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Wednesday
August 23, 1995

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

DEPARTMENT OF AGRICULTURE

Consolidated Farm Service Agency

7 CFR Part 792

Commodity Credit Corporation

7 CFR Part 1403

RIN 0560–AD78

Debt Settlement Policies and Procedures

AGENCIES: Consolidated Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: A proposed rule was published in the **Federal Register** on August 24, 1994, at 59 FR 43504, amending 7 CFR parts 792 and 1403, which set forth the debt settlement policies and procedures of the Consolidated Farm Service Agency (CFSA) and the Commodity Credit Corporation (CCC), respectively. This final rule adopts the provisions of the proposed rule. This final rule amends CCC's debt settlement policies and procedures to remove references to Internal Revenue Service Notices of Levy, except to exempt them from coverage, and revises the rate of interest to be charged on delinquent debts. This final rule also amends CFSA's and CCC's debt settlement policies and procedures to provide for offset of a debtor's pro rata share of payments due any entity which the debtor participates in, either directly or indirectly. This regulation protects the financial integrity of many Federal agricultural programs by ensuring the Government will be able to collect, or otherwise settle, debts owed it by any person, organization, corporation, or other legal entity.

EFFECTIVE DATE: August 23, 1995.

FOR FURTHER INFORMATION CONTACT: Carol Spencer, CFSA, USDA, P.O. Box 2415, Washington, DC 20013–2415, at 703–305–1422.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been reviewed in conformance with Executive Order 12866 and has been determined to be a significant regulatory action.

Paperwork Reduction Act

This action will not increase the Federal paperwork burden for individuals, small businesses, and others and will not have a significant impact on a substantial number of small entities.

Regulatory Flexibility Act

Neither CFSA nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule. Therefore this action is exempt from the provision of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. It is not retroactive and preempts State and local laws. Before any judicial action may be brought regarding the provisions of this rule, administrative appeal remedies set forth at 7 CFR parts 24 and 780 must be exhausted.

Executive Order 12372

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

Background

The Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3711, *et seq.*), and the joint regulations promulgated thereunder by the Comptroller General and the Attorney General (4 CFR parts 101–105) provide minimum standards for the administrative collection of claims by the United States. The Act also provides that nothing therein shall diminish the existing authority of the head of an agency to settle, compromise, or close claims. The CCC Charter Act, as amended (15 U.S.C. 714, *et seq.*), provides that CCC shall have the authority to make final and conclusive settlement and adjustment of any claims by or against it irrespective of the amount at issue. CCC is, therefore, not subject to the provisions of the Federal Claims Collection Act of 1966 or its implementing regulations. However, it has been CCC policy to follow the Federal Claims Collection Standards (FCCS) to the maximum practicable extent. The FCCS require each Federal agency to take aggressive action to collect debts owed it.

Discussion of Final Rule

1. Impact of Interest Rate Change on CFSA and CCC and Affected Private Interests

This rule amends 7 CFR part 1403 to change the rate of interest which CCC charges on its delinquent debts from a rate equal to that assessed under the Prompt Payment Act, to a rate equal to the higher of the Treasury Department's current value of funds rate or the rate of interest assessed under the Prompt Payment Act. CCC currently charges interest on delinquent debts at a rate equal to that charged under the Prompt Payment Act. That rate was chosen because it was generally a higher rate than the current value of funds rate required under the Debt Collection Act, and would ensure that CCC, at a minimum, would always recoup the cost of CCC borrowing. It was also believed to be equitable since it is the same rate which CCC is required to pay when its payments are late. This rule amends the rate which CCC charges on delinquent debts to the higher of the Treasury Department's current value of funds rate or the rate assessed under the Prompt Payment Act. Concerning the difference in interest rates, over the past 10 years the current value of funds rate was higher than the Prompt Payment Act rate for only one 6-month period. The economic effect of this rate change is likely to be minimal. This change, however, allows the late payment interest rate assessed by CCC to conform to the late payment interest rate assessed by CFSA, as well as, conforming to the rate required by the Federal Claims Collection Act of 1966, as amended. As both CCC and CFSA programs are administered by the same

offices, administrative costs should be reduced by having the same interest rates apply to both programs.

2. References to IRS Notices of Levy

This rule also amends 7 CFR part 1403 regarding references to Internal Revenue Service (IRS) Notices of Levy. It was the past policy of CCC to treat IRS Notices of Levy the same as requests for administrative offset from other Federal agencies. This was agreed to in 1970 by CCC and IRS, and was documented in former regulations dealing with offset at 7 CFR part 13. However, due to a change in policy by IRS, changes in our previous regulations, certain court decisions, and advice from the Office of the General Counsel, it has been determined that IRS Notices of Levy can no longer be treated as offset requests, but should be honored only as required by statute, including taking priority over assignments of CFSA and CCC payments. Therefore, this final rule amends the CCC debt settlement regulations to remove all references to IRS Notices of Levy, except to specifically exempt them from coverage in 7 CFR 1403.7. This change will create little cost or benefit to CCC.

3. Expanded Offset

Finally, this rule amends 7 CFR parts 792 and 1403 to provide for an expanded ability to offset payments from debtors to collect delinquent debt. During 1993, CFSA and CCC collected approximately $76 million, of which $32 million or 42 percent of the total was through administrative offset. As such, it is the most effective debt collection tool. However, in the past debtors have avoided offset of their program payments by reorganizing their farming operations, changing the name of their operations, transferring ownership of their operations, receiving payments under more than one entity, or by changing the payee in some other manner. In order to increase CFSA's and CCC's ability to collect delinquent debts, without adversely affecting other non-debtors, the regulations are amended to provide for offset of a debtor's pro rata share of payments due any entity which the debtor participates in, either directly or indirectly.

This rule also provides for offset when CFSA or CCC determines that a debtor has established an entity, or transferred ownership of, reorganized, or changed in some other manner, his or her operations in order to avoid a debt. By allowing for this expanded ability to offset, CFSA and CCC will substantially increase their ability to collect delinquent debt in an efficient and effective manner. This will also help ensure that those owing delinquent debts are not continuing to receive government payments, without first satisfying their debts. While it is not feasible to estimate the exact amount by which CFSA and CCC collections will increase, it is likely that these circumstances arise most often with debtors who have debts of $50,000 or more. Therefore, increased collections could be sizeable in relation to past collections. There should be no cost to the government created by this change.

This regulation will protect the financial integrity of many Federal agricultural programs by ensuring the Government will be able to collect, or otherwise settle, debts owed it by any person, organization, corporation, or other legal entity.

A description of the amendments made by this final rule was set forth in the proposed rule at 59 FR 43504 (August 24, 1994). The proposed rule requested comments with respect to the proposed amendments. No comments were received and it has been determined that the proposal should be adopted as a final rule with modifications to reflect the reorganization of the Department of Agriculture, and for purposes of clarity.

List of Subjects

7 CFR Part 792

Claims, Income taxes.

7 CFR Part 1403

Claims, Income taxes, Loan programs—agriculture.

Accordingly, 7 CFR parts 792 and 1403 are amended as follows:

PART 792—DEBT SETTLEMENT POLICIES AND PROCEDURES

1. The authority citation for 7 CFR part 792 continues to read as follows:

Authority: 31 U.S.C. 3701, 3711, 3716–3719, 3728; 4 CFR parts 101–105; 7 CFR 3.21(b).

2. Section 792.7(l) is revised to read as follows:

§ 792.7 Collection by administrative offset.

* * * * *

(l) Any action authorized by the provisions of this section may be taken:

(1) Against a debtor's pro rata share of payments due any entity which the debtor participates in, either directly or indirectly, as determined by CFSA.

(2) When CFSA determines that the debtor has established an entity, or reorganized, transferred ownership of, or changed in some other manner, their operation, for the purpose of avoiding the payment of the claim or debt.

* * * * *

PART 1403—DEBT SETTLEMENT POLICIES AND PROCEDURES

3. The authority citation for 7 CFR part 1403 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; 7 U.S.C. 1445b–2(b).

4. Section 1403.7 is amended by:

A. Removing the word ''and'' at the end of paragraph (a)(3),

B. Removing the period at the end of paragraph (a)(4) and inserting a semicolon in its place and adding the word ''and'',

C. Adding paragraph (a)(5),

D. Removing paragraph (m)(4),

E. Redesignating paragraphs (m)(5) and (m)(6) as paragraphs (m)(4) and (m)(5), respectively, and

F. Revising paragraph (q) to read as follows:

§ 1403.7 Collection by administrative offset.

(a) * * *

(3) Cases in which CCC must adjust, by increasing or decreasing, a payment which is to be paid under a contract in order to properly make other payments due by CCC;

(4) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by statute; and

(5) IRS Notices of Levy which shall be honored in accordance with IRS statutes and regulations.

* * * * *

(q) Any action authorized by the provisions of this section may be taken:

(1) Against a debtor's pro rata share of payments due any entity which the debtor participates in, either directly or indirectly, as determined by CCC.

(2) When CCC determines that the debtor has established an entity, or reorganized, transferred ownership of, or changed in some other manner, their operation, for the purpose of avoiding the payment of the claim or debt.

* * * * *

5. Section 1403.9(c) is revised to read as follows:

§ 1403.9 Late payment interest and administrative charges.

* * * * *

(c) The late payment interest shall be expressed as an annual rate of interest which CCC charges on delinquent debts. The late payment interest rate shall be equal to the higher of the Treasury Department's current value of funds rate or the rate of interest assessed under the Prompt Payment Act, determined as of the date specified in paragraphs (d)(1) and (d)(2) of this section.

* * * * *

Signed at Washington, DC, on August 15, 1995.

Bruce R. Weber,

Acting Administrator, Consolidated Farm Service Agency and Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–20781 Filed 8–22–95; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–85–AD; Amendment 39–9340; AD 95–17–10]

Airworthiness Directives; Jetstream Aircraft Limited Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Jetstream Aircraft Limited (JAL) Jetstream Models 3101 and 3201 airplanes. This action requires modifying the central annunciator panel test button circuit. A report of diode failure in this circuit and subsequent inadvertent engine shutdown on one of the affected airplanes prompted this action. The actions specified by this AD are intended to prevent failure of a diode in the central annunciator panel test button circuit, which could result in inadvertent engine shutdown while in flight if the central annunciator panel test button is pressed.

DATES: Effective October 3, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 3, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 91–CE–85–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. Sam Lovell, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain JAL Jetstream Models 3101 and 3201 airplanes was published in the **Federal Register** on April 11, 1995 (60 FR 18376). The action proposed to require modifying the central annunciator panel test button circuit by removing diodes from the engine stop circuit and configuring a minor wiring change. Accomplishment of the proposed actions would be in accordance with Jetstream Alert Service Bulletin 80–A-JA 911045, Revision 1, dated November 1, 1991.

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

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

The FAA estimates that 260 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish the required modification, and that the average labor rate is approximately $60 an hour. JAL will provide parts at no cost to the owner/operator. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $31,200. This figure is based on the assumption that no affected owner/operator has incorporated the required modification.

JAL has informed the FAA that 2 modification kits have been distributed to affected airplane owners/operators. Assuming that each of these modification kits has been incorporated on an affected airplane, then the cost impact upon U.S. operators would be reduced $240 (2 workhours × $60 per hour × 2 airplanes) from $31,200 to $30,960. The FAA also believes that numerous owners/operators of the affected airplanes have accomplished the modification using 22AWA cable and terminal tags instead of obtaining parts from the manufacturer, as is provided for in this AD. This would further reduce the cost impact of the AD upon U.S. operators of the affected airplanes. The FAA has no way of determining how many airplanes have accomplished the required modification utilizing the 22AWA cable and terminal tags alternative.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ''ADDRESSES''.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

95–17–10 Jetstream Aircraft Limited: Amendment 39–9340; Docket No. 91–CE–85–AD.

Applicability: Jetstream Model 3101 airplanes, all serial numbers, and Jetstream Model 3201 airplanes, serial numbers 790 through 950, certificated in any category.

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

Compliance: Required within the next 200 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of a diode in the central annunciator panel test button circuit, which could result in inadvertent engine shutdown while in flight if the central annunciator panel test button is pressed, accomplish the following:

(a) Modify the central annunciator panel test button circuit (Amendment JA 911045) by removing diodes from the engine stop circuit and configuring a minor wiring change in accordance with PART 2 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Alert Service Bulletin 80–A–JA 911045, Revision 1, dated November 1, 1991.

(b) As noted in Jetstream Alert Service Bulletin 80–A–JA 911045, Revision 1, dated November 1, 1991, terminals may be linked using 22 AWA cable and terminal tags, provided the following is accomplished:

(1) For airplanes without roof panel plug breaks, identify the cables as WQ69 and WQ70.

(2) For airplanes with roof panel plug breaks, identify the cables as WQ71 and WQ72.

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

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

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

(e) The modification required by this AD shall be done in accordance with Jetstream Alert Service Bulletin 80–A-JA 911045, Revision 1, dated November 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(f) This amendment (39–9340) becomes effective on October 3, 1995. Issued in Kansas City, Missouri, on August 10, 1995.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–20277 Filed 8–22–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 73

[Airspace Docket No. 95–ASW–3]

Amendment of Restricted Areas R–6302B and R–6302E, Fort Hood, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published on July 20, 1995. The airspace designation for ''R–6203E Fort Hood, TX,'' was in error. This correction changes ''R–6203E Fort Hood, TX'' to read ''R–6302E Fort Hood, TX.''

EFFECTIVE DATE: August 23, 1995.

FOR FURTHER INFORMATION CONTACT: Pete Magarelli, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7130.

SUPPLEMENTARY INFORMATION: On July 20, 1995, the FAA published a final rule that amended the descriptions of R–6302B and R–6302E Fort Hood, TX. The airspace designation for ''R–6203E Fort Hood, TX,'' was in error. This correction changes ''R–6203E Fort Hood, TX'' to read ''R–6302E Fort Hood, TX.'' [95–ASW–3] 2

Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the title of the airspace designation for ''R–6203E Fort Hood, TX'' published in the **Federal Register** on July 20, 1995 (60 FR 37331; **Federal Register** Document 95–17901, Column 3) is corrected as follows:

* * * * *

On page 37331, Column 3, the title for the airspace designation is revised to read as ''R–6302E Fort Hood, TX.''

* * * * *

Issued in Washington, DC, on August 14, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–20839 Filed 8–22–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 73

[Airspace Docket No. 95–AGL–7]

Alteration of R–3403A and Revocation of Restricted Area R–3403C, Jefferson Proving Ground, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Restricted Area R–3403C Jefferson Proving Ground, IN. As a result of the annual restricted area review, the Department of the Army has determined that there is no longer a requirement for a separate continuous use restricted area. Additionally, R–3403A is being amended to remove reference to R–3403C.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Jim Robinson, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 493–4050.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations removes Restricted Area R–3403C, Jefferson

Proving Ground, IN. As a result of the annual restricted area review, the Department of the Army has determined there is no longer an appropriate mission for R–3403C. This area is completed contained within the lateral and vertical boundaries of R–3403A. This action returns use of this airspace for civil aviation activities when R–3403A is inactive. Additionally, this action amends the legal description of R–3403A by removing reference to R–3403C. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. Section 73.34 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

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

Environmental Review

This action removes special use airspace. This action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts'' and the National Environmental Policy Act of 1969 (NEPA).

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

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

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

§ 73.34 [Amended]

2. Section 73.34 is amended as follows:

R–3403A Jefferson Proving Ground, IN [Amended]

By removing, under boundaries, the words ''excluding that airspace designated as R–3403C when activated.''

R–3403C Jefferson Proving Ground, IN [Removed]

Issued in Washington, DC, on August 14, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–20840 Filed 8–22–95; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AE19

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Extension of Expiration Date for Adult Mental Disorders Listings

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: The Social Security Administration (SSA) issues listings of impairments to evaluate disability and blindness under the Social Security and supplemental security income (SSI) programs. This rule extends the expiration date for the adult mental disorders listings and makes two nonsubstantive technical changes described below. We have made no revisions to the medical criteria in the listings; they remain the same as they now appear in the Code of Federal Regulations. This extension will ensure that we continue to have medical evaluation criteria in the listings to adjudicate claims for disability based on mental impairments at step three of our sequential evaluation process.

EFFECTIVE DATE: This regulation is effective August 23, 1995.

FOR FURTHER INFORMATION CONTACT: Regarding this **Federal Register** document—Richard M. Bresnick, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1758; regarding eligibility or filing for benefits—our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: On August 28, 1985, we published revised adult mental disorders listings (50 FR 35038) in part A of appendix 1 (Listing of Impairments) to subpart P of part 404. We use the listings to evaluate disability and blindness at the third step of the sequential evaluation process for adults and children under the Social Security and SSI programs. The listings describe impairments considered severe enough to prevent a person from doing any gainful activity, or, for an individual under age 18 applying for SSI benefits based on disability, from functioning independently, appropriately, and effectively in an age-appropriate manner. We use the criteria in part A mainly to evaluate impairments of adults. We use the criteria in part B first to evaluate impairments of individuals under age 18. If those criteria do not apply, we may use the criteria in part A.

When we published the revised adult mental disorders listings in August 1985, we indicated that medical advances in disability evaluation and treatment and program experience would require that the listings be periodically reviewed and updated. Accordingly, we established a date of August 28, 1988, on which the listings would no longer be effective unless extended by the Secretary of Health and Human Services (the Secretary) or revised and promulgated again. Under the Social Security Independence and Program Improvements Act of 1994, Public Law (Pub. L.) 103–296, this authority was transferred to the Commissioner of Social Security (the Commissioner).

Subsequently, we issued a number of final rules extending the expiration date of the adult mental disorders listings. The last was published on August 16, 1994 (59 FR 41974) and provided that the listings for adult mental disorders would no longer be effective on August 28, 1995. Also, on July 18, 1991, we published a notice of proposed rulemaking (NPRM) (56 FR 33130) that included proposed revisions to those listings. We will publish any changes to the listings based on that NPRM in a subsequent final rule.

In this final regulation, we are extending for two years, to August 28, 1997, the date on which the adult mental disorders listings will no longer be effective. We believe that the requirements in these listings are still valid for our program purposes. Specifically, if we find that an individual has an impairment that meets the statutory duration requirement and also meets or is equivalent in severity to an impairment in the listings, we will find that the individual is disabled without completing the remaining steps of the

sequential evaluation process. We do not use the listings to find that an individual is not disabled. Individuals whose impairments do not meet or equal the criteria of the listings receive individualized assessments at the subsequent steps of the sequential evaluation process.

Also, in the introductory text of the Listing of Impairments, we are changing the reference from the Secretary to the Commissioner. This change reflects the transfer of functions which took place, effective March 31, 1995, pursuant to Public Law 103–296, which made SSA an independent agency, separate from the Department of Health and Human Services.

Further, in the list of dates on which the various body system listings will no longer be effective, we are revising the format of item 5, Cardiovascular System, to be consistent with the rest of the list. We are not changing the date in the entry, only the format. The current entry was in the revised cardiovascular system listings published on February 10, 1994 (59 FR 6468).

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(5)(a), SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because this regulation only extends the date on which the adult mental disorders listings will no longer be effective and makes minor technical changes to the introductory text of the listings. It makes no substantive changes to the listings. The current regulations expressly provide that the listings may be extended, as well as revised and promulgated again. Therefore, opportunity for prior comment is unnecessary, and we are issuing these changes to our regulations as a final rule.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in the listings. However, without an extension of the expiration date for the adult mental disorders listings, we will lack regulatory guidelines for assessing mental impairments at the third step of the sequential evaluation processes after the current expiration date of the listings. In order to ensure that we continue to have regulatory criteria for assessing these impairments under the listings, we find that it is in the public interest to make this rule effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This regulation imposes no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social security.

Dated: July 27, 1995.

Shirley Chater,

Commissioner of Social Security.

For the reasons set forth in the preamble, part 404, subpart P, chapter III of title 20 of the Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d) through (h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)).

2. Appendix 1 to subpart P of part 404 is amended by revising the first sentence and items 5 and 13 of the introductory text before part A to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

The body system listings in parts A and B of the Listing of Impairments will no longer be effective on the following dates unless extended by the Commissioner or revised and promulgated again.

* * * * *

5. Cardiovascular System (4.00 and 104.00): February 10, 1998.

* * * * *

13. Mental Disorders (12.00): August 28, 1997.

* * * * *

3. Part A of appendix 1 to subpart P of part 404 is amended by revising the first paragraph of 12.00 to read as follows:

12.00 Mental Disorders

The mental disorders listings in 12.00 of the Listing of Impairments will no longer be effective on August 28, 1997, unless extended by the Commissioner or revised and promulgated again.

* * * * *

[FR Doc. 95–20869 Filed 8–22–95; 8:45 am]

BILLING CODE 4190–29–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA39–1–7028a; FRL–5268–3]

Approval and Promulgation of Implementation Plan for Vehicle Miles Traveled Forecasting and Tracking: Puget Sound, Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA approves the State Implementation Plan (SIP) revision submitted by the State of Washington for the purpose of forecasting and tracking vehicle miles traveled (VMT) for the Puget Sound Carbon Monoxide (CO) Nonattainment Area, Washington. On January 28, 1993, Washington State submitted a SIP revision for the Puget Sound Carbon Monoxide (CO) Nonattainment Area to satisfy the requirements of Section 187(a)(2)(A) and Section 187(a)(3) of the Clean Air Act Amendments of 1990 (CAAA). Section 187(a)(2)(A) requires Moderate and Serious carbon monoxide (CO) non-attainment areas with a design value above 12.7 to submit a SIP revision that contains a forecast of VMT in the non-attainment area for each year before the year in which the SIP projects the

National Ambient Air Quality Standard (NAAQS) for CO to be attained. The SIP revision, which was due by November 15, 1992, is also required to provide annual updates of the forecasts along with annual reports regarding the extent to which the forecasts proved to be accurate. These annual reports must contain estimates of actual VMT for each forecast year.

The rationale for the approval is set forth in this notice; additional information is available at the address indicated below.

DATES: This final rule is effective on October 23, 1995 unless adverse or critical comments are received by September 22, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

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

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

FOR FURTHER INFORMATION CONTACT: Stephanie Cooper, EPA Region 10, Mail Stop AT–082, Seattle, WA 98101, (206) 553–6917.

SUPPLEMENTARY INFORMATION:

I. Background

Section 187(a)(2)(A) of the Clean Air Act Amendments of 1990 required EPA, in consultation with the U.S. Department of Transportation (DOT), to develop guidance for states to use in complying with the VMT forecasting and tracking provisions of Section 187. A Notice of Availability for the resulting *Section 187 VMT Forecasting and Tracking Guidance* was published in the **Federal Register** on March 19, 1992.

The Section 187 Guidance identifies the Federal Highway Administration's Highway Performance Monitoring System (HPMS) as the foundation for VMT estimates and forecasts.

When determining that actual annual VMT or a VMT forecast has exceeded the most recent prior forecast and, therefore, that contingency measures should be implemented, EPA believes that it is appropriate to take into account the statistical variability in the estimates of VMT generated through HPMS. Consequently, EPA has identified a margin of error to be applied when making VMT comparisons. In practice, there are two ways in which an estimate of actual VMT or an updated forecast can be found to exceed a prior forecast.

EPA interprets the requirement for contingency measures to ''take effect without further action by the State or the Administrator'' to mean that no further rulemaking activities by the State or EPA would be needed to implement the measures.

The State of Washington has submitted a SIP revision to EPA in order to satisfy the requirements of Section 187(a)(2)(A) and Section 187(a)(3). In order to be approved, the State submittal must provide for each of the following mandatory elements: (1) a forecast of VMT in the non-attainment area for each year prior to the attainment year; (2) a provision for annual updates of the forecasts along with a provision for annual reports describing the extent to which the forecasts proved to be accurate; these reports shall provide estimates of actual VMT in each year for which a forecast was required; (3) adopted and enforceable contingency measures to be implemented without further action by the State or the Administrator if actual annual VMT or an updated forecast exceeds the most recent prior forecast or if the area fails to attain the CO NAAQS by the attainment date.

II. Analysis

EPA is approving the SIP revision for Puget Sound because Washington has met the requirements of Section 187(a)(2)(A) and Section 187(a)(3).

1. VMT Forecasts

Section 187(a)(2)(A) requires that Washington include in its SIP submittal a forecast of VMT in the non-attainment area for each year before the year in which the SIP projects the National Ambient Air Quality Standard for CO to be attained. The forecasts are to be based on guidance developed by EPA in consultation with DOT, i.e., the *Section 187 VMT Forecasting and Tracking Guidance.*

Washington created a ''Memorandum of Understanding'' between the Puget Sound Regional Council, Spokane Regional Council, Washington State Department of Ecology and Washington State Department of Transportation to apportion responsibility for reporting of vehicle miles travelled to these agencies. Puget Sound Regional Council and Spokane Regional Council develop for peer review draft vehicle miles travelled reports for their respective Federal Aid Urban Areas, based on data submitted by the Department of Transportation. The draft reports are submitted to Ecology, which will submit the final vehicle miles travelled annual report to EPA.

To arrive at vehicle miles travelled forecasts, the Puget Sound Regional Council, (which develops VMT forecasts for the Puget Sound CO nonattainment area), uses a four-part model consisting of a trip generation component, a trip distribution component, a mode choice component, and a transportation/mode assignment component. The model considers residential factors, employment, road network, land use, population, etc., and is reevaluated several times per year.

2. Annual VMT Updates/Reports

Section 187(a)(2)(A) specifies that the SIP revision provide for annual updates of the VMT forecasts and annual reports that describe the accuracy of the forecasts and that provide estimates of actual VMT in each year for which a forecast was required. The *Section 187 VMT Forecasting and Tracking Guidance* specifies that annual reports should be submitted to EPA by September 30 of the year following the year for which the VMT estimate is made.

The SIP provided annual and daily VMT forecasts for 1993, 1994, and 1995, and actual VMT for 1990. However, Puget Sound updated its 1993 forecast prior to reporting the differences between HPMS (actual) values and forecasted values. The metropolitan planning organization updated its travel-demand-models with more current information and techniques. EPA received Washington's first annual VMT report on October 18, 1995. The report showed that Puget Sound's actual 1993 vehicle miles travelled were within .95 percent of the forecast. Table 1 outlines the difference between projected and actual VMT for 1993:

TABLE 1.—ACTUAL AND PROJECTED VMT FOR THE PUGET SOUND CARBON MONOXIDE NONATTAINMENT AREA, 1993

Nonattainment area	Actual (HPMS) 1993 daily VMT in millions	Projected 1993 VMT in millions	Percent difference
Puget Sound	57,307,000	56,769,000	+.95%

3. Contingency Measures

Section 187(a)(3) specifies that the State adopt specific, enforceable contingency measures to be implemented if the annual estimate of actual VMT or a subsequent VMT forecast exceeds the most recent prior forecast of VMT. Implementation of the identified contingency measures must not require further rulemaking activities by the State or EPA. The State has met this requirement by adopting two programs as contingency measures. Both measures are ''over control'', meaning that Ecology is already implementing the measures but is not taking credit for the measures as part of a control strategy for attaining the NAAQS. The two control measures are: Commute Trip Reduction (CTR) programs, as specified in Washington State's Transportation Demand Management Act, and outreach and education to induce voluntary reductions in vehicle operations during periods of poor air quality. While these control measures are not contingency plans in the strict sense of the term ''contingency'', they satisfy the broader intent of the Act's contingency measure provision.

The commute trip reduction measure is codified under Revised Code of Washington (RCW) 70.94.510–551. It calls for ''major employers'' located within counties with a population of 150,000 or more and to submit plans to reduce commuting trips to the workplace. The second control measure aims at voluntary curtailment of vehicle operation during periods of poor air quality. This measure intends to educate the public during periods of extreme temperature inversions, and to encourage the use of public transportation, mass transit, telecommuting, and other less polluting transit options. Outreach media will include television, radio, and newsprint. Both VMT contingency measures will, if required, be funded by statewide CMAQ (Congestion Mitigation and Air Quality) funds.

III. Today's Action

In today's action, EPA is approving the SIP revision submitted by the State of Washington.

The State of Washington has submitted a SIP revision implementing each of the required elements required by Section 187(a)(2)(A) and Section 187(a)(3) of the CAAA. Washington has crafted a ''memorandum of understanding'' among the Puget Sound Regional Council, the Spokane Regional Council, the Washington State Department of Ecology, and the Washington State Department of Transportation that delineates each agency's responsibility in reporting vehicle miles travelled in Washington State. Additionally, Washington has outlined two contingency measures (commute trip reduction and voluntary reduction of vehicle operation through public outreach and education) in case VMT forecasts are exceeded. EPA is therefore approving this submittal.

IV. Administrative Review

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

SIP approvals under section 110 and subchapter I, Part D of the CAAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document published elsewhere in this **Federal Register**, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 23, 1995 unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 23, 1995.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

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

This action has been classified as a Table 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 a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to

accompany any proposed or final rule 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. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today 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 approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 23, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: July 20, 1995.

Chuck Clarke,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c) (55) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(55) On January 22, 1993 the Director of the Washington State Department of Ecology (WDOE) submitted the amendment to the Washington SIP for Carbon Monoxide (CO) in the King, Pierce, and Snohomish Counties' Urbanized Areas.

(i) Incorporation by reference.

(A) The January 22, 1993 letter from the Director of the WDOE submitting the Amendment to the Washington SIP for Carbon Monoxide in the King, Pierce, and Snohomish Counties' Urbanized Areas to EPA, ''Supplement to the SIP for Washington State, Puget Sound Carbon Monoxide Nonattainment Area, January 1993,'' Section 6.0 Vehicle Miles Traveled Forecasting and Tracking, adopted on January 22, 1993.

(ii) Additional material.

(A) VMT supplements to include the VMT Tracking Report data required for the Puget Sound CO Nonattainment Areas, dated October 13, 1994 and September 19, 1994.

[FR Doc. 95–20801 Filed 8–22–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 79–2–7068; FRL–5267–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Placer County Air Pollution Control 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 November 28, 1994, and April 24, 1995. This final action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of oxides of nitrogen (NO_X) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules concern the control of NO_X from stationary gas turbines, stationary internal combustion engines, and boilers, steam generators, and process heaters. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This final rule is effective on September 22, 1995.

ADDRESSES: Copies of the rules and EPA's evaluation report for the rules 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 94105–3901.

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

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

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603.

Ventura County Air Pollution Control District, Rule Development Section, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Duane F. James, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1191.

SUPPLEMENTARY INFORMATION:

Background

On November 28, 1994, in 59 FR 60750, and on April 24, 1995, in 60 FR 20066, EPA proposed to approve the following rules into the California SIP: Placer County Air Pollution Control District's (PCAPCD) Rule 250, ''Stationary Gas Turbines,'' and Ventura County Air Pollution Control District's (VCAPCD) Rule 74.9, ''Stationary Internal Combustion Engines,'' and Rule 74.15.1, ''Boilers, Steam Generators, and Process Heaters'' (the NPRMs). The PCAPCD adopted Rule 250 on October 17, 1994, and the VCAPCD adopted Rule 74.15.1 on May 11, 1993, and Rule 74.9 on December 21, 1993. These rules were submitted by the California Air Resources Board (ARB) to EPA on November 18, 1993 (Rule 74.15.1), March 29, 1994 (Rule 74.9), and October 19, 1994 (Rule 250). These rules were adopted as part of Placer and Ventura Counties' efforts to achieve the National

Ambient Air Quality Standards (NAAQS) for ozone and in response to Section 182(f) NO_X RACT requirements of the Clean Air Act (CAA). A detailed discussion of the background for the rules and nonattainment areas is provided in the NPRMs cited above.

EPA has evaluated the rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRMs cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rules' provisions and evaluations has been provided in the NPRMs and in the technical support documents (TSDs), dated March 3, 1994 (Rule 74.15.1), November 28, 1994 (Rule 250), and December 5, 1994 (Rule 74.9), which are available at EPA's Region IX office.

Response to Public Comments

A 30-day public comment period was provided in the NPRMs. EPA received no comments on PCAPCD's Rule 250 and VCAPCD's Rules 74.9 and 74.15.1.

EPA Action

EPA is finalizing this action to approve the above rules for inclusion into the California SIP. EPA is approving the submittals 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 NO_X 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.

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.

Regulatory Process

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, 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 21, 1995.

John Wise,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(194)(i)(A)(*3*), (c)(196)(i)(B), and (c)(202)(i)(E) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(194) * * *

(i) * * *

(A) * * *

(*3*) Rule 74.15.1, adopted on May 11, 1993.

* * * * *

(196) * * *

(i) * * *

(B) Ventura County Air Pollution Control District.

(*1*) Rule 74.9, adopted on December 21, 1993.

* * * * *

(202) * * *

(i) * * *

(E) Placer County Air Pollution Control District.

(*1*) Rule 250, adopted on October 17, 1994.

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[FR Doc. 95–20800 Filed 8–22–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[VA12–1–6863a, VA28–1–5997a; FRL–5262–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia (Approval of Miscellaneous Revisions)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. These revisions incorporate changes adopted by Virginia in 1989 and 1993 into the federally enforceable Virginia SIP. The intended effect of this action is to revise the federally-approved SIP to reflect the current State requirements. This action is being taken under section 110 of the Clean Air Act.

DATES: This final rule is effective October 23, 1995 unless adverse or critical comments are submitted before September 22, 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 Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 597–1325.

SUPPLEMENTARY INFORMATION: In 1989 and in 1993, the Commonwealth of Virginia submitted a series of amendments to its Regulations for the Control and Abatement of Air Pollution as a formal revision to its State Implementation Plan (SIP). These SIP revision submittals are described below.

I. SIP Revision Submittal—April 12, 1989

On April 12, 1989, the Commonwealth of Virginia submitted a series of administrative revisions to its Regulations to the Control and Abatement of Air Pollution and requested that they be reviewed and approved as revisions of the Virginia State Implementation Plan (SIP). Virginia has amended the provisions of Parts I, IV, and VIII by 1) revising the format of terms and definitions; and 2) incorporating by reference certain governmental, scientific, and technical documents. Virginia has also added an Appendix M (Documents Incorporated by Reference) to its air pollution control regulations.

Virginia has certified that public hearings were held on May 5, 1986 for all of the above revisions in accordance with 40 CFR Section 51.102. The public hearing locations were Abingdon, Roanoke, Lynchburg, Richmond, Virginia Beach, and Springfield.

Description of Revisions

The revised Virginia regulations are described below:

All Parts

For Specific terms being defined—

1. The general format is changed from all capital letters to the first letter of the term being capitalized.
2. Quotation marks (‘‘ ’’) are used at the beginning and end of the term defined.
3. The word ‘‘means’’ is added after the term.
4. The definition has been revised to cite an updated or revised reference document listed in Appendix M.

Unless stated otherwise, all definitions and terms listed below are revised in accordance with the revised format stated above.

Part I—Definitions

Reference Method, Reid Vapor Pressure, Stationary Source, True Vapor Pressure, Vapor Pressure.

Part IV—Emission Standards and Existing Sources

Rule 4–5 (Synthesized Pharmaceutical Products Manufacturing Operations)

Section 120–08–0502C.—Definitions of: condenser, production equipment exhaust system, reactor, synthesized pharmaceutical products manufacturing.

Section 120–04–0504C.3.b. (Control Technology Guidelines)—Change in reference method from ‘‘state or local fire codes, or the National Fire Prevention Association guidelines’’ to National Fire Prevention Association (NFPA) Standards 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, NFPA 30, Flammable and Combustible Liquids Code; NFPA 30A, Automotive and Marine Service Station Code; cross-reference to Appendix M.

Rule 4–21 (Sulfuric Acid Production Units)

Section 120–04–2102C.—Definitions of ‘‘sulfuric acid mist’’ and ‘‘sulfuric acid production unit’’.

Section 120–04–2110E. (Monitoring)—Virginia has revised the citation of the technical document used to establish conversion factors for the purpose of converting monitoring data into the units of the applicable sulfur dioxide (SO_2) standard. For Publication 999–AP–13, the words ‘‘National Air Pollution Control Administration’’ has been replaced with ‘‘Atmospheric Emissions form Sulfuric Acid Manufacturing Processes,’ Public Health Service.’’ The conversion factor itself remains unchanged.

Rule 4–34 (Miscellaneous Metal Parts and Products Coating Application Systems)

Section 120–04–3402C.—Definitions of: Application area, Carbon adsorption system, Coating applicator, Extreme environmental conditions, Flashoff area, Miscellaneous metal parts and products, Major groups.

Rule 4–37 (Emission Standards for Petroleum Liquid Storage and Transfer Operations)

Section 120–04–3702C.—Definitions of: Bulk gasoline plant, Bulk gasoline terminal, Condensate, External floating roof, Gasoline, Gasoline dispensing facility, Internal Floating Roof, Liquid-mounted, Petroleum liquids, Petroleum refinery, Submerged fill pipe, vapor-mounted, Vapor tight, Waxy, heavy pour crude oil.

Section 120–04–3704C.2.b. (Control Technology Guidelines)—Change in reference method from ‘‘state or local fire codes, or the National Fire Prevention Association guidelines’’ to National Fire Prevention Association (NFPA) Standards 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, NFPA 30, Flammable and Combustible Liquids Code; NFPA 30A, Automotive and Marine Service Station Code; cross-reference to Appendix M.

Rule 4–41 (Emission Standards for Mobile Sources)

Section 120–04–4102C.—Definitions of: Mobile source, Motor vehicle.

Section 120–04–4105B.2. (Export/Import of Motor Vehicles) Addition of citations of Federal requirements (e.g., 19 CFR Part 12, 40 CFR Part 86).

Note: Virginia had also submitted revisions to other definitions as part of their April 12, 1989 submittal. However, these definitions were further revised by Virginia and submitted as a SIP revision request on May 10, 1991. EPA approved these revised terms as revisions to the Virginia SIP, and incorporated them by reference in their entirety into the Virginia SIP at 40 CFR Section 52.2420(c)(99). Therefore, EPA will not review the revisions to these definitions as part of this submittal action. The affected definitions are:

Section 120–04–3402C.—Definitions of ‘‘Clear Coating,’’ ‘‘Coating application system,’’ ‘‘Extreme performance coatings,’’ and ‘‘Oven.’’

Section 120–04–3702C.—Definitions of ‘‘Crude oil’’ and ‘‘Custody transfer.’’

Part VIII—Permits

Section 120–08–01 (Permits—New and Modified Stationary Sources)—

Section 120–08–01B3.—Terms defined: Allowable emissions, Begin actual construction, Commence, Construction, Emissions units, Federally enforceable, Fixed capital cost, Major modification, Major stationary source, Modification, Modified source, Necessary preconstruction approvals or permits, New source, Potential to emit, Public comment period, Reactivation, Reconstruction, Secondary emissions, State enforceable, Stationary source, Uncontrolled emission rate.

Section 120–08–01C.4.d. (General)—reference to good engineering practice (GEP) stack height definitions.

Section 120–08–03 (Permits—Major Stationary Sources and Major Modification Locating in Nonattainment Areas)

Section 120–08–03B.3. Terms defined:

1. All terms—the word ‘‘means’’ is added after the term.
2. Definition of ‘‘Building, structure, or facility’’—Reference to publications which help define the expression ‘‘Major Group’’ are moved from the paragraph defining this term to Appendix M.

Section 120–08–03N.7. (Offsets) The reference to Section IV.D of Appendix S in 40 CFR Part 51 is reworded. This revision is considered to be a format change and not a substantive change.

Appendix M (Added)

Appendix M lists all State and Federal requirements (both statutory and regulatory), as well as specific technical and scientific reference documents which Virginia incorporates by reference into its air pollution control regulations. The scientific and technical document consists of the following:

1. Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement (U.S. Government Printing Office stock numbers 4101–006 and 003–005–00176–0, respectively.

2. The following documents issued by the American Society for Testing and Materials (ASTM): ''1985 Annual Book of ASTM Standards,'' Section 5, Volume 05.01, Test Methods D323–82, D97–66.

3. American Petroleum Institute (API) Document 2517, (February 1980).

4. National Fire Prevention Association (NFPA) Documents 385 (1985 Edition), 30 and 30A (1984 Edition).

5. Publication 999–AP–13, the words ''National Air Pollution Control Administration'' has been replaced with ''Atmospheric Emissions form Sulfuric Acid Manufacturing Processes,' Public Health Service.''

II. SIP Revision Submittal—February 12, 1993

On February 12, 1993, The Commonwealth of Virginia submitted administrative amendments to its Regulations to the Control and Abatement of Air Pollution and requested that they be reviewed and approved as revisions of the Virginia State Implementation Plan (SIP). Virginia has revised Appendix M (Documents Incorporated by Reference), Sections II.A. through II.E. and II.G. to reflect all changes made in the documents referenced therein through July 1, 1991. Virginia certified that public hearings were held on July 1, 1992 in Abingdon, Roanoke, Lynchburg, Fredericksburg, Richmond, Chesapeake, and Springfield, in accordance with 40 C.F.R. Section 51.102.

Evaluation of State Submittals

The amendments submitted by Virginia in its April 12, 1989 SIP revision request are administrative in nature and do not revise any emission standards or exemption levels. Therefore, these SIP revisions will have no adverse impact on the NAAQS. The documents listed above are widely circulated and almost universally endorsed within the regulatory and regulated community. Therefore, EPA finds the references to these documents acceptable as a SIP revision. EPA's evaluation of the revisions to Part VIII (Permits) are limited to the administrative revisions described above. Since April 1989, the Commonwealth of Virginia has submitted numerous substantive revisions to the provisions of Part VIII. EPA's review and evaluation of these substantive revisions will be addressed in a separate rulemaking action.

The documents submitted by Virginia on April 12, 1989 and February 12, 1993, and listed in Appendix M, consist of Federal regulations codified in the Code of Federal Regulations (CFR), widely circulated government documents, and widely circulated scientific and technical documents. Any requirement contained in the CFR is already federally enforceable.

Cross-references to Appendix M are found in various sections of Part V (New and Modified Sources) of Virginia's air pollution control regulations. In turn, Part V is cross-referenced in provisions of Part VIII which are part of the SIP, and therefore federally enforceable. EPA's approval of Appendix M would allow the Agency to ensure that New Source Performance Standards requirements codified at 40 CFR part 60 are being applied to the applicable new and modified sources.

Because 40 CFR part 60 is already a Federal regulation, EPA cannot approve the text found in Appendix M through the incorporation by reference (IBR) procedures established at 1 C.F.R. Part 51, (the mechanism used for incorporating State regulations into federally enforceable regulations). Where conflicts exist between the most current provisions of 40 CFR part 60 and those which existed as of July 1, 1991, EPA will apply the most current provisions of 40 CFR part 60.

Virginia did not submit, as part of the SIP revision request, actual copies of the scientific and technical documents cross-referenced in Parts I, IV and VIII. Therefore, EPA considers the IBR process to be inappropriate for incorporating the text of Appendix M into the SIP. However, these documents listed in Appendix M are widely available, and can be easily obtained from libraries, professional societies such as ASTM, the National Technical Information Service (NTIS), and the Government Printing Office (GPO). Therefore, EPA has determined that the documents listed in Appendix M are to be considered as part of the federally-enforceable SIP. EPA's approval action is confined to Sections II.A. through II.E. and Section II.G. of Appendix M, which lists the specific documents to be cited in the federally enforceable Virginia SIP. The remainder of Appendix M contains text which pertains to internal State administrative processes and control of hazardous materials, neither of which is governed by the SIP.

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 published elsewhere in this **Federal Register**, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 23, 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 document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. 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 23, 1995.

Final Action

EPA is approving the revisions to Parts I, IV and VIII, and the addition of Appendix M submitted by Virginia on April 12, 1989 as a revision to the Virginia SIP. EPA is also approving the additional revisions to Appendix M submitted on February 12, 1993 as a revision to the Virginia SIP. Accordingly, 40 CFR 52.2420 (Identification of Plan) is revised to reflect EPA's approval of the revisions to Parts I, IV, and VIII, and 40 CFR 52.2423 (Approval status) is revised by adding subsections (m) and (n) to reflect EPA's approval of Virginia's Appendix M, Sections II.A. through II.E. and II.G. into the SIP regulations.

The Agency has reviewed Virginia's April 12, 1989 submittal for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final 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. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated 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 approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 23, 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 to approve miscellaneous administrative revisions to the Virginia SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides.

Dated: July 6, 1995.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52, 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 VV—Virginia

2. Section 52.2420 is amended by adding paragraph (c)(105) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(105) Revisions to the Virginia Regulations For the Control and Abatement of Air Pollution submitted on April 12, 1989 by the Virginia Department of Air Pollution Control:

(i) Incorporation by reference.

(A) Letter from the Virginia Department of Air Pollution Control dated April 12, 1989 submitting a revision to the Virginia State Implementation Plan.

(B) The following provisions of the Virginia regulations, effective October 1, 1986.

(*1*) Part I Definitions. Section 1.02 (Definitions of ''Reference method,'' ''Reid vapor pressure,'' ''Stationary source,'' ''True vapor pressure'' and ''Vapor pressure'').

(*2*) Part IV Emission Standards from Existing Sources.

Rule 4–5, Sections 120–08–0502C. (Definitions of ''Condenser,'' ''Production equipment exhaust system,'' ''Reactor'' and ''Synthesized pharmaceutical products manufacturing'') and 120–04–0504C.3.b. (Control Technology Guidelines)

Rule 4–21, Sections 120–04–2102C. (Definitions of ''Sulfuric acid mist'' and ''Sulfuric acid production unit'') and 120–04–2110E. (Monitoring)

Rule 4–34, Section 120–04–3402C. (Definitions of ''Application area,'' ''Carbon adsorption system,'' ''Coating applicator,'' ''Extreme environmental conditions,'' ''Flashoff area,'' ''Miscellaneous metal parts and products'' and ''Major groups'')

Rule 4–37, Sections 120–04–3702C. (Definitions of ''Bulk gasoline plant,'' ''Bulk gasoline terminal,'' ''Condensate,'' ''External floating roof,'' ''Gasoline,'' ''Gasoline dispensing facility,'' ''Internal floating roof,'' ''Liquid-mounted,'' ''Petroleum liquids,'' ''Petroleum refinery,'' ''Submerged fill pipe,'' ''vapor-mounted,'' ''Vapor tight'' and ''Waxy, heavy pour crude oil'') and 120–04–3704C.2.b (Control Technology Guidelines)

Rule 4–41, Sections 120–04–4102C. (Definitions of ''Mobile source'' and ''Motor vehicle'') and 120–04–4105B.2. (Export/Import of Motor Vehicles)

(*3*) Part VIII Permits.

Section 120–08–01 (Permits—New and Modified Stationary Sources), subsections 120–08–01B3. (definitions of ''Allowable emissions,'' ''Begin actual construction,'' ''Commence,'' ''Construction,'' ''Emissions units,'' ''Federally enforceable,'' ''Fixed capital cost,'' ''Major modification,'' ''Major stationary source,'' ''Modification,'' ''Modified source,'' ''Necessary preconstruction approvals or permits,'' ''New source,'' ''Potential to emit,'' ''Public comment period,'' ''Reactivation,'' ''Reconstruction,'' ''Secondary emissions,'' ''State enforceable,'' ''Stationary source'' and ''Uncontrolled emission rate'') and 120–08–01C.4.d. (General)

Section 120–08–03 (Permits—Major Stationary Sources and Major Modifications Locating in Nonattainment Areas), subsections 120–08–03B.3. (all terms) and 120–08–03N.7. (Offsets)

(ii) Additional material.

(A) Remainder of February 12, 1989 State submittal pertaining to the revised provisions of Parts I, IV and VIII.

3. Section 52.2423 is amended by adding paragraphs (m) and (n) to read as follows:

§ 52.2423 Approval status.

* * * * *

(m) EPA approves as part of the Virginia State Implementation Plan the documents listed in Appendix M, Sections II.A. through II.E and Section II.G. of the Virginia Regulations for the Control and Abatement of Air Pollution

submitted by the Virginia Department of Air Pollution Control on April 12, 1989.

(n) EPA approves as part of the Virginia State Implementation Plan the revised references to the documents listed in Appendix M, Sections II.A. and II.B. of the Virginia Regulations for the Control and Abatement of Air Pollution submitted by the Virginia Department of Air Pollution Control on February 12, 1993.

[FR Doc. 95–20799 Filed 8–22–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[PP–8F3662/R1176; FRL–4178–2]

RIN 2070–AB78

Urea; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a permanent exemption from the requirement of a tolerance for residues of the frost protectant urea in or on various agricultural commodities. Unocal Corp. requested this regulation pursuant to the Federal Food, Drug and Cosmetic Act.

EFFECTIVE DATE: This regulation becomes effective August 23, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 8F3662/R1176], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 8F3662/R1176]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8323; e-mail: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 12, 1988 (53 FR 39784), which announced that the Unocal Corp., 3960 Industrial Blvd., Suite 600-B, West Sacramento, CA 95691, had submitted pesticide petition (PP) 8F3662 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish an exemption from the requirement of a tolerance for the frost protectant urea in or on all raw agricultural products. The proposed exemption was subsequently editorially amended to specify the following crops on the label of the product proposed for registration under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended: alfalfa, almonds, apples, apricots, artichokes, asparagus, avocados, beans, bell peppers, blackberries, blueberries, broccoli, brussles sprouts, boysenberries, caneberries, canola, cantaloupe, carrots, cauliflower, casaba, celery, cherries, chili peppers, chinese cabbage (bok choy, napa), cooking peppers, corn, cotton, crenshaw, cucumbers, figs, grapefruit, grapes, honeydew melon, hops, kiwifruit, kohlrabi, lemons, lentils, lettuce, limes, macadamia nuts, musk melon, nectarines, olives, onions, oranges, peaches, pears, peanuts, peas, persian melon, pistachios, plums, potatoes, pumpkin, prunes, radish, raspberries, rice, safflower, sorghum, spinach, spinach (New Zealand), squash (winter and summer), strawberries, sugar beets, sunflower, sweet pepper, table beets, tangerines, tomatoes, walnuts, watermelon, and zucchini.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The toxicological data considered in support of the exemption from the requirement of a tolerance include an acute oral toxicity study in the rat, an acute dermal toxicity study in the rabbit, an acute inhalation toxicity study in the rat, a primary eye irritation study in the rabbit, a primary dermal irritation study in rabbits, and a dermal sensitization study in the guinea pig. These studies were performed on the end-use product, ''Enfrost,'' with 42.9-percent urea. A review of these studies indicates that the frost protectant has a low toxicity to animals when administered via the oral, dermal, or inhalation routes of exposure (Toxicity Categories III and IV). The active ingredient, urea, has GRAS (Generally Recognized as Safe) status as a direct food additive under title 21 of the Code of Federal Regulations (CFR) under 40 CFR 184.1923. Urea is exempt from the requirement of a tolerance under 40 CFR 180.1001(c) as an inert ingredient in formulations applied to growing crops or crops after harvest. The amount to be used is similar to that permitted for the inert ingredient use. Urea is a normal constituent of animal tissues and body fluid. Humans excrete about 25 grams per day in the urine. Urea is a naturally occurring crop/plant constituent.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request.

Urea is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. There are no regulatory actions pending against the registration of urea. Based on the information considered, the Agency concludes that establishment of a tolerance is not necessary to protect the public health, and therefore, the exemption from the requirement of a tolerance is established as set forth below.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 8F3662/R1176] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 8F3662/R1176], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 4, 1995.

Allen Jennings,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, adding new § 180.1117, to read as follows:

§ 180.1117 Urea; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the frost protectant urea in or on the following raw agricultural commodities when used before harvest in the production of: alfalfa, almonds, apples, apricots, artichokes, asparagus, avocados, beans, bell peppers, blackberries, blueberries, broccoli, brussels sprouts, boysenberries, caneberries, canola, cantaloupes, carrots, cauliflower, casaba, celery, cherries, chili peppers, chinese cabbage (bok choy, napa), cooking peppers, corn, cotton, crenshaw, cucumbers, figs, grapefruit, grapes, honeydew melon, hops, kiwifruit, kohlrabi, lemons, lentils, lettuce, limes, macadamia nuts, musk melon, nectarines, olives, onions, oranges, peaches, pears, peanuts, peas, persian melon, pistachios, plums, potatoes, pumpkin, prunes, radish, raspberries, rice, safflower, sorghum, spinach, spinach (New Zealand), squash (winter and summer), strawberries, sugar beets, sunflower, sweet pepper, table beets, tangerines, tomatoes, walnuts, watermelon, and zucchini.

[FR Doc. 95–20888 Filed 8–22–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 387

[Docket No. R–157]

RIN 2133–AB18

Utilization and Disposal of Surplus Federal Real Property for Development or Operation of a Port Facility; Correction

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule; correction.

SUMMARY: This document makes a technical correction to a final rule published on August 16, 1995 concerning the terms, reservations, restrictions, and conditions under which the Secretary of Transportation will convey surplus Federal real property and related personal property to public entities for use in the development or operation of a port facility.

EFFECTIVE DATE: August 16, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Carman (202) 366–4357.

SUPPLEMENTARY INFORMATION: Beginning on page 42466 in the issue of August 16, 1995, the Maritime Administration published a final rule adding a new part 387. However, in the table of contents for the part on page 42467, in the second column, and in the section headings of the sections on pages 42467 through 42469, the new sections were incorrectly designated as §§ 12.1 through §§ 12.6. These section numbers are corrected to read as §§ 387.1 through §§ 387.6. In addition, it should be noted that the new part 387 is added to Subchapter J—Miscellaneous, of Title 46 CFR chapter II.

By Order of the Maritime Administrator.

Dated: August 17, 1995.

Joel Richard,

Secretary, Maritime Administration.

[FR Doc. 95–20870 Filed 8–22–95; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 92–235, FCC 95–255]

Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; Clarification.

SUMMARY: On June 15, 1995, the Commission adopted a *Report and Order* which resolves many of the technical issues which have inhibited private land mobile radio (PLMR) users from employing the most spectrally-efficient technologies. This Public Notice clarifies the June 15, 1995, *Report and Order* so that license applications requesting power in excess of that now permitted on the offsets (*e.g.,* 2 watts output power in all services except the Special Industrial Radio Service, where entities may be licensed for an effective radiated power of up to 100 watts) will not be accepted for filing until issues are resolved relative to the consolidation of radio services and/or the designation of dedicated channels in the 450–470 MHz band for low power use. Upon the resolution of these issues, the Commission will notify the public as to the lifting of the freeze.

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Mark Rubin of the Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION: On June 15, 1995, the Commission adopted a *Report and Order,* PR Docket No. 92–235, FCC 95–255 60 FR 37152, July 19, 1995 to promote more efficient use of the private land mobile radio (PLMR) spectrum below 800 MHz. The Commission formulated a narrowband channel plan in order to promote spectrum efficiency. Under the new plan, channels in the 450–470 MHz band available under former § 90.267 of the Commission's rules, 47 CFR 90.267, that are 12.5 kHz removed from regularly-assignable channels and reserved for low power operation (''12.5 kHz offset channels'') can be assigned for high power operation. The Commission recognized, however, that there still is a need for low power channels. It stated that frequency coordinators, as part of the coordination transition plan, could designate specific channels for low power use. A key part of the frequency coordination plan is the consolidation of the twenty PLMR services. The Commission provided the PLMR community three months to negotiate and submit a consensus plan for consolidation.

Hewlett-Packard Company (HP) submitted a letter on July 25, 1995, to the Chief of the Private Wireless Division, requesting that, in light of the August 18, 1995, effective date of the new rules, the Commission protect current operations on these 12.5 kHz offset channels until the underlying issues regarding frequency coordination and the establishment of dedicated channels in the 450–470 MHz band for low power use are addressed. HP stated that hospitals use tens of thousands of HP telemetry devices operating on the 12.5 kHz offsets to monitor electrocardiographs and other critical information on the status of cardiac patients. HP explained that these telemetry units play an important role in allowing cardiac patients to become ambulatory within limited proximity to the treating hospital, thereby facilitating recovery and reducing inpatient costs. HP suggested that medical telemetry and high-powered operations cannot co-exist on these 12.5 kHz offset channels.

The Bureau agrees with HP that a problem could develop if many applicants were to file for and obtain high powered operation on these offsets prior to coordinators identifying a new location for low power operations. Therefore, license applications requesting power in excess of that now permitted on the offsets (*e.g.,* 2 watts output power in all services except the Special Industrial Radio Service, where entities may be licensed for an effective radiated power of up to 100 watts) will not be accepted for filing until issues are resolved relative to the consolidation of radio services and/or the designation of dedicated channels in the 450–470 MHz band for low power use. Upon the resolution of these issues, the Commission will notify the public as to the lifting of the freeze.

The imposition of the freeze is procedural in nature and, therefore, is not subject to the notice and comment and effective date requirements of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)). See *Neighborhood TV Co., Inc.* v. *FCC,* 742 F.2d 629 (D.C. Cir. 1984, *Buckeye Cablevision, Inc.* v. *United States,* 438 F. 2d 948 (6th Cir. 1971), and *Kessler* v. *FCC,* 326 F.2d 673 (D.C. Cir. 1963). Furthermore, good cause exists for non-compliance with the APA's ''notice and comment'' and ''effective date'' requirements because it would be impractical, unnecessary, and contrary to the public interest if the Commission did not act to protect the critical operations on these 12.5 kHz offset channels. This action is effective immediately.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–20732 Filed 8–22–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 215

[DFARS Case 95–D701]

Defense Federal Acquisition Regulation Supplement; Contract Award (Interim)

AGENCY: Department of Defense (DoD).

ACTION: Correction to interim regulation.

SUMMARY: The interim rule published at 60 FR 40106 on August 7, 1995, is corrected to reflect removal of the subsections within the removed section on production special tooling and production special test equipment.

EFFECTIVE DATE: August 7, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa D. Rider, DFARS FASTA Implementation Secretariat, at (703) 614–1634. Please cite DFARS Case 95–D701.

SUPPLEMENTARY INFORMATION: The Department of Defense published an interim rule amending 48 CFR Parts 206, 207, 215, 219, and 252 on August 7, 1995, at 60 FR 40106. The amendment to Part 215 removed and reserved section 215.871, but inadvertently did not indicate that subsections 215.871–1 through 215.871–5 are also removed. This correction removes the appropriate subsections.

List of Subjects in 48 CFR Part 215

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 215 is amended as follows:

1. The authority citation for 48 CFR Part 215 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

215.871–1, 215.871–2, 215.871–3, 215.871–4, 215871–5 [Removed]

2. Sections 215.871–1, 215.871–2, 215.871–3, 215.871–4, and 215.871–5 are removed.

[FR Doc. 95–20751 Filed 8–22–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Decision on Designation of Critical Habitat for the Gulf Sturgeon

AGENCIES: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce; and Fish and Wildlife Service, Interior.

ACTION: Notice of decision on critical habitat designation.

SUMMARY: The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS), collectively the Services, announce a decision on designation of critical habitat for the Gulf sturgeon (*Acipenser oxyrinchus desotoi*), a federally listed threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). Based on lack of benefit to the species, the Services have determined that critical habitat designation is not prudent.

DATES: The finding announced in this notice was made on August 18, 1995.

ADDRESSES: Information, comments, or questions should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216. The administrative record supporting this decision is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Michael M. Bentzien at the above address or telephone 904/232–2580.

SUPPLEMENTARY INFORMATION:

Background

The Gulf sturgeon (*Acipenser oxyrinchus* (=*oxyrhynchus desotoi*), also known as the Gulf of Mexico sturgeon, is a nearly cylindrical fish with an extended snout, ventral mouth, chin barbels, and with the upper lobe of the tail longer than the lower. Adults range from 1.8–2.4 meters (6–8 feet) in length, with adult females larger than males. It is a subspecies of Atlantic sturgeon, *Acipenser oxyrinchus* (=*oxyrhynchus*), and is distinguished from *Acipenser oxyrinchus oxyrinchus,* the East Coast subspecies, by its longer head, pectoral fins, and spleen. The Gulf sturgeon is restricted to the Gulf of Mexico and its drainages, primarily from the Mississippi River to the Suwannee River, including the States of Louisiana, Mississippi, Alabama, and Florida. Sporadic occurrences are known as far west as Texas (Rio Grande), and marine waters in Florida south to Florida Bay (Wooley and Crateau 1985, Reynolds 1993). As an anadromous species, the Gulf sturgeon migrates between fresh and salt water. For discussion of the ecology, life history, and threats to this subspecies, see the Services' September 30, 1991, final rule listing the Gulf sturgeon as a threatened species (56 FR 49653).

Gilbert (1992) discovered that the specific scientific name of the Atlantic sturgeon had been ''. . . misspelled for over 100 years . . .'' and pointed out that it should be *oxyrinchus,* not the previously used *oxyrhynchus.* Both spellings are conjuncted in this proposed rule to acknowledge the correct zoological nomenclature and avoid confusion with previous Federal documents and literature references.

Services' involvement with the Gulf sturgeon began with monitoring and other studies of the Apalachicola River population by the FWS Panama City, Florida, Fisheries Assistance Office in 1979. The fish was included as a category 2 species in the FWS December 30, 1982 (47 FR 58454) and September 18, 1985 (50 FR 37958) vertebrate review notices and in the January 6, 1989 (54 FR 554) animal notice of review. Category 2 designation was given to those species for which listing as threatened or endangered is possibly appropriate, but for which additional biological information is needed to support a proposed rule. In 1980, the FWS Jacksonville, Florida Office contracted a status survey report on the Gulf sturgeon (Hollowell 1980). The report concluded that the fish had been reduced to a small population due to overfishing and habitat loss. In 1988, the Panama City, Florida Office completed a report (Barkuloo 1988) on the conservation status of the Gulf sturgeon, recommending that the subspecies be listed as a threatened species pursuant to the Act.

The FWS and NMFS jointly proposed the Gulf sturgeon for listing as a threatened species on May 2, 1990 (55 FR 18357). In that proposed rule, the Services maintained that designation of critical habitat was ''not prudent'' due to the sturgeon's broad range and the lack of knowledge of specific areas utilized by the subspecies. The final rule for the Gulf sturgeon was published

on September 30, 1991 (56 FR 49653). It included special rules promulgated under section 4(d) of the Act for a threatened species, allowing taking of Gulf sturgeon in accordance with applicable state laws, for educational and scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes. The final rule found that critical habitat designation ''may be prudent but is not now determinable.'' Further comments on the critical habitat issue were solicited from all interested parties following listing. A final decision on designation of critical habitat was to have been made by May 2, 1992.

On August 11, 1994, the Sierra Club Legal Defense Fund, Inc. (Fund), on behalf of the Orleans Audubon Society and Florida Wildlife Federation, gave written notice of their intent to file suit against the Department of the Interior for failure to designate critical habitat for the Gulf sturgeon within the statutory time limits established under the Act. The Fund filed suit (Orleans Audubon Society *vs* Babbitt, Civ. No. 94–3510 (E.D. La)) following a combined meeting and teleconference with the FWS on October 11, 1994.

Critical habitat is defined in section 3(5)(A) of the Act as ''(i) the specific areas within the geographic area occupied by a species . . . on which are found those physical or biological features (I) Essential to the conservation of the species, and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed . . . upon determination by the Secretary that such areas are essential for the conservation of the species.'' The term ''conservation,'' as defined in section 3(3) of the Act, means ''. . . to use and the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary,'' i.e., the species is recovered and can be removed from the list of endangered and threatened species. The Act requires that critical habitat be designated at the time any species is listed as an endangered or threatened species, to the extent prudent and determinable. If a final regulation listing a species finds that critical habitat is not determinable, a decision on whether to designate critical habitat must be made within one additional year (within two years of the date on which the species was proposed for listing).

The Services' criteria for designating critical habitat (50 CFR part 424.12) state that a designation of critical habitat is not prudent if either of the two following situations exist:

1. The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or

2. Such designation of critical habitat would not be beneficial to the species.

The Services' determination not to declare critical habitat for this species is based on the lack of benefit to the species because there are existing conservation measures in place and other management efforts that provide the species with protection above and beyond that of the Act. Therefore, for this reason, the designation of critical habitat will not provide additional protection for the species. A detailed explanation follows.

1. Existing Conservation Measures

As required in section 4(f) of the Act and in accordance with established regulations, the Services have proceeded with the development of a recovery plan for this species. A draft plan was prepared and circulated for comment and a final plan is ready for approval in the near future. The final plan will be both a recovery and management plan. This plan will provide essential guidance for the recovery of the Gulf sturgeon.

In addition to the protection afforded the species by the Act (e.g., section 9 prohibitions on take), because the Gulf sturgeon has been listed as a threatened species, additional extensive protection has been afforded the species. A summary of some of these measures as explained in detail in the recovery plan follow:

a. All states within the range of the Gulf sturgeon have prohibited take.

The Alabama Department of Conservation and Natural Resources established a regulation in 1972 prohibiting all take of sturgeon within the jurisdiction of the State of Alabama.

The Florida Marine Fisheries Commission established a regulation in 1984 prohibiting all take of sturgeon within the jurisdiction of the State of Florida.

The Mississippi Department of Wildlife, Fisheries, and Parks established a regulation in 1974 prohibiting all take of sturgeon within the jurisdiction of the State of Mississippi.

The Louisiana Department of Wildlife and Fisheries established a regulation in 1990 prohibiting all take of sturgeon within the jurisdiction of the State of Louisiana.

b. The Gulf States Marine Fisheries Commission initiated a Gulf Sturgeon Interjurisdictional Fishery Management Plan in 1990, which served as the foundation for the recovery team and recovery plan.

c. The Services and the States of Alabama, Florida, Louisiana, Mississippi, and Texas have all conducted research on the distribution and abundance of Gulf sturgeon. Research programs to gather more life history and population information will be a continuing coordinated effort.

d. The Mobile District of the U.S. Army Corps of Engineers (Corps) has worked closely with conservation agencies on several projects to improve habitat for Gulf sturgeon. These include efforts to restore important thermal refugia habitat and access into Battle Bend Cutoff in the Apalachicola River. The Corps has also funded studies to monitor the Pearl River Gulf sturgeon populations.

e. The Corps and the National Oceanic and Atmospheric Administration have developed a Cooperative Agreement to Create and Restore Fish Habitat. Under this agreement, much can be accomplished for the recovery of Gulf sturgeon. One such project includes restoration of access to the Blue Spring Run on the Apalachicola River.

f. The FWS has recently produced a draft Mobile River Basin Aquatic Ecosystem Recovery Plan to protect habitat and water quality in this portion of the Gulf sturgeon's range. A Mobile River Basin Aquatic Ecosystem Coalition composed of business leaders, private property owners, State and Federal agencies, and environmental organizations has been established to manage recovery efforts in the Basin.

g. Several State and Federal agencies have recently formed the Suwannee River Cooperative River Basin Study. This project will focus on taking a holistic approach to water quality management in the entire Suwannee River watershed, home to a significant population of the Gulf sturgeon.

h. In September, 1994, fourteen Federal agencies including the FWS, Corps, NMFS, National Park Service, and the Department of Defense signed a Memorandum of Understanding (MOU) on implementation of the Act. The purpose of the MOU was to establish a general framework for cooperation and participation among the agencies in accordance with responsibilities under the Act. The agencies are to work together along with appropriate involvement of the public, States, Indian Tribal governments, and local governments, to achieve the common goal of conserving species listed as threatened or endangered under the Act by protecting and managing their populations and the ecosystems upon

which those populations depend. The cooperating Federal agencies involved in recovery of the Gulf sturgeon will now be able to work closely together under the umbrella of the MOU.

i. Designated critical habitat is protected by the Act only under section 7(a)(2), which provides that activities that are federally funded, permitted, or carried out may not destroy or adversely modify critical habitat. However, section 7(a)(2), which also prohibits Federal activities likely to jeopardize listed species, provides substantial protection to the habitat of listed species even if critical habitat is not designated. For some species, the protection afforded the species' habitat through application of the no jeopardy standard is so strong, the Service believes there would be no direct net conservation benefit from designating critical habitat.

Regulations (50 CFR part 402.02) define ''jeopardize the continued existence of'' as meaning an action that would reduce appreciably the likelihood of both the survival and recovery of a species by reducing the reproduction, numbers, or distribution of that species. ''Destruction or adverse modification'' is defined as an alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Because it is a wide-ranging anadromous fish, moving from the marine environment into freshwater rivers to spawn, the Gulf sturgeon is dependent on a variety of habitat features and environmental conditions. During its annual migration, it requires nearshore (bays and estuaries) and offshore (Gulf of Mexico) feeding areas and freshwater rivers with adequate water quality and quantity, hard bottoms for spawning, and spring flows and deep holes for thermal refugia. Destruction or adverse modification of any of these habitat features to the point of appreciably diminishing habitat value for recovery and survival would also jeopardize the species' continued existence by reducing its reproduction, numbers, or distribution.

For example, a dam proposed for construction on a river system used for spawning by the Gulf sturgeon could affect the species by preventing access to upstream spawning areas. If critical habitat were designated for the Gulf sturgeon, and if the dam impeded access thus reducing the value of the critical habitat for both survival and recovery, the Service would make a ''destruction or adverse modification'' finding in its biological opinion. However, if critical habitat were not designated, the dam would prevent the Gulf sturgeon from reaching the spawning areas, thereby reducing its distribution, reproduction, and probably numbers. If this loss was sufficient to reduce appreciably the likelihood of both survival and recovery of the species, it would meet the definition of jeopardy (see above), and result in a jeopardy biological opinion. Another example would be the development of a private marina involving the dredging of a basin for boat use. If the dredging altered or destroyed certain habitat features required by the Gulf sturgeon, such as hard bottoms or deep holes, it would violate the ''destroy or adversely modify'' standard by reducing the value of that habitat for survival and recovery of the species. However, appreciable reduction of any such habitat would also jeopardize the species by reducing the species' reproduction, numbers, or distribution. Loss of hard bottoms would affect reproduction due to the loss of sites for egg deposition, and loss of deep holes used for thermal refugia would change the distribution of the species by preventing it from remaining in formerly suitable river reaches.

For the Gulf sturgeon, the Service therefore believes that designation of critical habitat would not add any protection over that afforded by the jeopardy standard, because any appreciable diminishment of habitat sufficient to appreciably reduce the value of the habitat for survival and recovery would also appreciably reduce the likelihood of survival and recovery by reducing reproduction, numbers, or distribution. The Service has found this to be the case for other aquatic species for which an appreciable reduction in habitat value would trigger the jeopardy standard, for example the Appalachian elktoe mussel, listed as endangered on November 23, 1994 (59 FR 60324), and three Texas aquatic invertebrates, listed as endangered on June 5, 1995 (60 FR 29537).

Based on the above discussion, the Services have determined that the lack of additional conservation benefit from critical habitat designation for this species makes such designation not prudent.

References Cited

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Author

The primary author of this document is Dr. Michael M. Bentzien (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 18, 1995.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

Dated: August 17, 1995.

Gary C. Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–20935 Filed 8–22–95; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 60, No. 163
Wednesday, August 23, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 315

RIN 3206–AG81

Career and Career-Conditional Employment; Noncompetitive Appointment of Certain Former Overseas Employees

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) proposes to issue regulations implementing Executive Order 12721. That order authorizes OPM to set the conditions under which Federal agencies can noncompetitively appoint certain former overseas employees, i.e., family members who accompanied their sponsors on official assignment overseas. Among the conditions for noncompetitive appointment in the United States is the requirement that the former overseas employee have 52 weeks of service. Under the current regulations, up to 26 weeks of the 52-week service requirement can be waived for a family member whose expected 52 weeks of employment were cut short because of an emergency situation which necessitated the family member's relocation to the United States. An emergency situation includes conflict, terrorism, or the threat of terrorism but does not include a personal situation such as ill health.

This proposal would permit the agency that employed the individual overseas to waive a portion of the 52-week overseas service requirement for family members forced to return to the United States because of military drawdowns or other management-initiated decisions not personal to the individual. In addition, the proposal would streamline the entire regulation by removing duplication and adding clarifying information.

DATES: Comments must be received on or before October 23, 1995.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Employment, U.S. Office of Personnel Management, 1900 E Street NW., Room 6F08, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Ellen Russell on 202–606–0830, FAX 202–606–2329, or TDD 202–606–0023.

SUPPLEMENTARY INFORMATION: Executive Order 12362, dated May 12, 1982, first demonstrated the U.S. Government's interest in enhancing the well-being of U.S. Government families by improving career employment opportunities for family members of civilian and military employees assigned abroad. By providing family members with access to career positions in the United States based on their nonpermanent service overseas, the Executive order helped Government families cope with the disruption resulting from assignments to overseas locations where career jobs for family members typically do not exist. Executive Order 12362 permitted these family members to qualify for noncompetitive appointment in the United States after 24 months of overseas service under nonpermanent appointment. Executive Order 12585 of March 3, 1987, reduced the 24-month service requirement to 18 months. Executive Order 12721, dated July 30, 1990, revoked the two previous Orders and authorized the Office of Personnel Management to establish requirements under which family members could qualify for noncompetitive appointment. OPM regulations issued on April 3, 1991 (56 FR 13575) then reduced the service requirement to 52 weeks and also permitted OPM or agencies under delegated agreement to waive up to 26 weeks of the service requirement in emergency situations as defined in the regulations, for example, conflict or terrorism.

Since 1991, many changes have occurred in the United States military presence overseas.

As a result of the end of the Cold War, the U.S. Government is reducing (drawing down) the number of personnel (civilian and military) assigned overseas. As a result, family members of these returning personnel are relocating to the United States before they have worked the full 52 weeks, the amount of time necessary to qualify for noncompetitive appointment. The Department of Defense recommends, and we concur, that these family members should not be penalized by the service drawdowns. Consequently, the proposed regulation would delegate to agencies the authority to waive up to 26 weeks of service in nonpersonal situations that necessitate the relocation of family members out of the overseas area.

Section Analysis

Following is a summary of the changes we would make; section numbers refer to the proposed regulation.

A. § 315.608(a)(1): Clarifies that an appointee under this section receives a career rather than a career-conditional appointment when the individual has already satisfied requirements for career tenure or is appointed to a position that requires career tenure upon appointment.

B. § 315.608(a): Clarifies that the *United States* includes Guam, Puerto Rico, and Virgin Islands for purpose of Stateside appointment.

C. § 315.608(b)(1): Drops the requirement that an individual meet the overseas service requirement *in a 10-year period beginning after January 1, 1980*. We see no need for this requirement.

D. § 315.608(b)(2): Drops the reference to performance ratings earned after January 1, 1984. We see no need for this requirement.

E. § 315.608(c): To include military drawdowns, broadens the conditions under which agencies are allowed to waive up to 26 weeks of the 52-week overseas service requirement. (We explained our rationale for this change in the Supplementary Information.) Also, delegates the waiver authority to agencies in keeping with the National Performance Review (NPR) recommendation to give agencies more flexibility.

F. § 315.608(d): Clarifies when the 3-year period of eligibility begins, i.e., when a family member returns to the United States to resume residence as opposed to returning for vacation, training, etc.

G. § 315.608(d): Removes reference to Stateside appointment before January 1, 1994. Changes the authority to extend an individual's period of employment eligibility beyond the 3-year period in two specific circumstances from the

Office of Personnel Management to the hiring agency.

H. § 315.608(e)(4)(ii): Defines local hire appointments to include overseas limited appointments when made on a temporary or term basis.

I. § 315.608(e)(4)(v): Removes reference to the Federal Personnel Manual. That document was abolished on December 31, 1994.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulation pertains only to Federal employees and agencies.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 315

Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend part 315 of title 5, Code of Federal Regulations, as follows:

PART 315—CAREER AND CAREER-CONDITIONAL APPOINTMENT

1. The authority citation for part 315 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652.

Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104.

Sec. 315.603 also issued under 5 U.S.C. 8151.

Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp., p. 111.

Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp., p. 303.

Sec. 315.607 also issued under 22 U.S.C. 2506.

Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp., p. 293.

Sec. 315.610 also issued under 5 U.S.C. 3304(d).

Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp., p. 229.

Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

2. Section 315.608 is revised to read as follows:

§ 315.608 Noncompetitive appointment of certain former overseas employees.

(a) An executive branch agency may noncompetitively appoint, to a competitive service position within the United States (including Guam, Puerto Rico, and the Virgin Islands) an individual who has completed 52 weeks of creditable overseas service as defined in paragraph (b) of this section and is appointed within the time limits in paragraph (d) of this section. Any law, Executive order, or regulation that disqualifies an applicant for appointment, such as the citizenship requirement, also disqualifies the applicant for appointment under this section.

(1) *Tenure.* A person appointed under this section becomes a career-conditional employee unless he or she has already satisfied the requirements for career tenure or is exempt from the service requirements in 5 CFR 315.201.

(2) *Competitive status.* A person appointed under this section acquires competitive status automatically upon completion of probation.

(b) Creditable overseas service for purposes of this section only, is service in an appropriated fund position(s) performed by a family member under a local hire appointment(s) overseas:

(1) During the time the family member was accompanying a sponsor officially assigned to an overseas area; and

(2) For which the family member received a fully successful or better (or equivalent) performance rating.

(3) Computation of creditable overseas service is in accordance with the service computation procedures in the Guide to Processing Personnel Actions. Leave without pay (LWOP) taken during the time an individual is in the overseas area is credited on the same basis as time worked.

(c) *Exception.* Up to 26 weeks of the 52-week service requirement is waived when the head of an agency (or designee) that employed the family member overseas certifies that the family member's expected 52 weeks of employment were cut short because of a nonpersonal situation that necessitated the relocation of the family member from the overseas area. For this purpose, a nonpersonal situation includes disaster, conflict, terrorism or the threat of terrorism, and the deployment of the family member's sponsor from the overseas area. A nonpersonal situation does not include circumstances that specifically relate to a particular individual, for example, ill health or personal interest in relocating.

(d) An individual is eligible for appointment(s) under this authority only within 3 years of returning from overseas to the United States to resume residence. The hiring agency may extend an individual's appointment eligibility beyond 3 years for periods equivalent to—

(1) The time the individual was accompanying a sponsor on official assignment to an area of the United States with no significant opportunities for Federal employment as determined by the hiring agency; or

(2) The time the hiring agency determines an eligible individual was incapacitated for employment.

(e) *Definitions.* In this section—

(1) *Family member.* An unmarried child under age 23 or a spouse.

(2) *Sponsor.* A Federal civilian employee, a Federal nonappropriated fund employee, or a member of a uniformed service who is officially assigned to an overseas area.

(i) *Officially assigned.* Under active orders issued by the United States Government.

(ii) *Federal civilian employee.* An employee of the executive, judicial, or legislative branch of the United States Government who serves in an appropriated fund position.

(iii) *Nonappropriated fund employee.* An employee paid from nonappropriated funds of the Army and Air Force Exchange Service, Navy Ship's Stores Ashore, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or other instrumentalities of the United States.

(iv) *Member of a uniformed service.* Personnel of the U.S. Armed Forces (including the Coast Guard), the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

(3) *Accompanying.* The family member resided in the overseas area while the sponsor was officially assigned to an overseas post of duty. The family member need not have physically resided with the sponsor at all times or have traveled with the sponsor to or from the overseas area.

(4) *Local hire appointment.* An appointment that is not actually or potentially permanent and that is made from among individuals residing in the overseas area. In this section only, a local hire appointment includes nonpermanent employment under:

(i) Overseas limited appointment under 5 CFR 301.203(b) or (c);

(ii) Excepted appointment under Schedule A 213.3106(b)(1), 213.3106(b)(6), or 213.3106(d)(1)) when the duration of the appointment is tied to the sponsor's rotation date or when the appointment is made on a not-to-exceed (NTE) basis;

(iii) An ''American family member'' or ''part-time intermittent temporary (PIT)'' appointment in U.S. diplomatic establishments;

(iv) 50 U.S.C. 403j; Public Law 86–36 (50 U.S.C. 403, note); the Berlin Tariff Agreement; or as a local national employee paid from appropriated funds; or

(v) Any other nonpermanent appointment in the competitive or excepted service approved by OPM.

(5) *Overseas.* A location outside: the 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(6) *Qualified.* Meeting all qualification requirements for a position in the United States, except that an agency may waive any requirement for a written test after determining that the duties and responsibilities of the applicant's overseas position were similar enough to make the written test unnecessary.

[FR Doc. 95–20881 Filed 8–22–95; 8:45 am]

BILLING CODE 6325–01–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 52 and 100

Nuclear Energy Institute

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission staff will meet with the staff of the Nuclear Energy Institute (NEI) and other industry representatives to hear a clarification of industry comments on the non-seismic aspects of the proposed revision of 10 CFR Parts 50, 52 and 100 and associated guidance documents.

DATES: September 13, 1995, 9 a.m.

ADDRESSES: Two White Flint North, 11145 Rockville Pike, Conference Rooms T–9A1 and T–9F5, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Soffer, Accident Evaluation Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–6574.

SUPPLEMENTARY INFORMATION: Proposed revisions to 10 CFR 50, 52, and 100 were published for public comment on October 17, 1994 (59 FR 522255). The availability of draft guidance documents was published on February 28, 1995 (60 FR 10810). The public comment period ended May 12, 1995. The proposed revision to 10 CFR 100 primarily consists of two separate changes, namely, the source term and dose considerations, and the seismic and earthquake engineering considerations of reactor siting. The purpose of this meeting is for the NRC staff to hear, at the industry's request, a clarification of industry comments on the source term and dose consideration aspects of the proposed rule.

Dated at Rockville, Maryland, this 16th day of August, 1995, for the Nuclear Regulatory Commission.

M. Wayne Hodges,

Director, Division of Systems Technology, Office of Nuclear Regulatory Research.

[FR Doc. 95–20867 Filed 8–22–95; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T; Docket No. R–0772]

RIN 7100–AB28

Securities Credit Transactions; Review of Regulation T, ''Credit by Brokers and Dealers''; Extension of Comment Period

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On June 29, 1995, the Board requested comment on a proposal to amend Regulation T (Credit by Brokers and Dealers) (60 FR 33763). The Secretary of the Board, acting pursuant to delegated authority, has extended the comment period to September 29, 1995, to give the public additional time to provide comments.

DATES: Comments must be received on or before September 29, 1995.

ADDRESSES: Comments should refer to Docket R–0772, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Scott Holz, Senior Attorney or Angela Desmond, Senior Counsel, Division of Banking Supervision and Regulation (202) 452–2781, Board of Governors of the Federal Reserve System. For users of Telecommunications Device for the Deaf (TDD) *only,* contact Dorothea Thompson at (202) 452–3544.

SUPPLEMENTARY INFORMATION: The Board is extending the comment period on the proposed amendments to Regulation T (Credit to Brokers and Dealers) until September 29, 1995, to give the public additional time to comment on the proposal.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, August 17, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–20864 Filed 8–22–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–95–3]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received October 23, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No.

_____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132. Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on August 17, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 27371.

Petitioner: Homeowners of Encino.

Regulations Affected:

14 CFR 91.119(d)

Description of Rulechange Sought: To replace current § 91.119(d) with the following language: *Helicopters.* Helicopters operated by any municipal, county, state, or federal authority for emergency services, rescue operations, police or fire protection, may be operated at less than the minimum prescribed in paragraph (b) or (c) of this section if the operation is conducted without hazard to persons or property on the surface.

Petitioner's Reason for the Request: The petitioner feels that the FAA should reconsider its denial of the original request to amend the rule because it did not provide sufficient determination to presented data or comments. The petitioner also requests a 60-day comment period for this reconsideration.

[FR Doc. 95–20877 Filed 8–22–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 33

[Docket No. 95–ANE–46; Notice No. 33–ANE–05]

Special Conditions: Turbomeca Model Arriel 2S1 Turboshaft Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Turbomeca Model Arriel 2S1 turboshaft engine. This engine will have novel or unique engine ratings that are not defined by the applicable airworthiness regulations. This notice proposes the safety standards for those novel or unique ratings that the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 33 of the Federal Aviation Regulations (FAR).

DATES: Comments must be submitted on or before September 22, 1995.

ADDRESSES: Comments on this proposal may be submitted in triplicate to: Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 95–ANE–46, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments must be marked: Docket No. 95–ANE–46. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chung Hsieh, Engine and Propeller Standards Staff, ANE–110, Engine and propeller Directorate, Aircraft Certification Service FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; (617) 238–7115; Fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under **ADDRESSES**. All communications received on or before the closing date for comments, specified under **DATES**, will be considered by the Administrator before taking action on the proposal. The proposal contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed special conditions. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this proposal will be filed in the docket.

Comments wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–ANE–46.'' The postcard will be date stamped and returned to the commenter.

Background

On February 25, 1994, Turbomeca applied for an amendment to Type Certificate No. E19EU to add a new Model Arriel 2S1 turboshaft engine. The Model Arriel 2S1 turboshaft engine, a derivative of the Arriel 1 turboshaft engine will be rated at 30-Second OEI, 2-Minute one engine inoparative (OEI), Continuous OEI, Takeoff, and Maximum Continuous ratings.

The applicable airworthiness requirements do not contain 30-Second OEI and 2-Minute OEI rating definitions, and do not contain adequate or appropriate safety standards for the type certification of these new and unusual engine ratings.

Type Certification Basis

Under the provisions of section 21.101 of the Federal Aviation Regulations (FAR's) Turbomeca must show that the new Model Arriel 2S1 turboshaft engine meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. E19EU or the applicable regulations in effect on the date of application. The FAR's incorporated by reference in type Certificate No. E19EU are: Section 21.29 and part 33, effective February 1, 1965, as amended.

The Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the Turbomeca Arriel 2S1 turboshaft engine because of the new and unique engine ratings. Therefore, the Administrator proposes special conditions under the provisions of section 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with section 11.49 of the FAR after public notice and opportunity for comment, as required by sections 11.28 and 11.29(b), and become part of the type certification basis in accordance with section 21.17(a)(2).

Conclusion

This action affects only certain novel or unusual design features on one model engine. It is not a rule of general

applicability and affects only the manufacturer who applied to the FAA for approval of these features on the engine.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Turbomeca Arriel 2S1 turboshaft engine:

(a) In addition to the requirements of section 33.7, the following ratings are defined as:

(1) RATED 30-SECOND ONE-ENGINE-INOPERATIVE (OEI) POWER: The approved brake horsepower developed statically in standard atmosphere at sea level, or at a specified altitude and temperature, for continued one-flight operation after the failure of one engine in multi-engine rotorcraft, limited to three periods of use, no greater than 30 seconds each, at rotor shaft rotation speed and gas temperature established for this rating by part 33 or this special condition.

(2) RATED 2-MINUTE OEI POWER: The approved brake horsepower, developed statically in standard atmosphere at sea level, or at a specified altitude and temperature, for continued one-flight operation, after failure of one engine in multi-engine rotorcraft, limited to three periods of use, of up to two minutes each, at rotor shaft rotation speed and gas temperature established for this rating by part 33 or this special condition.

(b) In addition to the requirements of section 33.4, the mandatory inspection and maintenance actions required following the use of the 30-Second or 2-Minute OEI rating, must be included in the airworthiness limitations section of the appropriate engine manuals.

(c) In addition to the requirements of section 33.27, the following additional test requirements must be considered. For 30-Second and 2-Minute OEI conditions, test for a period of 5 minutes—

(1) At 100 percent of the highest speed that would result from failure of the most critical component of each turbine and compressor or system in a representative installation of the engine when operating at 30-Second and 2-Minute OEI rating conditions.

(2) The test speed must take into account minimum material properties, maximum operating temperature, and the most adverse dimensional tolerances.

(3) Following the test, rotor growth and distress beyond dimensional limits for an overspeed condition is permitted for 30-Second and 2-Minute OEI rating only, provided the structural integrity of the rotor is maintained, as shown by a procedure acceptable to the Administrator.

(d) In addition to the requirements of section 33.29, the engine must provide for a means:

(1) To indicate when the engine is at either 30-Second and 2-Minute OEI-rated power level; and

(2) To determine the elapsed time of operation at 2-Minute OEI and 30-Second OEI-rated power levels.

(e) In addition to the requirements of section 33.67, the engine must provide for a means for automatic availability and automatic control of the 30-Second OEI power; and engine test runs must be performed to demonstrate automatic switching to a 30-Second OEI rating condition.

(f) In addition to the requirements of section 33.83, the following additional test requirements must be considered under section 33.83(a):

(1) For 30-Second and 2-Minute OEI rating conditions, the vibration survey shall cover the ranges of power, and both the physical and corrected rotational speeds for each rotor system, corresponding to operations throughout the range of ambient conditions in the declared flight envelope, from the minumum rotor speed up to 103 percent of the maximum rotor speed permitted for 2-Minute OEI rating, and up to 100 percent of the maximum rotor speed permitted for 30-Second OEI rating speed. If there is any indication of a stress peak arising at high physical or corrected rotational speeds, the surveys shall be extended in order to quantify the phenomenon and to ensure compliance with the requirements of section 33.63.

(g) In addition to the requirements of section 33.85, tests performed at the 30-Second and 2-Minute OEI ratings, during the applicable endurance test prescribed in section 33.87, may be used to show compliance with the requirements of section 33.85.

(h) In addition to the requirements of section 33.87, an engine test must be conducted four times, using the following test sequence, for a total of not less than 120 minutes:

(1) Takeoff Power—three minutes at rated takeoff power.

(2) 30-Second OEI power—thirty seconds at rated 30-Second OEI power.

(3) 2-Minute OEI power—two minutes at rated 2-Minute OEI power.

(4) 30-Minute OEI, Continuous OEI, or Maximum Continuous power—five minutes at rated 30-Minute OEI power, or rated Continuous OEI power, or rated Maximum Continuous power, whichever is greatest, except that during the first test sequence this period shall be 65 minutes.

(5) 50 percent takeoff power—one minute at 50 percent takeoff power.

(6) 30-second OEI power—thirty seconds at rated 30-Second OEI power.

(7) 2-minute OEI power—two minutes at rated 2-Minute OEI power.

(8) Idle power—one minute at Idle power.

(i) In addition to the requirements of section 33.88, the following must be performed:

(1) For engines that do not provide a means for temperature limiting; conduct a test for a period of five minutes at the maximum permissible power-on RPM, with the gas temperature at least 75 degrees Fahrenheit higher than the 30-Second OEI rating operating temperature limit.

(2) For engines that provide a means for temperature limiting; conduct a test for a period of four minutes at the maximum permissible power-on RPM, with the gas temperature at least 35 degrees Fahrenheit higher than the 30-Second OEI rating operating temperature limit.

(3) A separate test engine may be used for each test.

(4) Following the test, rotor assembly growth and distress beyond serviceable limits for an overtemperature condition is permitted, provided the structural integrity of the rotor assembly is maintained, as shown by a procedure that is acceptable to the Administrator.

(j) In addition to the requirements of section 33.93, this special condition requires that the engine be completely disassembled after completing the additional testing of section 33.87. The engine may exhibit deterioration in excess of that permitted in section 33.93(b), and may include some engine parts and components that may be unsuitable for further use. It must be shown by procedures approved by the Administrator that the structural integrity of the engine, including mounts, cases, bearing supports, shafts and rotors, is maintained.

Issued in Burlington, Massachusetts, on August 14, 1995.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–20876 Filed 8–22–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 95–NM–93–AD]

Airworthiness Directives; Boeing Model 747–100, –200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, –200 and –300 series airplanes. This proposal would require an inspection to determine if hinge bolts and nuts are installed in the overhead stowage bins, and the installation of hinge bolts and nuts, if necessary. This proposal is prompted by reports that overhead stowage bins in the passenger compartment have fallen out of position due to missing hinge bolts. The actions specified by the proposed AD are intended to ensure that hinge bolts are installed in the overhead storage bins.

Missing hinge bolts could result in the overhead stowage bins falling out of position and injuring airplane occupants.

DATES: Comments must be received by October 19, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–93–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dorothy Lundy, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington; telephone (206) 227–1675; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–93–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No 95–NM–93–AD, 1601 Lind Avenue SW., Renton, Washington, 98055–4056.

Discussion

The FAA has received reports indicating that overhead stowage bins in the passenger compartment of certain Model 747 series airplanes have fallen out of position and injured passengers. Investigation has revealed that the stowage bin support panel separated because the hinge bolts were not installed during maintenance. This omission may have resulted from the long cure times for the bin material preceding installation of the bolts, which necessitates installing the bolts long after the rest of the associated maintenance has been completed. The hinge bolt acts as the primary support for the overhead bins; when the hinge bolts are installed, the stowage bins should not fall out of position. Missing hinge bolts could result in the overhead stowage bind failing out of position and injuring airplane occupants.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–25A3095, dated April 27, 1995, which describes procedures for a one-time visual inspection to determine if hinge bolts and nuts are installed in the overhead stowage bins. The alert service bulletin also describes procedures for installing hinge bolts and nuts, if necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time visual inspection to determine if the hinge bolts and nuts are installed in the overhead stowage bins. The proposed AD also would require installation of hinge bolts and nuts, if necessary. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

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

There are approximately 560 Boeing Model 747–100, –200, and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 144 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $8,640, or $60 per airplane.

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

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

Boeing: Docket 95–NM–93–AD.

Applicability: Model 747–100, –200, and –300 series airplanes; as listed in Boeing Alert Service Bulletin 747–25A3095, dated April 27, 1995; certificated in any category.

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

Compliance: Required as indicated.

To ensure that hinge bolts are installed in the overhead storage pins, accomplish the following:

(a) Within 90 days after the effective date of this AD, unless accomplished previously within the last 6 months prior to the effective date of this AD, perform a one-time visual inspection to determine if hinge bolts and nuts are installed in the overhead stowage bins, in accordance with Boeing Alert Service Bulletin 747–25A3095, dated April 27, 1995.

(1) If the hinge bolts and nuts are installed, no further action is required by this AD.

(2) If any hinge bolt or nut is not installed, prior to further flight, install a hinge bolt and nut in accordance with the alert service bulletin.

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

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

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

Issued in Renton, Washington, on August 17, 1995.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–20858 Filed 8–22–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–ANE–38]

Airworthiness Directives; Pratt & Whitney JT9D–7R4 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT9D–7R4 series turbofan engines. This proposal would require removal of web material at ten bosses on the diffuser case assembly, inspections, shotpeening of the area, and remarking the diffuser case assemblies with a new part number. This proposal is prompted by reports of cracks in the aft corners of the bosses. The actions specified by the proposed AD are intended to prevent diffuser case assembly rupture, which could result in an uncontained engine failure, engine fire, and damage to the aircraft.

DATES: Comments must be received by October 23, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–38, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: John Fisher, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7149, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–ANE–38.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–38, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of cracks at the aft corners of bosses on the diffuser case assembly on Pratt & Whitney (PW) JT9D–7R4 series turbofan engines. No engine failures have resulted from these cracks. The cracks occur in webs of material at ten bosses that were a result of a machining operation during original

manufacture. The webs of material create stress concentrations that can cause a crack to start. Removal of this web material will provide local stress relief and prevent the initiation of cracks at the aft corners of the bosses. This condition, if not corrected, could result in diffuser case assembly rupture, which could result in an uncontained engine failure, engine fire, and damage to the aircraft.

