohibit the transportation of radioactive material by mail; and

4. The request that the NRC staff modify every license issued to transporters of radioactive materials and builders of nuclear power plants so that these parties must put two-foot high letters on everything transported or built stating ''DANGER–RADIOACTIVE'' and in slightly smaller letters ''there is no safe level of radiation, any exposure can [a]ffect health.''

The bases for these requests are that there is no safe level of radiation, that storage and disposal of radioactive waste is inadequate, and that the NRC sewage discharge guidelines are totally inadequate. The Petitioner has also indicated that the basis for the request related to transportation by mail is that accidents have occurred while transporting radioactive materials. The issues enumerated by the Petitioner are broadly framed requests to take actions to prohibit discharging all radioactive material into sewers and waters of the U.S., to create a zero release limit of radioactive material, and to modify the transportation regulations under 10 CFR part 71.[43] The Petitioner also raises concerns over the adequacy of current NRC regulations related to radiation protection.[44] Finally, the Petitioner questions the adequacy of NRC and Environmental Protection Agency (EPA) regulations on allowed radioisotopes in the environment.

For each of the Petitioner's concerns cited directly above, the Petitioner has provided no specific information or basis which would support taking action on the Petitioner's four requests cited in this section. The Petitioner's request to withdraw all license authority for the discharging of any quantity of radioactive materials to all sewers and waters is based on a general assertion that the NRC's sewer dumping guidelines are totally inadequate. The Petitioner offers no support for this assertion. In addition, the Petitioner's stated bases for the request to withdraw all licenses which operate under ALARA principles (i.e., there is no safe level of radiation and the storage and disposal of radioactive materials, as well as the regulations, are inadequate) have not been substantiated by any data or references in the Petition. Finally, no information was provided that transportation accidents had not been evaluated and issues resolved under the provision of current regulations or that present regulations regarding the use of mail to transport radioactive material is not acceptable. Because these stated concerns are general and are not supported by additional information in the Petition, these concerns do not provide the basis for taking enforcement action under 10 CFR 2.206.

No specific information was provided to support the Petitioner's general statements on the inadequacy of NRC regulations. The Petitioner has provided no information that would lead to a conclusion that the packaging and transportation regulations in 10 CFR part 71, the radiation protection regulations in 10 CFR part 20, and the NRC's and EPA's environmental protection regulations, are not providing acceptable protection to the public health and safety, as well as to the environment. Since the Petitioner has not submitted any relevant technical, scientific or other data to support any of the general requests for the actions enumerated in this section, or raised a substantial health and safety concern based on these issues, the Petitioner's general requests for such actions are denied. However, should this Petitioner, or anyone, wish to provide relevant technical, scientific or other data and grounds to support any change to NRC regulations, a Petition for Rulemaking can be submitted in accordance with 10 CFR 2.802.

III. Conclusion

The institution of proceedings pursuant to Section 2.206 is appropriate only if substantial health and safety issues have been raised. See Consolidated Edison Co. of New York (Indian Point, Units 1, 2, and 3), CLI–75–8, 2 NRC 173, 175 (1975); Washington Public Power Supply

[43] The NRC's packaging and transportation regulations in 10 CFR part 71 are part of a broad regulatory scheme for the packaging and transportation of radioactive materials. The packaging and transportation of radioactive materials are also subject to the regulations of the U.S. Department of Transportation and the U.S. Postal Service. See 10 CFR 71.0(b).

[44] These concerns include that the release limits to the sewer systems is established as a monthly concentration and allows release of soluble material, that the brain and ovaries are not specifically mentioned in the organ dose weighting factors, that an individual is not considered a member of the public any time in which the individual receives an occupational dose, that special exposures should not be allowed, that no dose be allowed to the embryo/fetus whether the woman is declared pregnant or not, and that radiological release limits are established assuming a ''Reference Man.''

System (WPPSS Nuclear Project No. 2), DD–84–7, 19 NRC 899, 924 (1984). This is the standard that has been applied to the concerns raised by the Petitioner to determine whether the action requested by the Petitioner is warranted.

With regard to the requests made by the Petitioner discussed herein, the NRC staff finds no basis for taking such actions. Rather, as explained above, the NRC staff concludes that no substantial health and safety issues have been raised by the Petitioner. Accordingly, the Petitioner's requests for action, pursuant to Section 2.206 on the Georgia Tech Research Reactor, are denied on issues A(1) through A(8) and A(10), insofar as the issues on A(8) do not relate to the Petitioner's concerns on the persistence of substantial management deficiencies and the issues on A(10) do not relate to the Petitioner's security issues. As previously noted in the Introduction and Discussion to this Partial Director's Decision, the issue related to the persistence of management problems [part of A(8)] and the issue related to security [A(9) and part of A(10)] will be decided after taking into account the results of the licensing proceeding on the license renewal application. In addition, the Petitioner's requests on general license and authority revocation, as discussed in Section B of this Partial Director's Decision, are denied.

A copy of this Decision will be filed with the Secretary for the Commission as provided by 10 CFR 2.206(c) of the Commission's regulations. The Decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision in that time.

Dated at Rockville, Maryland, this 31st day of July 1995.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95–19510 Filed 8–7–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–254 and 50–265]

Exemption

In the Matter of: Commonwealth Edison Company (Quad Cities, Units 1 and 2)

I

The Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License Nos. DPR–29 and DPR–30, which authorizes operation of the Quad Cities Nuclear Power Station, Units 1 and 2 (the facilities). The licenses provide, among other things, that the facilities are subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities are boiling water reactors located at the licensee's site in Rock Island County, Illinois.

II

In 10 CFR 73.55, ''Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage,'' paragraph (a), in part, states that ''the licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.''

In 10 CFR 73.55(d), ''Access Requirements,'' paragraph (1), it specifies that ''the licensee shall control all points of personnel and vehicle access into a protected area.'' Also, 10 CFR 73.55(d)(5) requires that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' It further states that individuals not employed by the licensee (e.g., contractors) may be authorized access to protected areas without escort provided that the individual, ''receives a picture badge upon entrance into a protected area which must be returned upon exit from the protected area. * * *''

The licensee proposes to implement an alternative unescorted access system which would eliminate the need to issue and retrieve picture badges at the entrance/exit location to the protected area and would allow all individuals, including contractors, to keep their picture badges in their possession when departing the Quad Cities site.

III

Pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. According to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have the same ''high assurance'' objective, that the proposed measures meet the general performance requirements of the regulation, and that the overall level of system performance provides protection against radiological sabotage equivalent to that which would be provided by the regulation.

Currently, unescorted access into the protected area for both employee and contractor personnel into Quad Cities, Units 1 and 2, is controlled through the use of picture badges. Positive identification of personnel which are authorized and request access into the protected area is established by security personnel making a visual comparison of the individual requesting access and that individual's picture badge. In accordance with 10 CFR 73.55(d)(5), contractor personnel are not allowed to take their picture badges off site. In addition, in accordance with the plant's physical security plan, the licensee's employees are also not allowed to take their picture badges off site.

The proposed system will require that all individuals with authorized unescorted access have the physical characteristics of their hand (hand geometry) registered with their picture badge number in a computerized access control system. Therefore, all authorized individuals must not only have their picture badge to gain access to the protected area, but must also have their hand geometry confirmed. All individuals, including contractors, who have authorized unescorted access into the protected area will be allowed to keep their picture badges in their possession when departing the Quad Cities site.

All other access processes, including search function capability and access revocation, will remain the same. A security officer responsible for access control will continue to be positioned within a bullet-resistant structure. It should also be noted that the proposed system is only for individuals with authorized unescorted access and will not be used for those individuals requiring escorts.

Sandia National Laboratories conducted testing which demonstrated that the hand geometry equipment possesses strong performance characteristics. Details of the testing performed are in the Sandia report, ''A Performance Evaluation of Biometric Identification Devices,'' SAND91—0276 UC—906 Unlimited Release, June 1991. Based on the Sandia report and the licensee's experience using the current photo picture identification system, the false acceptance rate for the proposed hand geometry system would be at least

equivalent to that of the current system. To assure that the proposed system will continue to meet the general performance requirements of 10 CFR 73.55(d)(5), the licensee will implement a process for testing the system. The site security plans will also be revised to allow implementation of the hand geometry system and to allow employees and contractors with unescorted access to keep their picture badges in their possession which leaving the Quad Cities site.

IV

For the foregoing reasons, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet the same high assurance objective and the general performance requirements of 10 CFR 73.55. In addition, the staff has determined that the overall level of the proposed system's performance will provide protection against radiological sabotage equivalent to that which is provided by the current system in accordance with 10 CFR 73.55.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest.

Therefore, the Commission hereby grants the following exemption:

The requirement of 10 CFR 73.55(d)(5) that individuals who have been granted unescorted access and are not employed by the licensee are to return their picture badges upon exit from the protected area is no longer necessary. Thus, these individuals may keep their picture badges in their possession upon leaving the Quad Cities site.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (60 FR 39464).

Dated at Rockville, Maryland, this 26th day of July 1995.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–19511 Filed 8–7–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by Office of Management and Budget

Agency Clearance Officer: Michael E. Bartell, (202) 942–8800.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

[File No. 270–259]

Proposed Amendments

Rule 17f–5

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission (the ''Commission'') has submitted for OMB approval amendments to Rule 17f–5.

Rule 17f–5 currently permits management investment companies (''funds'') to place their asserts with certain foreign banks and securities depositories, subject to numerous and highly detailed conditions. The amended rule would revise these conditions. The amended rule would require findings that the fund's foreign custody arrangements will provide reasonable protection for fund assets. Although foreign custodians would not have satisfy specific capital or other requirements, the custodian's ability to provide reasonable protection for the fund's asserts would have to be evaluated based on all relevant factors, including the custodian's financial strength. The amended rule would require the fund's foreign custody arrangements to be governed by a written contract, although it would not specify particular provisions that must be included in the contract. The amended rule also would require the fund's arrangements to be monitored for continuing appropriateness. If an arrangement no longer complies with the amended rule's requirements, a fund would have to withdraw its assets from the country or custodian as soon as reasonably practicable.

In addition, the amended rule would allow fund directors to delegate their responsibilities under the current rule to the fund's adviser or officers or a U.S. or foreign bank. In selecting particular delegates for foreign custody decisions, the board would need to find that it is reasonable to rely on the delegate to perform the delegated responsibilities. The amended rule would require the delegate to provide the board with written reports notifying the board of the placement of the fund's assets in a particular country and with a particular custodian. The delegate also would be required to provide written reports of any material changes in the fund's arrangements. These reports would be provided to the board no later than the next regularly scheduled board meeting following the delegate's actions.

It is estimated that 3,214 total respondents (2,600 fund portfolios and 614 delegates (representing 600 investment advisers and 14 U.S. bank custodians)) may expend an estimated 8,740 total burden hours in connection with the board's delegation of its responsibility for foreign custody matters, the delegate's monitoring of the arrangements, and the amended rule's periodic reporting requirements. The amendments may eliminate the need for the estimated 14 U.S. bank custodians to file exemptive applications with the Commission to maintain custody of fund assets with certain foreign custodians, resulting in savings estimated at 840 total burden hours.

Direct general comments to the OMB Clearance Officer for the SEC at the address stated below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms to Michael E. Bartell, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and OMB Clearance Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget (Paperwork Reduction Act Project No. 3235–0269), Room 3208 New Executive Office Building, Washington, DC 20543.

Dated: July 27, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19520 Filed 8–7–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36049; International Series Release No. 834 File No. SR–CBOE–95–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Maintenance Criteria for Options on American Depository Receipts

August 2, 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 July 12, 1995, the Chicago Board Options Exchange (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rules 5.3 and 5.4 relating the listing and trading of options on American Depository Receipts (''ADRs''). The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise certain of the Exchange's rules relating to the listing and maintenance criteria for options on ADRs, as set forth in two separate Interpretation and Policies, one under CBOE Rule 5.3 and one under CBOE Rule 5.4.

Listing Criteria for Options on ADRs

The first set of changes concern Interpretation .03 under Rule 5.3. Currently, the Exchange may list options on ADRs that meet the criteria and guidelines set forth in Rule 5.3 and the interpretations thereunder if any of the following conditions are satisfied: (i) The Exchange has in place an effective surveillance agreement [3] with the primary exchange in the home country in which the security underlying the ADR is traded; (ii) the combined trading volume of the ADR, the security underlying the ADR, other classes of common stock related to the security underlying the ADR, and ADRs overlying such other classes of common stock (collectively ''other related ADRs and securities'') occurring in the U.S. ADR market represents (on a share equivalent basis) at least 50% of the combined worldwide trading volume in the ADR and other related ADRs and securities over the three month period preceding the date of selection of the ADR for options trading (''50% Test''); or (iii) the Commission otherwise authorizes the listing.

The proposed rule change would amend CBOE Rule 5.3, Interpretation .03 in two ways. First, the manner by which the applicable percentage of worldwide trading volume is calculated would be revised. Second, a new set of criteria for the listing of options on ADRs, based on daily trading in the U.S., would be added.

The 50% Test will be revised so that trading in ADRs and other related ADRs and securities in any market with which the Exchange has in place an effective surveillance sharing agreement will be added to U.S. ADR market volume. Currently, only trading in the U.S. ADR market counts towards satisfying the 50% Test. The Exchange believes it is legitimate to add the trading volume in the markets with which the Exchange has in place comprehensive surveillance sharing agreements to U.S. market trading volume because the Exchange is able to monitor trading activity in these other markets.

Interpretation .03 to Rule 5.3 would also be revised by adding a fourth set of criteria under which the Exchange could list options on ADRs. This new standard (''Daily Trading Volume Standard'') will permit the Exchange to list options on ADRs if each of the following three conditions is met: (1) The combined trading volume for the ADR and other related ADRs and securities occurring in the U.S. ADR market or in any market with which the Exchange has in place an effective surveillance agreement represents (on a share equivalent basis) at least 20% of the combined worldwide trading volume in the ADR and other related ADRs and securities over the three month period preceding the date of selection of the ADR for options trading, (2) the average trading volume for the ADR in the U.S. ADR market over the three months preceding the date of selection of the ADR for options trading is at least 100,000 shares per day, and (3) the trading volume for the ADR in the U.S. ADR market is at least 60,000 shares per day for a majority of the trading days for the three months preceding the date of selection of the ADR for options trading.

This new standard, like the 50% Test, will allow the listing of options on ADRs in the absence of a surveillance sharing agreement between the Exchange and the home country where the security underlying the ADR is traded. The Exchange notes that the Daily Trading Volume Standard differs from the 50% Test in three respects. First, the percentage trading requirement is lowered to 20% from 50%. Countervailing this reduced percentage, which by itself would tend to relax the listing standards, are two numerical U.S. trading volume requirements—one that would require a high average daily U.S. trading volume and the other that would require a certain level of trading on a majority of days in the preceding three months. The existing criteria for listing options on ADRs do not have similar trading volume requirements.

The Exchange believes that the Daily Trading Volume Standard is justified because it will enable the Exchange to list options on ADRs that are widely followed by U.S. investors but that do not meet the 50% Test. At the same time, however, these ADRs must have high trading volume in the U.S. ADR market. The Exchange believes that this requirement of observable, high trading volumes, should ameliorate any regulatory concerns regarding investor protection.

Maintenance Criteria for Options on ADRs

The proposed rule change would also establish new maintenance criteria corresponding to the new listing criteria discussed above. Currently, Interpretation .09 to Rule 5.4 prohibits the Exchange from opening trading on any additional series of options on an ADR that was initially listed under the 50% Test if the U.S. trading volume over a subsequent three month period is less than 30% of worldwide trading volume, unless either (1) the Exchange has in place an effective surveillance agreement with the primary exchange in the home country where the security underlying the ADR is traded, or (2) the Commission has otherwise authorized the listing.

The proposed new maintenance criteria would prohibit the Exchange from opening trading on any additional series of options on an ADR that was initially listed pursuant to the proposed Daily Trading Volume Standard unless (A) the percentage of worldwide trading volume in the ADR and other related ADRs and securities that takes place in the U.S. ADR market or in markets with which the Exchange has in place surveillance sharing agreements for any consecutive three month period is either (i) at least 30% without regard to the average trading volume in the ADR, or (ii) at least 15% when the average U.S. daily trading volume in the ADR for the previous three months is at least 70,000

[3] The Commission defines an effective (*i.e.*, comprehensive surveillance agreement as one pursuant to which the Exchange can obtain not only information regarding the identity of exchange members executing trades, but also the information regarding the identity of the ultimate customer.

shares, or (B) the Exchange then has in place an effective surveillance agreement with the primary exchange in the home country where the security underlying the ADR is traded or (C) the Commission has otherwise authorized the listing. The Exchange believes that the slight decrease in the trading volume percentage (*i.e.*, from 20% to 15%) and the significant average daily trading volume requirement (70,000 shares) should be adequate to address any concerns regarding possible manipulation without being so high as to unduly interfere with the continued trading of option products that have become established on the Exchange.

This second revision merely establishes a maintenance criteria for the 50% Test that is consistent with the newly proposed listing criteria. Specifically, for purposes of applying the 30% maintenance standard, the Exchange will add to U.S. ADR market volume the volume in the ADR and other related ADRs and securities occurring in markets with which the CBOE has in place effective surveillance agreements.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[4] 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 by enabling the Exchange to list options on widely followed ADRs without compromising investor protection concerns.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consent, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–32 and should be submitted by August 29, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19521 Filed 8–7–95; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b)(5) (1988).

[5] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36032; International Series Release No. 832; File No. SR–NYSE–95–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to the Listing of Investment Company Units

July 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (''Act''), notice is hereby given that on June 7, 1995, the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to adopt ¶ 703.16 of its Listed Company Manual (''Manual''), consisting of listing standards for units of trading (''Units'') that represent an interest in a registered investment company (''Investment Company'') that could be organized as a unit investment trust (''UNIT''), an open-end management investment company, or a similar entity. The investment company would hold securities comprising, or otherwise based on or representing an investment in, an index or portfolio of securities. The investment company either could hold the securities directly or could hold another security representing the index or portfolio securities (such as in a UIT that holds shares of an open-end investment company). The Exchange also proposes to amend Exchange Rule 460 to permit specialists to whom Units have been allocated to purchase and redeem Units, or securities that can be subdivided or converted into Units, through a distributor, from the issuer of such securities.

The Exchange initially seeks to list up to nine series of Units, in the form of ''CountryBaskets.''[1] These CountryBaskets will be structured in one of two ways. First, in the ''Fund-only structure,'' they could be structured as series of an open-end management investment company investing in a portfolio of securities (''Index Securities'') included in the corresponding component of the FT–Actuaries World Index ''FT–AWI'').[2] Alternatively, in the ''Fund/UIT structure,'' they could be structured as UITs that have as their assets shares of an open-end investment company holding the underlying Index Securities. If, in the future, the Exchange seeks to list Units with respect to other indices, it will make an appropriate filing with the Commission to provide the authorization to effect such listings.

[1] ''CountryBasket,'' ''CountryBaskets'' and ''CB'' are trademarks of Deutsche Bank Securities Corporation (''DBSC'').

[2] ''FT-Actuaries World Indices,''''FT-Actuaries World Index,'' and ''FT-AWI'' are trade and service marks of The Finacial Times Limited, and are used under license by Goldman, Sachs & Co. and NatWest Securities Limited.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to list up to nine CountryBasket securities (''Securities''). The Securities will be issued either by an open-end management investment company or by UITs or similar entities that invest in individual series of an index fund.[3] Each series of such an investment company (each a ''Fund'') is designed to provide investment results that substantially correspond to the price and yield performance of a specific component of the FT-Actuaries World Index. The initial nine series of Funds will be based on the following FT-Actuaries World Indices: Australia; France; Germany; Hong Kong; Italy; Japan; South Africa; United Kingdom; and the United States.[4]

The FT-Actuaries World Indices

DBSC, the adviser to the Funds, has provided the Exchange with the following description of the FT-Actuaries World Indices.

Establishing an Index

The FT–AWI are jointly compiled by The Financial Times Limited, Goldman, Sachs & Co., and NatWest Securities Limited, in conjunction with the Institute of Actuaries (together, the ''Consortium''). The aim of the Consortium is to create and maintain a series of high quality equity indices for use by the global investment community. Specifically, the Consortium seeks to establish and maintain the FT–AWI so that with respect to their corresponding markets, they are comprehensive, consistent, flexible, accurate, investible, and representative.

The World Index Policy Committee (''WIPC'') makes all policy decisions concerning the FT–AWI, including: objectives; selection criteria; liquidity requirements; calculation methodologies; and the timing and disclosure of additions and deletions. The WIPC makes those decisions in a manner that is consistent with the stated aims and objectives of the Consortium. In general, the WIPC aims for a minimum of 70 percent coverage of the aggregate value of all domestic exchange-listed stocks in every country, region and sector in which it maintains an index.

The WIPC consists of: One representative of each Consortium member; one member nominated by each of the parties as representing an actual or prospective main user group of the World Indices; a Chairman and additional member who are members of the Institute of Actuaries or the Facility of Actuaries.

A country must satisfy the following criteria for the WIPC to include it in the FT-Actuaries World Indices: (1) Direct equity investment by non-nationals must be permitted; (2) accurate and timely data must be available; (3) no significant exchange controls should exist that would prevent the timely repatriation of capital or dividends; (4) significant international investor interest in the local equity market must have been demonstrated; and (5) adequate liquidity must exist.

Securities in the FT–AWI are subject to the following ''investibility screens'': (1) Securities comprising the bottom five percent of any market's capitalization are excluded; (2) securities must be eligible to be owned by foreign investors; (3) 25 percent or more of the full capitalization of eligible securities must be publicly available for investment and not in the hands of a single party or parties ''acting in concert''; and (4) securities that fail to trade for more than 15 business days within each of two consecutive quarters are excluded.

The WIPC seeks to select constituent stocks that capture 85 percent of the equity that remains available in any market (known as the ''investible universe'') after applying the investibility screens. Securities are selected with regard to economic sector and market capitalization to make the FT–AWI component highly representative of the overall economic sector make-up and market capitalization distribution of the investible universe of a market.

Maintaining an Index

The WIPC may add securities to the FT–AWI for any of the following reasons: (1) The addition would make the economic sector make-up and market capitalization distribution of the FT–AWI component more representative of its investible universe; (2) a non-constituent security has gained in importance and replaces an existing constituent security under the rules of review established by the WIPC; (3) the FT–AWI component represents less than its targeted percentage of the capitalization of its investible universe (usually in cases where the investible universe has grown faster than the corresponding FT–AWI component); (4) a new, eligible security becomes available whose total capitalization is one percent or more of the current capitalization of the relevant FT–AWI component; (5) an existing constituent ''spin off'' a part of its business and issues new equity to the existing shareholders; or (6) changes in investibility factors lead to a stock becoming eligible for inclusion and that stock now qualifies on other grounds.

The WIPC may adjust the FT–AWI for any of the following reasons: (1) The component comprises too high a percentage of its representative universe; (2) a review by the WIPC shows that a constituent security has declined in importance and should be replaced by a non-constituent security; (3) the deletion of a security that has declined in importance would make the FT–AWI component more representative of the economic make-up of its investible universe; (4) circumstances regarding investibility and free float change, causing the constituent security to fail the FT–AWI screening criteria; (5) an existing constituent security is acquired by another entity; or (6) the stock has been suspended from trading for a period of more than ten working days. Generally, but not in all cases, changes resulting from review by the WIPC occur at the end of a calendar quarter. Changes resulting from merger or ''spin-off'' activity will be effectuated as soon as practicable.

[3] The specific character or structure of the Securities will be determined based on, among other things, the types of exemptive relief the product sponsors receive from the Commission with respect to issues arising under the Investment Company Act of 1940. The manner in which the Securities will be listed and traded on the Exchange will be the same regardless of the structure chosen. For ease of reference throughout this filing the term ''Fund'' will refer either to each series of the open end management investment company that will be trading on the Exchange (in a fund-only structure) or to each series of the open end management investment company that will be underlying a UIT (in a dual Fund/UIT structure).

[4] The actual components, component capitalization, and component weightings for each series were submitted as part of a Form N–1A registration statement of The CountryBaskets Index Fund, Inc. under the Securities Act of 1933 and the Investment Company Act of 1940. Registration Nos. 33–85710; 811–8734.

Calculation and Dissemination of an Index

The FT–AWI are calculated through widely accepted mathematical formulae, with the effect that the indices are weighted arithmetic averages of the price relatives of the constituents—as produced solely by changes in the marketplace—adjusted for intervening capital changes. The FT–AWI are base-weighted aggregates of the initial market capitalization, the price of each issue being weighted by the number of shares outstanding, modified to reflect only those shares outstanding that are eligible to be owned by foreign investors.

For each constituent security, the implied annual dividend is divided by 260 (an accepted approximation for the number of business days in a calendar year). This dividend is then reinvested daily according to standard actuarial calculations. Distributions affect adjustments to the base capital or the price per share in accordance with prescribed FT–AWI standards. The indices' values and related performance figures for various periods of time are calculated daily and are disseminated to the public.[5]

The FT–AWI are valued in the terms of local currency, U.S. dollars, and U.K. pounds sterling, thereby allowing the effect of currency value on the index value to be measured. Changes to the indices are announced as soon as possible, and on Mondays the Financial Times publishes a list of changes to each index implemented during the previous week, if any. The FT–AWI are calculated once a day on weekdays when one or more of the constituent markets are open; the indices are syndicated and published in the financial sections of several newspapers worldwide. FT–AWI data also may be purchased electronically.

Distribution of the Securities

The Securities will be distributed in transactions with the Fund through ''Creation Transactions.'' To effect a Creation Transaction in the Fund-only structure, a person would buy Fund shares from the Fund at their net asset value (''NAV'') next computed. The sales will be in ''Creation Unit'' size aggregations in exchange for a deposit (''Deposit'') of Index Securities (a ''Fund Basket'') and a specified amount of cash sufficient to equal the NAV of such shares.

Securities in Creation Unit size aggregations only may be redeemed, at NAV, generally for an in-kind distribution of Index Securities comprising the Fund shares, plus a cash payment. A Creation Unit size of Fund shares will represent securities with approximately $2 to $5 million in market value. The Creation Unit would be disaggregated into the individual Securities that would trade on the Exchange. For the nine initial CountryBasket Securities, there would be the following number of Securities per Creation Unit:

Australia	75,000
France	100,000
Germany	100,000
Hong Kong	75,000
Italy	75,000
Japan	100,000
South Africa	75,000
United Kingdom	100,000
United States	100,000

To effect a Creation Transaction in the Fund/UIT structure, a person would buy a Fund Share (or fractional share) in exchange for the Deposit. Each UIT would invest solely in shares of a specified series of the Fund, and would offer one ''redeemable unit of beneficial interest'' (a ''Redeemable Unit'') in exchange for each Fund share or fractional share. The Redeemable Unit would be the functional equivalent of the Creation Unit in the Fund-only structure.

The owner of a Redeemable Unit could separate that unit into a specific number of identical fractional non-redeemable subunits that would constitute the Securities traded on the Exchange. As with the Fund-only structure, for example, in the case of the Germany CountryBasket Trust there would be 100,000 Securities per Redeemable Unit. These Securities could be recombined into Redeemable Units and then redeemed, at NAV, for the appropriate number of Fund shares. In turn, the Fund shares could be redeemed for the Index Securities and cash. The Securities would not be redeemable other than in Creation Unit aggregations.

Regardless of the structure used, there may be an initial distribution period of Fund shares lasting from one to a few weeks. During this period, the principal underwriter or distributor (''Distributor'') directly or through soliciting dealers would accept subscriptions to purchase Fund shares. In the dual Fund/UIT structure, orders also would be accepted to exchange Fund shares for Redeemable Units and to separate such units into tradeable Securities. Therefore, the offering would be continuous.

Exchange Trading of Units

The proposed listing criteria provide flexible standards for the listing of Units. Before commencing trading, the Exchange will require that there be at least 300,000 tradeable Units outstanding, representing, for the nine series encompassed by this filing, at least three or four Creation Units. The Exchange will consider the suspension of trading and the delisting of a series of Units if:

- After the first year of trading, there are fewer than 50 record or beneficial holders of the Units for 30 or more consecutive trading days;
- The value of the underlying index or portfolio of securities is no longer calculated or available; or
- There occurs another event that makes further dealings in the Units on the Exchange inadvisable.

Dealing in Units on the Exchange will be conducted pursuant to the Exchange's general agency-auction trading rules. The Exchange's general dealing and settlement rules would apply, including its rules on clearance and settlement of securities transactions (see NYSE Rules 45 through 296). Other Exchange equity rules and procedures, such as the Exchange's equity margin rules, would apply.[6] Unless the prospectus for a specific Security states otherwise, the Units trading on the Exchange will have one vote per share; however, as with other securities issued by registered investment companies, there will not be a ''passthrough'' of the voting rights on the actual index securities held by a fund or directly or indirectly by a trust.

With respect to specialist dealings, Exchange Rule 460 precludes certain business relationships between an issuer and the specialist in the issuer's securities. This could be interpreted to prevent a specialist from entering into Creation Transactions or redeeming Securities or Redeemable Units from the issuer. However, such market activities could enhance liquidity in the Units and facilitate the specialist's market-making responsibilities. In addition, since the specialist will be able to engage in Creation Transactions and redemptions only according to the same terms and conditions as every other investor (and only at NAV), the Exchange believes that there is no potential for abuse.

[5] The responsibility for collecting, calculating, and transmitting the index data is split between Goldman Sachs and NatWest Securities.

[6] With respect to margin, the Exchange will be requesting that the Commission's Division of Market Regulation grant ''no action'' relief with respect to section 11(d)(1) of the Act, as amended, and Rules 11d1–1 and 11d1–2 thereunder with respect to the extension of credit to customers on a security that is part of a new issue.

The Exchange is thus proposing amendments to Rule 460 to permit specialists to engage in these types of transactions if such transactions would facilitate the maintenance of a fair and orderly market in the Security. However, any Creation Transactions in which the specialist engages will have to be effected through the Distributor, and not directly with the issuer. This requirement will make clear that the specialist is purchasing Units in Creation Unit size only to facilitate normal specialist trading activity.

With respect to investor disclosure, the Exchange notes that, pursuant to the requirements of the Securities Act of 1933, as amended (''1933 Act''), all investors in CountryBaskets will receive a prospectus regarding the Securities. Because the Securities will be in continuous distribution, the prospectus delivery requirements of the 1933 Act will apply to all investors in CountryBaskets. However, it is possible that an exemption from the prospectus delivery requirement may be obtained at some point in the future, either with respect to these Securities or other Units listed on the Exchange. In the event of such an exemption, the Exchange will discuss with the Commission staff the appropriate level of disclosure that should be required with respect to the Units being listed, and will file any necessary rule change to provide for such disclosure.

Upon the initial listing of any class of Units, the Exchange will also issue a circular to its membership explaining the unique characteristics and risks of this type of security. That circular, among other things, will inform member organizations of their responsibilities under Exchange Rule 405 (''know your customer rule'') with respect to transactions in the Securities. The circular also will inform member organizations of their responsibility to deliver a prospectus to investors.

With respect to trading halts, the trading of Units would be halted, along with the trading of all other listed stocks, in the event the ''circuit breaker'' thresholds of Exchange Rule 80B are reached. In addition, the Exchange will consider halting the trading in any series of Units if necessary to maintain a fair and orderly market in the Units. For example, the Exchange would consider halting the trading in a series of Units if trading has been halted or suspended in the primary market for stocks representing a significant percentage (such as 20 percent) of the value of the underlying stock index or portfolio.

Finally, while equity securities traded on the Exchange must be certificated, the Exchange is proposing that Units trade either in certificated form or solely through the use of a global certificate. The use of the global certificate would have to be consistent with ¶ 501.02(B) of the Manual, which imposes conditions on the use of global certificates for bonds. Permitting the use of global certificates would be consistent with expediting the processing of transactions in Units and would minimize the costs of engaging in transactions in these securities.

The Exchange believes that its proposal is consistent with Section 6(b) of the Act. Specifically, the Exchange believes that its proposal is consistent with the objectives of Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NYSE–95–23 and should be submitted by August 29, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19522 Filed 8–7–95; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12) (1994).

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 1, 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.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0222.

Form Number: ATF F 5640.2.
Type of Review: Extension.
Title: Offer in Compromise of Liability Incurred Under the Federal Alcohol Administration Act.
Description: Persons who have committed violations of the Federal Alcohol Administration (FAA) Act may submit an offer in compromise. The offer is a request by the party in violation to compromise penalties for the violation in lieu of civil or criminal action. ATF F 5640.2 identifies the violation(s) to be compromised by the person committing them, and the amount of the offer, plus a justification for acceptance of the offer.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 12.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 24 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W.,Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–19455 Filed 8–7–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

July 31, 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.

Departmental Offices/Disclosure Services

OMB Number: 1505–0065.
Form Number: None.
Type of Review: Extension.
Title: Privacy Act—Form of Request for Notification of Whether a Record Exists, Form of Request to Amend Records, Form of Request for Appeal of Refusal to Amend Records
Description: This collection pertains to requests for records pursuant to the Privacy Act. The Privacy Act provides that a U.S. citizen or resident alien may seek access or amendment to their records or any information pertaining to them maintained in a system of records and referenced by name or personal identifier.
Respondents: Individuals or households.
Estimated Number of Respondents: 4,821.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: Voluntarily as required.
Estimated Total Reporting Burden: 4,821 hours.
OMB Number: 1505–0066.
Form Number: None.
Type of Review: Extension.
Title: FOIA—Form of Request for Information and Appeal of Denial, Waiver of Fees.
Description: This collection requests information pursuit to the Freedom of Information Act (FOIA). The public submits FOIA requests in writing, signed by requester, which reasonably describes records, agrees to pay for search, review and duplication or states up to what amount will be paid, states whether copies are requested or inspection of records is preferred.
Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal Government.
Estimated Number of Respondents: 61,013.
Estimated Burden Hours Per Response: 45 minutes.
Frequency of Response: Voluntarily as required.
Estimated Total Reporting Burden: 45,760 hours.
Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W.,Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–19453 Filed 8–7–95; 8:45 am]

BILLING CODE 4810–25–P

Public Information Collection Requirements Submitted to OMB for Review

August 1, 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.

Financial Management Service (FMS)

OMB Number: 1510–0004.
Form Number: FMS 285–A.
Type of Review: Extension.
Title: Schedule of Excess Risks.
Description: Listing of excess risks written or assumed by Treasury certified companies showing compliance with Treasury Regulations to assist Treasury in determining solvency of certified companies for the benefit of writing Federal surety bonds.
Respondents: Business or other for-profit.
Estimated Number of Respondents: Applications—40; Renewals—312.
Estimated Burden Hours Per Response: 20 hours.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 25,760 hours.
OMB Number: 1510–0047.
Form Number: TfS 2211.
Type of Review: Extension.
Title: List of Data.
Description: Information is collected from insurance companies to provide Treasury with a basis for determining acceptability of insurance companies applying for a Certificate of Authority to write or reinsure Federal surety bonds.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 25.
Estimated Burden Hours Per Response: 18 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 450 hours.
OMB Number: 1510–0061.
Form Number: None.
Type of Review: Extension.
Title: Cash Management Improvement Act (CMIA) Annual Report and Direct Cost Claim Report.
Description: States and territories must report interest owed to and from

the Federal Government for major Federal assistance programs on an annual basis. The data is used by Treasury and other Federal agencies to verify State interest claims, to assess Federal and State cash management practices and to exchange amounts of interest owed.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents: 56.

Estimated Burden Hours Per Response: 500 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 28,000 hours.

Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer

[FR Doc. 95–19454 Filed 8–7–95; 8:45 am]

BILLING CODE 4810–35–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: 1545–0162.

Form Number: IRS Form 4136.

Type of Review: Revision.

Title: Credit for Federal Tax Paid on Fuels.

Description: Internal Revenue Code (IRC) Section 34 allows a credit for Federal excise tax for certain fuel uses. This form is used to figure the amount of income tax credit. The data is used to verify the validity of the claim for the type of nontaxable or exempt use.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 831,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Preparing and sending the form to the IRS
4136	43 min	1 hr.
4136 (Line 1)	29 min	1 hr.
4136 (Line 2)	29 min	1 hr.
4136 (Line 3)	14 min	0 hr.
4136 (Line 4)	1 hr., 26 min	1 hr.
4136 (Line 5)	1 hr., 55 min	2 hr.
4136 (Line 6)	1 hr., 55 min	2 hr.
4136 (Line 7)	2 hr., 23 min	2 hr.
4136 (Line 8)	58 min	1 hr.
4136 (Line 9)	58 min	1 hr.
4136 (Line 10)	1 hr., 12 min	1 hr.
4136 (Line 11)	58 min	1 hr.
4136 (Line 12)	14 min	0 hr.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 2,886,100 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.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–19457 Filed 8–7–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 31, 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: 1545–0191.

Form Number: IRS Form 4952.

Type of Review: Extension.

Title: Investment Interest Expense Deduction.

Description: Form 4952 is used by taxpayers who paid or accrued interest on money borrowed to purchase or carry investment property. The form is used to compute the allowable deduction for interest on investment indebtedness and the information obtained is necessary to verify the amount actually deducted.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 800,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—13 min.

Learning about the law or the form—15 min.

Preparing the form—21 min.

Copying, assembling, and sending the form to the IRS—10 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 792,000 hours.

OMB Number: 1545–0790.

Form Number: IRS Form 8082.

Type of Review: Extension.

Title: Notice of Inconsistent Treatment or Amended Return (Administrative Adjustment Return (AAR)).

Description: IRC sections 6222 and 6227 require partners to notify IRS by filing Form 8082 when they (1) treat partnership items inconsistent with the partnership's treatment (6222), and (2) change previously reported partnership items (6227). Sections 6244 and 860F extend this requirement to shareholders of S corporations and residuals of REMICs.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents: 10,600.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—4 hours, 18 minutes.
Learning about the law or the form—24 minutes.
Preparing and sending the form to the IRS—29 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 55,014 hours.

OMB Number: 1545–0798.

Regulation ID Number: 26 CFR 31.6001–1, 26 CFR 31.6001–2, 26 CFR 31.6001–3, 26 CFR 31.6001–5, and 26 CFR 31.6001–6.

Type of Review: Extension.

Title: 26 CFR 31.6001–1 *Records in General*, 26 CFR 31.6001–2 *Additional Records under FICA*; 26 CFR 31.6001–3, *Additional Records Under Railroad Retirement Tax Act*; 26 CFR 31.6001–5 *Additional Records in Connection with Collection of Income Tax at Source on Wages*; 26 CFR 31.6001–6 *Notice by District Director Requiring Returns, Statements, or the Keeping of Records.*

Description: Internal Revenue Code (IRC) section 6001 requires, in part, that every person liable for tax, or for the collection of that tax keep such records and comply with such rules and regulations as the Secretary may from time to time prescribe. 26 CFR 31.6001 has special application to employment taxes. These records are needed to ensure compliance with the Code.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Recordkeepers: 5,676,263.

Estimated Burden Hours Per Recordkeeper:

For domestic employers—1 hour, 44 minutes.
For agricultural employers—1 hour, 48 minutes.
For railroad employers—12 hours, 20 minutes.
For all other employers—6 hours, 5 minutes.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 30,273,950 hours.

OMB Number: 1545–0810.

Regulation ID Number: LR–2013 (T.D. 7533) Final.

Type of Review: Extension.

Title: Time for Filing Returns and Other Documents.

Description: This regulation tells a taxpayer where in the regulations the dates for filing returns and other documents may be found if the dates are not specified by statute. The information is used to avoid or establish the existence of a failure to file penalty.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal Government.

Estimated Number of Respondents: 12,417.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Other (as required).

Estimated Total Reporting Burden: 3,104 hours.

OMB Number: 1545–1043.

Form Number: IRS Notice 88–30 and IRS Notice 88–132.

Type of Review: Revision.

Title: Diesel Fuel and Aviation Fuel Taxes Imposed at Wholesale Level (Notice 88–30), Diesel and Aviation Fuel Taxes; Rules Effective 1/1/89 (Notice 88–132).

Description: Producers of aviation fuel must be registered by the IRS to sell the fuel tax free. Producers must also obtain certifications from their tax-free buyers.

Respondents: Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 3,500.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour, 6 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 3,850 hours.

OMB Number: 1545–1205.

Form Number: IRS Form 8826.

Type of Review: Revision.

Title: Disabled Access Credit.

Description: Code section 44 allows eligible small businesses to claim a nonrefundable income tax credit of 50% of the amount of eligible access expenditures for any tax year that exceed $250 but do not exceed $10,250. Form 8826 figures the credit and the tax limit.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents/ Recordkeepers: 50,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—4 hours, 18 minutes.
Learning about the law or the form—47 minutes.
Preparing and sending the form to the IRS—54 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 299,500 hours.

OMB Number: 1545–1292.

Regulation ID Number: PS–101–90 and PS–97–91 (Final).

Type of Review: Extension.

Title: Enhanced Oil Recovery Credit.

Description: The regulation provides guidance concerning the costs subject to the enhanced oil recovery credit, the circumstances under which the credit is available, and procedures for certifying to the Internal Revenue Service that a project meets the requirements of section 43(c) of the Internal Revenue Code.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,460 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.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–19458 Filed 8–7–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 31, 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: 1545–0099.

Form Number: IRS Form 1065, Schedule D, Schedule K–1, Schedule L, Schedule M–1, and Schedule M–2.

Type of Review: Revision.

Title: U.S. Partnership Return of Income (1065); Capital Gains and Losses (Schedule D); Partner's Share of Income, Credits, Deductions, etc. (Schedule K–1); Balance Sheets (Schedule L); Reconciliation of Income (Loss) pe. Books With Income (Loss) per Return (M–1); and Analysis of Partners' Capital Accounts (M–2).

Description: Internal Revenue Code (IRC) section 6031 requires partnerships to file returns that show gross income items, allowable deductions, partners' names, addresses, and distribution shares, and other information. This information is used to verify correct reporting of partnership items and for general statistics.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents/Recordkeepers: 1,513,000.

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
1065	38 hr., 53 min	19 hr., 47 min	35 hr., 24 min	4 hr., 1 min.
Sch. D	5 hr., 30 min	1 hr., 41 min	1 hr., 51 min.	
Sch. K–1	25 hr., 7 min	9 hr., 2 min	9 hr., 51 min.	
Sch. L	15 hr., 32 min	6 min	22 min.	
Sch. M–1	3 hr., 21 min	12 min	16 min.	
Sch. M–2	2 hr., 52 min	6 min	9 min.	

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 872,366,670 hours.

OMB Number: 1545–0865.

Form Number: IRS Form 8264.

Type of Review: Extension.

Title: Application for Registration of a Tax Shelter.

Description: Organizers of certain tax shelters are required to register them with the IRS using Form 8264. (Other persons may have to register the tax shelter if the organizer doesn't.) We use the information to give the tax shelter a registration number. Sellers of interests in the tax shelter furnish the number of investors who report the number on their tax returns.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—33 hr., 14 min.
Learning about the law or the form—2 hr., 35 min.
Preparing, copying, assembling, and sending the form to the IRS—3 hr., 14 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 39,060 hours.

OMB Number: 1545–1051.

Regulation ID Number: INTL–29–91 Final.

Type of Review: Extension.

Title: Computation and Characterization of Income and Earnings and Profits under the Dollar Approximate Separate Transactions Method of Accounting (DASTM).

Description: For taxable years after the final regulations are effective, taxpayers operating in hyperinflationary currencies must use the U.S. as their functional currency and compute income using the dollar approximate separate transactions method (DASTM). Small taxpayers may elect an alternate method by which to compute income or loss. For prior taxable years in which income was computed using the profit and loss method, taxpayers may elect to recompute their income using DASTM.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 700.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (One time election).

Estimated Total Reporting Burden: 1,000 hours.

OMB Number: 1545–1156.

Regulation ID Number: 26 CFR 1.6001–1.

Type of Review: Extension.

Title: Records.

Description: Internal Revenue Code section 6001 requires, in part, that every person liable for tax, or for the collection of that tax, keep such records and comply with such rules and regulations as the Secretary may from time to time prescribe. These records are needed to ensure proper compliance with the Code.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Recordkeepers: 1.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1545–1349.

Form Number: None.

Type of Review: Extension.

Title: Cognitive and Psychological Research.

Description: The proposed research will improve the quality and data collection by examining the psychological and cognitive aspects of methods and procedures such as: interviewing processes, forms redesign, survey and tax collection technology and operating procedures (internal and external in nature).

Respondents: Individuals or households, Business or other for-profit, Federal Government.

Estimated Number of Respondents: 9,000.

Estimated Burden Hours Per Respondent:

FY 1996—1 hour.
FY 1997—1 hour.
FY 1998—1 hour.

Frequency of Response: Other.

Estimated Total Reporting Burden: 9,000 hours.

OMB Number: 1545–1351.

Form Number: None.

Type of Review: Revision.

Title: SOI Corporate Survey.

Description: This is a request to conduct a yearly survey on a small

portion of the very largest U.S. corporations. The data will be used to improve the quality of the Statistics of Income's (SOI) advance tax data. The survey will allow SOI to collect existing tax information earlier than regular IRS processing currently allows. Advance tax data has been requested by the Bureau of Economic Analysis, the Office of Tax Analysis and the Joint Committee on Taxation for tax analysis purposes.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Single.

Estimated Total Reporting Burden: 50 hours.

OMB Number: 1545–1420.

Form Number: IRS Form 8849.

Type of Review: Revision.

Title: Claim for Refund of Excise Taxes.

Description: Internal Revenue Code (IRC) sections 6402 and 6404, and sections 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 8849 is used by taxpayers to claim refunds of excise taxes.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 122,577.

Estimated Burden Hours Per Respondent/Recordkeeper:

[In minutes]

Form	Record-keeping	Learning	Preparing	Copying
8849 (Lines 1 & 2)	13	7	7	20
8849 (Line 3)	26	1	10	10
8849 (Line 4)	20	1	7	10
8849 (Line 5)	20	1	7	10
8849 (Line 6)	20	1	11	10
8849 (Line 7)	26	1	8	10
8849 (Line 8)	13	1	7	10
8849 (Line 9)	13	1	5	10
8849 (Line 10)	20	1	10	10
8849 (Line 11)	13	1	5	10
8849 (Line 12)	0	1	1	10

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 183,952 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.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–19459 Filed 8–7–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 31, 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.

U.S. Customs Service (CUS)

OMB Number: 1515–0090.

Form Number: None.

Type of Review: Extension.

Title: Exporter's Summary of Exportations.

Description: Under the Exporter's Summary Procedures, the drawback claim shall be supported by a chronological list of exports and other required documentation to establish the fact of exportation. This permits the consolidation of claims which substantially reduces the paperwork involved.

Respondents: Business or other for-profit, Federal Government.

Estimated Number of Respondents: 3,500.

Estimated Burden Hours Per Respondent: 6 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 63,000 hours.

OMB Number: 1515–0094.

Form Number: None.

Type of Review: Extension.

Title: Recordkeeping Requirements for Drawback Claims.

Description: The drawback regulations provide specific procedures as to what type of records and forms are needed for compliance with the law. 19 CFR 191.22 and 191.32 detail the records which must be maintained for 3 years after payment of drawback.

Respondents: Business or other for-profit, Federal Government.

Estimated Number of Recordkeepers: 7,000.

Estimated Burden Hours Per Recordkeeper: 12 hours.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 84,000 hours.

OMB Number: 1515–0100.

Form Number: None.

Type of Review: Extension.

Title: Customhouse Brokers.

Description: 19 CFR Part 111 requires various types of information from Customhouse Brokers to ensure statutory and regulatory compliance. The information is used for audit and investigations of interstate theft, narcotics smuggling, and prevents persons connected with organized crime syndicates from penetrating the industry.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 7,800.

Estimated Burden Hours Per Respondent: 45 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 2,015,050 hours.

OMB Number: 1515–0104.

Form Number: None.

Type of Review: Extension.

Title: Declaration of the Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes.

Description: The information in the declaration is needed to insure duty free entry of scientific or educational materials which have been exported for scientific or educational purposes.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 55.

Estimated Burden Hours Per Recordkeeper: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 41 hours.

Clearance Officer: Norman Waits (202) 927–1551, U.S. Customs Service, Printing and Records Management Branch, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–19456 Filed 8–7–95; 8:45 am]

BILLING CODE 4820–02–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 152
Tuesday, August 8, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, August 14, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 4, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19699 Filed 8–4–95; 3:04 pm]

BILLING CODE 6210–01–P

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, August 15, 1995.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C. 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 30965 (Sub-No. 4), *Delaware and Hudson Company—Lease and Trackage Rights—Springfield Terminal Railway Company.*

Docket No. AB–440X, *Wisconsin & Michigan Railway Ashland and Iron Counties, WI and Gogbic County, MI.* Finance Docket No. 32204, *Ozark Mountain Railroad—Construction Exemption.*

Finance Docket No. 41012, *Kwik-Way Corporation—Petition for Declaratory Order—Certain Rates and Practices of Country Wide Truck Service, Inc.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Press Services, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19678 Filed 8–4–95; 2:37 pm]

BILLING CODE 7035–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 7, 14, 21, and 28, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of August 7

There are no meetings scheduled for the Week of August 7.