The FAA has reviewed and approved the technical contents of PW Service Bulletin No. JT9D–7R4–72–469, Revision 2, dated April 25, 1994, that describes procedures for removing the web of material from ten bosses on the diffuser case assembly, performing a fluorescent penetrant inspection (FPI) and x-ray inspection of the reworked area, and shotpeening the reworked area. In addition, for diffuser case assemblies that have been previously weld-repaired but no records can be located to indicate that they have undergone furnace stress relief, or for diffuser case assemblies with weld repairs that have only been locally stress relieved, this SB describes procedures for performing furnace stress relief of these previously welded diffuser case assemblies to ensure that there is sufficient hardness.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, the proposed AD would require removing webs of material at ten bosses on the diffuser case assembly, performing an FPI and x-ray inspection of the reworked area, performing furnace stress relief if a local stress relief had been previously accomplished, shotpeening the reworked area, and remarking the diffuser case assemblies with a new part number. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 127 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $152,400.

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

For the reasons discussed above, I certify that this proposed regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

Pratt & Whitney: Docket No. 95–ANE–38.

Applicability: Pratt & Whitney (PW) JT9D–7R4 series turbofan engines, installed on but not limited to Airbus A300 series and A310 series, and Boeing 747 series and 767 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent diffuser case assembly rupture, which could result in an uncontained engine failure, engine fire, and damage to the aircraft, accomplish the following:

(a) At the next engine shop visit, but not later than 6,000 cycles in service after the effective date of this AD, whichever occurs first, inspect the diffuser case assembly, Part Numbers (P/N) 790541, 798379, 789996, 5004770–01, or 5000366–02, for existence of web material at ten boss locations, in accordance with PW Service Bulletin (SB) No. JT9D–7R4–72–469, Revision 2, dated April 25, 1994.

(1) For diffuser case assemblies that incorporate web material at any boss locations described in the above SB, accomplish the following:

(i) Rework the diffuser case assembly in accordance with PW SB No. JT9D–7R4–72–469, Revision 2, dated April 25, 1994. This rework removes web material at ten boss locations.

(ii) Perform a fluorescent penetrant inspection (FPI) of the reworked areas in accordance with PW SB No. JT9D–7R4–72–469, Revision 2, dated April 25, 1994, to ensure that there are no crack indications. If a crack indication is discovered, repair per Engine Manual Section 72–41–02, Repair 28, or remove the diffuser case from service and replace with a serviceable part.

(iii) Perform an x-ray inspection of the reworked areas in accordance with PW SB No. JT9D–7R4–72–469, Revision 2, dated April 25, 1994, to ensure that there are no crack indications. Additionally, the x-ray inspection is performed to assure that there are no cracks, incomplete fusion, incomplete penetration, voids, porosity, or inclusions from previous local weld repairs. If any of these defects are discovered, repair per PW JT9D–7R4 Engine Manual, Section 72–41–02, Repair 28, or remove the diffuser case from service and replace with a serviceable part.

(iv) Determine if any previous weld repairs have been performed at any of the boss locations described in the above SB through reviewing maintenance records. If maintenance records cannot be located, or maintenance records indicate that a weld repair with no stress relief or with a local stress relief has been performed at any of the ten boss locations, perform furnace stress relief and FPI diffuser case assemblies in accordance with PW SB No. JT9D–7R4–72–469, Revision 2, dated April 25, 1994.

(v) Shotpeen the reworked areas in accordance with PW SB No. JT9D–7R4–72–469, Revision 2, dated April 25, 1994.

(vi) Remark the diffuser case assembly with a new part number in accordance with PW SB No. JT9D–7R4–72–469, Revision 2, dated April 25, 1994.

(2) For diffuser case assemblies that have been previously reworked to remove web material at any boss locations prior to the effective date of this AD in accordance with the original issue of PW SB No. JT9D–7R4–72–469, dated October 2, 1992, accomplish the following:

(i) Unless maintenance records indicate that x-ray inspections were performed at ten

boss locations prior to the effective date of this AD in accordance with PW JT9D–7R4 Engine Manual, Section 72–41–02, Repair 28, perform an x-ray inspection of ten boss locations in accordance with the x-ray requirements of PW JT9D–7R4 Engine Manual, Section 72–41–02, Repair 28.

(ii) Determine if any previous weld repairs have been performed at any of the boss locations described in the above SB through reviewing maintenance records. If maintenance records cannot be located, or maintenance records indicate that a weld repair with a local stress relief has been performed at any of the boss locations, perform furnace stress relief, FPI, and shotpeen diffuser case assemblies in accordance with PW SB No. JT9D–7R4–72–469, Revision 2, dated April 25, 1994.

(b) For the purpose of this AD, an engine shop visit is defined as when the ''K'' and ''M'' flanges are separated so that the diffuser case is removed.

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

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

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

Issued in Burlington, Massachusetts, on August 15, 1995.

James C. Jones,

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

[FR Doc. 95–20851 Filed 8–22–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301, 1303, 1304 and 1305

[DEA–108P]

RIN 1117–AA19

Definition and Registration of Disposers

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The DEA proposes to amend its regulations to define the term Disposer and establish a new category of manufacturer registration. DEA is also proposing to amend the regulations to exempt disposers from the quota requirements; to delineate the records and reports required of disposers; and to set out order form procedures for disposers. DEA is proposing these amendments in response to industry requests. The proposed amendments establish the regulatory guidelines under which disposers may handle controlled substances.

DATES: Comments and objections must be submitted by October 23, 1995.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 Attention: Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: In years past, most pharmaceutical manufacturers and wholesalers, as a service to their customers, accepted returns of outdated/damaged controlled substances. Also, agencies such as DEA and state Boards of Pharmacy accepted surrendered drugs or witnessed their destruction by registrants.

Over the past several years, environmental concerns and regulations have eliminated many of the disposal options which had been available. As a result, drug manufacturers and government agencies alike are increasingly reluctant to be involved in the disposal process.

Pursuant to 21 CFR 1307.21, registrants may request permission to conduct disposal on their own without the benefit of DEA or State witness. In many cases, blanket permission is granted to manufacturers and distributors who have an ongoing need to dispose of unwanted substances. Their disposal must first have DEA authorization in writing, with a set schedule established. Other firms are granted disposal authority on a case by case basis.

In instances where DEA grants registrants authority to dispose of controlled substances, it is permissible for that registrant to utilize the services of an Environmental Protection Agency approved incinerator located in the area of the registrant's choice. The only caveat pursuant to DEA policy is that the registrant provide two designated responsible individuals to accompany the drugs to the disposal site and actually witness the destruction. The proposes registration of ''disposers'' will not alter the permissibility of this practice.

Traditionally, DEA has been opposed to granting DEA registrations to firms solely or primarily engaged in the disposal of controlled substances since they are not an essential link in the closed distribution system which the Controlled Substances Act established to control the flow of drugs from the manufacturer to the ultimate user. However, due to the changes in distribution patterns from local to a more national distribution, the time and resources expended by DEA in handling surrendered drugs, and the time expended by manufacturers, a disposer registration is becoming an essential link.

Title 21, CFR 1302.02(d) defines manufacture in part as ''the producing, preparation, propagation, compounding, or processing of a drug or substance. . .''. The section further defines a manufacturer as ''a person who manufactuers a drug or other substance . . . '' By its nature, a disposer processes a drug or other substance. Therefore, a disposer falls within the definition of manufacturer. However, due to the limited nature of the activity conducted by a disposer, a separate designation is necessary. Therefore, disposers will be registered as a subcategory of manufacturer.

The basic requirements for registration as a disposer will be similar to those currently imposed on all registrants at the manufacturer/distributor level. They include, but are not necessarily limited to: *Security;* all applicants must install at the registered premises physical security controls which meet the existing standards of 21 CFR 1301.71 and 1301.72. *Recordkeeping*; in accordance with 21 CFR 1304, periodic inventories and records of all controlled substances received, destroyed or distributed back to the original, registered manufacturers must be maintained. Due to the unique nature of this registration activity, the applicant must, consistent with 21 U.S.C. 823(a)(5), adequately describe the receipt and accountability methods and records to be employed to ensure the establishment of effective controls against diversion. *Order Forms* must be completed for all Schedule I and III items received and transferred *ARCOS* reports will be required. In addition to the DEA requirements, disposer applicants must obtain the appropriate state and federal approvals for controlled substance and disposal activities.

In conjunction with the proposed amendments outlined above, proposed

amendments are being made to a number of sections which currently are gender specific to make them gender appropriate.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this purposed rule, initiated in the public interest is required to address disposers of controlled substances which are not covered by the existing regulations. This regulation will not have a significant economic impact on a substantial number of small entities; therefore no regulatory flexibility analysis is required in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq. The Deputy Assistant Administrator, Office of Diversion Control has determined that this rule is not a significant regulatory action under Executive Order 12866, Section 3(f) Regulatory Planning and Review, and therefore has not been reviewed by the Office of Management and Budget.

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

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1303

Administrative practice and procedure, Drug traffic control.

21 CFR Part 1304

Drug traffic control, Reporting requirements.

21 CFR Part 1305

Drug traffic control, Reporting requirements.

For reasons set out above, 21 CFR parts 1301, 1303, 1304, and 1305 are proposed to be amended as follows:

PART 1301—[AMENDED]

1. The authority citation for Part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.02 is proposed to be amended by redesignating paragraphs (f) through (m) as (g) through (n) and adding a new paragraph (f) as follows:

§ 1301.02 Definitions.

* * * * *

(f) The term disposer means a manufacturer (as defined in 1302.02(d)) who receives controlled substances for the sole or primary purpose of processing such substances to render them unusable.

* * * * *

3. Section 1301.22 is proposed to be amended by revising paragraphs (b)(1) and (b)(2) and adding new paragraph (b)(7) as follows:

§ 1301.22 Separate registration for independent activities.

* * * * *

(b) * * *

(1) A person registered to manufacture or import any controlled substance or basic class of controlled substance, except a person registered to dispose of any controlled substance, shall be authorized to distribute that substance or class, but no other substance or class which he/she is not registered to manufacture or import; a person registered to dispose of any controlled substance shall be authorized to distribute such substance only to the original registered manufacturer of the substance;

(2) A person registered to manufacture any controlled substance listed in Schedules II through V, except a person registered to dispose of any controlled substance, shall be authorized to conduct chemical analysis and preclinical research (including quality control analysis) with narcotic and non-narcotic controlled substances listed in those schedules in which he/she is authorized to manufacture; a person registered to dispose of any controlled substance shall be authorized to conduct chemical analysis to ascertain that the substances received for disposal contain controlled substances;

* * * * *

(7) A person registered in any activity is authorized as a coincident activity to dispose of controlled substances in accordance with Section 1307.21.

* * * * *

4. Section 1301.26 is proposed to be amended by revising paragraphs (a)(1), (a)(2) and (b) and adding a new paragraph (a)(3) to read as follows:

§ 1301.26 Exemption of law enforcement officials.

(a) * * *

(1) Any officer or employee of the Administration, any officer of the U.S. Customs Service, any officer or employee of the United States Food and Drug Administration, and any other Federal officer who is lawfully engaged in the enforcement of any Federal law relating to controlled substances, drugs or customs, and is duly authorized to possess controlled substances in the course of his or her official duties;

(2) Any officer or employee of any State, or any political subdivision or agency thereof, who is engaged in the enforcement of any State or local law relating to controlled substances and is duly authorized to posses controlled substances in the course of his or her official duties; and

(3) Any person acting as an agent of the Administration or as an agent of any state or local law enforcement agency to dispose of controlled substances obtained from clandestine laboratories.

(b) Any official exempted by this section may, when acting in the course of his or her official duties, possess any controlled substance and distribute any such substance to any other official who is also exempted by this section and acting in the course of his or her official duties.

* * * * *

5. Section 1301.32 is proposed to be amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 1301.32 Application forms; contents; signature.

(a) * * *

(1) To manufacture, distribute, or dispose of controlled substances, he or she shall apply on DEA Form 225;

* * * * *

(b) * * *

(1) To manufacture, distribute, or dispose of controlled substances, he or she shall apply on DEA Form 225a;

* * * * *

6. In addition to the amendments set forth above in Section 1301.32, remove the words ''he shall apply'' and add, in their place ''he or she shall apply'' in each of paragraphs (a)(2) through (a)(8) and (b)(2) through (b)(8).

7. Section 1301.7 is proposed to be amended by revising paragraphs (b)(13) and (b)(14) and adding a new paragraph (b)(15) to read as follows:

§ 1301.71 Security requirements generally.

* * * * *

(b) * * *

(13) The availability of local police protection or of the registrant's or applicant's security personnel;

(14) The adequacy of the registrant's or applicant's system for monitoring the receipt, manufacture, distribution, and disposition of controlled substances in its operations; and

(15) The applicability of the security requirements contained in all Federal, state, and local laws and regulations governing the management of waste.

* * * * *

8. Section 1301.72 is proposed to be amended by revising paragraph (b)(7) to read as follows:

§ 1301.72 Physical security controls for non-practitioners; narcotic treatment programs and compounders for narcotic treatment programs; storage areas.

* * * * *

(b) * * *

(7) Such other secure storage areas as may be approved by the Administrator after considering the factors listed in Section 1301.71(b), (1) through (15);

* * * * *

PART 1303—[AMENDED]

1. The authority citation for Part 1303 continues to read as follows:

Authority: 21 U.S.C. 821, 826, 871(b).

2. Section 1303.12 is proposed to be amended by revising paragraphs (e)(2) and (e)(3) and adding a new paragraph (e)(4) to read as follows:

§ 1303.12 Procurement quotas.

* * * * *

(e) * * *

(2) Any person who is registered or authorized to conduct chemical analysis with controlled substances (for controlled substances to be used in such analysis only);

(3) Any person who is registered to conduct research with a basic class of controlled substance listed in Schedule I or II and who is authorized to manufacture a quantity of such class pursuant to Section 1301.22(b) of this chapter; and

(4) Any person who is registered solely as a disposer as defined in Section 1301.02(f) of this chapter.

* * * * *

PART 1304—[AMENDED]

1. The authority citation for Part 1304 continues to read as follows:

Authority: 21 U.S.C. 821, 827, 871(b) 958(d) 965, unless otherwise noted.

2. Part 1304 is proposed to be amended by adding new Section 1304.20 to read as follows:

§ 1304.20 Inventories of disposers.

Each person registered (by Section 1301.22(b) of this chapter) to dispose of controlled substances shall include in his inventory the same information required of manufacturers pursuant to Section 1304.15 (a), (c), and (d).

3. Part 1304 is proposed to be amended by adding new Section 1304.30 to read as follows:

§ 1304.30 Records for disposers.

Each person registered (by Section 1301.22(b) of this chapter) to dispose of controlled substances shall maintain records with the following information for each controlled substance:

(a) For each substance in bulk form,

(1) The name of the controlled substance;

(2) The total quantity of the controlled substance to the nearest metric unit weight consistent with unit size;

(3) The quantity received from other persons, including the date and quantity of each receipt and the name, address, and registration number of the other person from whom the controlled substance was received;

(4) The quantity distributed back to the original manufacturer of the controlled substance including the date of and quantity of each distribution and the name, address and registration number of the manufacturer to whom the controlled substance was distributed;

(5) The quantity disposed of including the date and manner of disposal, the quantity of the substance disposed, and the signatures of two responsible employees of the registrant who witnessed the disposal.

(b) For each controlled substance in finished form,

(1) The name of the substance;

(2) Each finished form (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial);

(3) The number of commercial containers of each such finished form received from other persons, including the date of and number of containers in each receipt and the name, address, and registration number of the person from whom the containers were received;

(4) The number of commercial containers of each such finished form distributed back to the original manufacturer of the substance, including the date of and number of containers in each distribution and the name, address, and registration number of the manufacturer to whom the containers were distributed;

(5) The number of units or volume of finished forms and/or commercial containers disposed of including the date and manner of disposal, the quantity of the substance in finished form disposed, and the signatures of two responsible employees of the registrant who witnessed the disposal.

4. Section 1304.34 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 1304.34 Reports generally.

(a) All reports required by Sections 1304.35–1304.39 shall be filed with the ARCOS Unit, P.O. Box 28293, Central Station, Washington, D.C. 20005.

(b) Reports required by Sections 1304.35–1304.39 shall be filed on DEA Form 333, or on medial which contains the data required by DEA Form 333 and which is acceptable to the ARCOS Unit.

* * * * *

5. Part 1304 is proposed to be amended by adding a new section 1304.39 to read as follows:

§ 1304.39 Reports from disposers.

Each person who is registered to dispose of controlled substances shall report as follows:

(a) Substances covered. Reports shall include data on each controlled substance listed in Schedules I and II and on each narcotic controlled substance listed in Schedule III (but not on any material, compound, mixture or preparation containing a quantity of a substance having a stimulant effect on the central nervous system, which material, compound, mixture or preparation is listed in Schedule III or on any narcotic controlled substance listed in Schedule V). Data shall be presented in such a manner as to identify the particular form, strength, and trade name, if any, of the product containing the controlled substance for which the report is being made. For this purpose, persons filing reports shall utilize the National Drug Code Number assigned to the product under the National Drug Code System of the Food and Drug Administration.

(b) Transactions reported. Reports shall provide data on each acquisition to inventory (identifying whether it is, e.g., by purchase or transfer, or supply by the Federal Government) and each reduction from inventory (identifying whether it is e.g., by sale or transfer to the manufacturer, theft, destruction, or seizure by Government agencies). These reports shall be filed every month not later than the 15th day of the month succeeding the month for which it is submitted: except that a registrant may be given permission to file more frequently or less frequently (but not less than quarterly), depending on the number of transactions being reported each time by that registrant.

(c) Inventories reported. Reports shall provide data on the stocks of each reported controlled substance on hand as of the close of business on December 31 of each year. These reports shall be filed no later than January 15 of the following year.

PART 1305—[AMENDED]

1. The authority citation for Part 1305 continues to read as follows:

Authority: 21 U.S.C. 821, 828, 871(b), unless otherwise noted.

2. Section 1305.08 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1305.08 Persons entitled to fill order forms.

* * * * *

(b) A person who has obtained any controlled substance in Schedule I or II by order form may return such substance, or portion thereof, to the person from whom he/she obtained the substance, to the manufacturer of the substance, or to a registered disposer pursuant to the order form of the latter person;

* * * * *

Dated: August 17, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–20890 Filed 8–22–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 206 and 260

RIN 1010–AB93

Bidding Systems for Leases in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Minerals Management Service (MMS) proposes an amendment to change the bidding systems for newly issued leases under the Outer Continental Shelf Lands Act (OCSLA). Four modifications of the existing alternative bidding systems are proposed that could lower the minimum prescribed royalty rate charged on newly issued Federal offshore leases from 12½ per centum to a rate greater than zero per centum; allow operating allowances in determining receipts subject to royalty rate; suspend or defer royalty for periods, volumes, or values of production; and extend the functional forms for calculating royalty rates under variable rate systems to include product prices as well as value and amount of production with the ability to apply different functional forms across time periods. The proposed rule does not affect existing leases.

This proposed rulemaking results from a review of alternative leasing policies conducted by MMS with constituent input, consistent with the Vice-President's Reinventing Government initiative. In particular, this change will grant the Secretary of the Interior (Secretary) the flexibility to improve the way MMS provides service to its customers and its ability to manage OCS oil and gas resources for the benefit of the public.

DATES: Comments must be received or postmarked no later than October 23, 1995 to be considered in this rulemaking.

ADDRESSES: Comments should be mailed or hand-carried to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4700; Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Dr. Marshall Rose, Chief, Economic Evaluation Branch, telephone (703) 787–1536.

SUPPLEMENTARY INFORMATION: Under the OCSLA, in section 8(a)(1), several bidding systems are authorized for new leases. The Secretary may grant a modification in the royalty rate to less than 12½ per centum upon application for existing leases. However, new leases are currently offered at a lease-specified royalty rate of no less than 12½ per centum, and it is for this class of leases that the proposed rule is applicable.

The OCSLA also provides authority to modify any bidding system currently authorized by the act if the Secretary determines the modification to be useful to accomplish the purposes and policies of the act (section 8(a)(1)).

MMS will consider using this more flexible royalty rate policy on specific types of new leases, including, but not limited to, those characterized by high development costs (deepwater leases in water depths of 200 meters or greater), relinquished tracts with qualifying wells but uneconomic reserves, or relinquished tracts that received high bonus bids but no exploration activity. Bidding systems that reflect a lower royalty than 12½ per centum are expected to increase competition for these tracts and, if discoveries are made, result in greater production in the future.

The proposed regulatory change would initiate actions to allow modification of the minimum royalty rate from 12½ per centum of the production amount or value to an effectively lower rate for all or a part of the tract's productive life as described in the lease terms portion of a sale's final notice. This lower rate could be designated over the life of the lease as a constant or variable measure or emerge as a result of fulfilling specified conditions (e.g., no royalties due until production reaches a designated level or a predetermined capital cost allowance is recovered). Further, the basis for determining the royalty rate under variable terms is expanded to include resource price as a potential variable. Thus, a smaller royalty rate could apply during periods of lower average product prices, and the precise relationship could vary between periods. This expansion will allow use of a simple price-royalty rate formula when unit operating costs are constant and can be estimated with some precision.

This proposed rule is the result of a review of alternate leasing policies conducted within MMS. MMS published a **Federal Register** Notice presenting possible alternate policies and received input from constituents, consistent with the Vice-President's Reinventing Government initiative.

The proposed actions will enable MMS to set royalty terms at time of sale for new leases that will adjust dynamically to changing market conditions prevalent in the oil and gas industry during exploration, development, and production. These actions are expected to result in increased competition for newly offered Federal offshore tracts, thereby contributing to the assurance of receipt of fair market value on leased tracts. These actions are also expected to increase the likelihood that a newly leased tract will be explored and developed. In sum, this change will grant the Secretary the flexibility to improve the way MMS provides service to its customers and its ability to manage OCS oil and gas resources for the benefit of the public.

Author: This document was prepared by Dr. Marshall Rose, Chief, Economic Revaluation Branch, MMS.

Executive Order (E.O.) 12866

This rule was reviewed under E.O. 12866. The rule was determined to not be significant under the criteria of E.O. 12866.

Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities. Any direct effects of this rulemaking will primarily affect the Outer Continental Shelf (OCS) lessees and operators—entities that are not, by definition, small due to the technical complexities and financial resources necessary to conduct OCS activities. The indirect effect of this rulemaking on small entities that provide support for

offshore activities have also been determined to be small.

Paperwork Reduction Act

The information collection requirements contained in those parts of MMS's regulatory program affected by this rule by this rule have been approved by OMB under (44 U.S.C. 3501 et seq.). The forms, filing date, and approved OMB clearance numbers are identified in 30 CFR 210.10 and 30 CFR 216.10.

Takings Implication Assessment

The DOI certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights, is not required.

E.O. 12778

The DOI has certified to OMB that this proposed rule meets the applicable civil justice reform standards provided in Sections 2(a) and 2(b)(2) of E.O. 12778.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) compliance for the proposed rule is covered by DOI procedures for implementing NEPA (516 DM2, Appendix 1.10). In accordance with those procedures, MMS will examine the potential environmental effects of the proposed rule during NEPA review for each lease sale. This is appropriate because the potential environmental effects of the rule depend largely on how it is applied, and decisions on application would be made on a sale-by-sale basis.

List of Subjects

30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 260

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources.

Dated: May 12, 1995.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, 30 CFR parts 206 and 260 are proposed to be amended as follows:

PART 206—PRODUCT VALUATION

1. The authority citation for part 206 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq., 396a et seq., 2101 et seq.; 30 U.S.C. 181 et seq., 351 et seq., 1001 et seq., 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 se seq., 1331 et seq., and 1801 et seq.

2. Section 206.106 of subpart C is added to read as follows:

§ 206.106 Operating allowances.

Notwithstanding any other provisions in these regulations, an operating allowance may be used for the purpose of computing royalty obligations when provided for in the notice of an Outer Continental Shelf (OCS) lease sale. The allowance amount or formula shall be as specified in the notice of an OCS lease sale and in the lease agreement.

3. Section 206.160 of subpart D is added to read as follows:

§ 206.160 Operating allowances.

Notwithstanding any other provisions in these regulations, an operating allowance may be used for the purpose of computing royalty obligations when provided for in the notice of an OCS lease sale. The allowance amount or formula shall be as specified in the notice of an OCS lease sale and in the lease agreement.

PART 260—OUTER CONTINENTAL SHELF OIL AND GAS LEASING

1. The authority citation for part 260 is revised to read as follows:

Authority: 43 U.S.C. 1331 and 1337.

2. Section 260.110 of subpart B is amended to revise paragraphs (a)(1)(iii), (2)(iii), (3)(i)(C)(*4*), and (iii) and to add new paragraphs (a) (5) and (6) to read as follows:

§ 260.110 Bidding systems.

(a) * * *

(1) * * *

(iii) The annual rental to be paid by the highest responsible qualified bidder and any amounts creditable against future royalties shall be the amount specified in the notice of an OCS lease sale published in the **Federal Register.**

* * * * *

(2) * * *

(iii) Payment amounts shall be as specified in paragraph (a)(1)(iii) of this section.

* * * * *

(3) * * *

(i) * * *

(C) * * *

(*4*) The production period and inflation factor for purposes of determining value or amount of production shall be stated in the notice of an OCS lease sale that is published in the **Federal Register**. The procedures for making the inflation adjustment shall be stated in the notice of an OCS lease sale published in the **Federal Register**.

* * * * *

(iii) Payment amounts shall be as specified in paragraph (a)(1)(iii) of this section.

* * * * *

(5) *Cash bonus bid with a variable royalty rate or rates during one or more production periods in amount or value of the production saved, removed or sold, and an annual rental. The royalties may be suspended or deferred for a period, volume, or value of production.*

(i) The royalty rate or rates to be paid by the highest responsible qualified bidder may be less than 12½ per centum, but greater than zero percentum, at the beginning of the lease period in the amount or value of production saved, removed or sold. The applicable royalty rate(s) and suspension or deferral magnitudes or formulas shall be specified in the notice of an OCS lease sale published in the **Federal Register**.

(ii) Amount and payment of cash bonus under procedure shall be as specified in paragraph (a)(1)(ii) of this section.

(iii) Payment amounts shall be as specified in paragraph (a)(1)(iii) of this section.

(6) *Cash bonus bid with a variable royalty rate or rates during one or more production periods in amount or value of the production saved, removed or sold, and an annual rental. The royalties may be suspended or deferred for a period, volume, or value of production.*

(i) The royalty rate or rates to be paid by the highest responsible qualified bidder shall be a percentage of the amount or value of the production saved, removed or sold. When the value of production is used, by unit or in aggregate, the basis for the prices to be applied shall be specified in the notice of an OCS lease sale published in the **Federal Register**.

(A) The royalty rate shall be calculated by utilizing a formula or

schedule, which relates the royalty rate established thereby to the adjusted amount or indexed value of the oil and gas produced during designated production periods. The description of the formula or schedule shall include the relationship between adjusted or actual amount, indexed value, or indexed price of production, and the royalty rate, with a stipulation of the lowest royalty rate and highest royalty rate. The royalty rate formula or schedule and the suspension or deferral magnitudes or formulas shall be included in the lease document as executed.

(B) The royalty rate formula or schedule and the suspension or deferral magnitudes or formulas shall be specified in the notice of an OCS lease sale published in the **Federal Register**.

(C) Royalty payment calculation.

(*1*) The royalty rate utilized in the calculation of royalty payments is based on an adjusted or indexed value, amount, or indexed price of production and is established through application of a formula or schedule during one or more designated production periods.

(*2*) The adjusted indexed value or indexed price of production shall be determined by applying an inflation factor to the actual indexed value or indexed price of production.

(*3*) The established royalty rate is applied to the actual value of production which results in the determination of amount in dollars to be paid to the United States by the person awarded the lease, or the amount of royalty oil and gas to be taken in kind by the United States.

(*4*) The production period, inflation factor for purposes of determining value or amount of production, and procedures for making the inflation adjustment shall be stated in the notice of an OCS lease sale that is published in the **Federal Register**.

(ii) Amount and payment of cash bonus under procedure shall be as specified in paragraph (a)(1)(ii) of this section.

(iii) Payment amounts shall be as specified in paragraph (a)(1)(iii) of this section.

* * * * *

[FR Doc. 95–20873 Filed 8–22–95; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA39–1–7028b; FRL–5268–4]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Washington for the purpose of forecasting and tracking vehicle miles traveled (VMT) for the Puget Sound Carbon Monoxide (CO) Nonattainment Area. The SIP revision was submitted by the State to satisfy certain Federal Clean Air Act requirements for Section 187(a)(2)(A) and Section 187(a)(3) of the Clean Air Act Amendments of 1990 (CAAA). In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: Comments on this proposed rule must be received in writing by September 22, 1995.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT-082), Air Programs Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

Washington State Department of Ecology, P.O. Box 47600, PV-11, Olympia, WA 98504-7600.

FOR FURTHER INFORMATION CONTACT: Stephanie Cooper, Air Programs Branch (AT-082), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553-6917.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: July 20, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–20802 Filed 8–22–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[VA12–1–6863b, VA28–1–5997b; FRL–5262–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia (Proposed Approval of Miscellaneous Revisions)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. These revisions incorporate changes adopted by Virginia in 1989 and 1993 into the federally enforceable Virginia SIP. The intended effect of this action is to revise the federally-approved SIP to reflect the current State requirements. This action is being taken under section 110 of the Clean Air Act.

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. 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 22, 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 Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 597–1325.

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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 6, 1995.

W. T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 95–20798 Filed 8–22–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–300395; FRL–4970–2]

RIN 2070–AC18

Cellulose Acetate; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish an exemption from the requirement of a tolerance for residues of cellulose acetate (CAS Reg. No. 9004-35-7) when used as an inert ingredient (pesticide rate-release regulating agent) in pesticide formulations applied to growing crops only. Consep, Inc., requested this proposed regulation pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

DATES: Written comments, identified by the document control number [OPP-300395], must be received on or before September 22, 1995.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-300395]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703)-308-8811; e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Consep, Inc., 213 Southwest Columbia St., Bend, OR 97702-1013, submitted pesticide petition (PP) 4E04401 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346 a(e)), propose to amend 40 CFR part 180.1001(d) by exempting cellulose acetate from the requirement of a tolerance. Cellulose acetate, when used as an inert ingredient (pesticide rate-release regulating agent) in pesticide formulations applied to growing crops only, under 40 CFR 180.1001(d), meets the definition of a polymer under 40 CFR 723.250(b) and the criteria listed in 40 CFR 723.250(e) that define a chemical substance that poses no unreasonable risk under section 5 of the Toxic Substance Control Act (TSCA).

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for cellulose acetate will need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances that are defined as ''polymers,'' the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Cellulose Acetate conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The minimum number average molecular weight of cellulose acetate is 28,000. Substances with molecular weights greater than 400 generally are

not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal tract. Chemicals not absorbed through skin or GI tract generally are incapable of eliciting a toxic response.

2. Cellulose acetate is not a cationic polymer, nor is it reasonably expected to become a cationic polymer in a natural aquatic environment.

3. Cellulose acetate does not contain less than 32.0 percent by weight of the atomic element carbon.

4. Cellulose acetate contains as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

5. Cellulose acetate does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(2)(ii).

6. Cellulose acetate is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.

7. Cellulose acetate is not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. Cellulose acetate does not contain reactive functional groups that are intended or reasonably expected to undergo further reaction.

9. Cellulose acetate is neither designed nor reasonably expected to substantially degrade, decompose, or depolymerize.

Based on the information above and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful, and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, that contains any of the ingredients listed herein, may request within 30 days after the publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300395]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [OPP-300395] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirement of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Processed foods, Reporting and recordkeeping requirements.

Dated: August 7, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredient	Limits	Uses
* *	* * *	* *
Cellulose acetate (CAS Reg. No. 9004-35-7), minimum number-average molecular weight 28,000.	.....	Pesticide rate-release regulating agent.
* *	* * *	* *

* * * * *

[FR Doc. 95–20889 Filed 8–22–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC39

Exemption From Garnishment for Temporary Housing Assistance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish that all financial assistance provided under the Disaster Housing Program is exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver.

DATES: Comments will be accepted until October 23, 1995.

ADDRESSES: Please send comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (facsimile) 202–646–4536.

FOR FURTHER INFORMATION CONTACT: Laurence W. Zensinger, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4262, (facsimile) 202–646–2730.

SUPPLEMENTARY INFORMATION: Financial assistance provided under the Disaster Housing Program is not currently exempt from garnishment. Financial assistance under the Individual and Family Grant (IFG) Program is exempt from garnishment as specified in 44 CFR 206.131(l). The purpose of financial assistance provided under the Disaster Housing Program is to aid the applicant in obtaining safe housing following a Presidentially declared disaster. When financial assistance provided to an applicant is garnished, the housing needs of the applicant remain unmet. Regulatory exemption from garnishment serves the intent of the Disaster Housing Program and this proposed rule would provide needed protection for applicants who are awarded assistance.

National Environmental Policy Act

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

Executive Order 12866, Regulatory Planning and Review

This proposed rule would not be a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735. To the extent possible this proposed rule would adhere to the regulatory principles set forth in E.O. 12866, but has not been reviewed by the Office of Management and Budget under the provisions of E.O. 12866.

Paperwork Reduction Act

This proposed rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of § 2(b)(2) of E.O. 12778.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance, Housing.

Accordingly, 44 CFR part 206 is proposed to be amended as follows:

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

Subpart D—Temporary Housing Assistance

1. The authority citation for part 206 is proposed to be revised to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329, 5 U.S.C. App. 1; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412, as amended; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Section 206.101(g) is proposed to be amended to add introductory text to read as follows:

(g) *Forms of Temporary Housing Assistance.* All proceeds received or receivable by the applicant under § 206.101 shall be exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver. No rights under this provision are assignable or transferable.

* * * * *

Dated: August 16, 1995.

Richard W. Krimm,

Associate Director, Response and Recovery.

[FR Doc. 95–20900 Filed 8–22–95; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21 and 25

[CC Docket No. 92–297, FCC 95–287]

Redesignating the 27.5–29.5 GHz Frequency Band, Reallocating the 29.5–30.0 GHz Frequency Band, and Establishing Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This is the Third Notice of Proposed Rulemaking to establish Local Multipoint Distribution Service (LMDS) in the 27.5–29.5 GHz (28 GHz) frequency band. In this Notice, the Commission proposes a band segmentation plan designed to permit both LMDS and Fixed Satellite Service (FSS) systems to operate in the 28 GHz frequency band. It also proposes to accommodate feeder links for certain Mobile Satellite Service (MSS) systems in this band. The proposal ensures the rapid dissemination of innovative communications services by facilitating the entry of multiple providers into the market. New providers will offer facilities-based competition to each other and traditional cable and telephone carriers—greatly enhancing customer choice. A wealth of innovative services will include two-way video, teleconferencing, telemedicine, telecommuting, data services and global networks. The Commission proposes the use of competitive bidding to choose among mutually exclusive LMDS and FSS applicants. It also proposes to reallocate the 29.5–30.0 GHz band in connection with the band segmentation plan. The Commission is also supplementing its earlier Tentative Decision on CellularVision's request for a Pioneer Preference.

DATES: Comments are due on or before August 28, 1995 and replies are due on or before September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0871; Donna Bethea, Satellite and Radiocommunication Division, International Bureau, (202) 739–0728.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Third Notice of Proposed Rulemaking* in CC Docket 92–297, adopted July 13, 1995, and released July 28, 1995.

The complete text of the *Third Notice of Proposed Rulemaking* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, at (202) 857–3800, 1919 M Street, NW., Room 246, Washington, DC 20554.

Synopsis of Third Notice of Proposed Rulemaking and Supplemental Tentative Decision

In the first NPRM, 58 FR 6400 (January 28, 1993), the Commission considered three petitions for rulemaking proposing a redesignation of the 28 GHz band. That band currently is designated for fixed point-to-point and fixed satellite service use. It found that redesignation of the point-to-point use of the band to point-to-multipoint use could stimulate greater use of a band that largely has lain fallow. However, the Commission asked for comment from satellite entities regarding the effect of redesignation on any proposed fixed satellite use of the band. Non-geostationary orbit (NGSO) and Geostationary orbit (GSO) FSS systems were proposed. In addition, entities planning mobile satellite services requested spectrum for their uplink feederlinks.

In this Notice, the Commission proposes a band segmentation plan that it tentatively concludes will permit both LMDS and Fixed Satellite Service (FSS) systems to operate in the 28 GHz frequency band. It also proposes to accommodate feeder links for certain Mobile Satellite Service (MSS) systems in this band.

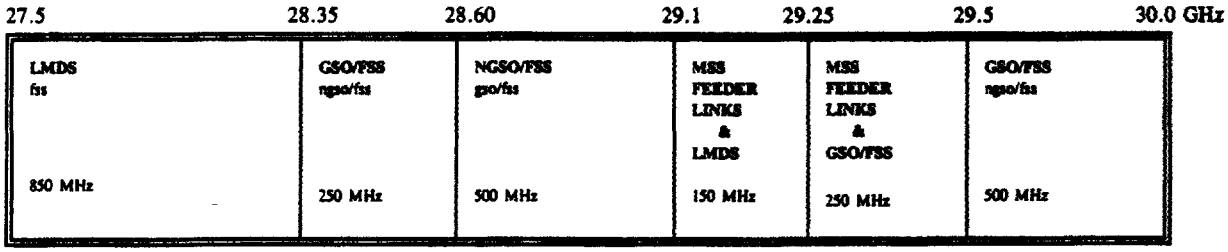
The proposal ensures the rapid dissemination of innovative communications services by facilitating the entry of multiple providers into the market. New providers will offer facilities-based competition to each other and traditional cable and telephone carriers—greatly enhancing customer choice. A wealth of innovative services will include two-way video, teleconferencing, telemedicine, telecommuting, data services and global networks. Flexible service rules will also promote the efficient use of scarce spectrum by allowing providers to adjust and respond to changes in technology and market demand.

The Commission proposes a segmentation scheme for the 28 GHz band that it believes is equitable, allows licensees to operate viable systems, promotes competition within the band, allows the public to receive service as soon as possible, and provides for future growth of both satellite and terrestrial services. The plan also supports the NII and GII, creates competition to cable, LECs, cellular, and PCS, and continues to promote the U.S. as a leader in satellite technology. The Commission believes this spectrum band plan accommodates the expected needs of all of the parties, although it does not reflect their exact requests. The Commission maintains that each proponent can still develop and operate viable systems within the band, and initiate competitive services. Moreover, this proposal allows both terrestrial LMDS and satellite industries to implement services in the near term.

The Commission's proposed plan is depicted graphically as follows:[1]

BILLING CODE 6712–01–M

PROPOSED BAND SEGMENTATION PLAN



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The Commission's recommended proposals for the WRC–95 include proposals designed to eliminate a principle regulatory obstacle to NGSO service—ITU Radio Regulation 2613 from applying in Ka-Band uplink and downlink spectrum. The proposals, if adopted at WRC–95, would facilitate the implementation of the band segmentation plan it proposes. However, adoption of different provisions at the WRC–95 could affect the ability to implement the plan. Accordingly, the Commission requests comment on what, if any, contingency plans may be appropriate at this stage, and on any other information that develops from the WRC–95 Preparatory process that may be relevant to implementation of the proposed plan.

Supplemental Tentative Decision on CellularVision's Pioneer's Preference Application

In the Tentative Decision on CellularVision's request for a pioneer's preference, the Commission found that CellularVision is the innovator of LMDS technology. Accordingly, it tentatively found that CellularVision should be awarded a pioneer's preference. CellularVision's specific pioneer's preference request was for the Los

[1] Primary services are listed in capital letters. Lower-case letters indicate secondary services. Primary services in a particular frequency band have equal rights to any other services operating in the same band. Stations operating in primary services are protected against interference from stations of ''secondary'' services. Moreover, stations operating in a secondary service cannot claim protection from harmful interference from stations of a primary service. 47 CFR 2.104(d) and 2.105(c).

Angeles MSA—it argued that the service it was providing in New York was substantially different from the service for which it requested a pioneer's preference in Los Angeles. The Commission disagreed, however, and determined not to award a pioneer's preference for LMDS in more than one service area. Accordingly, the Commission stated that if a pioneer's preference to CellularVision were to be awarded, that it would ''modify the authorization to (CellularVision) to meet the service area, frequency, and other technical rules developed in this proceeding for the area encompassing (CellularVision's) New York PMSA authorization.'' However, the Commission further stated that if CellularVision were to inform the Commission that it prefers Los Angeles, and if it were to surrender its New York license, the Commission would grant its pioneer's preference for Los Angeles.

CellularVision filed comments to the Tentative Decision in which it argued that it was entitled to a pioneer's preference in the Los Angeles area without its affiliate Hye Crest being forced to surrender its New York license. Specifically, CellularVision argued that: (a) Hye Crest was licensed prior to the adoption of the pioneer's preference rules; (b) the proposed 28 GHz service rules are an outgrowth of the work commenced by CellularVision after Hye Crest was authorized and the pioneer's preference rules were adopted; and, (c) the service provided by Hye Crest is different than the service for which CellularVision seeks a pioneer's preference.

A number of parties supported CellularVision's pioneer's preference arguments in comments and reply comments to the Tentative Decision. However, in this supplemental tentative decision, the Commission notes that all of those filings were made prior to the Commission being granted comptetiive bidding authority by Congress in August 1993. Due to the fact such authority has drastically altered the pioneer's preference rules by requiring payment from pioneers, and due to the unique circumstances discussed below, the Commission finds no further need to consider whether CellularVision is entitled to a preference in Los Angeles. Rather, it proposes to change its earlier tentative decision, and grant CellularVision a preference for that portion of the New York BTA (or other geographic service area utimately adopted) which includes the New York PMSA. The pioneer's preference, covering the portion of the BTA lying outside the PMSA, would be for the portion of the 28 GHz band proposed to be available for LMDS in the Commission's band splitting plan, *infra, i.e.*, 27.5–28.35 GHz and 29.1–29.25 GHz (or whatever band plan is ultimately adopted by the Commission). The Commission notes that if a pioneer's preference is awarded for the remainder of the BTA, section 309(j)(13)(B) of the Communications Act, requiring an 85 percent payment of the value of the pioneer's preference license, would apply only to the portion of the New York BTA not covered by CellularVision's existing license for the PMSA. The Commission also clarifies that the rules governing its evaluation of CellularVision's pioneer's preference request are those that were in effect when the Tentative Decision was adopted.[2]

Since the Commission's tentative decision on its pioneer's preference request in the First NPRM, CellularVision has begun serving a significant number of customers within its New York license area. Therefore, the Commission does not beleive it is in the public interest for it to continue proposing, in the context of a pioneer's preference award, that CellularVision voluntarily discontinue service in New York and turn in its license. Moreover, it believes that CellularVision has made a commitment to providing service in New York, as evidenced by the fact that it has applied for additional cell sites to cover the remainder of the PMSA. The Commission has held that the choice of which geographic area to be awarded as the pioneer's preference license will be the licensee's. CellularVision's circumstances are unique, however, in that the original license was granted before the Commission established an LMDS service category and adopted regulations to govern the service. Further, the license was granted pursuant to waiver, prior to the Commission's adoption of the pioneer's preference rules, and for reasons that are consistent with the underlying objectives of those rules. These unique circumstances warrant the Commission's tentative decision to waive its rules on its own motion to the extent they would afford CellularVision the opportunity to choose the geographic area to be awarded as the pioneer's preference license. The Commission also notes that CellularVision would have the opportunity (as would any interested party) to participate in any competitive bidding procedures we may establish in this proceeding for purposes of licensing LMDS service in the Los Angeles area.

It is the Commission's intention to accommodate CellularVision's operations within the New York PMSA to the maximum extent possible, while minimizing adverse effects of its operations in the 28.35–28.5 frequency band on eventual GSO licensees. It proposes, if it takes favorable action on any renewal application CellularVision files pursuant to its existing license (such a filing would be due in January 1996), to include as a condition of the PMSA license a provision permitting CellularVision to operate on the contiguous 1 GHz for which it is presently licensed for a period of time sufficient to accommodate its operations within the New York PMSA without adversely affecting the eventual GSO licensee. The Commission tentatively concludes that a grandfathering period of 36 months following the release date of the First Report and Order in this proceeding, or until the first GSO satellite is successfully launched, whichever occurs later, is appropriate. The Commission tentatively intends to instruct the Wireless Telecommunications Bureau to condition any such renewed license with a provision specifying that, after the end of the grandfathering period it adopts, the CellularVision license would become subject to the generally applicable rules for the provision of LMDS service. Thus, if the proposed band segmentation plan is adopted, at the end of the grandfathering period CellularVision would be required to cease operation on the 150 MHz allocated for GSO/FSS operations 36 months after release of the First Report and Order in this proceeding or until the first GSO satellite is launched, whichever is later. Simultaneously, CellularVision would be permitted to operate on a co-primary basis on the 150 MHz at 29.1–29.25 GHz.

Finally, the Commission seeks comment on whether it would be appropriate to place conditions on any pioneer's preference license issued to CellularVision, similar to those placed on other pioneer's preference licensees in PCS. For the pioneer's preference licenses heretofore granted, the Commission placed a condition on the broadband and narrowband PCS licenses that required that they be held for three years or until the construction requirements applicable to the five-year build-out period have been met, whichever is earlier.

[2] When the Commission adopted amendments to its pioneer's preference evaluation criteria in 1994, it explicitly held that the new criteria would not apply to proceedings in which tentative decisions had been issued, such as this one, see In the Matter of Review of the Pioneer's Preference Rules, First Report and Order, 59 FR 8413, February 22, 1994 9 FCC Rcd 605, para. 9 (1994).

Local Multipoint Distribution Service Licensing Issues

The Commission seeks comment on whether it is advisable, from a competitive standpoint, to license more than one LMDS operator per market and on any competitive concerns raised by the grant of a 1000 MHz block to a single LMDS licensee in each market.

While allowing one LMDS provider per market may help ensure the competitive viability of this fledgling service, and thereby maximize the ability of LMDS licensees to provide significant competition to other services, the Commission recognizes that digital LMDS is being developed that has the potential to greatly increase the capacity of LMDS systems. Possible schemes include issuing only one license per market for the entire 1000 MHz; issuing two licenses, one for the 850 MHz contiguous band of spectrum and one for the 150 MHz coprimary portion; and issuing three licenses, two for 425 MHz and one for the 150 MHz coprimary segment. If the licensing scheme which is ultimately adopted includes more than one license per market, the Commission seeks comment on whether to permit aggregation of licenses within the same geographic service area.

The Commission continues to believe that BTAs are the best geographic area for licensing LMDS.[3] It believes that, based on the record submitted thus far in this proceeding, there is a reasonable likelihood that services provided through use of the LMDs spectrum will have a local focus. BTA service areas, it tentatively concludes, will best approximate the likely scope of the service areas for these services.

The Commission seeks comment on whether the most rapid build-out of LMDS would occur if it were to permit partitioning of the license pursuant to eligibility and other rules adopted for this service. It seeks comment regarding whether geographic partitioning should be established in the case of LMDS licenses, and on the manner in which the proposed build-out requirement would be applied to a partitioned license.

The Commission requests comment on three alternatives for regulating LMDS licensees. One option is that licensees would be presumed to be common carriers subject to Title II regulation to the extent the system is used to provide two-way data, voice, and other telecommunications services, and in the absence of evidence demonstrating that they provide only private carriage. The second option is the same one set forth in the First NPRM, i.e., in their applications, successful bidders would specify the types of services they expect to offer and indicate the regulatory status under which those services would be offered. Licensees would be required to describe their proposed service in sufficient detail for the Commission to confirm that their requested status complies with relevant judicial and/or statutory standards. The Commission would retain oversight of the parties' compliance with the statutory and judicial standards for status based on the type of service offered. The third option for LMDS licensees is to treat them similarly to the way in which MMDS licensees are treated. MMDS licensees are permitted to provide service as common carriers or private carriers. Under the MMDS rules, however, licensees operating as private carriers must comply with common carriage rules, except for the tariffing requirement.

The Third NPRM seeks comment on the eligibility of telephone companies, commercial mobile radio service providers, cable television companies, and multichannel multipoint distribution service providers to be licensed for LMDS within their service areas.

Since the Commission is proposing the use of competitive bidding to award LMDS licenses, it withdraws its proposal to limit transfer or assignment of LMDS licenses, except in the case of licenses awarded to designated entities. Because of the special consideration accorded designated entities in the auction process, the Commission proposes that such licenses be restricted in a manner similar to that proposed for Specialized Mobile Radio licenses. A designated entity would be prohibited from voluntarily assigning or transferring control of its license to any other entity during the three years after license grant. In the fourth and fifth years of the license term, the designated entity would only be able to assign or transfer control of its license to another qualified designated entity, and no unjust enrichment could be gained through the transfer.

Although the Commission proposed in the First NPRM to forbear from regulating rates of LMDS licensees if regulated as common carriers, subsequent judicial interpretation of the Communications Act forecloses this approach to the extent that LMDS providers operate as common carriers. *AT&T v.* FCC, 978 F.2d (D.C. Cir. 1993), *Southwestern Bell Corp. v.* FCC, 43 F.3d 1515 (D.C. Cir. 1995) Accordingly, to the extent LMDS licensees offer services which are categorized as common carrier offerings that are not within the definition of Commercial Mobile Radio Services (CMRS), the Commission has no alternative but to impose all statutory requirements pertaining to common carriers. In the case of filings required under Section 214 of the Act, the Commission seeks comment regarding whether we should consider the development of streamlined filing provisions in the case of LMDS service providers.

The Commission tentatively concludes that some build-out requirement is necessary for LMDS, but one which is more moderate than was proposed in the First NPRM. The Commission proposes to require licensees to have made service available to a minimum of one-third of the population of their geographic areas within five years from license grant. It proposes that licensees will have made service available to a minimum of two-thirds of the population of their geographic areas within ten years from license grant.

Satellite Services Licensing

There are existing rules for the GSO/FSS systems in place in part 25 of the Commission's rules. These include technical rules, such as 2° orbital spacing and full frequency reuse, and licensee qualification rules, for example, a rigorous financial qualification standard. The Commission proposes to apply these rules to GSO/FSS systems that will use the 27.5-30.0 GHz band. The Commission requests comment on whether specific rules, such as the financial qualification requirement, should be altered and whether any additional rules should be created. It requests specific comment on any technical standards that will facilitate sharing under the band segmentation plan.

Following the release of this Notice, the Commission will place the pending satellite applications on separate Public Notice, and will establish cut-off periods for both the GSO/FSS and NGSO/FSS applications to be

[3] Rand McNally is the copyright owner of the MTA/BTA Listings, which list the BTAs contained in each MTA and the counties within each BTA, as embodied in Rand McNally's Trading Area System MTA/BTA Diskette, and geographically represented in the map contained in Rand McNally's Commercial Atlas & Marketing Guide. The conditional use of Rand McNally's copyrighted material by interested persons is authorized under a blanket licensee agreement dated February 10, 1994, and covers use by LMDS applicants. This agreement requires authorized users of the material to include a legend on reproductions (as specified in the license agreement) indicating Rand McNally's ownership.

considered concurrently with these.[4] If all qualified applicants in the processing group cannot be accommodated, it proposes to use competitive bidding as the procedure to choose among the mutually exclusive applications to provide domestic service within the United States. The Commission is not auctioning access rights to other countries from either NGSO/FSS or GSO/FSS systems. The Commission is also auctioning access rights to serve the U.S. market only from certain orbit locations for specific frequency bands.

Competitive Bidding Proposal and Procedures

Following is the verbatim text of that portion of the third NPRM pertaining to competitive bidding issues:

A. Competitive Bidding

Section 309(j)(1) of the Communications Act, as amended, 47 U.S.C. 309(j)(1), permits auctions only where mutually exclusive applications for initial licenses or construction permits are accepted for filing by the Commission and where the principal use of the spectrum will involve or is reasonably likely to involve the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communications signals.[5]

The Commission has previously determined that auctions are permissible if at least a majority of the use of the spectrum would be for service to subscribers. In making this determination, we looked to classes of licenses and permits rather than to individual licenses.[6] Based on the service proposals in the extensive record developed in this proceeding to date, we believe that the principal use of the LMDS spectrum will meet these requirements.

With respect to the NGSO and GSO FSS applicants, we tentatively conclude that the principal use of the spectrum will be to provide subscription based services,[7] even though certain portions of the spectrum will be used for large bandwidth applications through gateway terminals. We request comment on these tentative conclusions, including information from any potential LMDS or satellite applicants on the type of service they contemplate offering.

In addition, we tentatively conclude that the use of competitive bidding to award LMDS and satellite licenses will promote the objectives described in section 309(j)(3) of the Communications Act. These objectives are:

(A) The development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;

(B) Promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;

(C) Recovery for the public of a portion of the value of the public spectrum made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resources; and

(D) Efficient and intensive use of the electromagnetic spectrum.

First, based on our experience conducting PCS auctions, we believe that the use of competitive bidding to award GSO/FSS and NGSO/FSS and LMDS licenses, as compared with other licensing methods, will speed the development and deployment of new technologies, products and services to the public with minimal administrative or judicial delay, and will encourage efficient use of the spectrum as required by sections 309(j)(3) (A) and (D). Second, use of auctions to assign LMDS and satellite licenses will clearly advance the goals of section 309(j)(3)(C) by enabling us to recover for the public a portion of the value of the public spectrum.[8] By using a licensing methodology which ensures that licenses are assigned to those who value them most highly, it follows that such licensees can be expected to make the most efficient and intensive use of the spectrum. Finally, we believe that using auctions will meet the objectives of section 309(j)(3)(B) because we propose to adopt competitive bidding rules that foster economic opportunity and the distribution of licenses among a wide variety of applicants including small businesses, rural telephone companies and businesses owned by women and minorities (collectively referred to as ''designated entities'') who might otherwise face entry barriers.

B. Determining Mutual Exclusivity

As noted above, one of the prerequisites for use of the auction procedures is that applications must be mutually exclusive. The Communications Act states that ''[n]othing in [Section 309(j)], or in the use of competitive budding, shall * * * be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings * * *.'' 47 U.S.C. 309(j)(6)(E). With respect to LMDS, we propose to use discrete geographic service areas and spectrum blocks, thus avoiding the possibility of ''daisy chain'' mutual exclusivity among applications. However, because of the great interest shown in LMDS in this proceeding to date, we anticipate that there will be multiple applications filed for each geographic area. Moreover, we tentatively conclude that it would not serve the public interest for the Commission to avoid mutual exclusivity altogether because doing so would greatly circumscribe the geographic service areas and would defeat the Commission's ability to determine the applicants who would put the spectrum to its highest valued use.

We propose to determine mutual exclusivity based on the FCC Form 175 application for LMDS licenses. If more than one application is filed for the same LMDS frequency in the same geographic area then mutual exclusivity would be established and the license will be auctioned. As we indicated in the Second Report and Order in PP Docket No. 93–253, 9 FCC Rcd 2348 (1994) 59 FR 22980, May 4, 1994, if the Commission receives only one application that is acceptable for filing for a particular license, and thus there is no mutual exclusivity, the Commission by Public Notice will cancel the auction for this license and establish a date for the filing of a long-form application, the acceptance of which will trigger the procedures permitting petitions to deny.[9] We seek comment on this proposal, particularly whether some other type of filing method would be more appropriate for

[4] All applicants would have to pay the filing fees set out in our rules, for applications for authority to construct, launch, and operate a satellite in the FSS.

[5] As discussed *infra*, the LMDS services proposed to date all appear to be subscriber-based services. However, we are aware that interest in the use of this spectrum has been demonstrated by two entities interested in manufacturing point-to-point equipment (Digital Corporation and Harris Corp.—Farinon Div.) which is unlikely to be subscriber-based.

[6] *Second Report and Order, supra, n. 79 at 2354.*

[7] See First Report and Order and Second Notice of Proposed Rulemaking in ET Docket No. 94–32, FCC 95–47, 60 FR 13102 (March 10, 1995) at 33.

[8] Id.

[9] See Second Report and Order at para. 165.

determining whether initial applications are mutually exclusive.

With respect to GSO/FSS service and NGSO/FSS systems, it is premature to determine whether mutual exclusivity will occur. We intend to open a new filing period permitting additional parties to apply for this spectrum. If additional entities file applications during this filing period, it is possible, given the limited amount of spectrum available, that we may not be able to accommodate all of the applicants' proposals. Under these circumstances the Commission proposes to award these licenses by auction. We seek comment on this proposal.

C. Competitive Bidding Issues

1. Competitive Bidding Design

(a) General Competitive Bidding Principles

The Competitive Bidding Second Report and Order,[10] as modified by the Competitive Bidding Reconsideration Order,[11] established the criteria to be used in selecting which auction design method to use for each particular auctionable service. Generally, we concluded that awarding licenses to those parties who value them most highly will foster the statutory policy objectives. In this regard, we noted that since a bidder's ability to introduce valuable new services and to deploy them quickly, intensively, and efficiently increases the value of a license to that bidder, an auction design that awards licenses to those bidders with the highest willingness to pay tends to promote the development and rapid deployment of new services and the efficient and intensive use of the spectrum.[12]

Based on the foregoing, we concluded that where the licenses to be auctioned are interdependent and their value is expected to be high, simultaneous multiple round auctions would best achieve the Commission's goals for competitive bidding.[13] We also noted, however, that simultaneous multiple round auctions may not be appropriate for all licenses. For example, where there is less interdependence among licenses, there is less benefit to auctioning them simultaneously. Similarly, we explained that when the values of particular licenses to be auctioned are low relative to the costs of conducting a simultaneous multiple round auction, we may consider auction designs that are relatively simple, with low administrative costs and minimal costs to the auction participants.[14]

(b) Competitive Bidding Methodology for LMDS Licenses

Simultaneous Multiple Round Bidding. We believe that simultaneous multiple round bidding should be the preferred method for licensing LMDS spectrum blocks. Based on the record in this proceeding and our successful experience conducting simultaneous multiple round auctions for narrowband and broadband PCS licenses, we believe that this auction design is the most appropriate for auctioning LMDS licenses. First, we believe that for certain bidders the value of these licenses will be significantly interdependent because of the desirability of aggregation across geographic regions and because, if the Commission provides for more than one license in each geographic service area, licenses within the same area would likely be close substitutes or strong complements. As indicated above, under these circumstances, simultaneous multiple round bidding will generate more information about license values during the course of the auction and provide bidders with more flexibility to pursue back-up strategies than if these licenses are auctioned separately. Simultaneous multiple round bidding is therefore most likely to award licenses to the bidders who value them the most highly and to provide bidders with the greatest likelihood of obtaining the license combinations which best satisfy their service needs. Finally, we expect the value of these licenses to be sufficiently high to warrant the use of simultaneous multiple round auctions. Therefore, we intend to use simultaneous multiple round bidding to award LMDS licenses. We ask commenters to address this tentative conclusion and whether any other competitive bidding designs would be more appropriate for the licensing of this spectrum.

Grouping of Licenses. Assuming we use simultaneous multiple round auctions for LMDS licenses, we also seek comment on which blocks should be auctioned together, and the sequencing of each auction. The importance of the choice of license groupings increases with the degree of interdependence among the individual licenses or groups of licenses to be auctioned. Grouping interdependent licenses together and putting them up for bid at the same time will facilitate awarding licenses to bidders who value them the most highly by providing bidders with information about the prices of complementary and substitutable licenses during the course of the auction. Based on the foregoing, we propose to auction all LMDS licenses together in one simultaneous multiple round auction because of the expected value and significant interdependence of the licenses. We seek comment on this tentative analysis and on possible alternative license groupings.

Combinatorial Bidding. Another issue for consideration in auction design is whether to permit combinatorial bidding. In general terms, combinatorial bidding allows bidders to bid for multiple licenses as all-or-nothing packages (*e.g.*, all licenses nationwide on a particular spectrum block, with the licenses awarded as a package if the combinatorial bid is greater than the sum of the high bids on the individual licenses in the package).[15] Combinatorial bidding can be implemented with either simultaneous or sequential auction designs. At this time, we do not plan to use combinatorial bidding in LMDS licensing because although we recognize that there may be significant benefits associated with combinatorial bidding, especially in terms of efficient aggregation of licenses, we tentatively conclude that simultaneous multiple round auctions offer many of the same advantages without the same degree of administrative and operational complexity and without biasing auction outcomes in favor of combination bids. We seek comment on the specific combinatorial bidding procedures that should be adopted if combinatorial bidding is used.

Alternatively, we may consider modifying the auction rules to directly limit the risk associated with bid withdrawal for those seeking nationwide aggregations. For example, we might cap the bid withdrawal payment (discussed below) for nationwide bidders at five percent of the

[10] Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Second Report and Order, PP Docket No. 93–253, 9 FCC Rcd 2348, para. 69 (1994) (Competitive Bidding Second Report and Order).

[11] Competitive Bidding Reconsideration Order, 9 FCC Rcd at 7249–50.

[12] See Competitive Bidding Second Report and Order, 9 FCC Rcd at 2360–61, para. 70.

[13] See 9 FCC Rcd at 2367, paras. 109–111.

[14] See id. at 2367, paras. 112–113.

[15] In combinatorial bidding, if a bid for a group of licenses exceeds the sum of the highest bids for the individual licenses that comprise the package, then the package bid would win. In the Second Report and Order we also indicated that if we were to utilize combinatorial bidding we might institute a premium so that the combinatorial bid would win only if it exceeded the sum of the bids for individual licenses by a set percentage.

See Second Report and Order at para. 114. NTIA is the main advocate of combinatorial bidding. *See* comments of NTIA, and *ex parte* submission of NTIA in PP Docket No. 93–253, Feb. 28, 1994.

withdrawn bids. To discourage those who do not truly seek nationwide aggregations of taking advantage of the limitations on bid withdrawal payments and to speed up the auction, nationwide bidders might be subject to the requirement that they be active (defined below) on all license on each nationwide aggregation on which they did. To ensure adequate competition for licenses which are reoffered after a nationwide withdrawal we might also modify the activity rules (discussed below) so that if any bidder withdraws a bid, the eligibility of all other bidders will be increased by the amount of the withdrawal bid up to each bidder's initial maximum eligibility. We seek comment on this alternative method of facilitating efficient nationwide aggregations.

(c) GSO/FSS Auction Proposals

In the event a competitive bidding approach is adopted to award GSO/FSS and NGSO/FSS licenses, we emphasize that we would be auctioning access to the United States only for use of specific frequency bands within the U.S. Any international access by the satellite users depends on the rules of that particular country. To afford licensees some flexibility in designing their systems and to allow for the uncertainties of the international coordination process, we propose to allow applicants to bid on the total amount of spectrum designated for GSO/FSS and NGSO/FSS services, respectively, set out in the band segmentation plan.

As we discussed earlier, it is premature for us to determine whether there will be mutually exclusive applications for GSO/FSS licenses in the band. Applications for GSO/FSS licenses would be mutually exclusive if we do not have a sufficient number of orbit locations to accommodate all qualified applicants. We request comment, with accompanying justification, from applicants and potential applicants, on how many users, within our two degree spacing rule, they believe can be supported in the GSO/FSS segments to provide service to the continental United States (CONUS), without causing harmful interference. If a mutually exclusive situation should arise, we propose to auction the GSO/FSS spectrum at each orbit location in two paired, uplink and downlink, 500 MHz blocks, allowing applicants to bid for up to two blocks. We believe 500 MHz blocks are the smallest spectrum blocks feasible to support a viable FSS system at 28 GHz. We request comment on whether this amount of spectrum is sufficient. If auctions are used to award GSO/FSS licenses, we propose to use a simultaneous multiple round bidding, which will enable bidders to express the value interdependencies between the two blocks. We request comment on whether simultaneous multiple round bidding procedures are appropriate for this spectrum or whether other bidding procedures would better serve the statutory goals.

(d) NGSO/FSS Auction Proposals

The band segmentation plan designates 500 MHz of unrestricted contiguous spectrum to NGSO/FSS systems. Our preliminary technical analysis indicates that 500 MHz is the minimum amount of spectrum required to implement a viable system offering NGSO/FSS services. For NGSO/FSS systems, a mutually exclusive situation will arise if all qualified applicant are unable to share the spectum. If mutually exclusive applications are received, we propose to use competitive bidding to award a single license. If competitive bidding is used to award such a license, we propose to conduct a multiple round auction for the entire 500 MHz block of spectrum. This multiple round auction may be either oral or electronic. We request comment from NGSO/FSS applicants and potential applicants on this proposal. Specifically we ask commenters to address the specific application and auction procedures that should be used.

(e) MSS Feeder Links

We are not proposing competitive bidding rules for MSS feeder links. In the Second Report and Order in the Competitive Bidding Rulemaking Proceeding, the Commission decided not to auction intermediate links, including feeder links in the Mobile Satellite Services (MSS).[16] We reasoned that before employing competitive bidding, the Commission is required to determine that mutually exclusive applications are likely to be filed and that such bidding would promote the objectives of section 309(j)(3)(A) through (D) of the Communications Act. With regard to mutual exclusivity, we noted that in those frequency bands most often utilized as intermediate links, mutual exclusivity is usually avoided by employing a frequency coordination process for each intermediate link prior to the time an application is granted. With regard to the objective of section 309(j)(3)(A) through (D), we concluded that auctioning intermediate links could significantly delay the development and rapid deployment of new technologies, products and services for the benefit of the public, that auctions for these links could impose significant administrative costs on licensees and the Commission, and that it was unclear whether competitive bidding for intermediate links would recover for the public a significant portion of the value of the spectrum, prevent unjust enrichment or promote efficient and intensive use of the spectrum.[17]

We tentatively conclude that FSS spectrum used for MSS feeder links should be excluded from competitive bidding. We base this tentative conclusion on the finding that auctions for MSS feeder links would not achieve the public interest objectives in Section 309(j)(3). The feeder links are an integral part of the MSS systems and the systems would be unable to operate without them. Three MSS systems have also already been licensed and auctioning the feeder links would only delay implementation of service to the public.

(f) Bidding Procedures

If we use simultaneous multiple round auctions, we generally propose to use bidding procedures similar to those use for broadbank PCS.[18] We seek comment, however, on whether any variations on these procedures should be adopted for LMDS or FSS licenses.

Bid Increments and Tie Bids. In using simultaneous multiple round auctions to award licenses it is important to specify minimum bid increments. The bid increment is the amount or percentage by which the bid must be raised above the previous round's high bid in order to be accepted as a valid bid in the current bidding round. The application of a minimum bid increment speeds the progress of the auction and, along with activity and stopping rules, helps to ensure that the auction comes to closure within a reasonable period of time. Establishing an appropriate minimum bid increment is especially important in a simultaneous auction with a simultaneous closing rule. In that case, all markets remain open until there is no bidding on any license, and a delay in closing one market will delay the closing of all markets. As we recognized in the Second Report and Order in the

[16] See Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Second Report and Order, 9 FCC Rcd. 2348, 2355–56 n. 30 (1994).

[17] Id at 2355, para. 43.

[18] Fifth Report and Order in PP Docket No. 93–253, 59 FR 37566, July 22, 1994 9 FCC Rcd 5532 (1994) (Fifth Report and Order), recon. granted in part, Fifth Memorandum Opinion and Order, 59 FR 63210, December 7, 1994 10 FCC Rcd 403 (1995) (Fifth Memorandum Opinion and Order).

competitive bidding docket, it is important in establishing the amount of the minimum bid increment to express such increment as the greater of a percentage and fixed dollar amount.[19] This will ensure a timely completion of the auction even if bidding begins at a very low dollar amount. Accordingly, we propose to impose a minimum bid increment equal to some percentage of the high bid from the previous round or a dollar amount per MHza per pop, whichever is greater where multiple round bidding is used.

We propose to announce by public notice prior to auction the specific bid increment that generally will be used. We anticipate using large bid increments early in the auction and reducing the increment as bidding activity falls. We note, however, that the Commission proposes to retain the discretion to set and, by announcement before or during the auction, vary the minimum bid increments for individual licenses or groups of licenses over the course of an auction.[20]

Where a tie bid occurs, we propose that the high bidder be determined by the order in which the bids were received by the Commission.[21]

Stopping Rules. When simultaneous multiple round auctions are used, a stopping rule must be established for determining when the auction is over. In simultaneous multiple round auctions, bidding may close separately on individual licenses, simultaneously on all licenses, or a hybrid approach may be used. Under an individual, license-by-license approach, bidding closes on each license after one round passes in which no new acceptable bids are submitted for that particular license. With a simultaneous stopping rule, bidding generally remains open on all licenses until there is no new acceptable bid on any license. This approach has the advantage of providing bidders full flexibility to bid for any license as more information becomes available during the course of the auction, but it may lead to very long auctions, unless an activity rule (see discussion infra, paras. 157 ff) is imposed. A hybrid approach combines the first two stopping rules. For example, we may use a simultaneous stopping rule (along with an activity rule designed to expedite closure for licenses subject to the simultaneous stopping rule) for the higher value licenses. For lower value licenses, where the loss from eliminating some back-up strategies is less, we may use simpler license-by-license closings. In the Competitive Bidding Second Report and Order we recognized that such a hybrid approach might simplify and speed up the auction process without significantly sacrificing efficiency or expected revenue.[22]

For LMDS and FSS auctions, we propose to use a simultaneous stopping rule. Under this proposal, bidding will remain open on all licenses in an auction until bidding stops on every license. We propose that the auction will close after one round passes in which no new valid bids or proactive activity rule waivers (as defined below in the section on activity rules) are submitted. The Commission proposes to retain the discretion, however, to keep the auction open even if no new valid bids and no proactive waivers are submitted. In the event that the Commission exercises this discretion, the effect would be the same as if a bidder had submitted a proactive waiver.[23] Since we intend to impose an activity rule (as discussed below), we believe that allowing simultaneous closing for all licenses will afford bidders flexibility to pursue back-up strategies without running the risk that bidders will hold back their bidding until the final rounds.

In addition, we propose to retain the discretion to declare after forty rounds that the auction will end after some specified number of additional rounds. If this option were used, we propose to only accept bids on licenses where the high bid had increased in at least one of the last three rounds. We seek comment on our proposed use of a simultaneous stopping rule and ask commenters to indicate whether an alternative stopping rule would be more appropriate.

Duration of Bidding Rounds. In simultaneous multiple round auctions, bidders may need a significant amount of time to evaluate back-up strategies and develop their bidding plans. We seeks comment on the appropriate duration of the bidding rounds as well as the interval between bidding rounds. We propose to retain the discretion to establish the duration and frequency of bidding rounds by public notice before each auction. We also propose to announce any changes to the duration of or intervals between bidding rounds either by public notice prior to the auction, or announcement during the auction. We request comment on this proposal.

Bid Withdrawals. We propose to permit a high bidder to withdraw one or more of its high bids during the bid withdrawal period in each round subject to the bid withdrawal payments specified below. If a high bid is withdrawn, we propose that the license be offered in the next round at the second highest bid price. The Commission may at its discretion adjust the offer price in subsequent rounds until a valid bid is received on the license. In addition, to prevent a bidder from strategically delaying the close of the auction, we propose that the FCC retain the discretion to limit the number of times that a bidder may re-bid on a license from which it has withdrawn a high bid.

Activity Rules. In the Second Report and Order, we adopted the Milgrom-Wilson activity rule as our preferred activity rule where a simultaneous stopping rule is used. See Second Report and Order at paras. 144–145. The Milgrom-Wilson approach encourages bidders to participate in early rounds by limiting their maximum participation to some multiple of their minimum participation level. Bidders are required to declare their maximum eligibility in terms of MHz-pops, and make an upfront payment proportional to that eligibility level.[24] (See discussion of upfront payments infra, para. 167.) That is, in each round, bidders will be limited to bidding on licenses encompassing no more than the number of MHz-pops covered by their upfront payment. Licenses on which a bidder is the high bidder at the end of the bid withdrawal period in the previous round count against this bidding limit. Under this approach, bidders have the flexibility to shift their bids among any licenses for which they have applied so long as, within each round, the total MHz-pops encompassed by those licenses does not exceed the total number of MHz-pops on which they are eligible to bid. Under this approach, to preserve their maximum eligibility, bidders are required to maintain a certain level of bidding activity during each round of the auction. The auction is divided into three stages with increasing levels of bidding activity required in each stage of the auction. A bidder is considered active on a license

[19] See Second Report and Order, supra, at para. 126.

[20] In oral or electronic sequential auctions the auctioneer may within his or her sole discretion establish and vary the amount of the minimum bid increment in each round of bidding.

[21] See Second Report and Order at 2369.

[22] Id.

[23] This will help ensure that the auction is completed within a reasonable period of time, because it will enable the Commission to utilize larger bid increments, which speed the pace of the auction, without risking premature closing of the auction. See Memorandum Opinion and Order in PP Docket No. 93–253, 59 FR 64159, December 13, 1994 9 FCC Rcd 7684–7685 (1994).

[24] The number of ''MHz-pops'' is calculated by multiplying the population of the license service area by the amount of spectrum authorized by the license. We use the terms ''per MHz-pop'' and ''per MHz per pop'' interchangeably.

in the current round if the bidder has submitted an acceptable bid for that license in the current round, or has the high bid for that license at the end of the bid withdrawal period in the previous round in which case, the bidder does not need to bid on that license in the current round to be considered active on that license. A bidder's activity level in a round is the sum of the MHz-pops associated with licenses on which the bidder is active.

We tentatively conclude that the Milgrom-Wilson activity rule should be used in conjunction with the proposed simultaneous stopping rule for LMDS and FSS auctions. We believe that the Milgrom-Wilson approach will best achieve the Commission's goals of affording bidders flexibility to pursue backup strategies, while at the same time ensuring that simultaneous auctions are concluded within a reasonable period of time.

Under the Milgrom-Wilson proposal, the minimum activity level, measured as a fraction of the bidder's eligibility in the current round, will increase during the course of the auction. Milgrom-Wilson divide the auction into three stages. We propose to establish the following minimum required activity levels for each stage of the auction: In each round of Stage One of the auction, a bidder who wishes to maintain its current eligibility is required to be active on licenses encompassing at least 60% of the MHz-pops for which it is currently eligible. Failure to maintain the requisite activity level will result in a reduction in the amount of MHz-pops upon which a bidder will be eligible to bid in the next round of bidding (unless an activity rule waiver, as defined below, is used). During Stage One, if activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by five-thirds (5/3). Eligibility for each applicant in the first round of the auction is determined by the amount of the upfront payment received and the licenses identified in its auction application. In each round of the Stage Two, a bidder who wishes to maintain its current eligibility is required to be active on 80% on the MHz-pops for which it is eligible in the current round. During the second stage, if activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by five-fourths (5/4). In each round of Stage Three, a bidder who wishes to maintain its current eligibility is required to be active on licenses encompassing 95 percent of the MHz-pops for which it is eligible in the current round. In Stage Three, if activity in the current round is below 95 percent of current eligibility, eligibility in the next round will be calculated by multiplying the current round activity by twenty-nineteenths (20/19). We note, however, that the Commission proposes to retain the discretion to set and, by announcement before or during the auction, vary the required minimum activity levels (and associated eligibility calculations) for each auction stage. Retaining this flexibility will improve the Commission's ability to control the pace of the auction and help ensure that the auction is completed within a reasonable period of time.

In the PCS auctions, we specified transition guidelines for deciding when the auction would move from Stage One to Stage Two to Stage Three. Those guidelines are based on the ''auction activity level,'' the sum of the MHz-pops of PCS licenses for which the high bid increased in the current round as a percentage of the total MHz-pops of all licenses offered in the auction.[25] However, we also retained the discretion to move the PCS auctions from one stage to another at a rate different from that set out in the guidelines.[26]

For the LMDS and FSS auctions, we propose to use the following transition guidelines: The auction will begin in Stage One and move from Stage One to Stage Two when the auction activity level is below ten percent for three consecutive rounds in Stage One. The auction will move from Stage Two to Stage Three when the auction activity level is below five percent for three consecutive rounds in Stage Two. In no case can the auction revert to an earlier stage. We propose, however, that the Commission retain the discretion to determine and announce during the course of an auction when, and if, to move from one auction stage to the next, based on a variety of measures of bidder activity, including, but not limited to, the auction activity level as defined above, the percentage of licenses (measured in terms of MHz-pops) on which there are new bids, the number of new bids, and the percentage increase in revenue.

To avoid the consequences of clerical errors and to compensate for unusual circumstances that might delay a bidder's bid preparation or submission in a particular round, we proposed to provide bidders with a limited number of waivers of the above-described activity rule. We believe that some waiver procedure is needed because the Commission does not wish to reduce a bidder's eligibility due to an accidental act or circumstances not under the bidder's control.[27]

We propose to provide bidders five activity rule waivers that may be used in any round during the course of the auction.[28] If a bidder's activity level is below the required activity level, a waiver will automatically be applied. That is, if a bidder fails to submit a bid in a round, and its activity level from any standing high bids (high bids at the end of the bid withdrawal period in the previous round) falls below its required activity level, a waiver will be automatically applied. A waiver will preserve current eligibility in the next round.[29] An activity rule waiver applies to an entire round of bidding and not to a particular BTA service area.

Bidders will be afforded an opportunity to override the automatic waiver mechanism when they place a bid if they intentionally wish to reduce their bidding eligibility and do not want to use a waiver to retain their eligibility at its current level.[30] If a bidder overrides the automatic waiver mechanism, its eligibility will be permanently reduced (according to the formulas specified above), and it will not be permitted to regain its bidding eligibility from a previous round. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open. Bidders will have the option of proactively entering an activity rule waiver during the bid submission period.[31] If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, the auction will remain open.

The Commission proposes to retain the discretion to issue additional waivers during the course of an auction for circumstances beyond a bidder's control. We also propose to retain the flexibility to adjust by public notice prior to an auction the number of waivers permitted, or to institute a rule that allows one waiver during a specified number of bidding rounds or during specified stages of the auction.[32]

[25] See, e.g., Fifth Report and Order at 5555.

[26] See Fourth Memorandum Opinion and Order in PP Docket No. 93–253, 9 FCC Rcd 6858, 6860 (1994), 59 FR 53364, October 24, 1994.

[27] See Second Report and Order at 2372.

[28] See Second Report and Order at 2373.

[29] An activity rule waiver cannot be used to correct an error in the amount bid.

[30] See Fourth Memorandum Opinion and Order in PP Docket No. 93–253, 9 FCC Rcd 6858, 6861 (1994).

[31] Thus, a ''proactive'' waiver, as distinguished from the automatic waiver described above, is one requested by the bidder.

[32] See Second Report and Order at 2373.

We request comment on these proposals.

2. Procedural and Payment Issues

In the Competitive Bidding Second Report and Order, as modified by the Competitive Bidding Reconsideration Order in PP Docket No. 93–253, 9 FCC Rcd 7245 (1944), the Commission established general procedural and payment rules for auctions, but also stated that such rules may be modified on a service-specific basis.[33] As discussed below, we generally propose to follow the procedural and payment rules established in subpart Q of part 1 of the Commission's rules, but seek comment on whether any service-specific modifications of these rules are needed based on the particular characteristics of LMDS services.

(a) Upfront Payments

As in the case of other auctionable services, we propose to require participants in the LMDS and FSS auctions to tender to the Commission in advance of the auction, a substantial upfront payment. We have previously determined that a substantial upfront payment requirement is necessary to ensure that only serious, qualified bidders participate in auctions and to ensure that sufficient funds are available to satisfy any bid withdrawal or default payments (discussed infra) that may be incurred. We seek comment on the appropriate amount of such upfront payments for LMDS and satellite auctions. In the PCS auctions the upfront payments was established based on a formula of $0.02 per pop per MHz for the largest combination of MHz-pops a bidder anticipates being active in any single round of bidding. This upfront payment was designed to require an upfront payment representing approximately 5 percent of the expected value of such licenses. We seek comment on what the appropriate upfront payment price per MHz-pop should be for LMDS and satellite licenses. We also seek comment on whether we should establish a minimum upfront payment for applications and if so what the amount of that minimum upfront should be. In the Competitive Bidding Second Report and Order, we established a minimum upfront payment of $2,500, but we also indicated that the minimum amount could be modified on a service-specific basis.[34] With respect FSS auctions, we seek comment on whether a fixed upfront payment would be more appropriate, and if so, what the amount of that upfront should be.

(b) Down Payment and Full Payment for Licenses Awarded by Competitive Bidding

The Competitive Bidding Second Report and Order generally established a 20 percent down payment requirement for winning bidders to discourage default between the auction and licensing and to ensure payment if such default occurs. We concluded that a 20 percent down payment was appropriate to ensure that auction winners have the necessary financial capabilities to complete payment for the license and to pay for the costs of constructing a system, while at the same time not being so onerous as to hinder growth or diminish access.

We similarly propose to require all winning bidders in LMDS, GSO/FSS and NGSO/FSS auctions to supplement their upfront payments with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s).[35] Under this approach, winning bidders would be required to submit the required down payment by cashier's check or wire transfer to our lock-box bank by a date to be specified by Public Notice, generally within five (5) business days following the close of bidding. All auction winners would generally be required to make full payment of the balance of their winning bids within five (5) business days following notification by the Commission that it was prepared to award the license. The license would then be granted after this payment was received. We seek comment on whether this is an appropriate requirement for licensing of these services, and whether 20 percent represents an appropriate level of payment. In addition, as discussed more fully below, we ask commenters to address whether any special payment provisions, for example a reduced down payment, should be adopted for designated entities, and if so, for which specific categories of designated entities and why.

(c) Bid Withdrawal, Default, and Disqualification

As we discussed in the Second Report and Order, it is important to the success of our system of competitive bidding that potential bidders understand that there will be a substantial payment assessed if they withdraw a high bid, are found not to be qualified to hold licenses or default on payment of a balance due. Accordingly, we propose to use the bid withdrawal, default and disqualification rules contained §§ 1.2104(g) and 1.2109 of the Commission's rules for LMDS, GSO/FSS and NGSO/FSS auctions. Pursuant to these rules, any bidder who withdraws a high bid during an auction before the Commission declares bidding closed will be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if this subsequent winning bid is lower than the withdrawn bid.[36] No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid. After bidding closes, a defaulting auction winner (i.e., a winner who fails to remit the required down payment within the prescribed time, fails to pay for a license, or is otherwise disqualified) will be assessed an additional payment of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less.[37] The additional three percent payment is designed to encourage bidders who wish to withdraw their bids to do so before bidding ceases. We propose to hold deposits made by defaulting or disqualified auction winners until full payment of the

[33] 9 FCC Rcd at 7249–50, paras. 23–26.

[34] 9 FCC Rcd at 2379, para. 180.

[35] If the upfront payment already tendered by a winning bidder, after deducting any bid withdrawal and default payments due, amounts to 20 percent or more of its winning bids, no additional deposit will be required. If the upfront payment amount on deposit is greater than 20 percent of the winning bid amount after deducting any bid withdrawal and default payments due, the additional monies will be refunded. If a bidder has withdrawn a bid or defaulted but the amount of the payment cannot yet be determined, the bidder will be required to make a deposit of 20 percent of the amount bid on such licenses. When it becomes possible to calculate and assess the additional payment, any excess deposit will be refunded. Upfront payments will be applied to such deposits and to bid withdrawal and default payments due before being applied toward the bidder's down payment on licenses the bidder has won and seeks to acquire.

[36] If a license is re-offered by auction, the ''winning bid'' refers to the high bid in the auction in which the license is re-offered. If a license is re-offered in the same auction, the winning bid refers to the high bid amount, made subsequent to the withdrawal, in that auction. If the subsequent high bidder also withdraws its bid, that bidder will be required to pay an amount equal to the difference between its withdrawn bid and the amount of the subsequent winning bid the next time the license is offered by the Commission. If a license which is the subject of withdrawal or default is not re-auctioned, but is instead offered to the highest losing bidders in the initial auction, the ''winning bid'' refers to the bid of the highest bidder who accepts the offer. Losing bidders would not be required to accept the offer, *i.e.*, they may decline without additional payment. We wish to encourage losing bidders in simultaneous multiple round auctions to bid on other licenses, and therefore we will not hold them to their losing bids on a license for which a bidder has withdrawn a bid or on which a bidder has defaulted.

[37] See 47 CFR §§ 1.2104(g) and 1.2109.

additional amount.[38] We believe that these additional payments will adequately discourage default and ensure that bidders have adequate financing and that they meet all eligibility and qualification requirements. In the case of defaults, we also propose to retain discretion to offer a license to the next highest bidder at its final bid price if the default occurs within five business days after the close of bidding. We seek comment on these propose procedures.

In addition, if a default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, we propose to retain the option to declare the applicant and its principals ineligible to bid in future auctions, or take any other action we deem necessary, including institution of proceedings to revoke any existing licenses held by the applicant.[39]

3. Regulatory Safeguards

(a) Unjust Enrichment Provisions

The Budget Act directs the Commission to ''require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment and as a result of the methods employed to issue licenses and permits.'' We therefore propose to adopt the transfer disclosure requirements contained in § 1.2111(a) of our rules for all LMDS,GSO/FSS and NGSO/FSS licenses obtained through the competitive bidding process. In addition, we propose specific rules governing unjust enrichment by designated entities, which are discussed below. Generally, applicants transferring their licenses within three years after the initial license grant will be required to file, together with their transfer application, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of their licenses. We seek comment on these proposals.

(b) Performance Requirements

The Budget Act requires the Commission to ''include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services.'' 47 U.S.C. 309(j)(4)(B). In the Competitive Bidding Second Report and Order, we determined that it was unnecessary and undesirable to impose additional performance requirements, beyond those already provided in the service rules, for all auctionable services. Our proposed LMDS service rules (and GSO/FSS and NGSO/FSS service rules) contain specific performance requirements, such as the requirement to construct and provide service within a specific period of time. Thus, we do not propose to adopt any additional performance requirements for competitive bidding purposes. We seek comment on this tentative conclusion.

(c) Rules Prohibiting Collusion

In the Competitive Bidding docket, we adopted special rules prohibiting collusive conduct in the context of competitive bidding. We indicated that such rules would serve the objectives of the Budget Act by preventing parties, especially the largest firms, from agreeing in advance to bidding strategies that divide the market according to their strategic interests and that disadvantage other bidders. We propose to apply these rules to LMDS, GSO/FSS and NGSO/FSS auctions. Pursuant to these rules, from the time the short-form applications are filed until a winning bidder has made its required down payment, all bidders will be prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other bidders, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application. In addition, bidders are required by § 1.2105(a)(2) of the Commission's Rules to identify on their Form 175 applications all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate to the competitive bidding process. Bidders will also be required to certify that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid.

We also propose to require winning bidders, pursuant to § 1.2107 of the Commission's Rules, to attach as an exhibit to their license application a detailed explanation of the terms and conditions and parties involved in any bidding consortium, joint venture, partnership, or other agreement or arrangement they had entered into relating to the competitive bidding process prior to the close of bidding. All such arrangements must have been entered into prior to the filing of short-form applications. In addition, where specific instances of collusion in the competitive bidding process are alleged during the petition to deny process, the Commission may conduct an investigation or refer such complaints to the United States Department of Justice for investigation. Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with participation in the auction process may be subject to forfeiture of their down payment or their full bid amount and revocation of their license(s), and they may be prohibited from participating in future auctions. We seek comment on these proposals.

4. Treatment of Designated Entities

(a) Introduction

In authorizing the Commission to use competitive bidding, Congress mandated that the Commission ''ensure that small business, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' 47 U.S.C. 309(j)(4)(D). The statute requires the Commission to ''consider the use of tax certificates, bidding preferences, and other procedures'' in order to achieve this Congressional goal. In addition, section 309(j)(3)(B) provides that in establishing eligibility criteria and bidding methodologies the Commission shall promote ''economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' Finally, section 309(j)(4)(A) provides that to promote these objectives, the Commission shall consider alternative payment schedules including installment payments.

In instructing the Commission to ensure the opportunity for designated entities to participate in auctions and spectrum-based services, Congress was well aware of the problems that designated entities would have in competing against large, well-capitalized companies in auctions and the difficulties they encounter in accessing capital. For example, the legislative history accompanying our

[38] In rare cases in which it would be inequitable to retain a down payment, we will entertain requests for waiver of this provision.

[39] See Second Report and Order at para. 198.

grant of auction authority states generally that the Commission's regulations ''must promote economic opportunity and competition,'' and ''(t)he Commission will realize these goals by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses and businesses owned by members of minority groups and women.'' [40] The House Report states that the House Committee was concerned that, ''unless the Commission is sensitive to the need to maintain opportunities for small business, competitive bidding could result in a significant increase in concentration in the telecommunications industries.'' [41] More specifically, the House Committee was concerned that adoption of competitive bidding should not have the effect of ''excluding'' small businesses from the Commission's licensing procedures, and anticipated that the Commission would adopt regulations to ensure that small businesses would ''continue to have opportunities to become licensees.'' [42] On the other hand, the House Report also states that ''the characteristics of some services are inherently national in scope, and are therefore ill-suited for small businesses.'' [43]

Consistent with Congress's concern that auctions not operate to exclude small businesses, the provisions relating to installation payments were intended to assist small businesses. The House Report states that these related provisions were drafted to ''ensure that all small businesses will be covered by the Commission's regulations, including those owned by members of minority groups and women.'' [44] It also states that the provisions in section 309(j)(4)(A) relating to installment payments were intended to promote economic opportunity by ensuring that competitive bidding does not inadvertently favor incumbents with ''deep pockets'' ''over new companies or start-ups.'' [45]

In addition, with regard to access to capital, Congress had made specific findings in the Small Business Credit and Business Opportunity Enhancement Act of 1992, that ''small business concerns, which represent higher degrees of risk in financial markets than do large businesses, are experiencing increased difficulties in obtaining credit.'' [46] As a result of these difficulties. Congress resolved to consider carefully legislation and regulations ''to ensure that small business concerns are not negatively impacted'' and to give priority to passage of ''legislation and regulations that enhance the viability of small business concerns.'' [47] In the Competitive Bidding Second Report and Order, we also indicated that special measures may not be appropriate in all circumstances.

We have employed a wide range of special provisions and eligibility criteria designed to meet the statutory objectives of providing opportunities to designated entities in other spectrum-based services. For instance, we determined that minority-owned and women-owned businesses in the nationwide narrowband PCS auction would receive a 25 percent bidding credit on certain channels; [48] in the regional narrowband PCS auction women-owned and minority-owned businesses would receive a 40 percent bidding credit on certain channels and small businesses would be eligible for installment payments on all channels; [49] in the broadband PCS auction, on separate entrepreneurs' blocks, the bidding credits would vary according to the type of qualifying designated entity that applied,[50] and all entrepreneurs' block licensees would be eligible for installment payments.[51] For the Multipoint Distribution Service (''MDS'') we adopted a 15 percent bidding credit, reduced upfront payments and installment payments for small businesses, including those owned by members of minority groups and women.[52] In satellite services, we have not proposed or adopted specific measures for designated entitles.[53]

The measures considered thus far for each service were established after closely examining the specific characteristics of the service and determining whether any particular barriers to accessing capital stood in the way of designated entity opportunities. After examining the record in the competitive bidding proceeding in PP Docket 93–253, we established provisions necessary to enable designated entities to overcome the barriers to accessing capital in each particular service. Moreover, the measures we adopted also were designed to increase the likelihood that designated entities who win licenses in the auctions become strong competitors in the provision of wireless services.

As in other auctionable services, we fully intend in services using the 28 GHz band to meet the statutory objectives of promoting economic opportunity and competition, of avoiding excessive concentration of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. At the same time, we must be cautious and deliberative in our selected approach in light of the auction statute's directive to avoid judicial delays [54] and the substantial legal risks involved with providing preferential treatment on the basis of race or gender. In this regard, on June 12, 1995, the Supreme Court ruled in Adarand Constructors v. Peña [55] that measures adopted by the federal government awarding preferential treatment on the basis of race are subject to strict scrutiny.[56] To pass muster under that standard, such measures must be narrowly tailored to further compelling government interests.[57]

Adarand thus introduces an additional level of complexity in implementing Congress' mandate to ensure that businesses owned by minorities and women are provided ''the opportunity to participate in the provision of spectrum-based services.'' [58] Although Adarand did not address gender-based preferences, we

[40] H.R. Rep. No. 111, 103d Cong., 1st Sess. 254 (1993).

[41] Id.

[42] Id. at 255.

[43] Id. at 254.

[44] Id.

[45] Id.

[46] Small Business Credit and Business Opportunity Enhancement Act of 1992, section 331(a)(3), Pub. L. 102–366, Sept. 4, 1992.

[47] Id. section 331(b)(2)–(3).

[48] Auctions Third Report and Order at para. 72.

[49] Id. at para. 87. See implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, para. 58 (1994), 5Q FR 44058, August 26, 1994.

[50] Auctions Fifth Report & Order at para. 133; Auctions Fifth Memorandum Opinion & Order at para. 99; See also Further Notice of Proposed Rulemaking, FCC 95–263 (released June 23, 1995), 60 FR 34201, June 30, 1995.

[51] Auctions Fifth Memorandum Opinion & Order at para. 103.

[52] Report and Order, MM Docket No. 94–131 and PP Docket 93–253, FCC 95–230 (adopted June 15, 1995), 60 FR 36524, July 17, 1995.

[53] See Rules and Policies Pertaining to a Mobile Satellite Service in the 1610–1626.5/2483–2500 MHz Frequency Bands, Report and Order, CC Docket No. 92–166, 9 FCC Rcd 5936, 5969–70 (1994); Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310–2360 MHz Frequency Band, Notice of Proposed Rulemaking, IB Docket No. 95–91, paras. 107–108, FCC 95–229 (released June 15, 1995) 60 FR 35166, July 6 1995.

[54] 47U.S.C. 309(j)(3)(A).

[55] 63 U.S.L.W. 4523 (U.S. June 12, 1995).

[56] Id., 63 U.S.L.W. at 4530.

[57] Id.

[58] 47 U.S.C. 309(j)(4)(D).

have included them here in an effort to seek the broadest possible comment. We welcome comment as to the appropriateness of our approach. Accordingly, we seek comment on how we can best promote opportunities for businesses owned by minorities and women in the provision of LMDS and satellite services in light of Adarand. We seek the broadest possible comments including, but not limited to, responses to the following questions:

(1) Does the Commission have a compelling interest in establishing opportunity-enhancing measures in the provision of LMDS and satellite services specifically for minority-and women-owned businesses? If so, what is that compelling interest? Would the goal of assuring a ''diversity of voices'' in the provision of LMDS and satellite services? suffice as a compelling interest? [59]

(2) What evidence (statistical, documentary, anecdotal or otherwise) can be marshalled to support the proposed compelling interest?