Week of August 14—Tentative

There are no meetings scheduled for the Week of August 14.

Week of August 21—Tentative

Tuesday, August 22

10:00 a.m.

Briefing on Changes to the Performance Indicator Program (Public Meeting)

(Contact: Steve Mays, 301–415–7496)

11:30 a.m.

Affirmation Session (Public Meeting)

*(PLEASE NOTE: These items will be affirmed immediately following the conclusion of the preceding meeting.)

a. Final Amendment to 10 CFR Part 50, Appendix J, ''Containment Leakage Testing,'' to Adopt Performance-Oriented and Risk-Based Approaches (Tentative)

b. Curators of the University of Missouri Licensee's Petition for Reconsideration (Tentative)

(Contact: Andrew Bates, 301–415–1963)

Week of August 28—Tentative

There are no meetings scheduled for the Week of August 28.

Note: The Nuclear Regulatory Commission is operating under a deregulation of authority to Chairman Shirley A. Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: August 4, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–19700 Filed 8–4–95; 3:04 pm]

BILLING CODE 7590–01–M

federal register

Tuesday
August 8, 1995

Part II

National Archives and Records Administration

36 CFR Part 1253

Location of Records and Hours of Use; Suitland Research Room; Interim Final Rule

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1253

RIN 3095–AA64

Location of Records and Hours of Use; Suitland Research Room

AGENCY: National Archives and Records Administration.

ACTION: Interim final rule.

SUMMARY: The National Archives and Records Administration is revising its regulations on location of records and hours of use to modify the hours that the Suitland Research Room at the Washington National Records Center is open for archival research. Beginning the Saturday after Labor Day, the Suitland Research Room will be closed on Saturdays. Weekday hours are not affected. NARA is taking this action because Saturday use of the research room has diminished to the point that it is not cost effective to operate the research room on Saturdays. This action will allow staff resources to be reallocated to better serve the public. Additionally, NARA is updating information on its facilities outside the Washington, DC, area to add the Federal Records Center and Regional Archives at Pittsfield, MA, to correct other addresses and, in some instances, make minor adjustments to the hours of use.

DATES: The effective date of this rule is September 9, 1995. Comments on the interim rule must be received by October 10, 1995.

ADDRESSES: Submit comments to Director, Policy and Planning Division (PIRM–POL), National Archives at College Park Room 3200, 8601 Adelphi Road, College Park, MD 20740–6001. Comments may also be faxed to (301) 713–7270.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard on (301) 713–6730.

SUPPLEMENTARY INFORMATION: Beginning September 9, 1995, the research room at the Washington National Records Center, in Suitland, Maryland will no longer be open for archival research on Saturdays. NARA is taking this action because Saturday use of the research room has diminished to the point that it is not cost-effective to operate the research room on Saturdays. Within the next year when all archival records currently at the Washington National Records Center have been relocated to the National Archives Building in Washington, DC, or to the National Archives at College Park facility, NARA will close the Suitland Research Room as an archival research room.

A significant number of records have been or are in the process of being moved from Suitland to College Park. These records include the Records of Foreign Service Posts; Records of the Army Staff; Records of the Office of Military Government of Germany, United States; Records of the War Relocation Authority; Records of the US Air Force; and Records of the Bureau of Land Management. Between April 29, 1995 and July 1, 1995, Saturday use of the Suitland Research Room ranged from 1 to 8 archival researchers, with an average of 6 researchers. The summer time period is traditionally peak use of the research room. As more of the heavily used records are moved from Suitland and the peak use period ends, even this level of use will not be sustained. When the Suitland Research Room closes on Saturdays, NARA staff will be reassigned from Suitland to either the College Park or the Washington, DC facility, where there is heavier Saturday research use.

Addresses of Presidential libraries, the National Personnel Records Centers, Federal Records Centers, and Regional Archives also have been updated. For some Presidential libraries and Federal Records Centers, the hours of use have been corrected to reflect current hours of operation.

This rule is being issued as an interim final rule without prior notice of proposed rulemaking as permitted by the Administrative Procedures Act (5 U.S.C. 553(b)(3)(B)) when the agency for good cause finds that notice and public comment thereon are impractical, unnecessary, or contrary to the public interest. Because this rule will have only a minor impact on the researchers using archival records in NARA's Washington, DC, area research rooms and early reprogramming of the resources will better serve the public, NARA finds good cause to make this rule effective without prior notice of proposed rulemaking.

NARA will issue a final rule confirming or amending this interim rule at the close of the comment period.

This rule is not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993, and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

List of Subjects in 36 CFR Part 1253

Archives and records.

For the reasons set forth in the preamble, chapter XII of title 36, Code of Federal Regulations, is amended as follows:

PART 1253—LOCATION OF RECORDS AND HOURS OF USE

1. The authority citation for part 1253 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

2. In § 1253.3, a new introductory paragraph is added and paragraphs (a) through (f) and (h) through (j) are revised to read as follows:

§ 1253.3 Presidential libraries.

Some of the Presidential Libraries may offer extended research room hours on selected evenings and Saturdays; museums within the Libraries offer Saturday and Sunday hours. More specific information on extended hours is available from each Presidential Library. The hours listed in this section are the minimum hours that each Presidential Library is normally open.

(a) Herbert Hoover Library, 210 Parkside Dr., West Branch, IA. Mailing address: PO Box 488, West Branch, IA 52358–0488. Hours: 9 a.m. to 5 p.m., Monday through Friday.

(b) Franklin D. Roosevelt Library, 511 Albany Post Rd., Hyde Park, NY 12538–1999. Hours: 8:45 a.m. to 5 p.m., Monday through Friday.

(c) Harry S. Truman Library, 500 W. US Hwy 24, Independence, MO 64050–1798. Hours: 8:45 a.m. to 4:45 p.m., Monday through Friday.

(d) Dwight D. Eisenhower Library, 200 SE Fourth Street, Abilene, KS 67410–9904. Hours: 9 a.m. to 4:45 p.m., Monday through Friday.

(e) John Fitzgerald Kennedy Library, Columbia Point, Boston, MA 02125. Hours: 8 a.m. to 4:30 p.m., Monday through Friday.

(f) Lyndon Baines Johnson Library, 2313 Red River St., Austin, TX 78705–5702. Hours: 9 a.m. to 5 p.m., Monday through Friday.

* * * * *

(h) Gerald R. Ford Museum, 303 Pearl St. NW, Grand Rapids MI 49504–5353. Hours: 9 a.m. to 4:45 p.m., Sunday through Saturday.

(i) Jimmy Carter Library, 1 Copenhill Ave NE, Atlanta, GA 30307–1406. Hours: 9 a.m. to 4:45 p.m., Monday through Friday.

(j) Ronald Reagan Library, 40 Presidential Dr, Simi Valley, CA 93065–0666. Hours: 9 a.m. to 4:30 p.m., Monday through Friday.

3. Section 1253.4 is revised to read:

§ 1253.4 Washington National Records Center.

Washington National Records Center, 4205 Suitland Road, Suitland, MD. Mailing address: Washington National Records Center, 4205 Suitland Road, Washington, DC 20409–0002. Hours: 8 a.m. to 4:30 p.m., Monday through Friday; for the Suitland Research Room, 8 a.m. to 4:30 p.m., Monday through Friday.

4. Section 1253.5 is revised to read:

§ 1253.5 National Personnel Records Center.

(a) Military Personnel Records, National Personnel Records Center, 9700 Page Ave., St. Louis, MO 63132–5100. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

(b) Civilian Personnel Records, National Personnel Records Center, 111 Winnebago St., St. Louis, MO 63118–4199. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

5. Section 1253.6 is revised to read:

§ 1253.6 Federal Records Centers.

(a) 380 Trapelo Rd., Waltham, MA 02154–6399. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(b) 100 Dan Fox Dr., Pittsfield, MA 01201–8230. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

(c) Military Ocean Terminal Bldg. 22, Bayonne, NJ 07002–5388. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

(d) 14700 Townsend Rd., Philadelphia, PA 19154. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

(e) 1557 St. Joseph Ave., East Point, GA 30344–2593. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(f) 3150 Springboro Rd., Dayton, OH 45439–1883. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

(g) 7358 S. Pulaski Rd., Chicago, IL 60629–5898. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(h) 2312 E. Bannister Rd., Kansas City, MO 64131–3011. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(i) 501 W. Felix St., Fort Worth, TX. Mailing Address: PO Box 6216, Fort Worth, TX 76115–3405. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(j) Denver Federal Center Bldg. 48, Denver, CO. Mailing Address: PO Box 25307, Denver, CO 80225–0307. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

(k) 1000 Commodore Dr., San Bruno, CA 94066–2350. Hours: 7:30 a.m. to 3:30 p.m., Monday through Friday.

(l) 2400 Avila Rd., 1st Floor East, Laguna Niguel, CA. Mailing Address: PO Box 6719, Laguna Niguel, CA 92607–6719. Hours: 8 a.m. to 4:30 p.m., Monday through Friday.

(m) 6125 Sand Point Way NE, Seattle, WA 98115–7433. Hours: 8 a.m. to 4 p.m., Monday through Friday.

6. Section 1253.7 is revised to read:

§ 1253.7 Regional Archives System.

Some of the Regional Archives may offer extended research room hours on selected evenings and Saturdays. More specific information on extended hours is available from each Regional Archives. The hours listed in this section are the minimum hours that each Regional Archives is normally open.

(a) National Archives—New England Region, 380 Trapelo Rd., Waltham, MA 02154–6399. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (617) 647–8100.

(b) National Archives—Pittsfield Region, 100 Dan Fox Dr., Pittsfield, MA 01201–8230. Hours: 9 a.m. to 3:30 p.m., Monday through Friday. Telephone: (413) 445–8458.

(c) National Archives—Northeast Region, 201 Varick St., New York, NY 10014–4811. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (212) 337–1300.

(d) National Archives—Mid-Atlantic Region, 900 Market St. Room 1350, Philadelphia, PA 19107–4292. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (215) 597–3000.

(e) National Archives—Southeast Region, 1557 St. Joseph Ave., East Point, GA 30344–2593. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (404) 763–7477.

(f) National Archives—Great Lakes Region, 7358 S. Pulaski Rd., Chicago, IL 60629–5898. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (312) 353–0162.

(g) National Archives—Central Plains Region, 2312 E. Bannister Rd., Kansas City, MO 64131–3011. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (816) 926–6934.

(h) National Archives—Southwest Region, 501 West Felix St., Bldg. 1, Fort Worth, TX. Mailing address: PO Box 6216, Fort Worth, TX 76115–3405. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (817) 334–5525.

(i) National Archives—Rocky Mountain Region, Denver Federal Center, Bldg. 48, Denver, CO. Mailing address: PO Box 25307, Denver, CO 80225–0307. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (303) 236–0817.

(j) National Archives—Pacific Southwest Region, 2400 Avila Rd., 1st Floor East, Laguna Niguel, CA. Mailing address: PO Box 6719, Laguna Niguel, CA 92607–6719. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (714) 643–4241.

(k) National Archives—Pacific Sierra Region, 1000 Commodore Dr., San Bruno, CA 94066–2350. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (415) 876–9009.

(l) National Archives—Pacific Northwest Region, 6125 Sand Point Way NE, Seattle, WA 98115–7433. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (206) 526–6507.

(m) National Archives—Alaska Region, 654 W. 3rd Ave., Anchorage, AK 99501–2145. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (907) 271–2441.

Dated: August 1, 1995

John W. Carlin,

Archivist of the United States

[FR Doc. 95–19568 Filed 8–7–95; 8:45 am]

BILLING CODE 7515–01–P

federal register

Tuesday
August 8, 1995

Part III

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Supplemental Rule to Amend Leak Repair Provisions Under Section 608 of the Clean Air Act; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5267–3]

RIN 2060–AE92

Protection of Stratospheric Ozone: Supplemental Rule to Amend Leak Repair Provisions Under Section 608 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Through this action EPA is amending the Refrigerant Recycling Regulations promulgated under section 608 of the Clean Air Act Amendments of 1990. This action is being undertaken to address specific concerns regarding the leak repair requirements for industrial process refrigeration systems, pursuant to a settlement agreement with the Chemical Manufacturers Association (CMA). This action will affect the owners and operators of industrial process refrigeration with regard to leak repair provisions. Certain aspects of this action will also affect federal owners and operators of commercial and comfort-cooling refrigeration with charges of 50 pounds of refrigerant or greater. This action provides greater flexibility to owners and operators of industrial process sources and to some federally-owned commercial and comfort-cooling refrigerant sources with regard to leak repair provisions. EPA is providing this flexibility without compromising the goals of protecting public health and the environment.

EFFECTIVE DATE: September 7, 1995.

ADDRESSES: Comments on this action are contained in the Air Docket Office, Public Docket No. A–92–01 VIIID, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500. Additional comments and materials supporting this rulemaking are contained in Public Docket No. A–92–01. Dockets may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Cindy Newberg, Regulatory Development Section, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460, (202) 233–9729. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Refrigerant Recycling Regulations
II. This Rule
III. Notice of Proposed Rulemaking
IV. Summary of Major Comments Received
V. Response to Comments
A. Legal Authority
B. Contracted Employees
C. Nuclear Power
D. Definition of Industrial Process Refrigeration Equipment and the Need for Separate Leak Repair Requirements
E. Repairing Appliances
1. Repair Attempts
2. Timeframes for Repairing Leaks
3. Determining the Full Charge of Refrigerant
4. Best Efforts
5. Static and Dynamic Tests
6. Fixing Other Leaks
F. Industrial Process Shutdown
G. Retrofitting or Replacing Equipment
H. Recordkeeping and Reporting Requirements
I. Purged Refrigerants
J. Federally-Owned Chillers
K. Mothballing
L. Grandfathering
M. Terminology
N. Regulatory Impact Analysis
O. Allowing Appliances To Be Pressurized To Slightly Above O PSIG
VI. Judicial Review
VII. Administrative Requirements
A. Executive Order 12866
B. Unfunded Mandates Act
C. Paperwork Reduction Act
D. Regulatory Flexibility Act

I. Refrigerant Recycling Regulations

Final regulations promulgated by the U.S. Environmental Protection Agency (EPA) under section 608 of the Clean Air Act Amendments of 1990 (the Act), published on May 14, 1993 (58 FR 28660), establish a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment. Together with the prohibition on venting during the maintenance, service, repair and disposal of class I and class II substances (see the listing notice January 22, 1991; 56 FR 2420) that took effect on July 1, 1992, these regulations are intended to substantially reduce the emissions of ozone-depleting refrigerants. These regulations were subsequently revised in the final regulations published August 19, 1994 (59 FR 42950), November 9, 1994 (59 FR 55912), and March 17, 1995 (60 FR 14607).

The current regulations require that persons servicing air-conditioning and refrigeration equipment observe certain service practices to reduce emissions, establish equipment and reclamation certification requirements, and comply with a technician certification requirement. The regulations also require that ozone-depleting compounds contained in appliances be removed prior to disposal of the appliances, and that all air-conditioning and refrigeration equipment, except for small appliances, be provided with a servicing aperture that will facilitate recovery of refrigerant.

The May 14, 1993 regulations establish leak repair requirements to further minimize emissions of class I and class II substances. The rule states that appliances that normally hold a refrigerant charge of fifty pounds or more are subject to the leak repair requirements. An annual leak rate of 35 percent was established for industrial process sources and commercial chillers, while an annual leak rate of 15 percent was established for comfort-cooling. Where the leak rate is exceeded, the appliance must be repaired within 30 days. An alternative is to develop a retrofit or replacement plan within 30 days, outlining action to retrofit or replace the appliance within one year from the exceedance.

The NPRM proposed revisions to the leak repair provisions in response to a settlement agreement reached by the Agency and the Chemical Manufacturers Association (CMA) specifically for industrial process refrigerant equipment. In that settlement, EPA agreed to propose changes to the leak repair requirements that would provide additional time to repair and/or retrofit industrial process refrigeration equipment based on the uniqueness of the industrial process sector and on new information provided by CMA. EPA also agreed to propose revising the evacuation requirements for oil changes to permit for slight positive pressure, not to exceed 5 PSIG. Finally, EPA agreed to clarify that purged emissions that have been captured and destroyed should be excluded from the leak rate calculations.

The information received from CMA after the completion of the initial rulemaking indicated that under certain circumstances the timelines for repairing leaky industrial process refrigeration equipment or to retrofit such equipment are not achievable. The proposed rulemaking was developed to respond to those circumstances by proposing the shortest timeframes achievable for this sector and to relax the requirements for oil changes as well as to permit for the exclusion of destroyed purged refrigerants.

The NPRM also proposed several other changes to the regulations, including an exemption for federally-owned chillers under certain circumstances. The NPRM is discussed in further detail in the following section.

The recycling rule, 40 CFR, part 82, subpart F, was only re-opened for purposes of reconsidering the specific provisions outlined in the NPRM and discussed in this final action. EPA did not invite comments on any other provisions of the recycling rule. However, in separate actions EPA has recently addressed a stay on the sales restriction for split systems (60 FR 24676), and an extension of the reclamation requirements (60 FR 14607). In addition, EPA plans in the future to consider additional changes to the requirements under 40 CFR, part 82, subpart F, including:

- Reconsideration of the sales restriction for split systems and pre-charged parts;
- The adoption of an industry off-site recycling standard; and
- Requirements for recovering alternative substances to class I and class II refrigerants unless the Administrator determines that venting, releasing or disposing of the substitute refrigerants do not pose a threat to the environment.

These issues will be addressed in separate rulemakings that will follow appropriate notice and comment procedures.

II. This Rule

This final rule affects the owners and operators of industrial process refrigeration equipment that normally contain a charge of 50 pounds or more of a class I or class II refrigerant. Today's action will provide the owners and operators with greater flexibility in repairing leaks and retrofitting leaky appliances. EPA will permit the owner or operator to have more than 30 days to complete repairs and more than one year to retrofit appliances where the conditions described in this final rule apply.

Through this final action EPA is also clarifying that the owners and operators of all appliances subject to the leak repair provisions must only reduce leak rates to below the allowable leaks.

In addition, this action will permit additional time beyond the 30-day leak repair period for federally-owned chillers where the chillers are located in areas subject to radiological contamination. EPA will also permit additional time beyond the one-year retrofit period if appropriations and procurement requirements limit the feasibility of completing the retrofit activities within one year.

Finally, this rule will permit the owners or operators to evacuate appliances to slightly above atmospheric pressure, specifically to a pressure not exceeding 5 psig, to perform oil changes. Alternatively, EPA will permit the owner or operator to recover the oil to a system receiver where the receiver will be evacuated to atmospheric pressure.

This statement in conjunction with the NPRM, serves as the statement of basis and purpose under § 307 of the Act.

III. Notice of Proposed Rulemaking

On January 19, 1995, EPA published a notice of proposed rulemaking (NPRM) (60 FR 3992) concerning proposed revisions to the leak repair requirements promulgated under section 608. Below is a summary of the NPRM.

EPA proposed to permit the owners and operators of industrial process refrigeration equipment more than 30 days to repair leaks when the necessary parts are unavailable, or if requirements of other federal, state or local regulations make a repair within 30 days impossible. Only the time necessary to receive delivery of any necessary parts or comply with any applicable regulations would be permitted. The NPRM specified that the owner or operator of the industrial process refrigeration equipment would have to exert best efforts to repair leaks within the 30-day time period. If the equipment could not be repaired within the 30-day requirement, the owner or operator would have to document repair efforts, notify EPA of the inability to comply, provide appropriate information concerning the reason for the inability to complete the repairs and develop to EPA a one-year retrofit, replacement, or retirement plan for the leaky appliance. The NPRM stated that the owners or operators of the industrial process refrigeration equipment would be required to maintain records concerning their actions and submit specific information to EPA that details the need for additional time to complete the repair work. These records are discussed in further detail in the NPRM (60 FR 3994).

In order to complete many types of repairs, industrial process refrigeration equipment may need to be shut down. EPA proposed a 120-day repair period, rather than a 30-day repair period, where an industrial process shutdown is necessary to repair a leak or leaks from industrial process refrigeration equipment.

EPA proposed three methods for owners and operators of industrial process refrigeration equipment to determine the full charge of refrigerant in the appliance and therefore, be able to calculate the leak rate. Two additional methods for these calculations were also discussed but were not proposed. The methods EPA proposed were: (1) To rely on the manufacturers' determinations, (2) to require the owner or operator to do calculations based on component sizes, flow rates, pressures, and other considerations, and/or (3) to rely on actual measurements of the amount of refrigerant added or evacuated from industrial process refrigeration equipment. These and other methods are discussed in greater detail in the NPRM (60 FR 3995).

EPA proposed that the repair efforts required for industrial process refrigeration equipment be those that sound engineering judgment indicates will be sufficient to bring the leak rate below a 35 percent annual rate, that a static test be conducted at the conclusion of the repairs to determine whether the repairs undertaken were successfully completed, and that a dynamic test be conducted within 30 days of bringing the system back on-line (if taken off-line) or within 30 days of completing the actual repairs, but no sooner than when the system has achieved steady-state operating characteristics. If the dynamic test indicates that the repairs have not been successfully completed, EPA proposed that the owner would be subject to a requirement to retrofit or replace the appliance within one year of the failure to verify that the repairs had been successfully completed or such longer time period as may be granted. Furthermore, EPA proposed that the owner or operator notify EPA of the failure within 30 days of the failed dynamic verification test. Proposed definitions of static and dynamic tests and examples of these tests are discussed in the NPRM (60 FR 3996).

Industrial process refrigeration systems have many potential sources of leaks. The NPRM stated that if a sufficient number of other leaks can be repaired creating a situation where the originally identified leak or leaks remain, but the overall leak rate has been successfully reduced to below 35 percent per year, the owner or operator has still in effect met its obligation under the rule. Therefore, EPA proposed that the owner or operator of an industrial process refrigeration unit be relieved of the obligation to retrofit or replace the appliance if, within 180 days of the failed dynamic verification

test, the owner or operator establishes that the appliance's annual leak rate does not exceed 35 percent. If the equipment owner or operator establishes that the appliance's annual leak rate does not exceed 35 percent, the owner or operator would be required to notify EPA within 30 days of that determination and the owner or operator would no longer be subject to the obligation to retrofit or replace the appliance that arose as a consequence of the initial failure to repair the leak or leaks successfully. The determination of whether the appliance's annual leak rate exceeds 35 percent would be determined in accordance with parameters identified by the owner or operator in its notice to EPA regarding the failure of the initial dynamic verification test.

EPA proposed to clarify that for industrial process and commercial sources, leaks need to be repaired such that the leak rate is brought back to a level below the 35 percent annual rate. A parallel clarification for comfort-cooling and commercial sources also was proposed. Therefore, rather than requiring that ''all'' leaks be repaired, EPA proposed revising the requirements to reduce leaks to a rate below the acceptable thresholds. EPA would permit leaky appliances to operate as long as the leak rate does not exceed that amount.

In the NPRM, EPA stated that it may be reasonable to permit additional time beyond the one-year established by the current regulations for the retrofitting of certain industrial process refrigeration equipment. EPA believes there are specific concerns relating to the need for special design, engineering, ordering and installation difficulties for some industrial process refrigeration equipment. EPA proposed to allow more than one year to complete the retrofit of industrial process refrigeration equipment in certain circumstances. The NPRM describes scenarios that may justify more than one year to retrofit an appliance; however, EPA does not believe additional time is always necessary. Therefore, EPA intended to permit additional time only when the owners or operators of the industrial process refrigeration equipment can provide information detailing the need for additional time in accordance with the proposed requirements described below.

EPA proposed that additional time, to the extent reasonably necessary, would be allowed due to delays occasioned by the requirements of other applicable federal, state, or local regulations, or due to the unavailability of a suitable replacement refrigerant with a lower ozone depletion potential. The suitability of a replacement refrigerant is discussed in the NPRM (60 FR 4000). The owner or operator of the facility would have to notify EPA within six months after the 30-day period following the discovery of an exceedance of the 35 percent leak rate. Records that would provide evidence that other regulations or the unavailability of a suitable alternative refrigerant prevent retrofit or replacement within one year must be submitted to EPA to allow EPA to determine that these provisions apply and assess the length of time necessary to complete the work. EPA proposed that it notify the owner or operator of its determination within 60 days of submittal. The limited recordkeeping requirements are discussed in the NPRM (60 FR 4000). EPA proposed that such records be maintained by the owner or operator and kept on-site.

EPA proposed that an additional one-year period beyond the initial one-year retrofit period be allowed for industrial process refrigeration equipment if four criteria are met: (1) The new or retrofitted refrigeration system is custom-built (meaning if it or any of its critical components cannot be purchased and/or installed without being specifically designed), fabricated and/or assembled to satisfy a specific set of industrial process conditions; (2) the supplier of the system of one or more of its critical components has quoted a delivery time of more than 30 weeks from when the order is placed; (3) the owner or operator notifies EPA within six months of the expiration of the 30-day period following the discovery of an exceedance of the 35 percent leak rate to identify the owner or operator, describe the appliance involved, explain why more than one year is needed, and demonstrate that the first two criteria are met; and (4) the owner or operator maintains records adequate to allow a determination that the criteria are met. The criteria are further discussed in the NPRM (60 FR 4000).

EPA proposed that if more than one additional year is needed, the owner may request to extend the deadline for completing all retrofit or replacement action. EPA proposed that such a request be submitted to EPA before the end of the ninth month of the additional year that was granted to retrofit, replace, or retire the appliance. The request would be required to include revisions to that information submitted for the first additional year as proposed under § 82.166(o). Unless EPA objects to the request within 30 days of receipt, it would be deemed approved. EPA stated that this extension would be granted only in cases where the actual nature of the retrofit or replacement activities is such that the additional time beyond the one year is crucial. The submittal of revised information is discussed in the NPRM (60 FR 4002).

EPA proposed to allow owners or operators to evacuate the appliance to slightly above atmospheric pressure, specifically to a pressure not exceeding 5 psig, to perform oil changes. Reasons for this approach are described in the NPRM (60 FR 4002).

The NPRM stated that EPA would like to clarify that the Agency interprets the 35 percent leak rate in the regulations as not including emissions of purged refrigerant that are destroyed, if their destruction is accounted for and can be verified by records maintained by the owners or operators of the industrial process refrigeration equipment. If purged refrigerant is destroyed using one of the five destruction technologies approved by the Parties to the Montreal Protocol, EPA can consider that refrigerant to have been destroyed and therefore, not part of the leak rate for the system. A description of the methods for destroying refrigerant and the how industrial process refrigeration systems could measure purged refrigerants is contained in the NPRM (60 FR 4003).

In the NPRM (60 FR 4003), EPA described temporarily mothballing equipment. If a facility is temporarily mothballed, EPA believes it is appropriate to suspend the time-relevant repair and/or retrofit requirements while the facility is effectively inoperative. In the same subsection, EPA described how temporarily mothballing is not equivalent to having an appliance taken off-line or to an industrial process shutdown. EPA proposed that while temporarily mothballed, the time-relevant repair and/or retrofit requirements would be suspended.

EPA proposed that owners or operators of a federally-owned refrigerant appliance be able to submit a request for extensions parallel to those outlined for industrial process refrigeration equipment, based on the hindrance of federal procurement requirements. If additional time is granted, EPA proposed that testing and documentation should occur, parallel to those for industrial process refrigeration equipment. The reasons for this proposed extension are discussed in detail in the NPRM (60 FR 4004).

IV. Summary of Major Comments Received

During the public comment period EPA received fourteen sets of comments that are addressed in this action. In

addition, EPA received and considered additional comments submitted to the Agency after the 30-day public comment period ended. All comments considered in this final action are contained in Air Docket A–92–01 VIIID.

All the commenters agreed that EPA should revise the leak repair requirements. Most of the commenters agreed with the general paradigm EPA proposed for repairing leaks in industrial process refrigeration equipment. Commenters raised specific concerns regarding various aspects of the proposed rule.

EPA received comments concerning the inclusion of specific types of appliances in the definition of industrial process refrigeration equipment. One commenter was concerned with whether the economic impact of an industrial process shutdown of a nuclear power reactor used in the generation of electricity was considered by the Agency.

Many commenters were concerned with the use and definitions of static and dynamic tests. In particular, several commenters suggested that the tests should be described as ''first verification test'' and ''follow-up verification test,'' thus avoiding any confusion stemming from the common associations of static and dynamic with a state of motion. Some commenters stated that dynamic tests in certain circumstances should be performed before the affected appliance is operating at steady-state.

A few commenters were concerned with the methods EPA proposed to determine the full charge of an appliance. These commenters believe that the fourth option described in the NPRM (60 FR 3996) should be considered an acceptable methodology.

Several commenters believe that EPA should broaden the proposed conditions under which mothballing an appliance would suspend the time-relevant leak repair requirements.

A few commenters suggested changes to the recordkeeping and reporting requirements.

EPA received several comments regarding the proposed requirements for federally-owned chillers. Some commenters supported EPA's proposal, some opposed it, and one commenter suggested that EPA re-propose the changes under a separate rulemaking.

EPA received comments on the requirement to exert best efforts to repair leaks. Commenters were concerned that since the settlement agreement between EPA and CMA was reached, the interpretation of best efforts and sound engineering judgment has changed.

All the comments received by EPA are discussed in greater detail below.

V. Response to Comments

EPA received fourteen sets of comments during the comment period on the proposed changes to the leak repair requirements published January 19, 1995 (60 FR 3992). Individual comments are specifically addressed in this section.

A. Legal Authority

EPA requested comment on the legal authority under which EPA was proposing and today is promulgating revisions to the leak repair requirements. A few commenters addressed this issue and agreed with EPA's legal basis for proposing these changes.

B. Contracted Employees

Two commenters requested that EPA clarify that actual work to be performed on affected appliances may be provided by contracted personnel. One commenter stated that although the owner or operator remains responsible for compliance, the work need not be performed by the owner or operator. EPA agrees with these commenters. The Agency recognizes that often repair and maintenance services are performed under contractual arrangements. Moreover, contracted personnel will be acting as agents of the owner or operator with respect to performance of service and maintenance of the appliances. Therefore, the owner or operator remains responsible to ensure that compliance with the requirements promulgated under section 608 occurs.

C. Nuclear Power

One comment received by EPA discusses the consideration of the leak repair requirements specifically for generation of electricity by a nuclear power reactor. The commenter does not believe the NPRM takes into account the technological and economic factors specific to the operation of these facilities in the context of the statutory standard in section 608(a)(3)(A) of the Act. For example, the commenter states that the shutdown of a nuclear power reactor within 120 days of discovering that the leak rate exceeds 35 percent is costly. The commenter stated that planned outages are typically scheduled on an 18-month cycle.

EPA understands under this rule, that an industrial process shutdown will often occur without regard to the planned outages for nuclear power stations, as well as for other industrial process refrigeration equipment in order to repair leaks. During the settlement agreement negotiations, discussions were held considering the possibility of waiting for the next scheduled shutdown. However, since these scheduled shutdowns often do not occur frequently, it was determined that undertaking a separate industrial process shutdown would be necessary to limit the emissions of refrigerant. EPA does not believe that the owners or operators of nuclear power stations incur costs that are dissimilar to those incurred by the chemical, pharmaceutical, petrochemical, and manufacturing industries when an industrial process shutdown occurs. Other commenters from these fields expressed concerns about the costs associated with an industrial process shutdown, but agreed with EPA that such an undertaking would be necessary to limit releases of ozone-depleting substances.

Prior to this rulemaking it was unclear whether the use of chillers in the generation of electricity actually met the definition of industrial process refrigeration equipment. Therefore, it is true that EPA did not base the NPRM on any specific consideration of the nuclear power industry. However, EPA does not believe that the commenter has demonstrated how the generation of electricity from a nuclear power reactor would face technological or economic factors not experienced by other owners or operators of industrial process refrigeration equipment. Furthermore, today's action lessens the burden for all industrial process refrigeration equipment, regardless of its use. If significant distinctions exist between refrigeration appliances used in the generation of electricity and other refrigeration appliances, EPA may need to reconsider whether the use of appliances in the generation of electricity is truly consistent with industrial process refrigeration equipment. If not, these appliances would be subject to the 15 percent leak rate and all associated requirements.

D. Definition of Industrial Process Refrigeration Equipment and the Need for Separate Leak Repair Requirements

The NPRM stated that three main refrigeration sectors are affected by the leak repair provisions promulgated under section 608 of the Act: commercial refrigeration, comfort-cooling, and industrial process refrigeration. While many different commercial refrigeration and comfort-cooling appliances are similar in design and function, EPA received information from CMA illustrating the uniqueness of industrial process refrigeration equipment. Industrial process

refrigeration equipment is custom-designed and assembled in-place at a process location. Thus, each of these industrial units has unique operating characteristics. Industrial process refrigeration has been defined in § 82.152 as:

* * * complex customized appliances used in the chemical, pharmaceutical, petrochemical and manufacturing industries. This sector also includes industrial ice machines and ice rinks.

EPA requested comment on the appropriateness of establishing separate repair provisions for industrial process refrigeration. EPA received several comments concerning the need for separate provisions. These comments agreed with the NPRM. Specifically, commenters referred to the uniqueness of industrial process refrigeration equipment used in pharmaceutical, petrochemical, and manufacturing industries. Commenters stated that there are several apparent differences between industrial process refrigeration equipment and other types of equipment affected by the leak repair provisions. Industrial process refrigeration equipment is larger and more complex than hermetically-sealed consumer units. Most comfort-cooling appliances have hermetically-sealed or semi-hermetically-sealed refrigerant loops. Complexity of the industrial process refrigeration equipment makes leak detection and leak rate calculations more difficult than for other sectors affected by the leak repair provisions. Commenters agreed with EPA's assessment that the replacement parts for this sector often must be specifically fabricated for the leaking equipment. Commenters believe that shutting down industrial process refrigeration equipment often takes several days and that the owners and operators of this equipment must avoid any unwanted chemical reactions that could lead to fires, explosions, or other immediate hazards. Based on the discussion in the NPRM and the comments received, EPA is establishing separate leak repair requirements for industrial process refrigeration equipment.

One commenter suggested EPA clarify the definition of industrial process refrigeration equipment with respect to the appliance's relationship to the manufacturing process. The commenter stated that the terms: ''complex;'' ''used in the manufacturing industry;'' ''custom designed;'' and ''assembled in place'' are subjective and could be applied to many of the appliances used for cooling large buildings or processes. Industrial process refrigeration equipment in the manufacturing sector is used to cool processes directly related to a broad range of manufacturing activities. The commenter suggests that the differentiating factor between industrial process and commercial refrigeration is that industrial process refrigeration equipment tends to be directly linked to a manufacturing activity. EPA agrees with this commenter's concerns. EPA distinguishes between commercial refrigeration and industrial process refrigeration equipment for the purposes of § 608 in part by considering how the appliance is used. EPA did not intend to include in the definition of industrial process refrigeration equipment appliances not involved in the industrial process. Therefore, through this action EPA will amend the definition of industrial process refrigeration to clarify that use is a factor in determining if an appliance is industrial process refrigeration equipment.

EPA received comments concerning whether the generation of electricity, particularly where a nuclear reactor is used, is included in the definition of industrial process refrigeration equipment. One commenter stated that EPA does not specifically identify electric generating stations as industrial processes, as the rule does for the chemical and pharmaceutical industries. The commenter states that large, custom refrigeration appliances to cool the production process are essential to the manufacturing of electricity and are prevalent at nuclear generating stations.

Fundamental to the classification of these appliances is whether or not the system is used directly in the production of electricity. The commenter states that shutting down the refrigeration appliances could result in the shutdown of the generating station, where the two are integrally linked. Another commenter stated that chillers used in safety-related equipment are critical to the safe shutdown of nuclear power stations in the event of an accident. EPA believes that current definition of industrial process refrigeration equipment needs to be clarified to specifically state that the generation of electricity is included. EPA believes that under the current definition it is not apparent that the generation of electricity is considered manufacturing. Therefore, through this action, EPA will add the generation of electricity to the definition of industrial process refrigeration. EPA would like to clarify that the definition will only include appliances directly linked to the generation of electricity. Appliances used to cool control rooms or offices are not considered industrial process refrigeration equipment.

The amended definition will be:

* * * complex customized appliances used in the chemical, pharmaceutical, petrochemical and manufacturing industries. These appliances are directly linked to the process. This sector also includes industrial ice machines, appliances used directly in the generation of electricity, and ice rinks * * *

EPA received one comment concerned with the potential for ambiguities in the definition of industrial process refrigeration equipment and commercial refrigeration. The commenter notes that by default, all appliances with more than 50 pounds of refrigerant that do not come under the definition of commercial or industrial process refrigeration equipment must have leaks repaired when the leak rate exceeds 15 percent leak rate. EPA agrees that all appliances with 50 pounds of refrigerant or more, that do not meet these definitions are subject to the 15 percent leak rate.

Three comments asserted that other types of appliances should also be included in the leak repair requirements for industrial process refrigeration equipment. These commenters proposed expanding the definition of industrial process refrigeration equipment to incorporate specialized comfort cooling appliances and specialized commercial refrigeration. One commenter stated that since industrial comfort-cooling equipment such as the air conditioners mounted on cranes in a smelter are ''custom built,'' EPA should allow additional time for repairs to be made. While EPA understands that these appliances are customized to be located on cranes, often above molten metal, EPA does not believe these appliances are consistent with either the original or amended definition of industrial process refrigeration equipment. EPA believes that the parts used in these types of comfort-cooling appliances are not unique and are therefore relatively easy to replace. Furthermore, the appliances do not function as part of the process. Customizing the appliances in this scenario refers predominantly to modifying the system to fit in its intended location. Therefore, EPA does not consider industrial comfort-cooling appliances to be industrial process refrigeration equipment.

Another commenter stated that the definition of industrial process refrigeration should be expanded. The commenter uses specialized refrigeration equipment in confined spaces and other industrial-setting applications, refrigeration as cooling equipment in laboratories for meeting

specific testing requirements, and cooling areas containing a bank of computers to ensure a controlled environment. Another commenter stated that the definition should specify that appliances used for regulating temperatures in the control panel buildings should also be considered industrial process. The commenter believes that this is an integral part of the process and that since these appliances are vital to the proper functioning of the instruments in the control panel they do not constitute ''comfort-cooling.'' While EPA understands that these cooling appliances are designed to meet specific cooling needs and fit in specific settings, these appliances do not meet the definition of industrial process refrigeration. EPA does not believe it is appropriate to expand the definition of industrial process refrigeration equipment to include specialized comfort-cooling appliances. If appropriate in the future, EPA could consider creating a separate category of specialized comfort-cooling appliances and/or specialized commercial appliances and permitting additional time to repair leaks. However, at this time EPA does not believe this is necessary. If EPA receives compelling information, then EPA would consider proceeding with appropriate notice and comment.

Amending the requirements to create new sub-sectors for appliances not considered in the NPRM, particularly where such determinations would likely have wide-ranging consequences where proper notice has not been given, would be inappropriate as part of today's final action. Therefore, EPA will not expand the definition of industrial process refrigeration equipment to include specialized comfort-cooling or specialized commercial appliances. EPA may reconsider this issue through proper notice and comment procedures, at a later date.

EPA received several comments regarding the amount of refrigerant contained in appliances subject to the leak repair requirements. Commenters asked that EPA clarify that leak repair is required only for appliances that normally contain more than 50 pounds of refrigerant. On August 19, 1994 (59 FR 42953), EPA addressed this concern. The notice states that ''although EPA did not explicitly restrict the scope of its leak repair requirement for commercial and industrial process refrigeration to equipment containing more than 50 pounds of refrigerant, EPA intended this requirement (§ 82.156(i)) to cover only equipment containing at least 50 pounds'' (59 FR 42953). Accordingly, EPA amended § 82.156(i) to specify the 50-pound cut-off (59 FR 42957). Inadvertently, EPA neglected to carry over that amended language in the January 19, 1995 NPRM. Therefore, through this action, EPA will amend the proposed requirements of § 82.156(i) to specify the 50-pound cut-off.

One commenter requests that EPA clarify that 50 pounds refers to the refrigerant in one refrigerant circuit. The commenter states that where two separate, wholly independent refrigeration circuits that are not interconnected, each having a normal refrigerant capacity of no more than 50 pounds, the leak repair provisions should not apply. EPA agrees with this commenter. Through this action, EPA would like to clarify that if the refrigerant circuits do not interconnect, and if each wholly independent circuit has a capacity of no more than 50 pounds of refrigerant, the leak repair provisions promulgated under § 82.156(i) do not apply. However, if the refrigerant circuits are connected, and the combined circuits have a normal capacity of more than 50 pounds of refrigerant, the leak repair provisions do apply.

EPA received several comments regarding appliances used as both industrial process refrigeration equipment and comfort-cooling. The commenters were concerned with whether they need to use the 15 percent leak rate or the 35 percent leak rate under these circumstances. One example would be a chiller used directly in the generation of electricity and used to cool the control room. EPA believes that where 50 percent or more of an appliance's capacity is being used as industrial process refrigeration equipment, that appliance should be treated as industrial process refrigeration equipment and therefore subject to the 35 leak rate. Where less than 50 percent of an appliance's capacity is being used as industrial process refrigeration equipment, then the appliance will not be considered industrial process refrigeration equipment and will therefore be subject to the 15 percent leak rate. EPA believes this demonstrates an equitable approach and is consistent with determinations made by the Agency's Office of Compliance.[1]

EPA received one comment regarding the definition of on-site. The commenter believes EPA should specify that on-site means within a contiguous geographic area, under common ownership or control, that includes the location of the appliance. For the purposes of these regulations, EPA agrees with this interpretation of the term on-site.

E. Repairing Appliances

1. Repair Attempts

EPA received several comments seeking clarification concerning how EPA will interpret the first repair attempt. Commenters stated that EPA should clarify that repairs can be iterative and therefore an owner or operator should be allowed to make as many repair attempts within the initial 30-day or 120-day timeframe as possible, as long as the results of conducting the verification tests indicate that the repairs were successful. One commenter explained that repairs may be checked several times before being considered complete. The commenter feared that there may be confusion that one unsuccessful attempt to tighten a bolt or replace a gasket might trigger the requirements as when a dynamic test fails.

EPA agrees with these concerns. EPA believes that during the initial 30-day or 120-day repair time, all attempts should be made to repair the leaks. Therefore, through this action EPA will replace the proposed language ''first attempt'' with ''initial repair efforts,'' thus including all the efforts made during the initial 30 or 120 days.

EPA also received comments concerning the interpretation of ''second attempt'' to repair leaks. The commenters are concerned that second attempt implies a singular event rather than a series of events to repair a leak within a finite period of time. One commenter suggested that ''efforts'' be used instead. The commenter believes a limited timeframe instead of a limited event should be acceptable. EPA received comments indicating that the Agency should modify the rule to include a timeframe for completing the second attempt to repair leaks, particularly since a timeframe was included in the settlement agreement.

EPA agrees with the comments. A timeframe of 30 days (or 120 days in the case of an industrial process shutdown) was specified in the settlement agreement and inadvertently not included in the NPRM under § 82.156(i)(3)(iv). As discussed above in reference to a first repair attempt, EPA understands that repairs may be iterative and that a singular effort should not be described. Another comment suggested EPA use the language, ''any subsequent repair attempt.'' EPA does not believe that this language is appropriate because it is too open-ended and could potentially cause

[1] Applicability Determination #51 made under the § 608 rulemakings.

confusion. Therefore, through this action EPA will modify the proposed § 82.156(i)(3)(iv) to include a reference to 30 days and 120 days for completing ''second repair efforts.''

2. Timeframes for Repairing Leaks

EPA received many comments supporting the proposed timeframes for repairing leaks in industrial process equipment. These commenters recognized that while many types of leaks can be repaired within 30 days, in particular circumstances, such as when an industrial process shutdown is required, additional time is necessary. EPA received one comment stating that in all cases 120 days should be provided to repair all leaks. The commenter further stated that if the leaks could not be repaired within 120 days, additional time should be provided if the parts are unavailable, there are complications due to other regulations, or the potential need for the system to be taken off line to effect the repair exists. The commenter believes that this will reduce the amount of delays experienced by waiting for approvals from the Agency and it would decrease the burden placed upon the industry by reducing the number of submittals. The commenter further believes that by reducing wasted time spent in performing bureaucratic functions, and waiting for approvals, the repairs may be more quickly and efficiently made.

EPA does not believe it is necessary to always permit 120 days to repair leaks. In negotiating the settlement agreement with CMA and in subsequent discussions with industry representatives, numerous examples of routine repairs that can easily be made within 30 days have been identified. These types of repairs include leaks caused by a ruptured tube and a leaking gasket between the flanges. These and other types of repairs normally completed in less than 30 days are discussed in the NPRM (60 FR 3994). Limiting repair times to the most reasonable amount of time ensures that the repairs are completed responsibly and consistent with the spirit and intent of section 608 and the initial regulations promulgated in May 1993. EPA sees no reason to provide additional time to repair leaks that many commenters agree can easily be repaired within 30 days. Part of EPA's rationale for proposing changes to the leak repair provisions is based on the need to provide flexibility where the leaks are such that repairs cannot be made within 30 days. Allowing 120 days for repairs where an industrial process shutdown is necessary recognizes the need to first complete the actual shutdown before attempting to fix the leaks. Since under most circumstances, owners or operators are expected to proceed with their repair or retrofit operations without receipt of prior approval, EPA does not believe waiting for approval constitutes a reason for the owners or operators to delay action. Thus extending the leak repair timeframe to 120 days to ensure adequate time to receive EPA approval is not necessary. Therefore, EPA is requiring that where appropriate, leaks are to be repaired within 30 days.

EPA received one comment regarding the course of action when the 30-day repair requirement cannot be met. The commenter notes that the NPRM's preamble states that when the 30-day repair requirement cannot be met, the owner or operator must notify EPA and include ''a one-year retrofit, replacement or retirement plan for the leaky equipment'' (60 FR 3994). However, the regulatory language does not state that requirement. Instead, the regulatory language states that the owners or operators must provide the reason(s) why more than 30 days are needed and an estimate of when the repair work will be completed. The commenter believes the regulatory text is correct. EPA agrees that the regulatory language properly reflects the notification requirement. Provisions proposed under § 82.156(i) allows for other alternatives besides automatically retrofitting or replacing the equipment.

3. Determining the Full Charge of Refrigerant

EPA received several comments concerning establishment of the amount of refrigerant contained in industrial process refrigeration equipment and therefore determining the leak rate for the affected appliance. One commenter suggested that EPA should specify a methodology for determining the percentage of refrigerant lost during a 12-month period. Another commenter stated that large facilities that have in-house staff for servicing refrigeration equipment may not have had any regulatory requirement or internal justification for maintaining records of refrigerant charges prior to June 14, 1993 (the effective date of the initial regulations promulgated under section 608). The commenter requests that EPA clarify that leak rate calculations are required to be performed by taking into consideration the additions of refrigerant that occur after the original promulgation of section 608. Furthermore, the commenter requests clarification about prorating refrigerant added over more than a 12-month period. For example, if 20% is added every 24 months, does that constitute a 10% per year leak rate? The commenter believes that since there were no regulatory requirements prior to May 1993, owners or operators should not be subject to enforcement based on imprecise calculations. Alternatively, the commenter believes that EPA should permit the first recharge to occur without regard to the leak rate in order to establish a full charge baseline.

EPA understands that prior to June 1993, records regarding the addition of refrigerant may not have been maintained. However, at this point such information should have been maintained for over two years. Therefore, EPA believes it is reasonable to assume a baseline can be established. EPA agrees that refrigerant recharges should be appropriately prorated to establish a yearly leak rate; however, EPA does not believe it is necessary or appropriate to permit the first recharge to occur without making an effort to assess the leak rate.

Several commenters requested that EPA permit the use of the fourth option discussed in the NPRM (60 FR 3996) for determining the full charge of refrigerant. This method allows one to choose a number from within an established range based on the best data currently available. Once a number is selected, it would be considered the full charge; however, over time the owner or operator of the appliance may adjust the number based on new or revised information concerning the performance of the system. EPA expressed concerns that there is no clarity regarding circumstances under which a change in the number could be justified. In the NPRM, EPA stated that an everchanging estimate of the full charge defeats the purpose of creating a baseline.

Several commenters stated that EPA's concerns can be overcome. One commenter stated that in its experience it is difficult to accurately estimate the full charge of particular appliances. The commenter believes that often only trial and error will derive an accurate number. The commenter believes it is essential to allow an owner or operator to be able to draw from experience and use a range in estimating the full charge. The commenter believes that as long as the method used is documented, an inspector can determine if the approach was reasonable. Another commenter stated that EPA should not reject any legitimate technique for calculating the full charge. Several commenters stated that every method for determining the full charge has its strengths and weaknesses. Moreover, expressed or not, all methods will develop a range. The commenters believed that EPA's

concerns are that the owners or operators might frequently change the determination of full charge and that EPA would lack the criteria to evaluate whether the changes were justified. The commenters suggested a way to address these concerns:

- Any downward revision of the full charge should be acceptable without a need for EPA to challenge it;
- EPA could specify that the midpoint of the established range constitutes the full charge for determining a leak rate;
- EPA could require the owners or operators to maintain records of the basis for their original determinations of the full charges and any data behind any changes to those determinations; and
- EPA could require the owners or operators to submit a report to EPA when a number is revised after discovering refrigerant losses, when a number is revised resulting in a leak rate below 35 percent, and when the owners or operators do not intend to fix the leaks.