(3) What techniques could the Commission employ that would be narrowly tailored to further the proposed compelling interest? Would such techniques include bidding credits and installment payments? Are race-conscious or gender-conscious measures necessary, or are there race-or gender-neutral measures that would be effective?

Commenters are encouraged to provide the Commission as much evidence as possible with regard to past discrimination, continuing discrimination, discrimination in access to capital, underrepresentation and other significant barriers facing businesses owned by minorities and women in satellite services, services similar to LMDS, and in licensed communications services generally.

In the Competitive Bidding docket, we established eligibility criteria and general rules that would govern the award of special provisions for small businesses, rural telephone companies, and minority-and women-owned businesses (collectively, ''designated entities''). We also established a menu of possible special provisions that could be awarded to designated entities in particular services, including installment payments, spectrum set-asides, bidding credits, and tax certificates.[60] In addition, we set forth rules to prevent unjust enrichment by designated entities seeking to transfer licenses obtained through use of one of these special provisions.

In keeping with the general parameters set forth in the Competitive Bidding docket, we propose specific measures and eligibility criteria for designated entities who seek to obtain spectrum to provide LMDS and satellite services, designed to ensure that such entities are given the opportunity to participate both in the competitive bidding process and in the provision of these services. We seek comment on these proposals, and specifically on identifying special provisions that are tailored to the unique characteristics of the LMDS and satellite services and that will create meaningful incentives and opportunities for designated entities.

(b) Installment Payments

We propose to adopt installment payments for small businesses bidding for LMDS licenses. The record in the Competitive Bidding proceeding suggests that the most significant barrier for small business participation in the auctioning of LMDS spectrum will be access to adequate private financing to ensure their ability to compete against larger firms in the competitive bidding process. In the competitive Bidding Second Report and Order, we concluded that a reduced down payment requirement coupled with installment payments is an effective means to address the inability of small businesses bidding for PCS licenses. We seek comment on our proposal to use this same approach in the LMDS auctions, and on whether any additional or alternative special provisions should be provided for small businesses bidding on LMDS spectrum. We also seek comment on whether installment payments are appropriate to encourage small businesses participation in the provision of satellite services.

To ensure that large businesses do not become the unintended beneficiaries of installment payment provisions meant for small businesses, we also propose to make the unjust enrichment provisions adopted in the Competitive Bidding Second Report and Order applicable to installment payments by small business applicants. Specifically, if a small business making installment payments seeks to transfer a license to a non-small business entity during the term of the license, we propose to require payment of the remaining principle balance and accrued interest as a condition of the license transfer. We seek comment on this proposal including whether additional unjust enrichment provisions are necessary for LMDS licensing. We also see comment on whether these unjust enrichments would be appropriate if installment payments are also adopted for small businesses participating in satellite auctions.

Eligibility Criteria. We propose to define a small business as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding years of less than $40 million. We believe this standard is appropriate for LMDS service because build-out costs are likely to be significant. Additionally, the cost of acquiring a license is likely to be higher than for other services. We also seek comment on whether this definition is appropriate for small businesses in the context of satellite auctions.

Commenters should address whether this is an appropriate threshold given the expected cost associated with the provision of LMDS and satellite services. Should it be higher or lower, based on the types of companies that are likely to benefit from the special provisions proposed here? We also propose not to attribute the gross revenues of investors that hold less than 25 percent interest in the applicant, but we will include the gross revenues of the applicant's affiliates and investors with ownership interests of 25 percent or more in the applicant in determining whether an applicant qualifies as a small business. Is a different attribution threshold warranted for LMDS or for satellite services? We seek comment on these issues.

(c) Bidding Credits

Specific Special Provisions. Based on the list of special provisions for designated entities established in the Competitive Bidding Second Report and Order, we propose to utilize bidding credits for small businesses participating in LMDS or FSS auctions. We tentatively conclude that affording such businesses bidding credits and installment payments is the most cost-effective and efficient means of achieving Congress' objective of ensuring an opportunity for these designated entities to participate in the provision of LMDS service, while preserving the advantages of

[59] We suggest ''diversity of voices'' as a possible compelling interest because LMDS is likely to be used as a ''medium of mass communication'' similar to other multipoint distribution services. See 47 U.S.C. 309(i)(3)(C)(i). In Metro Broadcasting v. F.C.C., the Supreme Court upheld the Commission's minority preference programs in the awarding of broadcast licenses because they served the ''important'' governmental interest of promoting diversity in broadcast programming. Metro Broadcasting v. F.C.C., 497 U.S. 547, 566–68 (1990). While Adarand overrules Metro, to the extent that Metro applied ''Intermediate scrutiny,'' Adarand did not reject the diversity interest; rather, it simply held that the diversity interest must be ''compelling.''

[60] Congress has now repealed the tax credit program in the Communications Act, except with respect to fixed microwave licenses not at issue here. 109 Stat. 93 (195), Pub. L. 104–7, April 11, 1995.

competitive open bidding. We seek comment on this proposal.

We request comment on how we should determine the appropriate amount of the bidding credit. Our analysis of the telecommunications industry suggests the possibility that incumbent telecommunications providers may be able to utilize existing infrastructure and thus enjoy economies of scope in the provision of many of the services that may develop in LMDS. Therefore, these incumbents may have the ability to bid more than first-time operators.

We propose a bidding credit of 25 percent that would be available on one of the proposed spectrum blocks. We seek comment on the appropriateness of the proposed bidding credits for LMDS and FSS auctions.

To prevent unjust enrichment by small businesses trafficking in licenses acquired through the use of bidding credits, we propose imposition of a payment requirement on transfers of such licenses to entities that are not owned by small businesses. Small businesses seeking to transfer a license to an entity that does not meet the eligibility criteria for a small business would be required to reimburse the Government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before the transfer will be permitted. The amount of the penalty would be reduced over time so that a transfer in the first two years of the license term would result in a payment of 100 percent of the value of the bidding credit; in year three of the license term the payment would be 75 percent; in year four the penalty would be 50 percent and in year five the payment would be 25 percent, after which there would be no payment. We seek comment on these proposals.

(d) Rural Telephone Companies

We seek comment on whether we should provide bidding credits or other special provisions for rural telephone companies. In addition, the vast majority of rural telephone companies will qualify as small businesses and thus will receive installment payment options. Because many of the specific uses proposed for LMDS, including wireless cable and video telecommunications, may be of interest to rural telephone companies, such entities may be interested in bidding for LMDS spectrum. However, we are unable to determine with any certainty the potential prices these services may bring in rural areas. If service prices in such areas are low, acquiring a license should not present significant barriers to rural telephone companies. Also, under one possible approach, the degree of flexibility we would afford in the use of this spectrum, including provisions for partitioning or leasing spectrum, should assist in satisfying the spectrum needs of rural telephone companies at low cost. Finally, as with other incumbent providers of telecommunications services, rural telephone companies may be able to benefit from the use of their existing infrastructure in the provision of some services. Such economies of scale would give rural telephone companies an advantage in the bidding for such licenses. For these reasons, we do not believe that special preferences are needed to ensure adequate participation by rural telephone companies in the provision of services in this spectrum. However, comments on this analysis are requested.

(e) Additional Special Provisions

In addition to the special provisions proposed above for the various classes of designated entities, we seek comment on whether additional special provisions should be adopted that would enhance our goal of ensuring their participation in the competitive bidding process for LMDS and satellite licenses. We request that commenters give particular attention to the alternatives described below.

Reduced Upfront Payments. In the Competitive Bidding Second Report and Order, we concluded that upfront payment requirements would ensure that bidders are qualified and serious and would provide the Commission with a source of funds in the event of default or bid withdrawal. 9 FCC Rcd at 2377, 2379, paras. 169, 176. We also noted that reduced upfront payments may be particularly appropriate for auctions of spectrum specifically set aside for designated entities as a means of encouraging participation in the auctions, particularly by all eligible designated entities.[61] We seek comment on whether there should be a similar reduction in upfront payments for small businesses or any other designated entities applying for LMDS or satellite licenses. In addition, we ask commenters to address the costs and benefits with respect to auction administration and designated entity participation associated with a reduced upfront payment for licenses in LMDS or satellite services in the absence of a spectrum set-aside.

[61] Competitive Bidding Fifth Report and Order, 9 FCC Rcd at 5599–5600, para. 154.

Comment Dates

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 28, 1995, and reply comments on or before September 18, 1995. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

Initial Regulatory Flexibility Analysis

Reason for action. The purposes of this NPRM are four-fold; first, to obtain comment on the Commission's designation proposal for the 27.5–29.5 GHz frequency band; second, to obtain comment on the Commission's proposal for a reallocation pertaining to the 29.5–30.0 GHz frequency band; third, to obtain comment on proposed service rules for LMDS and FSS; and fourth, to obtain comment on the Commission's supplemental tentative decision to grant CellularVision a Pioneer's Preference.

Objectives. The objective of this Notice is to request public comment on the proposals made herein for the efficient licensing of services in the 27.5–30.0 GHz band, for the development and implementation of a new technology to provide innovative telecommunications services to the public.

Legal basis. The authority for this action is the Administrative Procedure Act, 5 U.S.C. 553; and sections 4(i), 4(j), 301, 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. 145, 301, and 303(r).

Reporting, recordkeeping and other compliance requirements. Reporting requirements are proposed to ensure that the spectrum, if redesignated for these new uses, is used to serve the public's need for communications services.

Federal rules which overlap, duplicate or conflict with these rules. None.

Description, potential impact and number of small entities involved. Any rule changes in this proceeding could

affect MMDS licensees, the majority of which are small businesses. These entities may have some additional competition from video programming service which could be provided by Suite 12's multicell technology. In addition, rule changes could affect rural telephone companies, to the extent that any are considered small businesses. These entities may have competition to their local exchange service; alternatively, these entities may be considered designated entities and given bidding and other benefits. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

Significant Alternatives. While there are alternative methods to provide the services proposed by LMDS and FSS parties, we find that the services proposed will provide significant competition to existing service providers, thus bringing the benefits of competition to the public.

Ordering Clauses

According, it is ordered that the Notice of Proposed Rulemaking is hereby adopted with proposed rules below.

It is further ordered that the Petition for Rulemaking filed by Harris Corporation-Farinon Division and Digital Equipment Company is denied.

It is further ordered that CellularVision, the successor-in-interest to Suite 12 Group, is tentatively granted a pioneer's preference in accordance with the discussion in paragraphs 68–73 of this Supplemental Tentative Decision.

It is further ordered that the Acting Secretary shall mail a copy of this document to the Chief Counsel for Advocacy, Small Business Administration.

List of Subjects

47 CFR Part 21

Communications common carriers, Radio.

47 CFR Part 25

Satellites.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

Proposed Amendatory Text

47 CFR Parts 21 and 25 are proposed to be amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

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

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602,: 47 U.S.C. 552,554.

2. Section 21.2 is proposed to be amended by adding the following definitions, in alphabetical order, to read as follows:

* * * * *

§ 21.2 Definitions.

* * * * *

Local Multipoint Distribution Service Hub Station. A fixed point-to-multipoint radio station in a Local Multipoint Distribution Service System that provides one-way or two-way communication with Local Multipoint Distribution Service Subscriber Stations.

* * * * *

Local Multipoint Distribution Service System. A fixed point-to-multipoint radio system consisting of Local Multipoint Distribution Service Hub Stations and their associated Local Multipoint Distribution Service Subscriber Stations.

* * * * *

Local Multipoint Distribution Service Subscriber Station. Any one of the fixed microwave radio stations located at users' premises, lying within the coverage area of a Local Multipoint Distribution Service Hub Station, capable of receiving one-way communications from or providing two-way communications with the Local Multipoint Distribution Service Hub Station.

* * * * *

Local Multipoint Distribution Service Backbone Link. A point-to-point radio service link in a Local Multipoint Distribution Service System that is used to interconnect Local Multipoint Distribution Service Hub Stations with each other or with the public switched telephone network.

* * * * *

3. Section 21.107(b) is amended by removing the entry for the frequency band 27,500 MHz to 29,500 MHz, and adding new entires 27,500 MHz to 28,350 MHz and 29,100 MHz to 29,250 MHz to read as follows:

§ 21.107 Transmitter power.

* * * * *

(b) * * *

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
* * * *	*		*	*
27,500 MHz to 28,350 MHz			−52 dBW/Hz	
29,100 MHz to 29,250 MHz			([5])	

[5] This value is based on the value in §§ 21.1018–21.1021.

* * * * *

4. Section 21.1002 (proposed at 58 FR 6378, Jan. 28, 1993), is amended by adding new paragraph (c) to read as follows:

§ 21.1002 Frequencies.

* * * * *

(c) Special requirements for operations in the band 29.1–29.25 GHz.

(1)(i) LMDS receive stations operating on frequencies in the 29.1–29.25 GHz band within a radius of 75 nautical miles of the geographic coordinates provided by a non-GSO MSS licensee pursuant to paragraphs (c)(2) or (c)(3)(i) of this section (the ''feeder link earth station complex protection zone'') shall accept any interference caused to them by such earth station complexes and shall not claim protection from such earth station complexes.

(ii) LMDS licensees operating on frequencies in the 29.1–29.25 GHz band outside a feeder link earth station complex protection zone shall cooperate fully and make reasonable efforts to resolve technical problems with the non-GSO MSS licensee to the extent that transmissions from the non-GSO MSS operator's feeder link earth station complex interfere with an LMDS receive station.

(2) At least 45 days prior to the commencement of LMDS auctions, feeder link earth station complexes shall

be specified by a set of geographic coordinates in accordance with the following requirements: No feeder link earth station complex may be located in the top eight (8) metropolitan statistical areas (''MSAs''), ranked by population, as defined by the Office of Management and Budget as of June 1993, using estimated populations as of December 1992; two (2) complexes may be located in MSAs 9 through 25, one of which must be Phoenix, AZ (for a complex at Chandler, AZ); one (1) complex may be located in MSAs 26 to 50; three (3) complexes may be located in MSAs 51 to 100, one of which must be Honolulu, Hawaii (for a complex at Waimea); and the two (2) remaining complexes must be located at least 75 nautical miles from the borders of the 100 largest MSAs or in any MSA not included in the 100 largest MSAs. Any location allotted for one range of MSAs may be taken from an MSA below that range.

(3)(i) Any non-GSO MSS licensee may at any time specify sets of geographic coordinates for feeder link earth station complexes with each earth station contained therein to be located at least 75 nautical miles from the borders of the 100 largest MSAs.

(ii) For purposes of paragraph (c)(3)(i) of this section, non-GSO MSS feeder link earth station complexes shall be entitled to accommodation only if the affected non-GSO MSS licensee reapplies to the Commission for a feeder link earth station complex or certifies to the Commission within sixty days of receiving a copy of an LMDS application that it intends to file an application for a feeder link earth station complex within six months of the date of receipt of the LMDS application.

(iii) If said non-GSO MSS licensee application is filed later than six months after certification to the Commission, the LMDS and non-GSO MSS entities shall still cooperate fully and make reasonable efforts to resolve technical problems, but the LMDS licensee shall not be obligated to re-engineer its proposal or make changes to its system.

(4) LMDS licensees or applicants proposing to operate hub stations on frequencies in the 29.1–29.25 GHz band at locations outside of the 100 largest MSAs or within a distance of 150 nautical miles from a set of geographic coordinates specified under paragraphs (c)(2) or (c)(3)(i) of this section shall serve copies of their applications on all non-GSO MSS applicants, permittees or licensees meeting the criteria specified in § 25.257(a). Non-GSO MSS licensees or applicants shall serve copies of their feeder link earth station applications on any LMDS applicant or licensee within a distance of 150 nautical miles from the geographic coordinates that it specified under paragraphs (c)(2) or (c)(3)(i) of this section. Any necessary coordination shall commence upon notification by the party receiving an application to the party who filed the application. The results of any such coordination shall be reported to the Commission within sixty days. The non-GSO MSS earth station licensee shall also provide all such LMDS licensees with a copy of its channel plan.

5. A new § 21.1018 is proposed to be added to read as follows:

§ 21.1018 LMDS single station EIRP limit.

Point-to-point stations in the 29.1–29.5 GHz band for the LMDS backbone between LMDS hubs shall be limited to a maximum allowable EIRP density per carrier of 23 dBW/MHz in any one megahertz in clear air, and may exceed this limit by employment of adaptive power control in cases where link propagation attenuation exceeds the clear air value due to precipitation and only to the extent that the link is impaired.

6. A new § 21.1019 is proposed to be added to read as follows:

§ 21.1019 LMDS subscriber transmissions.

LMDS licensees shall not operate transmitters from subscriber locations in the 29.1–29.25 GHz band.

7. A new § 21.1020 is proposed to be added to read as follows:

§ 21.1020 Hub transmitter EIRP spectral area density limit.

(a) LMDS applicants shall demonstrate that, under clear air operating conditions, the maximum aggregate of LMDS transmitting hub stations in a Basic Trading Area in the 29.1–29.25 GHz band will not transmit a co-frequency hub-to-subscriber EIRP spectral area density in any azimuthal direction in excess of X dBW/(MHz-km²) when averaged over any 4.375 MHz band, where X is defined in Table 1. Individual hub stations may exceed their clear air EIRPs by employment of adaptive power control in cases where link propagation attenuation exceeds the clear air value and only to the extent that the link is impaired.

(b) The EIRP aggregate spectral area density is calculated as follows:

$$10\log\left[1/A\sum_{i=1}^{N} p_i g_i(a_i)\right]\text{dBW/MHz-km}^2$$

Where:

N=number of co-frequency hubs in BTA

A=Area of BTA in km²

p_i=spectral power density into antenna of i-th hub (in W/MHz)

g_i=gain of i-th hub antenna at zero degree elevation angle

Each p_i and g_i are in the same 1 MHz

(c) The climate zones in Table 1 are defined for different geographic locations within the US as shown in Appendix 28 of the ITU Radio Regulations and § 25.254 of this chapter.

TABLE 1*

Climate zone	EIRP spectral density (clear air) (dbW/MHz-km²)**
1	−23
2	−25
3,4,5	−26

*LMDS system licensees in two or more BTAs may individually or collectively deviate from the spectral area density computed above by averaging the power over any 200 km by 400 km area, provided that the aggregate interference to the satellite receiver is no greater than if the spectral area density were as specified in Table 1. A showing to the Commission comparing both methods of computation is required and copies shall be served on any affected non-GSO MSS providers.

**See § 21.1007(c)(i) for the population density of the BTA.

8. A new § 21.1021 is proposed to be added to read as follows:

§ 21.1021 Hub transmitter EIRP spectral area density limit at elevation angles above the horizon.

(a) LMDS applicants shall demonstrate that, under clear air operating conditions, the maximum aggregate of LMDS transmitting hub stations in a Basic Trading Area in the 29.1–29.25 GHz band will not transmit a co-frequency hub-to-subscriber EIRP spectral area density in any azimuthal direction in excess of X dBW/(MHz-km²) when averaged over any 5.375 MHz band where X is defined in Table 2. Individual hub stations may exceed their clear air EIRPs by employment of adaptive power control in cases where link propagation attenuation exceeds the clear air value and only to the extent that the link is impaired.

(b) The EIRP aggregate spectral area density is calculated as follows:

$$10\log\left[1/A\sum_{i=1}^{N} \text{EIRP}(a_i)\right]\text{dBW/MHz-km}^2$$

Where:

N=number of co-frequency hubs in BTA

A=Area of BTA in km²

$\text{EIRP}(a_1)$=equivalent isoptropic radiated spectral power density of the i-th hub (in W/MHz) at elevation angle a

TABLE 2*

Elevation angle (a)	Relative EIRP density (dBW/MHz-km^2)
0°≤a≤4.0* .	EIRP(a)=EIRP(0°)+20 log (sinπx)(1/πx) Where x=(a+1)/7.5°
4.0<a≤7.7°	EIRP(a)=EIRP(0°) – 3.85a+7.7
a>7.7°	EIRP(a)=EIRP(0°) – 22

*LMDS system licensees in two or more BTAs may individually or collectively deviate from the spectral area density computed above by averaging the power over any 200 km by 400 km area, provided that the aggregate interference to the satellite receiver is no greater than if the spectral area density were as specified in Table 1. A showing to the Commission comparing both methods of computation is required and copies shall be served on any affected non-GSO MSS providers.

Note: Where a is the angle in degrees of elevation above horizon. EIRP(0°) is the hub EIRP area density at the horizon used in Section 21.1020. The nominal antenna pattern will be used for elevation angles between 0° and 8°, and average levels will be used for angles beyond 8°, where average levels will be calculated by sampling the antenna patterns in each 1° interval between 8° and 90°, dividing by 83.

9. A new § 21.1022 is proposed to be added to read as follows:

§ 21.1022 Power reduction techniques.

LMDS hub transmitters shall employ methods to reduce average power levels received by non-GSO MSS satellite receivers, to the extent necessary to comply with §§ 21.1020 and 21.1021, by employing the methods set forth below:

(a) *Alternate Polarizations.* LMDS hub transmitters in the LMDS service area may employ both vertical and horizontal linear polarizations such that 50 percent (plus or minus 10 percent) of the hub transmitters shall employ vertical polarization and 50 percent (plus or minus 10 percent) shall employ horizontal polarization.

(b) *Frequency Interleaving.* LMDS hub transmitters in the LMDS service area may employ frequency interleaving such that 50 percent (plus or minus 10 percent) of the hub transmitters shall employ channel center frequencies which are different by one-half the channel bandwidth of the other 50 percent (plus or minus 10 percent) of the hub transmitters.

(c) *Alternative Methods.* As alternatives to paragraphs (a) and (b) of this section, LMDS operators may employ such other methods as may be shown to achieve equivalent reductions in average power density received by non-GSO MSS satellite receivers.

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: Secs. 25.101 to 25.601 issued under sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101–104, 76 stat. 419–427; 47 U.S.C. 701–744; 47 U.S.C. 554.

2. A new § 25.257 is proposed to be added to read as follows:

§ 25.257 Special requirements for operations in the band 29.1–29.25 GHz

(a) Special requirements for operations in the band 29.1–29.25 GHz.

(1) Non-geostationary mobile satellite service (non-GSO MSS) operators shall use the 29.1–29.25 GHz band for Earth-to-space transmissions from feeder link earth station complexes. For purposes of this subsection, a ''feeder link earth station complex'' may include up to three (3) earth station groups, with each earth station group having up to four (4) antennas, located within a radius of 75 nautical miles of a given set of geographic coordinates provided by a non-GSO MSS operator pursuant to paragraphs (c)(5) or (c)(6)(i) of this section.

(2) A maximum of eight (8) feeder link earth station complexes in the contiguous United States, Alaska, and Hawaii may be operated concurrently in the band 29.1–29.25 GHz.

(b) Coordination of LMDS systems and geostationary fixed satellite systems in the band 29.1–29.25 must be done in accordance with the technical standards of §§ 21.1018–21.1024 of this chapter.

[FR Doc. 95–20731 Filed 8–22–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 223, and 252

[DFARS Case 95–D001]

Defense Federal Acquisition Regulation Supplement; Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to provide guidance on physical security requirements for contracts involving sensitive conventional arms, ammunition, and explosives (AA&E).

DATES: *Comment date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before October 23, 1995, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: R.G. Layser, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D001 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT:

Rick Layser, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives, prescribes standards and criteria intended to protect against loss or theft of sensitive conventional AA&E in the custody of DoD components or DoD contractors. This rule proposes amendments to the DFARS to provide guidance for the incorporation of the requirements of DoD 5100.76–M in DoD contracts.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely provides a standard method of implementing security requirements which already exist under DoD 5100.76–M. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D001 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies. A request for approval of the information collection has been submitted to the Office of Management and Budget.

List of Subjects in 48 CFR Parts 204, 223, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 204, 223, and 252 are proposed to be amended as follows:

PART 204—ADMINISTRATIVE MATTERS

1. The authority citation for 48 CFR Parts 204, 223, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 204.202 is amended by adding paragraph (1)(v) to read as follows:

204.202 Agency distribution requirements.

(1) * * *

(v) One copy, or an extract of the pertinent information, to the cognizant Defense Investigative Service office listed in DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives, when the clause at 252.223–7XXX, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives, is included in the contract.

* * * * *

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

3. Subpart 223.72 is added to read as follows:

Subpart 223.72—Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives

223.7200 Definition.

Arms, ammunition, and explosives (AA&E), as used in this subpart, is defined in the clause at 252.223–7XXX, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives.

223.7201 Policy.

(a) The requirements of DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives, shall be applied to contracts when—

(1) AA&E will be provided to the contractor or subcontractor as Government-furnished property; or

(2) The principal development, production, manufacture, or purchase of AA&E is for DoD use.

(b) The requirements of DoD 5100.76–M need not be applied to contracts when—

(1) The AA&E to be acquired under the contract is commercially available; or

(2) The contract will be performed in a Government-owned contractor-operated ammunition production facility. However, if subcontracts issued under such a contract will meet the criteria of paragraph (a) of this section, the requirements of DoD 5100.76–M shall apply.

223.7202 Preaward responsibilities.

When an acquisition involves AA&E, technical or requirements personnel shall specify in the purchase request—

(a) That AA&E is involved; and

(b) Which physical security requirements of DoD 5100.76–M apply.

223.7203 Contract clause.

Use the clause at 252.223–7XXX, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives, in all solicitations and contracts to which DoD 5100.76–M applies, in accordance with the policy at 223.7201. Complete paragraph (b) of the clause base on information provided by cognizant technical or requirements personnel.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.223–7XXX is added to read as follows:

252.223–7XXX Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives.

As prescribed in 223.7203, use the following clause:

Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (Date)

(a) *Definition. Arms, ammunition, and explosives (AA&E),* as used in this clause, means those items covered within the scope of DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

(b) The requirements of DoD 5100.76–M apply to the following items of AA&E being developed, produced, manufactured, or purchased for the Government, or provided to the Contractor as Government-furnished property, under this contract:

Nomenclature	National stock number	Sensitivity/ Category

(c) The Contractor shall comply with the requirements of DoD 5100.76–M, as specified in the statement of work. The edition of DoD 5100.76–M in effect on the date of issuance of the solicitation for this contract shall apply.

(d) The Contractor shall allow representatives of the Defense Investigative Service (DIS), and representatives of other appropriate offices of the Government, access at all reasonable times into its facilities and those of its subcontractors, for the purpose of performing surveys, inspections, and investigations necessary to review compliance with the physical security standards applicable to this contract.

(e) The Contractor shall notify the cognizant DIS field office of any subcontract involving AA&E within 10 days after award of the subcontract.

(f) The Contractor shall ensure that the requirements of this clause are included in all subcontracts, at every tier—

(1) For the development, production, manufacture, or purchase of AA&E; or

(2) When AA&E will be provided to the subcontractor as Government-furnished property.

(g) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, state, and local law, ordinances, codes, and regulations (including requirements for obtaining licenses and permits) in connection with the performance of this contract.

(End of clause)

[FR Doc. 95–20750 Filed 8–22–95; 8:45 am]

BILLING CODE 5000–04–M

Notices

Federal Register

Vol. 60, No. 163

Wednesday, August 23, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–95–15]

Public Hearing Regarding Establishment of a New Tobacco Auction Market

Notice is hereby given of a public hearing regarding an application to combine the Boone and West Jefferson, North Carolina, and Mountain City, Tennessee, tobacco markets.

Date: September 15, 1995.

Time: 9:00 a.m. local time.

Place: Watauga County Courthouse, Courthouse Room #2, 842 West King Street, Boone, North Carolina.

Purpose: To hear testimony and to receive evidence regarding an application for tobacco inspection and price support services to a new market, which would be a consolidation of the currently designated markets of Boone and West Jefferson, North Carolina, and Mountain City, Tennessee. The application was made by Joey Coleman, Boone Tobacco Market, Boone, North Carolina; Mary Jo Hicks, West Jefferson Tobacco Market, West Jefferson, North Carolina; and Rick Coleman, Mountain City Tobacco Market, Mountain City, Tennessee.

This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR §§ 29.1 through 29.3), issued under the Tobacco Inspection Act, as amended (7 U.S.C. 511 *et seq.*) and the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714 *et seq.*).

Dated: August 16, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–20837 Filed 8–22–95; 8:45 am]

BILLING CODE 3410–02–P

[Docket No. TB–95–13]

Public Hearing Regarding Establishment of a New Tobacco Auction Market

Notice is hereby given of a public hearing regarding an application to combine the Horse Cave, Glasgow, and Greensburg, Kentucky, tobacco markets.

Date: September 13, 1995.

Time: 9:00 a.m. local time.

Place: Cave City Convention Center, the Kentucky Room, 502 Mammoth Cave Street, Cave City, Kentucky.

Purpose: To hear testimony and to receive evidence regarding an application for tobacco inspection and price support services to a new market, which would be a consolidation of the currently designated markets of Horse Cave, Glasgow, and Greensburg, Kentucky. The application was made by Tom Bale, Bale Tobacco Warehouse, Horse Cave, Kentucky.

This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR 29.1 through 29.3), issued under the Tobacco Inspection Act, as amended (7 U.S.C. 511 *et seq.*) and the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714 *et seq.*).

Dated: August 16, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–20836 Filed 8–22–95; 8:45 am]

BILLING CODE 3410–02–P

Forest Service

Inland Native Fish Strategy

ACTION: Notice of Availability of the Decision Notice on the Inland Native Fish Strategy Environmental Assessment and Finding of No Significant Impact.

SUMMARY: In the August 4, 1995, **Federal Register**, notice was given that the Regional Foresters for the Northern, Intermountain, and Pacific Northwest regions of the Forest Service have announced their decision on the Inland Native Fish Strategy. Based on public comment analysis and internal review, they have decided, with the support of the US Fish and Wildlife Service, to select Alternative D as described in the Environmental Assessment for the Inland Native Fish Strategy.

In addition, the Regional Foresters have directed Inland Native Fish Strategy Team Leader David Wright to develop a strategy to apply the concepts and philosophy of Alternatives C and E on a limited test basis. Alternative D will be implemented for all of the areas outside the test watersheds. Application of Alternative D will provide the short-term reduction of risk we desire, while this test of Alternatives C and E will allow the Forest Service to develop the information needed to provide better long-term direction.

The Inland Native Fish Strategy covers approximately 25 million acres of National Forest System lands in eastern Washington and Oregon, Idaho, western Montana, and portions of Nevada. The Environmental Assessment for the strategy was distributed to the public in June for a 30-day review. A series of public hearings were held to allow ample opportunity for the public to share their concerns. All comments have been considered and incorporated into the decision.

Copies of the Decision Notice have been mailed to everyone on the Inland Native Fish Strategy mailing list. This decision notice reflects the final decision of the Forest Service. The decision may be appealed in accordance with the provisions identified in the Decision Notice. Legal ads have been published in designated newspapers announcing the availability of the document and the start of the appeal period. The appeal period will begin August 24 and end October 9, 1995.

FOR FURTHER INFORMATION CONTACT:

Questions about the Decision Notice, Finding of No Significant Impact, and Environmental Assessment should be directed to David Wright, Team Leader for the Inland Native Fish Strategy, USDA Forest Service, 3815 Schreiber Way, Coeur d'Alene, ID 83814. Phone: (208) 765–7223.

Dated: August 18, 1995.

David J. Wright,

Inland Native Fish Team Leader, USDA Forest Service.

[FR Doc. 95–20846 Filed 8–22–95; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Amendment to Certification of Central Filing System—Oklahoma

The Statewide central filing system of Oklahoma has been previously certified, pursuant to Section 1324 of the Food Security Act of 1985, on the basis of information submitted by the Oklahoma Secretary of State, for farm products produced in that State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted by Tom Cole, Secretary of State, for an additional farm product produced in that State as follows:

parakeets

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c) (2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c) (2); 7 CFR 2.18(e) (3), 2.56(a) (3), 55 FR 22795.

Dated: August 16, 1995.

Calvin W. Watkins,

Deputy Administrator, Packers and Stockyards Programs.

[FR Doc. 95–20821 Filed 8–22–95; 8:45 am]

BILLING CODE 3410–KD–P

Natural Resources Conservation Service

Black Creek Watershed, Holmes County, Mississippi

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); the Natural Resources Conservation Service Regulations (7 CFR Part 650); and the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the floodwater retarding structure being added to Black Creek Watershed, Holmes County, Mississippi.

FOR FURTHER INFORMATION CONTACT: Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, Suite 1321, Dr. A. H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269–1399, telephone (601) 965–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Homer L. Wilkes, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project proposals are to reduce flood damage to agricultural land, 30 houses and their outbuildings, streets, a county road and public utilities, and reduce damages to water quality and the fishery resources in Black Creek. This will be accomplished by the construction of a floodwater retarding structure.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties.

A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Homer L. Wilkes.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Reginald M. Spears,

Acting State Conservationist.

[FR Doc. 95–20924 Filed 8–22–95; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.

Title: Short Supply Regulations – Petroleum Products.

Agency Form Number: None.

OMB Approval Number: 0694–0026.

Type of Request: Extension of a currently approved collection.

Burden: 3 hours.

Number of Respondents: 5.

Avg Hours Per Response: Approximately 30 minutes.

Needs and Uses: The Naval Petroleum Production Act restricts the export of any petroleum product produced from crude oil derived from National Petroleum Reserves. Under very limited circumstances, petroleum products can be exported if a validated license is obtained and supported by special documentation.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration.

Title of Survey: License Exception for Western Red Cedar.

Agency Form Number: None.

OMB Approval Number: 0694–0065.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 50 hours.

Number of Respondents: 50.

Avg Hours Per Response: 1.

Needs and Uses: BXA established a General License for the shipment of unprocessed western red cedar. Under this license, exporters are required to maintain records to ensure that the timber exported was not harvested from prohibited public lands. Exporters without evidence of origin are subject to penalty.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration.

Title: Application for an Export Trade Certificate of Review.

Agency Form Number: ITA–4039P.

OMB Approval Number: 0625–0125.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 960 hours.

Number of Respondents: 30.

Avg Hours Per Response: 32.

Needs and Uses: The information provided by private or public entities of this application enables the Department of Commerce and Justice to begin to determine whether an antitrust Export Trade Certificate of Review should be issued in accordance with TITLE III of the Export Trading Company Act of 1992. This Certificate provides the holder with virtual immunity from government action under state and federal antitrust laws for the export conduct specified in the certificate.

Affected Public: Businesses or other for–profit organizations, not–for–profit institutions, and state government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: National Ice Center Customer Survey of Products and Services.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New Collection.

Burden: 50 hours.

Number of Respondents: 200.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The National Ice Center is an interagency organization comprised of personnel from Navy, NOAA, and the Coast Guard. Its mission is to provide worldwide operational sea ice analyses and forecasts for the U.S. armed forces and allied nations, other government agencies, and the civil sector. The questionnaire will be used to determine which ice products and services are most useful to customers and to ascertain which future products would be beneficial.

Affected Public: Individuals, businesses or other for–profit organizations, not–for–profit institutions, federal, state, local and tribal governments.

Frequency: One-time survey.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title of Survey: Pacific Tuna Fisheries.

Agency Form Number: None assigned.

OMB Approval Number: 0648–0148.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 815 hours.

Number of Respondents: 72 (8,150 responses).

Avg Hours Per Response: 0.1 hours.

Needs and Uses: Fishing vessels in the Pacific Tuna fishery must maintain logbooks with catch–related information. The data are used by the National Marine Fisheries Service and the Inter–American Tuna Commission biologists to determine the effects of fishing on tuna abundance. Results form the basis of stock assessments.

Affected Public: Individuals, businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: August 11, 1995

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–20862 Filed 8–22–95; 8:45 am]

BILLING CODE 3510–CW–F

Foreign-Trade Zones Board

[Docket 43–95]

Foreign-Trade Zone 40—Cleveland, OH; Application for Subzone Status; Motch Corporation Plant (Vertical Turning and Grinding Machinery); Euclid, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Cleveland-Cuyahoga County Port Authority, grantee of FTZ 40, requesting special-purpose subzone status for the manufacturing plant (vertical turning and grinding machines) of the Motch Corporation (Motch) (subsidiary of PITTLER Maschinenfabrik AG, Germany), located in Euclid, Ohio. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 11, 1995.

The Motch plant (18 acres/200,000 sq.ft.) is located at 1250 East 222nd Street, in Euclid (Cuyahoga County), Ohio. The facility (110 employees) is used to produce vertical turning and grinding (metal working) machines (1995 duty rates: 4.2%, 4.4%), including vertical and front turning centers (work stations), vertical numerical chuckers, horizontal self loaders, vertical and universal grinders (thread rolling machines), and metal working lathes. Components purchased from abroad (between 25% and 45% of total) include electrical components (including electrical power supplies, encoders, relays), motors, printed circuits, bearings (roller/ball), gauges, tachometers, steel angles, ball screws, bushings, co-axial cables, cam rollers, chain sprockets, clutch/couplings, compound glassers, solenoid valves, cooling devices, filters, gears, gibs, gripper pawls, guide rollers, keys, fasteners, covers, springs, stoessel-rams, parts of lathes and thread rolling machines, O rings, safety glass, toothed belts, hydraulic valves, and wipers (1995 duty rate range: free—10.6%). Foreign-origin numerical process controllers would be admitted to the proposed subzone in domestic status (landed duty paid). The finished machines are used in the automotive, aerospace, truck, oil equipment, agricultural equipment, bearing, and heavy equipment manufacturing industries. Up to 50 percent of the finished machines are exported.

Zone procedures would exempt Motch from Customs duty payments on the foreign components used in export production. On its domestic sales, Motch would be able to choose the duty rates that apply to finished vertical turning and grinding machines for the foreign components noted above. Zone procedures would also exempt certain merchandise from certain state/local ad valorem inventory taxes. The application indicates that the savings from zone procedures would help improve Motch's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 23, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 6, 1995.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Suite 700, Bank One Center, 600 Superior Avenue, Cleveland, OH 44114,

and

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: August 16, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–20932 Filed 8–22–95; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 44–95]

Foreign-Trade Zone 21, Charleston, South Carolina; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority (SCSPA), grantee of Foreign-Trade Zone 21, Charleston, South Carolina, requesting authority to expand its zone to include a site in Myrtle Beach, South Carolina, adjacent to the Georgetown Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 15, 1995.

FTZ 21 was approved on June 12, 1975 (Board Order 106, 40 FR 25613, 6/17/75) and expanded on February 28, 1995 (Board Order 734, 60 FR 12735, 3/8/95). The zone project includes 6 general-purpose sites in the Charleston, South Carolina, Customs port of entry: *Site 1* (134 acres)—Tri-County Industrial Park, Summerville; *Site 2* (57 acres)—Cainhoy Industrial Park, Wando; *Site 3* (160 acres)—Crowfield Corporate Center, Goose Creek; *Site 4* (998 acres)—Low Country Regional Industrial Park, Early Branch; *Site 5* (2,017 acres)—SCSPA's terminal complex, Charleston; *Site 6* (19 acres)—Meadow Street Business Park, Loris; and, *Temporary Site* (23 acres; expires December 31, 1997)—Wando Park, Mount Pleasant.

The applicant is now requesting authority to further expand the general-purpose zone to include an additional site (proposed *Site 7*—1,782 acres) at the Myrtle Beach International Airport, including a portion of the former Myrtle Beach U.S. Air Force Base, Myrtle Beach (Horry County), South Carolina. The former Air Force Base site is in the process of being transferred to the Myrtle Beach Air Base Redevelopment Authority.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 23, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 6, 1995).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 81 Mary Street, Charleston, South Carolina 29402;
and
Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: August 17, 1995

John J. Da Ponte, Jr.,

Executive Secretary

[FR Doc. 95–20931 Filed 8–22–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–815]

Gray Portland Cement and Clinker From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On February 11, 1994, the Department of Commerce (the Department) published the preliminary results of review of the antidumping duty order on gray portland cement and clinker from Japan. The review covers one manufacturer/exporter, Onoda Cement Co., Ltd., and the period May 1, 1992, through April 30, 1993.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, and the correction of clerical errors, we have changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: August 23, 1995.

FOR FURTHER INFORMATION CONTACT: David Genovese or Michael Heaney, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC. 20230; telephone (202) 482–5254.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 1993, the Ad Hoc Committee of Southern California Producers of Gray Portland Cement (the petitioner) requested that the Department conduct an administrative review of the antidumping duty order on gray portland cement and clinker from Japan (56 FR 21658, May 10, 1991) for Onoda Cement Co., Ltd. (Onoda). We initiated the review, covering the period May 1, 1992, through April 30, 1993, on June 25, 1993 (58 FR 34414). On February 11, 1994, we published the preliminary results of the administrative review (59 FR 6614). The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this review are gray portland cement and clinker from Japan. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement. Microfine cement was specifically excluded from the antidumping duty order.

Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29, and clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under item number 2523.90 as ''other hydraulic cements''.

The HTS item numbers are provided for convenience and Customs purposes. The written product description remains dispositive as to the scope of the product coverage.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner and from the respondent. At the request of the petitioner and respondent, we held a public hearing on March 29, 1994.

Comment 1

Petitioner argues that the Department inaccurately adjusted FMV for home market indirect selling expenses in those instances where the Department compared U.S. sales of cement imported into the United States and further manufactured into concrete with sales of cement in the home market. Where such comparisons occurred, petitioner states that, because the imported merchandise was cement, the Department appropriately deducted further manufacturing costs and attempted to make cement-to-cement comparisons. However, petitioner

asserts that, for purposes of 19 CFR 353.56(b)(2), the Department must make an adjustment to the U.S. indirect selling expense figure for U.S. concrete sales, since Onoda's data reflect the expenses incurred on sales of concrete in the United States, not sales of cement. Petitioner maintains that 19 CFR 353.56(b)(2) directs the Department to limit the home market indirect selling expense adjustment to the amount of the indirect selling expense incurred on the U.S. merchandise. In petitioner's view, this requires the Department, for the purpose of establishing the appropriate adjustment to FMV for indirect selling expenses, to recalculate the indirect selling expense figure for the U.S. sales of concrete so that they reflect the cement equivalent. In this manner, petitioner concludes that the Department will meet the requirements of the regulations by limiting the indirect selling expense adjustment to home market sales of cement to those expenses associated with sales of cement in the United States.

Onoda argues that the Department should base the exporter's sales price (ESP) ''cap'' on the entire amount of indirect selling expenses associated with ESP sales as it did in the 1990/92 review of this order. Onoda asserts that this method of determining the ESP cap is appropriate because indirect selling expenses associated with ESP sales can not be ascribed to foreign production and U.S. further manufacturing. Onoda cites the Court of International Trade's ruling in *Torrington Co.* v. *United States,* 818 F. Supp. 1563, 1576 (CIT 1993), and the Department's findings in *Final Results of Antidumping Duty Administrative Review; Color Picture Tubes from Japan,* 55 FR 37915 (September 14, 1990) (hereafter *CPTs*), to argue that the Department's established practice has been to include in the ESP cap all indirect selling expenses deducted from ESP under 19 CFR 353.41(e).

Department's Position

We agree with the petitioner. It is the Department's practice to allocate indirect expenses to the product imported into the United States (in this case cement) and to the further manufactured product sold in the United States (in this case, concrete) when calculating the ESP cap. (see *Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France,* 59 FR 14136 (March 25, 1994)) Because Onoda exported cement to the United States and, before selling it to an unrelated customer, converted the cement into concrete, our calculation of U.S. price (USP) reflects the deduction of the value which Onoda added in the United States, other expenses, and indirect selling expenses.

In determining the appropriate adjustment to FMV under 19 CFR 353.56(c), we have limited the home market indirect selling expense adjustment to the amount of those selling expenses associated with the cement which entered the United States, since we are making a cement-to-cement comparison. This requires adjusting Onoda's total U.S. indirect selling expenses to reflect only those expenses associated with cement.

Onoda's argument that indirect selling expenses are indivisible is inaccurate. The Department's goal is to make an apples-to-apples comparison when comparing merchandise sold in the United States with merchandise sold in the home market. In order to make such a comparison, it is necessary to allocate expenses so that we compare cement which enters the United States with cement sold in the home market.

Additionally, the *Torrington* case cited by Onoda does not advocate including all indirect selling expenses associated with ESP sales in the ESP cap. Rather, *Torrington* advocates allocating expenses incurred on ESP sales between the imported product (which is the product sold in the home market) and the further-manufactured product. Accordingly, we allocated indirect expenses between the imported product (which is the product sold in the home market) and the further-manufactured product and limited the ESP cap to those indirect selling expenses incurred on the imported product.

Similarly, in the aforementioned *CPTs* case, the respondent was importing color picture tubes (CPTs) and incorporating them into color televisions (CTVs). In *CPTs,* the Department determined that ''(s)ince it is the CTV and not the CPT that is ultimately sold in the United States, a proportional amount of the CTV indirect selling expenses was allocated to the CPT based upon the costs associated solely with the CPT to the total CTV cost. The total of the indirect selling expenses allocated to the CPT formed the cap for the allowable home market selling expenses offset under § 353.56(b) of the Department's regulations.'' See CPTs at 37917.

Comment 2

Petitioner argues that Onoda is not entitled to a difference-in-merchandise (difmer) adjustment for the cost differences between U.S. models Type I and Type II, and home market models Type N and Type M. Petitioner argues that Onoda has failed to meet the criterion for a difmer adjustment that was articulated in the Department's Policy Bulletin No. 92.2 and in other antidumping cases. According to petitioner, that criterion is that respondents are entitled to difmer adjustments only if they show that the difference in cost between the two models is attributable to the difference in physical characteristics of the merchandise. Petitioner relies upon plant-by-plant variable cost of manufacture data for Type N cement to argue that the weighted-average difmer adjustments reported by Onoda are largely attributable to differences in efficiencies between Onoda's various production facilities and not to cost differences associated with the physical characteristics of the merchandise. Accordingly, petitioner requests that the Department deny Onoda's difmer adjustment.

Onoda argues that it followed the exact same procedure in preparing its difmer adjustment in this segment of the proceeding as it did in the less-than-fair-value (LTFV) investigation and the 1990/92 review. Onoda notes that during the LTFV investigation, the Department verified the difmer data, and granted the difmer adjustment in calculating the dumping margin. Furthermore, Onoda observes that in the LTFV investigation the Department was satisfied that Onoda had reasonably tied cost differences to physical differences (*Final Determination of Sales at Less Than Fair Value; Gray Portland Cement and Clinker from Japan,* 56 FR 12156, March 22, 1991 (*Gray Portland Cement—LTFV Investigation*)). Additionally, Onoda notes that the Department determined in the final results of the 1990/92 review that evidence on the record did not establish that any differences in plant efficiencies were the source of the cost differences (*Gray Portland Cement and Clinker from Japan, Final Results of Antidumping Duty Administrative Review,* 58 FR 48826, September 20, 1993 (*Gray Portland Cement—First Review*)).

Additionally, Onoda argues that the only way it can calculate the difmer adjustment is to weight-average the variable costs to produce Type N cement at all plants and compare that amount to the variable costs to produce Type I cement at the single plant where it produced Type I cement. Onoda argues that this methodology of weight-averaging costs across all plants is consistent with Departmental practice.

Thus, according to Onoda, there is no reason for the Department not to grant the adjustment in this review. However,

should the Department decline to grant the full difmer adjustment, Onoda argues that the Department should at least grant a difmer adjustment for the cost differences of the material inputs.

Department's Position

Consistent with the Department's practice in the LTFV investigation and the 1990/92 review of this case, we have allowed the difmer adjustment claimed by Onoda. As we stated in the 1990/92 review, which was the first review, although Onoda's plants may have different efficiencies, evidence on record does not establish that any differences in plant efficiencies are the source of the cost differences identified by Onoda (see *Gray Portland Cement and Clinker—First Review* at 48827). Rather, cost differences are due to differences in material inputs and the physical differences which result from different production processes.

First, as stated previously, the Department compared Type I and Type II cement in the United States with Type N and Type M cement in the home market, respectively. The specific differences in costs among the various cement types are due to the varying costs of the inputs, including material inputs (limestone, clay, silica, etc.), fuel inputs (fuel oil, coal, anthracite, etc.) and electricity (mixing, grinding, burning, etc.). For example, Type I cement contains clinker, gypsum and minor grinding agents. In contrast, Type N cement contains clinker, gypsum, minor grinding agents and additives. Furthermore, Type I cement contains a higher percentage of clinker and gypsum than Type N cement. Moreover, Type I, on average, has a slightly higher percentage of silicon dioxide. Similarly, Type II and Type M cement also differ in terms of their chemical and physical composition. Type M cement generally has a higher percentage of clinker and a lower percentage of gypsum than Type II cement. Additionally, Type M cement has a lower tricalcium aluminate level than Type II.

Second, as noted in the LTFV investigation, ''we verified Onoda's claimed difference in merchandise adjustment and found it to be an accurate representation of the relevant variable costs of production as reflected in its actual cost accounting records. Given the fact that physical differences between types of cement arise from differences in the production process (e.g., amount and duration of heat), and from differences in component materials, we are satisfied that Onoda has reasonably tied cost differences to physical differences'' (see *Gray Portland Cement and Clinker—LTFV Investigation* at 12161).

Additionally, with regard to the weighted-average methodology employed by Onoda, the Department specifically requested that Onoda report its cost of manufacture information on a weighted-average basis (see the Department's questionnaire at page 54: ''If the subject merchandise is manufactured at more than one facility, the reported COM should be the weighted-average manufacturing cost from all facilities'').

Accordingly, we have allowed Onoda's claimed difmer adjustment.

Comment 3

The petitioner argues that home market sales of bagged cement should be included in the calculation of FMV. Petitioner asserts that this is appropriate since: (1) The technical specifications for cement sold in bags and in bulk are identical; (2) charges related to sales of bagged cement were included in the calculation of various adjustments made to FMV; and (3) the Department has all the data necessary to calculate FMV for bagged cement. Petitioner cites to *Gray Portland Cement and Cement Clinker from Venezuela,* 56 FR 56390 (November 4, 1991), *Industrial Phosphoric Acid from Israel,* 52 FR 25440 (July 7, 1987, and *Frozen Concentrated Orange Juice from Brazil,* 57 FR 3995 (February 3, 1992) as examples where the Department compared identical merchandise that was packaged differently.

Onoda argues that the Department should not include home market sales of bagged cement in the FMV calculation since it only sold bulk cement in the United States. Onoda asserts that since the Department's goal should be to compare sales in the United States and foreign markets which are as similar as possible, the Department should compare bulk sales in the United States to bulk sales in the home market. Onoda argues that it is not relevant that cement sold in bags is within the scope of the order and is physically the same. Onoda asserts that it would be unfair to include bagged cement sales in the calculation of FMV since it would distort the FMV figure. Onoda cites *Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand,* 57 FR 13695 (April 17, 1992), *Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Mexico,* 55 FR 29244 (July 18, 1990), and *Gray Portland Cement and Clinker from Venezuela,* 56 FR 56390 (November 4, 1991), to argue that the Department has consistently made bulk-to-bulk and bag-to-bag comparisons.

Department's Position

We agree with the petitioner. There is no physical difference between the bagged and bulk cement sold in Japan. The only difference is the manner in which the merchandise is packed. Since packing in not a criterion for comparability, and because there is no physical difference between bulk and bagged cement sold in the home market, we did not exclude home market sales of bagged cement from our calculations of FMV.

In *Brazilian orange juice,* the Department based USP on packed merchandise and FMV on packed and bulk merchandise. In *Venezuelan cement,* the Department compared bulk-to-bulk and bagged-to-bagged sales as well as bulk-to-bag sales. In Israeli acid, the Department compared bulk U.S. product to the home market product packed in drums. The comparison of bulk-to-bag and bulk-to-drum sales in *Venezuelan cement* and *Israeli acid* supports the Department's conclusion in this case that it is acceptable to compare bulk-to-bagged sales.

Additionally, the issue raised in *New Zealand kiwifruit* was whether the Department ''must * * * adjust for difference in packing costs when comparing differently packed identical merchandise,'' not whether the Department should compare bulk-to-bulk and bagged-to-bagged merchandise. In *Mexican cement,* the issue did not arise because all U.S. sales and their corresponding identical matches in Mexico were bulk sales. Finally, in prior segments of this proceeding, we made bulk-to-bag and bag-to-bulk comparisons, with appropriate adjustments for packing differences.

Therefore, because the cases cited by Onoda do not stand for the proposition that the Department must always compare bulk-to-bulk and bag-to-bag sales, and because packing is not a criterion for matching types of cement, we compared sales of bulk cement in the United States to sales of both bulk and bagged cement in the home market, and made the appropriate adjustments to reflect the packing costs associated with bagged cement.

Comment 4

Petitioner argues that the Department should disallow Onoda's claimed deductions for commissions to distributors because Onoda has not properly documented what portion of its commission payments are made to related parties, or whether the terms of commissions paid to related distributors

are comparable to the terms of commissions paid to unrelated distributors.

Additionally, petitioner states that Onoda has failed to show how one type of commission, which is offered to distributors to promote sales of all Onoda cement, not just cement within the scope of the order, is tied directly to the subject merchandise.

Onoda states that the Department should grant a full deduction for these commissions in its FMV calculations because it has fully explained the basis for the payment of the commissions in the home market and has directly tied these commissions to its home market sales of Types N and M cement.

Onoda disagrees with petitioner's assertion that it failed to tie commissions to the subject merchandise. Onoda asserts that because Type N and M cement accounted for the majority of home market sales, the majority of the commissions in question were associated with the sale of Types N and M cement. Additionally, Onoda argues that it did not simply deduct the total commission expense from the sales price of Types N and M cement. Rather, Onoda allocated these expenses over all cement types.

Department's Position

We agree with Onoda. Onoda provided a sufficient response to the Department's questions concerning the commissions it grants to related and unrelated distributors in the home market. The terms of the commissions offered by Onoda are fixed, so that related and unrelated distributors are offered commissions on precisely the same terms that do not vary according to the product sold. The commissions in question are allocated to the subject merchandise, are offered to both related and unrelated distributors, and, because the terms of the commissions are the same whether the distributors are related or unrelated, we have determined that the commissions are at arm's-length and therefore an allowable deduction from the home market price.

Comment 5

Petitioner argues that the Department should include in its calculation of FMV the price actually charged by Onoda's related distributors to the first unrelated customer. To accomplish this, petitioner suggests that the Department add to the related distributor price a mark-up which Onoda provides to all of its distributors. Petitioner contends that this is appropriate because the mark-up Onoda provides to its related distributors is merely an intracompany transfer that benefits Onoda.

Department's Position

We disagree with the petitioner. Since the mark-up to related distributors is at arm's-length (*i.e.*, is the same for related and unrelated distributors and the sales prices to related distributors are comparable to the sales price to unrelated distributors (see our response to comment 6)) and directly related to the sales in question, the mark-up should not be added to the related distributor's price when calculating FMV. Accordingly, when calculating FMV, the Department did not add the mark-up to the price charged related distributors because Onoda provides the identical mark-up to all its distributors, whether related or unrelated.

Comment 6

The petitioner states that, when determining what sales to use to calculate FMV, the Department should use only those related party sales for which the price is greater than or equal to the price charged to unrelated customers. Petitioner argues that using related party sales whose prices are below those of unrelated party sales is inconsistent with the Department's general practice in prior cases and fails to eliminate related party sales that were not made at arm's-length.

Onoda states that it treats all sales to distributors, whether related or unrelated, in the same fashion, and, therefore, all sales to related distributors should be included in the calculation of FMV. Moreover, Onoda asserts that the price it charges its distributors is in no way influenced by Onoda, since it is based on a price that is negotiated between the distributor and its unrelated customer. Thus, argues Onoda, all sales to related distributors should be included in the calculation of FMV.

Department's Position

Consistent with 19 CFR 353.45(a), we include related party transactions in our calculation of FMV when we are satisfied that the price of such sales are comparable to the prices of sales to the unrelated party. In this case, since related party sales were generally at prices equal to or greater than unrelated party sales, we determined that related party sales are comparable to Onoda's sales to unrelated parties. Accordingly, we have included all related party sales in our calculation of FMV.

Comment 7

Petitioner argues that the commission Onoda granted to a Japanese trading company should be deducted in its entirety from Onoda's U.S. prices (*i.e.*, the Department should deduct from U.S. price the result of multiplying the F.O.B. Japan price by the contractually arranged commission rate).

Onoda argues that petitioner's methodology represents only one-half of the transaction. Onoda asserts that the actual commission is the *net* amount which passes from the Onoda corporate family (*i.e.*, Onoda and Lone Star Northwest) to the Japanese trading company corporate family, and that the sequence and composition of the payments have no bearing on the value of the commission. Thus, Onoda argues that in the preliminary results the Department correctly calculated the amount of U.S. commissions.

Department's Position

We agree with Onoda. In a sales/distribution situation where there are two payments and two corporate families, what is relevant is the entire payment from one corporate family to the other. Thus, as we did in the 1990/92 review of this case, we have included both portions of the transaction in our calculation of the payment to the trading company rather than applying the commission rate to the F.O.B. Japan price as recommended by the petitioner.

Comment 8

Petitioner argues that the direct selling expenses Onoda reported in its cost of production (COP) response do not equal the direct selling expenses Onoda reported in its home market sales tape. Petitioner states that certain expenses included in the direct selling expense category of Onoda's home market sales tape were not included in the direct selling expense category for Onoda's COP response. Petitioner states that the Department should weight-average and add to its COP calculations the direct selling expenses reported on Onoda's home market sales tape in order to ensure that the direct selling expenses used to determine FMV and COP are used consistently. Petitioner asserts that this adjustment is necessary to ensure a fair comparison of expenses in the COP and FMV calculations.

Onoda states that the direct selling expenses it reported on the home market sales tape and the COP response are not equal because certain direct selling expenses, such as two commission expenses, were reported as indirect selling expenses rather than as direct selling expenses in the COP response. Onoda states that, for COP purposes, it does not matter if commission expenses are categorized as direct or indirect, since all selling

expenses are treated identically in determining whether home market sales are below cost. Onoda asserts that what is important is that the total selling expenses reported on the home market sales tape and in the COP response be equal.

Department's Position

It is important that the total selling expenses reported in the COP response equal the total selling expenses reported on the home market sales tape, since the Department will compare the COP with the net home market price in order to determine if sales below cost occurred. Any inequality in total selling expenses between COP and home market sales will lead to an imperfect comparison and therefore an inaccurate determination of sales below cost.

Accordingly, for these final results, we have added to the reported total selling expenses for COP the weighted-average direct selling expenses included in the home market sales tape (*i.e.*, technical service, quality control, plant quality control, and advertising) since they were not included in the COP calculation reported by Onoda. Additionally, we deducted from the reported total selling expenses for COP the amounts included in the field DIRSELEX (tanker freight costs and freight expense for swap transactions) since these selling expenses were deducted from the calculation of net home market price for comparison to the COP. We did not add commission expenses to the reported total selling expenses for COP since, as noted by Onoda, they were already included in the reported indirect selling expense figure. This methodology ensures that the amount of total selling expenses we use in our COP analysis equals the total selling expenses we use in our FMV calculations.

Comment 9

Onoda argues that the decision by the Court of Appeals for the Federal Circuit (Federal Circuit) in *The Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States,* 13 F.3d 398 (Federal Circuit 1994), (hereafter *Ad Hoc Committee*), which states that pre-sale movement expenses cannot be deducted as a direct expense from FMV, does not apply to FMV when the U.S. sales are ESP transactions. (Since Onoda submitted its comments, the cite for *Ad Hoc Committee* has changed. The revised cite is *The Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States,* 13 F.3d 398 (Federal Circuit 1994) *cert. denied* 115 S. Ct. 67 (1994).) Onoda cites the Court of International Trade's decision, *The Torrington Company* v. *United States,* Slip Op. 94–37, at 7 (CIT 1994) (hereafter *Torrington II*), to support its claim that *Ad Hoc Committee* does not apply to ESP sales. (Since Onoda submitted its comments, the cite for *Torrington II* has changed. The revised cite is *The Torrington Company* v. *United States,* 850 F. Supp 7, (CIT 1994).)

Onoda states that if the Department were to conclude that *Ad Hoc Committee* does apply to FMV when calculating margins on ESP transactions, then the Department should treat U.S. pre-sale freight expenses as indirect expenses. Otherwise, Onoda argues that the resulting comparison between U.S. and home market sales will be inequitable.

Additionally, Onoda states that *Ad Hoc Committee* is not yet final because there is still time to file a petition for appeal to the Supreme Court. Therefore, Onoda urges the Department not to apply *Ad Hoc Committee* until all possibilities for appeal have been exhausted.

Petitioner argues that *Ad Hoc Committee* applies to FMV in both ESP and purchase price (PP) comparisons. Petitioner asserts that the issue the Federal Circuit addressed in *Ad Hoc Committee* was whether pre-sale transportation costs should be categorized as a direct or indirect expense in calculating FMV. Petitioner contends that the Federal Circuit did not distinguish between comparisons to PP and ESP in reaching its conclusion.

Petitioner also argues that the *Torrington II* decision cited by the respondent takes too narrow a view of the Federal Circuit's holding in *Ad Hoc Committee.* Accordingly, petitioner argues that the Department should follow the Federal Circuit's ruling in *Ad Hoc Committee,* and not the CIT's decision in *Torrington II* interpreting the Federal Circuit's decision. Accordingly, the Department should continue to follow *Ad Hoc Committee.*

Moreover, petitioner cites *Ayuda, Inc.* v. *Thornburgh,* 919 F.2d 153 (D.C. Cir. 1990), to argue that a decision by the Federal Circuit is final unless and until it is reversed or overruled by the U.S. Supreme Court.

Finally, petitioner argues that the Department cannot treat pre-sale transportation costs for U.S. sales as indirect expenses (which would increase the ESP cap) because section 772(d)(2)(A) of the Act clearly instructs the Department to treat these expenses as direct expenses.

In a related matter, petitioner argues that because home market pre-sale transportation costs are considered indirect selling expenses (in accordance with the Court's decision in *Ad Hoc Committee*) and because Onoda reported home market pre-sale transportation expenses with other direct selling expenses in the field DIRSELH, the Department should treat all expenses reported in the DIRSELH field as indirect, rather than direct, selling expenses.

Department's Position

We agree with Onoda and the CIT's assertion in *Torrington II,* that the *Ad Hoc Committee* decision was limited to the narrow question of our inherent authority to deduct pre-sale freight expenses in purchase price situations. However, as noted by the CIT in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement* v. *United States,* 865 F. Supp. 857 (CIT 1994) (*Ad Hoc Committee II*), the *Ad Hoc Committee* decision ''discussed *without disapproval,* Commerce's ESP-COS procedures where, as indicated, indirect expenses, such as most pre-sale transportation costs, are deductible from FMV to the extent of the USP level of expenses.'' (emphasis added)

We have determined, in light of *Ad Hoc Committee* and its progeny, that the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. We instead adjust for those expenses under the circumstance-of-sale (COS) provision of 19 CFR 353.56 and the ESP offset provision of 19 CFR 353.56(b)(1) and (2), as appropriate, in the manner described below.

When USP is based on either ESP or purchase price, we adjust FMV for home market movement charges through the COS provision of 19 CFR 353.56(a). Under this adjustment, we capture only direct selling expenses, which include post-sale movement expenses and, in some circumstances, pre-sale movement expenses. Specifically, we treat pre-sale movement expenses as direct expenses if those expenses are directly related to the home market sales of the merchandise under consideration.

In order to determine whether pre-sale movement expenses are direct, the Department examines the respondent's pre-sale warehousing expenses, since the pre-sale movement charges incurred in positioning the merchandise at the warehouse are, for analytical purposes, linked to pre-sale warehousing expenses. *See* Final Results of Redetermination Pursuant to Court Remand, dated January 5, 1995 (pertaining to Slip. Op. 94–151). If the pre-sale warehousing constitutes an

indirect expense, the expense involved in getting the merchandise to the warehouse, in the absence of contrary evidence, also must be indirect; conversely, a direct pre-sale warehousing expense necessarily implies a direct pre-sale movement expense. We note that although pre-sale warehousing expenses in most cases have been found to be indirect expenses, these expenses may be deducted from FMV as a COS adjustment in a particular case if the respondent is able to demonstrate that the expenses are directly related to the sales under consideration. *See Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement* v. *United States,* Slip Op. 95–91 (CIT May 15, 1995) (upholding the Department's pre-sale inland freight methodology set forth in its January 5, 1995 Remand Results).

Respondent reported in its questionnaire response of August 26, 1993, that it incurred no after-sale warehousing expenses and respondent did not claim any warehousing expenses as direct COS expenses. The Department interprets this to mean that any warehousing expenses incurred are properly classified as pre-sale, indirect selling expenses and that the expense of transporting the cement to the warehouse should also be treated as an indirect expense. Accordingly, the Department has not deducted home market pre-sale movement expenses from FMV for comparison to PP sales. However, we deducted post-sale movement expenses from FMV as a direct expense.

When USP is based on ESP, the Department applies the COS adjustment in the same manner as it does in PP situations. We treated pre-sale movement charges as indirect expenses, which we deducted from FMV pursuant to the ESP offset provision set forth in 19 CFR 353.56(b)(2).

We disagree with Onoda's assertion that the Department should treat U.S. pre-sale freight expenses as indirect expenses. As Petitioner states, section 772(d)(2)(A) of the Tariff Act clearly instructs the Department to treat these expenses as direct expenses: The purchase price and exporter's sales price ''shall be adjusted by being—reduced by * * * any additional costs, charges, and expenses, * * * incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States.'' Additionally, Onoda's argument that Ad Hoc Committee is not yet final because there is still time to file a petition for appeal to the Supreme Court is moot. This case became final and conclusive in October 1994, when the U.S. Supreme Court denied the writ of certiorari submitted by Onoda. We agree with petitioner that since Onoda reported home market pre-sale transportation expenses (which are indirect expenses) with direct selling expenses in the field DIRSELH, we should treat all expenses reported in the DIRSELH field as indirect, rather than direct, selling expenses. Comment 10: Onoda argues that the Department, in accordance with its new tax methodology as outlined in Federal-Mogul Corporation and the Torrington Company v. United States, 834 F. Supp. 1391 (CIT, 1993), included a tax adjustment for indirect selling expenses when calculating the USP for ESP sales, but that the Department failed to make a similar adjustment when calculating the net FMV for home market sales that were subsequently compared to USP. Accordingly, Onoda asserts that the Department should include a tax adjustment for home market indirect selling expenses when calculating the net home market price since the Department included this adjustment in its calculation of USP.

Department's Position

We agree with Onoda and have made the appropriate correction to our calculations.

Comment 11

Onoda argues that the Department should have made a difmer adjustment to FMV for comparisons between U.S. sales of Type II cement and home market sales of Type M cement during the period October 1992 through March 1993. Onoda asserts that the fact that these sales came from inventory rather than from its cement production in no way affects the applicability of a difmer adjustment. Onoda states that the Department can correct its oversight by calculating a difmer adjustment based on a comparison of U.S. Type II cement variable cost information for the period April 1992 through September 1992 and variable cost information for home market Type M cement for the period October 1992 through March 1993.

Petitioner argues that the Department should not grant a difmer adjustment since it used the information which Onoda supplied. Additionally, petitioner argues that it is not reasonable for the Department to apply variable cost data from one period to another period, since Onoda has not demonstrated that the use of such a difmer calculation is warranted.

Department's Position

We agree with Onoda. Upon reviewing the data submitted by Onoda, we have determined that a difmer adjustment when comparing Type II and Type M cement for the period October 1992 through March 1993 is appropriate even though Onoda did not produce Type II cement during the period October 1992 through March 1993 (the threshold issue of whether Onoda is entitled to a difmer adjustment was discussed in Comment 2). Accordingly, for these final results, we used the variable cost of Type II cement for the period April 1992 through September 1992, and compared it with the variable cost of Type M cement for the period October 1992 through March 1993 in order to determine a difmer adjustment for comparison of Type II and Type M cement for the period October 1992 through March 1993.

Comment 12

Onoda argues that the Department incorrectly calculated the commission offset to FMV for comparisons to PP sales. Onoda states that in calculating the FMV for PP sales, the Department used as the commission offset either the indirect selling expenses of the division responsible for export sales, or the sum of home market commissions, whichever was lower. Onoda asserts that since commissions had been paid on home market sales but not on PP sales, the Department should have followed its normal practice and calculated the commission offset by deducting the full amount of home market commissions from FMV and then adding to FMV, as an offset, the amount of U.S. indirect expenses capped by the amount of home market commissions.

Department's Position

We agree with Onoda and have made the appropriate adjustments to our calculations.

Comment 13

Onoda argues that the Department should include in its calculation of FMV, all home market sales in which a zero or a negative value appeared under the variable for gross value, quantity, or gross unit price. Onoda argues that these values are due to retroactive downward price changes, input errors, or renegotiations with customers. Onoda asserts that by dropping all sales with negative and zero values from the FMV database, the Department has calculated monthly average FMVs which do not reflect the actual sales value of the merchandise in the home market.

Petitioner argues that the Department should continue to exclude zero and negative values from its calculation of FMV since Onoda has failed to provide a detailed explanation, or documentation, for these values.

Department's Position

We agree with the petitioner. We requested in a supplemental questionnaire (dated December 7, 1993) that Onoda provide a ''detailed explanation'' of the retroactive price adjustments and adjustments to volume that resulted in negative numbers or zeros for numerous variables in the home market sales tape. In response to this request, Onoda merely stated, without providing supporting documentation, that such values occur due to retroactive downward price changes, input errors or revisions after negotiations with customers. Since Onoda did not support its claim, we have excluded from our calculations, sales in which a zero or negative value appeared under the variable for gross value, quantity or gross unit price.

Comment 14

Onoda argues that the Department, in its COP calculations, should have accepted Onoda's claim that the interest expense it incurred should reflect the short-term interest income it earned. Onoda argues that its supporting documentation was adequate and that the Department should have requested additional information if the documentation submitted was considered inadequate.

Department's Position

We disagree with Onoda. When a respondent makes a claim for an adjustment, it is the respondent's responsibility to provide a detailed explanation of the adjustment as well as supporting documentation if necessary. In its original questionnaire response, Onoda did not provide documentation to support this adjustment. In a supplemental questionnaire issued by the Department, we requested that Onoda provide documentation to support its claim for a short-term interest income offset. In response to this request, Onoda provided the Department with two untranslated pages that are reported to be from a general ledger showing bank interest earned by Onoda. Onoda's documentation is not only ambiguous and untranslated, it also lacks a narrative response explaining exactly how the documentation supports the deduction of Onoda's short-term interest income from its interest expense. Therefore, we have used the full interest figure in determining the interest ratio for our COP calculations.

Comment 15

Onoda argues that the Department's methodology of using the mean service station expense (SSLH) when calculating the COP directly conflicts with the methodology employed in the 1990/92 review. Onoda asserts that the Department should use the methodology it used in the 1990/92 review (*i.e.*, calculating the total SSLH expense from the sales tape, dividing this amount by the total gross value of home market sales and then multiplying this percentage by the unit cost of manufacture, and adding the resulting per unit amount to the COP). Alternatively, Onoda urges the Department to use a weighted-average SSLH expense in its calculations rather than a mean expense.

Petitioner argues that the methodology the Department used in the 1990/92 review would understate the amount of SSLH in COP, since the cost of manufacture figure is a much lower number than the gross sales price. Moreover, petitioner argues that the Department must treat SSLH equally when calculating COP and home market price for the below-cost test. Petitioner provides two methodologies it believes would result in a fair treatment of SSLH costs in the sales-below-cost test: (1) Calculate total SSLH as a percentage of total gross price, multiply this percentage by the gross unit price, and add the resulting amount to COP; or (2) calculate total SSLH as a percentage of total manufacturing costs, multiply this ratio by COP, and add the resulting amount to COP and net price.

Department's Position

In the 1990/92 review we calculated two COPs, one for the period April 1990 through March 1991, and one for the period April 1991 through March 1992. The Department's goal in calculating two COPs was to annualize costs in order to prevent the distortion of per unit charges and adjustments due to the seasonal nature of the merchandise. (Moreover, we did not simply divide the total SSLH by total QTYH as given on the sales tape when calculating the two COPs since the sales tape only covered the period October 31, 1990 through April 30, 1992.) To calculate the per metric ton amount to add to the COP in the 1990/92 review, we first totaled the gross value (GRSVALH) and SSLH fields and then divided total SSLH by total GRSVALH. We then multiplied the resulting ratio by the total COM.

In this review, since the POR is one year, the Department does not face the same situation (*i.e.*, we do not have to annualize costs). Accordingly, in this review, the Department followed its standard practice and used a weighted-average, per unit, SSLH expense (i.e., total SSLH expense incurred divided by total quantity sold) and added this amount to COP. The Department applied the weighted-average SSLH expense reported by Onoda (in its case brief filed in response to the Department's preliminary results of review) and added it to the COP. The use of a weighted-average insures that SSLH expenses are accurately represented in the sales-below-cost test.

The Department did not use the alternatives recommended by the petitioner since it was our goal to calculate a per unit SSLH expense to be added to COP since these expenses are reported in the home market on a per unit basis.

Comment 16

Onoda argues that the Department should use the U.S. interest rate for calculating imputed credit expenses associated with PP sales, rather than Onoda's Japanese interest rate, since Onoda had access to the lower U.S. interest rates.

Department's Position

We agree with Onoda. It is our practice to use U.S. interest rates to calculate credit expenses incurred on U.S. sales when a respondent demonstrates that it had either actual borrowings or access to U.S. dollar loans during the period of review (see, *e.g.*, *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from France*, 58 FR 37125 (July 9, 1993)). In the present case, Onoda's U.S. subsidiary, Lone Star Northwest (LSNW), had access to U.S. dollar loans. Accordingly, for these final results we have used the average U.S. interest rate available to LSNW during the third quarter of 1992 for all PP sales.

Comment 17

Onoda disagrees with the Department's classification of U.S. port-to-U.S. facility movement expense in its further manufacturing calculations. Specifically, Onoda argues that the resulting allocations between cost of manufacturing in Japan and value-added in the United States are flawed. Onoda argues that these pre-value-added inland freight expenses should be

considered part of the cost of materials of the imported product.

Onoda argues that based on § 353.41(e) of the Department's regulations and the wording of certain questions in the Department's questionnaire, these costs should be attributed to the Japanese cost of materials rather than to the amount of Onoda's U.S. further manufacturing activities.

Onoda states that section 353.41(e) of the Department's questionnaire directs the Department to reduce exporter's sales price by the amount of ''(a)ny increased value resulting from a process of production or assembly performed on the merchandise after importation and before sale to a person who is not the exporter of the merchandise, which value the Secretary generally will determine from the cost of material, fabrication, and other expenses incurred in such production and assembly.''

Onoda states that § 353.41(e) clearly defines ''increased value'' as that added by a manufacturing process or an assembly operation after the merchandise is imported into the United States. Onoda asserts that when a manufacturer merely moves a component or product from the port to its factory, it does not perform a manufacturing or assembly process on the imported merchandise. Consequently, these movement costs should not be considered part of U.S. value added.

With regards to the Department's questionnaire, Onoda states that the section of the questionnaire entitled ''*Further Processing*'' discusses material costs in two places. Onoda refers to section 8A(1) of the questionnaire which states: ''Material cost: Provide the transfer prices of individual components, subassemblies and completed units received by the U.S. affiliate(s) * * *'' Onoda states that this definition of material cost refers to the price of the delivered item. Onoda further cites Section 8A(1)(c) which states: ''Provide the actual costs for all individual components * * * These should include the price paid to the third party, transportation costs, and other costs normally associated with materials costs.'' Accordingly, Onoda argues that movement expense is defined as part of the materials costs, and, therefore, transportation costs between the port and the factories should be allocated entirely to the Japanese portion of the cement cost. Onoda further states that in the cost of production and constructed value portion of the questionnaire (question VIII(3)(B)(2)(a)), the Department defines material cost as including ''the purchase price, transportation charges, duties and all other expenses normally associated with obtaining the materials used in production.'' Onoda argues that in each of these provisions, the expense of transporting the material to the factory is defined as part of the cost of materials. Onoda concludes that it follows that the freight costs between the port and the terminals should be allocated entirely to the Japanese portion of the cement cost.

Department's Position

We disagree with Onoda. It is the Department's established practice to attribute all costs incurred after a product has arrived in the U.S. to U.S. production costs when the product is further manufactured in the United States. See *Stainless Steel Hollow Products from Sweden; Final Results of Antidumping Duty Administrative Review* (57 FR 21389, May 20, 1992) and *Gray Portland Cement and Clinker from Japan; Final Results of Antidumping Duty Administrative Review* (58 FR 48826, September 20, 1993).

Onoda correctly cites § 353.41(e) of the Department's regulations, but interprets the regulation too narrowly. The Department has interpreted this regulation to include in further-manufacturing expenses the cost of transporting the merchandise from the port to the factory where further-manufacturing occurs. Only by incurring this expense can increased value through the process of production occur. Accordingly, the process of transporting the material is inextricably linked to the ''process of production'' in further-manufactured sales.

Similarly, Onoda's cite to sections 8A(1) and 8A(1)(c) of the Department's questionnaire to support its argument that movement costs are considered part of materials costs is misleading. The Department requests information on movement cost, but does not specifically state that such costs should be allocated to the cost of materials in the home market. Rather, as stated above, it is our practice to attribute all costs incurred after a product has arrived in the United States to U.S. production costs when the product is further-manufactured in the United States.

Additionally, Onoda correctly cites the COP/CV section of the questionnaire in explaining that in the home market, the expense of transporting the material to the factory is defined as part of the cost of materials which is then incorporated into the cost of manufacturing. This is done so that the cost of materials and therefore, the cost of manufacturing reflects all the expenses incurred during the production process. Similarly, in further-manufacturing situations, the cost of transporting the cement from the U.S. port to the U.S. factory is included under ''process of production'' expenses used to determine U.S. value added in order to accurately reflect all expenses incurred during the further-manufacturing process.

Consistent with our established practice, we included freight expense from the U.S. port to the U.S. plant in the U.S. further manufacturing costs in establishing the relationship between U.S. further manufacturing costs and total costs of the merchandise.

Comment 18

Onoda argues that the Department incorrectly calculated the profit per transaction for each U.S. sale of ready-mix concrete by deducting from the gross transaction price only the prompt payment discount and the total cost of the further-manufactured product. Onoda argues that the Department must also deduct from the gross price the cost of delivery to the unrelated customer, including the associated insurance cost, in order to calculate profit correctly. Onoda states that these delivery costs are real costs, and, as such, directly reduce the profit on each sale.

Petitioner argues that the Department should not adjust further manufacturing profit to reflect LSNW's costs for ready-mix delivery and related insurance. Petitioner states that, ''(i)n this case, Onoda asks that the profit on further manufactured sales of concrete be reduced by the costs incurred by Onoda to transport concrete'' to its unrelated customers. Petitioner argues that the issue of whether ready-mix delivery and insurance costs should be included in U.S. value added was addressed and decided in the first review of this case where the Department declined to include such costs in U.S. value added.

Department's Position

We agree with Onoda that the cost of delivery to the unrelated customer, including the associated insurance cost, should be deducted when determining the gross profit on further-manufactured sales since these costs are real costs, and, as such, directly reduce the profit on each sale. Therefore, we have revised our calculations in these final results to ensure that freight and related insurance costs are deducted from the gross price in calculating the profit on each U.S. sale.

Contrary to petitioner's statement, we did not address the issue of

transportation expenses in calculating the total profit in the last review.

Final Results of Review

Based on our analysis of comments received, and the correction of clerical errors, we have determined that a final margin of 24.27 percent exists for Onoda for the period May 1, 1992, through April 30, 1993.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Onoda will be 24.27; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review, earlier reviews, or the original investigation, whichever is the most recent; and (4) the ''all others'' rate, as established in the original investigation, will be 70.23 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 11, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration

[FR Doc. 95–20929 Filed 8–22–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–028]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan

AGENCY: International Trade Administration/Import Administration, Department of Commerce

EFFECTIVE DATE: August 23, 1995.

SUMMARY: In response to a request from the American Chain Association, the petitioner in this proceeding, the Department of Commerce has conducted an administrative review of the antidumping finding on roller chain, other than bicycle, from Japan. This review, which covers four manufacturers/exporters of this merchandise to the United States and the period April 1, 1992 through March 31, 1993, indicates the existence of dumping margins. Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Donna Berg or Gregory Thompson, Office of Antidumping Investigation, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–0114 or 482–3003, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statue and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act), and section 353.22 of the Department's regulations (19 CFR 353.22).

Background

On October 7, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 52264) the final results of its last administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9226; April 12, 1973). In April 1993, the petitioner requested that we conduct an administrative review for the period April 1, 1992 through March 31, 1993, in accordance with 19 CFR 353.22(a)(1). We published a notice of initiation of review on May 27, 1993 (58 FR 30769).

On August 9, 1993, the Department issued an antidumping questionnaire to the following six companies: Daido Kogyo Co., Ltd. (Daido), Enuma Chain Mfg. Co., Ltd. (Enuma), Hitachi Metals Techno Ltd. (Hitachi), Izumi Chain Manufacturing Co., Ltd. (Izumi), Pulton Chain Co., Ltd. (Pulton), and R.K. Excel (Excel). Of those six companies, Excel and Izumi submitted their responses on September 24, 1993. Hitachi and Pulton asserted that they had no sales during this period of review (POR). Although Daido and Enuma were included when the Department published a notice of initiation for this review, the administrative reviews of Daido and Enuma are being conducted separately and their preliminary results will be published in a later notice.

Scope of the Review

Imports covered by the review are shipments of roller chain, other than bicycle, from Japan. The term ''roller chain, other than bicycle,'' as used in this review includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyer chain.

This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain is currently

classified under the *Harmonized Tariff Schedule of the United States* (HTSUS) subheadings 7315.11.00 through 7619.90.00. HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Fair Value Comparisons

We compared the United States price (USP) to the foreign market value (FMV), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice. When comparing the U.S. sales to sales of similar merchandise in the home market, we made adjustments for differences in physical characteristics, pursuant to 19 CFR 353.57.

United States Price

Pursuant to section 772(b) of the Act, we based USP on purchase price because all of Excel's and Izumi's U.S. sales to the first unrelated purchaser took place prior to importation into the United States, and exporter's sales price methodology was not otherwise indicated.

We calculated purchase price based on packed FOB or ex-go-down Japanese port prices to unrelated purchasers in the United States or Japan. Inasmuch as Excel incorrectly reported U.S. price, net of commissions, we recalculated gross unit price to include U.S. commissions. Where applicable, we made deductions for foreign inland freight and foreign inland insurance. *See Roller Chain, Other Than Bicycle, From Japan: Final Results of Antidumping Duty Administrative Review* 57 FR 56319–20 (November 27, 1992).

In accordance with our standard practice, pursuant to the decision of the U.S. Court of International Trade (CIT) in *Federal-Mogul Corporation and The Torrington Company v. United States (Federal-Mogul)*, 834 F. Supp. 1391 (CIT 1993), our calculations include an adjustment to U.S. price for the consumption tax levied on comparison sales in Japan. See *Final Antidumping Duty Determination of Sales at Less Than Fair Value: Stainless Steel Angle From Japan*, 60 FR 16609 (March 31, 1995) and *Preliminary Antidumping Duty Determination: Color Negative Photographic Paper and Chemical Components from Japan*, 59 FR 16177, 16179 (April 6, 1994), for an explanation of this methodology.

Foreign Market Value

In order to determine whether there were sufficient sales of the subject merchandise in the home market to serve as a viable basis for calculating FMV, we compared each respondents' volume of home market sales of the subject merchandise to the volume of third country sales in accordance with section 773(a)(1)(B) of the Act. We found that the home market was viable for both respondents. *See* 19 CFR 353.48(a).

We calculated FMV for both respondents based on packed, FOB or delivered prices to unrelated purchasers in Japan. We made deductions, where appropriate, from FMV for inland freight, insurance, and discounts. In accordance with section 773(a)(1) of the Act, we deducted, as appropriate, home market packing costs and added U.S. packing costs. We made circumstance-of-sale adjustments, where applicable, for differences in credit expenses, advertising expenses, warranty expenses and technical service expenses. Pursuant to section 353.56 (b)(1) of the Department's regulations, we offset U.S. commissions, where appropriate, by deducting home-market indirect selling expenses from FMV in an amount not exceeding the U.S. commissions. We recalculated Excel's technical service costs. Only the travel portion of Excel's technical service costs was treated as a direct selling expense because these expenses would not have been incurred absent the sales of the subject merchandise. Following our past practice, the fixed costs associated with technical services (salaries, benefits, and automobile depreciation) were treated as indirect selling expenses.

An adjustment for the consumption tax was made in accordance with our practice (*see* ''United States Price'' section of this notice).

We performed an arm's-length test to determine whether Izumi's sales to its related customers were made at arm's length. Consequently, we disregarded one of Izumi's reported sales to a related party for margin calculation purposes because there were no comparable sales to unrelated parties to use as an arm's length benchmark.

Section 773(a)(4)(c) of the Act provides that a difference-in-merchandise (DIFMER) allowance may be made when a product on which FMV is based is not identical to that exported to the United States. However, when the DIFMER is greater than 20 percent of the U.S. product's total cost of manufacture (COM), the Department resorts to constructed value (CV) to establish FMV. *See* ''Differences in Merchandise: 20% Rule,'' *Import Administration Policy Bulletin:* Number 92.2 (July 29, 1992).

In this review, we found that the variable manufacturing cost differences for certain models of roller chain, other than bicycle, did not exceed 20 percent of the total average COM of the product exported to the United States. In such instances, we based FMV on home-market prices, including a DIFMER allowance. For some models sold by Izumi, however, these variable-cost differences exceeded 20 percent of the U.S. product COM. In these instances, we based FMV on CV, as described in the ''Constructed Value'' section below.

Constructed Value

Pursuant to section 773(a)(2) of the Act, where there were no contemporaneous home-market sales of such or similar merchandise, we based FMV on CV. We also relied on CV where there were contemporaneous home-market sales of such or similar merchandise but the DIFMER exceeded 20 percent.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of materials, fabrication costs, general expenses, profit, and U.S. packing. Based on *Import Administration Policy Bulletin:* Number 94.6 (March 25, 1994), we did not include consumption taxes in our calculation of CV. We added statutory or actual amounts for the general expenses and profit components of CV, as appropriate.

With respect to Izumi's CV submission, we made the following adjustments:

(1) General and administrative (G&A) expenses: Izumi, in accordance with its accounting period, reported its G&A expenses for the chain division in two six-month periods. We recalculated these expenses on a company-wide basis for the year ending September 30, 1992. Using this period is consistent with the Department's practice, i.e., it was the annual period corresponding most closely to the POR. Additionally, we deducted inland freight from the submitted G&A expenses.

(2) Interest expenses: Izumi computed interest expense for CV based on amounts incurred by the company's chain division. It is the Department's normal practice to compute interest at the highest entity level, in this case, Izumi Chain Manufacturing Co., Ltd. We therefore revised Izumi's interest expense based on its company-wide financial statements for the year ended September 30, 1992, the annual period most closely related to the POR.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine the following dumping margins:

Manufacturer/exporter	Margin (percent)
Hitachi	[1] 12.68
Izumi	0.27
Pulton	[1] 0.01
Excel	0.10
All Others	15.92

[1] No sales during the period. Rate is from the last period in which there were sales.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. Upon completion of this administrative review, the Department will issue appraisement instructions on each exporter directly to the Customs Service. Furthermore, the following deposit requirements will be effective for all shipments of roller chain, other than bicycle, from Japan, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate will be that established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published in the final determination covering the most recent period review; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but its manufacturer is such a firm, the cash deposit rate will be the rate established for the manufacturer in the final results of the most recently completed review; and (4) for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to any firms listed above, or any previously reviewed firm, the cash deposit rate will be the ''new shipper'' rate established in the first review conducted by the Department in which a ''new shipper'' rate was established, as discussed below.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council v. United States,* 822 F. Supp. 766 (CIT 1993), and in *Federal-Mogul,* 822 F. Supp. 782 (CIT 1993), decided that once an ''all others'' rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original ''all others'' rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews. Because this proceeding is governed by an antidumping duty finding, and we are unable to ascertain the ''all others'' rate from the Treasury LTFV investigation, the ''all others'' rate for the purposes of this review would normally be the ''new shipper'' rate established in the first notice of final results of administrative review published by the Department (46 FR 44488, September 4, 1981). However, a ''new shipper'' rate was not established in that notice. Therefore, the ''all others'' rate of 15.92 percent is based on the first review conducted by the Department in which a ''new shipper'' rate was established in the final results of antidumping finding administrative review (48 FR 51801, November 14, 1983).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of publication. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than September 18, 1995, and rebuttal briefs no later than September 20, 1995. A public hearing, if requested, will be held on September 22, 1995, at 10:00 am at the U.S. Department of Commerce, in Room 1410, 14th Street and Constitution Avenue, NW, Washington, DC. Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled time. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. The Department will publish a notice of final results of this administrative review, including an analysis of issues raised in any written comments.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations (19 CFR 353.22).

Dated: August 16, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–20930 Filed 8–22–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–057]

Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada; Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Antidumping Duty Finding

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Antidumping Duty Finding.

SUMMARY: In response to requests from the Blaw-Knox Construction Equipment Corporation (Blaw-Knox), the petitioner in this proceeding, and the Road Machinery Division of Ingersoll-Rand Company (IR), the only respondent in the administrative reviews covering the periods September 1, 1991 through August 31, 1992 (1991–92) and September 1, 1992 through August 31, 1993 (1992–93), the Department of Commerce (the Department) is initiating a changed circumstances antidumping duty administrative review and issuing a notice of intent to revoke the antidumping duty finding. Blaw-Knox has filed a submission stating that it no longer has any interest in the antidumping finding. In addition, the petitioner has consulted with interested parties who are known to them to be involved in the U.S. production of replacement parts, Barber-Greene and Cedarapids, and did not find any opposition to the revocation of the finding. Blaw-Knox and IR also requested that this revocation be retroactive to the beginning of the 1991–92 administrative review period, September 1, 1991. Therefore, based on the fact that domestic interested parties

are no longer interested in the antidumping duty finding on self-propelled bituminous paving equipment from Canada, we intend to revoke the finding. The revocation will apply to all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1991. We invite interested parties to comment on these preliminary results and our intent to revoke the finding.

EFFECTIVE DATE: August 23, 1995.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 751(d) and 782(h) of the Tariff Act of 1930, as amended (1995) (the Act), the Department may revoke an antidumping duty order based on a review under section 751(b) of the Act (i.e., a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances administrative review to be conducted upon receipt of a request containing sufficient information concerning changed circumstances.

On September 7, 1977, the Department published the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada. On August 1, 1995, Blaw-Knox submitted a letter to the Department stating that it has no further interest in the antidumping duty finding on replacement parts for self-propelled bituminous paving equipment from Canada and requested retroactive revocation for all entries of subject merchandise made on or after September 1, 1991. September 1, 1991, is the beginning of the review period for the earliest period for which there is no completed administrative review; there are pending reviews for the 1991–92 and 1992–93 review periods. The request is based on changed circumstances in accordance with 19 CFR 353.25(d)(1994). In addition, Blaw-Knox has consulted with the other major U.S. producers of replacement parts, Barber-Greene and Cedarapids, and did not find any opposition to the revocation of the finding. This changed circumstances administrative review covers all producers and/or exporters of the subject merchandise and all shipments of this merchandise to the United States.

Scope of the Reviews

Imports covered by this changed circumstances review are replacement parts for self-propelled bituminous paving equipment, excluding attachments and parts for attachments. This merchandise is currently classifiable under *Harmonized Tariff Schedule* (HTS) item numbers 4016.93.10, 7315.11.00, 7315.89.50, 7315.90.00, 8336.50.00, 8479.99.00, 8481.20.00, 8482.10.10, 8483.90.90, 8539.29.20, 8544.20.00, 8544.41.00, 8544.51.80, 8544.60.20, and 9015.30.40. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke the Finding

The Department's regulations at 19 CFR 353.25(d)(2) require the Department to conduct a changed circumstances administrative review under section 353.22(f) based upon an affirmative statement of no interest from the petitioner in the proceeding. Section 353.25(d)(1)(i) further provides that the Department may revoke an order or revoke an order in part if it determines that the order under review is no longer of interest to interested parties. In addition, in the event that the Department concludes that expedited action is warranted, section 353.22(f)(4) of the regulations permit the Department to combine the notices of initiation and preliminary results.

Therefore, in accordance with sections 751(d) and 782(h) of the Act and 19 CFR 353.25(d) and 353.22(f), based on an affirmative statement of no interest in the proceeding by the petitioner Blaw-Knox, we are initiating this changed circumstances administrative review. Further, based on the petitioner's affirmative statement of no further interest in these proceedings, not opposed by statements of interest by other domestic interested parties, we determine that expedited action is warranted, and we preliminarily determine that the finding on replacement parts for self-propelled bituminous paving equipment from Canada is no longer of interest to domestic interested parties. Because we have concluded that expedited action is warranted, we are combining the notice of initiation and preliminary results.

We are hereby notifying the public of our preliminary determination to revoke this antidumping duty finding. If this preliminary determination to revoke this finding is made final, the effective date of the revocation will be September 1, 1991, the beginning of the currently pending 1991–92 administrative review.

If final revocation occurs, we intend to instruct the U.S. Customs Service (Customs) to liquidate without regard to antidumping duties all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of revocation in accordance with 19 CFR 353.25(d)(5). We also intend to instruct Customs to refund with interest any estimated antidumping duties collected with respect to entries made on or after September 1, 1991, in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this changed circumstances administrative review.

Public Comment

Interested parties may request a hearing within 10 days of the date of publication of this notice. Case briefs and/or other written comments from interested parties may be submitted not later than 14 days after the date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing case briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with section 353.31(e) of the Department's regulations (1994). Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 353.38(c)(1994), are due. The Department will publish the final results of this changed circumstances administrative review and its decision on revocation of this antidumping duty finding, as well as the results of its analysis of issues raised in any case or rebuttal brief.

This notice also serves as a preliminary reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to

comply with the regulations and terms of an APO is a sanctionable violation.

This notice of changed circumstances administrative review and intent to revoke are in accordance with sections 751 (b)(1) and (d) of the Act (19 U.S.C. 1675 (b)(1) and (d) (1995)) and 19 CFR 353.22(f) and 353.25(d) (1994).