Another commenter stated that if EPA does not revise the proposed regulations to permit this method for determining the full charge, the Agency should provide at least six months for the owners or operators to determine the full charge of affected appliances using acceptable methods.

EPA has considered these comments very carefully. EPA's concerns relate to the accuracy of the fourth method for determining the full charge of a system and the potential to adjust the estimate to reduce leak rates below the applicable thresholds. However, EPA believes that the commenters have suggested ways to alleviate EPA's concerns. EPA understands that while ranges may need to be adjusted several times for a new appliance, over time the frequency of such adjustments would likely decrease, unless substantial modifications were made to the appliance. Moreover, in most cases, ranges would not need to be adjusted more than once every few years after an appliance has been in operation long enough for the owner or operator to become comfortable with the range. Furthermore, EPA understands that a range may actually represent seasonal variations.

EPA agrees with the commenters that any downward revision of the full charge should be acceptable without any need for EPA to challenge the revision. EPA further agrees that the midpoint of the established range shall represent the full charge for determining a leak rate. This mitigates the possibility of receiving any unfair advantage by adjusting the range, since the midpoint would not vary as much.

EPA agrees with the comments that records should be maintained concerning the determination of the range and any adjustments to it. If the owners or operators of an appliance choose to establish a range, it is critical to understand the methodology for the establishment of the range and the methodology for any adjustments that would result in a larger number for the midpoint. EPA believes that such records would be beneficial in any compliance determinations. Moreover, EPA believes that while ranges many need to be adjusted several times during the first year, the ranges will soon become stabilized. It will not be necessary to adjust the ranges unless a major change was made to the industrial process refrigeration equipment. Therefore, the records would not need to be modified often. Commenters suggested data elements to be contained in the records, including the original full charge and any revisions. EPA agrees with these commenters. Therefore, the records required for using the fourth option will include: the identification of the owner or operator of the appliance; the location of the appliance; the original full charge of the appliance and how it was determined; any revision of the full charge number and how it was determined; and the date such revisions occurred. Since the owner or operator need not use the fourth methodology, EPA does not believe this recordkeeping provision constitutes an unreasonable burden for the owners or operators.

While commenters suggested limited reporting requirements to accompany this recordkeeping provision, EPA does not believe it is necessary or appropriate to require reports to be submitted detailing the methodology for establishing or changing the full charge determination. EPA believes maintaining records is necessary for the Agency to understand the methodologies used if an issue of compliance arises. EPA also believes that in all likelihood, such records will benefit the owner or operator of the appliance by providing a historic record of how the current leak rate was developed. However, routinely providing that information to EPA, particularly where no potential violation is suspected, is not necessary or appropriate. Therefore, EPA will require that records be maintained if the fourth method for establishing the full charge is used; however, EPA will not require any periodic reporting.

Commenters stated that if the Agency adopts any recordkeeping or reporting options for the fourth methodology, such provisions should not be extended for use with the other three methodologies. EPA agrees with these commenters. EPA did not propose and today is not adopting any recordkeeping options for these three methodologies.

Through this action EPA will allow any one of the three proposed methods and the fourth method discussed in the NPRM, or a combination of these methods to be used for determining the full charge of appliances. If the fourth method is chosen or used in combination with any of the other acceptable methods, the midpoint of the range will constitute the full charge for purposes of determining the leak rate. The owners and operators of the affected industrial process refrigeration equipment must keep records in accordance with § 82.166(q), detailing the methodology used for determining and adjusting the range.

Two commenters stated that the calculations required for determining the normal charge of industrial process refrigeration equipment should apply to the commercial and comfort-cooling sectors as well. One commenter believes that these other appliances have field-installed interconnecting piping and there may not be any information available from the manufacturer indicating the normal refrigerant charge. Furthermore, the commenter requests that EPA publish guidance, including formulas, tables and sample calculations with enough detail that most owners affected by the leak repair provisions will be able to perform the necessary calculations. EPA does not agree with this commenter. In cases where a comfort-cooling or commercial refrigeration appliance is ''customized,'' EPA believes it is still relatively easy to derive the charge of the system. Field-installed piping can be measured and the refrigerant charge can, therefore, be calculated. Moreover, the owners or operators of such systems often hire contractors to service and maintain their appliances. These contractors should be able either to determine the full charge or to provide guidance on establishing leak rates. EPA believes that in most instances, these contractors will be better able to advise the owners or operators. Therefore, EPA does not believe it is necessary to specify how the full charge will be established for these sectors, nor to publish specific guidance.

One commenter believes that EPA should exclude from any calculation of refrigerant leak rates the loss of refrigerant through a one-time accidental release, such as breaking pipes, a ruptured disc, or operator error.

EPA disagrees with this commenter. While EPA understands that accidents do occur, EPA believes that if the events are such that the leak rate surpasses the 15 percent or 35 percent thresholds, the necessary repairs should be made to ensure that the owners or operators of the appliances are in compliance. Such repairs would include replacement of the broken pipe or rupture disk that led to the accidental release. Such repairs would also include correcting any condition that repeatedly led to an accidental release (e.g. over pressurization). Moreover, since many leaks occur because of one-time events, such as ruptured pipe, it would be impossible to draw clear distinctions of what would be included in leak repair calculations.

One commenter stated that EPA should clarify that the owners or operators may hire contractors to determine the full charge. The commenter further believes that throughout the rule EPA should recognize the role of contractors who service refrigeration appliances. As stated earlier in this preamble, EPA recognizes that the owners or operators may have contractual arrangements with contractors or technicians who actually perform maintenance and repair work on the appliances subject to the leak repair provisions. While the work may be performed under such arrangements, the personnel are in effect acting as an agent of the owners or operators.

One commenter stated that EPA should clarify how to determine the full charge for appliances with multiple independent compressors and refrigerant loops. As EPA has stated elsewhere in this notice, the charge of an appliance is based on the charge of an individual refrigerant loop/circuit where that loop/circuit is not interconnected and that contains a normal charge of 50 pounds of refrigerant or more. EPA distinguishes between those that are independent and those that are interconnected, perhaps employing multiple compressors (e.g. parallel systems).

4. Best Efforts

EPA received several comments concerning the term ''best efforts,'' as used in § 82.156(i)(2). Several commenters agreed with the Agency's interpretations. These commenters stated that it was appropriate to exclude formal protocols from the interpretation of best efforts because of wide variations in the regulated community. One commenter stated that each leak is unique and best efforts to repair a small leak will differ from those taken to repair larger leaks. A formal definition would either be too complex or ineffective at capturing all the scenarios.

One commenter requested that EPA include a formal definition of best efforts in the final rule. The commenter stated that the lack of a formal definition could create uncertainty as to what the rule requires. The commenter recognized that the description of best efforts discussed in the NPRM originated with industry. The commenter provided two possible ways to better characterize a best efforts approach. The approach includes providing more description in § 82.156(i)(2) and/or creating a specific definition in § 82.152. The commenter suggested the following definitions:

> best efforts means a repair method is used that is reasonably expected to be effective on the particular type of leak, based on past experience;

or

> best efforts means that, during an extension of the 30-day period for repairs, the owner or operator repairs significant leaks to the extent practical during the 30 days, by using a repair method that is reasonably expected to be effective based on past experience, on those leaks that do not require an extension of time.

While EPA understands the benefits of having a formal definition for any term used in regulations, EPA does not believe these definitions solve the problem discussed in the NPRM. In the NPRM, EPA states that its concerns are the lack of formal protocols in the best efforts approach described by EPA. EPA characterizes a best efforts approach in the NPRM as implying that a methodology for repair that is reasonably expected to be effective based on past experience and potentially may include consultation (60 FR 3994). EPA does not believe the commenter's suggested language incorporates all of the concepts described in the NPRM. Adopting an inadequate definition does not benefit EPA or the regulated community. EPA requested comments on a definition hoping that perhaps an industry standard could be cited. Throughout the regulations promulgated under section 608, EPA refers to industry standards. Without the existence of such standards, EPA believes that a formal definition is not the best approach.

Several commenters stated that EPA should modify the proposed regulatory language in § 82.156 (i)(2) and (i)(2)(ii) to distinguish best efforts from sound engineering/professional judgment. The commenters are concerned that EPA erroneously included sound engineering/professional judgment in the definition of best efforts. The commenters stated that the intention behind best efforts was that the owners or operators should do what is necessary within reason to repair leaks within 30 days in situations where longer extensions beyond 30 days are necessary to conduct repairs due to the unavailability of spare parts or compliance with other federal, state, or local regulations. In further discussions with the commenters, it appears that over time any initial distinction that EPA and CMA made in the settlement agreement between best efforts and sound engineering/professional judgment has become convoluted. EPA believes that the rationale for using the term best efforts for repairing leaks that required an extension beyond the initial 30 days was to ensure that where there are multiple leaks or where a leak can be partially repaired, the owners or operators will complete all reasonable actions during the initial 30 days. The result will be to reduce the leak rate as much as possible during the initial 30 days where additional time is necessary to complete all repair activities. Additional comments submitted by CMA confirm this interpretation. Therefore, EPA is amending § 82.156(i)(2) to remove the references to best efforts. Instead, EPA will state that the owners or operators must conduct all necessary leak repairs that do not require additional time beyond the initial 30 or 120 days. EPA believes that this change in language more adequately conveys the intent of this provision, which is to allow additional time, while ensuring that all that can be done has been done.

5. Static and Dynamic Tests

EPA received many comments supporting the use of static and dynamic tests. While these commenters agreed with the need for these tests, several suggestions for when the tests should be used and alternative terminologies were suggested. These comments will be discussed in greater detail later in this subsection. EPA received one comment opposing the use of static and dynamic tests. The commenter stated that static and dynamic tests are not precisely reliable methods on which to base a requirement to retrofit a piece of equipment. The commenter stated that it had documented cases where the results of such tests have been inconclusive. The commenter further believes that the tests are overly burdensome and unnecessary. The commenter believes that the tax and cost of refrigerants should provide the necessary incentives.

EPA agrees that the expense of ozone-depleting refrigerants will influence the decisions made by many organizations. However, considering the size of the refrigerant charges for some of the appliances subject to the leak repair provisions, ensuring that appliances brought back on-line are no longer leaking above the threshold, is important. Also, often appliances may use an HCFC, which is not subject to federal tax. In the settlement agreement, EPA and CMA agreed to propose this verification approach. Since these tests are regularly performed to ensure that a leak has been repaired, EPA believes these requirements are not overly burdensome. Furthermore, EPA believes that performing such tests provides the owners or operators with a strong measure of insurance. Moreover, since EPA has proposed options other than retrofitting or retiring the leaky equipment, such as reducing other leak sources, EPA does not believe a retrofit or replacement decision would be based solely on one failed static or dynamic test. Therefore, EPA will require that the tests be performed.

EPA received several comments regarding the use of the terms ''static'' and ''dynamic.'' Commenters stated that uses of the terms ''first verification test'' or ''initial verification test'' and ''follow-up verification test'' would be more appropriate. Among the reasons suggested for this change is a concern that the terms static and dynamic have commonly understood meanings. Static generally means a system is at rest and dynamic generally means a system is operating. One commenter stated that during the settlement discussions the terms were crafted to discuss repairs, using the widely understood meaning. However, later it was realized that industrial process refrigeration equipment that was not shut down during repairs was neglected. The terms were then broadened to mean a first verification and a second verification test. After discussions with employees, the commenter now believes that the broadened definitions would likely cause confusion. Another commenter agreed that while the broadened definition captures the situations faced by the owners or operators, the language would be confusing. Several commenters suggested that the terms ''first'' or ''initial verification test'' and ''follow-up verification test'' would be more accurate.

EPA agrees with these commenters. The definitions of static and dynamic were broadened to capture real world situations. Since the settlement agreement bound the Agency to a proposal that included those terms, EPA did not consider the use of other language to describe the tests. However, EPA agrees that ''initial verification test'' and ''follow-up verification test'' more accurately describe the tests, particularly since often the same types of tests qualify as both static and dynamic, depending on when they are performed. EPA believes changing the language would further clarify that the state of motion is not necessarily a criterion. Therefore, through this action, EPA will replace the proposed terms ''static'' and ''dynamic'' with the terms ''initial verification test'' and ''follow-up verification.''

Commenters suggested that EPA streamline the definition of initial verification test (static verification test) by removing illogical or redundant statements. The commenters state that there is no need to say that the test will be performed before the appliance or portion of the appliance has reached operation at normal working conditions of temperature and pressure because it would not be possible for an appliance or portion of an appliance to do so without a full refrigerant charge. EPA understands the commenters' concerns. Clearly, without a full charge of refrigerant, normal working conditions of temperature and pressure cannot be reached. However, to limit the potential for misinterpretations, EPA would rather be overly explicit.

One commenter requested that EPA distinguish between the terms steady-state operating conditions, steady-state operating characteristics, normal working conditions and normal operating conditions. The commenter stated that in engineering terms, these terms are not always equivalent. For example, if the values of all the variables in a process (e.g. all temperatures, pressures, volumes, flow rates, etc.) do not change with time, except for possibly minor fluctuations, the process is said to be operating at steady state. However, if any of the process variables change with time, transient or unsteady-state operating is said to exist. Depending upon the industrial process that the industrial process refrigeration equipment is supporting, its normal operation in strict engineering terms may be characterized as steady-state or unsteady-state. The commenter therefore believes it is more appropriate when referencing the operation state of the refrigeration equipment, for purposes of indicating when either verification test should be conducted, for the Agency to adopt the terminology ''normal operating characteristics and conditions.'' Furthermore, the commenter believes that normal operating characteristics and conditions has an understood definition equivalent to how the NPRM defines and refers to steady-state operations.

While EPA received other comments supporting the use of the term steady-state, EPA agrees with the concerns regarding the potential for confusion. The use of the term steady-state in this context originated with the settlement agreement. While the proposed definition for steady-state appears acceptable to most of the affected industry, EPA is concerned that someone familiar with the engineering distinctions between steady-state and unsteady-state would be confused. Therefore, EPA believes it is appropriate to replace ''steady-state'' with ''normal operating characteristics and conditions.'' EPA will not be revising the definition in any substantive manner; therefore, the definition itself will be consistent with the spirit of the settlement agreement.

Several commenters raised concerns on when a follow-up verification test is performed. The commenters are concerned that the NPRM does not properly consider occasions where a verification test at normal operating characteristics and conditions is impractical or less meaningful. Commenters stated that there are repair situations where the repair sites will not be accessible to perform a meaningful verification test after the industrial process refrigeration equipment is returned to normal operating characteristics and conditions. One example would be a verification test for leaks inside a heat exchanger. The tests can be performed while the exchanger is open. A test performed after the exchanger is reassembled would not be as meaningful. Other examples provided by the commenters include: compressor internals, locations that must be re-insulated prior to start-up, and locations in close proximity to dangerous hot equipment or moving parts where access is not possible after reassembly. EPA did discuss whether it would be appropriate to permit follow-up verification tests prior to returning to normal operating characteristics and conditions; however, EPA did not propose to allow these alternative tests. Commenters stated that since there are situations where the tests prior to a return to normal operating characteristics and conditions will be more meaningful and reliable, EPA should permit sound engineering/professional judgment to be used to determine what the appropriate operational state of industrial process refrigeration equipment should be when the follow-up verification tests are

conducted. One commenter stated that EPA should take confidence in the fact that leak detection and repair of appliances did not originate with section 608; it has been an integral part of maintenance practice for many years.

EPA agrees that in certain circumstances, performing a follow-up verification test prior to normal operating characteristics and conditions may be more meaningful and reliable. Performing multiple verification tests may be appropriate under many conditions. One of the Agency's concerns, however, was that until normal operating characteristics and conditions are achieved, it may be unclear if the leak repair work was truly successful. EPA was concerned that at less than true operational state, a particular fix may not hold. The Agency understands that leak detection and repair has been part of this sector's practices before the development of these regulations. Furthermore, EPA believes that as class I and class II refrigerants become less readily available, leak detection and repair efforts may increase. Moreover, EPA believes that in most cases the owners or operators rely on personnel with appropriate professional judgment in determining the best way to repair and verify the repair of a leak source. Therefore, through this action EPA will amend the proposed requirements for performing follow-up verification tests. EPA will require that the test be performed at normal operating characteristics and conditions unless sound professional judgment determines that a follow-up test should be performed prior to returning to normal operating characteristics and conditions.

EPA received several comments requesting that the Agency clarify that initial and follow-up verification tests are to be performed even when repairs are made within 30 days. One commenter stated that the NPRM was unclear. The commenter believes that as a practical matter, and to minimize confusing plant operations, it would be preferable to treat all repairs equally, and to require documentation that tests should be done to verify a successful repair. Another commenter stated that these tests are a measure of compliance. Another commenter stated that the settlement agreement makes no mention that these requirements must be met only in cases where the owners or operators are granted additional time. Furthermore, the settlement agreement does not limit these tests to situations where an industrial process shutdown has occurred, or where the repairs were made while an appliance was mothballed. This commenter believes that, with regards, to the performance of these tests, the regulatory language should be in full agreement with the settlement agreement.

EPA agrees that the tests demonstrate whether a leak repair effort was successful or not, though the tests do not necessarily mean that the leak rate has been sufficiently reduced. In addition, EPA understands that often these tests have been routinely performed regardless of any regulatory requirement. EPA believes that many organizations have internal policies requiring that verification tests be performed. EPA agrees that having a consistent requirement that can easily be paraphrased for technicians is useful. Moreover, EPA does not believe requiring these tests in all circumstances equates to any substantial burden to industry. Therefore, EPA will require that initial and follow-up verification tests be performed when repairing leaks on industrial process refrigeration equipment where such leakage has surpassed the 35 percent annual leak rate.

One commenter requested that EPA clarify that the verification tests demonstrate the success of a leak repair, not that the leak rate has been reduced below the threshold. EPA agrees with this commenter. It was not EPA's intention to imply that the verification test shows what the leak rate is. However, EPA believes that where the verification test shows that the repairs have been successful, in most cases this will mean that there has been a reduction in the leak rate. If more than one leak exists, it is possible that the leak rate could remain above acceptable levels. In such cases the owners or operators would be expected to take reasonable actions.

Two commenters stated that where an industrial process shutdown is not required, the initial and follow-up verification tests will be identical; therefore, a follow-up verification test is unnecessary. EPA disagrees with these commenters. While the same test might be performed, the fact that the tests are performed at different times is important. If a repair consists of tightening flange bolts, for example, it may appear that a repair is successful during an initial verification test. However, it may not be immediately obvious that the repair was unsuccessful. A bolt may appear to have been tightened sufficiently; however, if the threading is damaged, it may loosen in a short period of time. Performing a follow-up verification test will demonstrate that a problem still exists. EPA believes that even when an industrial process shutdown is not necessary, initial and follow-up verification tests will play vital roles. Therefore, EPA is requiring that both initial and follow-up verification tests be performed when repairs are made even if an industrial process shutdown is not required.

EPA received one comment requesting that more than one follow-up verification test be permitted before an owner or operator must notify EPA of a failure. The commenter is concerned that situations could arise in which a follow-up verification test may indicate a failure even though in reality the leak has been fixed. The commenter suggested that it would be more reliable in the event that the test was inconsistent with the expected results, that subsequent tests be permitted to be performed during the 30-day period. EPA understands this commenter's concerns. Since repairs are often interrelated, tests may demonstrate a need to continue repair efforts. EPA proposed to permit the follow-up verification test to occur within 30 days. However, since the Agency is revising the terminology used in the NPRM to first repair efforts and second repair efforts, EPA believes the issue has been resolved. Tests will be completed after the repair efforts are complete.

EPA received comments concerning the interpretation and use of sound engineering/professional judgment. Commenters stated that EPA should not incorporate sound engineering/professional judgment into the interpretation of best efforts. Sound engineering/professional judgment should only be discussed in relation to verification tests. EPA has already addressed the commenters' concerns about the NPRM's incorporation of sound engineering/professional judgment with the use of best efforts.

A few commenters stated that since the decision-making process may not be performed by an engineer, the use of the term engineering is inappropriate. In the NPRM, EPA states that sound engineering or professional judgment means a ''combination of the use of logic and operational experience, with methods of calculation that are practical, based on training, experience and education'' (60 FR 3997). EPA agrees that in many cases the professional making the decision may not be an engineer. Therefore, EPA will use the term, ''sound professional judgement.''

One commenter stated that sound professional judgement should be employed to determine where and which initial and follow-up verification tests should be performed, whenever

leaks that are subject to the leak repair requirements for industrial process refrigeration equipment must be repaired. EPA agrees with this commenter.

Another commenter stated that fluorescent dye combined with a leak monitoring UV light source should be considered an acceptable initial or follow-up verification test. In the NPRM, EPA discussed three types of verification tests. EPA states that the three discussed represent examples that EPA believes would be considered acceptable forms of verification tests. EPA states that other types of tests may exist (60 FR 3997). EPA believes that sound professional judgement should be employed when determining the type of verification test that is appropriate for the particular leak. Therefore, it is not necessary for EPA to state which tests are acceptable. However, EPA would like to clarify that any verification test must be acceptable under all other regulatory requirements. For example, if fluorescent dye was combined with an ozone-depleting substance, where that ozone-depleting substance is used to propel the dye from a pressurized dispenser into the appliance, that application would be banned under the nonessential products ban promulgated under section 610 of the Act.

EPA received one comment regarding the need to perform verification tests if the owner or operator determines that the industrial process refrigeration equipment should be retrofitted. For example, if the leaky equipment is shut down to perform repairs on the heat exchanger, and as the repair work begins, it is determined that the compressor is about worn out, the owner or operator may choose to retrofit or replace the system rather than complete repairs. The commenter believes that under these circumstances the obligation to perform the verification tests should be lifted. EPA agrees with this commenter. If the owner or operator is switching to a retrofit, replace, or retire mode, the obligation to bring the leak rate below 35 percent is suspended. Therefore, it is not necessary to perform tests to verify the success of individual leak repair efforts.

EPA received an additional comment concerning the use of verification tests when the owners and operators are retrofitting or replacing the appliance. The commenter was concerned that the proposed language would obligate owners or operators to perform verification tests on replaced or retrofitted equipment. EPA agrees that these tests are not necessary for replaced or retrofitted equipment.

6. Fixing Other Leaks

EPA received one comment regarding what happens if EPA disapproves the parameters for fixing leaks. In § 82.156(i)(4), EPA stated that if repairs fail a follow-up verification test, the owner or operator could choose the option of doing whatever it takes to get the rate below the threshold within 180 days. It is anticipated that the owner or operator will follow parameters from earlier notifications. EPA may disapprove of those parameters; however, the parameters are deemed approved if EPA does not object within 30 days after receiving notice. The commenter supports this approach, but is concerned about what happens if EPA disapproves. In such cases the commenter suggests that the owner or operator and EPA should reach agreement on what parameters will be used. EPA agrees with the need to specify what will occur if the EPA objects to the parameters. If this situation occurs, in all likelihood, EPA will consult with the owner or operator. However, EPA and the owner or operator may not necessarily ''reach agreement.'' Through this action, EPA will specify that where EPA objects to the submitted parameters for bringing the overall leak rate below the applicable threshold, EPA will select appropriate parameters. In all likelihood, this selection will be made expeditiously since the applicable timelines will remain in effect. If such disapproval significantly limits the ability of the owners or operators to comply with appropriate timelines, EPA may consider granting an extension. If no agreement can be reached, it is anticipated that the course of action may be to retrofit or replace the affected industrial process refrigeration equipment. Under such circumstances, EPA may need to consider providing additional time for the owners or operators of the affected industrial process refrigeration equipment to complete retrofit or replacement activities.

EPA received several comments supporting the provision relieving the owner or operator of the obligation to retrofit or retire industrial process refrigeration equipment where, within 180 days, the owner or operator has reduced the leak rate to below 35 percent by completing other repairs and tightening the operation of the appliance. These commenters believe that by reducing the amount of refrigerant being released, the owner or operator has met the goals of the leak repair provisions although the original leak remains.