Dated: August 16, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–20928 Filed 8–22–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–549–501]

Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On June 8, 1995, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of its administrative review of the countervailing duty order on certain circular welded carbon steel pipe and tubes from Thailand for the period January 1, 1993, through December 31, 1993. We have completed this review and determine the net subsidy to be 0.23 percent *ad valorem* for all companies during this review period. In accordance with 19 CFR 355.7, this rate is *de minimis.* Therefore, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from Thailand exported on or after January 1, 1993 and on or before December 31, 1993.

EFFECTIVE DATE: August 23, 1995.

FOR FURTHER INFORMATION CONTACT: Tre Moore, Stephen Lebowitz or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1995, the Department published in the **Federal Register** (60 FR 30284) the preliminary results of its administrative review of the countervailing duty order on certain circular welded carbon steel pipes and tubes from Thailand. The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

The review covers the period January 1, 1993 through December 31, 1993, one manufacturer/exporter, and the following nine programs:

(A) Export Packing Credits
(B) Tax Certificates for Exporters
(C) Electricity Discounts for Exporters
(D) Tax and Duty Exemptions Under Section 28 of the Investment Promotion Act
(E) Repurchase of Industrial Bills
(F) Export Processing Zones
(G) International Trade Promotion Fund/Export Promotion Fund
(H) Reduced Business Taxes for Producers of Intermediate Goods for Export Industries
(I) Additional Incentives under the IPA

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Review

The Department clarified the Harmonized Tariff Schedule (HTS) numbers that were applicable to the subject merchandise (see Memorandum to Susan Esserman from Susan Kuhbach, dated March 29, 1994, regarding Change of Scope in Administrative Review of Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand which is on file in the Central Records Unit, Room B099, Main Commerce Building). This clarification was necessary because of annual changes in the HTS. The scope now reads:

Imports covered in this review are circular welded carbon steel pipes and tubes (pipes and tubes) with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A–120, A–53 and A–135. During the review period, this merchandise was classified under item numbers 7306.30.10 and 7306.30.50 of the HTS. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments, and have made no changes to the preliminary results.

Final Results of Review

For the period January 1, 1993 through December 31, 1993, we determine the total net subsidy to be 0.23 percent *ad valorem*. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis.*

As a result of this review, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from Thailand, exported on or after January 1, 1993, and on or before December 31, 1993. Further, as provided by section 751(a)(1) of the Act, the Department will instruct Customs to collect cash deposits of estimated countervailing duties at a rate of zero percent of the f.o.b. invoice price on all shipments of the subject merchandise from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. These instructions shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.43(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 16, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–20933 Filed 8–22–95; 8:45 am]

BILLING CODE 3510–DS–P

North American Free Trade Agreement, Article 1904, Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final affirmation antidumping duty determination made by the U.S. International Trade Administration, in an affirmative antidumping duty determination respecting Certain Corrosion-Resistant Carbon Steel Flat Products from Canada, Secretariat File No. USA–93–1904–03 and Certain Cut-To-Length Carbon Steel Plate from Canada, Secretariat File No. USA–93–1904–04.

SUMMARY: Pursuant to the Order of the Binational Panel dated July 7, 1995, affirming the final redetermination described above was completed on August 18, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On July 7, 1995, the Binational Panel issued an order which affirmed the final affirmative duty redetermination of the United States International Trade Administration (''ITA'') concerning Certain Corrosion-Resistant Carbon Steel Flat Products from Canada and Certain Cut-to-Length Steel Plate from Canada. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no Request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules*, the Panel Review was completed and the panelists discharged from their duties effective August 18, 1995.

Dated: August 18, 1995.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 95–20921 Filed 8–22–95; 8:45 am]

BILLING CODE 3510–GT–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; Notice to Add Record Systems

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Notice to add record systems.

SUMMARY: The Office of the Secretary of Defense proposes to add two systems of records notices to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The additions will be effective on September 22, 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, Records Management 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.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on August 4, 1995, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 25, 1994 (59 FR 37906, July 25, 1994).

Dated: August 16, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 05

SYSTEM NAME:

Persian Gulf Veterans Illnesses Files.

SYSTEM LOCATION:

Department of Defense Persian Gulf Veterans Illnesses Investigative Team, 5205 Leesburg Pike, Falls Church, VA 22041–3881; and Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Washington, DC 20301–1200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who served in Operation Desert Storm and/or Operation Desert Shield who feel they may have been exposed to biological, chemical, disease, or environmental agents. Those individuals may contact the Persian Gulf Veterans Illnesses Investigative Team by dialing 1–800–472–6719 to report experiences of unusual illness or health conditions following service during the Persian Gulf conflict.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of individual's name, Social Security Number or service number, last known or current address, occupational information, date and extent of involvement in Persian Gulf military operations, perceived exposure information, medical treatment information, medical history of subject, and other documentation of reports of possible exposure to biological, chemical, disease, or environmental agents.

The system contains information from unit and historical records and information provided to the Department of Defense by individuals with first-hand knowledge of reports of possible biological, chemical, disease, or environmental incidents.

Information from health care providers who have evaluated patients with illnesses possibly related to service in the Persian Gulf is also included. Records include those documents, files, and other matter in the medical, operational, and intelligence communities that could relate to possible causes of Persian Gulf War Veterans illnesses.

Records of diagnostic and treatment methods pursued on subjects following reports of possible incidental exposure are also included in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 131, 10 U.S.C. 136, and E.O. 9397.

PURPOSE(S):

Records are collected and assembled to permit investigative examination and analysis of reports of possible exposure to biological, chemical, disease, or environmental agents incident to service in the Persian Gulf War and to conduct scientific or related studies or medical follow-up programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND 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:

To the Department of Veterans Affairs and the Social Security Administration for appropriate consideration of individual claims for benefits for which that agency is responsible.

The 'Blanket Routine Uses' set forth at the beginning of 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 records are maintained in file folders; electronic records are stored on magnetic media; microfilm/microfiche are maintained in appropriate storage containers.

RETRIEVABILITY:

Records are retrieved by case number, name, Social Security Number or service number.

SAFEGUARDS:

Access to areas where records maintained is limited to authorized personnel. Areas are protected by access control devices during working hours and intrusion alarm devices during non-duty hours.

RETENTION AND DISPOSAL:

Files will be retained permanently. They will be maintained in the custody of the Persian Gulf Veterans Illnesses Investigative Team under the oversight of the Assistant Secretary of Defense (Health Affairs) until completion of the Team's investigative mission. Upon disbanding of the Team, custody of the records will be transferred to OASD(HA) where they will be held for five years, and then transferred to the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Washington, DC 20301–1200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Persian Gulf War Veterans Illnesses Investigative Team, Suite 810, 5205 Leesburg Pike, Falls Church, VA 22041–3881, or to the Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Washington, DC 20301–1200.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Persian Gulf War Veterans Illnesses Investigative Team, Suite 810, 5205 Leesburg Pike, Falls Church, VA 22041–3881, or to the Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Washington, DC 20301–1200.

CONTESTING RECORDS PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is from the individuals themselves, witnesses to a possible agent event, health care providers who have evaluated patients with illnesses possibly related to service in the Persian Gulf, as well as extracts from historical records to include: personnel files and lists, unit histories, medical records, and related sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DHA 06

SYSTEM NAME:

USTF Managed Care System.

SYSTEM LOCATION:

Primary location: Office of the Assistant Secretary of Defense (Health Affairs), Deputy Assistant Secretary of Defense (Health Services Financing), Director Uniformed Services Treatment Facility Program Office, 1200 Defense Pentagon, Room 1B657, Washington, DC 20301–1200.

Secondary locations: Directorate of Information Management, Building 1422, Ft. Detrick, MD 21702–5012.

Vector Research, Incorporated, 901 South Highland Street, Arlington, VA 22204–2419.

USTF Management Office Sites:

Martin's Point Healthcare Center, 331 Veranda Street, Portland, ME 04103–5040.

Brighton Marine Health Center, 77 Warren Street, Boston, MA 02135–9862.

Bayley Seton Hospital, Bay Street and Vanderbilt Avenue, Staten Island, NY 10304–3850.

Johns Hopkins Medical Services Corporation, 3100 Wyman Park Drive, Baltimore, MD 21211–2803.

Lutheran Medical Center, 2609 Franklin Boulevard, Cleveland, OH 44113–2992.

Sisters of Charity of the Incarnate Word, 2600 North Loop West, Houston, TX 77092–8914.

Pacific Medical Center, 1200 12th Avenue South, Seattle, WA 98144–2790.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals eligible to participate in, and who have elected to enroll in the Uniformed Services Treatment Facility (USTF) segment of the Department of Defense Military Health Services System.

CATEGORIES OF RECORDS IN THE SYSTEM:

Enrollment Records: Electronic files containing beneficiary ID, date of birth, gender, sponsor status (active duty or retired), relationship to sponsor, sponsor pay grade, state/country, zip code, and program enrollment information (i.e., date of enrollment, expiration of enrollment, program enrolled in, etc.)

Management Clinical Data Records: Electronic files containing USTF identifier, beneficiary ID, other demographics (i.e., county, state, zip code, coverage area for USTF), healthcare services, healthcare provider, and financial information (e.g., Diagnosis-Related Groups and uniformed service beneficiaries cost share.)

Medicare Claims Records: Electronic files containing claim identifiers, beneficiary ID, county, state, zip code, healthcare services, healthcare provider, and cost of healthcare and procedure retained for two years for analysis of cost trends.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1102 and E.O. 9397.

PURPOSE(S):

The system is used to administer the USTF segment of the DoD Managed Medical Care System. It identifies eligible beneficiaries enrolled in USTF managed care programs and records healthcare services provided and payments made on behalf of eligible uniformed services health beneficiaries. Additional management functions enable DoD Healthcare Officials to use information in the system at individual and aggregate levels to monitor quantity and type of healthcare provided and to analyze and study the cost effectiveness of the USTF Managed Care System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to disclosures noted above and those 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:

To Health Care Finance Agency, to detect duplicate or overlapping payments made by Medicare.

To National Oceanic Service, United States Public Health Service, and National Oceanic and Atmospheric Administration to track services

provided to their uniformed service personnel and beneficiaries.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer files are stored on magnetic tape and disk.

RETRIEVABILITY:

Individual records are retrieved by patient or sponsor's surname, Social Security Number, classification of medical diagnosis, procedure code, enrollment date or code, age, location, or other data field.

SAFEGUARDS:

Records are maintained in a controlled area accessible only to authorized personnel. Entry to this area is restricted to personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of a cipher lock on the only entrance to the computer room. Personal data maintained at the back-up site is stored in a locked room.

Access to USTF personal data records is restricted to those individuals who require the records in the performance of official duties and to those records that are the subject of official duties. Access is restricted by passwords that are changed periodically.

RETENTION AND DISPOSAL:

Maintained for as long as beneficiary is enrolled in USTF Military Health Services System. Upon death or disenrollment from system, records are marked for inactive file and kept an additional five years. Storage media containing data with personal identifiers will be erased (degaussed) after the five year inactive record retention.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Assistant Secretary of Defense (Health Affairs), Deputy Assistant Secretary of Defense (Health Services Financing), Director, Uniformed Services Treatment Facility Program Office, 1200 Defense Pentagon, Room 1B657, Washington, DC 20301–1200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Healthcare Management Directorate, Defense Medical Systems Support Center, Office of the Assistant Secretary of Defense (Health Affairs), Six Skyline Place, Suite 508, 5109 Leesburg Pike, Falls Church, VA 22041–3201.

The request should contain the full names of the patient and sponsor, sponsor's Social Security Number, patient's date of birth, Defense Enrollment/Eligibility Reporting System dependent suffix, gender, treatment facility(ies), and calendar year(s) of interest.

RECORD ACCESS PROCEDURES:

Written requests from an individual wishing to obtain a copy of his or her records should be addressed to Healthcare Management Directorate, Defense Medical Systems Support Center, Office of the Assistant Secretary of Defense (Health Affairs), Six Skyline Place, Suite 508, 5109 Leesburg Pike, Falls Church, VA 22041–3201.

The request should contain the full names of the patient and sponsor, sponsor's Social Security Number, patient's date of birth, Defense Enrollment/Eligibility Reporting System dependent suffix, gender, treatment facility(ies), and calendar year(s) of interest.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Uniformed Services Treatment Facility enrollment records; medical/hospital information systems, and/or billing systems; eligibility information from the Defense Enrollment/Eligibility Reporting System; claim information from Health Care Financing Agency; beneficiary information from National Oceanic and Atmospheric Administration, National Oceanic Service, and U.S. Public Health Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–20892 Filed 8–22–95; 8:45 am]

BILLING CODE 5000–04–F

Joint Advisory Committee on Nuclear Weapons Surety

ACTION: Notice of advisory committee meeting.

SUMMARY: The Joint Advisory (JAC) on Nuclear Weapons Surety will conduct a closed Executive Session on September 27, 1995, at Lawrence Livermore National Laboratory, Livermore, California.

The Joint Advisory Committee is charged with advising the Secretary of Defense, Secretary of Energy, and the Joint Nuclear Weapons Council on nuclear weapons systems surety matters. At this meeting, the Joint Advisory Committee will discuss classified material on Science Based Stockpile Stewardship alternatives to nuclear testing and future JAC projects.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended, Title 5, U.S.C. App. II, (1988)), this meeting concerns matters, sensitive to the interests of national security, listed in 5 U.S.C. section 552b(c)(1) and accordingly this meeting will be closed to the public.

Dated: August 17, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 95–20895 Filed 8–22–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Depot Maintenance Operations & Management

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Depot Maintenance Operations & Management will meet in open session on August 30, 1995 at the Pentagon, Room 1E801, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Mr. Wimpy Pybus at (703) 614–0862.

Dated: August 17, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–20894 Filed 8–22–95; 8:45 am]

BILLING CODE 5000–04–M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on September 5, 1995; September 12, 1995; September 19, 1995; and September 26, 1995, at 10

a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Pub. L. 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: August 17, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–20896 Filed 8–22–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Performance Review Boards; List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Secretariat

Maj. Gen Charles D. Link
Dr. Robert D. Wolff
Mr. John T. Manclark
Mr. William C. James
Dr. William O. Berry

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–20923 Filed 8–22–95; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Small Businesses Sought to Perform Transportation Services

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: MTMC is engaged in re-engineering the existing DOD Personal Property Program and searching for small business source to provide transportation services. The Standard Industrial Classification codes which may apply are 4213 or 4731. To be considered a small business under these codes, annual receipts must be less than $18.5 million. Transportation services will be provided by channel (a single AOR to a single rate area). To obtain instructions on responding to this notice, contact the Acquisition Policy Division (MTAQ–P). Interested sources must respond in writing. This is not intended to be a pre-solicitation notice. Any solicitation shall be advertised at a later date.

DATES: Responses must be received by 20 September 1995.

ADDRESS: Mail comments to Headquarters, Military Traffic Management Command, ATTN: MTAQ–P, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Wendy Despres, MTAQ–P, (703) 681–6054.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–20827 Filed 8–22–95; 8:45 am]

BILLING CODE 3710–08–M

Defense Information Systems Agency

Privacy Act of 1974; Notice to Amend Systems of Records.

AGENCY: Defense Information Systems Agency, DOD.

ACTION: Notice to amend systems of records.

SUMMARY: The Defense Information Systems Agency is amending two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed actions will be effective without further notice on September 22, 1995, unless comments are received which result in a contrary determination.

ADDRESSES: Records Manager, Code BIAR, Defense Information Systems Agency, 701 South Courthouse Road, Arlington, VA 22204–2199.

FOR FURTHER INFORMATION CONTACT: Ms. Jill van der Does at (703) 607–4460.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency systems 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 specific changes to the record system being amended are set forth below followed by the entire notice, as amended. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 11, 1995.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

K240.01

SYSTEM NAME:

Personnel Security Investigative Dossier File (PSIDF) *(February 22, 1993, 58 FR 10588).*

CHANGES:

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with 'None'.

K240.01

SYSTEM NAME:

Personnel Security Investigative Dossier File (PSIDF).

SYSTEM LOCATION:

Security Branch, Arlington Service Center, Code BLS, Center for Agency Services, Defense Information Systems Agency, 701 South Courthouse Road, Arlington, VA 22204–2199.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This file includes individual personnel security investigative dossiers on: U.S. military personnel who have been selected for assignment to, are now, or have been assigned to the DISA; U.S. Government civilian personnel who are being processed for employment, are now or have been employed by the DISA; U.S. military or civilian personnel who are being processed for, or have been granted, access to sensitive compartmented information (SCI) by the DISA at the request of their parent organization; industrial employees who are performing, expect to perform, or have performed duties under DISA SCI cognizance as a result of a U.S. Government contract; or personnel who are or have been, affiliated with the DISA.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual personnel security investigative dossiers. Individual dossiers may contain submissions by the individual such as Statement of Personal History/personnel

security questionnaire, appropriate release statements and related personal documentation, i.e., educational diplomas, marriage and divorce records, etc.; information obtained as a result of a National Agency Check, investigative action and/or volunteer sources. Information may consist of acquisitions from listed or developed character references, co-workers, supervisors, present and past employers, financial or trade institutions, credit bureaus, personnel of the legal, medical, educational or religious professions, educational institutions, present and former neighbors, courts, U.S. federal, state or local agencies and departments; foreign law agencies, private investigative sources, active and retired U.S. military or civilian personnel records, interview of the individual, his spouse, relatives or associates, fingerprint identification check. This information normally covers the period of the individual's life for a fifteen year period immediately preceding the investigation or from the date of his eighteenth birthday. However, if derogatory information is developed or if the individual has a long tenure of U.S. Government service, the file may cover a greater period of time; information on the individual's spouse, relatives or associates; correspondence between the individual and DISA or other U.S. Government activity or correspondence related to the individual between his employer, organization of assignment and DISA (Code BZS) or other U.S. Government activity; correspondence related to National Agency Checks, investigations, evaluations, clearance or special accesses for the individual; certificates of clearance, security determination or special access authorizations and terminations thereof; content, adjudicative and clearance action sheets; certificates of release or review of personnel security investigative dossiers; results of review of personnel and/or medical files; photographic likeness with identifying data such as name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 10450, as amended; E.O. 10865.

PURPOSE(S):

Information is collected and used for the purposes of determining the suitability, eligibility or qualification of personnel previously defined for assignment, employment or qualification for access to various levels of U.S. Government classified and sensitive compartmented information and to certify clearances and accesses as required.

Counterintelligence and Security Division (DIA): The personnel security investigative dossier for each individual previously defined who has, or had, a valid requirement for access to compartmented intelligence information is reviewed to determine, for the responsible United States Intelligence Board Member, the individual's eligibility for such access.

Also released to law enforcement and investigatory authorities of the U.S. Government for conduct of official investigations.

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:

Any component or official of the U.S. Government having established a need-to-know: Used as a basis for gaining access to classified information upon reassignment employment, etc.

The 'Blanket Routine Uses' set forth at the beginning of the DISA'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, microfiche, in file folders; ADP cards or magnetic tapes.

RETRIEVABILITY:

Information is retrieved by the individual's name.

SAFEGUARDS:

Building employs security guards. Records are maintained in areas accessible only by authorized personnel that are properly cleared and trained. Records, during non-duty hours, are additionally protected by storage in locked electrical filing cabinets.

RETENTION AND DISPOSAL:

Individual records are maintained from the date of initial nomination for assignment, employment or affiliation with the DISA until at least one year but not more than two years, following his departure. Individual records which contain information upon which an adverse determination was based are maintained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Security Division, Code 240, Headquarters, Defense Information Systems Agency.

Decentralized Segment - Chief, Security Branch, Defense Communications Engineering Center, Code R121, 1860 Wiehle Avenue, Reston, VA 22090.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Security Branch, Code BZS, Headquarters, Defense Information Systems Agency.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Security Division, Code BLS, Headquarters, Defense Information Systems Agency.

CONTESTING RECORD PROCEDURES:

DISA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DISA Instruction 210–225–2; 32 CFR part 316; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is placed into the system by the system manager after an individual has been nominated for assignment, employment or affiliation with the DISA as previously defined. Information may be obtained from the individual's submissions, listed or developed character references, co-workers, supervisors, present and past employers, financial or trade institutions, credit bureaus, personnel of the legal, medical, educational or religious professions, educational institutions, present and former neighbors, courts, U.S. federal, state or local law agencies/departments, active and retired U.S. military or civilian personnel records, interview of the individual, his spouse, relatives or associates, any component of the U.S. Government having an identifiable record on the individual or volunteer sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

K890.01

SYSTEM NAME:

Freedom of Information Act File (FOIA) *(February 22, 1993, 58 FR 10608).*

CHANGES:

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with 'None'.

K890.01

SYSTEM NAME:

Freedom of Information Act File (FOIA) *(February 22, 1993, 58 FR 10608).*

SYSTEM LOCATION:

Office of the Chief of Staff, Code AD, Headquarters, Defense Information Systems Agency, 701 South Courthouse Road, Arlington, VA 22204–2199.

Decentralized - DISA Field Activities World-wide. Official mailing addresses are published as an appendix to DISA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who request information under FOIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Consists of (1) Policy File which contains DOD Directive 5400.7, Availability to the Public of DOD Information, February 14, 1975; DISA Instruction 210–225–1, Availability to the Public of DISA Information March 31, 1975; USAF Regulation 12–30, Disclosure of Air Force Records to the Public, February 19, 1975; Department of Health, Education and Welfare, Public Information, contained in **Federal Register** Vol 39, Number 248, Part II, December 24, 1974; Commanders Digest, Vol 17, Number 8, Freedom of Information Actions, February 18, 1975; DOD Directive 5400.9, Publication of Proposed and Adopted Regulations Affecting the Public, December 23, 1974; and DISA Messages to Field Activities implementing the FOIA. (2) Log File which consists of a record of all written requests for information under the FOIA which have been processed within DISA since January 1, 1975. (3) Correspondence received in DISA relating to FOIA, including replies thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, as amended by Pub. L. 93–502, Freedom of Information Act; DOD Directive 5400.7, February 14, 1975, Availability to the Public of DOD Information.

PURPOSE(S):

For making available to the public the maximum amount of information concerning the operations and activities of DISA. DISA Management - to receive, process, and respond to requests for information under FOIA. Director, DISA - to review and deny requests for information under provisions of FOIA and to forward applicable correspondence to DOD when the denial may be contested or appealed.

DOD and Department of Justice - for review and in event of judicial action.

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 DISA'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:

The paper records in file folders.

RETRIEVABILITY:

Retrieved by the control number and the name of the individual who requested the information.

SAFEGUARDS:

Records are stored in a locked safe. Records pertaining to policy are permanent. Correspondence maintained for two years, then destroyed. Records are maintained in areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

All records (except the Authorities which are permanent) are retained by Code 104, Headquarters, DISA, for two years. Logs are kept until reference need expires.

SYSTEM MANAGER(S) AND ADDRESS:

Civilian Assistant to the Chief of Staff, Headquarters, Defense Information Systems Agency, Code 104, 701 South Courthouse Road, Arlington, VA 22204–2199.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Information Systems Agency Headquarters or Defense Information Systems Agency Field Activities in the Washington Metropolitan area should be addressed to the Civilian Assistant to the Chief of Staff, Code 104, Headquarters, Defense Information Systems Agency, 701 South Courthouse Road, Arlington, VA 22204–2199.

Requests from individuals relating to information from DISA Field Activities outside the Washington Metropolitan area should be addressed to the Commanders of those activities. Individual must provide his full name, a detailed description of the record desired. For personal visits, the individual must present proof of identity to include full name and e full name and Social Security Number as well as positive identification, i.e., such as driver's license, etc., and fully identify record desired.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Civilian Assistant to the Chief of Staff, Headquarters, Defense Information Systems Agency, Code 104, 701 South Courthouse Road, Arlington, VA 22204–2199.

CONTESTING RECORD PROCEDURES:

DISA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DISA Instruction 210–225–2; 32 CFR part 316; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From individuals concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–20893 Filed 8–22–95; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Notice of Intent To Prepare Supplemental Environmental Impact Statement Waste Isolation Pilot Plant, Disposal Phase

AGENCY: Department of Energy.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Department announces its intent to prepare a Supplemental Environmental Impact Statement (SEIS II) for the proposed continued phased development of the Waste Isolation Pilot Plant (WIPP) for disposal of transuranic (TRU) waste. The Department will prepare the SEIS II pursuant to the National Environmental Policy Act (NEPA) of 1969, in accordance with the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA and the Department's implementing procedures, and to conduct public scoping meetings.

The Department has been proceeding with the phased development of WIPP to meet its statutory responsibility to demonstrate the safe disposal of TRU waste resulting from United States defense activities.

After preparing an EIS in 1980, the Department decided in its 1981 Record of Decision to begin phased development of a research and development facility to demonstrate the safe disposal of TRU wastes in salt by constructing WIPP near Carlsbad, New Mexico. The Department prepared its first Supplemental EIS in 1990 to analyze changes in environmental impacts resulting from significant new information and changed circumstances since the 1980 EIS. In a 1990 Record of Decision, the Department decided to continue with phased development of WIPP by conducting test phase activities to demonstrate WIPP's compliance with applicable disposal regulations. Test phase activities were to have included tests with TRU waste in the excavated underground area of WIPP. In October 1993, however, the Department decided to conduct tests using radioactive wastes in above-ground laboratories rather than underground at WIPP. Some experiments to further examine the hydrologic, geologic and physical characteristics of the repository continue to be conducted underground at WIPP.

In the Record of Decision for the 1990 Supplemental EIS, the Department stated that it would prepare the SEIS II before deciding whether to proceed with the WIPP disposal phase. The Department proposes to continue phased development of WIPP to begin waste disposal in 1998. The Department is aware that a bill, H.R. 1663, has been introduced in Congress that, if enacted, could accelerate this planned schedule. The Department intends to prepare the SEIS II to further examine the environmental impacts of the proposed future phases of WIPP, including the disposal, closure, and post-closure phases.

DATES: The Department invites all interested parties to submit comments or suggestions concerning the scope of the issues to be addressed, alternatives to be analyzed, and the environmental impacts to be assessed in the SEIS II during a comment period ending September 30, 1995. All comments will be considered in preparation of the SEIS II. Written comments must be postmarked by September 30, 1995 to assure consideration. Comments postmarked after that date will be considered to the extent practicable.

The public is also invited to attend scoping meetings where comments will be received on the SEIS II. Public scoping meetings will be held on the dates and at the locations given below:

Carlsbad, New Mexico	September 7, 1995	Holiday Inn Carlsbad, 601 South Canal Street, Carlsbad, NM 88220, (505) 885–8500.
Albuquerque, New Mexico	September 12, 1995	Pyramid Holiday Inn, 5151 San Francisco Road NE., Albuquerque, NM 87109, (505) 821–3333.
Santa Fe, New Mexico	September 14, 1995	Best Western High Mesa Inn, 3347 Cerrillos Road, Santa Fe, NM 87501, (505) 473–2800.
Denver, Colorado	September 19, 1995	Denver Marriott West, 1717 Denver West Boulevard, Golden, CO 80401, (303) 273–4022.
Boise, Idaho	September 20, 1995	Red Lion Inn Riverside, 2900 Chinden Boulevard, Boise, ID 83714, (208) 343–1871.

Scoping meetings will be conducted in the afternoon and evening at the New Mexico locations. Only evening scoping meetings are planned for Denver and Boise. The hours for scoping meetings will be: 2:00 PM to 5:00 PM for the afternoon meetings and 7:00 PM to 10:00 PM for the evening meetings.

The scoping meetings will be conducted as workshops. Displays will provide an overview of the WIPP project, and Department personnel will be present to answer general questions about the project. Separate displays will explain individual aspects of the WIPP project in more detail and experts will be present to answer questions on a variety of topics, including transportation, waste handling and disposal plans, and long-term performance issues (including geology, hydrology, and health impact assessment). Additional displays and experts may be added to the presentation based on public input before the scoping meetings.

Note takers will capture the substance of public comments in the display and discussion areas. A separate area also will be available where the public can write their own comments or record them on audiotape.

Records of, and responses to, the oral and written scoping comments will be presented in the Implementation Plan for the SEIS II. The Implementation Plan will also provide guidance for preparation of the SEIS II and state the planned scope and content (10 CFR 1021.312). The Implementation Plan will be issued as soon as possible after the close of the public scoping process, but in any event before issuing the draft SEIS II.

ADDRESSES: Copies of the Implementation Plan will be provided to interested and affected members of the public upon request and will be available for inspection in the public reading room locations indicated below:

Public Library Reading Room, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004

Office of Scientific and Technical Information, Technical Information Center, Department of Energy, P.O. Box 62, Oak Ridge, TN 37831

WIPP Public Reading Room, National Atomic Museum, Albuquerque Operations Office, Department of Energy, P.O. Box 5400, Albuquerque, NM 87115

Zimmerman Library, Government Publications Department, University of New Mexico, Albuquerque, NM 87138

Carlsbad Public Library, 101 S. Halagueno Street, Carlsbad, NM 88220

Pannell Library, New Mexico Junior College, 5317 Lovington Highway, Hobbs, NM 88240

Thomas Brannigan Memorial Library, 200 E. Picacho, Las Cruces, NM 88005

Raton Public Library, 244 Cook Avenue, Raton, NM 87740

New Mexico State Library, 325 Don Gaspar, Santa Fe, NM 87503

Martin Speare Memorial Library, New Mexico Institute of Mining and Technology, Campus Station, Socorro, NM 87801

Idaho National Engineering Laboratory, Boise Office, 816 West Bannock, Suite 306, Boise, ID 83706

Shoshone-Bannock Library, Human Resources Center, Bannock and Pima, Fort Hall, ID 83203

Public Reading Room, Idaho National Engineering Laboratory Technical Library, 1776 Science Center Drive, Idaho Falls, ID 83402

University of Idaho Library, Government Document Department, University of Idaho Campus, Rayburn Street, Moscow, ID 83403

Moscow Environmental Restoration Information Office, 530 South Ashbury, Suite 2, Moscow, ID 83843

Idaho National Engineering Laboratory, Pocatello Office, 1651 Al Ricken Drive, Pocatello, ID 83201
Idaho National Engineering Laboratory, Twin Falls Office, 233 2nd Street North, Suite B, Twin Falls, ID 83301
Standley Lake Library, 8485 Kipling Street, Arvada, CO 80005
Information Center, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Building A, Denver, CO 80222–1530
Superfund Records Center, U. S. Environmental Protection Agency, 999 18th Street, 5th Floor, Denver, CO 80220
Rocky Flats Public Reading Room, Department of Energy, Front Range Community College Library, 3645 West 112th Avenue, Westminster, CO 80030
Citizens Advisory Board, 9035 N. Wadsworth Parkway, Suite 2250, Westminster, CO 80021

Comments on the scope of the SEIS II, questions concerning the Department's proposal to begin the WIPP disposal phase, and requests for copies of the Implementation Plan and/or the Draft SEIS II should be directed to the designated Carlsbad Area Office contact below.

FOR FURTHER INFORMATION CONTACT: Written questions and comments should be directed to: Harold Johnson, NEPA Compliance Officer, Attn: Scoping Comments, Mail Stop 535, Carlsbad Area Office, U.S. Department of Energy, Post Office Box 3090, Carlsbad, NM 88221.

Oral and faxed questions and comments should be directed to the SEIS II Project at the numbers below: Telephone: 1–800–336–9477, Facsimile: 1–505–224–8030.

For information on the Department's NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone: 202–586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

The ''National Security and Military Applications of Nuclear Energy Act of 1980'' (Pub.L. 96–164) authorized the Department to develop a research and development facility to demonstrate the safe disposal of radioactive waste generated by national defense activities. WIPP is intended to meet the statutory requirements of Pub.L. 96–164. Initially the WIPP mission was to include experimentation with high-level radioactive wastes, but subsequent legislation has limited the radioactive component of waste the Department proposes to place in WIPP to TRU waste.

TRU waste is waste that contains alpha particle-emitting radionuclides with an atomic number greater than that of uranium (92), half-lives greater than 20 years, and concentrations greater than 100 nanocuries per gram of waste. TRU waste is classified according to the radiation dose rate at a package surface. Contact-handled TRU waste has a radiation dose rate at a package surface of 200 millirem per hour or less; this waste can be safely handled directly by personnel. Remote-handled TRU waste has a radiation dose rate at a package surface greater than 200 millirem per hour; this waste must be handled remotely (e.g., with machinery designed to shield the handler from radiation). Alpha radiation is the primary factor in the radiation health hazard associated with TRU waste. Alpha radiation is not energetic enough to penetrate human skin but poses a health hazard if it is taken into the body (e.g., inhaled or ingested). Remote-handled TRU waste also emits gamma and/or beta radiation, which can penetrate the human body and requires shielding during transport and handling.

The Department's TRU waste inventory has resulted primarily from research and development, nuclear weapons production, and fuel reprocessing activities at Departmental sites. [Idaho National Engineering Laboratory; Rocky Flats Environmental Technology Site; the Hanford, Savannah River, Mound and Nevada Test Sites: and Los Alamos, Oak Ridge, Lawrence Livermore and Argonne (Chicago) National Laboratories have historically generated over 90 percent of the Department's TRU waste, with smaller sites generating the remainder.] Currently, about 2.6 million cubic feet of contact-handled TRU waste and about 42,000 cubic feet of remote-handled TRU waste are in retrievable storage at Departmental sites around the country. The Department projects that approximately 1.8 million additional cubic feet of contact-handled TRU waste and 127,000 cubic feet of remote-handled TRU waste will be generated through the year 2022 from continuing site activities and decontamination and decommissioning. Additional TRU waste would be generated by environmental restoration activities at Departmental sites, but the volume and characteristics of this waste that might be disposed of at WIPP are uncertain. (Decisions on the disposition of waste and contaminated media from environmental restoration activities are made on a cleanup-by-cleanup basis, and such decisions have not yet been made for many of the Department's environmental restoration activities. The Department has also not yet sufficiently characterized all of the contaminated sites to be certain as to the specific wastestreams from those cleanups.) The potential for disposal at WIPP of TRU waste from environmental restoration activities will be analyzed in the cumulative impacts section of the SEIS II as a reasonably foreseeable future action.

Before 1970, material that is now classified as contact-handled TRU waste was not segregated from low-level waste and was buried along with low-level waste. At the time of burial, the Department did not intend to retrieve that waste. Since the Atomic Energy Commission (one of the Department's predecessor agencies) adopted a policy requiring retrievable storage of certain waste containing transuranic radionuclides in 1970, Departmental TRU waste has been stored in containers so that it could be easily retrieved when future decisions were made regarding the management or disposition of this waste.

About 55 percent of the Department's current TRU waste inventory contains hazardous substances regulated under the Resource Conservation and Recovery Act and is referred to as TRU mixed waste. The fraction of TRU waste streams that is mixed waste is expected to decrease in the future due to Departmental pollution prevention activities. Under the Resource Conservation and Recovery Act, land disposal of waste containing certain listed hazardous constituents is prohibited, unless the waste is treated to substantially diminish the waste's toxicity or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized. (This prohibition, and the required treatment level, are referred to as the ''land disposal restrictions.'') The Environmental Protection Agency can grant an exemption from the land disposal restrictions if it finds that there will be no migration of hazardous constituents from the disposal unit for as long as the wastes remain hazardous (a ''no-migration exemption''). (The Department received such an exemption for the WIPP test phase.) The Department plans to submit a petition for a no-migration exemption for the WIPP disposal phase to the Environmental Protection Agency in

June 1996. As discussed further below, the SEIS II will analyze three levels of TRU waste treatment to provide for any decision the Environmental Protection Agency may make on that petition.

The Department has been proceeding with the phased development of WIPP since 1981. In the *Final Environmental Impact Statement, Waste Isolation Pilot Plant* (DOE/EIS–0026, 1980), the Department examined the environmental impacts of the WIPP and alternatives and in the 1981 Record of Decision (46 FR 9162, January 23, 1981) decided to begin construction of the WIPP facility to demonstrate the safe disposal of TRU waste in salt formations. In the following nine years, construction of WIPP surface facilities and shafts necessary for waste and salt handling and ventilation were completed, and the experimental area and a portion of the underground disposal area were excavated.

In 1990, the Department prepared the *Final Supplemental Environmental Impact Statement, Waste Isolation Pilot Plant* (DOE/EIS–0026FS, 1990), which reexamined the environmental impacts of WIPP in light of new information and changed circumstances (including a reduction in the expected volume of TRU waste, inclusion of high-curie and high-neutron waste in the TRU waste inventory, a decision not to emplace high-level waste in WIPP for experimental purposes, and changes from a vented to a non-vented TRU waste transportation package). In the 1990 Record of Decision (55 FR 25689, June 22, 1990), the Department decided to continue phased development of WIPP by conducting test phase activities to reduce uncertainties associated with performance assessment predictions that are necessary to determine whether WIPP would comply with applicable disposal regulations. Test phase activities were to have included tests with TRU waste in the underground area of WIPP. On October 21, 1993, in response to comments from the Environmental Protection Agency, the scientific community, and the public, the Department decided to conduct tests using radioactive wastes in above-ground laboratories rather than underground at WIPP. Performance assessment models based on these tests are being used to demonstrate compliance with applicable disposal regulations.

In the 1990 Record of Decision, the Department announced it would prepare this SEIS II before proceeding with the proposed waste disposal phase at the WIPP. The Department is proposing to begin the disposal phase of WIPP operations in June 1998. (The Department is aware that a bill, H.R. 1663, has been introduced in Congress that, if enacted, could accelerate disposal to March 1997.) The Department is preparing the SEIS II to provide updated information about the environmental impacts of the proposed action and alternatives.

The 1990 Record of Decision stated that the scope of the SEIS II would include an analysis of the long-term performance of WIPP in light of the information obtained during the test phase activities and a more detailed analysis of the processing and handling of TRU waste at the generator facilities. In 1992, Congress passed the ''Waste Isolation Pilot Plant Land Withdrawal Act'' (Pub.L. 102–579) (Land Withdrawal Act), which imposed additional requirements on the Department's phased development of the WIPP site. As explained more fully below, the SEIS II will also discuss these statutory changes and other changed circumstances to the extent that they could affect the environmental impacts of WIPP.

Additional changes to the Land Withdrawal Act proposed in H.R. 1663, if enacted, could further affect the scope of the SEIS II analysis.

Changed Circumstances and New Information:

Several changed circumstances since 1990 that could affect the environmental impacts of the WIPP disposal phase will be examined in the SEIS II, as part of the analysis of the proposed action or of alternatives or subalternatives to the proposed action, including the following:

- *Waste Management Programmatic EIS.* The Department is examining various options for waste management across the Departmental complex in the *Waste Management Programmatic EIS* (DOE/EIS–0200) (PEIS). The Notice of Intent was published on October 22, 1990 and an Implementation Plan was issued on December 23, 1993. The Department proposed to modify the scope of the PEIS in January 1995 (60 FR 4607, January 24, 1995). The Draft PEIS is scheduled for issuance in September 1995. The PEIS is examining alternatives for treatment, storage, and disposal of specified waste types complex-wide, including post-1970 generated TRU waste. Because the SEIS II will examine impacts of TRU waste disposal at WIPP, the PEIS does not examine those impacts. Under all of the PEIS TRU waste alternatives, disposal at WIPP of all post-1970 Department-generated retrievably-stored TRU waste is assumed for purposes of analysis.

The PEIS examines the potential environmental impacts of treating the waste to three levels: treatment to meet the planning-basis WIPP waste acceptance criteria (primarily designed to decrease waste mobility), intermediate treatment to also reduce the gas generation potential of the waste, and enhanced treatment of TRU mixed waste to also meet Resource Conservation and Recovery Act land disposal restrictions at various Departmental sites that generate TRU waste. WIPP is the only Departmental site not currently generating TRU waste that would be considered as an alternative treatment site (for contact-handled TRU waste only).

To fulfill the commitments made in the 1990 Record of Decision to examine the impacts of waste processing and handling at the generator sites, the SEIS II will summarize and incorporate by reference the PEIS analysis of the alternatives for TRU waste treatment locations that are being considered in the PEIS. The SEIS II will also include an analysis of the impacts of disposal of waste treated to meet the three treatment levels being considered in the PEIS. The information from the PEIS concerning impacts of various treatment levels at the treatment sites and the SEIS II analysis of disposal impacts at WIPP from various treatment levels will inform the Department's decision on final WIPP waste acceptance criteria.

The Department proposes to use WIPP to dispose of post-1970 retrievably-stored and newly-generated TRU waste generated by defense-related activities. For completeness, however, the SEIS II also will assess the impacts of disposing of a relatively small volume (when compared to defense-related waste) of non-defense TRU waste at WIPP, consistent with the PEIS action alternatives. The SEIS II will incorporate the PEIS analysis by reference and supplement it as appropriate. Statutory changes would be required before WIPP could dispose of non-defense generated TRU waste.

The scope of the analysis in the SEIS II will differ from that of the PEIS in several major aspects resulting from the documents' different purposes. Specifically, the SEIS II, but not the PEIS, will analyze the impacts of TRU waste disposal at WIPP. In addition, because the PEIS assumes for analytic purposes that WIPP will operate, the long-term environmental impacts of indefinite storage of TRU waste at generator sites are not included in the PEIS analysis. The PEIS no-action alternative analyzes the impacts of continued storage of TRU waste at generator sites until disposal at WIPP,

assuming that existing waste management facilities would be used. The impacts of storage for an indefinite time will be analyzed as part of the no-action alternative in the SEIS II.

• *More Generator Sites.* Ten generator sites for the majority of the Department's TRU waste were identified in the 1990 Supplemental EIS (listed under Background, above), but the Department since then has identified additional sites that generate small quantities of TRU waste that would be disposed of at WIPP. Options for managing this waste are being addressed in the PEIS (and will be incorporated by reference in the SEIS II), including treatment at the small generator sites to meet the planning-basis WIPP waste acceptance criteria and direct shipment from these sites to WIPP for disposal (which would require activities such as certification, treatment, storage, and loading for transportation to be done at each small generator site) and using one or more of the main generator sites to perform such waste management activities.

• *Less Waste.* The volumes of contact-handled and remote-handled TRU waste in retrievable storage and estimated to be generated at the generator/storage sites from continuing operations have greatly decreased since 1990, primarily because of the Department's reduced nuclear weapons production activities.

• *Land Withdrawal Act.* The Land Withdrawal Act contains provisions that could affect the environmental impacts of various WIPP alternatives. One section of the Act sets an upper limit on the volume of TRU waste (6.2 million cubic feet) and the radioactivity (5.1 million curies) of remote-handled waste that can be disposed of at WIPP. The SEIS II would examine whether these limitations would affect the previous analysis of the impacts and whether the Department may need to dispose of more waste than the Act would allow to be disposed of at WIPP. Also, the Land Withdrawal Act requires the Department to perform certain studies, including one on rail and truck transportation alternatives, one on remote-handled TRU waste, and one on waste processing and volume reduction technologies. Any new information contained in studies required by the Land Withdrawal Act will be used, as appropriate, in preparing the SEIS II.

• *WIPP Experimental Program.* The WIPP experimental program has provided additional information regarding the site, the waste, and potential interactions between the waste and the WIPP environment that are relevant to the performance of the WIPP site. To date, experimental results appear to confirm previous expectations regarding the suitability of WIPP as a TRU waste repository. Performance assessment models based on these tests are being used to demonstrate compliance with applicable disposal regulations, and will be used to provide information on waste disposal impacts in the SEIS II.

• *Waste Acceptance Criteria.* DOE has revised the planning-basis WIPP waste acceptance criteria since 1990. The revision that could potentially affect environmental impacts the most is the addition of a requirement to treat waste to eliminate corrosive characteristics. The planning-basis WIPP waste acceptance criteria could potentially change again to conform with decisions made regarding TRU waste treatment based on the analysis of treatment subalternatives in the SEIS II.

• *Transportation Routes.* The Department has made minor changes to the local portions of some of the truck transportation routes that were presented in the 1990 Supplemental EIS.

Purpose and Need For Agency Action

As discussed under Background, above, since the mid-1940s, the Department's research and development, nuclear weapons production, and fuel reprocessing activities have produced TRU waste. Continued operation of Departmental facilities, decontamination and decommissioning of defense production facilities, and environmental restoration activities (including remediation of sites where pre-1970 wastes were buried) at Departmental sites are expected to generate additional TRU waste. The Department needs to safely dispose of the accumulated TRU waste and provide for the disposal of the additional TRU waste to be generated. TRU waste emits alpha radiation for a long period of time and must be isolated from means of environmental transport (primarily air and water). Similarly, the hazardous constituents of the TRU mixed waste also pose a hazard if they are taken into the body and need to be isolated or treated to reduce exposure and its consequences. As noted above, Congress authorized the Department in Pub.L. 96–164 to develop a research and development facility to meet the Department's need for disposal. The Department also needs to examine reasonable alternatives for treatment of the TRU waste to ensure that the disposal of the waste is protective of human health and the environment.

Proposed Action

The Department's proposed action is to continue phased development of WIPP by beginning the disposal phase of TRU waste operations at the facility. Any unfinished compliance activities would continue until the Department obtains regulatory approvals needed to begin receiving waste. (Compliance activities are ongoing now, and are scheduled for completion before a decision on the WIPP disposal phase.) The remainder of the planned waste disposal area at WIPP would be excavated to accommodate the waste, as needed. (Approximately one-eighth of the planned disposal area has already been excavated.)

Under the proposed action, retrievably-stored defense-generated waste would be characterized, packaged, and certified at the generator sites to meet WIPP waste acceptance criteria (to be determined based on the analysis in the SEIS II) and then loaded into approved reusable shipping containers for transportation to WIPP by truck. When the waste arrives at WIPP, the shipping container would be unloaded and the waste containers would be inspected before being emplaced underground at WIPP.

Under the proposed action, the SEIS II will analyze the impacts of waste storage, characterization, certification, treatment, and loading at the generator sites, and of transporting TRU waste from the generator sites to WIPP. The SEIS II will also discuss mitigation and accident prevention measures and emergency response procedures to protect the safety and health of workers and the public at the generator sites and along transportation routes, and tracking of waste shipments to WIPP. Much of this analysis will have already been done in the context of the PEIS and the previous WIPP Supplemental EIS, and will be summarized and incorporated by reference, and supplemented or updated as necessary.

The impacts of waste disposal operations at WIPP also will be analyzed under this alternative in the SEIS II, including the impacts of waste receipt and waste package inspection, monitoring, emplacement, and subsequent activities associated with eventual closure, decommissioning and institutional control of the WIPP after waste disposal operations have been completed. Loss of institutional controls will also be considered.

Alternatives to the Proposed Action

The SEIS II will consider a no-action alternative that consists of continued management of TRU waste at the

generator facilities and decommissioning or other disposition of the WIPP facility. This alternative will be analyzed to provide a baseline of environmental impacts if the waste were not disposed of at WIPP. Analysis of the no-action alternative would compare the impacts of continued storage of TRU waste (including an assumed loss of institutional controls after 100 years) with the expected post-closure impacts of WIPP under the proposed-action alternative.

Subalternatives

Subalternatives of the proposed action would also be considered. The effects on the performance of WIPP as a disposal site of several TRU waste treatment subalternatives would be considered in the SEIS II to help the Department establish final WIPP waste acceptance criteria. Another set of subalternatives would address the disposal of non-defense generated TRU waste. Transportation subalternatives, including rail common carrier service and dedicated rail service, particularly for remote-handled waste, would also be reexamined in the SEIS II.

Preliminary Identification of Environmental Issues

The issues listed below have been tentatively identified for analysis in the SEIS II. This list is presented to facilitate public comment on the scope of the SEIS II. It is not intended to be all-inclusive or to predetermine the potential impacts of any of the alternatives.

(1) Potential effects on the public and on-site workers from releases of radiological and non-radiological materials during normal operations and from reasonably foreseeable accidents;

(2) Pollution prevention and waste minimization;

(3) Potential effects on air and water quality and soils, and other environmental consequences of normal operations and reasonably foreseeable accidents;

(4) Potential cumulative effects of operations at the WIPP site, including relevant impacts from other past, present, and reasonably foreseeable activities at the site;

(5) Potential effects on endangered or threatened species, other species of concern, floodplain/wetlands, and archaeological/historical sites;

(6) Effects from normal transportation and reasonably foreseeable transportation accidents;

(7) Potential socioeconomic impacts on communities surrounding WIPP and the generator sites;

(8) Environmental justice considerations;

(9) Unavoidable adverse environmental effects;

(10) Short-term uses of the environment versus long-term productivity; and

(11) Potential irretrievable and irreversible commitments of resources.

Related NEPA Documentation

NEPA documents that have been or are being prepared for activities related to WIPP include, but are not limited to, the following:

(1) Final Environmental Impact Statement, Waste Isolation Pilot Plant (DOE/EIS–0026, October 1980), and the January 23, 1981, Record of Decision (46 FR 9162) and *Final Supplemental Environmental Impact Statement, Waste Isolation Pilot Plant* (DOE/EIS–0026–FS, January 1990), and the June 13, 1990, Record of Decision (55 FR 25689). These documents provide environmental analysis and the decision rationale for earlier phases of the WIPP project.

(2) *Waste Management PEIS*. The Waste Management PEIS will analyze complex-wide waste management alternatives. The Department published the Notice of Intent to prepare the PEIS on October 22, 1990 (55 FR 42633) and issued the Implementation Plan on December 23, 1993. The Department proposed to modify the scope of the PEIS in January 1995 (60 FR 4607), and the Draft PEIS is now scheduled for issuance in September 1995. As noted above, the SEIS II will incorporate the PEIS analysis of treatment alternatives to ensure that the decision whether to proceed with the WIPP disposal phase is consistent with the programmatic decisions on locations of waste treatment facilities that may be made based on the PEIS.

(3) *Environmental Assessment for the Proposed Actinide Source-Term Test Program at Los Alamos National Laboratory* (DOE/EA–0977). This Environmental Assessment examined the site specific impacts of conducting in-laboratory waste testing at Los Alamos National Laboratory as part of the WIPP test phase activities. A Finding of No Significant Impact was issued on January 23, 1995.

(4) *Environmental Assessment for the Construction and Operation of the Carlsbad Environmental Monitoring and Research Center* (DOE/EA–1081) (in preparation). The proposed action is for the Department to continue funding operation of the Carlsbad Environmental Monitoring and Research Center by the University of New Mexico. The Center's laboratories and offices would be constructed in Carlsbad, New Mexico, adjacent to the existing New Mexico State University campus. The Center would independently monitor and analyze biological and ecological impacts from ongoing and future WIPP operations as part of its work to improve environmental monitoring techniques.

(5) *Environmental Assessment for the Construction and Operation of the Sand Dunes to Ochoa Powerline Project* (DOE/EA–1109). The Department adopted this Bureau of Land Management Environmental Assessment and Finding of No Significant Impact on May 19, 1995. This Environmental Assessment examined the impacts of constructing a Department-funded backup powerline to WIPP so that commercial electric power would not be interrupted if the single existing powerline is damaged. As part of the project, a new substation also will be constructed within the WIPP secure area to increase the electrical supply available at WIPP.

(6) The *Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final Environmental Impact Statement* (DOE/EIS–0203–F, April 1995) and Record of Decision, (60 FR 2680, June 1, 1995); *Tritium Supply and Recycling Programmatic Environmental Impact Statement* (DOE/EIS–0161) (in preparation); *Long-Term Storage and Disposition of Weapons-Usable Fissile Materials Programmatic Environmental Impact Statement* (DOE/EIS–0229) (in preparation); *Environmental Impact Statement for the Continued Operation of the Pantex Plant and Associated Storage of Nuclear Weapon Components* (DOE/EIS–0225) (in preparation); *Site-wide Environmental Impact Statement for Continued Operation of the Los Alamos National Laboratory, Los Alamos, New Mexico* (DOE/EIS–0238) (in preparation); *Nevada Test Site and Other Off-Site Locations within the State of Nevada Site-wide Environmental Impact Statement* (DOE/EIS–0239) (in preparation); and *Rocky Flats Environmental Technology Site-wide Environmental Impact Statement, Rocky Flats Site, Golden, Colorado* (no number yet assigned) (in preparation) are among several recently completed and ongoing documents that analyze or have the potential to analyze proposals or alternatives that could generate additional transuranic waste for disposal at WIPP.

Issued in Washington, D.C., this 18th day of August, 1995.

Peter Brush,

Principal Deputy Assistant Secretary, Environment, Safety and Health.

[FR Doc. 95–20878 Filed 8–22–95; 8:45 am]

BILLING CODE 6450–01–P

Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of the Department of Energy Furnace Test Procedures From Carrier Corporation (Case No. F–079)

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 Carrier Corporation (Carrier) from the existing Department of Energy (DOE or Department) furnace test procedure regarding blower time delay for the company's 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces.

Today's notice also publishes a ''Petition for Waiver'' from Carrier. Carrier's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Carrier seeks to test using a blower delay time of 45 seconds for its 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than September 22, 1995.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–079, Mail Stop EE–43, Room 1J–108, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7574.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, 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) 586–9138

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 furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, 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 waive temporarily, 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 Assistant 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 June 28, 1995, Carrier filed an Application for Interim Waiver regarding blower time delay. Carrier's Application seeks an Interim Waiver from the Department's test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Carrier requests the allowance to test using a 45-second blower time delay when testing its 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, AND 58DNV/334BAV lines of induced draft furnaces. Carrier states that the 45-second delay is indicative of how these furnaces actually operate. Such a delay results in an overall furnace AFUE of approximately 0.6 percent point improvement. Since the Department's current test procedures do not address this variable blower time delay, Carrier asks that the Interim Waiver be granted.

The Department has published a Notice of Proposed Rulemaking on August 23, 1993, (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous waivers for this type of time blower delay control have been granted by the Department of Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920 January 25, 1991, 57 FR 10166, March 24, 1992, 57 FR 34560, August 5, 1992; 59 FR 30577, June 14, 1994, and 59 FR 55479, November 7, 1994; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991, and 59 FR

30579, June 14, 1994; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994: Amana Refrigeration Inc. 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman, Manufacturing Corporation, 56 FR 51713, October 15, 1991. 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160 March 24, 1992, FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, 57 FR 54230, November 17, 1992, and 59 FR 30575, June 14, 1994; Thermo Products, Inc., 57 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992, and 59 FR 46968, September 13, 1994; Bard Manufacturing Company, 57 FR 53733, November 12, 1992, and 59 FR 30578 June 14, 1994; and York International Corporation, 59 FR 46969, September 13, 1994, and 60 FR 100, January 3, 1995. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon the Department's 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.

Therefore, based on the above, the Department is granting Carrier an Interim Waiver for its 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces. 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 Carrier was issued.

Pursuant to paragraph (b) of 10 CFR Part 430.27, the Department is hereby publishing the ''Petition for Waiver'' in its entirety. The petition contains no confidential information. The Department Solicits comments, data, and information respecting the petition.

Issued in Washington, DC August 14, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Mr. Daniel J. Dempsey, P.E.,
Director, Heating Products Development, Residential Products Group, Carrier Corporation, 7310 West Morris Street, P.O. Box 70, Indianapolis, IN 46206–0070

Dear Mr. Dempsey: This is in response to your June 28, 1995, Application for Interim Waiver and Petition for Waiver from the Department of Energy (the Department) test procedure, regarding blower time delay for Carrier Corporation (Carrier) 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces.

Previous waivers for this type of timed blower delay control have been granted by the Department of Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, 57 FR 34560, August 5, 1992, 59 FR 30577, June 14, 1994, and 59 FR 55470, November 7, 1994; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991, and 59 FR 30579, June 14, 1994; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 48 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992, and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, 57 FR 54230, November 17, 1992, and 59 FR 30575, June 14, 1994; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992, and 59 FR 46968, September 13, 1994; Bard Manufacturing Company, 57 FR 53733, November 12, 1992, and 59 FR 30578, June 14, 1994; and York International Corporation, 59 FR 46969, September 13, 1994, and 60 FR 100, January 3, 1995. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Carrier's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Carrier will likely experience absent a favorable determination on its application.

However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE 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.

Therefore, Carrier's Application for an Interim Waiver from the DOE test procedure for its 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces regarding blower time delay is granted.

Carrier shall be permitted to test its 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, 58DXT/331JAV, and 58DNV/334BAV lines of induced draft furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Wavier 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.

Sincerely,

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

June 28, 1995.

The Assistant Secretary for Conservation and Renewable Energy

United States Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585

Subject: *Petition for Waiver and Application for Interim Waiver*

Gentlemen: This is a petition for Waiver and Application for Interim Waiver which are submitted pursuant to title 10 CFR 430.27 as amended November 14, 1986. Waiver is requested from Test Procedures for Measuring the Energy Consumption of Furnaces found in Appendix N to Subpart B of Part 430.

Under the existing Test Procedure, a 1.5 minute time delay between burner and blower startup is required. Carrier requests a waiver from the specified 1.5 minute delay. In its place, we request the use of a 45-second delay on Carrier's line of 58UXT/330JAV, 58UHV/333BAV, 58UXV/333JAV, and 58DNV/334BAV induced draft furnaces.

The time delay in all lines of equipment is fixed within the furnace control, and cannot be adjusted by the installer or servicer.

The current test producers do not credit Carrier for the energy savings associated with the shorter blower time delays. Test data on our mid-efficiency furnaces show a decrease in the heat-up cycle energy losses when using the 45-second delay, resulting in an increase in AFUE of approximately 0.6 AFUE points. Confidential supporting test data is available upon request.

Carrier is confident that a waiver will be granted for public reasons in the light of previous rulings in which DOE granted waivers of this type to Carrier, Lennox Industries, Inter-City Products, Amana, Rheem Manufacturing, and the Trane Company

Respectfully,

Daniel J. Dempsey, P.E.,

Director, Heating Products Development, Residential Products Group, Carrier Corporation.

[FR Doc. 95–20879 Filed 8–22–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER94–1188–006, et al.]

LG&E Power Marketing Inc., et al.; Electric Rate and Corporate Regulation Filings

August 15, 1995.

Take notice that the following filings have been made with the Commission:

1. LG&E Power Marketing Inc.

[Docket No. ER94–1188–006]

Take notice that on August 1, 1995, LG&E Power Marketing, Inc. tendered for filing certain information as required by the Commission's letter order dated August 19, 1995. Copies of the informational filing are on file with the Commission and are available for public inspection.

2. Louisville Gas & Electric Company

[Docket No. ER95–928–000]

Take notice that on August 7, 1995, Louisville Gas & Electric Company tendered for filing a Notice of Withdrawal in the above-referenced docket.

Comment date: August 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. The Washington Water Power Company

[Docket No. ER95–1135–000]

Take notice that on July 24, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission an amendment in the above-referenced docket.

Comment date: August 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Washington Water Power Company

[Docket No. ER95–1446–000]

Take notice that on July 28, 1995, The Washington Water Power Company (WWP), tendered for filing a signed service agreement under FERC Electric Tariff Volume No. 4 with Englehard Power Marketing, Inc. along with a Certificate of Concurrence with respect to exchanges. WWP requests waiver of the prior notice requirement and requests an effective date of September 1, 1995.

Comment date: August 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Atlantic City Electric Company

[Docket No. ER95–1476–000]

Take notice that on August 3, 1995, Atlantic City Electric Company (ACE), tendered for filing an Agreement for Short-Term Energy Transactions between ACE and Heartland Energy Services. ACE requests that the Agreement be accepted to become effective August 4, 1995.

Copies of the filing were served on the New Jersey Board of Regulatory Commissioners.

Comment date: August 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Company

[Docket No. ER95–1477–000]

Take notice that on August 3, 1995, Florida Power & Light Company (FPL), tendered for filing proposed Service Agreements with City of Lakeland for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on August 5, 1995, or as soon thereafter as practicable.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: August 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Kentucky Utilities Company

[Docket No. ER95–1478–000]

Take notice that on August 3, 1995, Kentucky Utilities Company (Company), tendered for filing two Supplements to the Interconnection Agreement between Company and the Tennessee Valley Authority (TVA), which provides for a backup feed between the two parties' systems and for TVA to pay KU a monthly charge for transmission service. An Agreement between the parties dated March 22, 1951, which is on file with this Commission, Company Rate Schedule FERC No. 93, provides for additional delivery points to be established as needs arise and for the parties to provide transmission service to specified transmission dependent loads.

The Company requests the effective date of April 1, 1995 for the transmission service charge. A backup feed to Warren Rural Electric Cooperative Corporation (WRECC) will be established from KU's system in the Leitchfield, Kentucky area.

Company states that copies of the filing have been sent to TVA, WRECC, and the Public Service Commission of Kentucky and the Virginia State Corporation Commission.

Comment date: August 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Bangor Hydro-Electric Company

[Docket No. ER95–1479–000]

Take notice that on August 3, 1995, Bangor Hydro-Electric Company (Bangor), tendered for filing Rate Schedule FERC No. 7 (Fifteenth Revision) for partial requirements service to Eastern Maine Electric Cooperative, Inc.

Comment date: August 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Houston Lighting & Power Company

[Docket No. ER95–1480–000]

Take notice that on August 3, 1995, Houston Lighting & Power Company (HL&P), tendered for filing executed transmission service agreements (TSA's) under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. The filing consists of firm power TSA's and economy energy and emergency power TSA's will each of (1) Southwestern Electric Power Company (SWEPCO), (2) Central Power and Light Company (CP&L) and (3) West Texas Utilities Company (WTU) providing for the transmission of power and energy to be scheduled over the East HVDC Interconnection. HL&P has requested an effective date of August 6, 1995, or the commercial operation date of the East HVDC Interconnection if that date is later than August 6, 1995.

Copies of the filing were served on WTU, SWEPCO and CP&L and the Public Utility Commission of Texas.

Comment date: August 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER95–1481–000]

Take notice that on August 3, 1995, Northern States Power Company-Minnesota (NSP–M) and Northern States Power Company-Wisconsin (NSP–W) jointly tendered and requested the Commission to accept two Transmission Service Agreements which provide for Limited and Interruptible Transmission Service to Wisconsin Public Power, Inc.

NSP requests that the Commission accept for filing the Transmission Service Agreements effective as of September 5, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to Part 35 so the Agreements may be accepted for filing effective on the date requested.

Comment date: August 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Portland General Electric Company

[Docket No. ER95–1482–000]

Take notice that on August 3, 1995, Portland General Electric Company (PGE), tendered for filing a Signed Service Agreement Under FERC Electric Tariff, 1st Revised Volume No. 2 (Docket No. ER95–754–000) with Eugene Water and Electric Board.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993, (Docket No. PL93–2–002), and the Commission's November 22, 1994 letter to PGE (Docket No. ER94–1543–000), PGE respectfully requests the Commission grant waiver of the notice requirements of 18 CFR 35.3 to allow the signed Service Agreement to become effective May 13, 1995.

A copy of the filing has been served on the party included in the body of the filing letter.

Comment date: August 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Puget Sound Power & Light Company

[Docket No. ER95–1483–000]

Take notice that on August 3, 1995, Puget Sound Power & Light Company (Puget), tendered for filing two service agreements (together, the Service Agreement) with Public Utility District No. 2 of Grant County, Washington and Public Utility District No. 1 of Cowlitz County, Washington, respectively (together, the Districts). A copy of the filing was served upon the Districts.

The Service Agreements are for the purchase and sale of non-firm surplus thermal or purchased energy pursuant to Puget's FPC Electric Tariff Original Volume No. 3.

Comment date: August 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Union Electric Company

[Docket No. ER95–1484–000]

Take notice that on August 4, 1995, Union Electric Company (UE), tendered for filing a Transmission Service Agreement dated August 7, 1995 between Noram Energy Services Inc. (NORAM) and UE. UE asserts that the purpose of the Agreement is to set out specific rates, terms, and conditions for transmission service transactions from UE to NORAM.

Comment date: August 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Central Vermont Public Service Corporation

[Docket No. ER95–1485–000]

Take notice that on August 4, 1995, Central Vermont Public Service Corporation, tendered for filing a service agreement with New England Power under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power and energy at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on July 5, 1995.

Comment date: August 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Energy Alliance Partnership

[Docket No. ER95–1491–000]

Take notice that on August 4, 1995, Energy Alliance Partnership (Alliance) petitioned the Commission for acceptance of Alliance's Rate Schedule FERC No. 1; the grant of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Comment date: August 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–20917 Filed 8–22–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–540–000]

South Georgia Natural Gas Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed South Georgia Expansion Project and Request for Comments on Environmental Issues

August 17, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the South Georgia Expansion Project.[1] This EA will be

[1] South Georgia Natural Gas Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

South Georgia Natural Gas Company (South Georgia) wants to expand the capacity of its facilities in Alabama and Georgia to transport an additional 6,000 thousand cubic feet per day of natural gas to Procter & Gamble Paper Products Company (Procter & Gamble) to meet the gas requirements resulting from an expansion of Procter & Gamble's Albany plant. South Georgia requests Commission authorization, in Docket No. CP95–540–000, to construct and operate 7.1 miles of 16-inch-diameter pipeline loop on its existing system from about milepost (MP) 27.9 in Russell County, Alabama to MP 34.9 in Stewart County, Georgia. See appendix 1 for a map of the proposed facilities.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 26.9 acres of land. Following construction, about 15.2 acres would be maintained as new right-of-way. The remaining 11.7 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- public safety
- land use
- cultural resources
- air quality and noise
- hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and made recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list of this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserves attention based on a preliminary review of the proposed facilities and the environmental information provide by South Georgia. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- The proposed pipeline would cross the Chattahoochee River and would require a temporary work space area of 150 feet by 100 feet.
- Eleven wetlands would be crossed by the proposed project.
- Ten federally or proposed listed endangered or threatened species may occur in the proposed project area.
- A total of 23.7 acres of forest land would convert to permanent pipeline right-of-way.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP95–540–000;
- Send a *copy* of your letter to: Ms. Alisa Lykens, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Room 7312, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before September 22, 1995.

If you wish to receive a copy of the EA, you should request one from Ms. Lykens at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 if the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Alisa Lykens, EA Project Manager, at (202) 208–0766.

Lois D. Cashell,

Secretary.

[FR Doc. 95–20838 Filed 8–22–95; 8:45 am]

BILLING CODE 6717–01–M

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capital Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[Docket No. CP95–664–000, et al.]

ANR Pipeline Company, et al.; Natural Gas Certificate Filings

August 15, 1995.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP95–664–000]

Take notice that on August 4, 1995, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed a prior notice request with the Commission in Docket No. CP95–664–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate an interconnection with Wisconsin Public Service Corporation (WPS) under ANR's blanket certificates issued in Docket Nos. CP82–480–000 and CP88–532–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

ANR proposes to construct and operate a 4-inch hot tap and metering facilities with two 2-inch turbine meters as an interconnection with WPS in Lake Nokomis, Lincoln County, Wisconsin. ANR states that it would deliver a maximum of 900 Mcf of natural gas per day under its FERC Rate Schedules ETS and FSS and that deliveries at this proposed interconnection could be made without detriment or disadvantage to any existing customer. ANR also states that WPS would reimburse ANR for 50 percent of the interconnection's estimated $179,000 construction cost.

Comment date: September 29, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. CNG Transmission Corporation and Texas Eastern Transmission Corporation

[Docket No. CP95–668–000]

Take notice that on August 7, 1995, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301 and Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056, collectively referred to as Applicants, filed a joint application in Docket No. CP95–668–000 pursuant to Section 7(b) and 7(c) of the Natural Gas Act for permission approval to abandon an existing compressor station and a related delivery service, and a certificate of public convenience and necessity authorizing the construction and operation of certain compression and pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants request authorization to abandon the existing Jeannette Station located in Westmoreland County, Pennsylvania. Applicants state that the present amount of compression at the Jeannette Station is 7,980 horsepower. Applicants also propose to abandon the delivery service to Peoples Natural Gas Company (PNG) at the Jeannette Station and effect the same delivery to PNG at the existing Oakford Compressor Station where facilities are in place to deliver gas to PNG from either the Oakford Storage Complex or from CNG's pipeline system.

As part of the abandonment of Jeannette Station, Applicants propose to install two 5,000 horsepower electric compressor units and related facilities at the existing South Oakford Station located in Westmoreland County, Pennsylvania. Applicants also propose to construct two new parallel storage pipelines consisting of 3,158 feet of 30-inch storage suction pipe and 3,158 feet of 20-inch storage discharge pipe. Applicants state that the estimated cost of the facilities is $16 million.

Applicants state that the proposed project would improve the recycling and delivery of migrated gas and maintain maximum deliverability from the Oakford Storage Pool; result in more efficient use of certificated storage capacity; maintain pressures at designated levels within the Oakford Storage Pool; reduce current air emission levels; and reduce operating costs.

Comment date: September 5, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP95–670–000]

Take notice that on August 8, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–670–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon, by sale to Shell Offshore Inc. (Shell), lateral and meter facilities located in offshore Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that the facilities were originally constructed to receive gas purchased from Shell in offshore Louisiana. Natural states that these facilities are no longer related to any gas purchase contracts and hence, no longer hold sufficient value to Natural, to warrant the expenditures required to maintain them.

Specifically, Natural proposes to abandon: (1) 2.8 miles of 8-inch pipeline that extends between Shell's ''A'' and ''B'' platforms in Eugene Island Block 331, offshore Louisiana, (2) a dual 8-inch meter and appurtenant facilities located on Shell's ''A'' platform in Eugene Island Block 331, offshore Louisiana, (3) a 10-inch dual meter and appurtenant facilities located on Shell's platform in Vermilion Block 321, offshore Louisiana, (4) a dual 6-inch meter and appurtenant facilities located on Shell's platform in Vermilion Block 340, offshore Louisiana, and (5) a dual 8-inch meter and appurtenant facilities located on Shell's platform in West Cameron 565, offshore Louisiana. Natural states that it intends to sell the facilities to Shell for $260,000.

Comment date: September 5, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance

of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–20918 Filed 8–22–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–682–000, et al.]

Williams Natural Gas Company, et al. Natural Gas Certificate Filings

August 16, 1995.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP95–682–000]

Take notice that on August 10, 1995, Williams Natural Gas Company (Applicant), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP95–682–000, a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by reclaim approximately 3.5 miles of the Cambridge 16-inch pipeline and to construct approximately 3.5 miles of replacement 6-inch pipeline located in Cowley County, Kansas, under the authorization issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

The portion of 16-inch pipeline to be replaced is of 1917 vintage and experienced a blowout. This line has been isolated and will be removed in order for the smaller replacement line to be installed in the same ditch. The replacement line will be operated at higher pressures to offset the larger pipe size that operated at lower pressures, thus maintaining the same delivery capability of 134,800 Mcf per day.

The total construction cost is estimated to be $605,440, the estimated reclaim cost is $21,440, and the estimated salvage value is $31,600.

Comment date: October 2, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Questar Pipeline Company

[Docket No. CP95–650–000]

Take notice that on July 31, 1995, Questar Pipeline Company (Questar Pipeline), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP95–650–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain certificated facilities by transfer (spindown) to Questar Gas Management Company (QGM), a wholly owned, unregulated subsidiary of Questar Pipeline that will be involved in the gathering, treating, dehydration, purification, field compression and processing of natural gas, and in the operation of various field facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Questar Pipeline proposes to transfer to QGM all of its gathering facilities and services by sale at net book value, effective January 1, 1996. Questar Pipeline states that the assets to be transferred to QGM include: (1) Certificated gathering facilities, including certain gathering facilities certificated to perform a limited transmission function, (2) a single transmission facility and (3) noncertificated gathering facilities. It is stated that the facilities are located in the states of Colorado, Wyoming and Utah, and as of May 31, 1995, the certificated portion of the facilities had a gross plant investment value of $7,366,119.

Questar Pipeline describes the facilities as follows:

(1) Certificated Gathering (Moxa Arch) Facilities.

(a) Lateral Nos. 1127, 1128, 1129 and 1130 (formerly Questar Pipeline's jurisdictional Lateral Nos. 35, 34 and 50). It is stated that these laterals were found to perform a gathering function by order issued May 17, 1994, in Docket Nos. CP93–431–000 and –001, although the original certifications remain until proper abandonment is sought.[1]

(b) Powder Wash Compressor Unit No. 1–A. It is also stated that this compressor was found to perform a gathering function by order issued July 8, 1994, in Docket No. CP93–706–000, although the original certification remains until proper abandonment authority is sought.[2]

(2) Gathering Facilities Certificated for Limited Transmission Function.

(a) Jurisdictional Tap Line No. 94 (formerly referred to as gathering Lateral Nos. 703, 722 and 829) and the Henry's Fork Compressor Station, and Metering and Regulating Station.

(3) Certificated Transmission Facility.

(a) Emigrant Trail Measuring and Regulating Station. This facility is said to comprise 786 feet of 10-inch jumper line, two eight-inch meter runs and one three-inch meter run, is located between two nonjurisdictional gas processing plants, and was inadvertently omitted from Questar Pipeline's Moxa Arch area refunctionalization filing in Docket Nos. CP93–431–000 and –001.

Questar Pipeline states that it will transfer its certificated and noncertificated gathering facilities upon receipt of a declaratory order requested by QGM, as set forth in QGM's related filing submitted in Docket No. CP95–658–000. Upon receipt of the requested authorizations, Questar Pipeline explains, QGM will own and operate these facilities as part of its nonjurisdictional gathering system. Questar Pipeline advises that the parties do not want the requested authorization unless the Commission deems the facilities to be nonjurisdictional upon transfer to QGM.

Questar Pipeline further states that QGM will operate the gathering facilities it acquires from Questar Pipeline in a nondiscriminatory manner and, through the assignment of existing gathering agreements, the negotiation of new gathering agreements, or through ''default contracts'', will offer existing Questar Pipeline gathering customers the opportunity to continue to receive reliable gathering services. Questar Pipeline notes that the current gathering agreements contain assignment provisions, agreed to by its customers, that permit assignment by Questar Pipeline to an affiliate. Because QGM will fully honor the terms and conditions of those agreements, Questar Pipeline states, no aspect of the service to the customer will be altered. It is further stated that the proposed transfer will not adversely affect Questar Pipeline's ability to continue to provide jurisdictional open-access transportation and storage services to its transportation and storage customers.

Questar Pipeline states that approval of its request will permit it to divest itself of facilities that do not complement its primary role as an open-access transporter of natural gas in a post Order No. 636 environment.

Comment date: September 6, 1995, in accordance with Standard Paragraph F at the end of this notice.

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[1] *See* 68 FERC ¶61,103 at p. 61,568 (1994).

[2] *See* 68 FERC ¶61,044 at p. 61,145 (1994).

3. Questar Gas Management Company

[Docket No. CP95–658–000]

Take notice that on August 2, 1995, Questar Gas Management Company (QGM), P.O. Box 115030, Salt Lake City, Utah 84147, filed in Docket No. CP95–658–000 a petition pursuant to Section 16 of the Natural Gas Act (NGA) and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207 (a)(2)), for a declaratory order disclaiming Commission jurisdiction over certain facilities and the services provided through them, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

QGM seeks a declaratory order from the Commission finding that QGM's proposed acquisition, ownership and operation of the gathering facilities currently owned by Questar Pipeline Company (Questar Pipeline) will not subject QGM or any portion of its facilities or services to jurisdiction under the Natural Gas Act (NGA).[3] QGM states that it is a wholly owned, unregulated subsidiary of Questar Pipeline, and upon acquisition of the facilities will be involved in the gathering, treating, dehydration, purification, field compression and processing of natural gas, and in the operation of various field facilities. It is stated that the facilities QGM will acquire are located in the states of Colorado, Wyoming and Utah.

QGM states that Questar Pipeline and QGM are undertaking the transfer of the gathering facilities, in part, as a response to the Commission's current policy not to regulate gathering by pipeline affiliates. QGM explains that Questar Pipeline unbundled its gathering services prior to the Commission's Order No. 636 that required pipelines to unbundle various historical services and that this has contributed to increased competition in already highly competitive areas in which Questar Pipeline currently provides gathering services. Because most of the providers of gathering services in these areas are not regulated by the Commission, QGM further explains that it is acquiring the Questar Pipeline gathering facilities in order to compete for gathering services on a ''level playing field'' with other non-regulated gatherers.

It is stated that Questar Pipeline and QGM have entered into an agreement for the transfer of assets under which QGM, upon Commission approval, will receive all of Questar Pipeline's gathering facilities and services at net book value, effective January 1, 1996. QGM emphasizes that it will conduct its gathering operations as a separate Questar Pipeline subsidiary whose business activities will be distinct from Questar Pipeline's interstate pipeline transportation business and will operate the subject gathering facilities in a non-discriminatory manner and, through the assignment of existing gathering agreements, the negotiation of new gathering agreements, or through ''default contracts'', will offer existing Questar Pipeline gathering customers the opportunity to continue to receive gathering services. Consequently, QGM concludes, no aspect of the service to the customer will be altered.

It is explained that the assets to be transferred to QGM include: (1) ''certificated gathering'' facilities, including certain gathering facilities certificated to perform a limited transmission function, (2) a single transmission facility and (3) non-certificated gathering facilities and that the gross-plant investment, as of May 31, 1995, of the noncertificated gathering, certificated gathering and transmission facilities proposed to be transferred to QGM is $83,649,500. QGM states that, upon receipt of the requested authorizations and upon completion of the transfer (spindown) of Questar Pipeline's gathering facilities, QGM will be engaged in the business of operating field facilities and gathering, treating, processing, dehydrating, purifying and providing field compression of natural gas. These activities, QGM further states, will be in competition with, among others, producers, other gatherers and intrastate pipeline companies, none of whom are regulated by the Commission.

Comment date: September 6, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

4. ANR Pipeline Company

[Docket No. CP95–678–000]

Take notice that on August 9, 1995, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP95–678–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate an interconnection under ANR's blanket certificate issued in Docket No. CP82–480–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR proposes to construct and operate an interconnection between ANR and Consumers Power Company. The interconnection will be located in Overisel Township, Allegan County, Michigan.

Comment date: October 2, 1995, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP95–685–000]

Take notice that on August 14, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–685–000 a request pursuant to Section 157.205 of the Commission's Regulations to construct and operate a new delivery point located on its system in McKean County, Pennsylvania for deliveries of natural gas to an existing end-user customer, Ball Glass Container Corporation (Ball Glass) under Tennessee's blanket certificate issued in Docket No. CP82–413–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to install, own, operate and maintain a 4-inch hot tap assembly, approximately sixty feet of 4-inch interconnecting pipe and a meter skid assembly on Tennessee's existing right-of-way and to install electronic gas measurement equipment on a site provided by Ball Glass adjacent to Tennessee's right-of-way located in McKean County, Pennsylvania. Tennessee states that the estimated cost to install these facilities is $65,000. Tennessee states that the volumes to be delivered to Ball Glass after the delivery point is established would not exceed the total quantities authorized to be delivered and would have no impact on Tennessee's peak day and annual deliveries. National states that the addition of the new delivery point is not prohibited by Tennessee's existing tariff and Tennessee has sufficient capacity to accomplish deliveries at the new delivery point without detriment or disadvantage to Tennessee's other customers.

Comment date: October 2, 1995, in accordance with Standard Paragraph G at the end of this notice.

6. Northern Natural Gas Company

[Docket No. CP95–687–000]

Take notice that on August 14, 1995, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket

[3] QGM states that Questar Pipeline has filed an application in Docket No. CP95–650–000 for authorization to abandon the facilities to be acquired by QGM.

No. CP95–687–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon, by sale to Conoco Inc. (Conoco), certain compressor and pipeline facilities, with appurtenances, in Rio Blanco County, Colorado, referred to as the Sagebrush facilities, and certain services rendered thereby, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that the Sagebrush facilities consist of its Rio Blanco compressor station and 200 feet of 10-inch downstream pipeline connecting to Questar Pipeline Company. Northern also states that Conoco owns the majority of the production attached to the Sagebrush facilities.

Northern explains that the Sagebrush facilities were initially acquired as gas supply facilities in order to connect new gas supplies required for its merchant sales obligation; however, as a result of industry restructuring under Order No. 636, Northern's role in the marketplace has changed from a merchant of natural gas to a transporter of natural gas and the responsibility for obtaining gas supply has shifted from Northern to its customers. Consequently, Northern states that the Sagebrush facilities are non-contiguous to Northern's traditional transmission pipeline system and are therefore no longer needed by Northern. Northern states that the Sagebrush facilities, if owned and operated by Conoco, will enhance the use of Conoco's other assets and services in the Rocky Mountain area.

Comment date: September 6, 1995, in accordance with Standard Paragraph F at the end of this notice.

7. Conoco Inc.

[Docket No. CP95–689–000]

Take notice that on August 15, 1995, Conoco Inc. (Conoco), 600 North Dairy Ashford, Houston, Texas 77079, filed in Docket No. CP95–689–000 a petition for an order declaring that the Sagebrush facilities located in Rio Blanco County, Colorado, to be acquired from Northern Natural Gas Company (Northern), are gathering, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Conoco states that the Sagebrush facilities are located in the vicinity of Conoco's production and gathering operations and Conoco owns most of the production attached to the Sagebrush facilities. Conoco states that it has entered into an Asset Purchase Agreement with Northern to acquire these assets for $125,000. Conoco further states that the Sagebrush facilities consist of a 137 horsepower compressor and 200 feet of 10-inch pipeline which connects to Questar Pipeline Company's mainline facilities.

Comment date: September 6, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–20919 Filed 8–22–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–1194–000]

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company; Notice of Filing

August 17, 1995.

Take notice that The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company on July 14, 1995, amended its filing in this docket of proposed changes in their FERC Electric Service Rate Schedules Nos. 26, 24, 160, 45 and 36 respectively.

The amendment to the filing is solely to correct the FERC rate schedule number for Toledo Edison Company. The filing amends the utilities' CAPCO Basic Operating Agreement (Agreement) to permit any two parties to the Agreement to provide capacity and associated energy in connection with scheduled maintenance on a willing supplier/willing receiver basis.

Copies of the filing were served upon the Public Utilities Commission of Ohio and the Pennsylvania Public Utility Commission.

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 August 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–20822 Filed 8–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–673–000]

Colorado Interstate Gas Company; Notice of Application

August 17, 1995.

Take notice that on August 8, 1995, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP95–673–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon five natural gas transportation agreements, all as more fully set forth in the application on file with the Commission and open to public inspection.

CIG proposes to abandon the following transportation agreements:

(1) On October 5, 1994, the Commission issued a certificate in Docket No. CP84–557–000, authorizing CIG to transport, on a best efforts basis, up to 9,000 Mcf of gas per day for Questar Pipeline Company (Questar). CIG states that under Rate Schedule X–52 it received gas from Questar in Sweetwater County, Wyoming and redelivered the gas to Questar in converse County, Wyoming. CIG asserts that by letter dated March 22, 1995, Questar has agreed to the termination of the agreement effective April 30, 1995.

(2) On April 12, 1985, the Commission issued a certificate in Docket No. CP85–23–000, authorizing CIG to transport, on an interruptible basis, up to 5,000 Mcf of gas per day for NGL Production Company (NGL). CIG states that under Rate Schedule X–53 it received gas from NGL in Park and Fremont Counties, Wyoming and redelivered the gas to NGL in Sweetwater County, Wyoming and Unitah County, Utah. CIG asserts that by letter dated June 21, 1995, it gave NGL notice that the agreement termination would be effective July 31, 1995.

(3) On October 30, 1985, the Commission issued a certificate in Docket No. CP85–589–000, authorizing CIG to transport, on an interruptible basis, up to 10,000 Mcf of gas per day for Sinclair Oil Corporation (Sinclair). CIG states that under Rate Schedule X–56 it received gas from Sinclair in Park, Fremont, Sweetwater, and Natrona Countries, Wyoming and redelivered the gas to Sinclair in Carbon County, Wyoming. CIG asserts that by letter dated June 21, 1995, it gave Sinclair notice that the agreement termination would be effective September 30, 1995.

(4) On September 30, 1985, the Commission issued a certificate in Docket No. CP85–447–000, authorizing CIG to transport, on an interruptible basis, up to 15,000 Mcf of gas per day for Western Natural Gas and Transmission Corp. (Western). CIG states that under Rate Schedule X–58 it received gas from Western in Park County, Wyoming and Kiowa County, Colorado and redelivered the gas to Western in Adams County, Colorado. CIG asserts that by letter dated June 13, 1995, it gave Western notice that the agreement termination would be effective September 30, 1995.

(5) On March 19, 1986, the Commission issued a certificate in Docket No. CP85–481–000, authorizing CIG to transport, on an interruptible basis, up to 10,000 Mcf of gas per day for Northern Natural Gas Company (Northern). CIG states that under Rate Schedule X–64 it received gas from Northern in Weld and Adams Counties, Colorado and Sweetwater, Carbon, Washakie, and Fremont Counties, Wyoming and redelivered the gas to Northern in Sweetwater County, Wyoming and Moore County, Texas. CIG asserts that by letter dated July 22, 1994 Northern has agreed to the termination effective July 31, 1994.

CIG states that it requests that the effective date of the proposed abandonment be the date the Commission issues an acceptable order. CIG also mentions that the transportation services listed above can be abandoned without detriment to any of the shippers.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 7, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CIG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–20823 Filed 8–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–72–007]

Iroquois Gas Transmission System, L.P.; Notice of Refund Report

August 17, 1995.

Take notice that on August 4, 1995, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing with the Federal Energy Regulatory Commission a Refund Report showing the amounts that were refunded pursuant to the Stipulation and Agreement (Agreement) filed on March 30, 1995, and approved by a Commission letter order issued June 19, 1995.

The report states that Iroquois has refunded to its affected customers $12,639,925.35 in principal and interest. Also, pursuant to Article I Section 1.2 of the Agreement, Iroquois has applied the ITS revenue sharing threshold offset against the August 1994 principal balance of each affected customer. The total offset applied is $192,708.52. Iroquois states that the refund was calculated in accordance with Section 2.2 of the Agreement. Interest was computed in accordance with 18 CFR 154.67(c)(2).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before August 24, 1995. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–20824 Filed 8–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–206–007]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 17, 1995.

Take notice that on August 14, 1995, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, proposed to be effective August 14, 1995.

Second Substitute First Revised Sheet No. 263A

In compliance with the Commission's Order issued August 3, 1995, in the above-referenced Docket, Northern states that it is refiling Sheet No. 263A to reflect an extension of the ''Resolution of Supply Commitment at Carlton'' (Carlton Resolution) for a one-year period, by changing the termination date from October 31, 1995, to October 31, 1996.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed on or before August 24, 1995. Protests will be considered by the Commission in determining the appropriate proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–20825 Filed 8–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–197–000 and RP95–197–001]

Transcontinental Gas Pipe Line Corporation; Notice of Informal Settlement Conference

August 17, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, September 12, 1995, at 10:00 a.m., for the purpose of exploring the possible settlement of the above-referenced proceeding. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, DC.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations. *See* 18 CFR 385.214.

For additional information, please contact Warren C. Wood at (202) 208–2091 or Donald A. Heydt at (202) 208–0740.

Lois D. Cashell,

Secretary.

[FR Doc. 95–20815 Filed 8–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–686–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

August 17, 1995.

Take notice that on August 14, 1995, Transcontinental Gas Pipe Line Corporation (''Transco''), Post Office Box 1396, Houston, Texas 77251, pursuant to and in accordance with Section 7(b) of the Natural Gas Act (''NGA'') and Part 157 of the Federal Energy Regulatory Commission's (''Commission'') regulations, filed an application in Docket No. CP95–686–000 for an order permitting and approving the abandonment of interruptible transportation service provided to Public Service Electric & Gas Company (''PSE&G'') under Transco's Rate Schedule X–77. In its application, Transco states that Rate Schedule X–77 sets forth the terms and conditions under which Transco provides interruptible transportation of up to 15,000 Mcf of gas per day for PSE&G from the interconnection between Transco and Tennessee Gas Pipeline Company located near Rivervale, Bergen County, New Jersey to existing points of delivery to PSE&G on Transco's Rivervale lateral in New Jersey. Transco states that service under Rate Schedule X–77 was authorized pursuant to the certificate of public convenience and necessity granted by the Commission by order issued May 4, 1976 in Docket No. CP75–337, Transcontinental Gas Pipe Line Corp., 55 FPC 2105 (1976).

Transco states that it provided notice to PSE&G that Transco was electing to terminate Rate Schedule X–77 because PSE&G no longer utilized that agreement for interruptible transportation service. Transco states that PSE&G formally notified Transco that PSE&G concurred with Transco's desire to terminate the agreement.

Transco states that abandonment of Rate Schedule X–77 is in the public interest. PSE&G no longer utilizes or desires this service agreement for interruptible service, and if PSE&G later desires to replace the interruptible transportation service rendered under Rate Schedule X–77, it could do so under Transco's Rate Schedule IT and Part 284 of the Commission's regulations. Transco further states that, unlike service under Rate Schedule X–77, the replacement service would have the advantage of flexible receipt points. Transco proposes that the effective date of the abandonment be the date of the Commission's order authorizing the abandonment.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 6, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the

certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–20826 Filed 8–22–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5284–2]

Governmental Advisory Committee to the U.S. Representative to the North American Commission on Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of the third meeting of the Governmental Advisory Committee (GAC) to the U.S. Government Representative to the North American Commission on Environmental Cooperation (NACEC).

The Committee was established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to the NACEC. The Committee is authorized under Article 18 of the North American Agreement on Environmental Cooperation, North America Free Trade Implementation Act, Public Law 103–182 and is directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation''. The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of a group of 12 independent representatives drawn from state and local government agencies and tribal governments.

DATES: The Committee will meet on September 26, 1995 from 8:30 a.m. to 4:30 p.m. and September 27, 1995 from 8:30 a.m. to 2:00 p.m.

ADDRESSES: Minneapolis Hilton and Towers, 1001 Marquette Avenue, Minneapolis, Minnesota 55403. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hardaker, Designated Federal Officer, U.S.EPA, Office of Cooperative Environmental Management, telephone 202–260–2477.

Dated: August 10, 1995.

Robert Hardaker,

Designated Federal Officer, Governmental Advisory Committee.

[FR Doc. 95–20886 Filed 8–22–95; 8:45 am]

BILLING CODE 6560–50–M

[FRI–5284–1]

National Advisory Committee to the U.S. Representative to the North American Commission on Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of the third meeting of the National Advisory Committee (NAC) to the U.S. Government Representative to the North American Commission on Environmental Cooperation (NACEC).

The Committee was established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to the NACEC. The Committee is authorized under Article 17 of the North American Agreement on Environmental Cooperation, North American Free Trade Implementation Act, Public Law 103–182 and is directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of a group of 15 independent representatives drawn from among environmental groups, business and industry, public policy organizations and educational institutions.

DATES: The Committee will meet on September 26, 1995 from 8:30 a.m. to 4:30 p.m. and September 27, 1995 from 8:30 a.m. to 2:00 p.m.

ADDRESSES: Minneapolis Hilton and Towers, 1001 Marquette Avenue, Minneapolis, Minnesota 55402. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Ms. Lena Nirk, Designated Federal Office, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–8169.

Dated: August 10, 1995.

Lena Nirk,

Designated Federal Officer National Advisory Committee.

[FR Doc. 95–20887 Filed 8–22–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5284–3]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9622(h), I.J. Stephens Farm Superfund Site, Newton County, Missouri

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement and request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act (''CERCLA''), notice is hereby given of a proposed settlement to resolve a claim against Sunbeam Products, Inc., formerly known as Sunbeam Corporation d/b/a Sunbeam Outdoor Products. The proposed settlement concerns the federal government's past response costs at the I.J. Stephens Farm Superfund Site, Newton County, Missouri. The settlement requires the settling party, Sunbeam Products, Inc., to pay $30,000 to the Hazardous Substance Superfund. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the U.S. EPA Region VII office at 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the proposed settlement may be obtained from Venessa Cobbs, Regional Hearing Clerk, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone number (913) 551–7630. Comments should reference the ''I.J. Stephens Farm Superfund Site'' and EPA Docket No. VII–94–F–0014 and should be addressed to Ms. Cobbs at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer G. MacDonald, Assistant Regional Counsel, EPA Region VII, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone number (913) 551–7843.

Dated: August 9, 1995.

Dennis Grams,

Regional Administrator.

[FR Doc. 95–20885 Filed 8–22–95; 8:45 am]

BILLING CODE 6560–50–M

[OPP–34080; FRL 4970–1]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on November 21, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 11 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before November 21, 1995 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000239–02483	ORTHO Methoxychlor 70 Dust Base	Methoxychlor	Turf, non-crop uses
001769–00233	Dichloron	Chlorpyrifos	Mosquito control
002217–00675	Acme Agricultural Products Norosac 4G Dichlobenil Herbicide	Dichlobenil	Nectarines
002217–00677	Casoron 85W Dichlobenil	Dichlobenil	Nectarines
002217–00680	Technical Dichlobenil	Dichlobenil	Nectarines
019713–00220	5% Cutworm Bait	Trichlorfon	Vegetables, field crops, seed field crops
034704–00291	Malathion 25% W/P	Malathion	Alfalfa, beans, clover, broccoli, brussel sprouts, cabbage, collards, dandelions, kale, kohlrabi, mustard greens, parsley, swiss chard, turnips, watercress, cucumbers, barley, corn, oats, rye wheat, grass, grass hay, lettuce, onions, peanuts, peppers, potatoes, soybeans, squash, sugar beets, tomatoes, apples, appricots, cherries, grapefruit, lemons, limes, oranges, tangerines, tangelos, kumquats, grapes, nectarines, peaches, pears, plums, prunes, pecans, strawberries
034704–00457	Cythion 5 EC	Malathion	Almonds, apples, asparagus, carrots, filberts, melons, peanuts, pears, pineapples plums, prunes, pumpkins, quince, safflower, soybeans, sugar beets, tobacco, stored commmodity treatment for wheat, oats, rice, corn, rye, barley, grain sorghum
034704–00565	Malathion ULV Concentrate Insecticide	Malathion	Flax, peas, safflower, soybeans, sugar beets, beef cattle feed lots, holding pens, tomatoes, forestry
066733–00001	Sanex Fosban 2E Insecticide	Chlorpyrifos	Mosquito larvicide/adulticide use
066733–00012	Sanex Fosban 4E Insecticide	Chlorpyrifos	Mosquito larvicide/adulticide use

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000239	The SOLARIS Group of Monsanto Co., P.O. Box 5006, San-Ramon, CA 94583.
001769	NCH Corporation, 2727 Chemsearch Blvd., Irving, TX 75062.
002217	PBI/Gordon Corp., 1217 W. 12th St., P.O. Box 4090, Kansas City, MO 64101.
019713	Drexel Chemical Co., P.O. Box 13327, 1700 Channel Ave., Memphis, TN 38113.
037404	Platte Chemical Co., P.O. Box 667, Greeley, CO 80632.
066733	Sanex Agro Inc., c/o Alfred Miller, 15 Webster St., Elliot Square Building, Suite 9470, Buffalo, NY 14203.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental Protection, Pesticides and pests, Product registrations

Dated: August 14, 1995.

Frank Sanders,

Director, Program Management and Support Division.

[FR Doc. 95–20671 Filed 8–22–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL RESERVE SYSTEM

Central Illinois Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have 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.

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 each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 6, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Central Illinois Bancorp, Inc., Sidney, Illinois; to acquire Mortgage Services of Illinois, Inc., Bloomington, Illinois, and thereby engage in making, selling, and servicing mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Southeast Bancorp of Texas, Inc., Winnie, Texas; to acquire Bonnet Financial Services, Inc., Winnie, Texas, and thereby engage in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 17, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-20911 Filed 8–22–95; 8:45 am]

BILLING CODE 6210–01–F

Community First Bankshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have 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.

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 each of these applications must be received at the Reserve Bank indicated for the application or the

offices of the Board of Governors not later than September 5, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bankshares, Inc., Fargo, North Dakota; to acquire National Insurance Agency, Holyoke, Colorado, and thereby engage, through its nonbank subsidiary, Community Insurance, Inc., Fargo, North Dakoa, in general insurance activities in a town of less than 5,000, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Centennial Holdings, Ltd., Olympia, Washington; to acquire Centennial Funding Corporation, Puyallup, Washington, and thereby engage in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 17, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–20915 Filed 8–22–95; 8:45 am]

BILLING CODE 6210–01–F

Corporacion Bancaria de Espana, S.A., 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 15, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Corporacion Bancaria de Espana, S.A., and its subsidiary, Banco Exterior de Espana, both of Madrid, Spain to acquire 100 percent of EXTEbancorp, Hauppauge, New York and thereby indirectly acquire Extebank, Hauppauge, New York. In connection with this application EXTEbancorp has applied to become a bank holding company by acquiring Extebank.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Pioneer Bancshares, Inc., Chattanooga, Tennessee, to acquire 100 percent of the voting shares of Sweetwater Valley Corporation, Sweetwater, Tennessee, and thereby indirectly acquire Valley Bank, Sweetwater, Tennessee.

Board of Governors of the Federal Reserve System, July 17, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–20912 Filed 8–22–95; 8:45 am]

BILLING CODE 6210–01–F

Glen R. Hurlbutt; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than September 5, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Glen R. Hurlbutt, individually and as Trustee of Neva Hurlbutt Trust, Marshalltown, Iowa; to acquire 11.74 percent, for a total of 11.74 percent, of the voting shares of Beaman Bancshares, Inc., Beaman, Iowa, and thereby indirectly acquire Farmers Savings Bank, Beaman, Iowa.

Board of Governors of the Federal Reserve System, August 17, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–20916 Filed 8–22–95; 8:45 am]

BILLING CODE 6210–01–F

Naperville Bancorp, Inc., 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 15, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Naperville Bancorp, Inc., Naperville, Illinois; to become a bank holding company by acquiring 100 percent of voting shares of Naperville Bank, Naperville, Illinois.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Paducah Bancshares of Texas, Inc., Paducah, Texas, and First Paducah Bancshares of Delaware, Dover, Delaware, to become bank holding companies by acquiring at least 87.7 percent of the voting shares of The First National Bank of Paducah, Paducah, Texas.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. ValliCorp Holdings, Inc., Fresno, California; to merge with Cobank Financial Corporation, San Luis Obispo, California, and thereby indirectly acquire Commerce Bank of San Luis Obispo, N.A., San Luis Obispo, California.

Board of Governors of the Federal Reserve System, August 17, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–20913 Filed 8–22–95; 8:45 am]

BILLING CODE 6210–01–F

State Street Boston Corporation, et al.; Notice of Application 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.

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 September 5, 1995

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. State Street Boston Corporation, Boston, Massachusetts; to establish, through its subsidiary, Boston Financial Data Services, Inc., Quincy, Massachusetts, a *de novo* joint venture, BancBoston State Street Investor Services, L.P., Canton, Massachusetts, with The First National Bank of Boston, N.A., Boston, Massachusetts, as co-venturer, and thereby engage in performing functions and activities that may be performed by a trust company and providing data processing and data transmission services, pursuant to § 225.25(b)(3) and (b)(7) of the Board's Regulation Y. Boston Financial Data Services, Inc. is equally owned by State Street Boston Corporation and DST Systems, Inc.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First York Ban Corp., York, Nebraska; and Albion National Management Company, Albion, Nebraska, to acquire Bartlett Savings & Loan Association, Bartlett, Nebraska, and thereby engage in owning, controlling, and operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 17, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–20914 Filed 8–22–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Dkt. 7611]

Independent News Company, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: This order reopens a 1960 consent order—which required the company to offer promotional allowances for its publications on proportionally equal terms to all customers—and sets aside the consent order as to respondent Warner Publisher Services, the successor of Independent News Company, pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

DATES: Consent order issued July 6, 1960. Set aside order issued June 14, 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S–2115, Washington, DC. 20580. (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of Independent News Company, Inc. The prohibited trade practices and/or corrective actions are removed as indicated.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 2, 49 Stat. 1526; 15 U.S.C. 13)

Order Reopening Proceeding and Setting Aside Order

Commissioners: Robert Pitofsky, Chairman, Mary L. Azcuenaga, Janet D. Steiger, Roscoe B. Starek, III, Christine A. Varney

On February 16, 1995, Warner Publisher Services, Inc. (''WPS''), as respondent and successor of Independent News Company, Inc.,[1] filed a Petition to Reopen and Set Aside Consent Order (''Petition''), in this matter. WPS requests that the Commission set aside the 1960 consent order in this matter pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), Rule 2.51 of the Commission's rules of practice, 16 CFR 2.51, and the Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders, issued on July 22, 1994, and published at 59 FR 45,286–92 (Sept. 1, 1994) (''Sunset Policy Statement''). In its Petition, WPS affirmatively states that it has not engaged in any conduct violating the terms of the order. The Petition was placed on the public record, and the thirty-day comment period expired on March 27, 1995. No comments where received.

The Commission in its Sunset Policy Statement said, in relevant part, that ''effective immediately, the Commission

[1] Since the Commission issued the order in this matter, Independent has changed its name to Warner Publisher Services, Inc. and is now owned by Warner Communications Inc. The other respondent in this matter, The New American Library of World Literature, Inc., did not petition to have the order set aside as to it.

will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than twenty years.'' [2] The Commission's consent order in Docket No. 7611 was issued on July 6, 1960, and has been in effect for more than twenty years. Consistent with the Commission's Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. 7611 as to WPS.

Accordingly, it is ordered that this matter be, and it hereby is, reopened;

It is further ordered that the Commission's order in Docket No. 7611 be, and it hereby is, set aside as to respondent Warner Publisher Services, Inc., as of the effective date of this order.

By the Commission.

Benjamin I. Berman,

Acting Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga in Independent News Company, Inc., Docket No. 7611

I concur in the decision to grant the request of Warner Publisher Services, Inc., the successor of Independent News Company, Inc., to set aside the 1960 order in this case. I dissent from the decision to limit the setting aside of the order to Warner, instead of setting aside the order in its entirety.

The decision to limit relief to Warner, one of the two respondents under the order, appears to be inconsistent with the Commission's announced policy to presume ''that the public interest requires reopening and setting aside the order *in its entirety*'' (emphasis added) ''when a petition to reopen and modify a competition order is filed'' and the order is more than twenty years old.[1] The Commission's recognition of the limitations of the findings underlying an order [2] further suggests that the presumption that an order will be terminated after twenty years should apply to the order in its entirety and not be limited to the petitioner.[3]

I previously have expressed my concern that the adoption of a presumption instead of an across-the-board rule in favor of sunset ''will impose costs by requiring respondents to file individual petitions and the Commission to assess in the context of each such petition whether the presumption has been overcome for that order.'' [4] Now the Commission would further increase the burden on both public and private resources by applying the presumption in favor of sunset not only on a case-by-case basis but on a respondent-by-respondent basis.

The petition filed by Warner invoked the twenty-year presumption that the order should be set aside. No evidence of recidivist conduct by any respondent, including The New American Library of World Literature, Inc., having been presented to overcome the presumption,[5] the order should be set aside in its entirety.

[FR Doc. 95–20904 Filed 8–22–95; 8:45 am]

BILLING CODE 6750–01–M

[2] *See* Sunset Policy Statement, 59 Fed. Reg. at 45,289.

[1] FTC, Statement of Policy with Respect to Duration of Competition Orders and Statement of Intention To Solicit Public Comment with Respect to Duration of Consumer Protection Orders (July 22, 1994), at 8 (hereafter ''Sunset Policy Statement'').

[2] ''[F]indings upon which [orders] are based should not be presumed to continue'' for longer than twenty years. Sunset Policy Statement at 4.

[3] The presumption of termination after 20 years applies automatically for new orders in competition cases and is not limited to individual respondents, further supporting the view that the twenty-year presumption in favor of sunset for existing orders should apply to the order, not to particular respondents.

[4] Separate Statement of Commissioner Mary L. Azcuenaga on Sunset Policy (July 22, 1994), at 7 (footnote omitted).

[5] *See* Sunset Policy Statement at 8 n.19.

[Dkt. 7614]

National Comics Publications, Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: This order reopens a 1960 consent order—which required the companies to offer promotional allowances for their publications on proportionally equal terms to all customers—and sets aside the consent order pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

DATES: Consent order issued July 6, 1960. Set aside order issued June 14, 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S–2115, Washington, DC 20580. (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of National Comics Publications, Inc., et al. The prohibited trade practices and/or corrective actions are removed as indicated.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 2, 49 Stat. 1526; 15 U.S.C. 13)

Commissioners: Robert Pitofsky, Chairman, Mary L. Azcuenaga, Janet D. Steiger, Roscoe B. Starek III, Christine A. Varney

Order Reopening Proceeding and Setting Aside Order

On February 16, 1995, DC Comics and Warner Publisher Services, Inc. (''WPS''), as respondents and successors to National Comics Publications, Inc. and Independent News Company, Inc.,[1] filed a Petition to Reopen and Set Aside Consent Order (''Petition''), in this matter. DC and WPS request that the Commission set aside the 1960 consent order in this matter pursuant to section 5(b) of the Federal Trade Commission Act, 14 U.S.C. 45(b), Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and the Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders, issued on July 22, 1994, and published at 59 FR 45,286–92 (Sept. 1, 1994) (''Sunset Policy Statement''). In its Petition, DC and WPS affirmatively state that neither has engaged in any conduct violating the terms of the order. The Petition was placed on the public record, and the thirty-day comment period expired on March 27, 1995. No comments were received.

The Commission in its Sunset Policy Statement said, in relevant part, that ''effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than twenty years.'' [2] The Commission's consent order in Docket No. 7614 was issued on July 6, 1960, and has been in effect for more than twenty years. Consistent with the Commission's Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. 7614.

Accordingly, it is ordered that this matter be, and it hereby is, reopened;

It is further ordered that the Commission's order in Docket No. 7614 be, and it hereby is, set aside as of the effective date of this order.

[1] Since the Commission issued the order in this matter, National Comics has become DC Comics, a general partnership between Warner Communications, Inc., and Time Warner Entertainment Co., L.P. Independent has changed its name to Warner Publisher Services, Inc. and is now owned by Warner Communications Inc.

[2] *See* Sunset Policy Statement, 59 FR at 45,289.

By the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–20905 Filed 8–22–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. 5448]

Rubber Manufacturers Association, Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: This order reopens a 1948 consent order—which prohibited the Association from formulating or enforcing resale price agreements, exchanging resale price information or entering into price-fixing agreements—and sets aside the consent order as to respondent Rubber Manufacturers Association pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

DATES: Consent order issued February 2, 1948. Set aside order issued July 19, 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Piotrowski, FTC/S–2115, Washington, D.C. 20580. (202) 326–2623.

SUPPLEMENTARY INFORMATION: In the Matter of Rubber Manufacturers Association, Inc., et al. The prohibited trade practices and/or corrective actions are removed as indicated.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Commissioners: Robert Pitofsky, Chairman, Mary L. Azcuenaga, Janet D. Steiger, Roscoe B. Starek, III, Christine A. Varney

In the Matter of—

Rubber Manufacturers Association, Inc., a corporation;
George Flint, an individual;
Auburn Rubber Corporation, a corporation;
Avon Sole Company, a corporation;
Dryden Rubber Company, a corporation;
Essex Rubber Company, a corporation;
The B.F. Goodrich Company, a corporation;
Goodyear Tire and Rubber Company, a corporation;
Alfred Hale Rubber Corporation, a corporation;
The Holtite Manufacturing Company, a corporation;
Hood Rubber Company, a corporation;
The I.T.S. Company, a corporation;
The O'Sullivan Rubber Company, a corporation;
Panther-Panco Rubber Company, Inc., a corporation;
Seiberling Rubber Company, a corporation;
United States Rubber Company, a corporation;
Rubber Heel & Sole Manufacturers Association, a trade association;
R.S. Crawford, an individual;
Avon Sole Company, a corporation;
The Bearfoot Sole Company, Inc., a corporation;
Beebe Brothers Rubber Company, a corporation;
Bradstone Rubber Company, a corporation;
The Hagerstown Rubber Company, a corporation;
Hanover Rubber Company, a corporation;
Lynch Heel Company, a corporation;
The Monarch Rubber Company, Inc., a corporation;
The Norwalk Tire & Rubber Company, a corporation;
Plymouth Rubber Company, Inc., a corporation;
Quabaug Rubber Company, a corporation;
Travelite Rubber Company, Inc., a corporation;
Victor Products Corporation of Pennsylvania, a corporation;
Webster Rubber Company, a corporation;
Connecticut Leather & Findings Association, Inc., a corporation;
Harry Diamond, an individual;
Bridgefport Leather Company, a corporation;
Maurice Greenberg, an individual;
Diamond Leather Company, a corporation;
Louis Geghter, an individual;
New Haven Leather Company, Inc., a corporation;
Puzzo Brothers Company, a corporation;
Rochina Decroce and Anthony Decroce, Copartners d/b/a Torrington Leather Company;
Zich Leather Company, a corporation; and
Cat's Paw Rubber Company, Inc., a corporation.

Order Reopening Proceeding and Setting Aside Order as to Respondent Rubber Manufacturers Association, Inc.

On March 17, 1995, Rubber Manufacturers Association, Inc. (''Rubber Manufacturers'') one of forty-three respondents named in this consent order,[1] filed its Petition to Reopen and Set Aside Consent Orders (''Petition'') in this matter. Rubber Manufacturers requests that the Commission set aside the 1948 consent order in this matter pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), Rule 2.51 of the Commission's Rules of Practice, 16 C.F.R. 2.51, and the Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders, issued on July 22, 1994, and published at 59 FR 45,286–92 (Sept. 1, 1994) (''Sunset Policy Statement''). In the Petition, Rubber Manufacturers affirmatively states that it has not engaged in any conduct violating the terms of the order. The Petition was placed on the public record, and the thirty-day comment period expired on May 10, 1995. One comment, relating to general policy issues concerning the Commission's Sunset Policy Statement, was received.

The Commission in its July 22, 1994, Sunset Policy Statement said, in relevant part, that ''effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than twenty years.''[2] The Commission's consent order in Docket No. 5448 was issued on February 2, 1948, and has been in effect for forty-seven years. Consistent with the Commission's July 22, 1994, Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. 5448 as to respondent Rubber Manufacturers.

Accordingly, *it is ordered* That this matter be, and it hereby is, reopened;

It is further ordered, that the Commission's order in Docket No. 5448 be, and it hereby is, set aside, as to respondent Rubber Manufacturers, as of the effective date of this order.

By the Commission.

Benjamin I. Berman,

Acting Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga in Rubber Manufacturers Association, Inc., D. 5448 and D. 7505

I concur in the decision to grant the request of the Rubber Manufacturers Association, Inc. to set aside the 1948 order in Docket No. D. 5448 and the 1962 order in Docket No. D. 7505. I dissent from the decision to limit the

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[1] The remaining respondents did not petition the Commission to reopen and set aside the order as to them.

[2] See Sunset Policy Statement, 59 Fed. Reg. at 45,289.

setting aside of the order to the association, instead of setting aside the order in its entirety.

The decision to limit relief to the Rubber Manufacturers Association, one of forty-three respondents under the order, appears to be inconsistent with the Commission's announced policy to presume ''that the public interest requires reopening and setting aside the order *in its entirety*'' (emphasis added) ''when a petition to reopen and modify a competition order is filed'' and the order is more than twenty years old.[1] The Commission's recognition of the limitations of the findings underlying an order[2] further suggests that the presumption that an order will be terminated after twenty years should apply to the order in its entirety and not be limited to the petitioner.[3]

I previously have expressed my concern that the adoption of a presumption instead of an across-the-board rule in favor of sunset ''will impose costs by requiring respondents to file individual petitions and the Commission to assess in the context of each such petition whether the presumption has been overcome for that order.''[4] Now the Commission would further increase the burden on both public and private resources by applying the presumption in favor of sunset not only on a case-by-case basis but on a respondent-by respondent basis.

The petition filed by the Rubber Manufacturers Association invoked the twenty-year presumption that the order should be set aside. No evidence of recidivist conduct by any of the forty-three respondents, having been presented to overcome the presumption,[5] the order should be set aside in its entirety.

[FR Doc. 95–20902 Filed 8–22–95; 8:45 am]

BILLING CODE 6750–01–M

[1] FTC, Statement of Policy with Respect to Duration of Competition Orders and Statement of Intention To Solicit Public Comment with Respect to Duration of Consumer Protection Orders (July 22, 1994), at 8 (hereafter ''Sunset Policy Statement'').

[2] ''[F]indings upon which [orders] are based should not be presumed to continue' for longer than twenty years. Sunset Policy Statement at 4.

[3] The presumption of termination after 20 years applies automatically for new orders in competition cases and is not limited to individual respondents, further supporting the view that the twenty-year presumption in favor of sunset for existing orders should apply to the order, not to particular respondents.

[4] Separate Statement of Commissioner Mary L. Azcuenaga on Sunset Policy (July 22, 1994), at 7 (footnote omitted).

[5] See Sunset Policy Statement at 8 n.19.

[Dkt. 7505]

Rubber Manufacturers Association, Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: This order reopens a 1962 consent order—which prohibited the Association from formulating or enforcing resale price agreements, exchanging resale price information or entering into price-fixing agreements—and sets aside the consent order as to respondent Rubber Manufacturers Association pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

DATES: Consent order issued January 6, 1962. Set aside order issued July 19, 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Piotrowski, FTC/S–2115, Washington, D.C. 20580. (202) 326–2623

SUPPLEMENTARY INFORMATION: In the Matter of Rubber Manufacturers Association, Inc., et al. The prohibited trade practices and/or corrective actions are removed as indicated.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Commissioners: Robert Pitofsky, Chairman, Mary L. Azcuenaga, Janet D. Steiger, Roscoe B. Starek, III, Christine A. Varney

In the Matter of—

Rubber Manufacturers Association, Inc., a trade association;
The Tire and Rim Association, Inc., a trade association;
The Goodyear Tire and Rubber Company, a corporation;
The Firestone Tire and Rubber Company, a corporation;
United States Rubber Company, a corporation;
The B.F. Goodrich Company, a corporation;
The General Tire and Rubber Company, a corporation;
The Armstrong Rubber Company, a corporation;
Cooper Tire and Rubber Company, a corporation;
The Dayton Rubber Company, a corporation;
Dunlop Tire and Rubber Corporation, a corporation;
The Gates Rubber Company, a corporation;
Lee Rubber and Tire Corporation, a corporation;
The Mansfield Tire and Rubber Company, a corporation;
McCreary Tire and Rubber Company, a corporation;
The Mohawk Rubber Corporation, a corporation; and
Seiberling Rubber Company, a corporation.

Order Reopening Proceeding and Setting Aside Order as to Respondent Rubber Manufacturers Association, Inc.

On March 17, 1995, Rubber Manufacturers Association, Inc. (''Rubber Manufacturers''), one of seventeen respondents named in this consent order,[1] filed its Petition to Reopen and Set Aside Consent Orders (''Petition'') in this matter. Rubber Manufacturers requests that the Commission set aside the 1962 consent order in this matter pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), Rule 2.51 of the Commission's Rules of Practice, 16 C.F.R. 2.51, and the Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders, issued on July 22, 1994, and published at 59 FR 45,286–92 (Sept. 11, 994) (''Sunset Policy Statement''). In the Petition, Rubber Manufacturers affirmatively states that it has not engaged in any conduct violating the terms of the order. The Petition was placed on the public record, and the thirty-day comment period expired on May 10, 1995. One comment, relating to general policy issues concerning the Commission's Sunset Policy Statement, was received.

The Commission in its July 22, 1994, Sunset Policy Statement said, in relevant part, that ''effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing order in effect for more than twenty years.''[2] The Commission's consent order in Docket No. 7505 was issued on January 6, 1962, and has been in effect for thirty-years. Consistent with the Commission's July 22, 1994, Sunset Policy Statement, the resumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. 7505 as to respondent Rubber Manufacturers.

Accordingly, it is ordered That this matter be, and it hereby is, reopened;

It is further ordered, That the Commission's order in Docket No. 7505

[1] The remaining respondents did not petition the Commission to reopen and set aside the order as to them.

[2] See Sunset Policy Statement, 59 Fed. Reg. at 45,289.

be, and it hereby is, set aside, as to respondent Rubber Manufacturers, as of the effective date of this order.

By the Commission.

Benjamin I. Berman,

Acting Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga in Rubber Manufacturers Association, Inc., D. 5448 and D. 7505

I concur in the decision to grant the request of the Rubber Manufacturers Association, Inc. to set aside the 1948 order in Docket No. D. 5448 and the 1962 order in Docket No. D. 7505. I dissent from the decision to limit the setting aside of the order to the association, instead of setting aside the order in its entirety.

The decision to limit relief to the Rubber Manufacturers Association, one of forty-three respondents under the order appears to be inconsistent with the Commission's announced policy to presume ''that the public interest requires reopening and setting aside the order *in its entirety*'' (emphasis added) ''when a petition to reopen and modify a competition order is filed'' and the order is more than twenty years old.[1] The Commission's recognition of the limitations of the findings underlying an order[2] further suggests that the presumption that an order will be terminated after twenty years should apply to the order in its entirety and not be limited to the petitioner.[3]

I previously have expressed my concern that the adoption of a presumption instead of an across-the-board rule in favor of sunset ''will impose costs by requiring respondents to file individual petitions and the Commission to assess in the context of each such petition whether the presumption has been overcome for that order.''[4] Now the Commission would further increase the burden on both public and private resources by applying the presumption in favor of sunset not only on a case-by-case basis but on a respondent-by respondent basis.

The petition filed by the Rubber Manufacturers Association invoked the twenty-year presumption that the order should be set aside. No evidence of recidivist conduct by any of the forty-three respondents, having been presented to overcome the presumption,[5] the order should be set aside in its entirety.

[FR Doc. 95–20903 Filed 8–22–95; 8:45 am]

BILLING CODE 6750–01–M

[1] FTC, Statement of Policy with Respect to Duration of Competition Orders and Statement of Intention To Solicit Public Comment with Respect to Duration of Consumer Protection Orders (July 22, 1994), at 8 (hereafter ''Sunset Policy Statement'').

[2] ''[F]indings upon which [orders] are based should not be presumed to continue'' for longer than twenty years. Sunset Policy Statement at 4.

[3] The presumption of termination after 20 years applies authomatically for new orders in competition cases and is not limited to individual respondents, further supporting the view that the twenty-year presumption in favor of sunset for existing orders should apply to the order, not to particular respondents.

[4] Separate Statement of Commission Mary L. Azcuenaga on Sunset Policy (July 22, 1994), at 7 (footnote omitted).

[5] See Sunset Policy Statement at 8 n.19.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Investigational New Drugs; Procedure to Monitor Clinical Hold Process; Meeting of Review Committee and Request for Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a meeting of the clinical hold review committee, which reviews the clinical holds that the Center for Drug Evaluation and Research (CDER) has placed on certain investigational new drug trials. The committee was established as a 1-year experiment in August 1991. The committee met quarterly through 1992 and currently meets semiannually as a regular program. The committee last met in June 1995. FDA is inviting any interested drug company to use the confidential mechanism to submit to the committee for its review the name and number of any investigational new drug trial placed on clinical hold during the past 12 months that the company wants the committee to review.

DATES: The meeting will be held in October 1995. Drug companies may submit review requests for the October meeting before September 22, 1995.

ADDRESSES: Submit clinical hold review requests to Amanda B. Pedersen, FDA Chief Mediator and Ombudsman, Office of the Commissioner (HF–7), Food and Drug Administration, rm. 14–105, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1306.

FOR FURTHER INFORMATION CONTACT: Deborah A. Wolf, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1046.

SUPPLEMENTARY INFORMATION: FDA regulations in part 312 (21 CFR part 312) provide procedures that govern the use of investigational new drugs in human subjects. These regulations require that the sponsor of a clinical investigation submit an investigational new drug application (IND) to FDA outlining the proposed use of the investigational drug. The IND must contain the study protocol, a summary of human and animal experience with the drug, and information about the drug's chemistry and pharmacology. FDA reviews an IND to help ensure the safety and rights of subjects and to help ensure that the quality of any scientific evaluation of drugs is adequate to permit an evaluation of the drug's efficacy and safety. An investigational new drug for which an IND is in effect is exempt from the premarketing approval requirements that are otherwise applicable and may be shipped lawfully for the purpose of conducting clinical investigations of that drug.

If FDA determines that a proposed or ongoing study may pose significant risks for human subjects or is otherwise seriously deficient, as discussed in the investigational new drug regulations, it may impose a clinical hold on the study. The clinical hold is one of FDA's primary mechanisms for protecting subjects who are involved in investigational new drug trials. A clinical hold is an order that FDA issues to a sponsor to delay a proposed investigation or to suspend an ongoing investigation. The clinical hold may be placed on one or more of the investigations covered by an IND. When a proposed study is placed on clinical hold, subjects may not be given the investigational drug as part of that study. When an ongoing study is placed on clinical hold, no new subjects may be recruited to the study and placed on the investigational drug, and patients already in the study should stop receiving therapy involving the investigational drug unless FDA specifically permits it.

FDA regulations in § 312.42 describe the grounds for the imposition of a clinical hold. When FDA concludes that there is a deficiency in a proposed or ongoing clinical trial that may be grounds for the imposition of a hold order, ordinarily FDA will attempt to resolve the matter through informal discussions with the sponsor. If that attempt is unsuccessful, the agency may order a clinical hold. In CDER, a clinical hold is ordered by or on behalf of the

director of the division that is responsible for review of the IND. The order identifies the studies under the IND to which the hold applies and explains the basis for the action. The hold order may be made by telephone or other means of rapid communication, or in writing. Within 30 days of the imposition of the clinical hold, the division director provides the sponsor with a written explanation of the basis for the hold. Any sponsor who has not received a written explanation within 30 days should notify the division and request that it be issued. In addition to providing a statement of reasons, this ensures that the hold is recorded in CDER's management information system.

The clinical hold order specifies whether the sponsor may resume the affected investigation without prior notification by FDA once the deficiency has been corrected. If the order does not permit the resumption, an investigation may resume only after the division director or his or her designee has notified the sponsor that the investigation may proceed. Resumption may be authorized by telephone or other means of rapid communication. If all investigations covered by an IND remain on clinical hold for 1 year or longer, FDA may place the IND on inactive status.

FDA regulations in § 312.48 provide dispute resolution mechanisms through which sponsors may request reconsideration of clinical hold orders. The regulations encourage the sponsor to attempt to resolve disputes directly with the review staff responsible for the review of the IND. If necessary, a sponsor may request a meeting with the review staff and management to discuss the hold.

Over the years, drug sponsors have expressed a number of concerns about the clinical hold process, including concerns about the scientific and procedural adequacy of some agency actions. FDA undertook several initiatives to evaluate the consistency and fairness of the Center's practices in imposing clinical holds. First, CDER completed a centerwide review of clinical holds recorded in the management information system. While some differences in practice and procedure were discerned among divisions, it appeared that the procedures specified in the regulations were, in general, being followed, and that holds were scientifically supportable.

Second, FDA established a committee in CDER to review selected clinical holds for scientific and procedural quality. The committee held pilot meetings in 1991 and 1992. The trial phase of the committee review process confirmed the agency's view that the divisions in CDER impose clinical holds in a manner that is generally consistent with FDA's procedural requirements and that holds are imposed on scientifically supportable grounds.

The clinical hold committee review process is now a regular, ongoing program. The review procedure of the committee is designed to afford an opportunity for a sponsor who does not wish to seek formal reconsideration of a pending hold to have that hold considered ''anonymously.'' The committee consists of senior managers in CDER, a senior official from the Center for Biologics Evaluation and Research, and the FDA Chief Mediator and Ombudsman. The committee now meets semiannually. The committee last met in June 1995.

Clinical holds to be reviewed will be chosen randomly. In addition, the committee will review holds proposed for review by drug sponsors. In general, a drug sponsor should consider requesting review when it disagrees with the agency's scientific or procedural basis for the decision.

Requests for committee review of a clinical hold should be submitted to the FDA Chief Mediator and Ombudsman, who is responsible for selecting clinical holds for review. The committee and CDER staff, with the exception of the FDA Chief Mediator and Ombudsman, are never advised, either in the review process or thereafter, which of the holds were randomly chosen and which were submitted by sponsors. The committee will evaluate the selected clinical holds for scientific content and consistency with agency regulations and CDER policy.

The meetings of the review committee are closed to the public because committee discussions deal with confidential commercial information. Summaries of the committee deliberations, excluding confidential commercial information, will be available from the FDA Chief Mediator and Ombudsman. If the status of a clinical hold changes following the committee's review, the appropriate division will notify the sponsor.

FDA invites drug companies to submit to the FDA Chief Mediator and Ombudsman the name and IND number of any investigational new drug trial that was placed on clinical hold during the past 12 months that they want the committee to review at its October meeting. Submissions should be made by September 22, 1995 to Amanda B. Pedersen, FDA Chief Mediator and Ombudsman (address above).

Dated: August 15, 1995.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 95–20812 Filed 8–22–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of September 1995.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: September 13, 9:00 am–5:00 pm.

Place: Parklawn Building, Conference Room D, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

Agenda

Agenda items will include, but not be limited to: a report on the National Vaccine Program; a report on the Task Force for Safer Childhood Vaccines and Acellular Pertussis Vaccine Trials from the National Institutes of Health; Review of the American Academy of Pediatrics/Advisory Committee on Immunization Practices Polio and Pertussis Vaccine Recommendations; and routine Program reports.

Public comment will be permitted before noon and at the end of the Commission meeting, as time permits. Oral presentations will be limited to 5 minutes per public speaker.

Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to Mr. Jerry Anderson, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–35, 5600 Fishers Lane, Rockville, MD 20852; Telephone (301) 443–1533.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation,

but desire to make an oral statement, may sign up in Conference Room D before 10:00 a.m. on September 13. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Mr. Anderson, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–35, 5600 Fishers Lane, Rockville, Maryland 20852; Telephone (301) 443–1533.

Name: National Advisory Committee on Rural Health.

Date and Time: September 17–20, 1995; 3:00 p.m.

Place: The Historic Inns of Annapolis, 16 Church Circle, Annapolis, MD 21401, (410) 263–2641.

The meeting is open to the public.

Agenda

The meeting will begin on Sunday, September 17, with an orientation for the four new members that were appointed. The orientation session will cover the purpose of the Committee, the structure of the meetings, a description of the Office of Rural Health Policy, introduction to TASCON (the Committee's logistics contractor), and a discussion of the Committee's accomplishments to date. A presentation on Conflict of Interest and Ethics will be presented.

The Plenary Session will begin at 8 a.m. on Monday, September 18. This meeting will be devoted to developing directions for a national rural health agenda and strategic planning for the future.

Anyone requiring information regarding the subject Committee should contact Dena S. Puskin, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, Room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835, FAX (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson, Office of Rural Health Policy, Health Resources and Services Administration, Telephone (301) 443–0835.

Name: National Advisory Council on Nurse Education and Practice and Council on Graduate Medical Education.

Date and Time: September 27, 1995, 8:30 a.m.–11:30 a.m.

Place: Bethesda Marriott, Salon A–B of the Grand Ballroom, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The meeting is open to the public.

Agenda

Agenda items on which the councils will make recommendations are the computer-based requirements model developed by the contractor and the requirements projections. Membership will also provide recommendations to the Director, Bureau of Health Professions based on the model and. The council will also review the work done in small groups and recommend future work that may be needed.

Anyone wishing to obtain a roster of members, or an agenda for the meeting contact R. Margaret Truax at (301) 443–5786.

Name: National Advisory Council on Nurse Education and Practice.

Date and Time: September 27, 1995, 1:30 p.m.–4:30 p.m.;

Place: Bethesda Marriott, Salon A–B of the Grand Ballroom, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The meeting is open to the public.

Agenda

Agenda items for the meeting will cover announcements, review of the computer based requirements model developed by a contractor and recommendations of the Council on Graduate Medical Education and the National Advisory Council on Nurse Education and Practice workgroups.

Anyone wishing to obtain a roster of members, minutes of meeting or other relevant information should write or contact Ms. Melanie Timberlake, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–36, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301)443–5786.

Name: Council on Graduate Medical Education.

Date and Time: September 27, 1995, 3:00 p.m.–5:00 p.m.; September 28, 1995, 8:30 a.m.–3:00 p.m.

Place: Holiday Inn, Capitol, 550 C Street, SW., Washington, DC 20024.

This meeting is open to the public.

Agenda

The agenda will include a panel to discuss future directions for Graduate Medical Education in a managed care world; a panel to discuss a COGME retrospective and vision for the future; an update on COGME activities and a discussion of Fiscal Year 1996 activities.

Anyone requiring information regarding the subject should contact F. Lawrence Clare, M.D., M.P.H., Acting Executive Secretary, telephone (301) 443–6326, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Health Resources and Service Administration, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda items are subject to change as priorities dictate.

Dated: August 17, 1995.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 95–20814 Filed 8–22–95; 8:45 am]

BILLING CODE 4160–15–P

Public Health Services

National Institutes of Health (NIH); Notice of the Meeting of the National Advisory Eye Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Eye Council (NAEC) on September 15, 1995, Executive Plaza North, Conference Room H, 6130 Executive Boulevard, Bethesda, Maryland.

The NAEC meeting will be open to the public on September 15 from 8:30 a.m. until approximately 11:30 a.m. Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies. Attendance by the public at the open session will be limited to space available.

In accordance with provisions set forth in Secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and Sec. 10(d) of Public Law 92–463, the meeting of the NAEC will be closed to the public on September 15 from approximately 11:30 a.m. until adjournment at approximately 5:00 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, EPS, Suite 350, 6120 Executive Boulevard, MSC–7164, Bethesda, Maryland 20892–7164, (301) 496–5301, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. DeNinno in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research: National Institutes of Health.)

Dated: August 17, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–20817 Filed 8–22–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

John E. Fogarty International Center for Advanced Study in the Health Sciences; Meeting of the Fogarty International Center Advisory Board

Pursuant to Pub. L. 92–463, notice is hereby given of the thirty-first meeting of the Fogarty International Center (FIC) Advisory Board, September 12, 1995, in the Lawton Chiles International House (Building 16), at the National Institutes of Health.

The meeting will be open to the public from 8:30 a.m. to noon. In addition to a report by the Director, FIC, and a report on the Advisory Committee to the Director, NIH, the agenda will focus on U.S.-Japan Scientific Cooperation. The agenda will feature a historic overview; the role of science and technology in the U.S.-Japan relationship; FIC program plans; and a presentation on protein engineering in Japan and other biotechnology issues. In addition, the agenda will include a presentation on the status of the FIC long-range plan.

In accordance with the provisions of Secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 1:15 p.m. to adjournment for the review of applications to the Senior International Fellowship Program; Fogarty International Research Collaboration and HIV, AIDS and Related Illness Collaboration Awards; International Training and Research in Environmental and Occupational Health Awards; International Training and Research in Population and Health Awards; and Bioprospecting Opportunity Awards.

Paula Cohen, Committee Management Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 CENTER DR MSC 2220, Bethesda, Maryland 20892–2220, telephone: 301–496–1491, will provide a summary of the meeting and a roster of the committee members upon request.

Irene Edwards, Executive Secretary, Fogarty International Center Advisory Board, Building 31, Room B2C08, telephone: 301–496–1491, will provide substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Cohen at least 2 weeks in advance of the meeting.

Catalog of Federal Domestic Assistance Program No. 93.989, Senior International Awards Program.

Dated: August 17, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–20906 Filed 8–22–95; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meetings

Pursuant to Sec. 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of advisory committee meetings of the National Cancer Institute.

These meetings will be open to the public, as indicated below, to discuss administrative details or other issues relating to committee activities, for the review of concepts being considered for funding, and for public testimony on the latest technology available to the research community in the area of cancer research. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below. The President's Cancer Panel will be closed in accordance with the provisions set forth in sec. 552b(c)(9)(B), Title 5, U.S.C. for the review of the expert testimony and formulation of recommendations. This review could disclose information the premature disclosure of which would be likely to significantly frustrate due consideration of the testimony presented and formulation of recommendations. The Board of Scientific Counselors will be closed in accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. for the review, discussion and evaluation of individual programs and projects, including consideration of personnel qualifications and performance, and the competence of individual investigators. These discussions could reveal confidential information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Carole Frank, the Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630M, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892–7405, (301–496–5708) will provide a summary of the meeting and the roster of committee members upon request. Other information pertaining to the meetings may be obtained from the contact person indicated below.

Individuals who plant to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed for that particular meeting.

Committee Name: President's Cancer Panel.

Contact Person: Dr. Maureen O. Wilson, Executive Secretary, National Cancer Institute, NIH, Building 31, Room 4B43, 9000 Rockville Pike, Bethesda, MD 20892, (301) 496–1148.

Date of Meeting: September 15, 1995.

Place of Meeting: University of Maryland Medical School, Teaching Facility, Auditorium 10, South Pine Street, Baltimore, MD 21201.

Open: September 15—8 am to 3 pm and 4 pm to 5 pm.

Agenda: Testimony from experts on the latest technology available to the cancer research community. After closed deliberations, the Panel will report on the recommendations to be made on the future of cancer research, its successes, failures and needs for improvement.

Closed: September 15—3 pm to 4 pm.

Agenda: Review, discussion and evaluation of the testimony given in open session and formulation of recommendations.

Committee Name: Board of Scientific Counselors, Division of Cancer Etiology.

Contact Person: Dr. Jerry M. Rice, Executive Secretary, Building 31, Room 11A03, 9000 Rockville Pike, Bethesda, MD 20892, 301–496–6618.

Dates of Meeting: October 5–6, 1995.

Place of Meeting: Building 31, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Open: October 5—9 am to 12 pm.

Agenda: Review progress of programs within the Division and review of concepts being considered for funding.

Closed: October 5—1 pm to 5 pm. October 6—9 am to Adjournment.

Agenda: Extramural/Intramural programmatic and personnel policies of a sensitive nature and consideration of personnel qualifications and performance, and the competence of individual investigators.

(**Catalog of Federal Domestic Assistance Program Numbers:** 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: August 17, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–20908 Filed 8–22–95; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meetings of the National Cancer Advisory Board and its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, and its Subcommittees on September 11–13, 1995. Except as noted below, the meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

A portion of the Board meeting will be closed to the public in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications and for discussion of issues pertaining to programmatic areas and/or NCI personnel. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning the individuals associated with the applications or programs, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 630E, 9000 Rockville Pike, Bethesda, Maryland 20892 (310/496–5708), will provide summaries of the meetings and rosters of the Board members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Carole Frank, Committee Management Specialist, at 301/496–5708 in advance of the meeting.

Name of Committee: Subcommittee on Cancer Centers.

Contact Person: Dr. Brian Kimes, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 300, 6130 Executive Blvd., Bethesda, MD 20892–7094; (301) 496–8537.

Date of Meeting: September 11, 1995.

Place of Meeting: Bethesda Marriott, 515 Pooks Hill Road, Bethesda, MD.

Open: 5 pm to 6 pm.

Agenda: To discuss the cancer centers.

Name of Committee: Subcommittee on Clinical Investigations.

Contact Person: Dr. Robert E. Wittes, Acting Executive Secretary, National Cancer Institute, NIH, Building 31, Room 3A52, 9000 Rockville Pike, Bethesda, MD 20892; (301) 496–4291.

Date of Meeting: September 11, 1995.

Place of Meeting: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Open: 7 pm to 8 pm.

Agenda: To discuss cancer clinical investigation issues.

Name of Committee: National Cancer Advisory Board.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, NIH Executive Plaza North, Room 600A, 6130 Executive Blvd., Bethesda, MD 20892–7405; (301) 496–5147.

Dates of Meeting: September 12–13, 1995.

Place of Meeting: Wilson Hall, Building 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Open: September 12—8 am to approximately 12 noon.

Agenda: Report on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; New Business; and Scientific Presentations.

Closed: September 12—3 pm to approximately 5 pm.

Agenda: For review and discussion of individual grant applications and extramural/intramural programmatic and personnel policies.

Open: September 13—8 am to adjournment.

Agenda: Subcommittee Reports; Continuing New Business; and Scientific Presentations.

Name of Committee: Subcommittee for Special Priorities.

Contact Person: Ms. Iris Schneider, Executive Secretary, National Cancer Institute, NIH, Building 31, Room 11A48, Bethesda, MD 20892; (301) 496–5534.

Date of Meeting: September 12, 1995.

Place of Meeting: Building 31A, Conference Room 11A10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Open: 12:45 pm to 2 pm.

Agenda: To discuss issues related to special priorities.

Name of Committee: Subcommittee on Planning and Budget.

Contact Person: Ms. Cherie Nichols, Executive Secretary, National Cancer Institute, NIH, Building 31, Room 11A19, Bethesda, MD 20892; (301) 496–5515.

Date of Meeting: September 12, 1995.

Place of Meeting: Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Open: 1:30 pm to 3 pm.

Agenda: To discuss the NCI budget and various planning issues.

Name of Committee: Subcommittee on Basic and Environmental Sciences.

Contact Person: Dr. Susan Sieber, Executive Secretary, National Cancer Institute, NIH, Building 31, Room 11A03, 9000 Rockville Pike, Bethesda, MD 20892; (301) 496–5946.

Date of Meeting: September 12, 1995.

Place of Meeting: Building 31A, Conference Room 11A10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Open: 2 pm to 3 pm.

Agenda: To discuss basic and environmental sciences issues.

Catalog of Federal Domestic Assistance Program Numbers: (93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: August 17, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–20907 Filed 8–22–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute and Arthritis and Musculoskeletal and Skin Diseases on September 14 and 15, 1995, Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public September 14 from 8:30 a.m. to 9:00 a.m. to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on September 14 from 9:00 a.m. to approximately 5:00 p.m. and if necessary the closed portion will continue on September 15 from 8:30 a.m. to adjournment in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant application. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Michael Lockshin, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Natcher, Building, Room 5AS–13, Bethesda, Maryland 20892, (301) 594–2463.

A summary of the meeting and roster of the members may be obtained from the Extramural Programs Office, NIAMS, Natcher Bldg, Rm. 5AS–13, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–2463.

(Catalog of Federal Domestic Assistance Program No. 93.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: August 17, 1995.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 95–20909 Filed 8–22–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meeting:

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Postdoc. Indiv. Service Award Small Grant Application-FCUF (Teleconference).

Dates: August 28, 1995.

Time: 2:30 pm.

Place: Natcher Building, Rm. 4AN–44F National Institutes of Health, Bethesda, MD 20892.

Contact Person: Dr. William Gartland, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

The meeting will be closed in accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the extramural research review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: August 17, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–20818 Filed 8–22–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Mental Health Council of the National Institute of Mental Health for September 1995.

The meeting will be open to the public, as indicated, for discussion of NIMH policy issues and will include current administrative, legislative, and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named below in advance of the meeting.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, a portion of the Council will be closed to the public as indicated below for the review, discussion and evaluation of individual grant applications. These applications, evaluations, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301, 443–4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the contact person indicated.

Name of Committee: National Advisory Mental Health Council.

Date: September 18–19, 1995.

Place: September 18—Wilson Hall, Building 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892; September 19—Conference Rooms D and E, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Open: September 18, 9 a.m. to 5 p.m.

Closed: September 19, 9:30 a.m. to adjournment.

Contact Person: Carolyn Strete, Ph.D., Executive Secretary, Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3367.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: August 17, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–20910 Filed 8–22–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review individual grant applications.

Name of SEP: Multidisciplinary Sciences.

Date: August 31, 1995.

Time: 10 a.m.

Place: NIH, Rockledge II, 5118.

Contact Person: Dr. Paul Parakkal, Scientific Review Administration, 6701 Rockledge Drive, Room 5118, Bethesda, MD 20892, (301) 435–1172.

Name of SEP: Microbiological and Immunological Sciences.

Date: October 16, 1995.

Time: 8:30 a.m.

Place: Double-Tree Inn, Rockville, MD.

Contact Person: Ms. Marcel Pons, Scientific Review Administrator, 6701 Rockledge Drive, Room 4196, Bethesda, MD 20892, (301) 435–1217.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 15, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–20819 Filed 8–22–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Institutes of Health; Proposed Data Collection Available for Public Comment and Recommendations

Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that the Federal agencies provide a 60-day notice in the **Federal Register** concerning each proposed collection of information. The National Institute of Dental Research (NIDR) of the National Institutes of Health is publishing this notice to solicit public comment on a proposed data collection: The Impact and Costs of Sealants in Young Child Populations.

Comments are invited on: (a) The need for the information (b) its practical utility, (c) the accuracy of the agency's burden estimate, and (d) ways to minimize burden on respondents. Send comments to Dr. Helen Gift, Chief, Disease Prevention and Health Promotion Branch, DEODP, NIDR, NIH, Natcher Building, Room 3AN–44D, 9000 Rockville Pike, Bethesda, MD 20892. Written comments must be received by [Federal Register insert the date 60 days following the publication.]. To request a copy of the data collection plan and instrument, call Dr. Gift on (301) 594–5579 (not a toll-free number).

Proposed Project

The Impact and Costs of Sealants in Young Child Populations—New—This study will assess the value (costs and effects) of providing dental sealants to the child population with erupted permanent teeth with occlusal surfaces (approximately ages 6–12) under alternative financial support programs in existing oral health care delivery systems and across two socioeconomic groups. The primary objectives of the study are to determine if various levels of dental insurance influence use of dental sealants, if costs attributable to sealants in a payment program provide value in terms of reduced caries, and if providing dental sealants to specific tooth surfaces of children merits the investment of limited resources within a larger oral health care program. The findings will provide valuable information concerning: (1) Real disease reductions possible using dental sealants for age-appropriate child populations within the existing oral health delivery system, (2) the costs of, and estimated savings from, providing sealants rather than restorative care, and (3) the marginal benefits and cost benefits of adding sealants to ''normative'' caries prevention efforts in age-appropriate child populations. Burden estimates are as follows:

	No. of respondents	No. of responses per respondent	Avg/burden/response (hours)
Parents	3600	4	.125
Children	3600	4	.129
Dentists	400	1	.033

Dated: August 16, 1995.

Yvonne H. du Buy,

Executive Officer, NIDR.

[FR Doc. 95–20820 Filed 8–22–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–050–1150–04]

Closure Order: Shoshone District Bat Hibenacula

AGENCY: Bureau of Land Management; Interior.

SUMMARY: Pursuant to 43 CFR 8364.1, all caves in the Shoshone District identified as bat hibernation sites (hibernacula) are seasonally closed to entry. With the exception of approved research, essential search and rescue, or other emergency or administrative operations for cave resources protection, in caves containing hibernation sites, and other caves that may be identified in the future as hibernacula, are closed seasonally during the hibernation season to all visitation, from October 15 to May 1.

Know affected caves are listed below:

Bat Cave
Chalk Cave
Giant Arch Cave
Gypsum Cave
Jawdropper
Little Arch Cave
Pot O' Gold Cave
Wedge Butte East and West Caves
Will's Cave

The purpose of the closure is to protect bat species and their habitat during the critical hibernation period. Any person who fails to comply with this closure and restriction order, under 43 CFR 8364.1, may be subject to the penalties provided in regulations at 43 CFR 8360.0–7; a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

DATES: This action is effective August 14, 1995.

ADDRESSES: The Federal Cave Resources Protection Act of 1988 prohibits disclosure of cave locations. Information pertaining to the above closure is available at the BLM Shoshone District in Shoshone, Idaho.

FOR FURTHER INFORMATION CONTACT: Cave Management Coordinator Paula Perletti, BLM Shoshone District, P.O. Box 2–B, Shoshone Idaho 83352, telephone (208) 886–7254.

SUPPLEMENTARY INFORMATION: Certain caves in the Shoshone District are particularly attractive to bats for hibernaculum because they provide a narrow yet optimum range of temperature and other microclimatical variables required for successful hibernation. Research has indicated that all bat species are extremely susceptible and sensitive to human disturbance during hibernation and that recreational caving trips during the hibernation season are detrimental to the survival of bat species.

The policy will be addressed in the Bennett Hills Resource Management Plan supplemental draft available 12/95.

Dated: August 14, 1995

Robert D. Cordell,

Bennett Hills Resource Area Manager.

[FR Doc. 95–20829 Filed 8–22–95; 8:45 am]

BILLING CODE 4310–GG–M

[WY–010–5101–00–K012, WYW–128830]

Express Pipeline Inc. (Express); Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability and Notice of Public Meetings on the Draft Environmental Impact Statement for the Express Pipeline for public review and comment.

SUMMARY: A Draft Environmental Impact Statement (DEIS) for Express Pipeline Inc. (Express) to construct, operate, and maintain a 24-inch pipeline on public lands to transport crude oil between Wild Horse, Alberta, Canada and Casper, Wyoming, is available for public review. The DEIS was prepared by Greystone, a third-party contractor for the Bureau of Land Management (BLM) under the provisions of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA). The DEIS describes and analyzes three alternatives and discloses each alternative's environmental effects. Public meetings will be held in communities along the proposed pipeline route.

DATES: Written comments concerning the analysis will be accepted for 60 days following the date the Environmental Protection Agency (EPA) publishes the notice of filing of the DEIS in the **Federal Register,** which is expected to be about August 18, 1995. Meetings will be held in communities along the proposed pipeline route to provide opportunities for the public to meet with representatives from the BLM and the Montana Department of Environmental Quality (DEQ), co-lead agency with BLM, and comment on the DEIS. (Representatives from DEQ will attend the Montana meetings only.) These meetings will be held in Havre, Montana, and in Casper, Wyoming, on September 11, 1995; in Lewistown, Montana, and Worland, Wyoming, on September 12, 1995; and in Billings, Montana, on September 13, 1995. The BLM will announce the specific times

and locations for the meetings through local media when they are set.

ADDRESSES: Copies of the DEIS may be reviewed at the following locations: Lewistown District BLM Office, 80 Airport Road, (contact Robert Padilla, Realty Specialist), Lewistown, Montana; Worland District BLM Office, 101 South 23rd Street, (Don Ogaard, BLM Project Manager) Worland, Wyoming; Casper District BLM Office, 1701 East ''E'' Street, (Pat Moore, Realty Specialist), Casper, Wyoming; Montana State Department of Environmental Quality (DEQ) (Art Compton) 1520 East 6th Avenue, Helena, Montana; and county and city libraries along the proposed pipeline route.

FOR FURTHER INFORMATION CONTACT: Don Ogaard, BLM Project Manager, Bureau of Land Management, Worland District Office, P.O. Box 119, 101 South 23rd Street, Worland, Wyoming 82401–0119, telephone 307–347–9871.

SUPPLEMENTARY INFORMATION: Express Pipeline, Inc. proposes to construct, operate, and maintain a 24-inch pipeline from Wild Horse (located on the border between Montana and Canada) to Casper, Wyoming, to transport Canadian crude oil. Nationwide, the demand for and consumption of petroleum in the U.S. has exceeded production for more than 20 years. In recent years, this gap has been widening as the demand for crude oil increases while domestic production declines. Because of this, the U.S. needs to locate additional, dependable sources of crude oil. The overall purpose of the proposed pipeline is to address the needs of refineries in the U.S., particularly in the Rocky Mountain Region, and the producers of Western Canada. The Express Mountain Region, and the producers of Western Canada. The Express pipeline would provide a new source of crude oil to refineries located throughout the Rocky Mountain Region and other parts of the U.S. through the existing network of pipelines.

The DEIS is not a decision document. The purpose of the DEIS is to provide sufficient information to make an informed decision about Express's proposal. It is a document disclosing the likely environmental consequences of implementing the proposed action or one of the alternatives to that action. This document describes the likely effects of constructing or not constructing the proposed pipeline.

Before Express can construct the pipeline, it must obtain numerous Federal, State, county, and local permits. Because the route crosses public land administered by the BLM and the Bureau of Reclamation, Express must obtain a Right-of-Way Grant from the Federal Government. As part of the process for granting the permits, these agencies must consider Express's proposal under NEPA. Regulations implementing NEPA (40 CFR 1500) encourage agencies to incorporate any previous NEPA analyses by reference to eliminate repetitive discussions of the same issues and to focus on specific issues of the proposal. The proposed pipeline would follow the routes of two other pipelines for which EIS's were previously issued by Federal agencies. Accordingly, this DEIS incorporates by reference the PGT/PG&E and Altamont Natural Gas Pipeline Projects Final EIS (FERC 1991) and the Amoco Carbon Dioxide Projects Final EIS (BLM 1989).

Dated: August 16, 1995.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 95–20848 Filed 8–22–95; 8:45 am]

BILLING CODE 4310–22–P

[WY–930–1430–01; WYW–130500]

Opening of National Forest System Land; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the temporary segregative effect as to 10 acres of National Forest System lands which were originally included in an application for exchange in the Bridger-Teton National Forest.

EFFECTIVE DATE: August 23, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2091.3–2(b), at 9 a.m. on August 23, 1995, the following described lands will be relieved of the temporary segregative effect of exchange application WYW 130500.

Sixth Principal Meridian, Wyoming

T. 42 N., R. 113 W.,
Sec. 16, E½SW¼NE¼SW¼, W½SE¼NE¼SW¼

The area described contains 10 acres in Teton County.

At 9 a.m. on August 23, 1995, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregation of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988) shall vest on rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law were not in conflict with Federal law. The Bureau of Land management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 95–20866 Filed 8–22–95; 8:45 am]

BILLING CODE 4310–22–M

[AZ–050–05–5440–00; 2920]

Notice of Realty Action, Lands Suitable for Concession Lease, Federal Land Policy and Management Act (FLPMA), Mohave County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Mohave County, Arizona, have been examined and found suitable for lease, in support of the Bureau of Land Management's (BLM) Recreation Program. Therefore, a portion of Section 12, Bullhead City shall be made available, through competitive lease applications, for development as a Recreational Vehicle (RV) Park. In addition to rental sites appropriate for RV use, the land may also be devoted to supporting developments associated with, and ordinary to, RV use. Competitive lease applications will be received and the land shall be leased to a selected applicant under the authority of the Federal Land Policy and Management Act of 1976, regulations at 43 CFR 2920, and consistent with the Yuma District Concession Review Program. Approximately 370 acres in Section 12 are available for lease. These lands are located on both sides of Highway 95, with approximately 35 acres west of Highway 95, and about 3,000 feet of shoreline on the Colorado River. Applications may be submitted for 75 acres, more or less, of the approximate 370 acres available, that are not already encumbered by existing realty restrictions.

The realty description for the available public lands is as follows:

Gila and Salt River Meridian, Arizona

T. 20 N., R. 22 W.,
Sec. 12, portions of lots 5, 6, 7, and 9, E½NE¼, SE¼.

The purpose of the lease, for recreation concession use, is consistent with BLM land use planning and would be in the public interest. When issued, the lease will be subject to the following terms, conditions, and reservations:

1. Provisions of the Code of Federal Regulations 2920, Leases, Permits, and Easements.
2. Provisions of the Yuma District Concession Review Program.
3. No mobile homes shall be installed for any purpose.
4. No residency shall be granted except to the concessioner and required staff.
5. All valid existing rights documented on the official public land records at the time of lease issuance shall remain valid.
6. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.
7. Any other terms and conditions the Authorized Officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.
8. Stipulations of the FLPMA lease authorizing and regulating the concession operation.
9. Compliance with necessary environmental review and analysis, licenses, permits, and other related documentation will be the responsibility and expense of the selected applicant.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Yuma District, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws.

DATES: By no later than November 21, 1995, interested persons may submit applications for developing the land as an RV park to the Area Manager, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406. If a satisfactory application is received, a lease contract will be issued without further publication. Applications should be clearly marked on the exterior of the envelope or parcel, ''Section 12 RV Park Proposal.'' All applications received will be held as proprietary information unless released by the applicant.

An information packet containing additional requirements, constraints, and information is available by writing to the above address or calling Mike Wilson, Concession Management Specialist, at 520–855–8017. The packet contains a copy of the concession lease, a master land use study, copies of regulatory documents, maps, payment terms, and other related documents. Potential applicants are strongly encouraged to obtain and review the information packet prior to submitting applications.

Dated: August 15, 1995.

Robert M. Henderson,

Acting Area Manager.

[FR Doc. 95–20925 Filed 8–22–95; 8:45 am]

BILLING CODE 4310–32–P

[AZ–026–05–5440–10–A131; AZA–29218]

Notice of Realty Action; Noncompetitive Sale of Public Lands in Pima County, Arizona

AGENCY: Bureau of Land Management (BLM).

ACTION: Notice.

SUMMARY: The following land has been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the fair market value of $51,600. The land is being offered by direct sale to Why Utility Company, who is the current landowner. The United States conveyed title to Why Utility Company under the Recreation & Public Purposes (R&PP) Act which restricts the use of the land and also allows for special pricing for the leasing or purchase of public lands. Why Utility Company will reconvey the land to the United States and they will receive another conveyance document under the Federal Land Policy and Management Act without the restrictions. The land will not be offered for sale until at least 60 days after the date of this notice.

Gila and Salt River Meridian, Arizona

T. 13 S., R. 5 W.,
Sec. 25, S½NE¼, W½SW¼SE¼NW¼, SE¼SE¼SE¼NW¼, E½SE¼NE¼SW¼, SW¼SW¼NE¼SW¼, E¼SE¼, NW¼SE¼.
Containing 215 acres.

FOR FURTHER INFORMATION CONTACT: Angela Mogel of the Phoenix District Office, U.S. Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 780–8090.

SUPPLEMENTARY INFORMATION: The land described above is hereby opened only to applications under the Sales and Conveyance of Federally-Owned Mineral Interests as authorized by Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719), upon publication of this notice.

If it is determined that there are no known mineral values, the mineral interests shall be determined suitable for sale under Section 209 of the Federal Land Policy and Management Act of 1976 and may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

The deed, when issued, will contain reservations to the United States for a right-of-way for ditches and canals and for a right-of-way for highway purposes as authorized by the Federal Aid Highway Act.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: August 14, 1995.

Kirby Boldan,

Acting District Manager, Phoenix District Office.

[FR Doc. 95–20926 Filed 8–22–95; 8:45 am]

BILLING CODE 4310–32–P

[OR–943–1430–05; GP–189; OR 52150]

Filing of Application for State Indemnity Selection; OR–52150

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action is to inform the public of the receipt of an application from the State of Oregon to select the parcel of public land described below as an Indemnity Selection pursuant to Sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852).

FOR FURTHER INFORMATION CONTACT: Bill Bliesner, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–952–6157.

SUPPLEMENTARY INFORMATION: Notice is given that on July 12, 1995, the State of Oregon filed an application for

Indemnity Selection of the land described as follows:

Willamette Meridian, Oregon

T. 18 S., R. 12 E.,
Sec. 11, All.

The area described contains 640.00 acres in Deschutes County, Oregon.

Upon filing of the application, the land selected was segregated to the extent that it will not be open to appropriation under the public land laws including the mining laws. The segregative effect of the application shall terminate either upon issuance of the document of conveyance for the land to the State, upon rejection of the application, or two years from the date of filing of the application, whichever occurs first.

Dated: August 3, 1995.

William E. Bliesner,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95–20830 Filed 8–22–95; 8:45 am]

BILLING CODE 4310–33–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–805646

Applicant: Brian Shorey, Conneaut Lake, PA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from the captive herd maintained by Mr. H. Kock, ''Verborgenfontein'', Merriman, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–805272

Applicant: Triple S Game Farm, Edmond, OK.

The applicant requests a permit to import 4 captive-hatched Cabot's tragopan (*Tragopan caboti*) from the Beijing Normal University, China for the purpose of enhancement of the survival of the species through propagation.

PRT–738264

Applicant: Dept. of Biology, University of California, La Jolla, CA.

The applicant requests to renew and amend their permit to import hairs collected from captive-held or captive-born gibbons (*Hylobates spp.*) from zoos worldwide for the purpose of genetic research in support of international conservation efforts.

PRT–734408

Applicant: Dept. of Biology, University of California, La Jolla, CA.

The applicant requests to renew their permit to import naturally shed hairs collected from abandoned nests of chimpanzee (*Pan troglodytes*) and bonobo (*Pan paniscus*) throughout the species natural range in Africa for the purpose of genetic research benefiting the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: August 17, 1995.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–20922 Filed 8–23–95; 8:45 am]

BILLING CODE 4310–55–P

Geological Survey

Digital Orthophoto Quadrangle Data Bases; Contribution From the Nature Conservancy

AGENCY: U.S. Geological Survey, DOI.

ACTION: Notice.

SUMMARY: The U.S. Geological Survey (USGS) produces Digital Orthophoto Quadrangle (DOQ), and other types of digital geospatial data which are registered to USGS topographic maps. These data are entered into digital geospatial data bases as part of the public domain. The notice announces that an unsolicited contribution of $1,800.00 has been accepted by the USGS from the non-profit organization, The Nature Conservancy. By mutual agreement, and with additional financial support from the Natural Resources Conservation Service, the USGS intends to use these funds to produce five DOQ's in Chester County, Pennsylvania. The USGS recognizes the public benefit of using contributed funds to produce DOQ, and other types of geospatial data for non-profit data users. As such, when it is in the Government's interest, and subject to the availability of appropriated funds, the USGS will accept contributions from other non-profit organizations to prepare these data.

ADDRESSES: Prospective contributors are requested to state their interest in writing. Letters may be sent to: Richard Kleckner, Chief, Branch of Data Planning and Integration, 511 National Center, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 22092.

SUPPLEMENTARY INFORMATION: This notice does not solicit contract support for specific USGS digital mapping requirements. Contributions require no further activity by the donor beyond the donation itself. All geospatal data produced via contribution will adhere to USGS geospatial data standards for content and accuracy, and will become part of the public domain. All proposed contributions must be determined by the USGS to serve the public interest and to comply with applicable public law.

Dated: August 14, 1995.

James R. Plasker,

Associate Division Chief, National Mapping Division.

[FR Doc. 95–20828 Filed 8–22–95; 8:45 am]

BILLING CODE 4310–31–M

Minerals Management Service

[DES 95–41]

Outer Continental Shelf, Alaska Region, Beaufort Sea Lease Sale 144

AGENCY: Minerals Management Service.

ACTION: Notice of Availability of the Draft Environmental Impact Statement and Locations and Dates of Public Hearings.

The Minerals Management Service (MMS) has prepared a draft Environmental Impact Statement (EIS) relating to the proposed 1996 Outer Continental Shelf oil and gas lease sale of available unleased blocks in the Beaufort Sea. The proposed Beaufort Sea Sale 144 will offer for lease approximately 9.8 million acres. Single copies of the draft EIS can be obtained from the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99503–4302, Attention: Public

Information. Copies can be requested by telephone, (907) 271–6070.

Copies of the draft EIS will also be available for inspection in the following public libraries:

Alakanuk Public Library, Alakanuk, AK
Alaska Resource Library, U.S. Department of the Interior, Anchorage, AK
Alaska State Library, Juneau, AK
Army Corps of Engineers Library, U.S. Department of Defense, Anchorage, AK
Brevig Mission Community Library, Brevig Mission, AK
Buckland Public Library, Buckland, AK
Davis Menadelook Memorial High School Library, Diomede, AK
Elim Community Library, Elim, AK
Elmer E. Rasmuson Library, 310 Tanana Drive, Fairbanks, AK
Fairbanks North Star Borough Public Library (Noel Wien Library), 1215 Cowles Street, Fairbanks, AK
Gambell Community Library/Learning Center, Gambell, AK
George Francis Memorial Library, Kotzebue, AK
Golovin Community Library, Golovin, AK
Kaveolook School Library, Kaktovik, AK
Kegoayah Kozga Public Library, Nome, AK
Kenai Community Library, 163 Main Street Loop, Kenai, AK
Kettleson Memorial Library, Sitka, AK
Kiana Elementary School Library, Kiana, AK
Kingikme Public Library, Wales, AK
Koyuk City Library, Koyuk, AK
McQueen School Library, Kivalina, AK
Nellie Weyiouanna Ilisaavik Library, Shishmaref, AK
Noorvik Elementary/High School Library, Noorvik, AK
North Slope Borough School District Library/Media Center, Barrow, AK
Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, AK
Nuiqsut Library, Nuiqsut, AK
Savoonga Community Library, Savoonga, AK
Shaktoolik School Library, Shaktoolik, AK
Soldotna Public Library, 235 Binkley Street, Soldotna, AK
Stebbins Community Library, Stebbins, AK
Ticasuk Library, Unalakleet, AK
Tikigaq Library, Point Hope, AK
University of Alaska, Anchorage Consortium Library, 3211 Providence Dr., Anchorage, AK
University of Alaska, Fairbanks Institute of Arctic Biology, 311 Irving Bldg., Fairbanks, AK
University of Alaska-Juneau Library, 11120 Glacier Highway, Juneau, AK

In accordance with 30 CRF 256.26, the MMS will hold public hearings to receive comments and suggestions relating to the EIS.

The hearings will be held on the following dates and times indicated:

October 26, 1995
University Plaza Building, 949 East 36th Avenue, 3rd Floor Conference Room, Anchorage, Alaska, 12:00 p.m. (noon)

October 30, 1995
Kisik Community Center, Nuiqsut, Alaska, 1:00 p.m.–5:00 p.m.

November 1, 1995
Community Building, Kaktovik, Alaska, 2:00 p.m., 5:00 p.m., 6:00 p.m.

November 2, 1995
North Slope Borough, Assembly Chambers, Barrow, Alaska, 7:30 p.m.

The hearings will provide the Secretary of the Interior with information from Government agencies and the public which will help in the evaluation of the potential effects of the proposed lease sale.

Interested individuals, representatives of organizations, and public officials wishing to testify at the hearings are asked to contact the Regional Director at the above address or Ray Emerson by telephone (907) 271–6650 or toll free 1–800–764–2627 by October 20, 1995.

Time limitations may make it necessary to limit the length of oral presentations to 10 minutes. An oral statement may be supplemented by a more complete written statement which may be submitted to a hearing official at the time of oral presentation or by mail until November 20, 1995. This will allow those unable to testify at a public hearing an opportunity to make their views known and for those presenting oral testimony to submit supplemental information and comments.

Comments concerning the draft EIS will be accepted until November 20, 1995, and should be addressed to the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508–4302.

Dated: August 10, 1995.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 95–20859 Filed 8–22–95; 8:45 am]

BILLING CODE 4310–MR–P

Electronic Data Interchange (EDI) in the Royalty Management Program

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of an EDI Presentation.

SUMMARY: The Minerals Management Service (MMS) is giving an Electronic Data Interchange (EDI) presentation in New Orleans, Louisiana, on September 28, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Y. Matthews, Systems Management Division, Minerals Management Service Royalty Management Program, P.O. Box 25165 MS 3140, Denver, Colorado, 80225–0165, telephone numbers (800) 619–4593 or (303) 275–7036, FAX number (303) 275–7099.

SUPPLEMENTARY INFORMATION: MMS is offering an EDI presentation at no cost to companies and interested parties that intend to implement or pilot EDI with MMS. The EDI presentation will be held the day following the American Petroleum Institute (API), Petroleum Industry Data Exchange (PIDX) Conference at the same location, which is the New Orleans Hilton Riverside and Towers Hotel, 2 Poydras Street, New Orleans, Louisiana. The API PIDX Conference is scheduled for September 25–27, 1995. The EDI Presentation instructors are MMS employees of the Royalty Management Program, Systems Management Division.

DATES: The EDI presentation is Thursday, September 28, 1995.

LOCATION: New Orleans Hilton Riverside and Towers Hotel, 2 Poydras Street, New Orleans, Louisiana, Phone: (504) 561–0500.

Agenda: Morning Session 9:00 a.m.–11:30 a.m.
Instructor: Mr. Ron Hatton
Subject: MMS EDI activities, capabilities, current status and implementation planning and schedules.

Afternoon Session 1:00 p.m.–4:00 p.m.
Instructor: Mr. Tim Allard
Subject: EDI technical issues related to mapping and transmittal of regulatory data to MMS via EDI.

All EDI Presentation attendees will be provided copies of the MMS EDI Implementation Guides for Royalty forms: MMS–2014, Report of Sales and Royalty Remittance; MMS–3160, Monthly Report of Operations; and MMS–4054, Oil and Gas Operations Report Part A—Well Production (OGOR–A), Oil and Gas Operations Report Part B—Product Disposition (OGOR–B), Oil and Gas Operations Report Part C—Product Sales From Facility (OGOR–C).

If you are planning to attend this EDI Presentation, please leave a message for Barbara Matthews at the telephone and FAX numbers in the information contact

section of this notice no later than September 15, 1995.

Date: August 17, 1995.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 95–20847 Filed 8–22–95; 8:45 am]

BILLING CODE 4310–MR–P

National Park Service

Notice of Availability of the Final Development Concept Plan/ Amendment to the General Management Plan and Final Environmental Impact Statement for Crater Lake National Park, Oregon

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Public Law 91–190, as amended), the National Park Service, Department of the Interior, has prepared a Final Development Concept Plan/ Amendment to the General Management Plan/Environmental Impact Statement (DCP/FEIS) that describes and analyzes a proposal and three alternatives that meet immediate and long-term needs at Crater Lake National Park regarding employee housing, completion of the ongoing redevelopment at Rim Village, and maintenance, administration, and storage facilities.

The Draft Development Concept Plan/ Amendment to the General Management Plan/Environmental Impact Statement (DCP/DEIS) was released for public review on November 29, 1994 (59 FR 228), and the public comment period closed February 2, 1995. During this comment period, three public meetings were held and written comments were also received. The DCP/FEIS contains responses to the comments received and modifications to the document as needed in response to the comments.

The proposal, which was developed in response to public and agency comments on the DCP/DEIS, calls for removing the visitor parking at Rim Village and constructing a new parking structure 800 feet off the rim with a shuttle bus system to provide year-round access to the rim; creating a new roadway on which visitors would travel from the parking facility to Crater Lake Lodge in shuttle buses; partially restoring to natural conditions a one-acre maintenance yard near park headquarters with the remainder of the site converted to an employee recreation area; developing a 98-person employee dormitory and associated parking, roads, pedestrian path, seasonal employee recreational vehicle (RV) sites, a maintenance building and group campsites at Mazama Village. New opportunities for placement of facilities originally proposed at the South Entrance were identified through the public review for the DCP/DEIS. Consequently, a separate planning effort would be undertaken to determine the most appropriate location for construction of these facilities, including employee housing (approximately 20–30 houses, 15–20 RV sites, and a second 98-person dormitory to replace the Rim Village dormitory), and additional support and storage facilities.

Three alternatives were considered, in addition to the proposal. The no-action alternative would implement the 1988 DCP and include development of two day-use parking areas to service Rim Village with associated connecting trail and new road connecting facilities on the rim, and a new employee dorm for 60–65 people. The South Entrance focus alternative would construct a new employee dormitory at Mazama Village and would relocate park headquarters, additional employee housing, and support/storage facilities to the South Entrance. The Mazama focus alternative would concentrate most development at Mazama Village, including a new employee dormitory and support/ storage facilities, with additional employee housing at the South Entrance.

Major impact topics assessed for the proposed action and the alternatives include earth resources, surface water, groundwater/water supply, water quality, air quality, vegetation, wildlife, special-status animal species, ecosystem processes, cultural resources, visitor experience, employee commuting and delivery of services, and land use and zoning.

SUPPLEMENTARY INFORMATION: The no-action period on this final plan and environmental impact statement will end 30 days after the Environmental Protection Agency has published a notice of availability of the DCP/FEIS in the **Federal Register**. For further information, contact: Superintendent, Crater Lake National Park, Post Office Box 7, Crater Lake, OR 97604–0007; telephone (503) 594–2211.

Copies of the DCP/FEIS will be available at Crater Lake National Park Headquarters, as well as the following locations: Multnomah County Library, 801 SW 10th, Portland, OR; Salem Library, 585 Liberty SE, Salem, OR; Klamath County Library, 126 South 3rd, Klamath Falls, OR; Eugene Library, 100 W 13th, Eugene, OR; Jackson County Library, 413 W Main, Medford, OR; Deschutes County Library, 507 NW Wall St., Bend, OR; Josephine County Library, 200 NW C, Grants Pass, OR; Douglas County Library, Courthouse, Roseburg, OR; Office of Public Affairs, National Park Service, Department of the Interior, 1849 C Street NW, Washington, DC; and National Park Service, Seattle System Support Office, 909 First Ave;, Seattle, WA.

Dated: August 14, 1995.

Rory D. Westberg,

Acting Deputy Field Director, Pacific West Area, National Park Service.

[FR Doc. 95–20811 Filed 8–22–95; 8:45 am]

BILLING CODE 4310–70–M

Availability of Plan of Operations and Environmental Assessment, Oil Well Plugging and Abandonment; Murphy Exploration and Production Company, Big Thicket National Preserve, Hardin County, Texas

Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Murphy Exploration and Production Company a Plan of Operations to plug and abandon an oil well, and reclaim the operations area in Big Thicket National Preserve, located within Hardin County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice. The documents can be viewed during normal business hours at the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, Texas. Copies can be requested from the Superintendent, Big Thicket National Preserve, 3785 Milam, Beaumont, TX 77701.

Dated: August 17, 1995.

Richard F. Strahan,

Acting Superintendent, Big Thicket National Preserve.

[FR Doc. 95–20865 Filed 8–22–95; 8:45 am]

BILLING CODE 4310–70–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Notice of Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of loans to Banco Centroamericano de Integracion Economica (CABEI) (''Borrower'') as part of USAID's development assistance program. The proceeds of this loan will be used for a municipal infrastructure finance program to finance urban environmental infrastructure for the

benefit of low-income families in Central American countries. At this time, CABEI has authorized USAID to request proposals from eligible lenders for a loan under this program of $7 Million U.S. Dollars (US$7,000,000). The name and address of the Borrower's representatives to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Banco Centroamericano De Integracion Economica

Project No: 596–HG–010—Amount: US$7,000,000.

Housing Guaranty Loan No.: 596–HG–007 A01, 596–HG–010 A01.

1. Attention: Mr. Jaime Chavez-Almendares, Financial Manager, Banco Centroamericano de Integracion Economica (CABEI), P.O. Box 772, Tegucigalpa, D.C., Honduras.

Telefax Nos.: 011/(504) 37–0188 or 011/(504) 37–9173 (preferred communication).

Telephone Nos.: 011/(504) 37–3119 or 011/(504) 38–4901.

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should limit their bids to the Borrower's representatives by *Wednesday, September 6, 1995, 12:00 noon Eastern Daylight Savings Time.* Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. Ronald Carlson, Director, Regional Housing and Urban Development Office, Central America, USAID/RHUDO/Guatemala, Unit 3323, APO AA 34024. (Street address: 1 Calle 7–66, Zona 9, 01009, Plaza Uno Bldg., Guatemala City, Guatemala, C.A.)

Telefax Nos.: 011/(502) 2–320–663 or 011/(502) 2–311–151 (preferred communication).

Telephone Nos.: 011/(502) 2–320–603 or 011/(502) 2–320–202.

Mr. Charles Billand, Assistant Director, Mr. Peter Pirnie, Financial Advisor.

Address: U.S. Agency for International Development, Office of Environment and Urban Programs, G/ENV/UP, Room 409, SA–18, Washington, DC 20523–1822.

Telex No.: 892703 AID WSA.

Telefax No.: 703/875–4384 or 875–4639 (preferred communication).

Telephone No.: 703/875–4300 or 875–4510.

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $7 million.

(2) *Term:* Alternatives of 15, 20, 25 and 30 years.

(3) *Grace Period:* Five years grace on repayment of principal. (During grace period, semi-annual payments of interest only. Thereafter, semi-annual level payments of principal and interest over the remaining life of the loan).

(4) *Interest Rate:* Quotes for fixed rate, only.

Fixed Interest Rate: For bid comparison purposes, rates are to be quoted based on a spread over an index, specifically the 6⅞% U.S. Treasury Bond due August 15, 2025. The actual rate is to be set at the time of acceptance.

(5) *Prepayment:*

(a) Offers should include options for prepayment and mention prepayment premiums, if any. Options for prepayment should be on the following basis:

(i) For a 15 year term, callable after five years on any semi-annual payment date.

(ii) For 20, 25, 30 year terms, callable after 10 years on any semi-annual payment date.

(b) Only in an extraordinary event to assure compliance with statutes binding USAID, USAID reserves the right to accelerate the loan (it should be noted that since the inception of the USAID Housing Guaranty Program in 1962, USAID has not exercised its right of acceleration).

(6) *Fees:* Offers should specify the placement fees and other expenses, including USAID fees, Paying and Transfer Agent fees, and out of pocket expenses, etc. Lenders are requested to include all legal fees in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan. *All fees should be clearly specified in the offer.*

(7) *Closing Date:* Not to exceed 60 days from date of selection of lender.

Selection of Investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower, and thereafter, subject to approval by USAID. Disbursements under the loan will be subject to certain conditions required of the Borrower by USAID as set forth in agreements between USAID and the Borrower.

The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the ''Act'').

Lenders eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for the USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the USAID housing guaranty program can be obtained from: Mr. Michael J. Lippe, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 409, SA–18, Washington, DC 20523–1822, Fax Nos: 703/875–4384 or 875–4639, telephone: 703/875–4300.

Dated: August 18, 1995.

Michael G. Kitay,

Assistant General Counsel, Bureau for Global Programs, Field Support and Research, U.S. Agency for International Development.

[FR Doc. 95–20951 Filed 8–22–95; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–736 and 737 (Preliminary)]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany and Japan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)),[2] that there is a reasonable indication that an industry in the United States is materially injured [3] by reason of imports from

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] These investigations are subject to the Uruguay Round Agreements Act amendments to the Tariff Act of 1930.

[3] Commissioner Rohr and Commissioner Newquist determine that there is a reasonable indication of threat of material injury.

Germany and Japan of large newspaper printing presses and components thereof, whether assembled or unassembled, provided for in subheadings 8443.11.10, 8443.11.50, 8443.21.00, 8443.30.00, 8443.40.00, 8443.60.00, 8443.90.50, 8471.91.40, 8471.91.80, 8524.21.30, 8524.90.20, 8524.90.30, 8524.90.40, 8537.10.30, 8537.10.60, and 8537.10.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On June 30, 1995, a petition was filed with the Commission and the Department of Commerce by Rockwell Graphic Systems, Inc., Westmont, IL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of large newspaper printing presses and components thereof, whether assembled or unassembled, from Germany and Japan.

Accordingly, effective June 30, 1995, the Commission instituted antidumping investigations Nos. 731–TA–736 and 737 (Preliminary). Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 10, 1995 (60 F.R. 35564). The conference was held in Washington, DC, on July 21, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 14, 1995. The views of the Commission are contained in USITC Publication 2916 (August 1995), entitled ''Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan: Investigations Nos. 731–TA–736 and 737 (Preliminary).''

Issued: August 15, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–20901 Filed 8–22–95; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 42 U.S.C. §§ 9622(d)(2) and 6973(d), and Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Apache Energy and Minerals Co., et al.*, Civil Action No. 86–C–1675 (Consolidated with 83–C–2388) was lodged on August 10, 1995, with the United States District Court for the District of Colorado.

The settlement concerns the California Gulch Superfund Site located in the central Rocky Mountains near Leadville, Colorado (the ''Site''), an area impacted by extensive mining and ore processing activities. Atlas Mortgage Company—Colorado, Inc. (''Atlas'') owns various mining claims in a portion of the Site upon which lead mill tailings and other mine waste is located. Under the terms of the settlement, a monetary judgment will be entered against Atlas in favor of the United States in the amount of $1 million for the government's past response costs, and Atlas is declared liable for any future response costs incurred by the United States in performing response actions upon Atlas' mining claims. Atlas' obligations will be secured by a lien upon Atlas' mining claims. Furthermore, Atlas agrees not to interfere with the implementation of response actions upon its mining claims. In exchange, the United States covenants not to sue Atlas for Atlas' liability at the Site under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act, (RCRA), 42 U.S.C. § 6973, excluding natural resource damages, criminal liability, or the future disposal of hazardous substances at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Apache Energy and Minerals Co., et al.*, DOJ Ref. #90–11–3–138. Commenters may request a public meeting in the affected areas pursuant to Section 7003(d) of RCRA.

The proposed consent decree may be examined at the Office of the United States Attorney, 1961 Stout Street, Suite 1200, Federal Building, Denver, Colorado 80294; the Region VIII Office of the Environmental Protection Agency, 999 18th Street, Suite 700 South, Denver, Colorado, 80202; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environment and Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 95–20831 Filed 8–22–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Amendment to Consent Decree Pursuant to the Toxic Substances Control Act

In accordance with Departmental policy, 28 CFR § 50.7 notice is hereby given that a proposed second amendment to the 1991 consent decree in *United States* v. *Boliden Metech, Inc.*, Civil Action No. 89–208–T, was lodged on August 11, 1995, with the Untied States District Court for the District of Rhode Island. The complaint alleged that the Defendant violated provisions of the Toxic Substances Control Act and regulations promulgated thereunder regarding the use, handling, storage and disposal of shredded electronic scrap that contains polychlorinated biphenyls (''PCBs''). The proposed second amendment to the consent decree sets forth procedures whereby the Defendant will export approximately 4,200 tons of the shredded electronic scrap for processing at a smelter operated by Boliden Mineral AB in Skelleftehamn, Sweden. Boliden Mineral AB is an affiliate of the Defendant. A first amendment to the consent decree governed a similar shipment in 1993.

The proposed decree may be examined at the Office of the United States Attorney, 10 Dorrance Street, Providence, Rhode Island; and at the Environmental Enforcement Section Consent Decree Library, 1120 G Street, NW., Washington, DC 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.50 (twenty-five cents

per page for reproduction) payable to the Consent Decree Library.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30 days from the date of this notice. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Boliden Metech, Inc.*, (DOJ Reference No. 90–5–1–1–3096).

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–20832 Filed 8–22–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR § 50.7, and Section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g), notice is hereby given that on August 9, 1995, a proposed Consent Decree in *United States* v. *Performance Abatement Services, Inc., et al.*, Civil Action No. 95–73203–DT, was lodged with the United States District Court for the Eastern District of Michigan. This consent decree represents a settlement of claims against Performance Abatement Services, Inc., Rudolph-Libbe, Inc. and Warner-Lambert, Co. for violations of the Clear Air Act, 42 U.S.C. § 7413(b), and the National Emissions Standard for Hazardous Air Pollutants for asbestos, 40 CFR Subpart M. The claims arose during a March, 1993 asbestos renovation operation by Performance Abatement Services, Inc. and Rudolph-Libbe, Inc. of a building owned by Warner-Lambert Company's Parke-Davis Pharmaceutical Research in Ann Arbor, Michigan.

Under this settlement, Performance Abatement Services, Inc., Rudolph-Libbe, Inc. and Warner-Lambert, Co. will pay the United States a civil penalty of $25,000. In addition, the Consent Decree requires the Settling Defendants to comply with the Clean Air Act and, in particular, to comply with specific notice and training requirements for one year. Stipulated penalties may be imposed in the event the Settling Defendants do not comply with the requirements of the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Performance Abatement Services, Inc., et al.*, D.J. Ref. 90–5–2–1–1959.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, 817 Federal Building, 231 West LaFayette Detroit, Michigan; at the Region V Office of the Environmental Protection Agency, 77 West Jackson Blvd. Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $4.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–20833 Filed 8–22–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 5, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 5, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 14th day of August, 1995.

Russell Kile,

Acting Program Manager, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 08/14/95

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,319	American Standard (Comp)	Hamilton Twp., NJ	07/27/95	Sanitary Wares.
31,320	Associated Gas Services (Wkrs)	Houston, TX	07/27/95	Market Natural Gas.
31,321	Basler Electric Co. (Wkrs)	Huntington, TN	07/11/95	Transformers.
31,322	ESCO (IUE)	St. Louis, MO	07/31/95	Printed Circuit Boards.
31,323	Koh-I-Noor, Inc. (Wkrs)	Bloomsbury, NJ	07/28/95	Pens.
31,324	New Vision (ILGWU)	Brooklyn, NY	08/01/95	Women's Knit Sweaters.
31,325	Shaw Industries, Inc. (Wkrs)	Ioccoa, GA	07/24/95	Staple Nylon Fibre.
31,326	Topographic Land Surveyor (Comp)	Midland, TX	07/28/95	Survey Oil Well Locations & Pipelines.

APPENDIX—PETITIONS INSTITUTED ON 08/14/95—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,327	BJ Services Company (Comp)	Houston, TX	08/03/95	Provide Oil & Gas Well Services.
31,328	Genesis Knitting Inc. (ILGWU)	Perth Amboy, NJ	08/03/95	Men's & Ladies' Sweaters.
31,329	H.L. Brown, Jr. (Comp)	Midland, TX	07/31/95	Oil & Gas Production.
31,330	Hollingsworth & Vose Co. (Comp)	Fall River, MA	07/15/95	Filter Media.
31,331	Owens Brockway (IAM)	Auburn, NY	08/03/95	Glass Bottles.
31,332	Jakel, Inc. (Wkrs)	Ramer, TN	08/03/95	Electric Motors.
31,333	Total Petroleum Refinery (Wkrs)	Arkansas City, KS	07/28/95	Gasoline, Asphalt, Butane Propane.
31,334	Space Vector Corp. (Wkrs)	Chatsworth, CA	07/21/95	Missiles & Rockets for Defense Dept.
31,335	Polytech Industries (Wkrs)	Scottsboro, AL	08/01/95	Convenience & Restraint Nets for Auto.
31,336	Superior Toy & Novelty Co. (LGPN)	Kansas City, MO	08/02/95	Toy Finishing.
31,337	McGill Mfg. Co. (CO)	Valparaiso, IN	07/24/95	Switches & Other Electrical Apparatus.
31,338	Owens-Brockway (GPPA)	Atlanta, GA	08/04/95	Glass Bottles.
31,339	Taylor Wood Craft, Inc. (Wkrs)	Malta, OH	08/02/95	Consumer Furniture.
31,340	Kaiser Porcelain, Inc. (Wkrs)	Niagara Falls, NY	08/03/95	Warehouse—Giftware.
31,341	Morrison Hertling & Co. (ACTWU)	Brooklyn, NY	08/01/95	Men's Suits, Sportcoats & Slacks.
31,342	Fine Contract, Inc. (Wkrs)	Hialeah, FL	07/31/95	Ladies' Lingerie.
31,343	Hampco Apparel, Inc. (Wkrs)	Chase City, VA	08/01/95	Men's & Ladies' Knit & Woven Shirts.
31,344	Clint Hurt & Assoc., Inc. (Co)	Charleston, WV	08/03/95	Oil & Gas Drilling.

[FR Doc. 95–20897 Filed 8–22–95; 8:45 am]

BILLING CODE 4510–30–M

Advisory Council on Unemployment Compensation; Meeting

SUMMARY: The Advisory Council on Unemployment Compensation (ACUC) was established in accordance with the provisions of the Federal Advisory Committee Act on January 24, 1992 (57 FR 4007, Feb. 3, 1992). Public Law 102–164, the Emergency Unemployment Compensation Act of 1991, mandated the establishment of the Council to evaluate the overall unemployment insurance program, including the purpose, goals, counter-cyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and other aspects of the program, and to make recommendations for improvement.

TIME AND PLACE: The meeting will be held from 8 a.m. to 5 p.m. on September 14, 1995 at The Mills House Hotel, 115 Meeting Street, Charleston, South Carolina.

AGENDA: The agenda for the meeting is as follows:

(1) Discussion of administrative financing within the unemployment insurance system;

(2) Discussion of performance measurement within the unemployment insurance system;

(3) Discussion of data needs in the unemployment system; and

(4) Discussion of the Council's findings and recommendations.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating will be available to the public on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal Official (DFO), listed below, at least 7 days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210. (202) 219–7831. (This is not a toll-free number.)

Signed at Washington, DC, this 11 day of August 1995.

Timothy M. Barnicle,

Assistant Secretary of Labor.

[FR Doc. 95–20899 Filed 8–22–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00521]

Crown Pacific LTD., Crown Pacific Plywood Division, Redmond, OR; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on July 11, 1995 in response to a petition filed on behalf of workers at Crown Pacific LTD., Crown Pacific Plywood Division, Redmond, Oregon. Workers produce plywood.

In a letter dated August 8, 1995, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation on this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 9th day of August 1995.

Arlene O'Connor,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–20898 Filed 8–22–95; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

South Carolina Electric and Gas Company; Virgil C. Summer Nuclear Station, Unit 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License No. NPF–12, issued to South Carolina Electric and Gas Company (the licensee), for operation of the Virgil C. Summer Nuclear Station (VCSNS), Unit 1, located in Fairfield County, South Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow implementation of a hand geometry biometric system of site access control

such that photograph identification badges can be taken offsite.

The proposed action is in accordance with the licensee's application dated June 28, 1995, for exemption from certain requirements of 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power plant reactors against radiological sabotage.''

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an onsite physical protection system and security organization.

Paragraph (1) of 10 CFR 73.55(d), ''Access Requirements,'' specifies that ''The licensee shall control all points of personnel and vehicle access into a protected area. * * *'' It is specified in 10 CFR 73.55(d)(5) that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' It also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area. * * *''

Currently, unescorted access into protected areas of the VCSNS is controlled through the use of a photograph on a badge/keycard (hereafter, these are referred to as badges). The security officers at the entrance station use the badge number, name and photograph on the badge to identify the individual requesting access. Under the current system, badges are not taken offsite and are issued, stored, and retrieved at the entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges offsite. In accordance with the plant's procedures, neither licensee employees nor contractors are currently allowed to take badges offsite.

The licensee proposes to implement alternative unescorted access control system which would eliminate the need to issue and retrieve badges at the entrance/exit location and would allow all individuals with unescorted access to keep their badges with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

The Commission has completed its evaluation of the proposed action. Under the proposed system, each individual who is authorized for unescorted entry into protected areas would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badge with them when they depart the site.

Based on a Sandia National Laboratories report titled ''A Performance Evaluation of Biometric Identification Devices,'' (SAND91—0276 UC—906 Unlimited Release, Printed June 1991), and on its experience with the current photo-identification system, the licensee stated that the false acceptance rate of the proposed hand geometry system is at least equal to that of the current system. The licensee stated that the use of the badges with hand geometry system would enhance access control capabilities at the protected area perimeter, reduce security force staffing requirements, and improve the emergency accountability process. Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas. The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plan will be revised to include implementation and testing of the hand geometry access control system.

The access process will continue to be under the observation of security personnel. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area.

Environmental Impacts of the Proposed Action

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluent and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the VCSNS.

Agencies and Persons Consulted

In accordance with its stated policy, on July 31, 1995, the staff consulted with the South Carolina State official, Mr. Virgil Autry of the Bureau of Solid and Hazardous Waste Management, Department of Health and Environmental Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 28, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the

Fairfield County Library, 300 Washington Street, Winnsboro, SC.

Dated at Rockville, Maryland, this 16th day of August 1995.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–20882 Filed 8–22–95; 8:45 am]

BILLING CODE 7590–01–P

Privacy Act of 1974, As Amended; Revisions to Existing System of Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Nuclear Regulatory Commission (NRC) is issuing public notice of its intent to modify an existing system of records, NRC–40, ''Facility Security Access Control Records—NRC,'' to revise a number of categories in the system notice, including individuals covered by the system, records contained in the system, record source categories, authority, retrievability, and safeguards. In addition, the list of NRC building locations contained in NRC's compilation of systems of records notices is being updated to reflect current addresses.

EFFECTIVE DATE: The revisions will become effective without further notice on October 2, 1995, unless comments received on or before that date cause a contrary decision. If, based on NRC's review of comments received, changes are made, NRC will publish a new final notice.

ADDRESSES: Send comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm Federal workdays. Copies of comments received may be examined at the NRC Public Document Room at 2120 L Street, NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jona L. Souder, Freedom of Information/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7170.

SUPPLEMENTARY INFORMATION: NRC is proposing to amend the system notice for NRC–40, ''Facility Security Access Control Records—NRC,'' to add ''approved visitors'' as a new category of individuals covered by the system. NRC–40 currently contains information on visitors in log entries and other written materials not retrieved by name or personal identifier. The records on visitors are time consuming to complete and review, and cumbersome to store. The overall process is outdated. An automated database for visitor registrations with an advance notice capability option available on NRC's local area network is being developed to alleviate this problem and to improve processing and monitoring capabilities of individuals entering NRC buildings. Information in the visitor database will be retrieved by the visitor's name, employer's name, date of visit, and sponsor's name.

The categories of records section in the system is also being revised to include information on approved visitors and to add visitors as a record source category. In addition, minor changes are being made to other sections of the system notice, including authority, retrievability, and safeguards, to make it more accurate and current.

A report on the proposed revisions to this system of records, required by 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–130, is being sent to the Committee on Governmental Affairs, U.S. Senate; the Committee on Government Reform and Oversight, U.S. House of Representatives; and OMB.

The list of NRC building locations contained in Addendum I to the NRC's compilation of systems of records notices that was published in the **Federal Register** on July 7, 1993 (58 FR 36455), is being updated to reflect current addresses.