EPA received one comment suggesting that the Agency should permit one year instead of 180 days. The commenter believes that providing additional time will not detract from the requirement to retrofit or replace the appliance. EPA disagrees with this commenter. EPA believes that to complete retrofit or replacement activities within one year, it would be necessary to perform preparatory work on the same appliance. The lack of clear direction between retrofitting and repairing the appliance that late in the year may influence the ability of the owner or operator to complete retrofit activities. Furthermore, EPA believes that where the leak rate can be reduced to below the applicable threshold, 180 days should be sufficient time. The leak repair provisions being promulgated through this action are designed to provide greater flexibility without compromising the goals of reducing emissions. To achieve this goal EPA proposed the shortest amount of additional time necessary to complete repairs. Therefore, EPA does not believe it is necessary to further extend this provision.

EPA received one comment requesting that the Agency specify that § 82.156(i)(3)(v) only apply where repairs have failed a follow-up verification test and the owners or operators have chosen to do whatever it takes to bring the leak rate below the applicable threshold. EPA agrees that there are other options available to the owners or operators. Therefore, through this action, EPA will clarify that the owner or operator may choose this option, but that other options, such as retrofitting the appliance, also exist.

EPA received several comments supporting the need to switch to the retrofit or replacement mode after discovering that successful leak repairs cannot be made in accordance with the necessary timelines. EPA received one comment suggesting that when a switch is made from a repair mode to a retrofit/replacement mode, the owner or operator of that industrial process refrigeration equipment should be held to the normal deadlines for retrofitting or retiring the appliance. The commenter stated that if the owner or operator has spent a month trying to fix the leaks, the owner or operator would have eleven months left for retrofitting, replacing, or retiring the equipment. EPA agrees with this commenter.

EPA received several comments supporting the need for additional time to complete the retrofit or retirement of industrial process refrigeration equipment beyond one year. One commenter stated that EPA should

clarify however, that additional time should be permitted under § 82.156(i)(7)(i), not one additional year. In some cases, more or less than one year is appropriate. One commenter stated that additional time, up to one additional year, should be permitted under § 82.156(i)(7)(ii). The commenter also stated that where additional time beyond the initial additional ''year'' is permitted in § 82.156(i)(7)(iii), EPA should explicitly state that additional time beyond the one year is permitted, not an additional year. EPA agrees with these commenters.

F. Industrial Process Shutdown

EPA received several comments supporting the extension to complete repairs when an industrial process shutdown is required. One commenter suggested that the term process shutdown should not be used interchangeably with the term industrial process shutdown. To provide clarity and consistency, the commenter believes the Agency should use and define the term industrial process shutdown exclusively. EPA agrees with this commenter. Therefore, EPA will define and use the term industrial process shutdown, instead of process shutdown.

EPA received one comment stating that the need for additional time beyond the 120 days permitted for an industrial process shutdown may not be evident within the initial 30-day repair period. The commenter is concerned that an initial determination that no other federal, state, or local regulations apply may be made by the owners or operators. It is also possible that within the initial 30 days the owners or operators may not realize that the appliance requires parts that are unavailable. After the industrial process shutdown is complete, possibly as late as day 115, such a determination may be made. Under those circumstances, the commenter is concerned that additional time beyond the 120 days would no longer be available. EPA understands these concerns. While the Agency believes that in most cases the owner or operator will know that other regulations will delay repairs or that the parts are not readily available within 30 days, it is possible that such a determination will not be known in advance of completing the industrial process shutdown. Therefore, through this action, EPA will specify that additional time is available beyond the 30-day or 120-day repair period where other federal, state or local regulations are applicable or where the necessary parts are unavailable. Only the additional time needed to receive delivery of the necessary parts or comply with the pertinent regulations will be permitted.

G. Retrofitting or Replacing Equipment

EPA received several comments concerning retrofitting or replacing equipment. Commenters supported the proposal to permit additional time where specific circumstances exist. Comments about specific aspects of the proposal are discussed below.

EPA received one comment asking for clarification regarding the process of notification to EPA if repairs done in good faith are not successful and retrofitting must be pursued. The concern is that there may be cases where a repair requires an industrial process shutdown. If the ''clock'' for notifying EPA begins the date the leak rates are discovered, there may be cases where six months has passed. Therefore, the commenter suggested that EPA permit six months from the date the decision to retrofit is made. EPA disagrees with this commenter. EPA believes six months provides enough time both when the 30-day timeline and 120-day timeline apply. The owners or operators would have acceptable time to make repairs, to determine that retrofitting is appropriate, and to submit any required information.

EPA received a few comments concerning returning equipment to operation after the decision to retrofit, replace, or retire the appliance has been made. One commenter stated that EPA should allow an owner or operator to start up and operate appliances that the owner or operator determines, after attempting to repair leaks, cannot pass an initial verification test, if the owner or operator plans to retrofit or replace the appliance in accordance with § 82.156(i)(6) or such longer time as may apply in accordance with § 82.156(i)(7) (i), (ii) and (iii) or § 82.156(i)(8) (i) and (ii). EPA agrees with these commenters. If the owners or operators of affected industrial process refrigeration equipment attempt to repair leaks, but determine the need to retrofit or replace the equipment in accordance with the provisions promulgated through this action, the affected industrial process refrigeration equipment may be brought back on line without an initial or follow-up verification test.

EPA received related comments concerning the ability of the owners or operators to switch from the repair to the retrofit mode, and from the retrofit to the repair mode. One commenter stated that as long as all applicable deadlines are met, the owners or operators should have the flexibility to change their initial determination of retrofitting or repairing the industrial process refrigeration equipment. EPA agrees that as long as all applicable deadlines are met, the owners or operators may change their initial decision to retrofit, replace, or repair leaky industrial process refrigeration equipment.

One commenter stated that the proposed requirement to develop retrofit plans within 30 days would be difficult for large industrial process refrigeration equipment. It may take time for the owners or operators to determine the cause of the leak and whether the best course of action is to repair or retrofit the appliance. The commenter requests that EPA permit 90 days for the owner or operator to obtain all the appropriate information to complete a valid retrofit or retirement plan. The commenter believes this is consistent with EPA's recognition that it may take time for the owners or operators to evaluate the available options. EPA agrees that it may take time to evaluate the available options; however, EPA does not believe it is necessary to permit 90 days to develop retrofit or retirement plans. EPA believes that system mothballing and the ability to switch from a repair mode to a retrofit mode provide the owner or operator of the affected appliance with sufficient time to develop such plans. EPA believes that particularly where the type of leak is unknown, most owners or operators will attempt to identify and repair the leak first. Therefore, EPA does not believe it is necessary to require additional time to develop retrofit or retirement plans.

EPA received one comment regarding when the clock starts for retrofitting a system. The commenter is concerned that § 82.156(i)(3)(ii) permits the owner or operator of industrial process refrigeration equipment to determine the need to retrofit industrial process refrigeration equipment after a failed follow-up verification test; however, § 82.156(i)(6) states that all work under the plan must be completed within one year of the plan's date and the plan must be developed within 30 days of discovering the leak. The commenter is concerned with this apparent inconsistency. EPA agrees with this commenter's concern. While in general, plans are to be developed within 30 days of discovering the leak, this final action provides opportunities for the owners or operators to switch to a retrofit mode. EPA will modify the language in § 82.156(i)(6) to reflect these scenarios.

EPA received one comment requesting, that if the owner or operator intended to retrofit or replace an

appliance, and developed an appropriate plan, and if the owner or operator later determines that the normal charge of the appliance was not correctly calculated, the owner or operator should be relieved of the obligation to retrofit or replace the appliance and therefore, be able to withdraw the plan. The commenter states that if the appliance was overcharged, the calculations would be incorrect. EPA understands these commenters concerns. As discussed above, EPA realizes that owners or operators may not have kept records of refrigerant charges prior to the promulgation of regulations under section 608. Therefore, EPA will permit the owner or operator to withdraw a retrofit or retirement plan if the calculations of the full charge used to determine the leak rate were incorrect. However, the owner or operator retracting such a plan will need to demonstrate clearly that the original determination was incorrect and why. EPA will be particularly concerned where the fourth methodology for determining the full charge was used. Where a range is used to establish the full charge and that range is altered, EPA is requiring that records be maintained and be made available to EPA upon request.

H. Recordkeeping and Reporting Requirements

EPA received several favorable comments regarding the proposed recordkeeping and reporting requirements. One commenter stated that although the recordkeeping and reporting requirements are more detailed than those promulgated in May 1993 and that they do constitute an additional burden, the commenter supports the requirements. The commenter believes the requirements are necessary to allow EPA the opportunity to verify that best efforts were expended to find and repair leaks. Another commenter stated that the provisions mostly appear necessary and appropriate, in order to assure compliance. This commenter did offer minor suggestions for the requirements that are discussed below. EPA received two negative comments on recordkeeping and reporting comments. One commenter stated that the provisions appear to be extremely burdensome and time consuming. This commenter feels that more flexibility should be provided and that incentives to expeditiously fix leaks and even retrofit will be derived from the cost of refrigerant. The commenter further stated that the NPRM contains 12 separate reporting items subject to noncompliance enforcement actions and strict deadlines while providing no environmental benefit. The second commenter stated while most of the requirements for recordkeeping and reporting seem justified, § 82.166(n) should not include recordkeeping or reporting requirements for § 82.156(i) (3) (iii), (iv), and (iv) because they are too burdensome. EPA disagrees with these commenters. This rulemaking, in its entirety, is designed to provide greater flexibility to the industry. The rule will alleviate stringent repair and retrofitting timelines and allows for more flexible approaches for lowering the overall leak rate of affected appliances. EPA has proposed and today is adopting reporting and recordkeeping requirements in conjunction with the more flexible approach to ensure compliance with this less stringent scheme. EPA recognizes that the reports themselves do not constitute an environmental benefit. However, ensuring compliance with this new leak repair scheme does provide a benefit. The three specific provisions cited by the second commenter are pertinent to EPA. One provision reports the results of a failed follow-up verification test. This failure is a trigger for the owner or operator to choose a new course of action. Notification to EPA of the failure is important and would accompany other required information. The other two provisions communicate the results of either successful second repair efforts or tightening other aspects of the appliance to reduce the leak rate below the threshold. Since these events result in relieving the owner or operator of having to retrofit or replace the appliance, it is essential for the owner or operator to notify EPA. These recordkeeping and reporting requirements are not always required. If the owner or operator of the industrial process refrigeration equipment can complete repairs successfully during the initial 30 days, there are no applicable recordkeeping or reporting requirements.

One commenter suggested that EPA clarify that only the information listed in § 82.166 (n),(o) and (p) must be maintained. The commenter suggested several other language changes to ensure an understanding of the terminology used. Particularly, the commenter suggested and EPA clarified through the terms, ''fix all other outstanding leaks,'' ''on-site,'' ''refrigeration facility,'' and ''time changes.'' Another commenter suggested that EPA clarify under what circumstances specific data elements should be included. EPA has changed the language in § 82.166 (n), (o), (p), and in the newly added (q) so that these sections clearly reflects EPA's intent.

EPA received comments regarding notification to EPA of changes from the original estimates concerning repair work. One commenter stated that it was unclear and confusing in both the preamble and the regulatory language regarding time changes for completion of work from the original estimates. The commenter believes that EPA should require notification only if the estimated date of completion of work changes and results in moving the completion date forward. Other commenters noted that if EPA reviewed every adjustment in the affected repair schedules, EPA would receive many unnecessary notices and companies would face additional compliance burdens. EPA agrees with these commenters. EPA is only concerned when the estimated date of completing work results in extending the date of completion, thus increasing the potential for refrigerant releases. Through this action EPA will change the proposed regulatory language to state that when the repair schedule results in extending the date of completion, the reasons for these changes must be documented and submitted to EPA within 30 days of discovery of the change in timing.

EPA received comments concerning the potential for the owners or operators of industrial process refrigeration equipment to be placed in a situation where they will not be able to comply with their original schedules because the vendor is unable to meet the delivery schedule previously supplied to the owner or operator. For example, if a vendor quotes 20 weeks for delivery and in week 18 changes that estimate to 36 weeks, the owners or operators of the affected appliances will be forced to reconfigure their installation schedules. EPA understands the concerns raised by these commenters. If a critical component is delayed, this might influence whether the owner or operator can meet their schedule. EPA is aware that often a retrofit will involve several vendors. In some cases non-critical components may be delayed. It may be possible to rearrange the schedules to install delayed parts later. Where these parts must be on hand for work to proceed, delays in delivery by the vendors could result in missed deadlines by the owners or operators. Therefore, through this action, EPA will permit an extension of the original deadlines where delays by vendors limit the ability of the owners and operators to proceed with their retrofit or replacement activities. Extensions will be based on the delivery date for the necessary components.

EPA received one comment requesting that instead of filing for additional time beyond the initial one-year period six months after the expiration of the 30-day period following the exceedance of the 35 percent leak rate, the owner or operator of the industrial process refrigeration equipment should submit information requesting additional time 10 months from the expiration of the 30-day period. The commenter argues that since the materials involved in construction of custom-built equipment may not normally be used by a refrigeration vendor, it is common for delivery dates to slip. The commenter believes that an owner or operator may request additional time even where it is unclear that such time is actually necessary. However, if the owner or operator must make the decision to request additional time at 10 months instead of six months, the owner or operator may be more realistic in his/her evaluation. While EPA understands these concerns EPA does not believe it is appropriate to postpone the date. EPA believes that in most cases it will be clear at six months if additional time will be necessary. Furthermore, EPA would prefer that those who are unsure if an extension will be necessary still notify the Agency. If EPA believes the request is unjustified, EPA can notify the owner or operator of such a determination. It would be inappropriate for the owners or operators to make such requests at the 10-month mark where EPA has 60 days to notify the owner or operator if the request was rejected.

EPA received comments concerning the need to clarify that in particular circumstances, all the information listed in § 82.166(n) would not need to be included in a report submitted to EPA. EPA agrees with this commenter. In the NPRM (60 FR 3995) EPA indicates that under certain circumstances particular items listed in § 82.166(n) would not be expected. However, EPA did not include this information in the regulatory text. Moreover, EPA understands that while combining the recordkeeping information list appears to simplify the provisions, misinterpretations could arise. Therefore, EPA has clarified the recordkeeping provisions in this final action by stating under what circumstances specific data elements are or are not required.

EPA received one comment regarding the need to modify the language in § 82.166(n) and (o). In the NPRM these provisions used the language, ''industrial process refrigeration equipment,'' while the requirements are also applicable to the federally-owned commercial and comfort-cooling appliances. EPA agrees with these comments and has made the necessary changes.

One commenter stated that EPA should revise § 82.156(i)(7)(i). The NPRM states that information, in accordance with § 82.166(o), will be submitted to EPA and within 60 days EPA will notify the owner or operator of its determination. The commenter suggests that instead, the request for additional time should be deemed acceptable unless the Agency notifies the commenter within 60 days. EPA disagrees with this commenter. EPA has permitted for an automatic process of granting up to one year where the conditions of § 82.156(i)(7)(ii) apply. EPA distinguished between these two provisions because if the conditions of § 82.156(i)(7)(i) apply, the Agency can grant as much time as necessary. This provision is far more open-ended than § 82.156(i)(7)(ii). Therefore, EPA continues to believe it is necessary for the Agency to review the request for additional time, agree that time to the extent reasonably necessary can be granted, and notify the owner or operator of EPA's decision.

EPA received one comment requesting notification of the proper address for submitting reports to the Agency. EPA will cross reference the address listed in § 82.160: Section 608 Recycling Program Manager, Stratospheric Protection Division, 6205J, 401 M Street, SW., Washington, DC 20460.

I. Purged Refrigerants

EPA received several comments regarding the treatment of purged refrigerants that are destroyed. The commenters agreed that if the refrigerant is not vented to the atmosphere, but is instead destroyed, the material did not leak and should not be included in any leak rate calculations. Several commenters suggested that records be kept on-site by the owners or operators and be made available to EPA upon request. One commenter stated that a requirement to notify EPA will prove to be a resource drain for EPA and will only provide a minimum environmental benefit. EPA agrees with these commenters and will require that records indicating the amount of purged and destroyed refrigerant be maintained and made available to EPA upon request.

One commenter requested that EPA exempt from leak detection determinations any refrigerant purged and destroyed where the destruction can be verified, regardless of the technology utilized. The commenter stated that refrigerant that is leaked into a system, then converted to elemental compounds or other non-ozone-depleting substances, by a process reactor or a hydrochloric acid burner should qualify for this exemption. In discussions with the Agency, commenters indicated that where an owner or operator decides to take credit for destroying purged refrigerant, it will be possible to find an appropriate method for verifying how and how much refrigerant was destroyed, if the refrigerant is ''completely destroyed'' for purposes of the phaseout regulations promulgated under sections 604 and 606 of the Act. EPA agrees with these commenters. While effective destruction of purged refrigerants can take place in a number of technologies, EPA does wish to ensure high efficiency. Therefore, so that purged refrigerant is not counted as part of the leak rate, today's rule will require purged refrigerant to be destroyed at a destruction efficiency of 98 percent or greater, consistent with both the phaseout and the labeling rules. Any destruction technology may be used for the purposes of destroying purged refrigerants under this rule, as long as the destruction efficiency is at least 98 percent.

J. Federally-Owned Chillers

EPA received several comments regarding the proposed requirements for federally-owned chillers. Several commenters supported the proposed language with only minor changes. A few commenters stated that EPA should broaden the requirements to allow additional time for non-federally-owned appliances to repair leaks. The commenters were concerned with manufacturing backlogs. One commenter stated that the Federal government should abide by the same rules as industry, noting that if federal entities are having trouble meeting timelines, large private companies may also be having the same problems. One commenter stated that if federal facilities cannot meet the time frames, then state and local governments may have similar difficulties. The commenter believes that giving an extension of time only to federal facilities could be viewed by the states and local governments as a mandate to them and an excuse for the federal government. One commenter stated that since the federal procurement process is governed by federal regulations a specific exemption was not necessary.

Several commenters stated that they are troubled that EPA has proposed to extend the sound professional judgment

and verification testing requirements to the owners and operators of federally-owned commercial refrigeration appliances for three reasons. First, because the owners or operators were not part of the settlement agreement between EPA and CMA. Second, because the commenters believe that EPA incorrectly stated that minor aspects of this rulemaking affect federally-owned chillers. Finally, because the commenters believe that this rulemaking constitutes an additional burden and that further legal action may be taken by the owners or operators of federally-owned chillers.

EPA understands all the concerns submitted by the commenters. In the NPRM, EPA states that the Agency received information from the Department of Energy (DOE) indicating a need for the proposed extension. EPA discussed with DOE the proposed language, including the use of verification tests. DOE understood and agreed with the requirements. Comments received during the public comment period from DOE suggest clarifications to the proposed regulatory language. DOE is the only federal entity to submit comments specific to this requirement.[2] EPA believes that in most cases federal entities should be able to repair appliances within 30 days or retrofit/replace equipment within one year, and that only under limited circumstances will this extension apply to federally-owned appliances.

EPA did not receive any comments during the public comment period from state or local governments regarding this proposal. Also, EPA received no information regarding the need for extensions for state and local governments prior to issuing the NPRM. Since EPA often receives formal and informal comments from state and local entities, EPA can only conclude that state and local entities do not believe an extension is necessary. The only comments regarding such an extension for state and local entities came from private-sector organizations.

One commenter stated that since the federal procurement process is governed by federal regulations, a de facto exemption exists without EPA specifying an exemption. EPA disagrees with this commenter. EPA is today providing additional time based on compliance with other federal, state, and local regulations for industrial process refrigeration equipment. This provision is applicable for both private and publicly owned or operated industrial process refrigeration equipment. However, it is not applicable to for comfort-cooling or commercial appliances. An additional exemption for federally-owned chillers not used for industrial process refrigeration equipment is necessary. Without such a provision, additional time based on federal, state, and local regulations would not apply.

EPA understands that often large private-sector organizations may have complicated procurement requirements. However, private-sector organizations do not need to go through public notice and comment to amend procurement practices.

Private-sector organizations can effect changes in order to ensure compliance. EPA proposed this extension because federal government officials are bound to follow federal regulations regarding the purchasing. There are only limited circumstances for expediting a specific purchase or changing the procedures quickly. EPA recognizes that the federal government is addressing the needs to provide more flexibility for contract and procurement officers to expedite the purchasing of the most cost-effective services and supplies. These changes, however, have not yet alleviated all the hurdles faced by those procuring appliances subject to this rulemaking.

In the NPRM, EPA focused on the procurement side of the issue. Based on additional comments from DOE, EPA understands that, in reality, the concerns raised by DOE also address how funding is appropriated, as well as environmental and health concerns associated with specific appliances owned or operated by DOE.

EPA recognizes that most of the appliances DOE is concerned with are unique, even amongst the appliances owned or operated by the federal government. DOE believes that in most cases it will be able to comply with the 30-day and one-year requirement. However, appliances used in the production of nuclear weapons and appliances located in areas subject to radiological contamination must comply with a unique set of environmental and public safety activities. It may be necessary to confront specific radiological concerns prior to beginning the process of locating and repairing leaks.

In the NPRM, EPA stated that the Agency intended for this exception to only be used in limited cases. EPA continues to believe that an extension for federally-owned appliances is appropriate; however, EPA recognizes that the proposed extension was overly broad. For example, DOE uses hot cells at a number of its facilities to process radioactive and radioactively-contaminated materials for research laboratories and medical isotope production. Refrigeration appliances serving hot cells may be standard chillers that are used for safe operation by the maintenance of specific temperatures. Hot cells use shielding windows for viewing manipulator operations. These windows are filled with mineral oil or zinc bromide fluids, that also act as radiation shields. If temperatures rise, the window gaskets could leak, the shielding fluid levels could fall, and the hot cell contaminants might be released, thus, posing a potentially serious safety hazard to the operators. If a refrigeration appliance serving a hot cell fails or leaks excessively, it may take several weeks for the radioactive materials in the cell to be placed in a stable condition, such that the materials can be handled safely. The use of temporary cooling appliances in these circumstances is not a viable option due to nuclear safety requirements. Thus, similar to industrial process equipment, the hot cell operations must be shut down to minimize safety hazards, and such a shutdown may take several weeks to be accomplished. In these situations, repair work may not be able to be completed within 30 days, since that work must be performed under safe conditions. EPA believes that there are a limited number of appliances that are confronted with this or similar situations. Therefore, the extension of the 30-day repair requirement would be limited. In most cases, similar to where an industrial process shutdown is required, 120 days will permit for the safe shutdown of the hot cells and for repair work to occur.

EPA estimates that even where radiological contamination exists, extensions will be used only to a limited degree. Moreover, EPA does not believe it is appropriate to broaden this extension to appliances owned by state and local governments since EPA is not aware of any state or local government faced with an analogous scenario. Therefore, federally-owned commercial and comfort-cooling refrigeration appliances will be permitted 120 days for repairs to be completed if the appliance is operating in, or sustaining activities and located in, radiologically contaminated areas.

EPA continues to believe that federal procurement and appropriations requirements influence the ability of the federal government to retrofit/replace/retire an appliance within one year. As stated above, while the federal government is attempting to streamline many procurement practices, the types

[2] Additional comments were received by the Tennessee Valley Authority concerning electricity generated by a nuclear power reactor, not the exemption for federally-owned chillers.

of appliances and their associated costs currently limits the ability of the federal government to comply with a one-year timeframe. In particular, securing funds to retrofit an appliance subject to radiological contamination may require a lengthy process. In most cases, the owners or operators would wait for notification that the funds have been allocated before requesting proposals. Therefore, EPA will provide additional time beyond the initial one year, to the extent necessary, where procurement or appropriations requirements interfere with the ability of a federal entity to retrofit/retire/replace an appliance within one year.

K. Mothballing

EPA proposed suspending the time-relevant leak repair requirements promulgated under § 82.156(i) for appliances that are temporarily or permanently mothballed. In the NPRM, EPA states that it may be possible for the owner or operator of the appliance to discontinue use temporarily, perhaps on a seasonal basis. For example, it may be reasonable to shut down or mothball a comfort-cooling appliance for a period of time.