Accordingly, the NRC proposes to amend NRC–40 and Addendum I to read as follows:

NRC–40

SYSTEM NAME:

Facility Security Access Control Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Security, Office of Administration, NRC, 11555 Rockville Pike, Rockville, Maryland, and 11545 Rockville Pike, Rockville, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the Technical Training Center, NRC, Osborne Office Center, 5700 Brainerd Road, Suite 200, Chattanooga, Tennessee 37411–4017, and the locations listed in Addendum I, Part 2.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including current and former NRC employees, consultants, contractors, other Government agency personnel, and approved visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information regarding NRC personal identification badges for access to NRC-controlled space, which includes, but is not limited to, an individual's name, social security number, citizenship, employer, purpose of visit, person visited, and date and time of visit.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2165 and 2101 (i), (k), and (p) (1988); Executive Order 9397, November 22, 1943; Executive Order 12958, April 20, 1995.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, NRC may disclose information contained in a record in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper form in logs and files, and on computer media.

RETRIEVABILITY:

Information is indexed and accessed by an individual's name, identification badge number, employer's name, date of visit, or sponsor's name.

SAFEGUARDS:

All records are maintained in NRC-controlled space that is secured after normal duty hours or in security areas under guard presence. Automated records are protected by password.

RETENTION AND DISPOSAL:

a. Records and forms related to NRC identification badges are retained in files and destroyed when superseded or obsolete.

b. Manual visitor logs are retained in cabinets and destroyed 2 years after date of entry.

c. The automated access control system reflects access to controlled areas and employee/contractor/visitor identification information. These records are disposed of after the retention period for those records identified in a. and b., or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORD ACCESS PROCEDURES:

Same as ''Notification Procedure.''

CONTESTING RECORD PROCEDURES:

Same as ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Persons including NRC employees, contractors, consultants, employees of other Government agencies, and visitors.

Addendum I—List of U.S. Nuclear Regulatory Commission Locations

Part 1—NRC Headquarters Offices

a. Gelman Building, 2120 L Street, NW., Washington, DC 20037.

b. One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

c. Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852.

d. Warehouse, 5000 Boiling Brook Parkway, Rockville, Maryland 20852.

e. NRC Training Center, Osborne Office Center, 5700 Brainerd Road, Suite 200, Chattanooga, Tennessee 37411–4017.

Part 2—NRC Regional and Other Offices

a. NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406–1415.

b. NRC Region II, 101 Marietta Street, Suite 2900, Atlanta, Georgia 30323–0199.

c. NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351.

d. NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011–8064.

e. Walnut Creek Field Office, 1450 Maria Lane, Walnut Creek, California 94596–5368.

f. High-Level Waste Management Office, 301 East Stewart Avenue, #203, Las Vegas, Nevada 89101.

Dated at Rockville, MD, this 16th day of August, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–20880 Filed 8–22–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Budget Analysis Branch; Sequestration Update Report

AGENCY: Office of Management and Budget—Budget Analysis Branch.

ACTION: Notice of Transmittal of Sequestration Update Report to the President and Congress.

SUMMARY: Pursuant to Section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Sequestration Update Report to the President, the Speaker of the House of Representatives, and the President of the Senate.

FOR FURTHER INFORMATION CONTACT: Arthur W. Stigile, Budget Analysis Branch—202/395–3945.

Dated: August 21, 1995.

John B. Arthur,

Associate Director for Administration.

[FR Doc. 95–21031 Filed 8–21–95; 1:04 pm]

BILLING CODE 3110–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Approval of Application Form Submitted to the Office of Management and Budget

AGENCY: President's Commission on White House Fellowships.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S. Code, chapter 35), this notice announces a proposed revision of the White House Fellowship Application which has been submitted to the Office of Management and Budget for approval. This form is completed by persons wishing to apply for a Fellowship. The information is used by the Commission to evaluate an applicant's qualifications.

Approximately 1,000 applications are completed annually, requiring an estimated five hours each, for a total annual burden of 5,000 hours. Response is required to be considered for a Fellowship.

A copy of the proposal is appended to this Notice.

DATES: Comments on this proposal should be received within 10 calendar days from the date of this publication. OMB has been requested to take action within 10 calendar days.

ADDRESS: Send or deliver comments to Joseph Lackey, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., Room 10235, Washington, DC 20503, U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director, Office of Personnel Management.

White House Fellowship Application

Instructions

Type all responses. Answer all questions fully and accurately, and sign and date the application in the space provided in Question 4.

Questions 1–4 should be answered on the first two pages of the application. (These pages may be recreated on a word processor, however, the format must remain exactly the same.)

Be sure to carefully follow the directions for Question 5: it is your receipt.

The remaining questions should be answered on separate sheets of plain white 8½″×11″ paper. Each sheet should include your name, social security number, and the question number in the upper right corner.

You may include additional items with your application, such as publications featuring or authored by you, books you have written, or music you have recorded. Use your best judgment. Generally, unpublished academic papers and copies of award certificates are not helpful.

Applications must be postmarked by December 1. It is the responsibility of the applicant to ensure a package mailed on December 1 is postmarked with that date. Applications mailed from overseas should be sent by air mail as early as possible. Mail applications to: The President's Commission on White House Fellowships, 712 Jackson Place, NW., Washington, DC 20503. While applications may be downloaded electronically from the Internet, they may not be filed by e-mail. Only hard-copy paper applications with original signatures will be accepted. Applicants will be notified by mail that their application has been received.

Only U.S. citizens are eligible to apply. Civilian employees of the federal government are not eligible. The Commission cannot consider applications from ineligible applicants, nor grant exemptions from these requirements.

The federal government is an equal opportunity employer. Hiring is based on qualifications and performance regardless of race, color, creed, religion, sex, age, national origin, sexual orientation or disability.

Application Checklist

First 2 pages of the application (Questions 1–4)
Cards requested in Question 5
Lists and essays (Questions 6–15)
Sealed recommendations (Question 16)

Part I

1. Personal Data

Name (last, first, middle)
Mr. Mrs. Ms. Other
Birthdate (mo/day/yr)
Other names used
Are you a US citizen: Yes No
Social Security Number
Occupation: (Profession, student, self-employed, retired, etc.)
Current employer's name and address:
Your title, rank, or status:
Home address:
Mailing address where you wish to receive Commission mailings, if different from above:
Home phone:
Work phone:
Fax number:
E-mail address:

Have you ever worked for or are you now working for the federal government, or are you being paid by federal funds? (Include active duty military service.) If so, please explain below and give inclusive dates.

Yes No

Explanation:

2. Personal Declarations

Please answer the following questions and explain on a separate sheet of paper details and resolution of any question answered ''yes.''

Have you ever been discharged from the Armed Forces under other than honorable conditions?

Yes No

Have you ever been convicted of a criminal offense?

Yes No

Have you ever been charged with a felony?

Yes No

Have you ever been charged with a violation of any firearms or explosives laws?

Yes No

Have you ever failed to meet a court-ordered child support payment?

Yes No

Are you delinquent on any federal debt?

Yes No

Have you ever been suspended, disciplined, or barred from any occupation or practice by any regulatory agency, professional association or organization because of your conduct?

Yes No

3. References

In the space below, list the names and contact information for the individuals whose personal evaluations accompany this application (see Question 14). You may submit a minimum of 3 and a maximum of 5 recommendations for consideration.

Name _____
Address _____
Phone _____

4. Certification

I certify that all of the statements made in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I know and understand that any or all items contained herein may be reviewed by representatives of the Commission, including former White House Fellows, and are subject to investigation or verification and I consent to the full release of all information concerning my capacity and fitness by employers, educational institutions (who are authorized to release my academic records), law enforcement agencies, and other individuals and agencies to duly accredited investigators of the federal government or the Commission for that purpose.

Signature (in ink)
Date _____

5. Required Cards

The following must be included with your application or it will not be considered:

A typed 3″×5″ index card that lists on one side your name, address, home and work phone numbers, date of birth, and date of our application; and

A self-addressed, stamped postcard. This card will be mailed to you as a receipt upon its arrival in the Commission office.

Part II

Instructions

The following questions should be answered on separate sheets of paper. Type your name, social security number and question number in the upper right corner of each page. Do not return or reproduce the questions with your application; submit only your answers.

6. Career Summary

It is helpful for the Commissioners evaluating your application to see ''at a glance'' the development of education and career patterns. Therefore, on a separate sheet of paper under the heading, ''Career Summary,'' please provide a chronological *listing* of all positions you have held, beginning with the most recent. Include dates, employers and/or schools attended. Account for all periods of unemployment. Please limit your response to a maximum of one page; details can be furnished in response to later questions.

Example:

6/92-present—Sr. Vice President, Acme Pictures
9/90–9/92—Director of Sales, Acme Pictures
6/90–9/90—Unemployed-job search
8/89–6/90—MBA student, Enormous State University
8/86–6/89—College student, Small State College

7. Educational Background

On a separate sheet of paper, type the heading ''Educational Background'' and include the following. Generally, answers to this question should not exceed one page.

A. Under the heading, ''Schools Attended,'' *list* all schools attended, including high school. List the degree or diploma earned, the name of each school, its location, dates attended and class rank.

Example:

MBA, Enormous State University, Anytown, USA, 8/89–8/90, top quarter.

BS, engineering, Small State College, Anothertown, USA, 8/86–8/89, school does not rank students.

B. If appropriate, under the heading, ''Tests and Exams,'' *list* all tests and examinations required of you in order to quality for the practice of any occupation or profession. For each test or examination, list each time you took the test, the administrating agency, the state or jurisdiction and year of such exam. For each test, also indicate whether or not you passed or failed.

C. Under the heading, ''Activities,'' *list* all of the major extracurricular activities in which you participated. Briefly explain each one and list the level of your participation, including any offices held, the length of your membership and the level of your participation. Also list any major awards or recognitions received.

8. Work Experience

On a separate sheet of paper, type the heading ''Work Experience'' and *list* information about your employment history. Work back from your current position and account for all periods of employment and unemployment. *Do not substitute a resume.* You may use as many sheets as required. Use the following as a guide:

Dates of employment
Exact job title
Employer
Employer's address and phone number
Nature of the business
Salary history
Number of workers you supervised

9. For each entry you may, at your option, provide a brief narrative description of the work you performed, not to exceed 200 words for your current position and 100 words for all previous positions. Describe any outstanding contributions made by you and list any citations, awards, or unusual promotions.

Example:

6/92-present
Sr. Vice President
Acme Pictures, Inc.
1234 C Street, Anytown, USA 54321. (202) 555–1212
Videotape distributor
Paid $70,000/yr on 6/92; currently earn $80,000/year
Supervise 19 employees

10. Professional and Occupational Activities

On a separate sheet of paper, type of the heading, ''Professional and Occupational Activities'' and *list* the major business and professional activities in which you have participated during the past ten years. Use the following guide:

Name of organization
City and state
Purpose or objective of the organization
Size of organization
Your level of participation
Dates of your participation
Awards or recognition you received for participation

Example:

The Generic Business Get-Together Group
Washington, DC
Professional advancement of business; lobbies Congress
2,000 nationwide
Co-founder; current vice president
8/93-present
No awards

11. Most Significant Achievement-Professional

On a separate sheet of paper, type the heading, ''Professional Achievement'' and then describe in 200 words or fewer what you consider to be your most significant contribution to your professional field. If you exceed 200 words your application will be disqualified.

12. Most Significant Achievement-Community Service

On a separate sheet of paper, type the heading, ''Community Service Achievement'' and then describe in 200 words or fewer what you consider to be your most significant voluntary contribution to your community. If you exceed 200 words your application will be disqualified.

13. Memorandum for the President

On a separate sheet of paper, type the heading, ''Memorandum for the President'' and write a memorandum of not more than 500 words for the President, making a specific policy proposal. Explain why you think it is important, what issues it raises, and why you think the President should support it. If you exceed 500 words your application will be disqualified.

14. Lifetime Goals

On a separate sheet of paper, type the heading ''Lifetime Goals'' and describe in 300 words or fewer your life's ambition, what you hope to accomplish or achieve in your lifetime, and what position you hope to attain. If you exceed 300 words your application will be disqualified.

15. Why I Want to be a White House Fellow

On a separate sheet of paper, type the heading, ''Why I Want to be a White House Fellow'' and describe in 300 words or fewer why you want to be a White House Fellow, what you consider to be your major strengths and qualifications for the program, and what benefits you feel are likely to result from your participation. If you exceed 300 words your application will be disqualified.

16. References

Please reproduce the enclosed personal evaluation letter and give it to a minimum of 3 and a maximum of 5 people who know you well. Recommenders should have a direct knowledge of your qualifications and character. At least one person listed should have professional competence in your field, at least one should have knowledge of your major community or civic activities, at least one should have knowledge of your business or professional accomplishments, and at least one should be your present supervisor, if applicable. Each reference should seal the letter of recommendation in an envelope, sign his or her name across the seal, and return the form to you. These references must be included in your application. Your application cannot be considered without these references.

White House Fellowship Application Candidate Evaluation

To: Individuals Completing an Evaluation
Subject: (Applicant's name)
From: The President's Commission on White House Fellowships

Thank you for taking the time to write a recommendation for the White House Fellowship applicant named above. Your candid and specific responses to the questions below will help the President's Commission select the next class of Fellows, 11 to 19 individuals from across the nation who will come to Washington to work for one year as paid, full-time special assistants to Cabinet officers and senior White House officials.

Please answer the following questions (on your office letterhead, if appropriate) and include your daytime telephone number. Please sign your evaluation, place it in a sealed envelope, write your signature over the seal, and return it to the applicant. The applicant must submit your evaluation as part of his or her application.

1. How long and in what connection have you known the applicant?
2. What are the applicant's major strengths? Please relate an occasion in which these strengths were demonstrated.
3. What are the applicant's major weaknesses?
4. What impact has the applicant had on his/her professional field?
5. What impact has he/she had in the community, outside the applicant's professional realm?
6. What has the candidate done that you consider creative?
7. How would you rate this candidate's writing ability?
8. How would you rate this candidate's intellectual ability?
9. How would you rate this candidate's public speaking ability?
10. How would you rate this candidate's personal integrity?
11. How would your rate this candidate's consensus-building, negotiating and leadership skills?

12. If you were a Cabinet Secretary, would you hire this person to be a key member of your staff?

13. What would you expect this candidate to be doing in 15 to 20 years?

Privacy Act and Paperwork Reduction Act Statements

Pursuant to the Freedom of Information Act (5 U.S.C. 552, as amended) and the Privacy Act (5 U.S.C. 552a), the President's Commission on White House Fellowships operates its competitive application process and collects personal information for its use in evaluating applicants under authority of Executive Order 11183, as amended. Submission of the information is voluntary; however, failure to furnish all the requested information may result in delay or elimination of consideration for a Fellowship. All files, records, and other material submitted by or in behalf of any applicant, or collected or obtained with regard to an applicant, are used by those persons associated with the Commission for the purpose of screening and evaluating applications. The information may also be disclosed to a congressional office in response to an inquiry from that office made at the request of that individual. Executive Order 9397 provides for the collection of Social Security Numbers to identify individual records. Furnishing your Social Security Number is voluntary; however, failure to do so may delay the processing of your application.

This request is in accordance with the clearance requirements of the Paperwork Reduction Act (44 U.S.C. 3507). The information is being collected in order to evaluate your qualifications for a Fellowship. Your response is required to make this determination. Public reporting burden for this collection of information is estimated to average five (5) hours per response, including time for reviewing instructions, gathering the requested personal evaluations, and completing the application. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the President's Commission on White House Fellowships, Washington, DC 20415.

Records Retention

The application forms of persons selected as White House Fellows may be circulated to appropriate Executive Branch officials incident to placing Fellows in assignments for the Fellowship year and subsequently may be retained, along with other applicant file materials, by the Commission in its permanent files on persons who are selected as White House Fellows. These permanent records are accessible to the individuals concerned.

Sixty days after a letter has been mailed to an applicant advising that he or she has been eliminated from the competition, all materials in the applicant's file will be destroyed and this procedure will be repeated after each stage of the selection process.

The Commission cannot assume responsibility for the return of applications or supporting documents. Applicants are therefore advised to retain copies of their application forms and not to submit irreplaceable documents or other materials with applications.

[FR Doc. 95–20947 Filed 8–22–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF STATE

[Public Notice 2237]

Exclusive Economic Zone and Maritime Boundaries; Notice of Limits

By Presidential Proclamation No. 5030 made on March 10, 1983, the United States established an exclusive economic zone, the outer limit of which is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

The Government of the United States of America has been, is, and will be, engaged in consultations and negotiations with governments of neighboring countries concerning the delimitation of areas subject to the respective jurisdiction of the United States and of these countries.

The limits of the exclusive economic zone of the United States as set forth below are intended to be without prejudice to any negotiations with these countries or to any positions which may have been or may be adopted respecting the limits of maritime jurisdiction in such areas. Further, the limits of the exclusive economic zone set forth below are without prejudice to the outer limit of the continental shelf of the United States where that shelf extends beyond 200 nautical miles from the baseline in accordance with international law.

The following notices have been published which have defined the United States maritime boundaries and fishery conservation zone established March 1, 1977: Public Notice 506, **Federal Register**, Vol. 41, No. 214, November 4, 1976, 48619–20; Public Notice 526, **Federal Register**, Vol. 42, No. 44, March 7, 1977, 12937–40; Public Notice 544, **Federal Register,** Vol. 42, No. 92, May 12, 1977, 24134; Public Notice 4710–01, **Federal Register,** Vol. 43, No. 7, January 11, 1978, 1658; Public Notice 585, **Federal Register**, Vol. 43, No. 7, January 11, 1978, 1659; Public Notice 910, **Federal Register**, Vol. 49, No. 155, August 9, 1984, 31973.

This Public Notice supersedes all limits defined in the above Public Notices.

Therefore, the Department of State on behalf of the Government of the United States hereby announces the limits of the exclusive economic zone of the United States of America, within which the United States will exercise its sovereign rights and jurisdiction as permitted under international law, pending the establishment of permanent maritime boundaries by mutual agreement in those cases where a boundary is necessary and has not already been agreed.

Publication of a notice on this subject which is effective immediately upon publication is necessary to effectively exercise the foreign affairs responsibility of the Department of State. (See Title 5 U.S.C. 553 (a)(1)(B).)

Unless otherwise noted, the coordinates in this notice relate to the Clarke 1866 Ellipsoid and the North American 1927 Datum (''NAD 27''). Unless otherwise specified, the term ''straight line'' in this notice means a geodetic line.

U.S. Atlantic Coast and Gulf of Mexico

In the Gulf of Maine area, the limit of the exclusive economic zone is defined by straight lines connecting the following coordinates[1]:

1. 44°46′35.346″ N., 66°54′11.253″ W.
2. 44°44′41″ N., 66°56′17″ W.
3. 44°43′56″ N., 66°56′26″ W.
4. 44°39′13″ N., 66°57′29″ W.
5. 44°36′58″ N., 67°00′36″ W.
6. 44°33′27″ N., 67°02′57″ W.
7. 44°30′38″ N., 67°02′38″ W.
8. 44°29′03″ N., 67°03′42″ W.
9. 44°25′27″ N., 67°02′16″ W.
10. 44°21′43″ N., 67°02′33″ W.
11. 44°14′06″ N., 67°08′38″ W.
12. 44°11′12″ N., 67°16′46″ W.
13. 42°53′14″ N., 67°44′35″ W.
14. 42°31′08″ N., 67°28′05″ W.
15. 40°27′05″ N., 65°41′59″ W.

Between points 15 and 16, the limit of the exclusive economic zone is 200 nautical miles seaward from the baseline from which the territorial sea is measured.

In the area of the Blake Plateau, the Straits of Florida, and Eastern Gulf of Mexico, the limit of the exclusive economic zone shall be determined by

[1] The limits of the U.S. exclusive economic zone from points 1 to 12 in areas adjacent to Canada do not correspond to limits of the Canadian fishery zone as defined in the Canada Gazette of January 1, 1977, due to the dispute between the United States and Canada relating to the sovereignty over Machias Seal Island and North Rock. The line defined by points 12 through 15 reflects the International Court of Justice Award of October 14, 1984, establishing a United States-Canada maritime boundary, pursuant to the Treaty between the Government of Canada and the Government of the United States of America to Submit to Binding Dispute Settlement the Delimitation of the Maritime Boundary in the Gulf of Maine Area, TIAS 10204.

straight lines connecting the following coordinates: [2]

16. 28°17′10″ N. 76°36′45″ W.
17. 28°17′10″ N. 79°11′24″ W.
18. 27°52′54″ N. 79°28′36″ W.
19. 27°26′00″ N. 79°31′38″ W.
20. 27°16′12″ N. 79°34′18″ W.
21. 27°11′53″ N. 79°34′56″ W.
22. 27°05′58″ N. 79°35′19″ W.
23. 27°00′27″ N. 79°35′17″ W.
24. 26°55′15″ N. 79°34′39″ W.
25. 26°53′57″ N. 79°34′27″ W.
26. 26°45′45″ N. 79°32′41″ W.
27. 26°44′29″ N. 79°32′23″ W.
28. 26°43′39″ N. 79°32′20″ W.
29. 26°41′11″ N. 79°32′01″ W.
30. 26°38′12″ N. 79°31′33″ W.
31. 26°36′29″ N. 79°31′07″ W.
32. 26°35′20″ N. 79°30′50″ W.
33. 26°34′50″ N. 79°30′46″ W.
34. 26°34′10″ N. 79°30′38″ W.
35. 26°31′11″ N. 79°30′15″ W.
36. 26°29′04″ N. 79°29′53″ W.
37. 26°25′30″ N. 79°29′58″ W.
38. 26°23′28″ N. 79°29′55″ W.
39. 26°23′20″ N. 79°29′54″ W.
40. 26°18′56″ N. 79°31′55″ W.
41. 26°15′25″ N. 79°33′17″ W.
42. 26°15′12″ N. 79°33′23″ W.
43. 26°08′08″ N. 79°35′53″ W.
44. 26°07′46″ N. 79°36′09″ W.
45. 26°06′58″ N. 79°36′35″ W.
46. 26°02′51″ N. 79°38′22″ W.
47. 25°59′29″ N. 79°40′03″ W.
48. 25°59′15″ N. 79°40′08″ W.
49. 25°57′47″ N. 79°40′38″ W.
50. 25°56′17″ N. 79°41′06″ W.
51. 25°54′03″ N. 79°41′38″ W.
52. 25°53′23″ N. 79°41′46″ W.
53. 25°51′53″ N. 79°41′59″ W.
54. 25°49′32″ N. 79°42′16″ W.
55. 25°48′23″ N. 79°42′23″ W.
56. 25°48′19″ N. 79°42′24″ W.
57. 25°46′25″ N. 79°42′44″ W.
58. 25°46′15″ N. 79°42′45″ W.
59. 25°43′39″ N. 79°42′59″ W.
60. 25°42′30″ N. 79°42′48″ W.
61. 25°40′36″ N. 79°42′27″ W.
62. 25°37′23″ N. 79°42′27″ W.
63. 25°37′07″ N. 79°42′27″ W.
64. 25°31′02″ N. 79°42′12″ W.
65. 25°27′58″ N. 79°42′11″ W.
66. 25°24′03″ N. 79°42′12″ W.
67. 25°22′20″ N. 79°42′20″ W.
68. 25°21′28″ N. 79°42′08″ W.
69. 25°16′51″ N. 79°41′24″ W.
70. 25°15′56″ N. 79°41′31″ W.
71. 25°10′38″ N. 79°41′31″ W.
72. 25°09′50″ N. 79°41′36″ W.
73. 25°09′02″ N. 79°41′45″ W.
74. 25°03′53″ N. 79°42′30″ W.
75. 25°02′58″ N. 79°42′57″ W.
76. 25°00′28″ N. 79°44′06″ W.
77. 24°59′01″ N. 79°44′49″ W.
78. 24°55′26″ N. 79°45′58″ W.
79. 24°44′16″ N. 79°49′25″ W.
80. 24°43′02″ N. 79°49′39″ W.
81. 24°42′34″ N. 79°50′51″ W.
82. 24°41′45″ N. 79°52′58″ W.
83. 24°38′30″ N. 79°59′59″ W.
84. 24°36′25″ N. 80°03′52″ W.
85. 24°33′16″ N. 80°12′44″ W.
86. 24°33′03″ N. 80°13′22″ W.
87. 24°32′11″ N. 80°15′17″ W.
88. 24°31′25″ N. 80°16′56″ W.
89. 24°30′55″ N. 80°17′48″ W.
90. 24°30′12″ N. 80°19′22″ W.
91. 24°30′04″ N. 80°19′45″ W.
92. 24°29′36″ N. 80°21′06″ W.
93. 24°28′16″ N. 80°24′36″ W.
94. 24°28′04″ N. 80°25′11″ W.
95. 24°27′21″ N. 80°27′21″ W.
96. 24°26′28″ N. 80°29′31″ W.
97. 24°25′05″ N. 80°32′23″ W.
98. 24°23′28″ N. 80°36′10″ W.
99. 24°22′31″ N. 80°38′57″ W.
100. 24°22′05″ N. 80°39′52″ W.
101. 24°19′29″ N. 80°45′22″ W.
102. 24°19′14″ N. 80°45′48″ W.
103. 24°18′36″ N. 80°46°50″ W.
104. 24°18′33″ N. 80°46′55″ W.
105. 24°09′49″ N. 80°59′48″ W.
106. 24°09′46″ N. 80°59′52″ W.
107. 24°08′56″ N. 81°01′08″ W.
108. 24°03′28″ N. 81°01′52″ W.
109. 24°08′24″ N. 81°01′58″ W.
110. 24°07′26″ N. 81°03′07″ W.
111. 24°02′18″ N. 81°09′06″ W.
112. 23°59′58″ N. 81°11′16″ W.
113. 23°55′30″ N. 81°12′55″ W.
114. 23°53′50″ N. 81°19′44″ W.
115. 23°50′50″ N. 81°30′00″ W.
116. 23°50′00″ N. 81°40′00″ W.
117. 23°49′03″ N. 81°50′00″ W.
118. 23°49′03″ N. 82°00′12″ W.
119. 23°49′40″ N. 82°10′00″ W.
120. 23°51′12″ N. 82°25′00″ W.
121. 23°51′12″ N. 82°40′00″ W.
122. 23°49′40″ N. 82°48′54″ W.
123. 23°49′30″ N. 82°51′12″ W.
124. 23°49′22″ N. 83°00′00″ W.
125. 23°49′50″ N. 83°15′00″ W.
126. 23°51′20″ N. 83°25′50″ W.
127. 23°52′25″ N. 83°33′02″ W.
128. 23°54′02″ N. 83°41′36″ W.
129. 23°55′45″ N. 83°48′12″ W.
130. 23°58′36″ N. 84°00′00″ W.
131. 24°09′35″ N. 84°29′28″ W.
132. 24°13′18″ N. 84°38′40″ W.
133. 24°16′39″ N. 84°46′08″ W.
134. 24°23′28″ N. 85°00′00″ W.
135. 24°26′35″ N. 85°06′20″ W.
136. 24°38′55″ N. 85°31′55″ W.
137. 24°44′15″ N. 85°43′12″ W.
138. 24°53′55″ N. 86°00′00″ W.
139. 25°12′25″ N. 86°33′12″ W.

Between points 139 and 140, the limit of the exclusive economic zone is 200 nautical miles seaward from the baseline from which the territorial sea is measured.

In the central Gulf of Mexico, the limit of the exclusive economic zone is determined by straight lines connecting the following coordinates: [3]

140. 25°41′56.52.88″ N. 88°23′05.54″ W.
141. 25°46′52.00″ N. 90°29′41.00″ W.
142. 25°42′13.05″ N. 91°05′24.89″ W.

Between points 142 and 143, the limit of the exclusive economic zone is 200 nautical miles seaward from the baseline from which the territorial sea is measured.

In the western Gulf of Mexico, the limit of the exclusive economic zone is determined by straight lines connecting the following coordinates:

143. 25°59′48.28″ N. 93°26′42.19″ W.
144. 26°00′30.00″ N. 95°39′26.00″ W.
145. 26°00′31.00″ N. 96°48′29.00″ W.
146. 25°58′30.57″ N. 96°55′27.37″ W.

From point 146, the limit of United States jurisdiction is the territorial sea boundary with Mexico established by the United States of America and the United Mexican States in Article V(A) and annexes of the Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary, signed at Mexico City, November 23, 1970, and entered into force April 18, 1972, TIAS No. 7313, 23 UST 371.

U.S. Pacific Coast (Washington, Oregon, and California)

In the area seaward of the Strait of Juan de Fuca, the limit of the exclusive economic zone shall be determined by straight lines connecting the points with the following coordinates: [4]

1. 48°29′37.19″ N. 124°43′33.19″ W.
2. 48°30′11″ N. 124°47′13″ W.
3. 48°30′22″ N. 124°50′21″ W.
4. 48°30′14″ N. 124°54′52″ W.
5. 48°29′57″ N. 124°59′14″ W.
6. 48°29′44″ N. 125°00′06″ W.
7. 48°28′09″ N. 125°05′47″ W.
8. 48°27′10″ N. 125°08′25″ W.
9. 48°26′47″ N. 125°09′12″ W.
10. 48°20′16″ N. 125°22′48″ W.
11. 48°18′22″ N. 125°29′58″ W.
12. 48°11′05″ N. 125°53′48″ W.
13. 47°49′15″ N. 126°40′57″ W.
14. 47°36′47″ N. 127°11′58″ W.
15. 47°22′00″ N. 127°41′23″ W.
16. 46°42′05″ N. 128°51′56″ W.
17. 46°31′47″ N. 129°07′39″ W.

Between point 17 and 18, the limit of the exclusive economic zone is 200 nautical miles seaward from the baseline from which the breadth of the territorial sea is measured. In the area off the Southern California coast, the limit of the exclusive economic zone shall be determined by straight lines connecting the following points: [5]

[2] The line defined by points 113 through 139 is that line delimited in the maritime boundary treaty signed with Cuba December 16, 1977, Senate Executive H, 96th Cong., lst Sess. The treaty has been applied provisionally since January 1, 1978.

[3] The lines defined by points 140–142 and 143–146 reflect the exchange of Notes Effecting Agreement on the provisional Maritime Boundary with Mexico done on November 24, 1976, TIAS 8805, 29 UST 196. The U.S.-Mexico Maritime Boundary Treaty, signed on May 4, 1978, Senate Executive F, 96th Congress, 1st Sess., defines boundary using the same turning points.

[4] The limit of the U.S. exclusive economic zone from points 1 to 17 adjacent to Canada in the area seaward of the Strait of Juan de Fuca do not correspond to limits of the Canadian fishery zone as defined in the Canada Gazette of January 1, 1977.

[5] The line defined by points 18 through 21 reflect the Exchange of Notes Effecting Agreement on the Provisional Maritime Boundary with Mexico done on November 24, 1976. The U.S.-Mexico Maritime

18. 30°32′31.20″ N. 121°51′58.37″ W.
19. 31°07′58.00″ N. 118°36′18.00″ W.
20. 32°37′37.00″ N. 117°49′31.00″ W.
21. 32°35′22.11″ N. 117°27′49.42″ W.

From point 21 to the coast, the limit of United States jurisdiction is the territorial sea boundary with Mexico established by the United States of America and the United Mexican States in Article V(B) and annexes of the Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary, signed at Mexico City, November 23, 1970, and entered into force April 18, 1972.

Alaska

Off the coast of Alaska, in the area of the Beaufort Sea, the limit of exclusive economic zone shall be determined by straight lines, connecting the following coordinates: [6]

1. 69°38′48.88″ N. 140°59′52.7″ W.
2. 69°38′52″ N. 140°59′51″ W.
3. 69°39′37″ N. 140°59′01″ W
4. 69°40′10″ N. 140°58′34″ W.
5. 69°41′30″ N. 140°57′00″ W.
6. 69°46′25″ N. 140°49′45″ W.
7. 69°47′54″ N. 140°47′07″ W.
8. 69°51′40″ N. 140°42′37″ W.
9. 70°09′26″ N. 140°19′22″ W.
10. 70°11′30″ N. 140°18′09″ W.
11. 70°29′07″ N. 140°09′51″ W.
12. 70°29′19″ N. 140°09′45″ W.
13. 70°37′31″ N. 140°02′47″ W.
14. 70°48′25″ N. 139°52′32″ W.
15. 70°58′02″ N. 139°47′16″ W.
16. 71°01′15″ N. 139°44′24″ W.
17. 71°11′58″ N. 139°33′58″ W.
18 71°23′10″ N. 139°21′46″ W.
19. 72°12′18″ N. 138°26′19″ W.
20. 72°46′39″ N. 137°30′02″ W.
21. 72°56′49″ N. 137°34′08″ W.

Between point 21 and point 22, the limit of the exclusive economic zone is 200 nautical miles seaward from the baseline from which the territorial sea is measured. In the Chukchi Sea, Bering Strait, and northern Bering Sea, the limit of the exclusive economic zone shall be determined by straight lines connecting the following coordinates: [7]

22. 72°46′29″ N. 168°58′37″ W.
23. 65°30′00″ N. 168°58′37″ W.
24. 65°19′58″ N. 168°21′38″ W.
25. 65°09′51″ N. 169°44′34″ W.
26. 64°59′41″ N. 170°07′23″ W.
27. 64°49′26″ N. 170°30′06″ W.
28. 64°39′08″ N. 170°52′43″ W.
29. 64°28′46″ N. 171°15′14″ W.
30. 64°18′20″ N. 171°37′40″ W.
31. 64°07′50″ N. 172°00′00″ W.
32. 63°59′27″ N. 172°18′39″ W.
33. 63°51′01″ N. 172°38′13″ W.
34. 63°42′33″ N. 172°55′42″ W.
35. 63°34′01″ N. 173°14′07″ W.
36. 63°25′27″ N. 173°32′27″ W.
37. 63°16′50″ N. 173°50′42″ W.
38. 63°08′11″ N. 174°08′52″ W.
39. 62°59′29″ N. 174°26′58″ W.
40. 62°50′44″ N. 174°44′59″ W.
41. 62°41′56″ N. 175°02′56″ W.
42. 62°33′06″ N. 175°20′48″ W.
43. 62°24′13″ N. 175°38′36″ W.
44. 62°15′17″ N. 175°56′19″ W.
45. 62°06′19″ N. 176°13′59″ W.
46. 61°57′18″ N. 176°31′34″ W.
47. 61°48′14″ N. 176°49′04″ W.
48. 61°39′08″ N. 177°06′31″ W.
49. 61°29′59″ N. 177°23′53″ W.
50. 61°20′47″ N. 177°41′11″ W.
51. 61°11′33″ N. 177°58′26″ W.
52. 61°02′17″ N. 178°15′36″ W.
53. 60°52′57″ N. 178°32′42″ W.
54. 60°43′35″ N. 178°49′45″ W.
55. 60°34′11″ N. 179°06′44″ W.
56. 60°24′44″ N. 179°23′38″ W.
57. 60°15′14″ N. 179°40′30″ W.
58. 60°11′39″ N. 179°46′49″ W.

Between points 58 and 59 the limit of the exclusive economic zone is 200 nautical miles seaward from the baseline from which the territorial sea is measured. In the southern Bering Sea and north Pacific Ocean, the limit of the exclusive economic zone shall be determined the straight lines connecting the following coordinates:

59. 56°16′31″ N. 174°00′19″ E.
60. 56°15′07″ N. 173°56′56″ E.
61. 56°04′34″ N. 173°41′08″ E.
62. 55°53′59″ N. 173°25′22″ E.
63. 55°43′22″ N. 173°09′37″ E.
64. 55°32′42″ N. 172°53′55″ E.
65. 55°21′59″ N. 172°38′14″ E.
66. 55°11′14″ N. 172°22′36″ E.
67. 55°00′26″ N. 172°06′59″ E.
68. 54°49′36″ N. 171°51′24″ E.
69. 54°38′43″ N. 171°35′51″ E.
70. 54°27′48″ N. 171°20′20″ E.
71. 54°16′50″ N. 171°04′50″ E.
72. 54°05′50″ N. 170°49′22″ E.
73. 53°54′47″ N. 170°33′56″ E.
74. 53°43′42″ N. 170°18′31″ E.
75. 53°32′46″ N. 170°05′29″ E.
76. 53°21′48″ N. 169°52′32″ E.
77. 53°10′49″ N. 169°39′40″ E.
78. 52°59′48″ N. 169°26′53″ E.
79. 52°48′46″ N. 169°14′12″ E.
80. 52°37′43″ N. 169°01′36″ E.
81. 52°26′38″ N. 168°49′05″ E.
82. 52°15′31″ N. 168°36′39″ E.
83. 52°04′23″ N. 168°24′17″ E.
84. 51°53′14″ N. 168°12′01″ E.
85. 51°42′03″ N. 167°59′49″ E.
86. 51°30′51″ N. 167°47′42″ E.
87. 51°22′15″ N. 167°38′28″ E.

From point 87 to point 88, the limit of the exclusive economic zone is 200 nautical miles from the baseline from which the territorial sea is measured.

From point 88, the southern limit of the exclusive economic zone off the coast of Alaska shall be determined by straight lines connecting the following coordinates:[8]

88. 53°28′27″ N. 138°45′20″ W.
89. 54°00′01″ N. 135°45′57″ W.
90. 54°07′30″ N. 134°56′24″ W.
91. 54°12′45″ N. 134°25′03″ W.
92. 54°12′57″ N. 134°23′47″ W.
93. 54°15′40″ N. 134°10′49″ W.
94. 54°20′33″ N. 133°49′21″ W.
95. 54°22′01″ N. 133°44′24″ W.
96. 54°30′06″ N. 133°16′58″ W.
97. 54°31′02″ N. 133°14′00″ W.
98. 54°30′42″ N. 133°11′28″ W.
99. 54°30′10″ N. 133°07′43″ W.
100. 54°30′03″ N. 133°07′00″ W.
101. 54°28′32″ N. 132°56′28″ W.
102. 54°28′25″ N. 132°55′54″ W.
103. 54°27′23″ N. 132°50′42″ W.
104. 54°27′07″ N. 132°49′35″ W.
105. 54°26′00″ N. 132°44′12″ W.
106. 54°24′54″ N. 132°39′46″ W.
107. 54°24′34″ N. 132°38′16″ W.
108. 54°24′39″ N. 132°26′51″ W.
109. 54°24′41″ N. 132°24′35″ W.
110. 54°24′41″ N. 132°24′29″ W.
111. 54°24′52″ N. 132°23′39″ W.
112. 54°21′51″ N. 132°02′54″ W.
113. 54°26′41″ N. 131°49′28″ W.
114. 54°28′18″ N. 131°45′20″ W.
115. 54°30′32″ N. 131°38′01″ W.
116. 54°29′53″ N. 131°33′48″ W.
117. 54°36′53″ N. 131°19′22″ W.
118. 54°39′09″ N. 131°16′17″ W.
119. 54°40′52″ N. 131°13′54″ W.
120. 54°42′11″ N. 131°13′00″ W.
121. 54°46′16″ N. 131°04′43″ W.
122. 54°45′39″ N. 131°03′06″ W.
123. 54°44′12″ N. 130°59′44″ W.
124. 54°43′46″ N. 130°58′55″ W.
125. 54°43′00″ N. 130°57′41″ W.
126. 54°42′34″ N. 130°57′09″ W.
127. 54°42′27″ N. 130°56′18″ W.
128. 54°41′26″ N. 130°53′39″ W.
129. 54°41′21″ N. 130°53′18″ W.
130. 54°41′05″ N. 130°49′17″ W.
131. 54°41′06″ N. 130°48′31″ W.
132. 54°40′46″ N. 130°45′51″ W.
133. 54°40′41″ N. 130°44′59″ W.
134. 54°40′42″ N. 130°44′43″ W.
135. 54°40′03″ N. 130°42′22″ W.
136. 54°39′48″ N. 130°41′35″ W.
137. 54°39′14″ N. 130°39′18″ W.
138. 54°39′54″ N. 130°38′58″ W.
139. 54°41′09″ N. 130°38′58″ W.
140. 54°42′22″ N. 130°38′26″ W.
141. 54°42′47″ N. 130°38′06″ W.
142. 54°42′58″ N. 130°37′57″ W.
143. 54°43′00″ N. 130°37′55″ W.
144. 54°43′15″ N. 130°37′44″ W.
145. 54°43′24″ N. 130°37′39″ W.

Boundary Treaty, signed on May 4, 1978, defines the boundary using the same turning points.

[6] The limit of the U.S. exclusive economic zone in areas adjacent to Canada in the Beaufort Sea do not correspond to limits of the Canadian fishery zone, as defined in the Canada Gazette of January 1, 1997.

[7] The line defined by points 22–58 and 59–87 is that line delimited in the maritime boundary treaty signed with the former Soviet Union (now applicable to Russia) June 1, 1990, Senate Treaty Doc. 102–22, and applied provisionally pending the exchange of instruments of ratifiction, by an exchange of notes effective June 15, 1990.

[8] The limit of the U.S. exclusive economic zone in, and seaward of, the Dixon Entrance do not correspond to the limits of the Canadian fishery zone, as defined in the Canada Gazette of January 1, 1977. Where the claimed boundaries published by the United States and Canada leave an unclaimed area within Dixon Entrance, the United States will exercise fishery management jurisdiction to the Canadian claimed line where that line is situated southward of the United States claimed line, until such time as a permanent maritime boundary with Canada is established in the Dixon Entrance.

146. 54°43′30.15″ N. 130°37′37.01″ W.

Caribbean Sea

The seaward limit of the exclusive economic zone around the Commonwealth of Puerto Rico and the Virgin Islands of the United States is a line 200 nautical miles from the baseline from which the breadth of the territorial sea is measured, except that to the east, south, and west, the limit of the exclusive economic zone shall be determined by straight lines connecting the following coordinates: [9]

1. 21°48′33″ N. 65°50′31″ W.
2. 21°41′20″ N. 65°49′13″ W.
3. 20°58′05″ N. 65°40′30″ W.
4. 20°46′56″ N. 65°38′14″ W.
5. 19°57′29″ N. 65°27′21″ W.
6. 19°37′29″ N. 65°20′57″ W.
7. 19°12′25″ N. 65°06′08″ W.
8. 18°45′14″ N. 65°00′22″ W.
9. 18°41′14″ N. 64°59′33″ W.
10. 18°29′22″ N. 64°53′50″ W.
11. 18°27′36″ N. 64°53′22″ W.
12. 18°25′22″ N. 64°52′39″ W.
13. 18°24′31″ N. 64°52′19″ W.
14. 18°23′51″ N. 64°51′50″ W.
15. 18°23′43″ N. 64°51′23″ W.
16. 18°23′37″ N. 64°50′18″ W.
17. 18°23′48″ N. 64°49′42″ W.
18. 18°24′11″ N. 64°49′01″ W.
19. 18°24′29″ N. 64°47′57″ W.
20. 18°24′18″ N. 64°47′00″ W.
21. 18°23′14″ N. 64°46′37″ W.
22. 18°22′38″ N. 64°45′21″ W.
23. 18°22′40″ N. 64°44′42″ W.
24. 18°22′42″ N. 64°44′36″ W.
25. 18°22′37″ N. 64°44′24″ W.
26. 18°22′40″ N. 64°43′42″ W.
27. 18°22′30″ N. 64°43′36″ W.
28. 18°22′25″ N. 64°42′58″ W.
29. 18°22′27″ N. 64°42′28″ W.
30. 18°22′16″ N. 64°42′03″ W.
31. 18°22′23″ N. 64°40′59″ W.
32. 18°21′58″ N. 64°40′15″ W.
33. 18°21′51″ N. 64°38′22″ W.
34. 18°21′22″ N. 64°38′16″ W.
35. 18°20′39″ N. 64°38′32″ W.
36. 18°19′16″ N. 64°38′13″ W.
37. 18°19′07″ N. 64°38′16″ W.
38. 18°17′24″ N. 64°39′37″ W.
39. 18°16′43″ N. 64°39′41″ W.
40. 18°11′34″ N. 64°38′58″ W.
41. 18°03′03″ N. 64°38′03″ W.
42. 18°02′57″ N. 64°29′35″ W.
43. 18°02′52″ N. 64°27′03″ W.
44. 18°02′30″ N. 64°21′08″ W.
45. 18°02′31″ N. 64°20′08″ W.
46. 18°02′01″ N. 64°15′39″ W.
47. 18°00′12″ N. 64°02′29″ W.
48. 17°59′58″ N. 64°01′02″ W.
49. 17°58′47″ N. 63°57′00″ W.
50. 17°57′51″ N. 63°53′53″ W.
51. 17°56′37″ N. 63°53′20″ W.
52. 17°39′48″ N. 63°54′54″ W.
53. 17°37′15″ N. 63°55′11″ W.
54. 17°30′28″ N. 63°55′57″ W.
55. 17°11′43″ N. 63°58′00″ W.
56. 17°05′07″ N. 63°58′42″ W.
57. 16°44′49″ N. 64°01′08″ W.
58. 16°43′22″ N. 64°06′31″ W.
59. 16°43′10″ N. 64°06′59″ W.
60. 16°42′40″ N. 64°08′06″ W.
61. 16°41′43″ N. 64°10′07″ W.
62. 16°35′19″ N. 64°23′39″ W.
63. 16°23′30″ N. 64°45′54″ W.
64. 15°39′31″ N. 65°58′41″ W.
65. 15°30′10″ N. 66°07′09″ W.
66. 15°14′06″ N. 66°19′57″ W.
67. 14°55′48″ N. 66°34′30″ W.
68. 14°56′06″ N. 66°51′40″ W.
69. 14°58′27″ N. 67°04′19″ W.
70. 14°58′45″ N. 67°05′17″ W.
71. 14°58′58″ N. 67°06′11″ W.
72. 14°59′10″ N. 67°07′00″ W.
73. 15°02′32″ N. 67°23′40″ W.
74. 15°05′07″ N. 67°36′23″ W.
75. 15°10′38″ N. 68°03′46″ W.
76. 15°11′06″ N. 68°09′21″ W.
77. 15°12′33″ N. 68°27′32″ W.
78. 15°12′51″ N. 68°28′56″ W.
79. 15°46′46″ N. 68°26′04″ W.
80. 17°21′30″ N. 68°17′53″ W.
81. 17°38′01″ N. 68°16′46″ W.
82. 17°50′24″ N. 68°16′11″ W.
83. 17°58′07″ N. 68°15′52″ W.
84. 18°02′28″ N. 68°15′40″ W.
85. 18°06′10″ N. 68°15′27″ W.
86. 18°07′27″ N. 68°15′33″ W.
87. 18°09′12″ N. 68°14′53″ W.
88. 18°17′06″ N. 68°11′28″ W.
89. 18°19′20″ N. 68°09′40″ W.
90. 18°22′42″ N. 68°06′57″ W.
91. 18°24′39″ N. 68°04′58″ W.
92. 18°25′25″ N. 68°04′09″ W.
93. 18°28′08″ N. 68°00′59″ W.
94. 18°31′27″ N. 67°56′57″ W.
95. 18°32′58″ N. 67°55′07″ W.
96. 18°34′34″ N. 67°52′53″ W.
97. 18°54′37″ N. 67°46′21″ W.
98. 19°00′42″ N. 67°44′25″ W.
99. 19°10′00″ N. 67°41′24″ W.
100. 19°19′03″ N. 67°38′19″ W.
101. 19°21′20″ N. 67°38′01″ W.
102. 19°59′45″ N. 67°31′52″ W.
103. 20°00′59″ N. 67°31′35″ W.
104. 20°01′17″ N. 67°31′29″ W.
105. 20°02′49″ N. 67°31′04″ W.
106. 20°03′30″ N. 67°30′52″ W.
107. 20°09′28″ N. 67°29′11″ W.
108. 20°48′18″ N. 67°17′50″ W.
109. 21°22′48″ N. 67°02′34″ W.
110. 21°30′18″ N. 66°59′05″ W.
111. 21°33′47″ N. 66°57′30″ W.
112. 21°51′24″ N. 66°49′30″ W.

Navassa Island. The limits of the exclusive economic zone around Navassa Island remain to be determined.

Central and Western Pacific

Northern Mariana Islands and Guam. The seaward limit of the exclusive economic zone is 200 nautical miles from the baseline from which the breadth of the territorial sea is measured, except that to the north of the Northern Mariana Islands, the limit of the exclusive economic zone shall be determined by straight lines connecting the following points [10]

1. 23°53′35″ N. 145°05′46″ E.
2. 23°44′32″ N. 144°54′05″ E.
3. 23°33′52″ N. 144°40′23″ E.
4. 23°16′11″ N. 144°17′47″ E.
5. 22°50′13″ N. 143°44′57″ E.
6. 22°18′13″ N. 143°05′02″ E.
7. 21°53′58″ N. 142°35′03″ E.
8. 21°42′14″ N. 142°20′39″ E.
9. 21°40′08″ N. 142°18′05″ E.
10. 21°28′21″ N. 142°03′45″ E.
11. 20°58′24″ N. 141°27′33″ E.
12. 20°52′51″ N. 141°20′54″ E.

and, except that to the south of Guam, the limit of the exclusive economic zone shall be determined by straight lines connecting the following points:

13. 11°38′25″ N. 147°44′42″ E.
14. 11°36′53″ N. 147°31′03″ E.
15. 11°31′48″ N. 146°55′19″ E.
16. 11°27′15″ N. 146°25′34″ E.
17. 11°22′13″ N. 145°52′36″ E.
18. 11°17′31″ N. 145°22′38″ E.
19. 11°13′32″ N. 144°57′26″ E.
20. 11°13′23″ N. 144°56′29″ E.
21. 10°57′03″ N. 143°26′53″ E.
22. 10°57′30″ N. 143°03′09″ E.
23. 11°52′33″ N. 142°15′28″ E.
24. 12°54′00″ N. 141°21′48″ E.
25. 12°54′17″ N. 141°21′33″ E.
26. 12°57′34″ N. 141°19′17″ E.
27. 13°06′32″ N. 141°12′53″ E.

Hawaii and Midway Island. The seaward limit of the exclusive economic zone is 200 nautical miles from the baselines from which the territorial sea is measured.

Johnston Atoll. The seaward limit of the exclusive economic zone is 200 nautical miles from the baselines from which the territorial sea is measured.

American Samoa. The seaward limit of the exclusive economic zone shall be determined by straight lines connecting the following points[11]:

1. 11°02′17″ S. 173°44′48″ W.

[9] The line defined by points 1–50 is that line delimited in the maritime boundary treaty signed with the United Kingdom (for the British Virgin Islands) at London on November 4, 1993, Senate Treaty Doc. 103–23, and entered into force on June 1, 1995. The line defined by points 50–51 is that line delimited in the maritime boundary treaty signed with the United Kingdom (for Anguilla) at London on November 4, 1993, Senate Treaty Doc. 103–23, and entered into force June 1, 1995. The line from point 1 to point 51 is on the North American Datum 1983 (NAD 83). The line defined by points 57–78 is that line delimited in the maritime boundary treaty signed with Venezuela at Caracas on March 28, 1978; the treaty entered into force on November 24, 1980, TIAS 9890, 32 UST 3100.

[10] The line defined by points 1–12 constitutes the line of delimination between the maritime zones of the United States and Japan as reflected in an Exchange of Notes effective July 5, 1994. Points 1–12 are on the World Geodetic System 1984 (WGS 84). In this regard, users should be aware that the Government of Japan defines points 1–12 on the Tokyo Datum and the coordinate values will differ slightly from those published in this Notice.

[11] The line defined by points 1–8 is that line delimited in the maritime boundary treaty with New Zealand (for Tokelau) signed at Atafu on December 2, 1980; this treaty entered into force on September 3, 1983, TIAS 10775. The line defined by points 8–32 is that line delimited in the maritime boundary treaty with the Cook Islands signed at Rarotonga on June 11, 1980; this treaty entered into force on September 8, 1983, TIAS 10774. Points 1–32 are on the World Geodetic System 1972 (WGS 72).

2. 10°46′15″ S. 173°03′53″ W.
3. 10°25′26″ S. 172°11′01″ W.
4. 10°17′50″ S. 171°50′58″ W.
5. 10°15′17″ S. 171°15′32″ W.
6. 10°10′18″ S. 170°16′10″ W.
7. 10°07′52″ S. 169°46′50″ W.
8. 10°01′26″ S. 168°31′25″ W.
9. 10°12′44″ S. 168°31′02″ W.
10. 10°12′49″ S. 168°31′02″ W.
11. 10°52′31″ S. 168°29′42″ W.
12. 11°02′40″ S. 168°29′21″ W.
13. 11°43′53″ S. 168°27′58″ W.
14. 12°01′55″ S. 168°10′24″ W.
15. 12°28′40″ S. 167°25′20″ W.
16. 12°41′22″ S. 167°11′01″ W.
17. 12°57′51″ S. 166°52′21″ W.
18. 13°11′25″ S. 166°37′02″ W.
19. 13°14′03″ S. 166°34′03″ W.
20. 13°21′25″ S. 166°25′42″ W.
21. 13°35′44″ S. 166°09′19″ W.
22. 13°44′56″ S. 165°58′44″ W.
23. 14°03′30″ S. 165°37′20″ W.
24. 15°00′09″ S. 165°22′07″ W.
25. 15°14′04″ S. 165°18′29″ W.
26. 15°38′47″ S. 165°12′03″ W.
27. 15°44′58″ S. 165°16′36″ W.
28. 16°08′42″ S. 165°34′12″ W.
29. 16°18′30″ S. 165°41′29″ W.
30. 16°23′29″ S. 165°45′11″ W.
31. 16°45′30″ S. 166°01′39″ W.
32. 17°33′28″ S. 166°38′35″ W.
33. 17°31′45″ S. 166°42′07″ W.
34. 16°56′20″ S. 168°26′05″ W.
35. 16°37′55″ S. 169°18′19″ W.
36. 16°37′36″ S. 169°19′12″ W.
37. 16°34′58″ S. 169°55′59″ W.
38. 16°39′17″ S. 170°19′09″ W.
39. 16°48′46″ S. 171°12′29″ W.
40. 16°49′33″ S. 171°17′03″ W.
41. 16°13′29″ S. 171°37′41″ W.
42. 16°04′47″ S. 171°42′37″ W.
43. 15°58′20″ S. 171°46′06″ W.
44. 15°50′48″ S. 171°50′23″ W.
45. 15°50′12″ S. 171°50′44″ W.
46. 15°14′19″ S. 171°37′37″ W.
47. 15°01′58″ S. 171°31′37″ W.
48. 14°46′48″ S. 171°24′21″ W.
49. 14°27′02″ S. 171°14′46″ W.
50. 14°06′18″ S. 171°04′48″ W.
51. 14°03′28″ S. 171°03′06″ W.
52. 14°03′27″ S. 171°03′05″ W.
53. 14°03′05″ S. 171°02′53″ W.
54. 13°56′54″ S. 170°59′34″ W.
55. 13°54′30″ S. 170°58′20″ W.
56. 13°53′43″ S. 170°57′57″ W.
57. 13°50′40″ S. 170°56′24″ W.
58. 13°13′56″ S. 170°44′20″ W.
59. 13°09′05″ S. 170°42′39″ W.
60. 12°36′18″ S. 170°30′44″ W.
61. 12°36′11″ S. 170°31′35″ W.
62. 12°35′21″ S. 170°36′26″ W.
63. 12°29′47″ S. 171°08′24″ W.
64. 12°27′27″ S. 171°17′25″ W.
65. 12°23′34″ S. 171°25′18″ W.
66. 12°17′36″ S. 171°37′14″ W.
67. 12°14′01″ S. 171°44′25″ W.
68. 12°13′49″ S. 171°44′47″ W.
69. 12°05′27″ S. 172°00′55″ W.
70. 11°54′06″ S. 172°22′53″ W.
71. 11°53′57″ S. 172°23′09″ W.
72. 11°40′49″ S. 172°48′17″ W.
73. 11°26′56″ S. 173°08′46″ W.
74. 11°22′08″ S. 173°15′50″ W.
75. 11°02′28″ S. 173°44′37″ W.
76. 11°02′17″ S. 173°44′48″ W.

Palmyra Atoll-Kingman Reef. The seaward limit of the exclusive economic zone is 200 nautical miles from the baseline from which the territorial sea is measured, except that to the southeast of Palmyra Atoll and Kingman Reef the limit of the exclusive economic zone shall be determined by straight lines connecting the following points:

1. 7°55′04″ N. 159°22′29″ W.
2. 7°31′05″ N. 159°39′30″ W.
3. 7°09′43″ N. 159°54′35″ W.
4. 6°33′40″ N. 160°19′51″ W.
5. 6°31′37″ N. 160°21′18″ W.
6. 6°25′31″ N. 160°25′40″ W.
7. 6°03′05″ N. 160°41′42″ W.
8. 5°44′12″ N. 160°55′13″ W.
9. 4°57′25″ N. 161°28′19″ W.
10. 4°44′38″ N. 161°37′18″ W.
11. 3°54′25″ N. 162°12′56″ W.
12. 2°39′50″ N. 163°05′14″ W.

Wake Island. The seaward limit of the exclusive economic zone is 200 nautical miles from the baseline from which the territorial sea is measured, except that to the south of Wake Island the limit of the exclusive economic zone shall be determined by straight lines connecting the following points:

1. 17°56′15″ N. 169°54′00″ E.
2. 17°46′02″ N. 169°31′18″ E.
3. 17°37′47″ N. 169°12′53″ E.
4. 17°11′18″ N. 168°13′30″ E.
5. 16°41′31″ N. 167°07′39″ E.
6. 16°02′45″ N. 165°43′30″ E.

Jarvis Island. The seaward limit of the exclusive economic zone is 200 nautical miles from the baseline from which the territorial sea is measured, except that to the north and east of Jarvis Island, the limit of the exclusive economic zone shall be determined by straight lines connecting the following points:

1. 2°01′00″ N. 162°22′00″ W.
2. 2°01′42″ N. 162°01′35″ W.
3. 2°03′20″ N. 161°41′33″ W.
4. 2°02′30″ N. 161°36′20″ W.
5. 2°00′13″ N. 161°22′24″ W.
6. 1°50′18″ N. 160°20′42″ W.
7. 1°45′46″ N. 159°52′59″ W.
8. 1°43′31″ N. 159°39′27″ W.
9. 0°58′53″ N. 158°59′04″ W.
10. 0°46′58″ N. 158°48′24″ W.
11. 0°12′36″ N. 158°18′06″ W.
12. 0°00′17″ S. 158°07′27″ W.
13. 0°24′23″ S. 157°49′44″ W.
14. 0°25′44″ S. 157°48′43″ W.
15. 0°58′15″ S. 157°24′52″ W.
16. 2°13′26″ S. 157°49′01″ W.
17. 3°10′40″ S. 158°10′30″ W.

Howland and Baker Islands. The seaward limit of the exclusive economic zone is a line 200 nautical miles from the baseline from which the territorial sea is measured, except to the southeast and south of Howland and Baker Islands the limit of the exclusive economic zone shall be determined by straight lines connecting the following points:

1. 0°14′30″ N. 173°08′00″ W.
2. 0°14′32″ S. 173°27′28″ W.
3. 0°43′52″ S. 173°45′30″ W.
4. 1°04′06″ S. 174°17′41″ W.
5. 1°12′39″ S. 174°31′02″ W.
6. 1°14′52″ S. 174°34′48″ W.
7. 1°52′36″ S. 175°34′51″ W.
8. 1°59′17″ S. 175°45′29″ W.
9. 2°17′09″ S. 176°13′58″ W.
10. 2°32′51″ S. 176°38′59″ W.
11. 2°40′26″ S. 176°51′03″ W.
12. 2°44′49″ S. 176°58′01″ W.
13. 2°44′53″ S. 176°58′08″ W.
14. 2°56′33″ S. 177°16′43″ W.
15. 2°58′45″ S. 177°26′00″ W.

Dated: August 10, 1995.

David A. Colson,

Deputy Assistant Secretary for Oceans

[FR Doc. 95–20794 Filed 8–22–95; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF STATE IN CONJUNCTION WITH DEPARTMENT OF THE INTERIOR

[Public Notice 2243]

Participation in Working Group To Elaborate a U.N. Declaration on Indigenous Rights

The Economic and Social Council (ECOSOC) of the United Nations has approved establishment of an open-ended, inter-sessional working group of the Commission on Human Rights to elaborate a draft declaration on indigenous rights. The goal of the Working Group is to prepare a declaration for consideration and adoption by the General Assembly during the International Decade of the World's Indigenous People (1994–2004). [The Working Group will consider the draft prepared by the independent experts who comprise the Working Group on Indigenous Populations, which is entitled ''United Nations draft declaration on the rights of indigenous peoples.'']

ECOSOC also approved adoption of a special procedure to authorize participation in the Working Group by organizations of indigenous people, including tribal governments, not in consultative status with ECOSOC. Interested organizations should apply to the Coordinator of the International Decade at the following address: The Honorable Ibrahima Fall, Assistant Secretary General for Human Rights, Human Rights Center, Office of the United Nations in Geneva, Palais des Nations, 8–14 Avenue de la Paix, 1211 Geneva, Switzerland.

Applications must include the following information about the organization concerned:

(a) The name, headquarters or seat, address and contact person for the organization;

(b) The aims and purposes of the organization (these should be in conformity with the spirit, purposes, and principles of the Charter of the United Nations);

(c) Information on the programs and activities of the organization and the country or countries in which they are carried out or to which they apply;

(d) A description of the membership of the organization, indicating the total number of members.

The Coordinator of the International Decade will promptly forward all applications, and any information received from the State concerned, to the Council Committee on Non-Governmental Organizations for its decision.

Negotiations on the text of the declaration are tentatively scheduled for two weeks in November 1995 in Geneva, Switzerland. In order to provide adequate time for processing applications, the United Nations Secretariat has requested that they be submitted by *August 31, 1995.*

Authorization to participate will remain valid for the duration of the Working Group, subject to relevant ECOSOC procedures. Organizations of indigenous people authorized to participate will have the opportunity to address the Working Group, consistent with relevant ECOSOC procedures, and are encouraged to organize themselves into constituencies for this purpose. Such organizations may make written presentations, but they will not be issued as official documents.

The Human Rights Commission, a subsidiary body of ECOSOC, encourages the Working Group to consider all aspects of the draft declaration, including its scope of application. Hence, participation by an organization in the Working Group would not necessarily mean that the people represented by it would be covered by all aspects of the declaration or, similarly, that people not represented would not be covered by the declaration. The United States has encouraged other governments to also consider the benefits of broad participation.

Tribal governments and other organizations of indigenous people can play an important and useful role in development of the declaration. While the declaration would be politically, not legally, binding it would represent the first comprehensive U.N. statement on indigenous rights and on the nature of the relationship between indigenous communities and the governments of the States in which they reside. Moreover, other countries appear interested in learning more about self-government by Indian tribes and Alaska Natives within the United States.

For further information, please contact Tom Hushek, Bureau of Democracy, Human Rights and Labor, U.S. Department of State, telephone: (202) 647–3892.

Dated: August 17, 1995.

Josiah Rosenblatt,

Director, Office of Multilateral Affairs, Bureau of Democracy, Human Rights and Labor.

[FR Doc. 95–20891 Filed 8–22–95; 8:45 am]

BILLING CODE 4710–18–M

TENNESSEE VALLEY AUTHORITY

Operation of Watts Bar Nuclear Plant Unit 1

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of record of decision.

SUMMARY: This notice is provided in accordance with TVA's procedures implementing the National Environmental Policy Act. TVA has determined that to meet the increasing need for electric power in the TVA region, it should continue with its plans to operate its Watts Bar Nuclear Plant (WBN) Unit 1 in 1996. On July 10, 1995, TVA announced that it had decided to adopt a Final Supplemental Environmental Impact Statement (FSEIS) on operation of WBN. 60 FR 35,577. This FSEIS was issued by the Nuclear Regulatory Commission in April 1995. Notice of the availability of the adopted FSEIS was announced by the Environmental Protection Agency at 60 FR 35393.

FOR FURTHER INFORMATION CONTACT: Jon M. Loney, Manager, Environmental Management Staff, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C–K, Knoxville, Tennessee 37902, (615) 632–2201.

SUPPLEMENTARY INFORMATION: TVA is the electric supplier to an 80,000-square mile area containing parts of seven States. It and the distributors of energy, which TVA generates, serve about 7.5 million people. TVA currently has 25,600 megawatts of generating capacity on its power system. This includes coal-fired units, nuclear units, hydroelectric units, combustion turbines, and pumped storage hydro units.

TVA's WBN is located in Rhea County, Tennessee, approximately 80 kilometers (50 miles) northeast of Chattanooga, Tennessee. The site is located adjacent to TVA's Watts Bar Dam Reservation at Tennessee River Mile 528. WBN is a two unit pressurized water reactor nuclear plant. Each of its units has a net electrical output 1,160 megawatts. In August 1970, TVA proposed to construct and operate WBN. After completing an environmental impact statement, TVA decided to proceed with the plant in 1973.

Completing and licensing of the plant has been delayed. The delay was due in part to installation of modifications that NRC ordered for nuclear plants following the 1979 incident at the Three Mile Island nuclear plant. In addition, the need for power in the TVA region and elsewhere in the country dramatically changed from the need forecasted in the early 1970s. Plant licensing was further delayed in the mid-1980s while TVA resolved a number of WBN-specific safety concerns. To respond to these concerns, TVA implemented a series of corrective actions and plant modifications to prepare WBN Unit 1 for operation. Fuel is now scheduled to be loaded in WBN Unit 1 in late 1995 with commercial operation expected in Spring 1996. TVA has determined that Unit 1's generation is needed in 1996 and has decided not to change its earlier decision to proceed with the unit.

Under TVA's Load Forecasts, WBN Unit 1 is Needed

The determination that WBN Unit 1 is needed in 1996 is based on TVA's forecasts of future power needs in the region that it serves. These forecasts rely on national and regional economic data and are produced through the use of state-of-the-art computer models. TVA prepares three types of forecasts of future power demands—a low-, medium-, and high-load forecast. There is substantial uncertainty in forecasting future power needs. Using a range of forecasts helps address this uncertainty.

The high-load forecast is designed to project a level of future energy demand that has 90-percent probability of not being exceeded (there is only a 10-percent chance that the forecast would be too low and that the demand would be greater). The medium-load forecast has a 50-percent probability. The probability for the low-load forecast is 10 percent—there is a 90-percent chance that the demand for energy in the TVA region would be greater than this estimated level.

Under all of TVA's current load forecasts, there is a need for additional energy resources in the immediate future to meet the demand for energy in the TVA region. Under TVA's medium-load forecast, there is a need in 1996 for the capacity of WBN Unit 1, as well as an additional 850 megawatts. Under TVA's high-load forecast, there is a need for 1,500 megawatts plus WBN Unit's capacity. Only under the low-load

forecast is there a slight surplus of capacity in 1996 of 300 megawatts with WBN Unit 1 operating.

TVA has received comments that its load forecasts are too high and the need for WBN Unit 1 has been questioned. TVA acknowledges that load forecasting is inherently uncertain and that future demand in the TVA region may be less than TVA's forecasts. However, since 1985, TVA's forecasting methodology has produced forecasts that have been within plus or minus 5 percent of actual demand. This is better than the utility industry standard of plus or minus 8-percent accuracy.

Because of concern about the accuracy of its forecasts, TVA asked Barakat & Chamberlin, Inc., a nationally-recognized expert in energy resource planning, to review TVA's forecasting approach in 1991. Barakat & Chamberlin concluded: ''on a comparative basis, TVA's forecasting procedures compare very favorably with the best-practice procedures in the United States utility industry.''

More recently, in connection with the preparation of its integrated resource plan and programmatic environmental impact statement, Energy Vision 2020, TVA asked George McCollister with Spectrum Economics, Inc., to review TVA's 1994 load forecast. Dr. McCollister is a load forecasting expert and was retained to provide independent advice to members of an outside stakeholders review group who oversaw preparation of Energy Vision 2020. Dr. McCollister suggested some improvements to TVA's load forecasting methodology but concluded: ''TVA uses state-of-the art models to forecast electric sales to residential and commercial customers in its power service area. TVA has acquired vast amounts of data and conducted many studies to support these models. TVA produces excellent documentation for its economic forecast, and perhaps does the best job of any utility in the country in forecasting the range of uncertainty in both its economic and electric load forecasts. TVA is highly commended for its achievements.''

It takes many years to plan, permit, and construct new energy sources or to plan and deploy energy conservation measures (demand-side management programs). Years before the demand for energy arises, electric utilities must make decisions about how to meet forecasted demands. If no decisions are made or if the utility's forecasts are too low, those needing electric service in the future may not get it. TVA decided years ago that WBN would be needed to meet future demands on its system. Its current forecasts show that WBN Unit 1 is needed next year, and TVA chooses to rely on these forecasts and its experts. Even under the forecasts produced by those questioning TVA's forecasts, there is still a need for additional energy resources to meet energy demands in the TVA region. WBN Unit 1 would meet those needs while offseting generation from the existing coal-fired system, thus reducing environmental effects.

Alternatives Considered

TVA considered a number of alternatives to constructing and completing WBN in its 1972 final environmental impact statement (FEIS). Among those alternatives were construction of coal-fired units, hydroelectric units, gas-fired units, and oil-fired units. These alternatives were deemed not feasible, more costly, and/or more environmentally detrimental than construction and operation of WBN. TVA also considered purchasing firm power from neighboring utilities but concluded that its neighbors would not be able to supply sufficient firm power to meet TVA's needs and that the environmental impacts of a neighboring utility generating that power would like be similar to or greater than the impacts associated with operating WBN.

WBN Unit 1 is not essentially complete and the alternatives available to TVA in light of the status of the unit and need for it are limited. TVA considered continuing with the unit (the No-Action Alternative because it involves not changing TVA's current course of action), delaying completing the unit and purchasing power, or canceling the unit and purchasing power. TVA concluded that continuing with WBN Unit 1 was the most cost effective and environmentally preferable alternative among the viable alternatives remaining to it.

TVA has invested approximately $6.4 billion in Unit 1 and the facilities it shares with Unit 2. Since these costs have already been incurred, changing TVA's course of action and deciding not to operate the plant would not avoid the costs. TVA would still have to recover these costs in the rates it charges for its electricity. If TVA does not complete the unit, it would have to write off approximately $200 million to $600 million in costs annually, depending on the period for the write-off. Operating the unit would allow TVA to begin earning a return on the agency's investment in the form of generation from the unit and allow TVA to recover the costs of building the facility over a longer period of time (40 years versus the traditional write-off period of 10 years).

Compared to purchasing power or meeting future demand with coal-fired generation or combustion turbine units, operation of WBN Unit 1 will be more economical. WBN Unit 1's operating costs are projected to be approximately 1.7 cents/kwh. The operating costs of alternative generating sources range from 2.0 to 6.0 cents/kwh.

It is difficult to project the potential environmental impacts associated with purchasing power because there are a number of different kinds of sources that could provide this power. If it comes from a neighboring utility system, TVA's analyses indicate that the power is likely to be produced by coal-fired units because these are the units that are economically marginal to operate (the utility will be operating other, lower-cost generation to meet its own needs). As explained in TVA's 1972 FEIS, coal-fired units result in substantially larger amounts of air pollution than would operation of WBN Unit 1. Gas-fired units would also produce more air emissions pollution. As a closed-cycle plant, WBN Unit 1 is also likely to produce fewer water emissions than a coal-fired unit or another nuclear unit which is open cycle.

The environmental consequences of completing and operating WBN Unit 1 are set out in TVA's 1972 FEIS and its adopted 1995 FSEIS. Most of the impacts associated with Unit 1 result from constructing the unit and have already been experienced. The impacts associated with actually operating the unit are relatively minimal. They include: (1) Releases of small quantities of radioactivty to the air and water; (2) release of minor quantities of heat and nonradioactive waste waters to Chickamauga Reservoir; and (3) release of significant quantities of heat and water vapor from the plant's cooling towers to the atmosphere. Conversion of the site from agricultural use to an industrial use has largely occurred with the construction of the plant.

TVA also considered as a possible, but nonviable, alternative the deployment of energy conservation programs to reduce the demand that WBN Unit 1 would serve. There are a large number of these programs that could be deployed in the TVA region. However, it takes three to five years to put such programs in place and to begin to achieve noticeable energy savings. The combination of sufficient programs to offset Unit 1's capacity is estimated to cost approximately 7.0 cents/kwh, well above Unit 1's operating costs. It is, therefore, not feasible to deploy sufficient energy conservation programs in time to meet the need in 1996; and,

even if such programs could be deployed in time, they would cost much more than operating WBN Unit 1.

Mitigation and Monitoring Measures

The 1972 FEIS and the 1995 FSEIS identify a number of mitigation and monitoring requirements. These have either been incorporated in the plant's construction permit or National Pollutant Discharge Elimination System (NPDES) permit and, as appropriate, are expected to appear as conditions in the operating license issued by NRC for the unit.

Dated: August 11, 1995.

Mark O. Medford,

Vice President, Engineering and Technical Services.

[FR Doc. 95–20860 Filed 8–22–95; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 USC Chapter 35).

DATES: August 17, 1995.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Gemma deGuzman, Information Resource Management (IRM) Strategies Division, M–32, Office of the Secretary of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on August 17, 1995:

DOT No: 4103.
OMB No: 2132—New.
Administration: Federal Transit Administration (FTA).
Title: FTA Customer Surveys.
Need for Information: Executive Order 13862, ''Setting Customer Service Standards'' requires agencies to set levels of service and monitor customer satisfaction.
Proposed Use of Information: This information obtained from FTA customers will provide decision makers with the information necessary to determine current levels of sercie, establish realistic ongoing sercie delivery standards, and to establish mechanisms for ongoing monitoring of customer satisfaction.
Frequency: Annually.
Respondents: Transit providers and Metropolitan Planning Organizations.
Number of Respondents: 911.
Burden Estimate: 455.5 hours.
Form(s): None.
Average Burden Hours Per Response: 30 minutes.

DOT No: 4104.
OMB No: 2128–0558.
Administration: National Highway Traffic Safety Administration (NHTSA).
Title: Production Reporting System for Side Impact Protection Compliance (49 CFR Part 586).
Need for Information: 15 U.S.C. 1392 of the National Traffic and Motor Vehicle Safety Act of 1966, authorizes the issuance of Federal Motor Vehicle Safety Standards (FMVSS).
Proposed Use of Information: The NHTSA will use this information to determine the extent to which manufacturers are complying with the stated goals.
Frequency: Annually.
Burden Estimate: 936 hours.
Respondents: Passenger car manufacturers.
Number of Respondents: 26.
Form(s): None.
Average Burden Hours Per Response: 24.

DOT No: 4105.
OMB No: 2133–0505.
Administration: Maritime Administration (MARAD).
Title: Voluntary Tanker Agreement.
Need for Information: The Maritime Administration is required to ensure sufficient capacity is available to satisfy the essential needs of the Department of Defense for transportation of petroleum and petroleum products in bulk by sea.
Proposed Use of Information: The MARAD will use this information to evaluate tanker capability and make plans for the use of this capability to meet national emergency requirements.
Frequency: On occasion.
Burden Estimate: 18 hours.
Respondents: Tanker companies.
Number of Respondents: 36.
Form(s): None.
Average Burden Hours Per Response: 30 minutes.

DOT No: 4106.
OMB No: 2127–0539.
Administration: National Highway Traffic Safety Administration.
Title: 49 CFR 542, Procedures for Selecting Lines to be Covered by the Theft Prevention Standard.
Need for Information: the Anti Car Theft Act of 1992 (amended the Motor Vehicle Theft Law Enforcement Act of 1984 (P.L. 98–547) requires this collection of information.
Proposed Use of Information: NHTSA will use this information to identify certain motor vehicles and their major replacement parts and to impede motor vehicle theft.
Frequency: One time only.
Burden Estimate: 4216 hours.
Respondents: Manufacturers of passenger automobiles.
Number of Respondents: 34.
Form(s): None.
Average Burden Hours Per Response: 24.8 hours.

DOT No: 4107.
OMB No: 2133–New.
Administration: Maritime Administration.
Title: Port Facility Conveyance Information.
Need for Information: Public Law 013–160, 2927 was passed on November 30, 1993, and amends 40 U.S.C. 484 (the Federal Property and Administrative Services Act of 1949). This authorizes the collection of this information.
Proposed Use of Information: This information will be used by MARAD to

determine (1) the community is committed to the redevelopment/reuse plan, (2) the redevelopment/reuse plan is viable and in the best interest of the public, and (3) the property is being used in accordance with the terms of the conveyance and applicable statutes and regulations.

Frequency: Annually.

Burden Estimate: 10.

Respondents: Tanker companies.

Number of Respondents: 10.

Form(s): None.

Average Burden Hours Per Response: 200 hours.

DOT No: 4108.

OMB No: 2132–0543.

Administration: Federal Transit Administration (FTA).

Title: Charter Service Operations.

Need for Information: 40 U.S.C. 5301 et seq., the charter service rule, contains three provisions that impose information collection on recipients of financial assistance from the Federal Transit Administration for capital or operating expenses under the Federal Transit Laws.

Proposed Use of Information: This information will be used by FTA to ensure all applicants to enter into a charter bus agreement with the Secretary of Transportation.

Frequency: Annually, with each application.

Burden Estimate: 2,000 hours.

Respondents: State or local governments, business or other for-profit, small businesses or organizations.

Number of Respondents: 1,664.

Form(s): None.

Average Burden Hours Per Response: 1.2 hours.

DOT No: 4109.

OMB No: 2137–0052.

Administration: Federal Aviation Administration.

Title: Aviation Maintenance Technician Schools.

Need for Information: 49 USC Section 44707 authorizes the Administrator of the Federal Aviation Administration to examine and rate the air agencies.

Proposed Use of Information: This information will be used by the Federal Aviation Administration to rate aviation maintenance technician schools to maintain a standardized level of proficiency.

Frequency: As required.

Burden Estimate: 78,461 hours annually.

Respondents: Aviation Maintenance Technician School Operators.

Form(s): FAA Form 8310–6.

Average Burden Hours Per Response: 40 hours per applicant.

Issued in Washington, D.C. on August 17, 1995.

Paula Ewen,

Manager, Information Resource Management (IRM), Strategies Division.

[FR Doc. 95–20871 Filed 8–22–95; 8:45 am].

BILLING CODE 4910–62–P

[Notice 91–10]

Senior Executive Service Performance Review Boards (PRB) Membership

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental Performance Review Boards (PRB) established by DOT under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Glenda M. Tate, Director of Personnel, and Executive Secretary, DOT Executive Resources Board, (202) 366–4088.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 4312 requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, 5 U.S.C. 4314(c) requires each agency to establish one or more PRBs, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, D.C., on August 14, 1995.

Melissa J. Spillenkothen,

Assistant Secretary for Administration.

Department of Transportation Nominations for Performance Review Boards Fiscal Year 1995 Performance Appraisal Cycle

Office of the Secretary

Roberta D. Gabel, Assistant General Counsel for Environmental, Civil Rights and General Law, Office of the Secretary

Douglas V. Leister, Executive Assistant, Office of the Secretary

Robert P. Thurber, Deputy Director, Office of Environment, Energy and Safety, Office of the Secretary

Paul M. Geier, Assistant General Counsel for Litigation, Office of the Secretary

Samuel Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings, Office of the Secretary

Richard B. Chapman, Deputy Director, Office of Information Resource Management, Office of the Secretary

John J. Taylor, Director, Office of Security, Office of the Secretary

Eugene A. Conti, Jr., Deputy Assistant Secretary for Budget and Programs, Office of the Secretary

Jerry A. Hawkins, Director, Office of Personnel and Training, Federal Highway Administration

United States Coast Guard

RADM William C. Donnell, Chief, Office of Personnel and Training, United States Coast Guard

RADM David E. Ciancaglini, Chief, Office of Command, Control and Communications, United States Coast Guard

RADM Norman T. Saunders, Chief, Office of Law Enforcement and Defense Operations, United States Coast Guard

RADM Edward J. Barrett, Chief, Office of Engineering Logistics and Development, United States Coast Guard

RADM Alan M. Steinman, Chief, Office of Health and Safety, United States Coast Guard

RADM Thomas H. Collins, Chief, Office of Acquisition, United States Coast Guard

RADM Rudy K. Peschel, Chief, Office of Navigation Safety and Waterway Services, United States Coast Guard

Richard B. Chapman, Deputy Director, Office of Information Resource Management, Office of the Secretary

Kay Frances Dolan, Program Director, Federal Aviation Administration

Jerry A. Hawkins, Director, Office of Personnel and Training, Federal Highway Administration

Diana L. Zeidel, Deputy Associate Administrator for Administration, Federal Highway Administration

Margarita Roque, Director, Executive Secretariat, Office of the Secretary

Federal Aviation Administration

Thomas C. Accardi, Director, Flight Standards Service, Federal Aviation Administration

Sandra Allen, Assistant Administrator for Public Affairs, Federal Aviation Administration

Joaquin Archilla, Director, Airway Facilities Service, Federal Aviation Administration

Joan W. Bauerlein, Director, Office of International Aviation, Federal Aviation Administration

Carolyn C. Blum, Regional Administrator, Southern Region, Federal Aviation Administration

Anthony J. Broderick, Jr., Associate Administrator for Regulation and Certification, Federal Aviation Administration
John H. Cassady, III, Deputy Chief Counsel, Federal Aviation Administration
Marcos Costilla, Jr., Manager, Airway Facilities Division, Southwest Region, Federal Aviation Administration
Lawrence Covington, Deputy Director, Business Information and Consultation, Federal Aviation Administration
Loni Czekalski, Director, Office of Communication, Navigation and Surveillance Systems, Federal Aviation Administration
Clyde M. DeHart, Jr., Regional Administrator, Southwest Region, Federal Aviation Administration
James S. Dillman, Assistant Chief Counsel, Litigation Division, Federal Aviation Administration
Kay Frances Dolan, Program Director, Office of Personnel, Federal Aviation Administration
Arlene B. Feldman, Regional Administrator, Eastern Region, Federal Aviation Administration
Cathal L. Flynn, Associate Administrator for Civil Aviation Security, Federal Aviation Administration
Garrome P. Franklin, Regional Administrator, Great Lakes Region, Federal Aviation Administration
Darlene Freeman, Deputy Associate Administrator for Air Traffic, Federal Aviation Administration
Norman T. Fujisaki, Program Director, Program Analysis and Operations Research, Federal Aviation Administration
Margaret M. Gilligan, Deputy Associate Administrator for Regulation and Certification, Federal Aviation Administration
Theron A. Gray, Director, Office of Information Technology, Federal Aviation Administration
Christopher A. Hart, Assistant Administrator for System Safety, Federal Aviation Administration
Charles H. Huettner, Director for Aviation Safety for the Office of Aeronautics, Federal Aviation Administration
Frederick M. Isaac, Regional Administrator, Northwest Mountain Region, Federal Aviation Administration
DeWitte T. Lawson, Jr., Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration
Ruth A. Leverenz, Director, Office of Budget and Accounting, Federal Aviation Administration
Louise E. Maillett, Deputy Assistant Administrator for Policy, Planning and International Aviation, Federal Aviation Administration
A. Bradley Mims, Assistant Administrator, Office of Government and Industry Affairs, Federal Aviation Administration
Homer C. McClure, Director, Aeronautical Center, Federal Aviation Administration
Lynn A. Osmus, Chief of Staff, Federal Aviation Administration
Neil Planzer, Director, Air Traffic Plans and Requirements Service, Federal Aviation Administration
Cynthia D. Rich, Assistant Administrator for Airports, Federal Aviation Administration
Barbara G. Ritz, Deputy Director, Aeronautical Center, Federal Aviation Administration
Fanny Rivera, Deputy Assistant Administrator for Civil Rights, Federal Aviation Administration
Stanley Rivers, Deputy Director, Airway Facilities Service, Federal Aviation Administration
Carl B. Schellenberg, Director, Office of System Capacity and Requirements, Federal Aviation Administration
Jacqueline L. Smith, Regional Administrator, Alaskan Region, Federal Aviation Administration
Quentin S. Taylor, Deputy Associate Administrator for Airports, Federal Aviation Administration
George W. Terrell, Program Director, Operational Support Program, Federal Aviation Administration
Frank Tuck, Manager, Business and Financial Management Staff, Federal Aviation Administration
John E. Turner, Regional Administrator, Central Region, Federal Aviation Administration
James H. Washington, Deputy Director, Air Traffic Service, Federal Aviation Administration
James W. Whitlow, Assistant Chief Counsel, General Legal Services Division, Federal Aviation Administration
William H. Williams, Jr., Program Director, Aviation System Standards Program, Federal Aviation Administration
Winifred Woodward, Program Director, Center for Management Development, Federal Aviation Administration
Barry L. Valentine, Assistant Administrator for Policy, Planning and International Aviation, Federal Aviation Administration
Elizabeth E. Yoest, Deputy Director, Aircraft Certification Service, Federal Aviation Administration
Jane H. Bachner, Deputy Associate Administrator for Industry and Intermodal Policy, Federal Railroad Administration
Madeleine S. Bloom, Director, Office of Policy Development, Federal Highway Administration
Jerry A. Hawkins, Director, Office of Personnel and Training, Federal Highway Administration
Barbara Orski, Director, Office of Right-of-Way, Federal Highway Administration
George S. Moore, Jr., Associate Administrator for Administration, Federal Highway Administration
Eugene A. Conti, Jr., Deputy Assistant Secretary for Budget and Programs, Office of the Secretary
Margarita Roque, Director, Executive Secretariat, Office of the Secretary

Federal Highway Administration

George S. Moore, Jr., Associate Administrator for Administration, Federal Highway Administration
Leon N. Larson, Regional Administrator, Region 4, Federal Highway Administration
Thomas J. Ptak, Associate Administrator for Program Development, Federal Highway Administration
Gloria J. Jeff, Associate Administrator for Policy, Federal Highway Administration
Thomas R. Hunt, Associate Administrator for Administrator, Federal Highway Administration
Rose A. McMurray, Associate Administrator for Management and Administration, Research and Special Programs Administration
John L. Mann, Jr., Associate Administrator for Administration, Maritime Administration

Federal Railroad Administration

S. Mark Lindsey, Chief Counsel, Federal Railroad Administration
Raymond J. Rogers, Associate Administrator for Administration and Finance, Federal Railroad Administration
Philip Olekszyk, Deputy Associate Administrator for Safety Compliance and Program Implementation, Federal Railroad Administration
James T. McQueen, Associate Administrator for Railroad Development, Federal Railroad Administration
Sally Hill Cooper, Associate Administrator for Policy, Federal Railroad Administration
Margarita Roque, Director, Executive Secretariat, Office of the Secretary
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary

National Highway Traffic Safety Administration

Barry I. Felrice, Associate Administrator for Safety Performance Standards,

National Highway Traffic Safety Administration

Donald Bischoff, Associate Administrator for Plans and Policy, National Highway Traffic Safety Administration

Michael B. Brownlee, Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration

Jane F. Garvey, Deputy Administrator, Federal Highway Administration

Jerry A. Hawkins, Director, Office of Personnel and Training, Federal Highway Administration

Federal Transit Administration

Thomas R. Hunt, Associate Administrator for Administration, Federal Transition Administration

Peter G. Halpin, Director, Office of Communications and External Affairs, Federal Transit Administration

Sally Hill Cooper, Associate Administrator for Policy, Federal Railroad Administration

Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary

Kevin E. Heanue, Director, Office of Environment and Planning, Federal Highway Administration

Philip Olekszyk, Deputy Associate Administrator for Safety Compliance and Program Implementation, Federal Railroad Administration

Maritime Administration

Bruce J. Carlton, Associate Administrator for Policy and International Trade and Marketing, Maritime Administration

James J. Zok, Associate Administrator for Ship Financial Assistance and Cargo Preference, Maritime Administration

Margaret D. Blum, Associate Administrator for Port, Intermodal and Environmental Activities, Maritime Administration

John L. Mann, Jr., Associate Administrator for Administration, Maritime Administration

Joan M. Bondareff, Chief Counsel, Maritime Administration

Sharon K. Brooks, Director, Office of Congressional and Public Affairs, Maritime Administration

Jerry A. Hawkins, Director, Office of Personnel and Training, Federal Highway Administration

Patricia D. Parrish, Director, Office of Management Planning, Office of the Secretary

Eugene K. Taylor, Director, Office of Information Resource Management, Office of the Secretary

Research and Special Programs Administration

Philip S. Coonley, Director, Office of Administration, Volpe National Transportation Systems Center, Research and Special Programs Administration

Rose A. McMurray, Associate Administrator for Management and Administration, Research and Special Programs Administration

Alan I. Roberts, Associate Administrator for Hazardous Materials Transportation, Research and Special Programs Administration

Frank F.C. Tung, Deputy Director, Volpe National Transportation Systems Center, Research and Special Programs Administration

Katherine E. Collins, Director, Office of Budget, Office of the Secretary

Arnold L. Levine, Director, Office of International Transportation and Trade, Office of the Secretary

Patricia D. Parrish, Director, Office of Management Planning, Office of the Secretary

Regina A. Sullivan, Director, Office of Congressional Affairs, Office of the Secretary

Jane F. Garvey, Deputy Administrator, Federal Highway Administration

Sally Hill Cooper, Associate Administrator for Policy, Federal Railroad Administration

Philip Olekszyk, Deputy Associate Administrator for Safety Compliance and Program Implementation, Federal Railroad Administration

Office of the Inspector General

Eileen Boyd, Assistant Inspector General for Civil and Administrative Remedies, Department of Health and Human Services

John J. Connors, Deputy Inspector General, Department of Housing and Urban Development

Judith J. Gordon, Assistant Inspector General for Systems Evaluation, Department of Commerce

Nancy Hendricks, Assistant Inspector General for Audits, Department of Energy

Donald Mancuso, Assistant Inspector General for Investigations, Department of Defense

Steve A. McNamara, Assistant Inspector General for Audit, Department of Education

Everett Mosely, Deputy Inspector General, Agency for International Development

Robert S. Terjesen, Assistant Inspector General for Investigations, Department of State

Joseph R. Willever, Deputy Inspector General, Office of Personnel Management

[FR Doc. 95–20861 Filed 8–22–95; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[Summary Notice No. PE–95–30]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of disposition of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 12, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on August 17, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28189
Petitioner: San Bernardino County Sheriff's Department Regulations Affected: 49 USC part A, subtitle VII
Description of Relief Sought: To permit the San Bernardino County Sheriff's Department to use its Beechcraft King Air U21A/A90–1 to transport San Bernardino County government officials as nonpaying passengers.

Docket No.: 28217
Petitioner: Air Nova, Inc.
Sections of the FAR Affected: 14 CFR 91.715
Description of Relief Sought: To permit Air Nova, Inc., to operate its aircraft in the United States under the authority of a Canadian ferry flight permit, rather than a special flight authorization issued by the Administrator as required by § 91.715.

Docket No.: 28281
Petitioner: Miller Aviation, Inc.
Sections of the FAR Affected: 14 CFR 135.165 (b)(6) and (b)(7)
Description of Relief Sought: To permit Miller Aviation, Inc., to operate turbojet aircraft configured with nine or fewer passenger seats, and with only one high-frequency communication transmitter/receiver, over routes between the East Coast of the United States and Europe, Bermuda, and the Caribbean Islands, including St. Maarten Island.

Docket No.: 28294
Petitioner: Cessna Aircraft Co.
Sections of the FAR Affected: 14 CFR 25.571(e)(1)
Description of Relief Sought: To permit Cessna to demonstrate that the Cessna Model 750 (Citation X) airplane is capable of successfully completing a flight during which likely structural damage occurs as a result of impact with a 4-pound bird at whichever true airspeed is greater: Vc at sea level, or 0.85 Vc at 8,000 feet.

Docket No.: 28269
Petitioner: Learjet Inc.
Sections of the FAR Affected: 14 CFR 25.562(c)(5)
Description of Relief Sought: To permit Learjet Inc., relief from the Head Injury Criterion (HIC) requirements for Learjet Model 45 forward, aft, and side-facing seats.

Dispositions of Petitions

Docket No.: 2965
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 61.63 (b) and (c) and 121.437(c)
Description of Relief Sought/Disposition: To extend Exemption No. 2965, as amended, which permits pilots employed by part 121 certificate holders to receive an additional category and class rating on their pilot's certificate, subject to certain conditions and limitations. *GRANT, June 29, 1995, Exemption No. 2965I*

Docket No.: 27257
Petitioner: Great Northern Airlines, Inc., d.b.a. Northern Air Guides
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/Disposition: To extend Exemption No. 27257, which permits appropriately trained pilots employed by Great Northern Air Guides (GNAC) to remove and reinstall aircraft cabin seats on the aircraft used in operations conducted by GNAC under part 135. *GRANT, June 30, 1995, Exemption No. 5702A*

Docket No.: 27293
Petitioner: Darby Aviation
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/Disposition: To extend Exemption No. 5726, as amended, which permits appropriately trained pilots employed by Darby Aviation to remove and reinstall stretchers used in ambulance service and aircraft cabin seats in its aircraft that are type certificated for nine or fewer passenger seats and used in operations conducted under part 135. *GRANT, July 6, 1995, Exemption No. 5726B*

Docket No.: 27307
Petitioner: Comair Airlines, Inc.
Sections of the FAR Affected: 14 CFR 61.57(e), 121.433(c)(1)(iii), 121.440(a), 121.141 (a)(1) and (b)(1), and appendix F, part 121
Description of Relief Sought/Disposition: To extend Exemption No. 5734, which permits Comair to combine recurrent flight and ground training and proficiency checks into a single pilot-in-command and second-in-command annual training and proficiency evaluation program, i.e., a Single-Visit Training Program. *GRANT, June 29, 1995, Exemption No. 5734A*

Docket No.: 27354
Petitioner: A.J. Blake, Inc.
Sections of the FAR Affected: 14 CFR 137.53(c)(2)
Description of Relief Sought/Disposition: To extend Exemption No. 5676, which permits A.J. Blake, Inc., to conduct aerial applications of insecticide materials from a PA–23–250 aircraft without this aircraft being equipped with a device that is capable of jettisoning at least one-half of the aircraft's maximum authorized load of agricultural materials within 45 seconds when operating over a congested area. *GRANT, June 29, 1995, Exemption No. 5676A*

Docket No.: 27662
Petitioner: Boeing Commercial Airplane Group
Sections of the FAR Affected: 14 CFR 25.809(f)(1)
Description of Relief Sought/Disposition: To reconsider terms of Partial Grant of Exemption No. 5993, which denied, in part, exemption from the requirements of § 25.809(f)(1) for an escape slide at the entry door on the Model 767–300F freighter airplane carrying supernumery occupants. *PARTIAL GRANT, August 9, 1995, Exemption No. 5993A*

Docket No.: 27672
Petitioner: Skydive Chicago, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/Disposition: To allow nonstudent parachutists who are foreign nationals (foreign parachutists) to participate in Skydive Chicago, Inc., sponsored parachute jumping events without complying with the parachute equipment and packing requirements of the FAR. *GRANT, July 10, 1995, Exemption No. 6131*

Docket No.: 27673
Petitioner: World Skydiving Center, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/Disposition: To allow nonstudent parachutists who are foreign nationals (foreign parachutists) to participate in World Skydiving Center, Inc., sponsored parachute jumping events without complying with the parachute equipment and packing requirements of the FAR. *GRANT, July 10, 1995, Exemption No. 6132*

Docket No.: 27729
Petitioner: Skydive Sebastian, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/Disposition: To allow nonstudent parachutists who are foreign nationals (foreign parachutists) to participate in Skydive Sebastian, Inc., sponsored parachute jumping events without complying with the parachute equipment and packing requirements

of the FAR. *GRANT, July 10, 1995, Exemption No. 6129*

Docket No.: 27755
Petitioner: Sky's The Limit, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/Disposition: To allow nonstudent parachutists who are foreign nationals (foreign parachutists) to participate in Sky's The Limit, Inc., sponsored parachute jumping events without complying with the parachute equipment and packing requirements of the FAR. *GRANT, July 10, 1995, Exemption No. 6130*

Docket No.: 27811
Petitioner: The Skydiving Center of Greater Washington, DC, Inc., and The Skydiving Center at Ocean City, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/Disposition: To allow nonstudent parachutists who are foreign nationals (foreign parachutists) to participate in The Skydiving Center of Greater Washington, DC, Inc., and The Skydiving Center at Ocean City, Inc., sponsored parachute jumping events without complying with the parachute equipment and packing requirements of the FAR. *GRANT, July 10, 1995, Exemption No. 6127*

Docket No.: 27860
Petitioner: Skydive Academy of Hawaii, Corp.
Sections of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/Disposition: To allow nonstudent parachutists who are foreign nationals (foreign parachutists) to participate in Skydive Academy of Hawaii, Corp., sponsored parachute jumping events without complying with the parachute equipment and packing requirements of the FAR. *GRANT, July 10, 1995, Exemption No. 6125*

Docket No.: 27882
Petitioner: Pacific International Skydiving Center
Sections of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/Disposition: To allow nonstudent parachutists who are foreign nationals (foreign parachutists) to participate in Pacific International Skydiving Center sponsored parachute jumping events without complying with the parachute equipment and packing requirements of the FAR. *GRANT, July 10, 1995, Exemption No. 6126*

Docket No.: 27962
Petitioner: Carolina Sky Sports
Sections of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/Disposition: To allow nonstudent parachutists who are foreign nationals (foreign parachutists) to participate in Carolina Sky Sports sponsored parachute jumping events without complying with the parachute equipment and packing requirements of the FAR. *GRANT, July 10, 1995, Exemption No. 6124*

Docket No.: 28133
Petitioner: Gee Bee, Inc., d.b.a. Great Northern Air Guides
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/Disposition: To allow appropriately trained pilots employed by Great Northern Air Guides (GNAC) to remove and replace passenger seats in its aircraft used in operations conducted by GNAC under part 135. *GRANT, June 30, 1995, Exemption No. 6119*

Docket No.: 28144
Petitioner: Perris Valley Skydiving
Sections of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/Disposition: To allow nonstudent parachutists who are foreign nationals (foreign parachutists) to participate in Perris Valley Skydiving sponsored parachute jumping events without complying with the parachute equipment and packing requirements of the FAR. *GRANT, July 10, 1995, Exemption No. 6123*

Docket No.: 28147
Petitioner: Alaska Central Express, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/Disposition: To allow appropriately trained pilots employed by Alaska Central Express, Inc., to remove and reinstall passenger seats in its aircraft that are type certificated for nine or fewer passenger seats and used in operations conducted under part 135. *GRANT, July 13, 1995, Exemption No. 6134.*

[FR Doc. 95–20874 Filed 8–22–95; 8:45 am]
BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Aviation Rulemaking Advisory Committee to discuss air carrier/general aviation maintenance issues.

DATES: The meeting will be held on September 18, 1995, at 1:00 p.m. and should adjourn by 3:00 p.m. Arrange for oral presentations by September 8, 1995.

ADDRESS: The meeting will be held at the Air Transport Association of America, 1301 Pennsylvania Avenue NW., Boardroom, Washington, DC, at 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Herber, Meeting Coordinator, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3498; fax number (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to consider air carrier/general aviation maintenance issues. The meeting will be held on September 18, 1995, at the Air Transport Association of America, 1301 Pennsylvania Avenue NW., Boardroom, Washington, DC, at 1:00 p.m. The agenda will include:

- Discussion of possible revisions to the Major/Minor task.
- Consideration of concept approval of the new Maintenance Training task.
- Exploration of harmonization of parts 65, 66, and 147.
- 1996 Meeting Plan.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements on or before September 8, 1995, to present oral statements at the meeting. The public may present written statements at any time by proving 35 copies to the Assistant Chair or by presenting the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the meeting coordinator listed under the heading **FOR FURTHER INFORMATION CONTACT.** The Assistant Chair may limit the time allowed for oral statements to fit the time available. The Assistant Chair may also allow questions from the public, again subject to time available.

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

Frederick J. Leonelli,

Assistant Executive Director for Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–20875 Filed 8–22–95; 8:45 am]
BILLING CODE 4910–13–M

Civil Tiltrotor Development Advisory Committee; Infrastructure Subcommittee

Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act, Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) Infrastructure Subcommittee that will be held on August 29, 1995 in the Department of Aviation Offices conference room, O'Hare Airport, Airport Terminal 2, Chicago Illinois. The meeting will begin at 10:00 a.m. and conclude by 4:00 p.m.

The agenda for the Infrastructure Subcommittee meeting will include the following:

(1) Review and discussion of the Subcommittee draft report.

(2) Review the Infrastructure Subcommittee work plans/schedule.

Space is very limited. Persons who plan to attend the meeting should notify Ms. Karen Braxton on 202–267–9451 by August 25. Attendance is open to the interested public, but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting.

Members of the public may provide a written statement to the Subcommittee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Karen Braxton not later than August 25.

Issued in Washington, DC, August 18, 1995.

Robert D. Smith,

Designated Federal Official, Civil Tiltrotor Development Advisory Committee.

[FR Doc. 95–20872 Filed 8–22–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Cumberland, Hoke, and Robeson Counties, North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Cumberland, Robeson, and Hoke Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Roy Shelton, Federal Highway Administration, 310 New Bern Avenue, Raleigh, North Carolina 27601, Telephone: (919) 856–4350

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an environmental impact statement (EIS) on a proposed new highway facility known as the Fayetteville Outer Loop (western and southern portions) in Cumberland, Hoke, and Robeson Counties of North Carolina. The proposed project would extend from the western termination point of the northern segment of the Fayetteville Outer Loop (X–2) near Ramsey Street (U.S. 401), would pass through the Fort Bragg Military Reservation, western and southern Cumberland County, eastern Hoke County, and northern Robeson County, and would end along I–95 south of Fayetteville, a distance of approximately 26 miles (42 kilometers). The proposed project is needed to improve access and reduce congestion on the Fayetteville urban roadway system and other roadway facilities in the area.

Alternatives under consideration include the (1) the ''no-build''; (2) improve existing facilities; (3) transportation systems management; (4) mass transit; and (5) constructing a four-lane freeway on new location.

A public hearing will be held in the vicinity of the project following the release of the draft EIS. Public notice will be given of the time and place of the public hearing. The draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on August 15, 1995.

Roy Shelton,

Operations Engineer, FHWA, Raleigh, North Carolina.

[FR Doc. 95–20832 Filed 8–22–95; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 95–63]

Revocation of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Broker license revocations.

SUMMARY: Notice is hereby given that on July 5, 1995, the Secretary of the Treasury, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Part 111.74 of the Customs Regulations, as amended (19 CFR 111.74), ordered the revocation of the following Customs broker licenses due to the failure of the broker to file the status report as required by 19 CFR 111.30(d). The list of affected brokers is as follows:

Baltimore

Norbert Anderson—07683
Joseph Cataggio—04228
Sharon Miles—09535

Charleston

James Fernandez—06070
Jack O. Garren—05867
Janet Pate—11912

Charlotte

Robert Auslander—10167
Andrew Davies—12753
Frederick Spike—06969
James P. Wilson—02103

Chicago

Kevin Calkin—12210
Margaret Cassidy—09077
George Divenere—12660
Paul Grenchik—06459
Mark Hogan—10311
Claudia Johnson—11585
William Panzarella—12169
Edward Pluemer—07652

Cleveland

William Ajenian—04244
Frank Maskiel—09051
Heidi Rollins—12239
William E. Smith—11298

Dallas

Sandra Dethrage—11622
Jacque M. Goar—06686
Corbin E. Jeffries, Jr.—06593
Charles L. Narmore—07691

Detroit

Mathew Adair—11820
Darlene Habarth—11624
Michael Irvin—09963
William McAffe—03371
Michael Mclean—04791
Scott Stapleton—12800

John Tebbe—05008
Dawn Wilson—12103

Duluth

Milton Eng—06505

Houston

George Anki—03708
James Casler—07279
Suzanne Schielack—06149

Norfolk

Karen L. Blanchard—10872
Martin E. Day—03774
Ronald A. Desconteaux—02948
James M. Dyer—10314
James G. Edmonson—12531
Helen Seldon—06202
Kenneth G. Swanson—09450

Philadelphia

Jona M. Barnhill—04241
Douglas Scott Beck—10959
William E. Booth—13110
Matthew Garland—06444
James J. Plunkett—07573

Savannah

Jonia Michelle Bradley—12747
Glen Grant—12627
Norman Krueger—10393
Manuel McGinn—06281
Robert Powers—13319

Washington D.C.

Jeffery Doyon—12480

Dated: August 16, 1995.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 95–20853 Filed 8–22–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–64]

Retraction of Revocation Notice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The Following Customs broker license number was erroneously included in a list of revoked Customs brokers licenses in the June 28, 1995, Customs Bulletin.

Darrell J. Sekin Co., Inc.—05249

License 05249, issued in the Houston-Galveston District, remains a valid license.

Dated: August 16, 1995.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 95–20854 Filed 8–22–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–65]

Cancellation of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Cancellation of license.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following Customs broker license is cancelled due to the death of the broker. The license was issued in the New York Region.

John J. Klingman—04255

Dated: August 16, 1995.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 95–20855 Filed 8–22–95; 8:45 am]

BILLING CODE 4820–02–P

Fiscal Service

[Dept. Circ. 570, 1994—Rev., Supp. No. 21]

Surety Companies Acceptable on Federal Bonds; Termination of Authority: Aetna Casualty Company of Connecticut, Aetna Commercial Insurance Company, Argonaut Insurance Company, Automobile Insurance Company of Hartford, Connecticut, (The) Home Indemnity Company, (The) Home Insurance Company, (The) International Credit of North America Reinsurance Inc., Oceanic Insurance and Surety Company

Notice is hereby given that the Certificate of Authority issued by the Treasury to the above listed companies, under the United States Code, Title 31, Sections 9304–9308, to qualify as acceptable sureties on Federal bonds were terminated effective June 30, 1995.

The Companies were lasted listed as acceptable sureties on Federal bonds beginning at 59 FR 34138, on July 1, 1994.

With respect to any bonds currently in force with, the above listed companies, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from these Companies. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202/FTS) 874–6850.

Dated: August 15, 1995.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 95–20920 Filed 8–22–95; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Availability of Biennial Report

Under section 10(d) of Public Law 92–462 (Federal Advisory Committee Act) notice is hereby given that the biennial Report of the Department of Veterans Affairs' Advisory Committee on Women Veterans for 1994 has been issued. The Report summarizes activities of the Committee on matters relative to women veterans, and the identification of areas where further study and improvements are required. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540

and

Department of Veterans Affairs, Center for Women Veterans, Central Office, Suite 700, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: August 15, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–20816 Filed 8–22–95; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 60, No. 163

Wednesday, August 23, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 982

[Docket No. R–95–1628; FR–2294–F–02]
RIN 2577–AB14

Section 8 Certificate and Voucher Programs Conforming Rule

Correction

In rule document 95–15906 beginning on page 34660 in the issue of Monday, July 3, 1995, make the following correction:

§ 982.163 [Corrected]

On page 34702, in the first column, in the section heading, **"§ 982 Fraud recoveries."** should read **"§ 982.163 Fraud recoveries."**

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-026-05-1430-01; AZA-7489]

Arizona: Termination of Classification and Opening of Lands to Entry in Maricopa County, Arizona

Correction

In notice document 95–18426 appearing on page 38569 in the issue of Thursday, July 27, 1995, make the following correction:

On the same page, in the second column, under the heading ''**Gila and Salt River Meridian, Arizona**'', in the land description, the coordinate ''S½,SE¼SE¼NW¼'' should read ''S½SE¼SE¼NW¼''.

BILLING CODE 1505–01–D

federal register

Wednesday
August 23, 1995

Part II

Federal Trade Commission

16 CFR Part 310

Prohibition of Deceptive and Abusive Telemarketing Acts; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 310

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Statement of basis and purpose and final rule.

SUMMARY: The Federal Trade Commission (''Commission'' or ''FTC'') issues its Statement of Basis and Purpose and Final Rule pursuant to the telemarketing and Consumer Fraud and Abuse Prevention Act (''Telemarketing Act'' or the ''Act''). Section 3 of the Act directs the FTC to prescribe regulations, within 365 days of enactment of the Act, prohibiting deceptive and abusive telemarketing acts or practices.

EFFECTIVE DATE: The Rule will become effective December 31, 1995.

ADDRESSES: Requests for copies of the Rule and the Statement of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Division of Marketing Practices: Judith M. Nixon (202) 326–3173, David M. Torok (202) 326–3140, or Carole I. Danielson (202) 326–3115, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Rule, in connection with any telemarketing transaction: (1) Requires clear and conspicuous disclosures of specified material information, orally or in writing, before a customer pays for goods or services offered; (2) prohibits misrepresenting, directly or by implication, specified material information relating to the goods or services that are the subject of a sales offer, as well as any other material aspects of a telemarketing transaction; (3) requires express verifiable authorization before submitting for payment a check, draft, or other form of negotiable paper drawn on a person's account; (4) prohibits false or misleading statements to induce payment for goods or services; (5) prohibits any person from assisting and facilitating certain deceptive or abusive telemarketing acts or practices; (6) prohibits credit card laundering; (7) prohibits specified abusive acts or practices; (8) imposes calling time restrictions; (9) requires specified information to be disclosed, truthfully, promptly, and in a clear and conspicuous manner, in an outbound telephone call; (10) requires that specified records be kept; and (11) specifies certain acts or practices that are exempt from the Rule.

Statement of Basis and Purpose

I. Introduction

On August 16, 1994, the President signed into law the Telemarketing Act,[1] which directs the Commission to prescribe regulations, within 365 days of enactment of the Act, prohibiting deceptive and abusive telemarketing acts or practices. The first step in meeting the Congressional directive was to publish a Notice of Proposed Rulemaking (''NPR'') in the **Federal Register**.[2] The provisions of the initially proposed Rule published in the NPR were based on the legislative history of the Telemarketing Act,[3] on the Commission's enforcement experience, and on information informally obtained from law enforcement and the telemarketing industry. The NPR gave interested persons 45 days to comment on the proposal. The comment period on the NPR closed on March 31, 1995. In response to the NPR, the Commission received over 350 comments from industry, law enforcement, consumer representatives, individual consumers, and businesses.[4]

From April 18 through 20, 1995, Commission staff conducted a public workshop conference in Chicago, Illinois, to discuss the issues raised in the NPR and the comments received in response to the NPR. Twenty associations or individual businesses were selected to engage in a roundtable discussion at the conference.[5] These participants were selected based upon (1) their interest in the rulemaking based on the likely effect the Rule ultimately will have on them or their members, and (2) their ability to represent others with similar interests. Participants discussed key aspects of the initially proposed Rule, addressed each other's comments and questions, and responded to questions from Commission staff. The conference was open to the public, and more than 150 observers attended. Time was reserved for oral comments from members of the public each day, and 37 persons spoke during the course of the three-day conference. The entire proceeding was transcribed, and the transcript was placed on the public record.[6]

On May 3, 1995, in an open meeting, Commission staff briefed all the Commissioners about the rulemaking process, the issues raised in the written comments and the public workshop conference, and outlined possible approaches to address the issues commenters raised. The briefing was transcribed, and the transcript was placed on the public record.

On June 8, 1995, the Commission published in the **Federal Register** a Revised Notice of Proposed Rulemaking (''RNPRM'')[7] for additional public comment. The revised proposed Rule published in the RNPRM reflected continued consideration of the Act's legislative history, the written comments received in response to the NPR, and information learned at the workshop conference. The public comment period on the RNPRM closed on June 30, 1995. The Commission received over 350 comments to the RNPRM from interested parties, including industry, law enforcement, consumer representatives, individual consumers, and businesses.

Individual consumers who commented favored restricting telemarketing; some even urged the Commission to prohibit telemarketing completely. Industry and business comments were generally positive about the revised proposed Rule. Law enforcement and consumer groups, however, expressed concern that many of the provisions in the initially proposed Rule, which, they asserted, provided consumers with much needed protection, had been eliminated from the revised proposed Rule.

The entire public record to date, including the comments, the public workshop conference transcript, and the Commission open meeting transcript is available on CD–ROM. In addition, the public record up to, but not including the RNPRM and the comments received in response to the RNPRM, was placed on the Internet.[8]

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[1] 15 U.S.C. 6101–08.

[2] 60 FR 8313–8333 (February 14, 1995).

[3] H.R. Rep. No. 20, 103rd Cong., 1st Sess.; S. Rep. No. 80, 103rd Cong., 1st Sess. (hereinafter referred to as ''House Report'' and ''Senate Report,'' respectively).

[4] A list of the commenters to both the NPR and the Revised Notice of Proposed Rulemaking (''RNPRM''), including the acronyms used to identify each commenter in this Statement, is attached as an Appendix.

[5] The selected participants were: AARP, ATA, ATFA, APAC, ANA, DMA, DSA - Nev., DSA, EMA, ISA, ICTA, MPA, Monex, NAAG, NACAA, NAPA, NCL, NRF, PMAA, and USPS.

[6] References to the conference transcript are cited as ''Tr.'' followed by the appropriate page designation. References to comments are cited as ''[acronym of commenter] at [page number].'' Unless otherwise indicated, all comment references in this Statement are to the comments received in response to the RNPRM.

[7] 60 FR 30406–30428 (June 8, 1995).

[8] The FTC gopher server address is CONSUMER.FTC.GOV 2416. For World Wide Web access, the URL is GOPHER:// CONSUMER.FTC.GOV:2416.

II. Discussion of the Rule

A. Section 310.1: Scope of the Regulations

Section 310.1 of the Final Rule states that this part implements the Telemarketing Act.

The Commission received a number of comments on the initially proposed Rule asking that the Commission expressly exempt those entities that are not subject to the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 41 *et seq.*[9] In response to those comments, the revised proposed Rule added language to this Section that was intended to clarify that the Rule does not apply to any activity outside the jurisdiction of the FTC Act. In that regard, the Commission quoted the Telemarketing Act as follows:

> [N]o activity which is outside the jurisdiction of (the FTC) Act shall be affected by this Act.[10]

After reviewing the record in this rulemaking, the Commission has decided to delete the additional language from the Final Rule. The Telemarketing Act makes clear that the Rule does not apply to any activity excluded from the Commission's jurisdiction; thus, restating this in the Rule is unnecessary. By deleting this language, the Commission does not intend to expand or contract its jurisdiction or the scope of the Rule's coverage. The Commission's jurisdictional limitations are set forth in section 5(a)(2) of the FTC Act; [11] accordingly, the Rule does not apply to:

> banks, savings and loan institutions described in section 18(f)(3), [12] Federal credit unions described in section 18(f)(4), [13] common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended, except as provided in section 406(b) of said Act.[14]

In addition, the Rule does not apply to any entity that is not ''organized to carry on business for its own profit or that of its members.'' [15] Finally, the Rule does not apply to the business of insurance to the extent that such business is regulated by State law.[16]

Other commenters [17] requested that the Final Rule expressly exclude from coverage those investment entities which were expressly excluded under the Telemarketing Act.[18] Again, the Telemarketing Act clearly excludes such entities and the Rule need not reiterate the statutory exclusion.

The Commission also received comments expressing differing views on whether parties acting on behalf of organizations exempt under section 5 of the FTC Act should be expressly exempt from the Rule. Some commenters urged the Commission to exclude agents of exempt organizations from Rule coverage.[19] The Commission does not see a need to provide broadly for the exemption of agents in the Rule. The FTC Act itself establishes exemptions from its coverage, and the Telemarketing Act provides that authority under the Rule may be no broader than under the FTC Act. Thus, for example, banks and airlines would not be subject to the Final Rule, because they are exempt under section 5 of the FTC Act.[20] Similarly, section 4 of the FTC Act exempts corporations that are not acting for their profit or that of their members.[21] However, a nonbank company that contracts with a bank to provide services on behalf of the bank, and a non-airline company that contracts with an airline to provide services on behalf of the airline, are not exempt from the FTC Act.[22] Similarly, a company that is acting for profit would be subject to the FTC Act even when providing services to a nonprofit corporation. The Commission is not aware of any reason why the Final Rule should create a special exemption for such companies where the FTC Act does not do so. Accordingly, the Final Rule does not include special provisions regarding exemptions of parties acting on behalf of exempt organizations; where such a company would be subject to the FTC Act, it would be subject to the Final Rule as well.

B. Section 310.2: Definitions

The revised proposed Rule defined the following terms: ''acquirer,'' ''attorney general,'' ''cardholder,'' ''Commission,'' ''credit,'' ''credit card,'' ''credit card sales draft,'' ''credit card system,'' ''customer,'' ''investment opportunity,'' ''material,'' ''merchant,'' ''merchant agreement,'' ''outbound telephone call,'' ''person,'' ''prize,'' ''prize promotion,'' ''seller,'' ''state,'' ''telemarketer,'' and ''telemarketing.'' Only the terms ''investment opportunity,'' ''material,'' ''seller,'' and ''telemarketing'' elicited much comment. Additionally, some commenters called for a definition of the term ''clear and conspicuous,'' as that term is used in Sections 310.3(a)(1) and 310.4(d) of the revised proposed Rule.

In the Final Rule, the Commission has modified the definitions of ''investment opportunity'' and ''seller.'' All other definitions have been adopted in the Final Rule without change from the revised proposed Rule. The Commission also has determined that the term ''telemarketing'' needs no further modification.

The Commission considered, but rejects, comments calling for a further definition of the phrase ''clear and conspicuous.'' [23] The Commission believes it is unnecessary to define the term ''clear and conspicuous'' in the Rule because the concept is well-developed in Commission case law and policy statements.[24] Moreover, the Commission believes that mandating rigid ''clear and conspicuous'' criteria would be inconsistent with the goal of allowing businesses maximum flexibility as long as customers receive

[9] *See, e.g.,* initial comments: GHAA at 3; AT&T at 6–13; AmEx at 3; ABA at 1; BOB at 1; ASAE at 2; SCIC at 7.

[10] 15 U.S.C. 6105(a).

[11] 15 U.S.C. 45(a)(2).

[12] Section 18(f)(3) of the FTC Act, 15 U.S.C. 57(f)(3), describes ''savings associations as defined in section 3 of the Federal Deposit Insurance Act,'' 12 U.S.C. 1811 *et seq.*

[13] Section 18(f)(4) of the FTC Act, 15 U.S.C. 57(f)(4), describes ''Federal credit unions under sections 120 and 206 of the Federal Credit Union Act (12 U.S.C. 1766 and 1786).''

[14] 15 U.S.C. 45(a)(2).

[15] *See* 15 U.S.C. 44.

[16] *See* Section 2 of the McCarran-Ferguson Act, 15 U.S.C. 1012(b).

[17] *See, e.g.,* CUNA at 3–4.

[18] As noted in the RNPRM, Sections 3 (d) and (e) of the Telemarketing Act, 15 U.S.C. 6102 (d) and (e), exclude from Rule coverage any of the following persons: a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer (as those terms are defined in Section 3(a) of the Securities and Exchange Act of 1934, 15 U.S.C. 78c(a)), an investment adviser (as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940, 15 U.S.C. 80b–2(a)(11)), an investment company [as that term is defined in section 3(a) of the Investment Company Act of 1940, 15 U.S.C. 80a–3(a)), any individual associated with those persons, or any persons described in section 6(f)(1) of the Commodity Exchange Act, 7 U.S.C. 8, 9, 15, 13b, 9a.

[19] *See, e.g.,* Chase at 1; AT&T at 5–6; BOA at 1; IBAA at 1; Consortium at 2; ATFA at 3. See, *e.g.,* initial comments: ABA at 1; Advanta at 1; Chase at 2; Citicorp at 3; NFN at 2.

[20] 15 U.S.C. 45(a)(2); *FTC v. Miller,* 549 F.2d 452 (7th Cir. 1977).

[21] 15 U.S.C. 44; *Community Blood Bank v. FTC,* 405 F.2d 1011 (8th Cir. 1969).

[22] *See, e.g., Official Airlines Guides, Inc. v. FTC,* 630 F.2d 920 (2d Cir. 1980); *FTC v. Miller,* 549 F.2d 452 (7th Cir. 1977).

[23] AARP at 12; CFA at 5–6; NCL at 12–13; USPS at 8.

[24] *See, e.g., Thompson Medical Co.,* 104 F.T.C. 648, 797–98 (1984); *The Kroger Co.,* 98 F.T.C. 639, 760 (1981); Statement of Enforcement Policy, ''Clear and Conspicuous Disclosures in Television Advertising,'' Trade Regulation Reporter (CCH) ¶ 7569.09 (Oct. 21, 1970); Statement of Enforcement Policy, ''Requirements Concerning Clear and Conspicuous Disclosures in Foreign Language Advertising and Sales Materials,'' 16 CFR 14.9.

the material information they need to make purchasing decisions.

1. Section 310.2(u): Definition of ''Telemarketing''

The definition of ''telemarketing'' sets the parameters of the Final Rule. The definition in the Final Rule reflects the statutory definition set forth by Congress in section 7(4) of the Telemarketing Act.[25]

Some commenters requested that the Commission exempt calls made by consumers in response to written advertisements and promotional materials sent by financial institutions or their agents that comply with the disclosure requirements in the Truth in Lending Act (''TILA''), 15 U.S.C. 1601 *et seq.*, and its implementing Regulation Z (''Reg. Z''), 12 CFR part 226.[26] The Commission has determined that such a broad exemption is inappropriate. The TILA and Reg. Z disclosures for credit and charge card solicitations, 15 U.S.C. 1631–1632; 12 CFR 226.5–226.5a, relate to specific costs and terms of credit, but do not contain many of the other protections that would be available to consumers under §§ 310.3 and 310.4 of this Rule. The Commission acknowledges, however, that certain credit disclosures required under sections 1631–1632 of the TILA and §§ 226.5–226.5a of Reg. Z are sufficient for compliance with some of the Final Rule's affirmative disclosures set forth in § 310.3(a)(1). Therefore, the Final Rule makes clear that compliance with the TILA and Reg. Z will suffice for purposes of compliance with § 310.3(a)(1)(i) of the Rule.

The Commission intends that the phrase ''goods or services'' contained in the definition of ''telemarketing'' cover any tangible and intangible goods or services including, but not limited to, leases, licenses, or memberships. Prizes and awards are also included as ''goods or services'' under the definition of ''telemarketing.'' This is consistent with the legislative history of the Telemarketing Act[27] and reflects the Commission's enforcement experience in this area.

The Telemarketing Act and the Final Rule exempt from the definition of telemarketing all solicitations of sales through the mailing of a catalog,[28] when the person making the solicitation does not call customers but only receives calls from customers in response to the catalog and only takes orders during those calls, without further solicitation. The Commission has determined that the term ''without further solicitation'' requires interpretation. Applied literally, the term could bar conduct that would not be deceptive or abusive, including asking catalog customers who have placed orders whether they wish to buy another item. There is no reason to suppose that Congress intended such a result. The Final Rule permits that, when catalog sellers receive calls from customers, the person taking the order may provide further information to the customer about, or may try to sell, any other item included in the same catalog which prompted the customer's call, or in a substantially similar catalog, without losing the exemption from the definition of ''telemarketing.'' The Commission's experience in the area of catalog sales suggests that this clarification will burden neither legitimate catalog sellers nor expose their customers to a significant risk of the type of deception or abuse that the Final Rule is intended to address.

2. Section 310.2(j): Definition of ''Investment Opportunity''

Section 310.2(j) of the Final Rule defines ''investment opportunity'' as anything, ''tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either expressed or implied, about past, present, or future income, profit, or appreciation.'' The RNPRM clarified that the definition of the term ''investment opportunity'' did not include sales of franchises subject to the Commission's Franchise Rule, 16 CFR part 436. To clarify further that the Rule does *not* cover such franchise sales, the Commission has deleted that language from the Final Rule's definition of ''investment opportunity'' and has created an express exemption for such transactions in § 310.6(b).

3. Sections 310.2(r) and (t): Definitions of ''Seller'' and ''Telemarketer''

In response to a suggestion from a commenter,[29] the Commission has modified the definition of ''seller'' to clarify that the term includes not only persons who, in connection with a telemarketing transaction, provide or offer to provide goods and services to the customer in exchange for consideration, but also persons who, in connection with a telemarketing transaction, arrange for others to provide goods or services to the customer. The Commission made this change in order to clarify that the Rule's coverage cannot be avoided by structuring a sale so that someone other than the seller actually provides the goods or services directly to the customer.

Another commenter requested clarification of the definition of ''seller'' with respect to its application to diversified companies or divisions within one parent organization.[30] The Commission intends that distinct corporate divisions may be considered separate ''sellers.'' The determination as to whether distinct divisions of a single corporate organization will be treated as separate sellers will depend on such factors as: (1) whether there exists substantial diversity between the operational structure of the corporate organization and the division that is selling the goods or services that are the subject of the offer, or between that division and the other divisions of the corporation; or (2) whether the nature or type of goods or services offered by the division are substantially different from those offered by other divisions of the corporation or the corporate organization as a whole.

Section 310.2(t) of the Final Rule defines ''telemarketer'' as ''any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer.'' The Commission intends that the term ''telemarketer'' apply to persons making a telephone call to, or receiving a telephone call from, a customer in connection with the purchase of goods or services.[31] It does not include persons making or receiving customer service calls or similar tangential telephone contacts, unless a sales offer is made or accepted during such calls.

One commenter asserted that sellers and telemarketers should be held jointly liable under the Rule for the actions of the other.[32] NYSCPB stated that, absent legislative history indicating that joint and several liability is contrary to the intent of Congress, the Commission should apply joint and several liability.[33] NYSCPB pointed out that in many instances a telemarketer engaging in fraud may abscond before law enforcers can move against it. NYSCPB expressed concern that, in such cases, State law enforcers might not be able to move against others involved in the

[25] 15 U.S.C. 6106(4).

[26] *See, e.g.*, Chase at 2.

[27] *See* House Report at 11; Senate Report at 8.

[28] The Telemarketing Act and the Final Rule require catalogs to include multiple pages of written descriptions or illustrations of the goods or services being offered for sale, to include a business address of the seller, and to be issued not less frequently than once a year.

[29] NASAA at 1.

[30] Rollins at 1–2.

[31] As previously stated in discussing the definition of ''telemarketing,'' the Commission intends that a ''prize,'' as that term is defined in § 310.2(p), is a good or service for purposes of this Rule.

[32] NYSCPB at 3–4.

[33] Id.

deceptive telemarketing scheme who remain within their reach.

The Commission declines to read joint and several liability for sellers and telemarketers into the Telemarketing Act. The assisting and facilitating provisions in § 310.3(b) of the Rule more appropriately provide a basis for an action by State enforcers in the situation described by NYSCPB.

4. Sections 310.2 (a), (c), (e), (f), (g), (h), (l), and (m): Credit-Related Definitions

The revised proposed Rule defined various credit-related terms that come into play primarily in § 310.3(c), which addresses credit card laundering. These terms are: ''Acquirer,'' ''cardholder,'' ''credit,'' ''credit card,'' ''credit card sales draft,'' ''credit card system,'' ''merchant,'' and ''merchant agreement.'' The Commission has adopted these definitions without change in the Final Rule. No further discussion is necessary in this Statement regarding the definitions of ''acquirer,'' ''cardholder,'' ''merchant,'' and ''merchant agreement.''

Section 310.2(e) defines ''credit'' to mean ''the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.'' This definition delineates the scope of § 310.3(c), which prohibits credit card laundering. Several commenters urged the Commission to extend the scope of § 310.3(c) to include other payment devices such as debit cards because they believe such devices can be laundered as easily as credit card transactions.[34] Based on the language of the Telemarketing Act[35] and its legislative history,[36] however, the Commission believes that Congress meant to prohibit credit card laundering predicated upon the definition of ''credit'' used throughout the consumer credit statutes, and did not contemplate coverage of all electronic payment systems. Therefore the definition of ''credit'' tracks the statutory definition of ''credit'' under the TILA.[37]

Section 310.3(f) of the Final Rule defines ''credit card'' as ''any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.'' This definition is identical to the statutory definition of ''credit card'' contained in the TILA.[38] Again, the Commission has defined ''credit card'' as it is used throughout the consumer credit statutes for consistency and to clarify that § 310.3(c) does not include other payment devices.

Section 310.2(g) defines the term ''credit card sales draft'' as ''any record or evidence of a credit card transaction.'' This definition is designed to be flexible enough to anticipate future technological changes in how credit card transactions are processed and handled and, therefore, does not refer to specific forms of records. This definition is intended to embody the broadest possible range of recordkeeping formats that will come within the scope of the Rule.

Section 310.2(h) of the Final Rule defines ''credit card system'' as ''any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.'' This definition does not include any in-house ''system'' that a seller or telemarketer may put in place. Rather, the Commission intends that this definition include only a credit card system to process credit card transactions involving credit cards issued or licensed by the credit card system operator.

5. Section 310.2(k): Definition of ''Material''

The Final Rule states that the term ''material'' means ''likely to affect a person's choice of, or conduct regarding, goods or services.'' In the RNPRM, the Commission responded to commenters' requests for clarification of the term ''material'' by stating that it intended that term to comport with the Commission's Deception Statement and established Commission precedent.[39] *Cliffdale Assocs.*, 103 F.T.C. 110 (1984); *Thompson Medical Co.*, 104 F.T.C. 648 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987); and the Commission's Deception Statement attached as an appendix to *Cliffdale Associates*. Nonetheless, several commenters on the revised proposed Rule requested additional clarification.[40] The Commission has considered these requests, but believes further clarification is unnecessary given the comprehensive guidance in the cited case law and policy statement.

6. Sections 310.2 (p) and (q): Definitions of ''Prize'' and ''Prize Promotion''

The Final Rule, at § 310.2(p), adopts the revised proposed Rule's definition of ''prize'' as follows: ''Anything offered, or purportedly offered, and given, or purportedly given, to a person by chance.'' Further tracking the revised proposed Rule, the Final Rule also makes clear that ''chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.'' This ensures that a typical deceptive prize scheme will be captured in the definition of ''prize.'' In those schemes, consumers receive a solicitation typically listing four or five items, guaranteeing that they will receive one of them. Consumers, however, are not told which specific item they will receive. Because a consumer is ''guaranteed'' to receive one of the stated items, it could be construed that there is no element of ''chance'' involved in the offer, and the item, therefore, is not a ''prize.'' That interpretation is eliminated by the definition as adopted.

Section 310.2(q) of the Final Rule defines ''prize promotion'' as either ''(1) a sweepstakes or other game of chance; or (2) an oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.'' This definition makes clear that the representations about winning may be either express or implied. In this way, the Final Rule includes in the definition of ''prize promotion'' those deceptive telemarketing solicitations that are artfully crafted to avoid express representations while delivering an implied message that a consumer has won a prize.

7. Sections 310.2 (b), (d), (i), (n), (o), and (s): Other Definitions

The Commission received no comments in response to the RNPRM on the definitions of ''Attorney General,'' ''Commission,'' ''customer,'' ''outbound telephone call,'' ''person,'' or ''State.'' Therefore, these definitions are adopted unchanged.

C. Section 310.3: Deceptive Telemarketing Acts or Practices

1. Section 310.3(a): Prohibited Deceptive Telemarketing Acts or Practices

Section 310.3(a) of the Final Rule requires affirmative disclosures, prohibits misrepresenting material information, requires express verifiable authorization before submitting for payment a check, draft, or other form of negotiable paper drawn on a person's account, and prohibits false or misleading statements to induce payment for goods or services. In the Final Rule, the Commission has clarified the applicability of the

[34] *E.g.*, Citicorp at 2; VISA at 2–4.

[35] 15 U.S.C. 6102(a)(2).

[36] *See generally* House Report at 2; Senate Report at 2, 10.

[37] 15 U.S.C. 1603(e).

[38] 15 U.S.C. 1603(k).

[39] 60 FR at 30410.

[40] *See, e.g.*, NRF at 5–8; IBM at 11; CC at 1.

disclosure of ''total cost and quantity'' in transactions involving credit products. In addition, the Commission has modified the provision requiring disclosure of refund policies and has included additional disclosures that are required in connection with prize promotions. The Commission also has clarified that all required disclosures must be made before a customer pays for the goods or services that are the subject of the sales offer. Finally, the Commission has added requirements for express verifiable authorization for payments.

a. Section 310.3(a)(1): Affirmative Disclosures

Section 310.3(a)(1) requires affirmative disclosure of certain categories of material information before a customer pays for goods or services. The Final Rule specifies only that the disclosures be made ''before a customer pays'' and that they be made ''in a clear and conspicuous manner.'' These disclosures may be made either orally or in writing.

The timing of the disclosures prompted considerable comment. Two commenters expressed the view that the revised proposed Rule was ambiguous regarding when payment occurs in credit card transactions: Does ''payment'' occur when the customer provides a seller or telemarketer with his or her credit card information, or when the customer's credit card account is charged for the goods or services?[41] NCL, for example, expressed concern that telemarketers might interpret this provision to permit delaying the disclosures until after the consumer has divulged his or her credit card or bank information and the funds have been withdrawn or transferred to a merchant credit card account.[42] The Commission intends that the disclosures be made *before* the consumer sends funds to a seller or telemarketer or divulges to a telemarketer or seller credit card or bank account information. Thus, a telemarketer or seller who fails to provide the disclosures until the consumer's payment information is in hand violates the Rule.

AARP recommended that the Commission require that the disclosures be made at the time of sale to prevent deceptive telemarketers from providing the disclosures in a postcard sent to the customer weeks before making the sales call.[43] The Commission intends, by requiring ''clear and conspicuous'' disclosures, that any outbound telephone call made after written disclosures have been sent to consumers must be made sufficiently close in time to enable the customer to associate the telephone call with the written document.

NAAG expressed a concern that permitting disclosures to be made ''before a customer pays'' will allow important disclosure information to be delayed until ''after the con artist can so excite and entice the consumer that, when made, the disclosures become meaningless.''[44] For example, NAAG stated that under the revised proposed Rule, a seller or telemarketer could delay making the required disclosures to consumers until the time that a courier arrives at the customer's door, ready to pick up payment for the goods or services. The Commission agrees that such tactics would evade the intent of the Rule that disclosures be given so as to be meaningful to a customer's purchase decision. The Commission also recognizes that deceptive telemarketers use couriers to a large extent and would most likely provide the required disclosures in the manner described by NAAG. Accordingly, the Final Rule makes clear, in a footnote to § 310.3(a)(1), that ''when a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment.'' All required disclosures, therefore, must be made *before* a courier pick-up of payment or authorization for payment from a customer.[45]

Section 310.3(a)(1)(i) requires disclosure of ''the total costs * * * and the quantity of, any goods or services that are the subject of the sales offer.'' In response to numerous comments from industry,[46] the Final Rule, in a footnote to § 310.3(a)(1)(i), clarifies that, with regard to offers of credit products subject to the TILA and Reg. Z, compliance with the credit disclosure requirements and the timing of those disclosures mandated by the TILA and Reg. Z[47] will constitute compliance with the total cost and quantity disclosures required under § 310.3(a)(1)(i) of the Rule.

Several commenters also pointed out that total cost and quantity is not ascertainable in those telemarketing sales transactions involving negative option[48] or continuity plans[49] where the customer has the option to preview or purchase a series of products over time.[50] Under such plans, separate payments are made for each item in the series. In addition, the customer controls how many products he or she accepts and typically can decide to terminate the series at any time, or after a minimum number of items are purchased. Thus, in both continuity and negative option plans, neither the seller nor the customer necessarily knows the quantity of products the customer will ultimately purchase, or the total cost for those products.

[41] ANA at 4; NCL at 12.

[42] NCL at 12.

[43] AARP at 12. Similarly, CFA suggested that the Rule require the disclosures be made before a consumer makes a purchasing decision, rather than before payment is made, in order to ensure that consumers have all necessary material information before deciding whether to buy a product or service. CFA at 6–8. The Commission agrees that consumers should have material information about the product or service before making their purchasing decision. However, the Commission believes that ''before a customer pays'' permits sufficient time for the consumer to consider all of the material information before making a final decision whether to purchase and provide payment for the goods or services.

[44] NAAG at 10.

[45] Many law enforcement and consumer representatives urged the Commission to reinstate, in the Final Rule, the absolute prohibition on courier pick-ups of customer payments included in the initially proposed Rule. *See, e.g.,* NAAG at 20; USPS at 5–6; VT AG at 2; IA DOJ at 11–12; NY DCA at 1; GA OCA at 2; NAPA DA at 1; SD DAG at 2; MA AG at 4; AARP at 17–21. As stated in the RNPRM, however, the Commission believes that there is nothing inherently deceptive or abusive about the use of couriers. In fact, a substantial number of legitimate businesses use them. *See, e.g.,* initial comments: Monex at 13–14; DMA at 25; PMAA at 84. While fraudulent telemarketers often use couriers to obtain quickly the spoils of their deceit, such telemarketers engage in other acts or practices that clearly are deceptive or abusive and therefore can be reached through other provisions of this Rule. Thus, an absolute prohibition of courier use is outweighed by the undue burden it would impose on legitimate industry.

[46] Chase at 2; MBAA at 1; CBA at 2; Citicorp at 3; CUNA at 4; VISA at 4; NB at 1.

[47] 15 U.S.C. 1631–1632; 12 CFR 226.5–226.5a.

[48] Under a negative option plan, the customer agrees to purchase a specific number of items in a specified time period. The customer receives periodic announcements of the selections; each announcement describes the selection, which will be sent automatically and billed to the customer unless the customer tells the company not to send it. *See also* the Commission's Rule governing ''Use of Negative Option Plans by Sellers in Commerce,'' 16 CFR part 425.

[49] ''Continuity plans'' offer subscriptions to collections of goods. Customers are offered an introductory selection and agree to receive selections on a regular schedule until they cancel their subscription. Unlike negative option plans, customers do not agree to buy a specified number of additional items in a specified time period, but may cancel their subscription at any time. Continuity plans resemble negative option plans in that customers are sent announcements of selections and those selections are shipped automatically to the customer unless the customer advises the company not to send it. Unlike negative option plans, however, customers are not billed for the selection when it is shipped, but only if they do not return the selection within the time specified for the free examination period.

[50] CHC at 2–4; ANA at 4; Time Warner at 3; DMA at 2.

The Commission recognizes that a seller or telemarketer may not be able to provide total cost and quantity information under such circumstances. Accordingly, in the case of negative option or continuity plans, the disclosures required under § 310.3(a)(1)(i) are satisfied if the seller or telemarketer discloses, before a customer pays for any of the goods or services offered, the total costs and quantity of goods or services that are part of the initial offer of the plan, the total quantity of additional goods or services, if any, that the customer must purchase over the duration of the plan, and the cost, or range of costs, to purchase each individual additional good or service.

Section 310.3(a)(1)(ii) requires sellers and telemarketers to disclose ''all material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer.'' A number of industry commenters expressed concern that this requirement was ambiguous and asked the Commission to provide clarification.[51] For example, SCIC states that, absent a clear definition of ''material,'' prudent business practice would require the disclosure of *all* terms and conditions, which would not be practical in connection with the telemarketing of service contracts. The Commission does not intend that sellers and telemarketers disclose *all* terms and conditions, but only those that are material. The Commission believes that the Final Rule's definition of ''material'' provides sufficient guidance regarding those factors which must be evaluated in determining which restrictions, limitations, or conditions must be disclosed.

Section 310.3(a)(1)(iii) requires disclosure of a seller's refund, cancellation, exchange, or repurchase policies under certain circumstances. The Final Rule tracks the revised proposed Rule by requiring disclosure, before the customer pays, of all material terms and conditions of such policies *only if* the seller or telemarketer makes a representation relating to such policies. Section 310.3(a)(1)(iii) also requires a customer to be informed if there is a policy of *not* making refunds, cancellations, exchanges, or repurchases.

Many law enforcement and consumer groups urged the Commission to broaden this provision to require a disclosure of the seller's refund, cancellation, exchange, or repurchase policies in all telemarketing transactions.[52] These commenters were concerned that this provision might create an incentive for sellers and telemarketers to remain silent about their refund policies in order to avoid triggering the disclosure requirement. Law enforcement and consumer groups asserted that information regarding these policies is material to the consumer's purchasing decision, particularly because consumers generally assume that an unconditional refund is available from sellers if they are dissatisfied.[53]

Historically, the Commission has not required sellers or advertisers to disclose material limitations or conditions applicable to a satisfaction guarantee or similar policy unless a solicitation mentions such a satisfaction guarantee or policy. The Commission's longstanding policy on this issue is set forth in the ''Guides for the Advertising of Warranties and Guarantees,'' which states:

> An advertisement that mentions a ''Satisfaction Guarantee'' or a similar representation should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, any material limitations or conditions that apply to the ''Satisfaction Guarantee'' or similar representation.[54]

Therefore, the Commission has retained in the Final Rule the requirement that all material terms and conditions of such policies be disclosed *only if* the seller or telemarketer makes a representation relating to a refund, cancellation, exchange, or repurchase policy.[55] Industry pointed out that many companies have a variety of refund, cancellation, exchange and repurchase policies, only some of which are referred to in advertising. The Commission does not intend that the seller or telemarketer disclose all of a seller's possible policies, but only the policies that relate to the specific goods or services that are the subject of the sales offer.

AARP suggested that, at a minimum, the Rule should require an affirmative disclosure if *no* refunds, exchanges, or cancellations are available.[56] AARP pointed out that this information is particularly important in the context of telemarketing sales because of the lack of direct contact between the seller and the consumer and because the consumer has no opportunity to examine the goods or services offered at the time of sale.[57] The Commission agrees that consumers may be misled if a seller fails, in a telemarketing transaction, to disclose that the sale is final. Therefore, the Commission has modified § 310.3(a)(1)(iii) of the Final Rule to require that the customer be informed if there is a policy of *not* making refunds, cancellations, exchanges, or repurchases.

Finally, § 310.3(a)(1) (iv) and (v) require a seller or telemarketer to disclose certain information in connection with prize promotions. Under the revised proposed Rule, sellers who offered a prize promotion were required to disclose only that no purchase was necessary to win. Law enforcement and consumer groups strongly urged the Commission to require disclosure of additional items of information to consumers.[58] They noted that deceptive prize promotions give rise to a large number of complaints, that they generate a very large amount of consumer injury, and that many State laws already require affirmative disclosure of more information than the revised proposed Rule required, including the odds of winning, the no-purchase method of entering, and the value of prizes. These commenters also noted that such State laws have provided law enforcement with a valuable tool in reaching deceptive prize promotions. In addition, several of these commenters noted that the disclosure ''no purchase is necessary'' is meaningless without requiring that the seller or telemarketer disclose the method for entering without a purchase.[59] Finally, USPS noted that the required disclosure should include, in addition to ''no purchase is necessary,'' that ''no payment is necessary'' to enter a prize promotion or to win a prize. According to USPS, such a disclosure will cover those scams where the seller or telemarketer will not ask the customer to purchase goods or services in connection with the prize promotion, but instead will ask for some type of

[51] *See, e.g.,* BSA at 4–6; ACRA at 5; SCIC at 2.

[52] CFA at 8; USPS at 6; NJ DCA at 2–3; San Diego at 1; NACAA at 3; NCL at 13.

[53] For example, NJ DCA pointed out that the New Jersey Consumer Fraud Act requires retailers to post return policies in such a fashion that the consumer will be aware of such policies before they tender their money. N.J. Stat. Ann. 56:82.14 *et seq.* NJ DCA at 3.

[54] 16 CFR 239.3(b).

[55] A seller or telemarketer ''makes a representation about a refund, cancellation, exchange or repurchase policy'' if the seller or telemarketer introduces this subject or discusses it in response to a customer's inquiry about such policies. If asked, the seller or telemarketer must disclose the material terms or conditions of its policy.

[56] AARP at 12–13.

[57] *See also* NM AG at 4.

[58] *See, e.g.,* NJ DCA at 3; NACAA at 3; NCL at 13; USPS at 7; NAAG at 14–15; IA DOJ at 14–15.

[59] *See, e.g.,* USPS at 7; NAAG at 15.

payment in order to enter or win a prize.[60]

The Commission's law enforcement experience is replete with examples of sellers and telemarketers using deceptive prize promotions to ''hook'' unsuspecting victims. Upon consideration of these comments, the Commission is persuaded that additional disclosures are needed to ensure that consumers are not misled by the promise of a prize or award. The Commission agrees that disclosure of the no-purchase/no-payment method of entry would serve to emphasize the message that no purchase or payment is necessary in order to participate in a prize promotion or to win a prize. If that disclosure were absent, the fact that no purchase or payment is necessary could more easily become ''lost'' in a sales pitch or promotional piece. The Commission is mindful, however, of the burden of making extensive disclosures and has attempted to provide industry with flexibility in making this disclosure to consumers. Therefore, for all telemarketing of prize promotions, the Final Rule requires, in addition to a statement that no purchase or payment is necessary to win, that sellers and telemarketers also disclose the no-purchase or no-payment method of entering the prize promotion by either providing full instructions on how to participate or by providing an address or local or toll-free telephone number that a customer may contact to obtain details.

The Commission is also persuaded that consumers should be made aware of the odds of being able to receive a specific prize. A truthful statement of the odds of receiving a prize helps to dispel the illusion that the consumer has been ''specially selected'' or is ''guaranteed'' to receive a particular prize. A statement of the odds also provides some indication of the value of each prize, since it is likely that the most valuable prizes would be awarded to the fewest people and the least valuable prizes would go to the most people. The Commission recognizes that in some prize promotions, sellers and telemarketers may not be able to calculate the odds in advance. Therefore, the Final Rule requires that the seller or telemarketer disclose the odds of being able to receive a prize, and if the odds are not calculable in advance, they must disclose the factors used in calculating the odds, such as a truthful statement that the odds depend on the number of entries received.

Finally, the Commission's enforcement history includes numerous examples of prizes whose value has been limited by the additional costs or conditions that were necessary to receive or redeem the prize. For example, these ''prizes'' included vacation certificates that required consumers to spend substantial amounts of money on airfare or other expenses, or that had extensive restrictions on use. Therefore, in § 310.4(a)(1)(v), the Final Rule requires that the seller or telemarketer disclose all material costs or conditions to receive or redeem a prize.[61]

Several commenters urged the Commission to require affirmative disclosures in connection with investment opportunities.[62] The Commission believes that the affirmative disclosures required under § 310.3(a)(1) are sufficient to cover the information relating to the sale of investment opportunities, which if undisclosed would be deceptive. These include the total costs to purchase, receive, or use the goods or services, and the material restrictions, limitations, or conditions to purchase, receive, or use the goods or services. Although some commenters urged the Commission to include specific affirmative disclosures relating to investment characteristics such as risk, profitability, liquidity, and earnings potential, the Commission declines to do so. Based on the Commission's enforcement experience, it believes the deception involving disclosure of investment information relating to risk, profitability, liquidity, or earnings potential can be addressed under § 310.3(a)(2)(vi) of the Final Rule. Therefore, the Commission has determined that additional affirmative disclosures for investment opportunities are unnecessary.

b. Section 310.3(a)(2): Prohibited Misrepresentations

Section 310.3(a)(2) prohibits misrepresentations of several categories of material information. The information deemed material under § 310.3(a)(2) is based on established case law and the Commission's policy statement on deception.[63] Several commenters urged the Commission to reinstate the list of specific prohibited practices that was contained in § 310.3(a)(2) of the initially proposed Rule.[64] Each of these prohibited misrepresentations was based on allegations in complaints filed in recent years by the Commission under section 13(b) of the FTC Act.[65] These commenters asserted that such a list provided the type of ''bright line'' guidance to industry, law enforcement, and consumers that Congress had directed the FTC to provide in the Rule. They also believed that the revised proposed Rule did not address several of the specific misrepresentations included in the initially proposed Rule and deleted in the revised proposed Rule, such as misrepresenting the non-profit or charitable status of a seller or telemarketer, or the purpose for which the seller or telemarketer will use a person's checking, savings, share, or similar account number, credit card account number, social security number, or related information.

The Commission has determined that it is unnecessary to enumerate the specific prohibited misrepresentations set forth in the initially proposed Rule. The enumerated misrepresentations in the initially proposed Rule are subsumed in the general prohibitions against misrepresentations set forth in § 310.3(a)(2) of the Final Rule. No inference should be drawn that these omissions from the Final Rule in any way alter the Commission's view that the misrepresentations set forth in § 310.3(a)(2) of the initially proposed Rule would violate the FTC Act as well as the Final Rule. The Commission believes that this more concise regulatory approach effectuates Congress's legislative intent. The Commission also believes that broad prohibitions will give law enforcement agencies the necessary flexibility to adapt to the changes that the deceptive telemarketing industry will undergo as a result of increased regulation.

Although some commenters requested that additional prohibited misrepresentations be included under § 310.3(a)(2),[66] few commenters raised concerns about or requested changes in the language of § 310.3(a)(2) as it appeared in the RNPRM. As a result, §§ 310.3(a)(2)(i)–(iv), (vi), and (vii) are adopted as set forth in the RNPRM. Sections 310.3(a)(2)(i)–(ii) prohibit misrepresenting certain information required to be disclosed under

[60] USPS at 2.

[61] Although legitimate awards, prizes, and prize promotions do not require a person to make a payment or purchase to enter a prize promotion or to win, there are instances when a person may be required to pay certain fees to receive or redeem a prize or award that they have already won.

[62] *See, e.g.,* CFA at 9; MA AG at 4; NJ DCA at 3.

[63] The Commission's Deception Statement, first set out in a letter to the Honorable John D. Dingell, Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, is attached as an appendix to *Cliffdale Associates,* 103 F.T.C. 110 (1984).

[64] *See, e.g.,* NACAA at 3–4; NJ DCA at 4; USPS at 2; GA OCA at 2; MA AG at 3; SC DCA at 2–3.

[65] 15 U.S.C. 53(b).

[66] *See, e.g.,* USPS at 1–3; GA OCA at 2; AARP at 13–14; NACAA at 4; MA AG at 4; CFA at 9; NJ DCA at 3.

§§ 310.3(a)(1)(i) and (ii): total costs, quantity, and material restrictions, limitations, or conditions. Section 310.3(a)(2)(iii) specifies that a misrepresentation of ''any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of the sales offer'' violates the Rule. Commission case law and policy are clear that such information is likely to affect a person's choice of, or conduct regarding, the purchase of goods or services. Similarly, representations about a seller's refund, cancellation, exchange, or repurchase policies are likely to affect a person's purchase decision. Section 310.3(a)(2)(iv), therefore, prohibits misrepresenting information regarding the material aspects of these policies.

Section 310.3(a)(2)(v) of the Final Rule prohibits misrepresenting ''any material aspect of a prize promotion, including but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or participate in a prize promotion.'' This provision is adopted in substantially the same form as it appeared in the revised proposed Rule. The provision enumerates specific examples of material aspects of a prize promotion that are frequently misrepresented by deceptive telemarketers. The Commission has targeted misrepresentation of these aspects of prize promotions in a number of complaints filed against deceptive telemarketers under section 13(b) of the FTC Act.[67] The Commission believes that a separate Rule provision is needed specifically prohibiting misrepresentations regarding prize promotions, given the great number of deceptive prize promotions and the distinct characteristics associated with such promotions.[68] The legislative history clearly shows that Congress specifically intended that the Rule cover prizes or awards.[69] The Commission intends that the telemarketing of prize promotions is not only subject to the prohibitions in § 310.3(a)(2)(v), but also to the other prohibitions against misrepresentations set forth in § 310.3(a)(2).

Although supportive of treating prize promotions separately in this Section, several commenters urged the Commission to expand the list of specific aspects relating to prize promotions that sellers or telemarketers may not misrepresent, especially that a person has been specially selected to receive a prize or that a premium is a prize.[70] The Commission believes that the current list of specific aspects adequately covers those concerns. As discussed in connection with the affirmative disclosures for prize promotions, *supra,* a truthful statement of the odds of receiving a prize should help dispel the illusion that the consumer has been ''specially selected'' or is ''guaranteed'' to receive a particular prize. Furthermore, a principal distinction between a ''premium'' and a ''prize'' is that while premiums are given only in connection with the purchase of goods or services, no such purchase is required to receive a prize. Therefore, the prohibition against misrepresenting that purchase or payment is required to receive a prize should also cover misrepresenting that a premium is a prize. Finally, the Commission's use of the language ''including but not limited to'' is intended to indicate that the list of material aspects of a prize promotion is illustrative, but should not be considered exhaustive. Misrepresentations of other material aspects of a prize promotion not listed here are also prohibited.

One minor change in wording has been adopted in § 310.3(a)(2)(v), namely, the phrase ''the odds of *winning*'' has been changed to ''the odds of *being able to receive a prize*.'' This wording is intended to be broader and more general, and is based upon similar usage employed by the Commission in provisions of the Pay-Per-Call Rule, 16 CFR Part 308, that govern solicitations for 900-number services involving sweepstakes or games of chance.[71] Another minor change is the addition of the language ''or payment.'' This addition is consistent with similar language added to § 310.3(a)(1)(v).

Similarly, § 310.3(a)(2)(vi) prohibits misrepresenting material aspects of an investment opportunity. This Section remains unchanged from the RNPRM. The legislative history of the Telemarketing Act reflects Congress' recognition that deceptive investment opportunities account for a considerable percentage of deceptive telemarketing.[72] In fact, since 1991, deceptive investment scams account for approximately 43% of the Commission's telemarketing cases. The amount at risk for a consumer is generally far greater in investment scams than in deceptive schemes involving other types of consumer goods or services. Thus, investment opportunities are an area of heightened concern for consumers and the Commission. The Final Rule includes § 310.3(a)(2)(vi), prohibiting misrepresentation of specified material aspects of investment opportunities, including risk, liquidity, earnings potential, or profitability. This provision is included to obviate any possible construction that might exclude investment opportunities from the scope of §§ 310.3(a)(2)(i)–(iii)—the general provisions of the Rule that center on purchase, receipt or use, or upon ''performance, efficacy, nature, or central characteristics'' of a limitless range of goods and services. The Commission believes that a separate provision, § 310.3(a)(2)(vi), is necessary to cover distinct attributes that are material to an investment decision, such as risk, liquidity, earnings potential, or profitability. The Commission intends that the telemarketing of investment opportunities is not only subject to the prohibitions in § 310.3(a)(2)(vi), but also to the prohibitions contained in other provisions set forth in § 310.3(a)(2).

Several commenters urged the Commission to expand the list of prohibited misrepresentations relating to specific aspects of investment opportunities to include markup over acquisition costs, past performance, marketability, and value.[73] The Commission's use of the language ''including but not limited to'' is intended to indicate that the list of prohibited material aspects of an investment opportunity that must not be misrepresented is illustrative, not exhaustive. Misrepresentations of other material aspects of an investment opportunity not listed are also prohibited.

Finally, the Commission maintains § 310.3(a)(2)(vii) as it was proposed in the revised proposed Rule. This section prohibits misrepresenting ''a seller's or telemarketer's affiliation with, or endorsement by, any government or third-party organization.'' The Commission believes that this Section is necessary based on its own experience in law enforcement actions against deceptive telemarketers, as well as the information State law enforcement agencies provided. Deceptive telemarketers often bolster their credibility by misrepresenting that they are endorsed by, or affiliated with, charitable, police, civic, or similar organizations. A separate category is required because these types of

[67] 15 U.S.C. 53(b).

[68] Almost 32% of the 141 telemarketing cases brought by the Commission since 1991 related to deceptive prize promotions.

[69] *See* Senate Report at 2, 8.

[70] See, e.g., AARP at 13; NACAA at 4; GA OCA at 2; NJ DCA at 3.

[71] 16 CFR 308.3(c).

[72] *See* Senate Report at 8.

[73] *See, e.g.,* CFA at 9; MA AG at 4; NJ DCA at 3.

misrepresentations, again, could be construed as outside the apparent scope of §§ 310.3(a)(2)(i)–(iii). However, the prohibition contained in § 310.3(a)(2)(vii) is in addition to, not in lieu of, the prohibitions contained in the other provisions under § 310.3(a)(2).

Several commenters asked the Commission to include specific prohibitions against misrepresenting the non-profit or charitable status of a seller or telemarketer.[74] The Commission intends that many of these misrepresentations will be covered by the prohibition in § 310.3(a)(2)(vii) against misrepresenting affiliation or endorsements.

Several commenters asked the Commission to include specific prohibitions against misrepresenting that a seller can improve a consumer's credit rating, or can recover money lost by a consumer to a ''dishonest'' telemarketer.[75] The Commission believes that these misrepresentations are subsumed under the prohibition in § 310.3(a)(2)(iii) against misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics of the goods or services.

In the initially proposed Rule there was a prohibition, omitted from the revised proposed Rule, against misrepresenting the purpose for which the seller or telemarketer will use a person's checking, savings, share, or similar account number, credit card account number, social security number, or related information. Several commenters on the revised proposed Rule urged the Commission to reinstate that prohibition, noting that it did not appear to be subsumed under the other prohibitions set out in § 310.3(a)(2).[76] The Commission, however, believes that such misrepresentations are covered under § 310.3(a)(4), which prohibits a seller or telemarketer from making a false or misleading statement to induce a person to pay for goods or services.

c. Section 310.3(a)(3): Verifiable Authorization

Section 310.3(a)(3) addresses the use of demand drafts, the practice of obtaining funds from a person's bank account without that person's signature on a negotiable instrument. Section 310.3(a)(4) of the initially proposed Rule required written authorization before a seller or telemarketer could take any funds from a consumer's checking, savings, or similar account. This provision was dropped from the revised proposed Rule because information provided in comments to the initially proposed Rule and in oral workshop conference presentations tended to refute the proposition that demand drafts are characteristic solely of deceptive telemarketers.[77]

In response to the NPR, the Commission received a number of comments from members of the automated payment industry—those companies that prepare demand drafts and submit such drafts to financial institutions for payment from consumers' bank accounts. These commenters noted that over 70 million Americans do not have credit cards.[78] Demand drafts can provide a means for those consumers to enjoy the same benefits of expeditious telephone transactions that use of a credit card provides.[79] Commenters noted that Fortune 500 companies, airlines, car rental companies, insurance companies, and other businesses characterized by quick turn-around transactions now use demand drafts because they recognize that not everyone has a credit card.[80] The automated payment industry also pointed out that requiring express written authorization for a demand draft is inconsistent with authorization requirements pertaining to an analogous payment method, electronic funds transfer.[81] As commenters noted, the Electronic Funds Transfer Act (title IX of the Consumer Credit Protection Act) (''EFTA''), 15 U.S.C. 1601 *et seq.*, and its implementing Regulation E (''Reg. E''), 12 CFR part 205, permit authorization of electronic funds transfers by telephone, thereby permitting oral authorization.[82] Commenters asserted that imposing more rigid authorization standards on the legitimate automated payment industry, an industry in its formative stages, could unduly hinder its development, restrain legitimate competition, and deprive consumers of benefits afforded by this payment method.[83]

In dropping the written authorization from the revised proposed Rule, the Commission noted in the RNPRM that the prohibition on any false or misleading statements to induce a person to pay for goods or services would address problems in this area.[84] In their comments on the revised proposed Rule, however, law enforcement and consumer groups strongly urged the Commission to reinstate restrictions on the use of demand drafts.[85]

Law enforcement and consumer groups pointed out that demand drafts do not provide consumers with the same level of protection as credit cards, nor is there widespread awareness among consumers about the dangers of this payment method.[86] For example, in many instances deceptive telemarketers induce consumers to disclose certain bank account information, after which they withdraw funds from the consumers' bank accounts without the consumers authorizing such withdrawals or realizing that such withdrawals are occurring. In fact, the USPS pointed out that, as it became more difficult for deceptive telemarketers to access the credit card system, demand drafts have surfaced as the most frequent form of payment in deceptive telemarketing over the past two to three years.[87] In addition, the Federal Reserve Bank of San Francisco (''FRB–SF'') strongly opposed deleting the prohibition, questioning whether a general ''do not mislead'' standard would prevent abuses.[88] FRB–SF noted that laws prohibiting misleading statements are already on the books, but have been of limited effectiveness. It also noted that any protections consumers might have under the current Uniform Commercial Code provisions[89] are illusory. FRB–SF stated that, in reality, banks have a pronounced disincentive to accept claims by a consumer that he or she did not authorize a particular draft because the banks must bear the loss of the amount of any draft that was unauthorized.

[74] *See, e.g.,* NACAA at 4; MA AG at 4.

[75] *See, e.g.,* NACAA at 4; MA AG at 4.

[76] *See, e.g.,* USPS at 2; AARP at 14.

[77] *See generally* initial comments: NAPA; Autoscribe; Olan.

[78] *See* initial comments: TCPS at 1; NBR at 1–2. *See generally* NAPA 2–4; Tr. at 64.

[79] NBR stated that in 1994, eighty-five percent of all consumer transactions were made by cash or check compared to fifteen percent by credit and debit cards. NBR initial comment at 2. TCPS similarly noted that nine of the current twenty service bureaus process approximately 38,000 demand drafts weekly, totalling over five million dollars for over 700 business clients throughout the country. TCPS initial comment at 1. Accelerated Payment Systems stated that it processes half a billion dollars a year through demand drafts. Tr. at 547.

[80] *See* initial comments: TCPS at 1–2; NAPA at 2; Olan at 9. Examples of businesses that use demand drafts include two of the baby Bells, GEICO, Citicorp, Telecheck, Equifax, Bank of America, Discovery Card, Dunn and Bradstreet, and First of America Bank. *See* Tr. at 547, 550–51.

[81] *See* initial comments: ATA at 6; Olan at 10; DMA at 21–22.

[82] 12 CFR 205(g).

[83] *See* Tr. at 544–49 (Accelerated Payment Systems), 557–58 (TCPS), 578–80 (Check-Debit). *See also* initial comments: NAPA at 7–9; Olan at 10.

[84] 60 FR at 30413. That prohibition is found in § 310.3(a)(4) of the Final Rule and was found in § 310.3(a)(3) of the revised proposed Rule.

[85] *See, e.g.,* NACAA at 4; IA DOJ at 10; AARP at 15–16; FRB–SF at 8; VBA at 1; NCL at 9; NJ DCA at 3; San Diego at 2.

[86] AARP at 15; NJ DCA at 3–4.

[87] USPS at 3.

[88] *See generally* FRB–SF.

[89] *See* UCC 1–201(39), 3–103(a)(6), 3–104(a), 3–401(a), 3–401(b), 3–402(a), 4–401 (1990 version).

FRB–SF described a variety of ways that banks can and do avoid authorizing a refund of a draft claimed by a consumer to be unauthorized. For example, banks may allege that consumers were negligent in giving out their bank information, or allege that consumers who have given such information have given apparent authority to issue any number of drafts in any amount.

Based on the extensive use of demand drafts by legitimate companies, the Commission is persuaded that demand drafts, in and of themselves, are not necessarily harmful, and, in fact may produce real benefits for consumers. The Commission also believes that requiring prior written authorization could be tantamount to eliminating this emerging payment alternative. Moreover, the Commission believes that it would be inconsistent to impose upon demand drafts a more stringent authorization mechanism than that imposed on electronic funds transfers under the EFTA and Reg. E. The Commission, however, is also persuaded by the comments on the revised proposed Rule that consumers need additional protections from abuse of this increasingly popular payment method. Therefore, the Final Rule includes certain restrictions on the use of demand drafts.

Section 310.3(a)(3) balances the benefits to consumers that may flow from the use of demand drafts against the costs arising from the known abuses of this payment method by deceptive telemarketers. Section 310.3(a)(3) requires ''express verifiable authorization'' before any seller or telemarketer obtains or submits ''for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account.'' To prevent deceptive telemarketers from abusing this mode of authorization, the Commission has included in the Final Rule specific requirements to establish what constitutes ''verifiable authorization'' under the Rule.

An authorization will be deemed verifiable if any of the following means are employed: (1) Express written authorization by the customer; (2) express oral authorization which is tape recorded [90] and made available to a customer's bank upon request, and which clearly evidences both the customer's authorization of payment for the goods or services that are the subject of the sales offer and the customer's receipt of six specific items of information during the tape recording; [91] or (3) written confirmation of the transaction sent to the customer, prior to submitting the draft for payment, containing the same six items of information required under the tape recording option. The written confirmation method also requires a seller or telemarketer to have in place, and to disclose to the customer in the confirmation, the procedures by which the customer can obtain a refund from the seller or telemarketer in the event the written confirmation is inaccurate. The Commission recognizes that the latter method of verifiable authorization may be susceptible to manipulation by deceptive sellers and telemarketers. However, any misrepresentation of the nature or terms of the refund policy will be actionable under § 310.3(a)(2)(iv), prohibiting misrepresentation of a seller's refund policy. The Final Rule also incorporates FRB-SF's suggestion that the taped verifiable authorization be made available to the customer's bank upon request.[92] The Commission will monitor the effectiveness of this provision in preventing the deceptive use of demand drafts.

d. Section 310.3(a)(4): False or Misleading Statements To Induce Payment

Section 310.3(a)(4) generally prohibits ''[m]aking a false or misleading statement to induce any person to pay for goods or services.'' The few comments on this Section questioned whether a general prohibition is an adequate substitute for a provision requiring express authorization for demand drafts: Unauthorized access often involves no inducement or purchase; the money is simply taken.[93] The Commission believes the Final Rule's express verifiable authorization requirement, § 310.3(a)(3), sufficiently addresses this concern.

Section 310.3(a)(4) also prohibits sellers and telemarketers from gaining access to consumers' money through false and misleading statements, regardless of the type of payment system used. This provides law enforcement with flexibility to address new ways that sellers and telemarketers engaged in fraud might attempt to take consumers' money.

2. Section 310.3(b): Assisting and Facilitating

Section 310.3(b) of the revised proposed Rule received substantial attention from commenters. Law enforcement objected to the inclusion of a requirement that the requisite substantial assistance or support be ''related to the commission or furtherance'' of a core rule violation.[94] NAAG viewed this as an unnecessary additional element of proof that would burden law enforcement, and feared that it could result in assisters and facilitators evading liability on the ground that their assistance was not ''related to'' an unlawful act, even where required showings of knowledge and substantial assistance could be made.[95] The Commission has determined that the ''related to'' requirement may be susceptible to the misapplication NAAG foresees, and has therefore deleted this requirement from the Final Rule. The Commission notes that knowledge of, and substantial assistance to, another's wrongdoing are a sufficient basis for liability in tort,[96] and were so in cases brought under the Securities and Exchange Act of 1934 [97] until the recent Supreme Court decision in *Central Bank of Denver* v. *Interstate*

[90] FRB–SF supported a requirement for tape recording customers' oral authorizations as an alternative to prior written authorization. *See* FRB-SF at 8–9.

[91] The six items of information are: ''(A) Date of the draft(s); (B) the amount of the draft(s); (C) the payor's name; (D) the number of draft payments (if more than one); (E) a telephone number for customer inquiry that is answered during normal business hours; and (G) the date of the customer's oral authorization.''

[92] FRB-SF at 8–9.

[93] *See, e.g.,* AARP at 15.

[94] NAAG at 23; NACAA at 5.

[95] NAAG at 23.

[96] Section 876(b) of the Restatement of Torts provides: ''For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so as to conduct himself. * * *'' *Restatement (Second) of Torts* § 876(b) (1977).

[97] *See, e.g., Schatz* v. *Rosenburg,* 943 F.2d 485, 495 (4th Cir. 1991), *cert. denied,* 503 U.S. 936 (1992); *National Union Fire Ins. Co.* v. *Turtur,* 892 F.2d 199, 206–07 (2d Cir. 1989); *DCD Programs, Ltd.* v. *Leighton,* 833 F.2d 183, 188 (9th Cir. 1987); *Moore* v. *Fenex,* 809 F.2d 297, 303 (6th Cir. 1987), *cert. denied,* 483 U.S. 1006 (1987); *Rudolph* v. *Arthur Andersen & Co.,* 800 F.2d 1040, 1045 (11th Cir. 1986), *cert. denied,* 480 U.S. 946 (1987); *Metge* v. *Baehler,* 762 F.2d 621, 624–25 (8th Cir. 1985), *cert. denied,* 474 U.S. 1057 (1986); *Woods* v. *Barnett Bank of Fort Lauderdale,* 765 F.2d 1004, 1009 (11th Cir. 1985); *Cleary* v. *Perfectune, Inc.,* 700 F.2d 774, 777 (1st Cir. 1983); *Armstrong* v. *McAlpin,* 699 F.2d 79, 91 (2d Cir. 1983); *Harmsen* v. *Smith,* 693 F.2d 932, 943 (9th Cir. 1982), *cert. denied,* 464 U.S. 822 (1983); *Stokes* v. *Lokken,* 644 F.2d 779, 782–83 (8th Cir. 1981); *IIT* v. *Cornfeld,* 619 F.2d 909, 922 (2d Cir. 1980); *Monsen* v. *Consolidated Dressed Beef Co.,* 579 F.2d 793, 799 (3d Cir. 1978), *cert. denied,* 439 U.S. 930 (1978); *Woodward* v. *Metro Bank of Dallas,* 522 F.2d 84, 94 (5th Cir. 1975).

Many of these cases base their analysis upon the test laid down in *SEC* v. *Coffey,* 493 F.2d 1304, 1316 (6th Cir. 1974), *cert. denied,* 420 U.S. 908 (1975):

A person may be held as an aider and abettor only if some other party has committed a securities law violation, if the accused party had general awareness that his role was part of an overall activity that was improper, and if the accused aider-abettor knowingly and substantially assisted the violation.

Bank of Denver.[98] The Commission further believes that the ordinary understanding of the qualifying word ''substantial'' encompasses the notion that the requisite assistance must consist of more than mere casual or incidental dealing with a seller or telemarketer that is unrelated to a violation of the Rule.

Law enforcement and consumer groups also generally opposed the ''knows or consciously avoids knowing'' standard in this Section, arguing that it imposed a higher burden of proof on law enforcement than the ''knows or should know'' standard in the initially proposed Rule, and requires proof of the wrongdoer's mental state.[99] These commenters recommended that the Commission return to the ''knows or should know'' standard. At the other end of the spectrum, industry comments continued to raise concerns that the proposed knowledge standard was too vague or harsh.[100]

As noted above, both in the law of tort and in a substantial body of pre-*Central Bank of Denver* aider and abettor case law developed under the Securities and Exchange Act of 1934, knowledge is a prerequisite for liability.[101] The Commission recognizes that proving actual knowledge could be a formidable hurdle in some cases.[102] The ''knows or should know'' standard is certainly the appropriate standard to use in framing allegations of third-party liability for unfair or deceptive acts or practices, in violation of section 5 of the FTC Act,[103] or in violation of State ''Little FTC'' Acts. However, in a situation where a person's liability to pay redress or civil penalties [104] for a violation of this Rule depends upon the wrongdoing of another person, the ''conscious avoidance'' standard is correct.[105]

The ''conscious avoidance'' standard is intended to capture the situation where actual knowledge cannot be proven, but there are facts and evidence that support an inference of deliberate ignorance [106] on the part of a person that the seller or telemarketer is engaged in an act or practice that violates §§ 310.3(a) or (c), or § 310.4 of this Rule.

Some commenters recommended that the Commission reinstate the examples of ''assisting and facilitating'' that had been in § 310.3(b)(2) of the initially proposed Rule.[107] The Commission has declined to list in the Rule examples of substantial assistance, but still considers the acts or practices enumerated in former § 310.3(b)(2) of the initially proposed Rule to be illustrative of those that can constitute substantial assistance to Rule violators when coupled with knowledge or conscious avoidance of knowledge of a violation of §§ 310.3 (a) or (c) or § 310.4. These include: Providing lists of contacts to a seller or telemarketer that identify persons over the age of 55, persons who have bad credit histories, or persons who have been victimized previously by deceptive telemarketing or direct sales; providing any certificate or coupon which may later be exchanged for travel related services; providing any script, advertising, brochure, promotional material, or direct marketing piece used in telemarketing; or providing an appraisal or valuation of a good or service sold through telemarketing when such an appraisal or valuation has no reasonable basis in fact or cannot be substantiated at the time it is rendered.

3. Section 310.3(c): Credit Card Laundering

Section 310.3(c) of the Final Rule prohibits credit card laundering, the practice of depositing into the credit card system a sales draft that is not the result of a credit card transaction between the cardholder and a merchant.[108] The Commission received very few comments that offered changes or that were critical of this section. Those comments that did address this section suggested that it be expanded to include other payment devices, such as debit cards, because such devices can be laundered as easily as credit card transactions.[109] The Commission has rejected such an expansion for the reasons stated *supra* in the discussion regarding the definition of ''credit.''

The Act expressly cited credit card laundering as a type of assisting and facilitating that the Rule could prohibit.[110] Credit card laundering is a pernicious practice because it enables deceptive telemarketers access to the credit card system that they would otherwise be unable to obtain. In order to obtain payment by credit card, a seller (''merchant'' as is defined in § 310.2(l)) must first have established an account with a financial institution (''acquirer'' as is defined in § 310.2(a)) that is authorized to accept credit card payments. A seller must have a written contract (''merchant agreement'' as defined in § 310.2(m)) with the financial institution to be able to access the credit card system and obtain payment from a consumer's credit card account. When the seller accepts a credit card for

[98] 114 S. Ct. 36, _____ U.S. _____ (1994). The Supreme Court held that there is no private cause of action for aiding and abetting under Rule 10(b) because the Securities and Exchange Act of 1934 does not expressly create such a cause of action. The Court's decision did not address the soundness of the rationale for the elements of aiding and abetting as developed in the cases. The Telemarketing Act, on the other hand, expressly authorizes ''assisting and facilitating'' as a violation of the Rule.

[99] *See, e.g.,* NJ DCA at 4; NACAA at 5; AARP at 16; NCL at 11; USPS at 12.

[100] *See, e.g.,* NAA at 2; MSSC at 4; HII at 2.

[101] The level of knowledge required for aider and abettor liability under the Securities and Exchange Act of 1934 varied from circuit to circuit. For example, the standard enunciated in *SEC v. Coffey* (general awareness of impropriety, plus knowing and substantial assistance) applied in the Sixth Circuit, whereas actual knowledge or reckless disregard was required in the Ninth Circuit. *Levine v. Daimanthuset, Inc.*, 950 F.2d 1478, 1483 (9th Cir. 1991). The Second Circuit held that ''something closer to an actual intent to aid in a fraud'' must be demonstrated. *Edwards & Hanly v. Wells Fargo Sec. Clearance Corp.*, 602 F.2d 478, 485 (2d Cir. 1979), *cert. denied*, 444 U.S. 1045 (1980). *See* W. H. Kuehnle, *Secondary Liability Under the Federal Securities Laws—Aiding and Abetting, Conspiracy, Controlling Person, and Agency: Common-Law Principles and the Statutory Scheme*, 14 J. Corp. L. 313, 322 (1988); Note, *Liability for Aiding and Abetting Violations of Rule 10b-5: The Recklessness Standard in Civil Damage Actions*, 62 Tex. L. Rev. 1087 (1984).

[102] The Commission noted in the RNPRM that case law under Section 13(b) of the FTC Act has developed a knowledge standard in the context of an analogous type of liability: individual liability to pay restitution to consumers for injury resulting from law violations of a corporation controlled by the individual. The Commission has sought, and the courts have ordered, payment of consumer redress from individual defendants for injury resulting from law violations of corporations controlled by such individuals only where the Commission could show either that these individuals had actual knowledge of the unlawful practices of the corporation, were recklessly indifferent to such practices, or had an awareness of a high probability of fraud coupled with an intentional avoidance of the truth. *FTC v. American Standard Credit Systems, Inc.*, No. CV 93–2623 LGB (JRx) (C.D. Cal. Aug. 15, 1994); *FTC v. Amy Travel Serv.*, 875 F.2d 564, 573–74 (7th Cir.), *cert. denied*, 493 U.S. 954 (1989); *FTC v. Kitco of Nevada, Inc.*, 612 F. Supp. 1282, 1292 (D. Minn. 1985); *FTC v. International Diamond Corp.*, 1983–2 Trade Cas. (CCH) ¶ 65,725 at 69,707 (N.D. Cal. 1983).

[103] *See, e.g., Citicorp Credit Services, Inc.*, FTC Dkt. No. C–3413 (Consent Order, Feb. 4, 1993).

[104] It is noteworthy that Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A), specifies that imposition of civil penalties for an act prohibited by a rule requires a showing of ''actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule.''

[105] Proof of conscious avoidance is widely accepted in criminal cases as fulfilling the requirement for proof of knowledge. *See, e.g., United States v. Beech-Nut Nutrition Corp.*, 871 F.2d 1181, 1195–1196 (2d Cir.), cert. denied, 493 U.S. 933 (1989); *United States v. Diaz*, 864 F.2d 544, 549 (7th Cir.), *cert. denied*, 490 U.S. 1070 (1989); *United States v. Manriquez Arbizo*, 833 F.2d 244, 248 (10th Cir. 1987); *United States v. Rothrock*, 806 F.2d 318, 323 (1st Cir. 1986); *United States v. Jewell*, 532 F.2d 697, 700 (9th Cir.), *cert. denied*, 426 U.S. 951 (1976).

[106] *U.S. v. Williams*, No. 90–3389, 1995 U.S. App. LEXIS 23546 (7th Cir. Aug. 26, 1994).

[107] *See, e.g.,* AARP at 17.

[108] As defined in § 310.2(l), a merchant is the person who is under a contractual agreement with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

[109] *E.g.,* Citicorp at 2; Mastercard at 2–4.

[110] 15 U.S.C. 6102(a)(2).

payment, the seller generates what is known as a credit card sales draft (as defined in § 310.2(g)). The seller then deposits the credit card sales draft into the seller's account with the financial institution and obtains the cash amount of the deposited drafts. The financial institution sends the credit card sales draft through the particular credit card system, *e.g.*, Visa, which will post the charge to the consumer's credit card account.

Most deceptive telemarketers are unable to establish a merchant account with an acquirer. Therefore, to be able to accept payment by credit card, they must gain access to the credit card system through another's merchant account. Obtaining access to the credit card system through another merchant's account without the authorization of the financial institution is credit card laundering. Credit card laundering facilitates deceptive telemarketing acts or practices by providing telemarketers engaged in fraud with ready access to cash through the credit card system. Credit card laundering also costs legitimate credit card companies over $300 million per year as a result of telemarketing fraud involving payment by credit card.[111]

The underlying purpose of § 310.3(c) is to delineate clearly, in accordance with legitimate industry standards, those persons who are deemed to have proper access to the credit card system. The Commission believes that the distinction between persons who are ''launderers'' and persons who legitimately use credit card systems rests on whether the credit card system permits such persons access to its system. In their comments to the initially proposed Rule, Visa and MasterCard recommended that access be permitted under the Rule if it is expressly permitted by the applicable credit card system.[112] Therefore, the Commission proposed in the revised proposed Rule language to the preamble of § 310.3(c), that ''except where expressly permitted by the applicable credit card system . . .'' and added similar language to the end of § 310.3(c)(3). In the absence of comments on this section in the RNPRM, the Final Rule adopts § 310.3(c) without change.

Section 310.3(c) of the Final Rule is divided into three parts. Section 310.3(c)(1) deals with merchants who engage in credit card laundering. Under this Section, it is a deceptive telemarketing act or practice, and a violation of the Rule, for a merchant to present to, or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and that merchant. It is also a deceptive act or practice for a merchant to cause another person to present to, or deposit into, the credit card system for payment such a credit card sales draft.

Section 310.3(c)(2) of the Final Rule deals with telemarketers, brokers, or others who employ merchants to engage in credit card laundering. This Section states that it is a deceptive telemarketing act or practice, and a violation of the Rule, for ''any person to employ, solicit, or otherwise cause a merchant or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant.''

Finally, § 310.3(c)(3) prohibits credit card laundering by means of joint ventures or other business relationships with a merchant. Specifically, this section prohibits any person from obtaining ''access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.''

D. Section 310.4: Abusive Telemarketing Acts or Practices

1. Section 310.4(a): Abusive Conduct Generally

Section 310.4(a) of the Final Rule prohibits any seller or telemarketer from engaging in four enumerated abusive acts or practices. Each of these practices will be discussed in turn.[113]

a. Section 310.4(a)(1): Threats, Intimidation, or the Use of Profane or Obscene Language

Section 310.4(a)(1) of the Final Rule prohibits any seller or telemarketer from engaging in threats, intimidation, or the use of profane or obscene language. The legislative history of the Telemarketing Act indicates that the Commission should consider prohibiting such practices, and should ''draw upon its experience in enforcing standards established under the Fair Debt Collection Practices Act (''FDCPA''), 15 U.S.C. 1692, in defining these terms.'' [114] The FDCPA includes a number of prohibitions on various types of threats,[115] and a specific prohibition on the use of profane or obscene language.[116] The Commission believes such prohibitions are equally appropriate in this Rule.

This Section covers all types of threats, including threats of bodily injury and financial ruin, and threats to ruin credit. It also prohibits intimidation, including acts which put undue pressure on a consumer, or which call into question a person's intelligence, honesty, reliability, or concern for family. Repeated calls to an individual who has declined to accept an offer may also be an act of intimidation.

b. Section 310.4(a)(2): Credit Repair Services

Section 310.4(a)(2) of the Final Rule is intended to limit the telemarketing of deceptive credit repair services. Typically, these services promise consumers that, for a fee paid in advance, they will improve the consumer's credit record by removing negative information from that record. Once the fee is paid, however, the seller fails to deliver the promised services or achieve the promised results, and the consumer's credit record does not improve.

This section of the Final Rule states that, in selling any goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating, a seller or telemarketer is prohibited from requesting or receiving payment of any fee or consideration until two events occur. First, the time frame within which the seller has represented that all of the goods or services will be provided to the purchaser must have expired.[117] Second, the promised results must have been achieved. In order to ensure the achievement of the promised results, the Final Rule requires the seller to provide

[111] Senate Report at 2.

[112] *See* initial comments: MasterCard at 10–11.

[113] Section 310.4(a) remains unchanged from the RNPRM.

[114] *See, e.g.*, House Report at 8.

[115] *See* FDCPA section 806(1), 15 U.S.C. 1692d(1) (''the use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person''); Section 807(5), 15 U.S.C. 1692e(5) (''the threat to take any action that cannot legally be taken or that is not intended to be taken''); and section 808(6), 15 U.S.C. 1692f(6) (''taking or threatening to take any nonjudicial action to effect dispossession or disablement of property'' in certain situations).

[116] Section 806(2) of the FDCPA, 15 U.S.C. 1692d(2).

[117] A seller or telemarketer can make such representations about the time for delivery of the credit repair goods or services either orally or in writing, including in the contract for the services. If any discrepancy exists between various representations by a credit repair seller, the longest time frame represented will determine when payment may be requested or received.

the purchaser with a consumer report from a consumer reporting agency that was issued more than six months after the results were achieved.[118]

A number of commenters stated that this section should not apply to the offering of secured credit cards.[119] According to these commenters, secured credit cards often are marketed as credit products that can improve a consumer's credit history, if properly used. The abusive practice against which § 310.4(a)(2) is directed is the deceptive marketing and sale of bogus credit repair services; it is not directed at the nondeceptive telemarketing of secured credit cards.[120] In addition, the Commission does not intend that this Section apply to legitimate credit monitoring services.

c. Section 310.4(a)(3): Recovery Room Services

The next abusive practice prohibited by the Final Rule involves recovery room scams. In these operations, a deceptive telemarketer calls a consumer who has lost money, or who has failed to win a promised prize, in a previous scam. The recovery room telemarketer falsely promises to recover the lost money, or obtain the promised prize, in exchange for a fee paid in advance. After the fee is paid, the promised services are never provided. In fact, the consumer may never hear from the telemarketer again.

The Final Rule, at § 310.4(a)(3), prohibits any seller or telemarketer from ''requesting or receiving payment of any fee or consideration from a person, for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven business days after such money or other item is delivered to that person.'' This prohibition does not apply, however, to goods or services provided by a licensed attorney. As stated in the RNPRM, the Commission does not wish to hinder legitimate activities by licensed attorneys to recover funds lost by consumers through deceptive telemarketing, and thus does not believe this prohibition should be applied to their services.

The Commission also intends that this Section not cover debt collection practices, since debt collection is not ''conducted to induce the purchase of goods or services,''—a prerequisite for Rule coverage as dictated by the definition of ''telemarketing'' in § 310.2(u). Furthermore, this section is applicable only to recovery services that promise the return of money or other items of value paid for or promised to the consumer in a previous telemarketing transaction. Thus, this Section will not apply to attempts to recover money or items lost outside of telemarketing.

d. Section 310.4(a)(4): Advance Fee Loans

Section 310.4(a)(4) of the Final Rule prohibits any seller or telemarketer from requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person.[121] This section is intended to prevent ''advance fee loan'' scams, in which a telemarketer promises to obtain a loan for a consumer, regardless of that consumer's credit history or credit record, in exchange for a fee, paid in advance. As with recovery room scams, after the consumer pays the fee, the promised services typically are not provided.

Two commenters stated that non-bank telemarketers may make ''prescreened,'' unconditional offers of home equity credit lines or other forms of mortgage credit and urged that the Rule should not prohibit non-bank telemarketers from collecting, in connection with legitimate ''prescreened'' offers of credit, an application fee, credit report fee, and/or appraisal fee before the loan actually closes.[122] Section 310.4(a)(4) is not directed at firm offers of credit by a creditor who properly uses a prescreened list in accordance with the FTC staff commentary on the FCRA.[123] Making an authentic firm offer of credit to every consumer on a prescreened list is not equivalent to the specious type of transaction involved in advance fee loan scams where a seller or telemarketer offers to obtain or arrange a loan or other extension of credit for a person.

2. Section 310.4(b): Pattern of Calls

The Telemarketing Act directs the Commission to include in this Rule ''a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy.'' [124] Section 310.4(b) of the Final Rule sets forth two prohibitions on sellers and telemarketers which are intended to effectuate this requirement of the Act.

First, § 310.4(b)(1)(i) prohibits causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number. Such a prohibition is included in the FDCPA,[125] and the legislative history of the Telemarketing Act states that the Commission should consider the FDCPA in establishing prohibited abusive acts or practices.[126]

Several comments on the RNPRM suggested that this Section should be keyed to a reasonable consumer's belief of what is annoying, abusing, or harassing, rather than the caller's intent.[127] The Commission has taken this prohibition virtually verbatim from the FDCPA, and finds no reason to alter this language. The staff commentary to the FDCPA states that ''continuously'' means ''making a series of telephone calls, one right after the other,'' and that ''repeatedly'' means ''calling with excessive frequency under the circumstances.'' [128] The Commission believes that if a telemarketer calls a consumer continuously or repeatedly, as those terms have been defined, it is presumed that the caller's intent was to annoy, abuse, or harass the person being called. The few courts that have ruled on this provision of the FDCPA have been silent on the intent requirement, ultimately deciding the case simply on the repeated nature of the calls.[129]

The second prohibition in the Final Rule intended to limit unsolicited telephone calls is the ''do not call'' requirement set forth in § 310.4(b)(1)(ii). This section prohibits any telemarketer from initiating, or any seller to cause a telemarketer to initiate, an outbound telephone call to a person when that person previously has stated that he or

[118] The Fair Credit Reporting Act (''FCRA''), 15 U.S.C. 1681, specifies certain permissible purposes for which a consumer report may be furnished. The Final Rule states that nothing in this Rule should be construed to affect those requirements set forth in the FCRA.

[119] *See, e.g.,* Mastercard at 6–7; BOA at 1–2.

[120] However, all other parts of this Rule, including all required disclosures and prohibitions against misrepresentations, apply to the telemarketing of secured credit cards.

[121] By using the terms ''loans or other extensions of credit,'' the Final Rule makes clear that this section does not apply to other types of credit services, such as monitoring or counseling services.

[122] BOA at 2; P&C–1 at 2–3.

[123] *Statement of General Policy or Interpretation; Commentary on the Fair Credit Reporting Act,* 55 FR 18804, 18815 (May 4, 1990).

[124] 15 U.S.C. 6102(a)(3)(A).

[125] 15 U.S.C. 1692d(5).

[126] *See, e.g.,* House Report at 8.

[127] *See* SD DAG at 2; AARP at 22–23.

[128] *Statements of General Policy or Interpretation; Staff Commentary on the Fair Debt Collection Practices Act,* 53 FR 50097, 50105 (Dec. 13, 1988).

[129] *See, e.g., Bingham* v. *Collection Bureau, Inc.,* 505 F. Supp. 864 (D.N.D. 1981); *Venes* v. *Professional Service Bureau,* 353 N.W.2d 671 (Minn. Ct. App. 1984).

she does not wish to receive such a call made by or on behalf of the seller whose goods or services are being offered.

The Telephone Consumer Protection Act (''TCPA'') [130] and the regulations of the Federal Communications Commission (''FCC'') implementing that Act [131] include a similar ''do not call'' prohibition. A number of commenters asked the Commission to clarify that compliance with the TCPA's ''do not call'' procedures will constitute compliance with this section of the Telemarketing Sales Rule as well.[132] The Commission cannot make such a blanket pronouncement due to the differences in enforcement of the TCPA and this Rule,[133] and the slight variations in the safe harbor provisions, discussed *infra*. On the other hand, in order to lessen compliance burdens, the Commission wishes to clarify that in order to comply with both the TCPA and this Rule, sellers and telemarketers need compile only one list of consumers who request not to be called by that seller or telemarketer.[134]

One commenter asked the Commission to modify this Section of the Final Rule to focus the ''do not call'' prohibition on a particular good or service, rather than on a seller.[135] For example, this commenter stated that if it calls a consumer to sell termite control, and the consumer asks it not to call any more, the Final Rule should permit that same seller to call the consumer in the future to offer a deck treatment. The Commission disagrees. Once a consumer states that he or she does not wish to receive any additional calls from a particular seller, that seller may not call the consumer to sell any other product or service whatsoever. On the other hand, in the discussion of the definition of ''seller,'' [136] the Commission has made clear that it will consider distinct corporate divisions to be separate sellers. Thus, if a consumer tells one division of a company not to call again, a distinct corporate division of that company may make another telemarketing call to that consumer.