The NPRM further states that this type of system mothballing would not be the same as an industrial process shutdown undertaken to repair particular leaks found in industrial process refrigeration equipment or perform other maintenance activities. Also, this type of shutdown or mothballing would not be the same as being taken off-line due to a power outage or event. The NPRM defines system mothballing as an intentional shutting down of the refrigerant appliance undertaken for an extended period of time by the owners or operators of that facility—not for the purposes of servicing or repairing the appliance—where the refrigerant has been evacuated. The NPRM further states that if the appliance is temporarily mothballed, EPA believes it is appropriate to suspend the time-relevant repair and/or retrofit requirements while the appliance is effectively inoperative. For example, if a comfort-cooling appliance with over 50 pounds of refrigerant has a leak rate of more than 15 percent per year, the leak or leaks must be repaired or the appliance must be retrofitted within one year. However, if after discovery of the exceedance of the leak rate, the owner or operator voluntarily mothballs the appliance for a period of several months or years, EPA believes it would be appropriate to suspend the need to repair leaks or retrofit the appliance during the same time period. Therefore, if the appliance operated for five days after discovery of the exceedance of the leak rate, then shut down for 2 months, when the appliance returned to operating, the owner or operator will still have 25 days to repair the leaks. The applicable verification tests would need to be employed.

EPA received several comments supporting the suspension of time-relevant repair or retrofit requirements if the owner or operator temporarily mothballs the affected appliance. However, several commenters suggested that the time-relevant requirements should also be suspended while repair or retrofit work is occurring. One commenter stated that refrigeration systems are designed to provide maximum cooling; however, if the weather cools or the processes needing refrigeration are not operating at full production, or if there are several refrigeration systems supporting a facility, it may be possible to mothball a leaky appliance. This commenter and several others recommend that EPA suspend the ''clock'' whether the appliance is mothballed for the purposes of repair or not. The commenters stated that the basis for their concern is that if the appliance or an isolated section of an appliance has been evacuated to at least atmospheric pressure, only a limited amount of refrigerant is likely to be released. The commenters further stated that the intent of the rulemaking is to reduce the emissions of ozone-depleting refrigerants. The commenters believe that while mothballed, there would essentially be no emission of ozone-depleting refrigerants. Another commenter stated that EPA should focus on the amount of time that an appliance actually operates at an excessive leak rate and not the amount of time that a repair takes. Another commenter stated that it may take some time to determine that the leak rate is above the threshold. After that determination is made, it may take time for a part to be ordered. The commenter is concerned that if the system mothballing definition excludes appliances shut down for the purposes of completing repairs, the owner or operator facing the above scenario would be forced into a retrofit/replacement mode. One commenter suggested that recordkeeping and reporting requirements could be used to monitor the appropriateness of using this provision.

EPA understands the concerns raised by these commenters. The intention of Section 608 is to limit refrigerant emissions, not to determine how long it should take to repair an appliance.

EPA intended to permit system mothballing because the risk of releases from evacuated appliances is minimal. EPA did not intend to preclude repair work from occurring while an appliance has been mothballed. Instead, EPA was attempting to distinguish between system mothballing and other types of shutdowns, for different purposes, particularly industrial process shutdowns. In most cases, EPA believes that system mothballing may constitute extensive shutdowns. In many cases, the appliance could be mothballed for a season.

EPA received comments describing scenarios where mothballing appliances and simultaneously completing repairs would be a practical solution. Examples include manufacturing processes that produce material that have only a seasonal demand, where a spare or backup appliance can be brought on line, and where there is excess capacity in another refrigerant appliance that can be used to replace the capacity lost by mothballing an appliance. Commenters believe that evacuating the appliance to at least atmospheric pressure, and allowing the repair activities to occur, will limit emissions. Commenters further recognize the need to complete verification tests regardless of the conditions under which the repair work was conducted.

EPA agrees that completing repairs while the appliance is evacuated equates to almost no risk of emissions. Therefore, through this action, EPA is modifying the proposed definition of system mothballing. EPA will delete the language ''not for purposes of servicing or repairing the appliance'' from the definition of system mothballing. However, to ensure that for industrial process refrigeration equipment, verification tests still occur, EPA will include language stating that an initial verification test be completed prior to returning these appliances to normal operating conditions and that a follow-up verification test will be required within 30 days.

L. Grandfathering

EPA received one comment regarding the treatment of industrial process refrigeration equipment that began retrofit or replacement activities prior to the promulgation of this rulemaking. A company that discovered a leak in early 1994 that exceeded 35 percent developed a retrofit plan under the existing requirements. It now has become apparent that the company will require additional time beyond the one year and if these regulations were already promulgated, the company most likely would have qualified for additional time. Since today's action was not already effective, and therefore

no extensions could be applied for, the commenter is concerned with how this appliance will be treated. EPA believes that in this case good faith efforts were made by the owner or operator of industrial process refrigeration equipment to meet the existing requirements prior to the stay. In cases where the owners or operators have developed plans and made good faith efforts to retrofit or retire appliances prior to the promulgation of today's action, and where these efforts are not yet complete, the owners or operators must develop a plan and complete all retrofit or retirement actions by August 8, 1996. The owners or operators are permitted to provide for extensions beyond August 8, 1996, in accordance with § 82.156 (i)(7) and (i)(8).

M. Terminology

EPA received comments asking the Agency to clarify, modify, and/or ensure consistency with EPA's use of certain terms, including but not limited to ''facility,'' ''system,'' and ''appliance.'' EPA has reviewed the regulatory text and the preamble to incorporate appropriate changes. EPA anticipates that these changes should lessen any confusion in distinguishing between a facility, a system, and an appliance. EPA also has considered all other comments concerning grammar and language and believes they have been appropriately addressed in the preamble and regulatory text.

EPA received one comment suggesting that where the regulatory text states that a leak rate should be reduced to 35 or 15 percent, the language should be amended to state 35 or 15 percent and below in order to include all universe of allowable leak rates. EPA agreed with this commenter and has made the necessary changes.

EPA received comments requesting additional cross-referencing in the regulatory text. One commenter suggested that particular cross-references should be added, deleted, or modified to more accurately indicate the Agency's intent. EPA believes it has addressed all these concerns.

N. Regulatory Impact Analysis

It has been determined by OMB and EPA that the proposed amendment to the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order. EPA received one comment disagreeing with this determination. The commenter stated that though the rule provides for extensions for leak repair, the recordkeeping burdens make this option essentially useless. The commenter further states that if other leaks cannot be located within 180 days, the rule has a net effect of mandating retrofits. The commenter believes retrofitting one plant alone could exceed $10 million. That multiplied over an entire group of affected industries would deem the rule significant.

EPA strongly disagrees with this commenter's view that this rule is significant. EPA did perform a Regulatory Impact Analysis (RIA) when the original regulations regarding section 608 were promulgated in May 1993. This RIA is contained in Air Docket A–92–01. At that time, the costs associated with repairing and retrofitting appliances were considered. Today's action only lessens the impact of the original requirements by providing flexibility. The owners or operators of affected equipment have many options. One failed verification test does not immediately mean that retrofitting or replacing the appliance is the only option available as the only avenue. Furthermore, the provision permitting 180 days to decrease the overall leak rate of the industrial process refrigeration equipment was not contained in the original rulemaking. The owners or operators of a leaky appliance would have had to repair the leaks within 30 days or develop a retrofit or retirement plan. Any new recordkeeping or reporting requirements are necessary as a result of the more flexible approach. Most commenters agreed that these provisions were necessary. Moreover, as comments in the docket suggest, many of the data elements contained in the recordkeeping and reporting requirements were suggested by CMA and its members.

EPA does not believe that this rulemaking substantially increases the burden on the regulated community. Moreover, EPA believes that is the impact of this rulemaking a more flexible less costly means for handling leaks.

O. Allowing Appliances To Be Pressurized To Slightly Above O PSIG

EPA proposed to allow appliances to be pressurized up to 5 psig in order to change oil in industrial process refrigeration equipment. The NPRM (60 FR 4002) states that a small positive pressure is needed during oil changes to force the oil from its reservoir. Oil will not flow from a reservoir that is under vacuum. EPA stated that this approach will reduce emissions and thus will have an overall positive impact on the environment.

EPA received comments regarding this issue. One commenter asked for EPA to reopen and extend the comment period. Since this provision is part of a settlement agreement with a court-ordered final signature date of July 31, 1995, EPA is unable to reopen the comment period at this time. Furthermore, EPA did provide a thirty-day comment period with the option of holding a public hearing if one had been requested, in accordance with the Administrative Procedures Act. Moreover, to the extent practicable, EPA has responded to all comments including those received after the close of the comment period.[3]

Several commenters agreed with EPA's proposed approach, stating that permitting evacuation or pressurization to slightly above 0 psig would facilitate the removal of oil. One commenter stated that only a small amount of positive pressure is necessary because technicians would not let oil out at full system pressure since the oil would immediately turn into a large volume of froth.

EPA also received comments disagreeing with the need to reduce pressure. One commenter stated that § 82.156 and § 82.158 should not apply to oil changes. The commenter stated that any unit that requires that the oil be changed is provided with proper valves for oil change. The only refrigerant that is vented is the refrigerant contained in the oil. The commenter believes that the oil will be heated using the system oil heaters to bring the oil up to the manufacturer's design temperature. The hot oil will contain the least amount of refrigerant possible for the system stand-by pressure. The commenter believes that any requirement to reduce the pressure of the system to 5 psig would add major costs to the preventive maintenance of the unit. A job that may take a few hours would become a two-day job in cases where the unit does not have a system receiver. A refrigerant recovery unit and tanks would have to be brought to and removed from the job site. The commenter believes that the rules as written allow for oil removal without changing the system pressure since no evacuation is necessary after the oil change and results in only a ''de minimis'' release of refrigerant. Another commenter stated that refrigerant entrained in oil is not subject to the regulations.

EPA disagrees with these commenters' interpretations of the

[3] This particular comment was received the evening of June 15, 1995. The comment period closed February 21, 1995.

regulations. Under the initial regulations promulgated under section 608 and published May 14, 1993 (58 FR 28660), oil removal is considered a minor repair. Consistent with the requirements for all minor repairs the appliance must be brought to at least atmospheric pressure for oil removal.

The settlement agreement between EPA and CMA was based on the need to provide greater flexibility to the regulated community. The inclusion of a proposed provision to allow a slight positive pressure was viewed as a relaxation of the current regulations. This implies that a significant part of the regulated community agreed with EPA's interpretation that under the May 14 rule, oil removal required evacuation to atmospheric pressure.

Two commenters stated that EPA should not consider removing oil to be opening the appliance. One commenter stated that when the oil has been removed the valve is closed and the oil container is removed. The second commenter stated that the oil remaining in the sump is a barrier that will keep the refrigerant in the appliance. The impeller is a labyrinth seal with only .002–.003 inch clearance, and the valve through which the oil is drained is a small orifice. This commenter believes that if extreme precautionary measures are taken the appliance is not truly opened.

EPA disagrees with these commenters. EPA believes that changing oil does constitute opening the appliance. Opening an appliance is defined as ''any service, maintenance, or repair on an appliance that would release class I or class II refrigerant from the appliance to the atmosphere unless the refrigerant were recovered previously from the appliance * * *'' (59 FR 55926). EPA believes that refrigerant would be released during an oil change, unless the refrigerant were recovered previously. One commenter recognized that such a risk exists by stating that there is a need for ''extreme precautionary measures * * * during oil changes'' and that only under those circumstances is the ''system not truly 'opened' and there is little risk that refrigerant in the system will be vented to the atmosphere.'' EPA believes that the need to take ''extreme precautionary measures'' to prevent a release demonstrates that without such precautions a release is likely. Furthermore, EPA believes there is no way to assure that refrigerant is not released except to evacuate the appliance to 5 psig or below. Therefore, EPA continues to believe that removing oil constitutes opening the appliance.

EPA is concerned not only with the bulk of the refrigerant charge, but also with the refrigerant entrained in the oil. EPA has stated in applicability determination #23 and in the preamble to the initial regulations (58 FR 28677) that *after an appliance is reduced to atmospheric pressure,* the refrigerant entrained in the oil is not subject to those regulations. EPA would like to clarify that where the refrigerant and oil have not been drawn to at least atmospheric pressure, section 608(c), the venting provision, would apply. Therefore, recovery of the refrigerant from that oil would still be required.

During the settlement negotiations with CMA, CMA supplied information stating that the percentage of refrigerant entrained in oil for an appliance at 80 degrees fahrenheit could be 50 percent of the total volume of oil for HCFC–22. If the pressure is reduced to 5 psig the percentage of refrigerant is less than 5 percent for HCFC–22. EPA believes that this demonstrates that without a requirement to reduce the pressure or to recover that refrigerant in some other way, significant quantities of refrigerant will be released.

One commenter suggested an approach that would recover the refrigerant in the oil through a less time-consuming method. The commenter suggested that instead of evacuating the refrigerant EPA should permit the oil to be drained into a secondary vessel that can be isolated from the chiller and evacuated to recover the refrigerant in the oil. EPA received another comment stating that this method would still be time-consuming and costly. After reviewing the comments, EPA believes that this method actually will be less time-consuming and costly than the current requirements. Those concerned with the time and cost involved with this procedure should consider whether their current practices are actually in violation of the regulations.

EPA is concerned with preventing the release of the refrigerant through the opening of the appliance. Therefore, EPA believes that if the oil can be drained into a system receiver, where the system receiver can be isolated and evacuated to a pressure no greater than 5 psig, the goal would be achieved. EPA believes this a reasonable alternative to the requirements currently in effect. Therefore, through this action, EPA will revise the regulations to permit appliances to be pressurized to slightly above 0 psig (but not to exceed 5 psig) during oil changes and/or to permit the oil to be drained into a system receiver where the technician will then recover the oil entrained in the refrigerant to 0 psig.

VI. Judicial Review

Under Section 307(b)(1) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of this action in the **Federal Register**. Under Section 307(b)(2), the requirements of this rule may not be challenged later in judicial proceedings brought to enforce those requirements.

VII. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this final action to amendment to the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be

significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. As discussed in this preamble, this rulemaking has the net effect of reducing the burden of part 82 subpart F of the Stratospheric Protection regulations on regulated entities, including State, local, and tribal governments or private sector entities by providing greater flexibility.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted to by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq* and will be assigned control number 2060–0256.

The current collection of information has an estimated reporting and recordkeeping burden averaging 564,807 hours per respondent; however, this final action will decrease that burden by 108 hours. 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 this burden to Director, Regulatory Information Division; EPA; 401 M Street SW., (Mail Code 2136); 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.''

D. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that any impact that this amendment will have on the regulated community will serve only to provide relief from otherwise applicable regulations, and will therefore limit the negative economic impact associated with the regulations previously promulgated under section 608. An examination of the impacts on small entities was discussed in the final rule (58 FR 28660). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis was developed. That impact analysis accompanied the final rule and is contained in Docket A–92–01.

I certify that this amendment to the refrigerant recycling rule will not have any additional negative economic impacts on any small entities.

Dated: July 25, 1995.

Carol M. Browner,

Administrator.

List of Subjects in 40 CFR Part 82

Environmental protection, Chemical Manufacturers Association, Industrial process refrigeration, Leak repair, Mothballing, Radiological contamination, Reporting and recordkeeping requirements, Retrofit, Verification test.

Part 82, chapter I, title 40, of the Code of Federal Regulations, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.152 is amended by removing the paragraph designations and placing the definitions in alphabetical order; by revising the definition for ''Industrial process refrigeration''; and by adding new definitions in alphabetical order to read as follows:

§ 82.152 Definitions.

* * * * *

Critical component means, for the purposes of § 82.156(i), a component without which industrial process refrigeration equipment will not function, will be unsafe in its intended environment, and/or will be subject to failures that would cause the industrial process served by the refrigeration appliance to be unsafe.

Custom-built means, for the purposes of § 82.156(i), that the equipment or any of its critical components cannot be purchased and/or installed without being uniquely designed, fabricated and/or assembled to satisfy a specific set of industrial process conditions.

Follow-up verification test means, for the purposes of § 82.156(i), those tests that involve checking the repairs within 30 days of the appliance's returning to normal operating characteristics and conditions. Follow-up verification tests for appliances from which the refrigerant charge has been evacuated means a test conducted after the appliance or portion of the appliance has resumed operation at normal operating characteristics and conditions of temperature and pressure, except in cases where sound professional judgment dictates that these tests will be more meaningful if performed prior to the return to normal operating characteristics and conditions. A follow-up verification test with respect to repairs conducted without evacuation of the refrigerant charge means a reverification test conducted after the initial verification test and usually within 30 days of normal operating conditions. Where an appliance is not evacuated, it is only necessary to conclude any required changes in pressure, temperature or other conditions to return the appliance to normal operating characteristics and conditions.

Full charge means, for the purposes of § 82.156(i), the amount of refrigerant required for normal operating characteristics and conditions of the appliance as determined by using one of the following four methods or a combination of one of the following four methods:

(1) The equipment manufacturers' determination of the correct full charge for the equipment;

(2) Determining the full charge by appropriate calculations based on component sizes, density of refrigerant, volume of piping, and all other relevant considerations;

(3) The use of actual measurements of the amount of refrigerant added or evacuated from the appliance; and/or

(4) The use of an established range based on the best available data, regarding the normal operating characteristics and conditions for the appliance, where the mid-point of the range will serve as the full charge, and where records are maintained in accordance with § 82.166(q).

* * * * *

Industrial process refrigeration means, for the purposes of § 82.156(i), complex customized appliances used in the chemical, pharmaceutical, petrochemical and manufacturing industries. These appliances are directly linked to the industrial process. This sector also includes industrial ice machines, appliances used directly in the generation of electricity, and ice rinks. Where one appliance is used for both industrial process refrigeration and other applications, it will be considered industrial process refrigeration equipment if 50 percent or more of its operating capacity is used for industrial process refrigeration.

Industrial process shutdown means, for the purposes of § 82.156(i), that an industrial process or facility temporarily ceases to operate or manufacture whatever is being produced at that facility.

Initial verification test means, for the purposes of § 82.156(i), those leak tests that are conducted as soon as practicable after the repair is completed. An initial verification test, with regard to the leak repairs that require the evacuation of the appliance or portion of the appliance, means a test conducted prior to the replacement of the full refrigerant charge and before the appliance or portion of the appliance has reached operation at normal operating characteristics and conditions of temperature and pressure. An initial verification test with regard to repairs conducted without the evacuation of the refrigerant charge means a test conducted as soon as practicable after the conclusion of the repair work.

* * * * *

Normal operating characteristics or conditions means, for the purposes of § 82.156(i), temperatures, pressures, fluid flows, speeds and other characteristics that would normally be expected for a given process load and ambient condition during operation. Normal operating characteristics and conditions are marked by the absence of atypical conditions affecting the operation of the refrigeration appliance.

* * * * *

Suitable replacement refrigerant means, for the purposes of § 82.156(i)(7)(i), a refrigerant that is acceptable under section 612(c) of the Clean Air Act Amendments of 1990 and all regulations promulgated under that section, compatible with other materials with which it may come into contact, and able to achieve the temperatures required for the affected industrial process in a technically feasible manner.

* * * * *

System mothballing means the intentional shutting down of a refrigeration appliance undertaken for an extended period of time by the owners or operators of that facility, where the refrigerant has been evacuated from the appliance or the affected isolated section of the appliance, at least to atmospheric pressure.

* * * * *

3. Section 82.156 is amended by revising paragraphs (a)(2)(i)(A) and (a)(2)(i)(B), adding a new paragraph (a)(2)(i)(C), and revising paragraph (i) to read as follows:

§ 82.156 Required practices.

* * * * *

(a) * * *

(2)(i) * * *

(A) Be evacuated to a pressure no higher than 0 psig before it is opened if it is a high- or very high-pressure appliance;

(B) Be pressurized to 0 psig before it is opened if it is a low-pressure appliance. Persons pressurizing low-pressure appliances that use refrigerants with boiling points at or below 85 degrees Fahrenheit at 29.9 inches of mercury (standard atmospheric pressure), (e.g., CFC–11 and HCFC–123), must not use methods such as nitrogen, that require subsequent purging. Persons pressurizing low-pressure appliances that use refrigerants with boiling points above 85 degrees Fahrenheit at 29.9 inches of mercury, e.g., CFC–113, must use heat to raise the internal pressure of the appliance as much as possible, but may use nitrogen to raise the internal pressure of the appliance from the level attainable through use of heat to atmospheric pressure; or

(C) For the purposes of oil changes, be evacuated or pressurized to a pressure no higher than 5 psig, before it is opened; or drain the oil into a system receiver to be evacuated or pressurized to a pressure no higher than 5 psig.

* * * * *

(i)(1) Owners or operators of commercial refrigeration equipment normally containing more than 50 pounds of refrigerant must have leaks repaired in accordance with paragraph (i)(9) of this section, if the appliance is leaking at a rate such that the loss of refrigerant will exceed 35 percent of the total charge during a 12-month period, except as described in paragraphs (i)(6), (i)(8), and (i)(10) of this section and paragraphs (i)(1)(i), (i)(1)(ii), and (i)(1)(iii) of this section. Repairs must bring the annual leak rate to below 35 percent.

(i) If the owners or operators of the federally-owned commercial refrigerant appliances determine that the leaks cannot be repaired in accordance with paragraph (i)(9) of this section and that an extension in accordance with the requirements discussed in this paragraph (i)(1)(i) of this section apply, they must document all repair efforts, and notify EPA of their inability to comply within the 30-day repair requirement, and the reason for the inability must be submitted to EPA in accordance with § 82.166(n). Such notification must be made within 30 days of discovering the leaks. EPA will determine if the extension requested in accordance with the requirements discussed in paragraph (i)(1)(i) of this section is justified. If the extension is not justified, EPA will notify the owner/operator within 30 days of receipt of the notification.

(ii) Owners or operators of federally-owned commercial refrigeration equipment may have more than 30 days to repair leaks if the refrigeration appliance is located in an area subject to radiological contamination or where the shutting down of the appliance will directly lead to radiological contamination. Only the additional time needed to conduct and complete repairs in a safe working environment will be permitted.

(iii) Owners or operators of federally-owned commercial refrigeration equipment requesting or who are granted time extensions under this paragraph must comply with paragraphs (i)(3) and (i)(4) of this section.

(2) The owners or operators of industrial process refrigeration equipment normally containing more than 50 pounds of refrigerant must have leaks repaired if the appliance is leaking at a rate such that the loss of refrigerant will exceed 35 percent of the total charge during a 12-month period in accordance with paragraph (i)(9) of this section, except as described in paragraphs (i)(6), (i)(7) and (i)(10) of this section, and paragraphs (i)(2)(i) and (i)(2)(ii) of this section. Repairs must bring annual leak rates to below 35 percent during a 12-month period. If the owners or operators of the industrial process refrigeration equipment determine that the leak rate cannot be brought to below 35 percent during a 12-month period within 30 days (or 120

days, where an industrial process shutdown in accordance with paragraph (i)(2)(ii) of this section is required,) and in accordance with paragraph (i)(9) of this section, and that an extension in accordance with the requirements discussed in this paragraph apply, the owners or operators of the appliance must document all repair efforts, and notify EPA of the reason for the inability in accordance with § 82.166(n) within 30 days of making this determination. Owners or operators who obtain an extension pursuant to this section or elect to utilize the additional time provided in paragraph (i)(2)(i) of this section, must conduct all necessary leak repairs, if any, that do not require any additional time beyond the initial 30 or 120 days.

(i) The owners or operators of industrial process refrigeration equipment are permitted more than 30 days (or 120 days where an industrial process shutdown in accordance with paragraph (i)(2)(ii) of this section is required) to repair leaks, if the necessary parts are unavailable or if requirements of other applicable federal, state, or local regulations make a repair within 30 or 120 days impossible. Only the additional time needed to receive delivery of the necessary parts or to comply with the pertinent regulations will be permitted.

(ii) Owners or operators of industrial process refrigeration equipment will have a 120-day repair period, rather than a 30-day repair period, to repair leaks in instances where an industrial process shutdown is needed to repair a leak or leaks from industrial process refrigeration equipment.

(3) The owners or operators of industrial process refrigeration equipment who are granted additional time under paragraphs (i)(1), (i)(2), and (i)(5) of this section must ensure that the repair efforts performed be those that sound professional judgment indicate will be sufficient to bring the leak rates below the applicable allowable annual rate. When an industrial process shutdown has occurred or when repairs have been made while an appliance is mothballed, an initial verification test shall be conducted at the conclusion of the repairs and a follow-up verification test shall be conducted within 30 days of completing the repairs or within 30 days of bringing the appliance back on-line, if taken off-line, but no sooner than when the system has achieved normal operating characteristics and conditions. When repairs have been conducted without an industrial process shutdown or system mothballing, an initial verification test shall be conducted at the conclusion of the repair efforts and a follow-up verification test shall be conducted within 30 days after the initial follow-up verification test. In all cases, the follow-up verification test shall be conducted at normal operating characteristics and conditions unless sound professional judgment indicates that tests performed at normal operating characteristics and conditions will produce less reliable results, in which case the follow-up verification test shall be conducted at or near the normal operating pressure where practicable, and at or near the normal operating temperature if practicable, and within 30 days of completing the repair efforts.

(i) If industrial process refrigeration equipment is taken off line, it can not be brought back on-line until an initial verification test indicates that the repairs undertaken in accordance with paragraphs (i)(1) (i), (ii), and (iii), or (i)(2) (i) and (ii), or (5) (i), (ii) and (iii) of this section, have been successfully completed, demonstrating the leak or leaks are repaired or where the owners or operators of the industrial process refrigeration equipment will retrofit/replace/retire the industrial process refrigeration equipment in accordance with paragraph (i)(6) of this section.

(ii) If the follow-up verification test indicates that the repairs to industrial process refrigeration equipment have not been successfully completed, the owner must retrofit or replace the equipment in accordance with paragraph (i)(6) of this section within one year after the failure to verify that the repairs had been successfully completed or such longer time period as may apply in accordance with paragraphs (i)(7) (i), (ii) and (iii) or (i)(8)(i) and (ii) of this section. The owners and operators of industrial process refrigeration equipment are relieved of this requirement if the conditions of paragraphs (i)(3)(iv) and/or (i)(3)(v) of this section are met.

(iii) The owner or operator of industrial process refrigeration equipment that fails a follow-up verification test must notify EPA within 30 days of the failed follow-up verification test in accordance with § 82.166(n).

(iv) The owner or operator is relieved of the obligation to retrofit or replace the industrial process refrigeration equipment as discussed in paragraph (i)(6) of this section if second repair efforts to fix the same leaks that were the subject of the first repair efforts are successfully completed within 30 days or 120 days where an industrial process shutdown is required, after the initial failed follow-up verification test. The second repair efforts are subject to the same verification requirements of paragraphs (i)(3), (i)(3) (i) and (ii) of this section. The owner or operator is required to notify EPA within 30 days of the successful follow-up verification test in accordance with § 82.166(n) and the owner or operator is no longer subject to the obligation to retrofit or replace the appliance that arose as a consequence of the initial failure to verify that the leak repair efforts were successful.

(v) The owner or operator of industrial process refrigeration equipment is relieved of the obligation to retrofit or replace the equipment in accordance with paragraph (i)(6) of this section if within 180 days of the initial failed follow-up verification test, the owner or operator establishes that the appliance's annual leak rate does not exceed the applicable allowable annual leak rate, in accordance with paragraph (i)(4) of this section. If the appliance's owner or operator establishes that the appliance's annual leak rate does not exceed the applicable allowable annual leak rate, the owner or operator is required to notify EPA within 30 days of that determination in accordance with § 82.166(n) and the owner or operator would no longer be subject to the obligation to retrofit or replace the equipment that arose as a consequence of the initial failure to verify that the leak repair efforts were successful.

(4) In the case of a failed follow-up verification test subject to paragraph (i)(3)(v) of this section, the determination of whether industrial process refrigeration equipment has an annual leak rate that exceeds the applicable allowable annual leak rate will be made in accordance with parameters identified by the owner or operator in its notice to EPA regarding the failure of the initial follow-up verification test, if those parameters are acceptable to EPA; otherwise by parameters selected by EPA. The determination must be based on the full charge for the affected industrial process refrigeration equipment. The leak rate determination parameters in the owner's or operator's notice will be considered acceptable unless EPA notifies the owners or operators within 30 days of receipt of the notice. Where EPA does not accept the parameters identified by the owner or operator in its notice, EPA will not provide additional time beyond the additional time permitted in paragraph (i)(3)(v) of this section unless specifically stated in the parameters selected by EPA.

(5) Owners or operators of appliances normally containing more than 50 pounds of refrigerant and not covered by paragraph (i)(1) or (i)(2) of this section must have leaks repaired in

accordance with paragraph (i)(9) of this section if the appliance is leaking at a rate such that the loss of refrigerant will exceed 15 percent of the total charge during a 12-month period, except as described in paragraphs (i)(6), (i)(8) and (i)(10) of this section and paragraphs (i)(5)(i), (i)(5)(ii) and (i)(5)(iii) of this section. Repairs must bring the annual leak rate to below 15 percent.

(i) If the owners or operators of federally-owned comfort-cooling appliances determine that the leaks cannot be repaired in accordance with paragraph (i)(9) of this section and that an extension in accordance with the requirements discussed in paragraph (i)(5) of this section apply, they must document all repair efforts, and notify EPA of their inability to comply within the 30-day repair requirement, and the reason for the inability must be submitted to EPA in accordance with § 82.166(n). Such notification must be made within 30 days of discovering that leak repair efforts cannot be completed within 30 days.

(ii) Owners or operators of federally-owned comfort-cooling appliances may have more than 30 days to repair leaks where the refrigeration appliance is located in an area subject to radiological contamination or where the shutting down of the appliance will directly lead to radiological contamination. Only the additional time needed to conduct and complete work in a safe environment will be permitted.

(iii) Owners or operators of federally-owned comfort-cooling appliances requesting, or who are granted, time extensions under this paragraph must comply with paragraphs (i)(3) and (i)(4) of this section.

(6) Owners or operators are not required to repair the leaks defined in paragraphs (i)(1), (i)(2) and (i)(5) of this section if, within 30 days of discovering the exceedance of the applicable leak rate or within 30 days of a failed follow-up verification test in accordance with paragraph (i)(3)(ii) of this section, they develop a one-year retrofit or retirement plan for the leaking appliance. This plan (or a legible copy) must be kept at the site of the appliance. The original must be made available for EPA inspection upon request. The plan must be dated and all work under the plan must be completed within one year of the plan's date, except as described in paragraphs (i)(7) and (i)(8) of this section. Owners are temporarily relieved of this obligation if the appliance has undergone system mothballing as defined in § 82.152.

(i) If the owner or operator has made good faith efforts to repair leaks in accordance with paragraphs (i)(1), (i)(2), or (i)(5) of this section, and has determined to proceed with a plan to retrofit or retire the appliance in accordance with paragraph (i)(6) of this section, the owner or operator must develop a retrofit or retirement plan within 30 days of the determination to retrofit or retire the appliance, to be completed within one year of when the owner or operator discovered that the leak rate exceeded the applicable allowable leak rate, except as provided in paragraphs (i)(7) and (i)(8) of this section.

(ii) In all cases, subject to paragraph (i)(6)(i) of this section, the written plan shall be prepared no later than 30 days after the owner or operator has determined to proceed with retrofitting or retiring the appliance. All reports required under § 82.166(o) shall be due at the time specified in the paragraph imposing the specific reporting requirement, or no later than 30 days after the decision to retrofit or retire the appliance, whichever is later.

(iii) In cases where the owner or operator of industrial process refrigeration equipment has made good faith efforts to retrofit or retire industrial process refrigeration equipment prior to August 8, 1995, and where these efforts are not complete, the owner or operator must develop a retrofit or retirement plan that will complete the retrofit or retirement of the affected appliance by August 8, 1996. This plan (or a legible copy) must be kept at the site of the appliance. The original must be made available for EPA inspection upon request. Where the conditions of paragraphs (i)(7) and (i)(8) of this section apply, and where the length of time necessary to complete the work is beyond August 8, 1996, all records must be submitted to EPA in accordance with § 82.166(o), as well as maintained on-site.

(7) The owners or operators of industrial process refrigeration equipment will be allowed additional time to complete the retrofit or retirement of industrial process refrigeration equipment if the conditions described in paragraphs (i)(7)(i) or (i)(7)(ii) of this section are met. The owners or operators of industrial process refrigeration equipment will be allowed additional time beyond the additional time provided in paragraph (i)(7)(ii) of this section if the conditions described in paragraph (i)(7)(iii) of this section are met.

(i) Additional time, to the extent reasonably necessary will be allowed for retrofitting or retiring industrial process refrigeration equipment due to delays occasioned by the requirements of other applicable federal, state, or local laws or regulations, or due to the unavailability of a suitable replacement refrigerant with a lower ozone depletion potential. If these circumstances apply, the owner or operator of the facility must notify EPA within six months after the 30-day period following the discovery of an exceedance of the 35 percent leak rate. Records necessary to allow EPA to determine that these provisions apply and the length of time necessary to complete the work must be submitted to EPA in accordance with § 82.166(o), as well as maintained on-site. EPA will notify the owner or operator of its determination within 60 days of receipt the submittal.

(ii) An additional one-year period beyond the initial one-year retrofit period is allowed for industrial process refrigeration equipment where the following criteria are met:

(A) The new or the retrofitted industrial process refrigerant equipment is custom-built;

(B) The supplier of the appliance or one or more of its critical components has quoted a delivery time of more than 30 weeks from when the order is placed;

(C) The owner or operator notifies EPA within six months of the expiration of the 30-day period following the discovery of an exceedance of the 35 percent leak rate to identify the owner or operator, describe the appliance involved, explain why more than one year is needed, and demonstrate that the first two criteria are met in accordance with § 82.166(o); and

(D) The owner or operator maintains records that are adequate to allow a determination that the criteria are met.

(iii) The owners or operators of industrial process refrigeration equipment may request additional time to complete retrofitting or retiring industrial process refrigeration equipment beyond the additional one-year period if needed and where the initial additional one year was granted in accordance with paragraph (i)(7)(ii) of this section. The request shall be submitted to EPA before the end of the ninth month of the first additional year and shall include revisions of information required under 82.166(o). Unless EPA objects to this request submitted in accordance with § 82.166(o) within 30 days of receipt, it shall be deemed approved.

(8) Owners or operators of federally-owned commercial or comfort-cooling appliances will be allowed an additional year to complete the retrofit or retirement of the appliances if the conditions described in paragraph (i)(8)(i) of this section are met, and will be allowed one year beyond the

additional year if the conditions in paragraph (i)(8)(ii) of this section are met.

(i) Up to one additional one-year period beyond the initial one-year retrofit period is allowed for such equipment where the following criteria are met:

(A) Due to complications presented by the federal agency appropriations and/or procurement process, a delivery time of more than 30 weeks from the beginning of the official procurement process is quoted, or where the appliance is located in an area subject to radiological contamination and creating a safe working environment will require more than 30 weeks;

(B) The operator notifies EPA within six months of the expiration of the 30-day period following the discovery of an exceedance of the applicable allowable annual leak rate to identify the operator, describe the appliance involved, explain why more than one year is needed, and demonstrate that the first criterion is met in accordance with § 82.166(o); and

(C) The operator maintains records adequate to allow a determination that the criteria are met.

(ii) The owners or operators of federally-owned commercial or comfort-cooling appliances may request additional time to complete retrofitting, replacement or retiring such appliances beyond the additional one-year period if needed and where the initial additional one year was granted in accordance with paragraph (i)(8)(i) of this section. The request shall be submitted to EPA before the end of the ninth month of the first additional year and shall include revisions of information earlier submitted as required under § 82.166(o). Unless EPA objects to this request submitted in accordance with § 82.166(o) within 30 days of receipt, it shall be deemed approved.

(9) Owners or operators must repair leaks pursuant to paragraphs (i)(1), (i)(2) and (i)(5) of this section within 30 days after discovery, or within 30 days after when the leaks should have been discovered if the owners intentionally shielded themselves from information which would have revealed a leak, unless granted additional time pursuant to § 82.156(i).

(10) The amount of time for owners and operators to complete repairs, retrofit plans or retrofits/replacements/retirements under paragraphs (i)(1), (i)(2), (i)(5), (i)(6), (i)(7), (i)(8), and (i)(9) of this section is temporarily suspended at the time an appliance is mothballed as defined in § 82.152. The time for owners and operators to complete repairs, retrofit plans, or retrofits/replacements will resume on the day the appliance is brought back on-line and is no longer considered mothballed. All initial and follow-up verification tests must be performed in accordance with paragraphs (i)(3), (i)(3)(i), and (i)(3)(ii) of this section.

(11) In calculating annual leak rates, purged refrigerant that is destroyed at a verifiable destruction efficiency of 98 percent or greater will not be counted toward the leak rate. Owners or operators destroying purged refrigerants must maintain information as set forth in § 82.166(p)(1) and submit to EPA, within 60 days after the first time such exclusion is used by that facility, information set forth in § 82.166(p)(2).

* * * * *

4. § 82.166 is amended by adding paragraphs (n), (o), (p), and (q) to read as follows:

§ 82.166 Reporting and recordkeeping requirements.

* * * * *

(n) The owners or operators of appliances must maintain on-site and report to EPA at the address listed in § 82.160 the following information, where such reporting and recordkeeping is required and within the timelines specified under § 82.156 (i)(1), (i)(2), (i)(3) and (i)(5). This information must be relevant to the affected appliance and must include: identification of the facility; the leak rate; the method used to determine the leak rate and full charge; the date a leak rate of greater than the allowable annual leak rate was discovered; the location of leaks(s) to the extent determined to date; and any repair work that has been completed thus far and the date that work was completed.

(1) The reasons why more than 30 days are needed to complete the work and an estimate of when repair work will be completed must be submitted with the initial information submitted with the information listed in paragraph (n) of this section. If changes from the original estimate of when work will be completed result in moving the completion date forward from the date submitted to EPA, the reasons for these changes must be documented and submitted to EPA within 30 days of discovering the need for such a change.

(2) If the owners or operators intend to establish that the appliance's annual leak rate does not exceed the applicable allowable annual leak rate in accordance with § 82.156(i)(3)(v), the owner or operator is required to submit a plan to fix other outstanding leaks for which repairs are planned but not yet completed to achieve a rate below the applicable allowable leak rate with the information listed in paragraph (n) of this section. Identification of the facility and date the original information regarding additional time beyond the initial 30 days was filed, and notification of the determination that the leak rate no longer exceeds the allowable annual leak rate must be included within 30 days of making such determination.

(3) The dates and types of all initial and follow-up verification tests performed and the test results for all initial and follow-up verification tests must be maintained and submitted to EPA within 30 days after conducting each test where recordkeeping and reporting is required within the timelines specified under § 82.156 (i)(1), (i)(2), (i)(3) and (i)(5).

(o) The owners or operators of appliances must maintain on-site and report to EPA at the address specified in § 82.160 the following information where such reporting and recordkeeping is required and in the timelines specified in § 82.156 (i)(7) and (i)(8), in accordance with § 82.156 (i)(7) and (i)(8). This information must be relevant to the affected appliance and must include:

(1) The identification of the industrial process facility;

(2) The leak rate;

(3) The method used to determine the leak rate and full charge;

(4) The date a leak rate of 35 percent or greater was discovered;

(5) The location of leaks(s) to the extent determined to date;

(6) Any repair work that has been completed thus far and the date that work was completed;

(7) A plan to complete the retrofit or replacement of the system;

(8) The reasons why more than one year is necessary to retrofit to replace the system;

(9) The date of notification to EPA; and

(10) An estimate of when retrofit or replacement work will be completed.

(i) If the estimated date of completion changes from the original estimate and results in moving the date of completion forward, documentation of the reason for these changes must be submitted within 30 days of occurring.

(ii) If the estimated date of completion changes from the original estimate and results in moving the date of completion forward, the date of notification to EPA regarding this change and the estimate of when the work will be completed must be maintained and submitted.

(p) (1) Owners or operators who wish to exclude purged refrigerants that are destroyed from annual leak rate calculations must maintain records on-site to support the amount of refrigerant

claimed as sent for destruction. Records shall be based on a monitoring strategy that provides reliable data to demonstrate that the amount of refrigerant claimed to have been destroyed is not greater than the amount of refrigerant actually purged and destroyed and that the 98 percent or greater destruction efficiency is met. Records shall include flow rate, quantity or concentration of the refrigerant in the vent stream, and periods of purge flow.

(2) Owners or operators who wish to exclude purged refrigerants that are destroyed from annual leak rate calculations must maintain on-site and make available to EPA upon request the following information after the first time the exclusion is utilized by the facility:

(i) The identification of the facility and a contact person, including the address and telephone number;

(ii) A general description of the refrigerant appliance, focusing on aspects of the appliance relevant to the purging of refrigerant and subsequent destruction;

(iii) A description of the methods used to determine the quantity of refrigerant sent for destruction and type of records that are being kept by the owners or operators where the appliance is located;

(iv) The frequency of monitoring and data-recording; and

(v) A description of the control device, and its destruction efficiency. This information must also be included, where applicable, in any reporting requirements required for compliance with the leak repair and retrofit requirements for industrial process refrigeration equipment, as set forth in paragraphs (n) and (o) of this section.

(q) Owners or operators choosing to determine the full charge as defined in § 82.152 of an affected appliance by using an established range or using that methodology in combination with other methods for determining the full charge defined in the following information:

(1) The identification of the owner or operator of the appliance;

(2) The location of the appliance;

(3) The original range for the full charge of the appliance, its midpoint, and how the range was determined;

(4) Any and all revisions of the full charge range and how they were determined; and

(5) The dates such revisions occurred.

* * * * *

[FR Doc. 95–18999 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

federal register

Tuesday
August 8, 1995

Part IV

Department of Education

Federal Student Assistance Programs Under Title IV of the Higher Education Act of 1965, as Amended; Notice

DEPARTMENT OF EDUCATION

Federal Student Assistance Programs Under Title IV of the Higher Education Act of 1965, as Amended

AGENCY: Department of Education.

ACTION: Notice inviting applications for participation in the Quality Assurance Program.

SUMMARY: The Secretary invites institutions of higher education that are not currently participating in the Quality Assurance (QA) Program under section 487A of the Higher Education Act to submit applications to participate beginning with the 1995–1996 award year.

DATES: Applications may be submitted any time after August 8, 1995.

ADDRESSES: Barbara Mroz, U.S. Department of Education, 600 Independence Avenue, SW., (Room 3925, ROB–3), Washington, DC 20202–5232.

FOR FURTHER INFORMATION CONTACT: Jacqulyn Bannister, telephone: (202) 260–4788. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Department of Education is undertaking a series of initiatives to simplify regulations and administrative processes for the Federal student assistance programs authorized by Title IV of the Higher Education Act (HEA). By notice published on April 25, 1995, 60 FR 20326, the Secretary invited QA Program participants and other institutions to submit proposals to reinvent the administration of those programs through the use of the experimental sites authority in section 487A(d) of the HEA. At the direction of the President, the Secretary has conducted a page-by-page review of all student financial assistance regulations to identify those that should be eliminated or improved. The Secretary will also consider developing proposals for statutory amendments to eliminate unnecessary administrative burden.

As a part of this student aid reform effort, the Secretary intends to expand the QA Program. Begun on a pilot basis in 1985, the QA Program currently permits participating institutions to develop and implement their own comprehensive systems to verify student financial aid application data. Participation in the program is entirely voluntary. The Secretary is authorized to exempt participating institutions from the reporting and verification requirements that would otherwise apply and to substitute other necessary quality assurance reporting.

Presently, ninety schools participate in the program, and the Secretary has exempted these schools from several provisions of the Student Assistance General Provisions regulations relating to verification.

Beginning with the upcoming award year, the Secretary intends to expand the QA Program by increasing the number of schools that participate in the program and by employing the experimental sites authority in section 487A(d) of the HEA to facilitate the development of innovative management approaches on a broader scale. If participating QA schools, acting alone or together, develop an innovative approach to the management of student aid programs and the Secretary approves the approach, the Secretary is authorized to exempt the schools from any Title IV statutory or regulatory requirement that would bias the results of their experiments.

Invitation for Applications

The Secretary invites institutions of higher education that administer one or more Title IV programs to submit applications to participate in the QA Program beginning with the 1995–1996 award year. Institutions that currently participate in the program may continue to do so without submitting new applications. Because training workshops will be scheduled for early fall, institutions are encouraged to apply as soon as possible. The Secretary anticipates that the review of applications will begin within 45 days of the date of this notice; however, applications that are received later will also be considered.

An institution that wishes to apply may do so by mailing a letter of application to Barbara Mroz at the address provided at the beginning of this notice or by faxing it to her at (202) 708–9485. The Secretary will review applications on the basis of demonstrated institutional performance, as indicated by information currently on file that pertains to the institution and information in the letter of application that addresses the institution's commitment to the Secretary's current quality assurance goals. Those goals are the following:

(1) To improve the accuracy of Title IV student aid awards;

(2) To increase institutional flexibility in managing student aid funds while maintaining accountability for the proper use of those funds;

(3) To encourage the development of innovative management approaches;

(4) To emphasize results rather than process, up-front correction rather than after-the-fact inspection; and

(5) To place responsibility for quality control and quality improvement at the point where funds and services are delivered—the institution.

Features of the Program

The Secretary encourages institutions participating in the QA Program to employ a continuous cycle of assessment and improvement as they develop and implement their systems to verify student aid application data. Institutions evaluate their verification procedures, adopt improvements in those procedures, test the effects of those improvements, and adopt further improvements.

The Secretary will adopt no regulations for the QA Program. Institutions that participate in the program will be free to develop and implement their own comprehensive verification systems and to request exemptions from reporting and verification requirements that would otherwise apply. It is the Secretary's intention to exempt all participating institutions from the requirements in the following provisions of 34 CFR part 668, subpart E—Verification of Student Aid Application Information:

- Section 668.53(a) (1)–(4);
- Section 668.54(a) (1), (2), and (4);
- Section 668.56;
- Section 668.57; and
- Section 668.60(a).

In addition, a participating institution may request an exemption from any other student financial assistance program reporting or verification requirement. As provided by section 487A(b) of the HEA, the Secretary may substitute such quality assurance reporting as he deems necessary to ensure accountability and compliance with the purposes of the Title IV programs.

Participating institutions may also take advantage of their improved administrative capabilities to propose their own individual or collective innovative approaches to the administration of Title IV programs under the experimental sites authority and to seek exemptions from Title IV requirements that stand in the way of those experiments. Further information on experimental sites may be found in the **Federal Register** document referred to earlier in this notice.

The Secretary believes that the process of continuous improvement in

verification systems fostered by the QA Program has enhanced the integrity of those systems at participating institutions. By expanding the program to include other management areas, the Secretary believes that it can serve to promote improvements not only in the accuracy of student aid awards and payments, but in the management of student aid offices and the delivery of services to students as well.

Dated: August 2, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–19463 Filed 8–7–95; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
August 8, 1995

Part V

The President

Proclamation 6814—National Child Support Awareness Month, 1995

Federal Register
Vol. 60, No. 152
Tuesday, August 8, 1995

Presidential Documents

Title 3—

The President

Proclamation 6814 of August 5, 1995

National Child Support Awareness Month, 1995

By the President of the United States of America

A Proclamation

Providing for our children is one of humanity's worthiest and most fundamental endeavors. Children are the best part of ourselves—the sum of our past and the promise of our future, the guarantee that our lives and values and dreams will flourish long after we are gone. Sadly, however, many parents in our country today deny the instinct to care for their children, failing to provide even the most basic economic support. Millions of America's children have no legally identified father. Millions do not receive the financial support they need to lead secure and healthy lives.

Because of these harsh realities, I have made the reform of our Nation's child support system one of the top priorities of my Administration. The welfare reform plan that I proposed to the Congress last year contains the toughest child support enforcement measures in America's history—measures that would improve the effectiveness of procedures for establishing paternity, make it easier to enter and update child support awards, and dramatically strengthen our ability to enforce payment of those awards. My proposals would also give us the ability to track deadbeat parents across State lines, suspend their driver's licenses if necessary, and make them work off what they owe.

As the Nation's largest single employer, the Federal Government must take a leadership role in the effort to ensure that all of America's children are properly supported. In February of this year, I signed an Executive order requiring Federal agencies to cooperate fully with measures to establish and enforce child support orders and to inform employees of how they can meet their support obligations. Additionally, we are encouraging State and local governments to develop innovative approaches to helping families cope with child support issues, and the Department of Health and Human Services (HHS) has begun to restructure and strengthen its partnerships with State child support agencies.

This month we celebrate the 20th anniversary of the Child Support Enforcement Program at HHS. This program—at the Federal, State, and local levels—has been instrumental in giving hope and support to America's children while fostering strong families and responsible parenting. Through their efforts, over 5.1 million children now have a legally recognized father; more than 11.7 million children with a parent living outside of their homes have a legal right to the financial support of that parent; and over $72.5 billion has been provided for children by their noncustodial parents.

But for all that we have accomplished, we still have much to do. By ensuring the enactment and implementation of my Administration's strong child support enforcement proposals, we will send a clear signal to our citizens that they should not have children until they are prepared to care for them. Those who do bring children into the world must bear the responsibility of supporting them. We must rededicate ourselves to the task of putting these youngest and most vulnerable of our citizens first.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 1995, as ''National Child Support Awareness Month.'' I call upon the citizens of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of August, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95–19783
Filed 8–7–95; 12:09 pm]
Billing code 3195–01–P

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Federal Register

Vol. 60, No. 152

Tuesday, August 8, 1995

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