Another commenter asked the Commission to clarify what consumers must tell a seller to indicate they do not want additional calls, whether that request must be in writing, and how quickly the seller must act upon the caller's request.[137] Any form of request that the consumer does not wish to receive calls from a seller will suffice.[138] An oral statement as simple as ''Do not call again'' is effective notice. Finally, although the Rule is silent on the time frame within which the seller must act upon the consumer's request, such actions must be taken in a reasonably expeditious manner.

Section 310.4(b)(2) of the Final Rule provides a limited safe harbor against liability for violating the ''do not call'' prohibitions included in § 310.4(b)(1)(ii). The safe harbor states that a seller or telemarketer will not be liable for such violations if: (1) It has established and implemented written procedures to comply with the ''do not call provisions''; (2) it has trained its personnel in those procedures; (3) the seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted; and (4) any subsequent call is the result of error.

One commenter maintained that this Section should mandate that a seller or telemarketer meet the requirements of the safe harbor in a reasonable manner in order to successfully assert the defense.[139] Another stated that a seller or telemarketer who makes repeated calls as the result of ''error,'' despite its adoption of the requisite procedures outlined in this Section, should be on notice of its error and should not be allowed to repeatedly violate the ''do not call'' provision.[140] The Commission agrees that a rule of reasonableness should prevail in determining application of the safe harbor provision. If a company is complying in a reasonable manner with the requirements of the safe harbor, any true error should be excused. On the other hand, numerous purportedly ''erroneous'' calls to consumers who previously had asked not to be called may be a sign that the seller's adopted procedures are ineffective, and that the safe harbor should no longer be available.

3. Section 310.4(c): Calling Time Restrictions

In the Final Rule, the Commission adopts the RNPRM's prohibition, in § 310.4(c), against any telemarketer engaging in outbound telephone calls to a person's residence, without the prior consent of the person, at any time other than between 8 a.m. and 9 p.m. local time at the called person's location. This provision is included in response to the Telemarketing Act's directive that the Rule should include ''restrictions on the hours of the day and night when unsolicited telephone calls can be made to consumers.'' [141]

This provision of the Rule struck a responsive chord with individual consumers. A number of individuals maintained that telemarketers be prohibited from calling them at all.[142] Others suggested multiple different time restrictions, for many different reasons.[143] On the other hand, the FCC has established calling time hours of 8 a.m. to 9 p.m. in its regulations implementing the TCPA.[144] By altering those permitted calling hours, the Commission would introduce a conflict in the federal regulations governing telemarketers. The record contains no compelling evidence to support a change that would produce such a result. Thus, this section of the Final Rule will be adopted as proposed.

4. Section 310.4(d): Required Oral Disclosures

The Telemarketing Act requires the Commission to include in this Rule the following:

A requirement that any person engaged in telemarketing for the sale of goods or services shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to sell goods or services and make

[130] 47 U.S.C. 227.

[131] 47 CFR 64.1200(e).

[132] *See, e.g.,* Citicorp at 2; DMA at 4–5; NRF at 8; Mastercard at 7; Chase at 2–3.

[133] The Telemarketing Sales Rule will be enforced by the Commission, the States, and any person who suffers more than $50,000 in actual damages caused by violations of this Rule. *See* 15 U.S.C. 6102(c), 6103, 6104. On the other hand, the TCPA ''do not call'' provisions may be enforced only in State court by a private person who receives more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the FCC's regulation. *See* 47 U.S.C. 227(c)(5).

[134] In the RNPRM discussion of the effective date of the Rule, the Commission stated that the ''do not call procedures'' adopted by telemarketers under the TCPA would comply with this section of the revised proposed Rule as well. 60 FR at 30424. The ''procedures'' mentioned in that section of the RNPRM consist of the compiling of the list of consumers who request not to be called by the seller or telemarketer.

[135] Rollins at 2.

[136] *See supra* text accompanying § 310.2(r) and (t) (discussing definitions of ''seller'' and ''telemarketer'').

[137] Milligan at 1.

[138] This includes a statement by consumers that they are revoking their prior consent to receive calls by that seller. *See* GA OCA at 3.

[139] NYSCPB at 4–5.

[140] AARP at 23. *See also* Gardner at 1.

[141] 15 U.S.C. 6102(a)(3)(B).

[142] *See, e.g.,* Broadbent at 1; Tiegs at 1; Dander at 1; Beaver at 1; Lombard at 1; Shore at 1.

[143] *See, e.g.,* GA OCA at 3 (to protect older victims who are home alone during the day, restrict calls to businesses between 8:00 a.m. to 5 p.m., and calls to residences between 5 p.m. and 9 p.m.); Dick at 1 (from 11 a.m. to 5 p.m. daily, with no calls on holidays and weekends); Rice at 1 (9 a.m. to 7 p.m., in respect for families with children); Stritchko at 1 (8 a.m. to 6 p.m., so a person can relax in the evening); Durkee at 1 (11 a.m. to 8 p.m., to respect those working nights or second shift); Kempf at 1 (10 a.m. to 2 p.m.); Joseph at 1; Tucker at 1; Magnuson at 1; Reymann at 1 (8 a.m. or 9 a.m. to 5 p.m.).

[144] *See* 47 CFR 64.1200(e)(1).

other such disclosures as the Commission deems appropriate.[145]

The Final Rule requires all telemarketers, in outbound telephone calls, to disclose promptly and in a clear and conspicuous manner to the person receiving the call the following four items of information: (1) The identity of the seller; (2) that the purpose of the call is to sell goods or services; (3) the nature of the goods or services; and (4) that no purchase or payment is necessary to win if a prize promotion is offered.

The Final Rule adheres to the statutory requirement that the disclosures be prompt and clear. Industry representatives generally supported this requirement.[146] On the other hand, many law enforcement and consumer representative commenters maintained that the Commission should return to the language in the initially proposed Rule, requiring such disclosures to occur ''at the beginning'' of the telephone call.[147] One commenter noted that it is important that calls begin with a statement of the call's purpose to provide ''an important protection against the usual strategy of prize promoters, which is to seduce consumers with visions of cars and cash before ever revealing that the caller's main purpose is to sell something.'' [148] Another stated that the Commission's failure to define the term ''promptly'' will ''invite shady promoters to shoot for the grey area, and to provoke litigation over its meaning.'' [149]

The Final Rule adopts the statutory language, requiring the disclosures to be ''prompt.'' Intending to permit some flexibility in the seller's telemarketing presentation, the Commission has opted not to include in the Rule a definition of the term ''prompt.'' [150] However, to respond to some of the concerns raised by commenters, the Commission intends that the Final Rule *not* permit the disclosure of the identity of the seller and the promotional purpose of the call at the end of the sales pitch.[151] At a minimum, the Commission agrees with commenters that ''prompt'' disclosures should be made prior to the time any substantive information about a prize, product, or service is conveyed to the consumer.[152]

The comments also raised a number of questions about when the required oral disclosures must be made in ''multiple purpose calls''—calls involving the sale of goods or services and some other activity, such as conducting a prize promotion or market research, or determining customer satisfaction. Law enforcement commenters noted the importance of requiring the mandated disclosures early in the call, to avoid consumer confusion about the call's purpose.[153] In addition, the legislative history of the Telemarketing Act noted the problem of deceptive telemarketers contacting potential victims under the guise of conducting a poll, survey, or other type of market research.[154] To address these problems, the Commission believes that in any multiple purpose call where the seller or telemarketer plans, in at least some of those calls, to sell goods or services, the disclosures required by this section of the Rule must be made ''promptly,'' during the first part of the call, before the non-sales portion of the call takes place. Only in this manner will the Rule assure that a sales call is not being made under the guise of a survey research call, or a call for some other purpose.

To clarify this point, the following two examples, taken from the comments, are offered. On the one hand, a seller may call a customer to determine if that customer is satisfied with a previous purchase of goods or services. The seller plans, during the course of that call, to move into a sales presentation *if* the seller determines that the customer is satisfied. If the seller determines that the customer is not satisfied, however, the seller plans to terminate the call.[155] In this example, since the seller plans to make a sales presentation in at least some of its calls, the seller is required to disclose promptly the information required by this part of the Rule during the initial portion of the call, before the seller makes lengthy inquiries about customer satisfaction.

On the other hand, a seller may make calls to welcome new customers and to inquire whether everything about recently-purchased goods or services is satisfactory. The seller does not plan, during any of these calls, to sell anything to those customers. However, during such calls the customer may ask about other purchase opportunities, to which the seller will respond by presenting those opportunities.[156] Since the seller initially has no plans to sell goods or services during these calls, no prompt disclosures are required.

As for the content of the required oral disclosures, the only significant comments concerned the ''no purchase necessary'' disclosure, in § 310.4(d)(4), required for calls offering a prize promotion. As stated in the RNPRM, the Commission believes that this disclosure is so critical to consumer protection in a prize promotion that it should be stated during an outbound telephone call. The USPS expressed concern in its comment that this disclosure may not cover scams where the marketer will not ask the consumer to purchase a prize, but instead will ask for payment of shipping charges, taxes, or other fees in order to enter or win a prize.[157] The Commission believes this is a valid concern, and therefore is amending this portion of the Final Rule to require the disclosure that ''no purchase *or payment* is necessary to win'' a prize. This disclosure is designed to counteract the false impression created by deceptive prize promotion telemarketers that a consumer must purchase some item, or make some other type of payment, in order to win the ''fabulous'' prize offered.[158] This disclosure carries the message to consumers that a true, legitimate prize promotion does not require any purchase or payment to participate or to win.[159]

The revised proposed Rule required this disclosure to be made before the prize is described to the person called. A number of industry commenters requested some timing flexibility here, suggesting that this disclosure be required ''before or in immediate conjunction with'' the description of the prize.[160] The Commission agrees that such a change will ensure that this key disclosure is linked directly to the prize described. This modification is designed to prohibit deceptive telemarketers from separating the disclosure from the description of the prize, thereby

[145] 15 U.S.C. 6102(a)(3)(C).

[146] *See* RNPRM at 30418.

[147] *See, e.g.,* NAAG at 13–14; NY DCA at 1; GA OCA at 1; AARP at 23–25; NAPA DA at 1.

[148] VT AG at 2–3.

[149] USPS at 6.

[150] The Commission believes that the usual meaning of the term should apply. ''Prompt'' is defined as ''done, performed, delivered, etc., at once or without delay.'' *Webster's Encyclopedic Unabridged Dictionary of the English Language* at 1151 (Portland House 1989).

[151] *See* MD AG at 2.

[152] IA DOJ at 4.

[153] *See, e.g.,* NAAG at 13–14; VT AG at 2–3; AARP at 23–25.

[154] *See* Senate Report at 9–10.

[155] *See* Rollins at 2.

[156] *See* Citicorp at 2.

[157] *See* USPS at 2.

[158] One commenter asked if an announcement, during a telemarketing call, that the consumer ''has been entered free'' into a sweepstakes would satisfy the disclosure requirement that no purchase or payment is necessary to win a prize. *See* ITI at 2–3. The Commission does not believe this disclosure would suffice, since the mere entry into a promotion may be different from actually having a chance of winning a prize.

[159] *See* 18 U.S.C. 1301.

[160] *See, e.g.,* DMA at 5–6; ITI at 3; PCH at 2–3.

negating or diluting its salutary effect.[161] In addition, in order to make the ''no purchase or payment'' disclosure meaningful, the Final Rule also requires telemarketers to disclose the no-purchase/no payment entry method for the prize promotion, if requested by the person called.

Many law enforcement and consumer representative commenters suggested that additional oral disclosures be required in every outbound telephone call involving a prize promotion.[162] The USPS comment included the most concise statement on this issue, noting that ''the fraud and deception caused by prize promotions are so great that any extra expense associated with making [such] oral disclosures * * * is a necessary cost of creating much-needed balance between telemarketers (who have all the information) and consumers (who will know only what the telemarketer tells them).'' [163] While the Commission is aware of the extensive amount of telemarketing fraud that occurs with deceptive prize promotions, it also is mindful that required oral disclosures increase both the length and the cost of telemarketing calls. Moreover, as stated in the RNPRM, the Commission is doubtful of the consumer benefit to be derived from repeated disclosures of the same information. Under §§ 310.3(a)(1) (iv) and (v) of the Final Rule, all sellers and telemarketers must disclose, before a customer pays for goods and services, the odds of receiving a prize (or the factors used in calculating the odds, if the odds cannot be calculated in advance), that no purchase or payment is necessary to receive a prize or to participate in a prize promotion, and the no purchase/no payment method of entry with either instructions on how to enter or an address or local or toll-free telephone number the customers may contact for information. In addition, all sellers and telemarketers must disclose the material costs or conditions to receive or redeem a prize. The Commission believes that mandating the repeated oral disclosure of this information in every outbound telephone call involving a prize promotion is unnecessary.

E. Section 310.5: Recordkeeping

Section 310.5 requires sellers or telemarketers to keep certain records relating to telemarketing activities for 24 months from the date the record is produced.[164] Failure to keep the records is a violation of the Rule.

A record retention requirement is necessary to enable law enforcement agencies to ascertain whether sellers and telemarketers are complying with the requirements of the Final Rule, to identify persons who are involved in any challenged practices, and to identify customers who may have been injured. A 24-month record retention period is necessary to provide adequate time for the Commission and State law enforcement agencies to complete investigations of noncompliance. Consumers who complain to a law enforcement agency about alleged deceptive or abusive telemarketing practices often fail to do so immediately. Thus, there may be substantial ''lag time'' between the occurrence of violations and the time law enforcement learns of the alleged violations. A two-year record retention period allows law enforcement agencies time to gather information needed to pursue law enforcement actions and identify victims.

The Commission is mindful, however, of the burden on legitimate business in maintaining these records. For example, commenters from the office supplies industry suggested that recordkeeping compliance costs would increase costs to dealers and, ultimately, consumers because of increased paperwork, computer usage and storage, and filing space.[165] The Final Rule, therefore, strikes a balance between minimizing the recordkeeping burden on industry and retaining the records necessary to pursue law enforcement actions and identify customers who have been injured. The Final Rule requires retaining records that most businesses already maintain during the ordinary course of business.

Section 310.5(a) sets out the records that must be maintained. Section 310.5(b) specifies that the records may be kept ''in any form.'' Sellers and telemarketers may maintain the records in any manner, format, or place as they keep such records in the ordinary course of business, including in electronic storage. Several law enforcement and consumer groups expressed concern that permitting electronic storage would increase the ease with which deceptive telemarketers could quickly destroy data.[166] Electronic storage and other non-paper recordkeeping pose the danger that deceptive telemarketers or sellers may quickly erase or otherwise destroy potential evidence. However, the Commission believes this risk is outweighed by the cost to legitimate businesses of maintaining hard copies of documents for two years. Electronic storage and other storage formats (other than paper) are increasingly used in both the public and private sectors to conserve space, paper, and personnel resources.

Moreover, if a deceptive telemarketer or seller were to destroy records, law enforcement agencies still would be able to charge them with violating § 310.5(b), which makes the failure to maintain all the required records a violation of the Rule.

Under § 310.5(a)(1), sellers and telemarketers must retain only *substantially different* advertising, brochures, telemarketing scripts, and promotional materials. Sellers and telemarketers need only retain a specimen copy of each advertising or promotional piece or script that is substantially different from other advertisements or scripts. They need not keep copies of documents that are virtually identical but for immaterial variations. If no scripts or other advertising or promotional materials are used in connection with the telemarketing activity, then no such materials would need to be retained. NAAG opined that telemarketers and sellers should not have sole discretion to determine what constitutes ''substantially different,'' in view of the fact that what is ''substantially different'' in the consumer protection context can be problematic, and that changing a few words in a telemarketing script can have a tremendous impact.[167]

The Commission agrees that reasonable people may differ as to whether a particular document is ''substantially different'' from another document. However, the Commission also recognizes that, in the legitimate telemarketing industry, scripts can change frequently, often with only minor alterations, and advertisements or promotional materials may differ only in minor respects from other versions.

[161] The statement in the Final Rule that this disclosure must be made before or in conjunction with the description of the prize does not alter the requirement that this disclosure must also be made ''promptly.''

[162] NAAG at 15 (''at a minimum, the Rule must require meaningful oral disclosures of the method of free entry, the odds of winning the prizes described, and the restrictions and conditions associated with the use of the prize''); VT AG at 3 (all of the above plus verifiable retail sales price should be disclosed); MD AG at 1 (require disclosure of the odds of winning, the nature and value of prizes, and the conditions on receiving the prizes); MA AG at 5 (value and odds); USPS at 7 (sales price and odds); AARP at 26–27 (free method of entry and prize value); IA DOJ at 14 (prize value); NAPA DA at 2 (prize value).

[163] USPS at 7.

[164] The Telemarketing Act authorizes the Commission to include recordkeeping requirements in the Rule. 15 U.S.C. 6102(a)(3).

[165] *See, e.g.,* Decora, Hall, Knobe, Mansfield, Way.

[166] *See, e.g.,* NAAG at 25; NACAA at 7; AARP at 27.

[167] NAAG at 25–26.

Retention of each and every script, advertisement, or other promotional piece would likely enhance efforts of law enforcers to build cases against deceptive telemarketers; but the Commission is unwilling to burden legitimate business with a requirement to maintain such a huge volume of records, much of which may be worthless or redundant from a law enforcement standpoint.

In the revised proposed Rule, § 310.5(a)(2) required sellers and telemarketers to maintain records of the name and last known address of each prize recipient and the prize awarded where the prizes have a value of $25 or more. Several commenters stated that requiring records of prize recipients only with regard to prizes having a value of more than $25 will not provide the type of documentation needed by law enforcement.[168] These commenters pointed out that many of the abuses found in prize promotions involve items valued under $25, but represented to be valued much higher. Further, by its very nature, a deceptive prize promotion involves prizes sent to consumers that are virtually worthless. In order to address this valid concern, but not increase the burden on legitimate prize promoters, the Commission has revised § 310.5(a)(2) to require that records be maintained for all prizes *represented, directly or by implication,* to have a value of $25 or more. Sellers and telemarketers do not have to maintain records on prize recipients and prizes awarded for prizes that are represented to have a value of less than $25. The Commission believes that this change in wording should not increase the recordkeeping burden on legitimate business because such telemarketers and sellers would be expected to accurately represent prize values. Although in the Commission's experience, there is often at least an implied representation of value in deceptive prize promotions, there may be times when a prize promotion is silent as to value. Therefore, in those instances where no direct or implied representations have been made as to a prize's value, a seller or telemarketer must keep records for prizes that cost the seller or telemarketer more than $25 to purchase.

Section 310.5(a)(3) requires that records be kept of customer transactions, including the name and last known address of the customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services. Only records relating to *actual sales* need be maintained; sellers and telemarketers are not required to keep records of all customer contacts, if those customers do not make a purchase.

Several commenters from the magazine sales industry noted that neither the seller nor telemarketer in the magazine sales industry has knowledge of, or control over, the dates of shipment, nor would they have records of such as required by § 310.5(a)(3);[169] records reflecting the date(s) of shipment would be kept by the contracted ''fulfillment house.'' These commenters noted, however, that sellers and telemarketers would have the date the order was placed with the fulfillment house or the date that the service was to commence. In connection with magazine sales, either of these dates will be sufficient for purposes of compliance with § 310.5(a)(3).

Section 310.5(a)(4) requires sellers and telemarketers to keep certain records on current and former employees who are directly involved in telephone sales: name, any fictitious name used, the last known home address and telephone number, and job title. Any records relating to current and former employees are required only for those persons who are or became employees on or after the effective date of the Final Rule.

IA DOJ recommended that, if callers use fictitious ''desk'' names, sellers and telemarketers should not allow more than one person to use the same alias and should maintain *current* information on the name and address of any employee who has used an alias. If such requirements were included, IA DOJ opined, law enforcement would be able to request and obtain the information from a seller or telemarketer expeditiously. IA DOJ stated that these requirements are necessary to identify and locate individuals responsible for deceptive telemarketing sales.[170]

The Commission agrees with the concerns raised by IA DOJ and has revised § 310.5(a)(4) to require that, if fictitious names are used by employees, the name must be traceable to a specific employee. This revision should eliminate the confusion that would result if more than one employee were using the same desk name.

The Commission believes, however, that it would be overly burdensome and inappropriate to require businesses to continue updating records on persons who no longer work for them. Businesses must maintain up-to-date information on current employees, and last-known information on former employees, but the Final Rule does not place an affirmative duty on the seller or telemarketer to update information on former employees.

Section 310.5(a)(5) requires sellers and telemarketers to retain copies of any verifiable authorizations required under § 310.3(a)(3) of the Rule.[171] Sellers and telemarketers should retain records of the verifiable authorization for each transaction. These records may be in any form, manner, or format consistent with the methods of authorization permitted under § 310.3(a)(3).

NASAA suggested that the Final Rule expressly provide law enforcement with access to records upon reasonable notice for the purpose of reviewing and copying.[172] The Commission has decided not to include a provision requiring that the records be provided upon reasonable notice. The Commission does not believe that such a provision would appreciably enhance tools currently at the disposal of law enforcement authorities to obtain such information, if it is required to be maintained. Moreover, the Commission's own law enforcement experience indicates that such a provision could be construed to hamper its ability to obtain such information quickly, especially through *ex parte* temporary restraining orders against deceptive telemarketers.

Section 310.5(b) states that ''[f]ailure to keep all records required by § 310.5(a) shall be a violation of this Rule.'' Sections 310.5 (c) and (d) minimize the burden of maintaining duplicate records.

Under § 310.5(c), the seller and telemarketer need not keep duplicative records if they allocate between themselves, by written agreement, responsibility for complying with the recordkeeping requirements. Absent a written agreement between the parties, or if the written agreement is unclear as to who must maintain the required records, the seller is responsible for complying with §§ 310.5(a)(1)–(3) and (5), and the telemarketer is responsible for complying with § 310.5(a)(4) (the Section dealing with records about current and former employees). Several commenters on the initially proposed Rule supported § 310.5(c),[173] noting that it strikes a reasonable balance between maintaining necessary documentation and avoiding overly burdensome

[168] AARP at 27–28; IA DOJ at 5.

[169] *See, e.g.,* MPA at 3; MSSC at 3; DMT&H at 1; HEARSTCO at 2.

[170] IA DOJ at 6.

[171] Section 310.3(a)(3) requires express verifiable authorization before submitting a demand draft for payment.

[172] NASAA at 2.

[173] This provision was included in § 310.5(b) of the initially proposed Rule.

requirements, as well as noting that it is consistent with the contractual nature of the relationship between sellers and telemarketers.[174]

On the other hand, NAAG feared that a seller could use contractual provisions to shift its recordkeeping responsibility to another ''fly-by-night,'' and most likely ''judgment proof,'' telemarketer. NAAG stated that the Rule's failure to provide joint and several responsibility for recordkeeping exacerbated the danger of deceptive telemarketers quickly destroying data.[175] NAAG asked that the Final Rule require that records be kept by an entity which will not benefit by their loss. The Commission has considered this suggestion, but since both sellers and telemarketers are liable for violations of the provisions of the Rule, it is unclear where such a ''disinterested'' recordkeeping entity might be found. Moreover, the Commission believes the risk that NAAG identified is outweighed by the cost to legitimate sellers and telemarketers of maintaining duplicate copies of documents for two years.

Finally, § 310.5(d) sets out the parties responsible for maintaining records at the end of, or after a change in ownership of, the seller's or telemarketer's business. In the event of dissolution or termination of such business, the principal of the seller or telemarketer is required to maintain these records. On the other hand, in the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business is required to maintain the records.[176]

F. Section 310.6 Exemptions

Section 310.6 of the Rule exempts certain types of activities from the Rule's coverage. This section prompted considerable RNPRM comments, as it did in the initially proposed Rule. In their comments to the RNPRM, law enforcement and consumer groups once again cautioned against any exemptions because of the potential danger that deceptive telemarketers will seize upon any perceived loophole to avoid coverage under the Rule.[177] These groups argued that exemptions only lead to confusion as to who is covered under the Rule and will cause law enforcement agencies to expend considerable resources to determine whether a telemarketer is subject to the Rule. They further maintained that, since only catalog sales are exempted from the Act, Congress intended for *all* telemarketers to be covered by the Rule and did not intend the Commission to include a broad list of specific exemptions.[178] The business community once again suggested that the Commission set out exemptions that will allow legitimate telemarketers to operate without the restraints of additional regulation.[179]

The Commission has concluded that it is vested by the Telemarketing Act with discretion both in determining what constitutes ''telemarketing'' under the Act and in defining deceptive and abusive practices. In exercising that discretion, the Commission has decided that narrowly-tailored exemptions are necessary to prevent an undue burden on legitimate businesses and sales transactions. Section 310.6 enumerates these exemptions. The Commission determined the advisability of each exemption after examining the Act and considering the following factors: (1) Whether Congress intended that a certain type of sales activity be exempt under the Rule; (2) whether the conduct or business in question already is regulated extensively by Federal or State law; (3) whether, based on the Commission's enforcement experience, the conduct or business lends itself easily to the forms of deception or abuse that the Act is intended to address; and (4) whether requiring businesses to comply with the Rule would be unduly burdensome when weighed against the likelihood that sellers or telemarketers engaged in fraud would use an exemption to circumvent Rule coverage.

One commenter suggested an exemption for providers of funeral goods and services who are subject to the Commission's Funeral Rule, 16 CFR part 453.[180] The Commission believes that most telephone sales by funeral providers covered by the Funeral Rule will not be completed until after a face-to-face sales presentation. Such transactions would be exempt under § 310.6(c), discussed below. It is therefore unnecessary to specifically exempt those transactions from the provisions of this Rule.

Other commenters requested that the Commission reconsider its decision not to exempt prior business relationships or established businesses.[181] The Commission is not persuaded that exemptions defined in such a manner would be workable, nor does the Commission believe they are necessary, given the changes elsewhere in the Rule that focus it more narrowly. Indeed, one of the commenters on the initially proposed Rule that strongly advocated a ''safe harbor'' provision for established businesses has indicated that such an exemption is unnecessary because the revised proposed Rule was more narrowly and appropriately focused.[182]

Section 310.6(a) exempts pay-per-call services subject to the Commission's 900-number Rule, 16 CFR part 308, since that Rule's extensive requirements and prohibitions governing these transactions already provide customers with substantial protections regarding the deceptive or abusive practices that are the subject of the Telemarketing Sales Rule.

Section 310.6(b) exempts the sales of franchises subject to the Commission's Franchise Rule, 16 CFR part 436. As discussed *supra*, the revised proposed Rule had defined the term ''investment opportunity'' in § 310.2(j) to exclude franchise sales. In order to make it clear that such transactions are *not* covered by the Telemarketing Sales Rule, the Commission has decided to add a separate exemption in § 310.6(b) for sales of franchises covered by the Franchise Rule, rather than to rely upon the definition of ''investment opportunity'' to accomplish this result. The Commission's Franchise Rule contains requirements and prohibitions that apply to the sale of franchises and business opportunities and that already provide customers with substantial protections. Subsequent to the publication of the NPR in this proceeding, the Commission issued a request for comments on the Franchise Rule as part of its periodic regulatory review of Commission trade regulation rules and guides.[183] The Commission believes it is more appropriate to consider within the framework of that review process whether any further action is needed to address the sale of franchises, including those employing telemarketing. Following this approach, the Commission ensures that any new requirement or prohibition applicable to franchises will be codified in one regulation—the Franchise Rule—rather than spread out over two separate Rules.

One commenter (DSA) maintained that business ventures that are not

[174] *See, e.g.,* initial comments: NRF at 41; ARDA at 37–38.

[175] NAAG at 25.

[176] One commenter suggested requiring that any agreement between the parties established under § 310.5(c) would also govern who is to maintain the records in the event of a dissolution. BSA at 7. The Commission believes that the division of responsibilities set forth in the Final Rule appears to be the most appropriate with regard to the types of records to be maintained.

[177] *See, e.g.,* NCL at 16; NACAA at 8; NAAG at 23–25.

[178] *See, e.g.,* NCL at 16.

[179] *See, e.g.,* ACRA at 6–7; IBM at 19–23; FFF; BPIA at 10–12.

[180] *See generally* MFDA.

[181] IBM at 19–23; ACRA at 6–7.

[182] Time Warner at 2–3.

[183] 60 FR 17656 (April 7, 1995).

covered by the Franchise Rule should be exempted from the definition of investment opportunities as well.[184] The Commission disagrees. When a business venture is not covered by the Franchise Rule, then consumers do not receive the protection afforded by that Rule's pre-sale disclosure requirements. Therefore, it is appropriate that telephone sales of such ventures should be covered by this Rule, so that consumers may receive the benefit of its protections.[185]

Section 310.6(c) exempts ''telephone calls in which the sale of goods or services is not completed, and payment or authorization for payment is not required, until after a face-to-face sales presentation by the seller.'' This exemption reflects the Commission's enforcement experience that the occurrence of a face-to-face meeting limits the incidence of telemarketing deception and abuse. The paradigm of telemarketing fraud involves an interstate telephone call in which the customer has no other direct contact with the caller. The Commission has deleted the language in the revised proposed Rule which would have required the consumer to have an opportunity to examine the goods or services offered. Many commenters pointed out that consumers would not be able to examine an intangible service, nor would they be able to examine each item that was described in a catalog used by the seller in a sales presentation.[186] Furthermore, DSA pointed out that the requirement that a consumer be given the opportunity to examine the good or service was contrary to most State telemarketing laws and might preempt a large body of existing State law.[187]

This exemption also covers those sales that begin with a face-to-face sales presentation and are later completed in a telephone call. The emphasis in this exemption is on the face-to-face contact between the buyer and seller, which distinguishes these transactions from those of telemarketing that are completed without face-to-face contact between buyer and seller.

Section 310.6(d) exempts calls initiated by a customer that are not the result of any solicitation by a seller or telemarketer. Such calls are not deemed to be part of a telemarketing ''plan, program, or campaign * * * to induce the purchase of goods or services'' under the Act.[188] This exemption covers incidental uses of the telephone that are not in response to a direct solicitation, *e.g.,* calls from a customer to make hotel, airline, car rental, or similar reservations, to place carry-out or restaurant delivery orders, or to obtain information or customer technical support.

Section 310.6(e) exempts calls initiated by a customer in response to general media advertisements, other than direct mail solicitations, unless the calls are in response to an advertisement relating to investment opportunities, credit repair, recovery rooms, or advance fee loans. This exemption applies to calls in response to television commercials, infomercials, home shopping programs, magazine and newspaper advertisements, and other forms of mass media advertising and solicitations. This exemption also covers calls from a customer in response to a business listing in the Yellow Pages or similar general directory listing. The Commission does not intend that telephone contacts in response to general media advertising be covered under the Rule. In the Commission's experience, calls responding to general media advertising do not typically involve the forms of deception and abuse the Act seeks to stem. Deceptive general media advertising will continue to be subject to enforcement actions under the FTC Act.

On the other hand, the Commission knows that some deceptive sellers or telemarketers use mass media or general advertising to entice their victims to call, particularly in relation to the sale of investment opportunities, specific credit-related programs, and recovery rooms. Given the Commission's experience with the marketing of these deceptive telemarketing schemes through television commercials, infomercials, magazine and newspaper advertisements, and other forms of mass media advertising, the Commission has excluded these activities from the general media advertising exemption.

USPS recommended that the Commission designate prize promotions as one of the types of telemarketing that will not be entitled to claim a general media advertising exemption.[189] USPS pointed out that deceptive telemarketers have proven to be very adaptable and that the general media advertising exemption may be a major loophole for those with a ''gift for developing 'new and improved' frauds.'' USPS cautioned that deceptive telemarketers may take advantage of the exemption by fashioning false and deceptive print and broadcast media ads instead of using direct mail. The Commission agrees that deceptive telemarketers are adept at circumventing regulations. However, it is impossible to predict accurately the manner in which their resourcefulness will manifest itself. The Commission's law enforcement experience relating to deceptive telemarketing has not identified a problem with general media advertising of prize promotions, unlike the problems that have arisen with the enumerated telemarketing businesses that have been excluded from the exemption. In fact, it would likely be much more difficult to persuade consumers that they have been ''specially selected'' to receive a prize if the solicitation relating to the prize were to be publicized on the television, in a magazine, or through other mass media. Therefore, the Commission has decided to retain the exemption for mass media advertising of prize promotions. The Commission will reconsider that position if general advertising of prize promotions becomes a problem after the Final Rule has been in effect.

Section 310.6(f) of the Final Rule exempts calls from a customer in response to a direct mail solicitation that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3(a)(1) of this part for any item offered in the direct mail solicitation. In the Commission's experience, such solicitations are not uniformly related to the forms of deception and abuse the Act seeks to stem, nor are they uniformly unrelated to such misconduct. Rather, in certain discrete areas of telemarketing, such solicitations often provide the opening for subsequent deception and abuse. The Commission has drawn upon its enforcement experience, identified those problem areas, and excluded them from this exemption. The exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to any of several categories of goods or services: investment opportunities, credit repair, recovery rooms, advance fee loans, or prize promotions.

Many commenters from law enforcement and consumer groups strongly recommended that the Commission also exclude direct mail solicitations involving prize promotions from this exemption.[190] They pointed out that direct mail solicitations of prize promotions are a major source of

[184] DSA at 2.

[185] DSA at 3–4. DSA was prompted to raise this suggestion by its concern that the recruitment of persons to engage in the direct sale of goods or services might be considered a ''business opportunity'' which may be covered by this Rule. However, this concern is unfounded given the exemption of face-to-face sales from coverage of this Rule, included in § 310.6(c).

[186] DSA at 5–7; ACA at 2; DMT&H at 1; HEARSTCO at 2–3; MSSC at 4.

[187] DSA at 5–7.

[188] See Senate Report at 8.

[189] USPS at 10.

[190] Mass AG at 5–6; IA DOJ at 7; USPS at 10–11.

consumer complaints and consumer injury, and should remain within the Rule's coverage. The Commission is persuaded that abuse in direct mail prize promotions has been such a major source of consumer injury that an exemption no matter how carefully crafted, might provide loopholes which deceptive promoters might exploit to evade the Rule. Therefore, the Commission has added prize promotions to the list of telemarketing areas that are excluded from the direct mail solicitation exemption.

In excluding prize promotions from the direct mail solicitation exemption, the Commission has been mindful of the burdens this action might place on legitimate prize promoters. However, the Commission believes that the changes elsewhere in the Rule have reduced substantially the burden on legitimate industry by providing maximum flexibility to business as long as customers receive the necessary information and protections. Furthermore, the Commission believes that any increased burden will be minimal. Based on information provided during the comment periods and the public workshop, the legitimate prize promotion industry already complies substantially with most of the Rule's provisions. For example, legitimate prize promoters do not misrepresent the prize promotion or the goods and services offered; they do not debit customer's accounts without express verifiable authorization; and they maintain the required records.

Several commenters also pointed out that the wording of the exemption in the revised proposed Rule would allow direct mail solicitors to claim an exemption even if a direct mail solicitation were totally deceptive, since the exemption was predicated solely on making the disclosures required under § 310.3(a)(1).[191] The exemption did not require that the disclosures be truthful, only that disclosures be made. It was not the Commission's intent to allow an exemption predicated upon untruthful § 310.3(a)(1) disclosures. Therefore, § 310.6(f) of the Final Rule specifies that the disclosures be made truthfully, in addition to being made clearly and conspicuously.

IBM noted that the Rule's exemptions for general media advertising in § 310.6(e) and direct mail solicitations in § 310.6(f) are broader and do not contain the prohibitions against further solicitation during calls from consumers that the Telemarketing Act places on catalog sales.[192] The commenter stated that ''this produces the potentially perverse result of regulating most intensely the marketing medium that provides the greatest indicia of legitimacy and the most information for the consumer.'' This is an illusory problem since catalogs, being ''direct mail solicitations,'' are exempt from the Rule, through § 310.6(f), if they clearly, conspicuously, and truthfully disclose all material information required in § 310.3(a)(1).

Section 310.6(g) exempts ''telephone calls between a telemarketer and any business, except calls involving the retail sale of nondurable office or cleaning supplies.'' Several industry commenters suggested that a ''business-to-business'' exemption was defensible only if provided on an across-the-board basis, without exceptions.[193] Industry also asked that any exemption be expanded to include entities other than businesses, *e.g.*, government agencies and educational institutions.[194] Numerous office and cleaning supplies businesses also expressed strong dissatisfaction with being covered by the Rule, arguing that the burden of complying with the Rule will fall on legitimate sellers and telemarketers, while the deceptive operators will simply ignore the requirements.[195]

Enforcement and consumer agencies, on the other hand, cautioned against providing any business-to-business exemption because of the potential loophole such an exemption would provide.[196] They predicted the revival of ''advertising specialty'' scams that victimize small businesses with promises of fabulous prizes in exchange for the purchase of promotional items engraved with the business's name. These commenters also predicted the rise of other scams targeting small businesses. Law enforcement agencies suggested that, if a business-to-business exemption were to be included in the Final Rule, the Commission should expand the list of goods or services that would be excluded from the exemption. They suggested that advertising and promotional specialties and the sale of listings in classified directories and other publications be excluded from the exemption.[197] Similarly, commenters from the office supplies industry argued that they should not be singled out for inclusion under the Rule because other industries selling to businesses also have a history of abuses, *e.g.*, specialty or business promotional products, investment opportunities, and premium and prize promotions.[198]

The Commission believes that Congress did not intend that every business use of the telephone be covered by this Rule. Nevertheless, the Commission's extensive enforcement experience pertaining to deceptive telemarketing directed to businesses, particularly office and cleaning supply scams, amply demonstrate that an across-the-board exemption for business-to-business contacts is inappropriate. The Commission recognizes that there may have been past problems with telemarketing sales of products other than office or cleaning supplies to businesses. However, the Commission's enforcement experience against deceptive telemarketers indicates that office and cleaning supplies have been by far the most significant business-to-business problem area; such telemarketing falls within the Commission's definition of deceptive telemarketing acts or practices. Therefore, the Commission has decided not to expand the list of business-to-business telemarketing activities excluded from the exemption. The Commission will reconsider that position if additional business-to-business telemarketing activities become problems after the Final Rule has been in effect.

BPIA suggested that, if the Commission does not believe a total exemption for business-to-business contacts is appropriate, there may be other modifications to the language of the Rule that would provide relief to the legitimate office supplies dealers who would otherwise be subject to the Rule's provisions.[199] The Commission believes that each of the suggested modifications would provide substantial loopholes for deceptive telemarketers. For example, one suggestion was that, in the context of office and cleaning supplies, ''telemarketer'' be defined as only those operations that sell their products exclusively through telemarketing. This definition would open the door to deceptive telemarketers who would need to set up only a *de minimis* number of non-telemarketing sales, *e.g.*, by sales representative or by catalog, in

[191] IA DOJ at 7; Mass AG at 5–6; USPS at 10–11.

[192] IBM at 15–17. The Telemarketing Act exempts solicitation of sales through the mailing of a catalog as long as the seller or telemarketer ''does not solicit customers by phone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation.'' § 6106(4).

[193] *See, e.g.*, DMA at 6–7; AAP at 3; BPIA at 4–7.

[194] *E.g.*, AAP at 3.

[195] *See, e.g.*, Allard, Allied, B&D, BESCO, Cook, Cornerstone, Daisy, Decora, Guernsey, Jud, MBR, Midesha, Pelican, Sablatura, Total, Way.

[196] *See, e.g.*, USPS at 11–12; IA DOJ at 8.

[197] *See, e.g.*, USPS at 11–12; IA DOJ at 8.

[198] BPIA at 4–7.

[199] BPIA at 10–12.

order to claim the exemption. The same problem would arise from BPIA's alternative suggestion that the Rule exempt telemarketing of office supplies where the initial sale was made by a sales representative in person, in writing, electronically, or as a result of receipt of a catalog. Again, this exemption would open the door to deceptive telemarketers who would need to set up only an initial sale through a deceptive catalog or other means in order to claim the exemption. BPIA's third alternative was to define ''telemarketer'' as a person employed or under contract with an office or cleaning supply dealer that sells or distributes fewer than 100 different products. This alternative presents evidentiary obstacles to law enforcement. Law enforcement agencies would have to expend scarce resources to prove that the number of products sold is less than the threshold of 100 and argue over whether each brand or size or color of toner or paper or other product constitutes a separate product. The Commission therefore rejects these suggestions as unworkable.

On the other hand, telephone calls to sell nondurable office and cleaning supplies are the only business-to-business contacts that are not exempt from this Rule. The Commission believes that the conduct prohibitions and affirmative disclosures mandated by the Final Rule are crucial to protect businesses—particularly small businesses and nonprofit organizations—from the harsh practices of some unscrupulous sellers of those products. Nevertheless, it recognizes that the Rule may result in a disparate impact on the legitimate sellers of office and cleaning supplies as opposed to other businesses exempted from the Rule. Therefore, the Commission wishes to balance the benefits derived from compliance with the Rule's prohibitions and disclosure requirements against the burdens imposed upon the office and cleaning supply industry—minimizing such burdens where possible.[200]

After considering all areas of the Rule for possible minimization of compliance burdens to the legitimate office and cleaning supply industry, the Commission has decided to exempt sellers or telemarketers engaged in the sale of nondurable office and cleaning supplies from the recordkeeping requirements in § 310.5 of the Rule. The Commission realizes that exempting sellers and telemarketers of office and cleaning supplies from the recordkeeping requirements may make law enforcement's job more difficult in some situations. However, the Commission has determined that the costs imposed on legitimate industry from the recordkeeping requirements under § 310.5 of the Rule outweigh the benefits compliance with that Section would afford. Based on its own law enforcement actions against deceptive sellers and telemarketers, the Commission does not believe that such an exemption will significantly obstruct law enforcement's efforts to stop unlawful activities by sellers and telemarketers of nondurable office and cleaning supplies.

G. Section 310.7: Actions by States and Private Persons

The Telemarketing Act permits certain State officials and private persons to bring civil actions in an appropriate federal district court for violations of this Rule.[201] Section 310.7(a) sets forth the notice that such parties must provide to the Commission regarding those actions. Such parties must serve written notice of their action on the Commission, if feasible, prior to initiating an action under this Rule. The notice must include a copy of the complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State official or private person must serve the Commission with the required notice immediately upon instituting its action.

One commenter suggested that the street address and telephone number be added to the mailing address given in the Rule in order to clarify that overnight express delivery or facsimile would also be appropriate for providing written notice of State action to the Commission.[202] The Commission believes that such an agreement on service can be arranged informally between the Commission and the States. Such an informal agreement also provides the flexibility needed as addresses and telephone numbers may change in the future.

Section 310.7(b) of the revised proposed Rule stated that the Rule ''does not vest the attorney general of any State or any private person with jurisdiction over any person or activity outside the jurisdiction of the FTC Act.''[203] This provision prompted considerable comment from State law enforcement agencies, who noted that the States are able to sue third parties (including many parties who are exempt from FTC jurisdiction) in State court for assisting and facilitating telemarketing fraud.[204] The States had anticipated that, in filing federal suits under the Act, State pendent claims could and would be joined to the federal causes of action. The States expressed concern that the language in § 310.7(b) could be construed to strip States of the right to bring pendent claims against entities that are exempt from FTC jurisdiction.[205]

The Commission does not believe that the language of § 310.7(b) in the revised proposed Rule would have compelled the construction that prompted NAAG's concern; but to clarify that the Commission intends to provide no support to such a construction, it has decided to delete § 310.7(b).

Congress clearly intended that the Act and the Rule serve to enhance, and not detract from, State law enforcement efforts to address telemarketing fraud. As NAAG pointed out,[206] section 6103(f) of the Act contains language which makes it clear that the limitation in section 6105(b) of the Act does *not* restrict a State's authority to pursue any claim or action under its own laws in State court. Therefore, the Final Rule adds a new § 310.7(b), with language tracking § 6103(f)(1) of the Telemarketing Act to clarify, in the Rule, that notwithstanding jurisdictional limitations of the FTC Act, an authorized State official is not inhibited from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

III. Preemption

Section 310.8 of the revised proposed Rule stated that ''(n)othing in (the Rule) shall be construed to preempt any State law that is not in direct conflict with any provision of (the Rule).'' This was intended to provide that State statutes, rules, or regulations concerning telemarketing that contain prohibitions or requirements that are not imposed by this Rule would remain in effect, to the extent that these statutes do not conflict with this Rule. This provision was intended to make clear that State laws can exceed the threshold-level requirements established by the Rule as

[200] BPIA estimates that, based on Dunn and Bradstreet data for 1995, there are over 6,000 office supply dealers in the United States, and the vast majority of these firms have annual revenues of less than $2 million. BPIA at 8.

[201] *See* 15 U.S.C. 6103 and 6104.

[202] *See generally* DMA.

[203] The Act states: ''(N)o activity which is outside the jurisdiction of (the FTC) Act shall be affected by this Act.'' 15 U.S.C. 6105(a). In addition, the legislative history includes the statement that: ''(t)he legislation * * * does not vest the FTC, the State attorneys general, or private parties with jurisdiction over any person over whom the FTC does not otherwise have authority.'' Senate Report at 14.

[204] *See, e.g.,* NAAG at 21; VT AG at 2; NACAA at 8.

[205] *Id.*

[206] NAAG at 8.

long as they do not directly conflict with the Rule's requirements.

This provision prompted considerable comment from industry and from law enforcement and consumer groups.[207] Industry generally recommended that the Rule adopt a preemption standard based on ''inconsistency,'' which has been used by the FTC in its Mail or Telephone Order Rule, 16 CFR part 435. They argued that such a standard would preempt State and local laws and regulations that are inconsistent with the federal rules to the extent that consumers are not provided with equal or greater protections, and would preempt those provisions of State law which provide the same requirements as the federal rules, but which demand that the requirements be undertaken in a fashion different from the federal law.

Law enforcement asked that the Commission clarify that the Rule does not preempt State law and recommended that a presumption against preemption be included in the text of the Rule.[208] They noted that the Act did *not* authorize the FTC to preempt State laws and that, by including a preemption section, States with stronger regulations than the Rule could find themselves facing preemptive challenges since the stricter State regulations could be seen to conflict with federal law. GA OCA suggested that, if the FTC intends to include a preemption section, the Rule should use the traditional standard of preemption used in other FTC rules, *i.e.*, that State law is preempted only to the extent that it provides less consumer protection than does the Rule.[209] NASAA recommended that only State regulations requiring conduct that would directly conflict with the federal rule should be exempted.[210]

NAAG commented most extensively on this issue, urging deletion of any preemption provision from the Rule.[211] NAAG stated that the language of the revised proposed Rule deviated sufficiently from the language of the statute that it could be used by defendants to argue that the FTC, by adoption of its Rule, has preempted enforcement of some State laws which are stronger than the FTC Rule. NAAG further stated that although it ''disagree[s] that the Rule has this preemptive effect, or in fact can have this effect when Congress clearly spoke (in section 4(f)(1) of the Act, 15 U.S.C. 6103(f)(1)) in favor of no preemption, history tells us that such arguments will be made and, as such will make enforcement of our more consumer-friendly State laws more time-consuming and difficult.'' NAAG further predicted that deceptive telemarketers defending against a State enforcement action may point to the Commission's deletion of certain provisions included in the initial version of the Rule published with the NPR as evidence that in rejecting those provisions, the Commission effectively preempted similar provisions in State law.

The Commission does not intend any such preemptive effect and is persuaded by NAAG's arguments that the quoted preemption provision in the revised proposed Rule should be dropped. By including § 310.7(b) that tracks section 4(f)(1) of the Act, 15 U.S.C. 6103(f)(1), the Commission intends to underscore that the Rule does not ''prohibit any attorney general or other authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.''

IV. Effective Date

The revised proposed Rule set an effective date of 30 days from the date the Rule was prescribed. Most industry commenters stated that 30 days was inadequate to permit systems to be refined, review and rewrite materials, review and renegotiate contracts between sellers and telemarketers, and train workers.[212] The Commission agrees that there should be a longer period of time between the date this Rule is prescribed and the effective date in order to provide sufficient time for industry members to familiarize themselves with the requirements of the Final Rule and to ensure that their operations are in compliance. The Commission believes four months is an adequate amount of time to address the industry's needs in this regard. Accordingly, the effective date for this Rule is December 31, 1995.

V. Regulatory Flexibility Act

In publishing the initially proposed Rule, the Commission certified, subject to subsequent public comment, that the proposed Rule, if promulgated, would not have a significant economic impact on a substantial number of small entities and, therefore, that the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), requiring an initial regulatory analysis, did not apply.[213] The Commission noted that any economic costs imposed on small entities by the proposed Rule were, in many instances, specifically imposed by statute. Where they were not, efforts had been made to minimize any unforeseen burden on small entities. The Commission determined, on the basis of the information available to the staff at that time, that the proposed Rule would result in few, if any, independent additional costs. The Commission nonetheless requested comment on the effects of the proposed Rule on costs, profitability, competitiveness, and employment in small entities, in order not to overlook any substantial economic impact that would warrant a final regulatory flexibility analysis.[214]

The information and comments received by the Commission did not provide sufficient reliable statistical or analytical data to quantify precisely the effect, differential or otherwise, of the proposed Rule on small entities versus its effect on all entities that may be subject to this Rule. Accordingly, the Commission has determined that public comments and information before the Commission do not alter the conclusion that the Final Rule would not have a sufficiently significant economic impact on a substantial number of small entities to warrant a final regulatory flexibility analysis under the Regulatory Flexibility Act. This notice serves as certification to that effect to the Small Business Administration.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA''),[215] and implementing regulations of the Office of Management and Budget (''OMB'')[216] require agencies to obtain clearance for regulations that involve the ''collection of information,'' which includes both reporting and recordkeeping requirements. In the RNPRM, the Commission proposed requiring sellers or telemarketers to maintain certain records relating to telemarketing transactions. The proposed recordkeeping requirements were ''collections of information'' as defined by the OMB regulations implementing the PRA. The proposed requirements, therefore, were submitted to OMB for review under the PRA and were

[207] *See, e.g.*, Spiegel at 1; DMA at 9–11; Olan at 4–6; ATA at 2; NASAA at 2; NJ DCA at 5; MD AG at 1–2; VT AG at 3; GA OCA at 3–4; MA AG at 6–7; NCL at 4; IA DOJ at 8; NAAG at 6–12.

[208] Several commenters requested clarification that county, municipal or other local laws would not be preempted by the Rule. *See generally* Napa; Hillsborough; NACAA; NYC; San Diego.

[209] GA OCA at 3–4.

[210] NASAA at 2.

[211] NAAG at 6–12. NAAG's position was supported by AARP, CFA, NACAA, IA DOJ, and USPS.

[212] *See, e.g.*, AAF at 1; CHC at 7; DMA at 11–14; NIMA at 4; IBM at 23–26; Olan at 6; Spiegel at 2; HII at 2.

[213] 60 FR 8313, 8322 (Feb. 14, 1995).

[214] *Id.*

[215] 44 U.S.C. 3501–3520.

[216] 5 CFR 1320.7(c).

published in the **Federal Register** for separate comment.[217]

The Commission estimated that approximately 40,000 industry members could be affected by the revised proposed Rule's recordkeeping requirements. It further estimated that no more than 100 companies would find it necessary to develop, modify, construct, or assemble materials or equipment in order to comply with the revised proposed Rule. The Commission further estimated that it would take these 100 entities approximately 100 hours each during the first year of compliance to assemble the necessary equipment, for a total of 10,000 burden hours. It also estimated that the companies that already have recordkeeping systems would require only one hour to comply with the proposed recordkeeping requirements, for a total burden estimate of 49,900 hours. The Commission requested that this figure be rounded up to a burden estimate of 50,000 hours. The additional burden hours, which was a yearly estimate, allowed for approximately 100 new companies to enter the industry during each succeeding year without requiring the Commission to modify the burden estimate.

The revised proposed Rule required sellers and telemarketers to provide certain disclosures in telemarketing transactions. Specifically, the revised proposed Rule required sellers or telemarketers to disclose in an outbound telephone call, the identity of the seller; the purpose of the call; the nature of the goods or services; and that no purchase was necessary to win if a prize promotion was offered in conjunction with a sales offer of goods or services. If requested, the telemarketer was required to disclose the no-purchase entry method for the prize promotion.

The Commission estimated that 40,000 industry members make approximately 9 billion calls per year, or 225,000 calls per year per company. However, under §§ 310.6(d) and (e) of the revised proposed Rule, if an industry member chose to solicit consumers by using advertising media other than direct mail or by using direct mail solicitations that make certain required disclosures, it would be exempted from complying with other disclosures required by the Rule. Because the burden of complying with written disclosures would be much lower than the burden of complying with all the Rule's provisions, the Commission estimated that at least 9,000 firms would choose to adopt telemarketing methods that exempt them from the revised proposed Rule's oral disclosure requirements. The Commission estimated that it would take 7 seconds for callers to disclose the required information. It also estimated that at least 60% of calls resulted in ''hang-ups'' before the seller or telemarketer could make all the required oral disclosures and therefore lasted only 2 seconds. Accordingly, the Commission estimated that the total disclosure burden of the revised proposed Rule's requirements was approximately 250 hours per firm or 7.75 million hours.

The revised proposed Rule also required additional disclosures before the customer paid for goods or services. Specifically, the sellers or telemarketers were required to disclose the total costs to purchase, receive, or use the offered goods or services; all material restrictions; all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies if a representation about the policy was part of the sales offer; and that no purchase was necessary to win if a prize promotion was offered in conjunction with a sales offer of goods or services. The telemarketer also had to disclose the non-purchase entry method for the prize promotion. The Commission estimated that approximately 10 seconds were necessary to make these required disclosures orally. However, these disclosures were only required to be made where a call resulted in an actual sale. The Commission estimated that sales occur in approximately 6 percent of telemarketing calls. Accordingly, the estimated burden for the disclosures was 37.5 hours per firm or 1.163 million hours.

Alternately, the disclosures required before the customer paid for goods or services could be made *in writing.* The Commission estimated that approximately 9,000 firms would choose to comply with the optional written disclosure requirement. Although this burden estimate was difficult to quantify, mailing campaigns appeared to be much less burdensome for firms than were individual oral disclosures. The Commission also found that these disclosure requirements were closely consistent with the ordinary business practices of most members of the industry. Absent the recordkeeping requirements, the Commission believed that this was the type of information that would be retained by these entities in any event during the normal course of business because it would be useful in resolving private, non-governmental inquiries and disputes. Nonetheless, the Commission had no reliable data from which to conclude that there was *no* separately identifiable burden associated with this provision. Therefore, it estimated that a typical firm would spend approximately 10 hours per year engaged in activities ensuring compliance with this provision of the Rule, for an estimated burden estimate of 90,000 hours.

No comments were received addressing the Commission's paperwork burden projections. Therefore the Commission sees no reason to revise its projections of burden per year per covered industry member, or to modify the recordkeeping or disclosure requirements in the revised proposed Rule.

Because the aforementioned requirements would involve the ''collection of information'' as defined by the regulations of OMB, the Commission was required to submit the proposed requirements to OMB for clearance, 5 CFR 1320.13, and did so as part of this proceeding. OMB approved the request and assigned control number 3084–0097 to the information collection requirements. This approval will expire on July 31, 1998, unless it has been extended before that date.

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

Accordingly, the Commission amends chapter I, subchapter C of 16 CFR by adding a new part 310 to read as follows:

PART 310—TELEMARKETING SALES RULE

Sec.
310.1 Scope of regulations in this part.
310.2 Definitions.
310.3 Deceptive telemarketing acts or practices.
310.4 Abusive telemarketing acts or practices.
310.5 Recordkeeping requirements.
310.6 Exemptions.
310.7 Actions by states and private persons.
310.8 Severability.

Authority: 15 U.S.C. 6101–6108.

§ 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108.

§ 310.2 Definitions.

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for

[217] 60 FR 32682 (June 23, 1995).

money, goods or services, or anything else of value.

(b) *Attorney General* means the chief legal officer of a State.

(c) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(d) *Commission* means the Federal Trade Commission.

(e) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(f) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(g) *Credit card sales draft* means any record or evidence of a credit card transaction.

(h) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(i) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(j) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(k) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services.

(l) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

(m) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

(n) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services.

(o) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(p) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(q) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(r) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(s) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(t) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer.

(u) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: Contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term ''further solicitation'' does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

§ 310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays [1] for goods or services offered, failing to disclose, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer; [2]

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion; and the no purchase/no payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate; and

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(2) Misrepresenting, directly or by implication, any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win

[1] When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment.

[2] For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226, compliance with the disclosure requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with § 310.3(a)(1)(i) of this Rule.

a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability; or

(vii) A seller's or telemarketer's affiliation with, or endorsement by, any government or third-party organization;

(3) Obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:

(i) Express written authorization by the customer, which may include the customer's signature on the negotiable instrument; or

(ii) Express oral authorization which is tape recorded and made available upon request to the customer's bank and which evidences clearly both the customer's authorization of payment for the goods and services that are the subject of the sales offer and the customer's receipt of all of the following information:

(A) The date of the draft(s);

(B) The amount of the draft(s);

(C) The payor's name;

(D) The number of draft payments (if more than one);

(E) A telephone number for customer inquiry that is answered during normal business hours; and

(F) The date of the customer's oral authorization; or

(iii) Written confirmation of the transaction, sent to the customer prior to submission for payment of the customer's check, draft, or other form of negotiable paper, that includes:

(A) All of the information contained in §§ 310.3(a)(3)(ii)(A)–(F); and

(B) The procedures by which the customer can obtain a refund from the seller or telemarketer in the event the confirmation is inaccurate; and

(4) Making a false or misleading statement to induce any person to pay for goods or services.

(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3(a) or (c), or § 310.4 of this Rule.

(c) *Credit card laundering.* Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

§ 310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person, for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney; or

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person.

(b) *Pattern of calls.* (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number; or

(ii) Initiating an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered.

(2) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) if:

(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii);

(ii) It has trained its personnel in the procedures established pursuant to § 310.4(b)(2)(i);

(iii) The seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted, in compliance with § 310.4(b)(1)(ii); and

(iv) Any subsequent call is the result of error.

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's location.

(d) *Required oral disclosures.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call to fail to disclose promptly and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a

prize promotion is offered. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion.

§ 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of $25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services; [3]

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by § 310.5(a) in any form, and in the manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by § 310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§ 310.5(a)(1)–(3) and (5); the telemarketer shall be responsible for complying with § 310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this section.

§ 310.6 Exemptions.

The following acts or practices are exempt from this Rule:

(a) The sale of pay-per-call services subject to the Commission's ''Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992,'' 16 CFR part 308;

(b) The sale of franchises subject to the Commission's Rule entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,'' 16 CFR part 436;

(c) Telephone calls in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller;

(d) Telephone calls initiated by a customer that are not the result of any solicitation by a seller or telemarketer;

(e) Telephone calls initiated by a customer in response to an advertisement through any media, other than direct mail solicitations; provided, however, that this exemption does not apply to calls initiated by a customer in response to an advertisement relating to investment opportunities, goods or services described in §§ 310.4(a) (2) or (3), or advertisements that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit;

(f) Telephone calls initiated by a customer in response to a direct mail solicitation that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3(a)(1) of this Rule for any item offered in the direct mail solicitation; provided, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, goods or services described in §§ 310.4(a) (2) or (3), or direct mail solicitations that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit; and

(g) Telephone calls between a telemarketer and any business, except calls involving the retail sale of nondurable office or cleaning supplies; provided, however, that § 310.5 of this Rule shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

§ 310.7 Actions by States and private persons.

(a) Any attorney general or other officer of a State authorized by the State to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, and shall include a copy of the State's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this section shall prohibit any attorney general or other authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

§ 310.8 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga in Telemarketing Sales Rule, Matter No. R411001

As required by the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Commission today promulgates a Telemarketing Sales Rule. I join my colleagues in promulgating the Rule, which generally should be beneficial in combatting telemarketing fraud. I remain concerned, however, about the legal basis for the exemptions (and exceptions to the exemptions) for certain categories of business activities

[3] For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with § 310.5(a)(3) of this Rule.

under § 310.6 of the Rule. The Commission has adopted an intricate scheme of exemptions, relying primarily on its law enforcement experience to justify its selective application of the requirements of the Rule. The Telemarketing and Consumer Fraud and Abuse Prevention Act does not provide the Commission with the express authority to grant exemptions from the Rule, and the better reading of the statute is that the Commission does not have the authority to exempt some of the categories of business activities in § 310.6. Although the exemptions may be reasonable as a matter of policy, the Commission does not have the authority to second-guess the Congress. *See Public Citizen* v. *FTC*, 869 F.2d 1541, 1553–57 (D.C. Cir. 1989).

APPENDIX—LIST OF COMMENTERS AND ACRONYMS, TELEMARKETING SALES RULE PROPOSALS

Acronym	Commenter
2M	2M Office Supply & Furniture**
3D	3D Office Supply and Printing**
AAAA	American Association of Advertising Agencies***
AAF	American Advertising Federation***
AAP	Association of American Publishers***
AARP	American Association of Retired Persons***
ABA	American Bankers Association***
ABI	Archbold Buckeye, Inc.*
ACA	American Cemetery Association***
ACB	Associated Credit Bureaus, Inc.*
ACRA	American Car Rental Association***
ADC	American Distributing Company***
ADS	ADS Teleservices*
ADVANTA	Advanta Corporation*
AFSA	American Financial Services Association*
A&H	Arter & Hadden*
AIG	American Impact Group*
AITS	Ass'n of Independent Television Stations, Inc.*
ALIC	Allstate Life Insurance Company*
ALLARD	Allard's**
ALLIED	Allied Strauss Office Products**
A–MARK	A-Mark Precious Metals, Inc.*
AMCI	Allstate Motor Club, Inc.*
AMERINET	AmeriNet, Inc.*
AMEX	American Express Company*
AMOC	Arizona Mail Order Company, Inc.*
ANA	Association of National Advertisers***
ANDREWS	Andrews Satellite & Home Theater*
ANN ARBOR	Ann Arbor News***
Anonymous	4 comments**
APAC	APAC TeleServices*
APN	American Publishers Network, Inc.*
ARA	Arizona Retailers Association*
ARAPAHOE	Arapahoe Heating Service, Inc.**
ARDA	American Resort Development Association***
ARMIN	Armin, Larry**
ASAE	American Society of Association Executives*
ASH	Ash, Paul T.**
ASTA	American Society of Travel Agents, Inc.***
AT&T	AT&T Corp.***
ATA	American Telemarketing Association***
ATAA	Air Transport Association of America**
ATFA	American Telephone Fundraisers Association***
ATLANTA	Atlanta Journal & Atlanta Constitution*
AUTOSCRIBE	AutoScribe Corporation*
AVALON	Avalon Communications**
AWMI	American West Marketing, Inc. (comments filed by two company representatives)*
BAGGS	Baggs, Andrew*
BAGWELL	Bagwell, Linda L.*
BAKER	Baker, Alden & Blanche**
BALLARD	Ballard, Barbara**
BAUER	Eddie Bauer, Inc.*
BAY CITY	Bay City Times*
B&D	B&D Office City**
BEAR	Bear Creek Corporation (comments forwarded by The Honorable Mark Hatfield and The Honorable Bob Packwood)*
BEAVER	Beaver, Laurence E.**
BELLEVILLE	Belleville News-Democrat*
BENNETT	Bennett's Office Supply & Equipment (comments forwarded by The Honorable Phil Gramm and The Honorable Kay Bailey Hutchison)**
BESCO	BESCO Business Equipment & Supply Co.**
BFC	Brown Forman Corporation*
BILLER	Biller, Mr. & Mrs. Albert C.**
BIRKHOLZ	Birkholtz, Ted**

APPENDIX—LIST OF COMMENTERS AND ACRONYMS, TELEMARKETING SALES RULE PROPOSALS—Continued

Acronym	Commenter
BMCA	Beneficial Management Corporation of America*
BNC	Birmingham News Company***
BOA	Bank of America**
BOB	Bank of Boston*
BPIA	Business Products Industry Association***
BRADLEY	Bradley, MJP*
BRANNEN	Brannen, Mary**
BRANTLEY	Brantley, Lamar*
BREWSTER	Brewster, The Honorable Bill K.*
BROADBENT	Broadbent, Alan R.**
BROGDON	Brogdon, Doris R.**
BROSKI	Broski, Jo Ann**
BROWNELL	Brownell, Catherine A.**
BS MGMT	BS Management Group**
BSA	Business Software Alliance**
BUBRICK	Bubrick's Office Supply Inc.**
BURKLAND	Burkland, George B.**
BUTHER	Buther, Peggy**
CA	Commercial Appeal*
CAPITAL	Capital Press*
CAPUTO	Caputo, Harriet Q.*
CARDOZA	Cardoza, James E.**
CARMODY	Carmody, John**
CBA	Consumer Bankers Association***
CC	Circuit City Stores, Inc.**
CCA	Career College Association*
CDI	Circulation Development, Inc.*
CFA	Consumer Federation of America***
CHAMPLIN	Champlin, Josephine A.**
CHASE	Chase Manhattan Bank (USA)***
CHAVKA	Chavka, Marian**
CHC	Columbia House Company***
CHEMICAL	Chemical Bank*
CHERNIKOFF	Chernikoff, J.D.*
CHRISTENSON	Christenson, Carl E.**
CHRISTIAN	Christian Book Store & Office Supply**
CITICORP	Citicorp/Citibank***
CME	Center for Media Education*
CMOR	Council for Marketing and Opinion Research***
COALITION	Coalition of various companies*
COFFEY	Coffey, Laurie E.**
COMCAST	Comcast Corporation/Jones Intercable*
COMMINS	Commins, Kevin J.**
CONSORTIUM	Consortium of nonprofit organizations**
CONWAY	Conway National Bank*
COOK	Cook Office Machine & Supply Company**
COPYTEK	Copytek Office Products**
CORNELL	Cornell Group*
CORNERSTONE	Cornerstone Office Systems, Inc.**
COX	Cox Newspapers, Inc.*
CPA	Colorado Press Association*
CRAPO	Crapo, The Honorable Michael D.**
CRILLY	Crilly, Thomas W.***
CROAK	Croak, E. Patrick**
CROWLEY	Crowley, Claude**
CROWDER	Crowder, Mrs. Lillian A.**
CUCI	CUC International*
CUNA	Credit Union National Assn, Inc.**
CUNNINGHAM	Cunningham, Georgia**
CURRAN	Curran, Jeanne**
DAILY NEWS	Daily News*
DAILY OKLA	Daily Oklahoman*
DAISY	Daisy Wheel Ribbon Co., Inc.**
DANDER	Dander, David A.**
DAVENPORT	Davenport, Frances L. and Jay E.**
DAWSON	Dawson, Burton**
DCR	Daily Court Review*
DECORA	Decora Office Furniture/Supplies**
DEFAZIO	DeFazio, Dominick**
DENTON	Denton Publishing Company (comments forwarded by The Honorable Kay Bailey Hutchison, The Honorable Mac Thornberry and The Honorable Phil Gramm)*
DIAMOND	Diamond, Peter & Karen**

APPENDIX—LIST OF COMMENTERS AND ACRONYMS, TELEMARKETING SALES RULE PROPOSALS—Continued

Acronym	Commenter
DICK	Dick, Joseph A.**
DICKS	Dicks, Della**
DILLON	Dillon, William R.**
DIVERSIFIED	Diversified Marketing Service, Inc.*
DMA	Direct Marketing Association***
DMBE	Department of Marketing and Business Environment, Florida International University*
DMI	DialAmerica Marketing, Inc.***
DMSI	Direct Marketing Services, Inc.*
DMT&H	Dickerson, Mackaman, Tyler & Hagen, P.C.***
DONREY	Donrey Media Group*
DOUBLEDAY	Doubleday Book & Music*
DOUGLAS	Douglas Center Stock Farm**
DOW JONES	Dow Jones & Company, Inc.***
DSA	Direct Selling Association***
DSA–NEV	Direct Sales Association of Nevada*
DSI	Direct Sales International*
DURKEE	Durkee, Dixie**
DUSTIN	Dustin, Doris**
DW&Z	Dierman, Wortley & Zola, Inc.*
EAGLE	Eagle Newspapers (forwarded by The Honorable John M. McHughes)*
EAKES	Eakes Office Products Center, Inc.**
EDMUND	Edmund Scientific Company*
EDWARDS	Edwards, Susan E.**
EHRLICH	Ehrlich, The Honorable Robert L., Jr.*
ELLIOTT	Elliott Office Equipment Co., Inc.**
EMA	Electronic Messaging Association***
EMMONS	Emmons, Ethel B.*
EPSTEIN, A	Epstein, Ann C.**
EPSTEIN, R	Epstein, Rosalie**
EQUIFAX	Equifax Credit Information Services, Inc.*
ERIE	Erie Construction (2 copies: one original; one forwarded by The Honorable Marcy Kaptur)*
ERNST	Ernst, Michael*
EXPRESS	Express Office Products**
FAIRFAX	Fairfax County Dept of Consumer Affairs**
FAYETTE	Fayetteville Publishing Co.*
FEDEX	Federal Express*
FFF	Feature Films for Families**
FINGERHUT	Fingerhut Companies***
FLINN	Flinn, Richard M.**
FLINT	Flint Journal***
FLUCH	Fluch, Mrs. Louise R.**
FORD	Ford Office Supply**
FORD, W	Ford, Wendell**
FORMS–NC	Forms & Supplies, Inc. (NC)**
FORMS–TN	Forms and Supplies, Inc. (TN)**
FORNEY	Forney Messenger Inc.*
FORREST	Forrest Stationers**
FOSTER	Foster, Alice Wilks**
FOURNIER	Fournier, Stephanie**
FPC	Fayetteville Publishing Company (forwarded by The Honorable Bill Hefner)*
FRANKLIN	Franklin Mint***
FRB	Federal Reserve Banks*
FRB–SF	Federal Reserve Bank of San Francisco***
FREECOM	FreeCom Communications, Inc.*
FRIENDS	Friends Office Products**
F&W	F&W Publications*
GA OCA	Georgia Office of Consumer Affairs***
GABRIEL	Gabriel, Mrs. Harry J. Jr.*
GAIL	Gail's Office Supply Company**
GANNETT	Gannett Co., Inc.*
GARAVALIA	Garavalia, Barbara A.**
GARDNER	Gardner, Darien**
GCM	Good Cents Marketing*
GE	GE Appliances*
GEROVICAP	Gerovicap Pharmaceutical**
GGP	Gift Gallery Promotions*
GHA	Group Health Association of America*
GIBSON CO	C.J. Gibson Co., Inc.**
GIBSON, D	Gibson, Derek**
GIBSON, S	Gibson, Stewart & Jean*
GLAMOUR	Glamour Shots (forwarded by The Honorable Don Nickles)**
GLOBE	Old Globe*

APPENDIX—LIST OF COMMENTERS AND ACRONYMS, TELEMARKETING SALES RULE PROPOSALS—Continued

Acronym	Commenter
GODDARD	Goddard, Ed**
GODFREY	Godfrey, Florence**
GOODMAN	Goodman, Marcia L.**
GORDON	Gordon, Philip J. (forwarded by The Honorable John M. McHugh**)
GOS	GOS Office Supply**
GOSLOW	Goslow, Alice**
GRA	Georgia Retail Association*
GREEN	Green, Jean**
GREENE	Greene Russ*
GRIDER	Grider, Felicia*
GRIFFIN	Griffin, Dennis O.**
GROLIER	Grolier TeleMarketing, Inc.*
GUERNSEY	Guernsey Office Products**
GUTHY	Guthy-Renker*
HALL	Henry Hall Office Products**
HAND	Hand, Robert & Lisbeth**
HARKAWAY	Harkaway, Mrs. Patricia**
HAWES	Hawes Center, Inc.*
HEAD	Head, W.L.***
HEARST	Hearst Magazines*
HEARSTCO	Hearst Corporation**
HEATON	Heaton, Peggy**
HERRERA	Herrera, Barbara*
HERTZ	Hertz Corporation*
HFC	Household Finance Corporation*
H&H–1	Howe & Hutton, Ltd.—March 14 comment*
H&H–2	Howe & Hutton, Ltd.—March 30 comment*
HHDM	Harte-Hanks Direct Marketing*
HHMS	Harte-Hanks Marketing Services*
HII	Household International***
HILLSBOROUGH	Hillsborough County Consumer Protection Div.**
HISER	Hiser, James & Sherrill**
HNM&T	Hearst New Media & Technology*
HOFMANIS	Hofmanis, Alfred**
HOLSTEIN	Holstein, Everett & Irma**
HOUSEHOLD	Household Bank*
HSN	Home Shopping Network*
HUDSON	Hudson City Savings Bank*
HUNTINGTON	Huntington National Bank*
HUNTSVILLE	Huntsville Times/Huntsville News*
IA DOJ	Iowa Department of Justice***
IBAA	Independent Bankers Association of America**
IBM	International Business Machines Corporation***
ICTA	Industry Council for Tangible Assets***
ID AG	Idaho Attorney General*
IFA	International Franchise Association*
IFI	International Fabricare Institute*
IH	Investment Hotlines*
IMC	InfoCision Management Corporation*
IMS	International Magazine Service of Northern California (comment forwarded by the Honorable Lynn Woolsey)*
IMS–TX	International Magazine Service (Texas) (comment forwarded by the Honorable Kay Bailey Hutchison)*
IMSI	Infomercial Monitoring Service, Inc.*
IMSP	IMS Promotions*
INFOMALL	Infomall TV Network*
INSP	Inspirational Network*
IRC	Indiana Retail Council, Inc.*
IRL	International Readers League of Indianapolis*
ISA	Interactive Services Association***
ISENBERG	Isenberg, Angeline C.**
ITI	ITI Marketing Services, Inc.***
ITT HARTFORD	ITT Hartford**
IVAN	Ivan Allen Company**
JACKSON	Jackson Office Equipment, Inc.**
JACKSON, B	Jackson, Bogle**
JACOBSON	Jacobson, Frances S.**
JCP	Jackson Citizen Patriot*
JENSON	Jenson, Ines V.**
JERSEY	Jersey Business Supply Co., Inc.**
JOCKS	Jocks, Donald B.**
JOHNSON, D	Johnson, Darlene**
JOHNSON	Johnson Stationers**
JOHNSTON	Johnston, Gloria*

APPENDIX—LIST OF COMMENTERS AND ACRONYMS, TELEMARKETING SALES RULE PROPOSALS—Continued

Acronym	Commenter
JOINER	Joiner, Alex & Debbie**
JOSEPH	Joseph, Laura**
JUD	Jud's Office Supply, Inc.**
KALAMAZOO	Kalamazoo Gazette***
KAPLAN	Kaplan, Jules*
KIKENDALL	Kikendall, Thomas J.*
KARLE	Karle Publications & Communications, Inc.**
KELLY	Kelly, Marion R.**
KEMPF	Kempf, L.W.**
KING	King, Donna E.**
KLAVON	Klavon, Karl F.**
KLEID	Kleid Company*
KNIGHT	Knight Ridder***
KNOBE	Knobe's Office Supply & Equipment**
KNOXVILLE	Knoxville News Sentinel Co. (comments from two company representatives)*
KRELL	Krell, Sadie**
LANDMARK	Landmark Community Newspapers, Inc.*
LARK	Lark In The Morning*
LA TIMES	The Los Angeles Times*
LAURENZA	Laurenza, Joseph*
LCS	LCS Direct Marketing Service*
LEFORT	LeFort, Peter F.**
LEIBACHER	Leibacher, Philip J.*
LENOX	Lenox, Inc.*
LEVINSON	Levinson, Mrs. Rosalie**
LIGHTFOOT	Lightfoot, The Honorable Jim*
LINDSAY	Lindsay, Mrs. Sandra**
LM	LM Office Supply & Furniture**
LOMBARD	Lombard, Barbara C.**
LOWE'S	Lowe's Studio*
LS	Landmark Stationers**
MACHCINSKI	Machcinski, Lynnae**
MAGADITSCH	Magaditsch, Gwyn**
MAGNUSON	Magnuson, Donna**
MALACINSKI	Malacinski, George M.**
MANSFIELD	Mansfield Typewriter Co.**
MARKETLINK	Marketlink*
MARTIN	Martin Direct*
MARWYCK	Marwyck, Inc.**
MARX	Marx, June D.**
MASON	Mason, William Raymond**
MASS AG	Massachusetts Attorney General**
MASTERCARD	Mastercard Intl, Inc. and VISA USA, Inc.***
MBAA	Mortgage Bankers Association of America***
MBNA	MBNA America Bank, N.A.*
MBR	Macauley's Business Resources, Inc.**
MCI	MCI Telecommunications Corp***
McKNIGHT	McKnight Management Company*
MCUL	Michigan Credit Union League**
MD AG	Maryland Attorney General**
MELLON	Mellon Bank Corporation*
MELTON	Melton, Carol A.*
MERCURY	Mercury Media*
MESSENGER	Messenger (forwarded by The Honorable Ed Whitfield)*
MEYER	Meyer, Alice W. (forwarded by The Honorable Lynn C. Woolsey)**
MEYERS	Meyers, Patricia**
MFDA	Missouri Funeral Directors' Association**
MGC	Merchants Golden Checks*
MGCB	Merchants Gift Check Book*
M–I	Messenger-Inquirer*
MIDESHA	Midesha Enterprises, Inc. (3 copies: one original; one forwarded by The Honorable Trent Lott; one forwarded by The Honorable Thad Cochran)**
MILLIGAN	Milligan, A.M.**
MILLS, S	Mills, Susan*
MILLS, M	Mills, Maria**
MINDHEIM	Mindheim, Mrs. Arthur D.**
MM	Merchant Masters*
MMC	Moore Medical Corporation*
MMS	Metropolitan Marketing Services*
MOBILE	Mobile Media*
MOERSCHELL	Moerschell, Mrs. G.E.**
MONEX	Monex Deposit Company***

APPENDIX—LIST OF COMMENTERS AND ACRONYMS, TELEMARKETING SALES RULE PROPOSALS—Continued

Acronym	Commenter
MOORE	Moore Medical (2 copies: one original; one forwarded by The Honorable Nancy L. Johnson)*
MOPA	Missouri Press Association*
MORA	Missouri Retailers Association*
MORSE	Morse, Larry E.*
MOUNTAIN	Mountain, Raymond**
MP	Merchants Promotions*
MPA	Magazine Publishers of America***
MPG	MPG Newspapers*
MPR	Mobile Press Register***
MRA	Michigan Retailers Association*
MRG	Marketing Response Group & Laser Co., Inc.*
MS PRESS	Mississippi Press***
MS	Merchant Sampler*
MSSC	Magazine Subscription Sales Coalition***
MTD	MTD Services*
MULLINS	Mullins, Zelma**
MUNSCH	Munsch, William C.**
MURRAY	Murray Ledger & Times*
MUSKEGON	Muskegon Chronicle*
MUTUAL	Mutual of Omaha Companies*
NAA	Newspaper Association of America***
NAAG	National Association of Attorneys General ***
NACAA	National Association of Consumer Agency Administrators ***
NAM	National Association of Manufacturers **
NAMA	National Automatic Merchandising Association *
NAPA	National Automated Payment Association ***
NAPA DA	Napa County District Attorney **
NAR	National Association of Realtors ***
NARASIMHAN	Narasimban, N. **
NARDA	North American Retail Dealers Association *
NASAA	North American Securities Administrators Association ***
NB	NationsBank ***
NBR	National Bank of the Redwoods *
NBS	NBS Office Supply **
NCL	National Consumers League ***
NCMC	National Credit Management Corporation *
NCTA	National Cable Television Association ***
NE	New England Office Supply, Inc. **
NETWORK	Network Direct *
NEVELING	Neveling, Dale *
NEWS	New Publishing Company *
NFA	National Futures Association *
NFIB	National Federation of Independent Business *
NFN	National Federation of Nonprofits *
NHI	New Hampton, Inc. *
NIE	Nationwide Insurance Enterprise *
NIMA	NIMA International ***
NJ DCA	New Jersey Division of Consumer Affairs **
NM AG	New Mexico Attorney General **
NNA	National Newspaper Association *
NORDSTROM	Norsdstrom *
NORTHLAND	Northland Lutheran Retirement Community **
NPC	Neighborhood Periodical Club *
NPS	National Promotional Services *
NRF	National Retail Federation ***
NSF	National Science Foundation *
NYC DCA	New York City Dept of Consumer Affairs **
NYNEX	NYNEX *
NYSCPB	New York State Consumer Protection Board ***
NYSCUL	New York State Credit Union League **
NYTC	New York Times Company *
OCHOA	Ochoa, Anna & James Becker **
OCITY	Office City **
OCONNECT	Office Connection **
ODEPOT	Office Depot **
OENVIRON	Office Environments **
OEQUIP	Office Equipment Co., Inc **
OHIO	Ohio Health Care Products, Inc. *
OLAN	Olan Mills, Inc ***
OLIVER	Oliver, Louise **
OMF	Office Machines & Furniture Inc.**
OMSCO	Office Machine Service Co.**

APPENDIX—LIST OF COMMENTERS AND ACRONYMS, TELEMARKETING SALES RULE PROPOSALS—Continued

Acronym	Commenter
ONYX	House of Onyx (comments forwarded by The Honorable Wendell H. Ford and The Honorable Ed Whitfield)*
OPC	Oregonian Publishing Company*
OPCO	Office Products Inc.**
OREGONIAN	East Oregonian*
ORESOURCE	Office Resources**
ORKIN—1	Orkin Pest Control (comments filed by two company representatives)***
ORKIN–L	Orkin Lawn Care*
ORKIN–M	Orkin Maid*
ORKIN–P1	Orkin Pest Control—March 23 comment*
ORKIN–P2	Orkin Pest Control—March 30 comment*
ORKIN–PL	Orkin Plantscaping*
OSS	Office Supply Services Inc.**
PACESETTER	Pacesetter Corporation*
PALACE	Palace Office Supply**
PALMER	Palmer, Peter W.**
PANNITTO	Pannitto, Joseph P.**
PARKER	Parker, Stella**
PATRIOT	The Patriot-News***
PAUL	Paul, Byron S., Jr.**
PAYNE	Payne, Mrs. Helen R.**
P&C	Pullman & Comley (comment on originally proposed Rule)
P&C–1	Pullman & Comley (June 23 comment on revised proposed Rule)
P&C–2	Pullman & Comley (June 27 comment on revised proposed Rule)
PCH	Publishers Clearing House***
PCI	Private Citizen, Inc.*
PDW	Publishers Discount Warehouse (comments filed by five different company representatives)*
PELICAN	Pelican Office Supply, Inc.**
PENCIL	The Pencil Box Office Supplies**
PENNEY	J.C. Penney Company, Inc.*
PEPPERTREE	Peppertree Resorts (2 copies: one original; one forwarded by The Honorable Jesse Helms)*
PERSHING	Pershing, Robert S.**
PETERSON, P	Peterson, Phyllis G.*
PETERSON, R	Peterson, Rosie Marie*
PETERSON, S	Peterson, Selma**
P&G	Procter & Gamble**
PIERCE	Pierce, James & Sally**
PINCKNEY	Pinckney, Betty**
PLAIN	Plain Dealer***
PLP	Personal Legal Plans*
PMAA	Promotional Marketing Association of America and Incentive Federation**
POE	Professional Office Enterprises**
POLK	Polk, Arlisha Jerone**
PORTER	Porter, The Honorable John Edward*
PPI	Phone Programs Inc.*
PRESTIGE	Prestige Office Products**
PRINTING	Printing, Campanella & Rome (forwarded by The Honorable Lynn Woolsey**
PROCH	Programmers Clearing House*
PRO-PRINT	Pro-Print Business Center**
PRUDENTIAL	Prudential Home Mortgage*
PTG	Pacific Telesis Group*
QUALITY	Quality Ribbons & Supplies Company**
QUICKCARD	Quickcard Systems***
QUILL	Quill Corporation**
QVC	QVC, Inc.***
RANKIN	Rankin, J.**
RDA	Reader's Digest Association, Inc.*
REGAL GROUP	Regal Group*
REGAL COMM	Regal Communications Corporation*
REICHWEIN	Reichwein, Kay*
RELIABLE	Reliable Office Products**
REYMANN	Reymann, Clete**
RICE, D	Rice, David**
RICE, R	Rice, Rodger D. and Barbara L.*
RICH	Rich, David G.*
RIGSBY	Rigsby, Janice**
RITCHIE	Ritchie Swimwear*
RIVERS	Joan Rivers Products, Inc.*
RMH	RMH Telemarketing*
ROBERTS, D	Roberts, Denise A.**
ROBERTS, E	Roberts, E.**
RODRIGUEZ	Rodriguez, Ann*
ROLLINS	Rollins, Inc.***

APPENDIX—LIST OF COMMENTERS AND ACRONYMS, TELEMARKETING SALES RULE PROPOSALS—Continued

Acronym	Commenter
ROTENBERG	Rotenberg, Marion*
RPI	Resource Publications, Inc.*
RPOA	Resort Property Owners Association*
RPS	Rollins Protective Services*
RYBKA	Rybka, Edward C.**
SABLATURA	Sablatura's Office Supply & Furniture**
SAGINAW	Saginaw News***
SAMPLER	Business Sampler Advertising, Inc.*
SAN DIEGO	San Diego Department of Agriculture, Weights & Measures**
SANTROCK	Santrock, Billie**
SAUNDERS	W.J. Saunders**
SBTC	Southwestern Bell Telephone Company*
SC DCA	South Carolina Department of Consumer Affairs**
SCARBOROUGH	Scarborough, Peggy S. & Mary A. Bloodworth**
SCHENKEL	Schenkel, Walter H. Jr.**
SCHMIDT	Schmidt, Ann **
SCHULENBURG	Schulenburg Printing Office Supplies, Inc. (comments filed by six different company representatives) **
SCIC	Service Contract Industry Council ***
SCOTT	Scott, Nancy A. **
SDRA	South Dakota Retailers Association *
SEARCHLIGHT	Record Searchlight (comments filed by two different company representatives) *
SEARS	Sears Merchandise Group *
SFNA	San Francisco Newspaper Agency*
SHANDLING	Shandling, Adrian H. **
SHI	Shop at Home *
SHUBERT	Shuberts Inc. **
SHULMAN	Shulman, Betty *
SIA	Staten Island Advance *
SIASSR	Securities Industry Association *
SIGNAL	Signal Office Supply **
SIGNATURE	The Signature Group*
SIMON, G	Simon, Gus & Naomi **
SIMON, H	Simon, Hank **
SIMPSON	Simpson, Donald S. **
SINGTON	Sington, Homer & Coral **
SINOPOLI, A	Sinopoli, Albert B. **
SINOPOLI, M	Sinopoli, Michael T. **
SINOPOLI, N	Sinopoli, Natalie A. **
SINOPOLI, P	Sinopoli, Peter **
SMART	Smart, Bob **
SMITH–1	Smith, Mrs. Margaret A. **
SMITH–2	Smith, Margie **
SMITH–3	Smith, Madelyn **
SMITH, R	Smith, R. *
SMSI	Strategic Marketing Specialists, Inc. *
SPIEGEL	Spiegel, Inc. ***
SPRINT	Sprint Corporation *
S&S	Simpson & Simpson, P.C. *
SSE	Superstar Satellite Entertainment *
SSI	SafeCard Services, Inc. *
SSS	''Strictly'' Subaru Service **
STANDARD	Standard Office Supply **
STAPLES	Staples, Inc. **
STAR	Star-Ledger *
STOKOE, G	Stokoe, Grant **
STOKOE, K	Stokoe, Kim Neuhoff **
STPETE	St. Petersburg Times *
STRITCHKO	Stritchko, Jim **
STUART	Stuart News *
SUBURBAN	Suburban Stationers, Inc **
SUFFOLK	Suffolk Life Newspapers **
SUN	Sun Newspapers *
SUPERIOR	Superior Office Products & Furniture Systems **
SUTTON	Sutton Marketing *
S&W	Sullivan & Worcester*
SYRACUSE	Syracuse Newspapers*
TALK800	Talk800*
TAYLOR	Taylor's Stationers**
TCI	Thomas Cook, Inc.*
TCPS	Telephone Check Payment Systems*
TELENATIONAL	Telenational Marketing*
TELESULTANTS	TeleSultants**

APPENDIX—LIST OF COMMENTERS AND ACRONYMS, TELEMARKETING SALES RULE PROPOSALS—Continued

Acronym	Commenter
TEZANOS	Tezanos, Maritza*
THOMPSON	Thompson's of Morgantown, Inc.**
THOMSON	Thomson, Ruth M.**
THORNTON	Thornton, Kevin A.**
THUMB	Thumb Office Supply, Inc.**
T–I	Times-Independent*
TIEDT	Tiedt, Thomas N.***
TIEGS	Tiegs, Curtis D.**
TIME WARNER	Time Warner***
TIMES TRENTON	Times of Trenton*
TITUS	Titus, The Honorable Dina (2 letters)*
TM	Telemarketing Magazine**
TMG	Television Marketing Group*
TMO	Total Marketing Outbound, Inc.*
TMW	TMW Marketing*
TOTAL	Total Office Products & Service**
TOWNE	Towne Office Supply**
TP	Times Picayune***
TPA	Tennessee Press Association, Inc.*
TRIBUNE	Tribune Products Company**
TUCKER	Tucker, H.J.**
TULANDER	Tulander, Jerry and Alan**
TUPPERWARE	Tupperware Worldwide*
TVMARKET	TV Marketplace, Inc.*
UACU	United Airlines Employees Credit Union**
UCI	United Color, Inc.*
UHL	Uhl, J.M.**
UMI	Universal Media, Inc.*
UNION	Union-News*
UPS	United Parcel Service, Inc.*
USCE	U.S. Coin Exchange*
USD	University of San Diego, Center for Public Interest Law*
USPS	U.S. Postal Service***
USTA	United States Telephone Association*
USWI	US West, Inc.*
VBA	Virginia Bankers Association**
VENTURA	Ventura County Star*
VIACOM	Viacom International***
VINCENT	Vincent, Chorey, Taylor & Feil*
VINSON	M.A. Vinson Construction Co.**
VIRGINIA	Virginia State Corporation Commission*
VT AG	Vermont Attorney General's Office**
WACHOVIA	Wachovia Corporation*
WADDLE	Waddle, Mr. Shannon**
WALDOON	Waldoon, James B.**
WALNUT	Walnut Telephone Company**
WARD	Ward, Doris L.**
WARD	Montgomery Ward*
WASHINGTON	The Washington Post***
WAUGH	Waugh, John C.*
WAY	Way Office Products Inc.**
WEBB	Webb, Mrs. Alice**
WEBER, G	Weber, G.E.**
WEBER	Ron Weber and Associates*
WESTVACO	Westvaco, Corp.*
WFNNB	World Financial Network National Bank*
WHITLEY	Whitley, Claude & Evelyn**
WILLIAMS	Williams Television Time*
WILSON, A	Wilson, A.M.**
WILSON, C	Wilson, Charles R.**
WILSON	Wilson Daily Times*
WINCHESTER	Winchester Sun*
WINDSOR	Windsor Vineyards*
WINONA	Winona Post*
WISE	Wise, Dorothy**
WOODARD	Woodard, James P.**
WOODBOURNE	Woodbourne International (comments forwarded by The Honorable Sam Nunn and The Honorable Kay Bailey Hutchison)*
WRIGHT, A	Wright, Albert R.**
WRIGHT, J	Wright, Joseph**
WRINKLE	Wrinkle, Glenn E.**
WTC	Wilmington Trust Company*

APPENDIX—LIST OF COMMENTERS AND ACRONYMS, TELEMARKETING SALES RULE PROPOSALS—Continued

Acronym	Commenter
WTO	West Telemarketing Outbound*
WU	Western Union*
YINGLING	Yingling, Thomas**
YOUNGBERG	Youngberg, Arthur D.*
ZIRGER	Zirger, Louise**

Notes:
* Filed comment to the originally proposed Rule.
** Filed comment to the revised proposed Rule.
*** Filed comments to both proposed Rules.

[FR Doc. 95–20655 Filed 8–22–95; 8:45 am]
BILLING CODE 6750–01–P

federal register

Wednesday
August 23, 1995

Part III

Environmental Protection Agency

40 CFR Parts 9 and 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Evaporative and Refueling Emission Regulations for Gasoline- and Methanol-Fueled Light-Duty Vehicles and Light-Duty Trucks and Heavy-Duty Vehicles; Technical Amendments; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 86

[FRL–5258–7]

RIN 2060–AF49

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Evaporative and Refueling Emission Regulations for Gasoline- and Methanol-Fueled Light-Duty Vehicles and Light-Duty Trucks and Heavy-Duty Vehicles; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: On March 24, 1993 EPA finalized a new test procedure to measure evaporative emissions from motor vehicles. The amendments contained in this document modify several of the test procedure's tolerances, equipment specifications, and procedural steps.

In compliance with the Paperwork Reduction Act, this document announces that the information collection requirements contained in the Evaporative Emissions Final Rule were approved by the Office of Management and Budget on May 9, 1994.

Also, this document incorporates by reference the California Regulatory Requirements Applicable to the Evaporative Emissions Program (January 4, 1995). EPA will accept test data developed using the California procedure for demonstrating compliance with the 1996 model year federal evaporative emissions requirement for purposes of certification.

DATES: The amendments to 40 CFR part 86 are effective October 23, 1995, unless notice is received by September 22, 1995, that adverse or critical comments will be submitted or that an opportunity to submit such comments at a public hearing is requested. If the Agency receives such comments or a request for a public hearing by September 22, 1995, EPA will then publish a subsequent **Federal Register** document withdrawing from this action only those items which are specifically listed in those comments or in the request for a public hearing. See **SUPPLEMENTARY INFORMATION** for further discussion on submission of public comment.

The incorporation by reference of the publications listed in the regulations is approved by the director of the **Federal Register** as of October 23, 1995.

The information collection requirements contained in 40 CFR 86.096–7, 86.096–8, 86.096–9, 86.096–10, 86.096–14, 86.096–21, 86.096–23, 86.096–26, 86.096–30, 86.096–35, 86.097–9, 86.098–23, 86.099–8, 86.099–9, and 86.099–10, which were published at 58 FR 16002, March 24, 1993, and the amendments to 40 CFR part 9 are effective August 23, 1995.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to Public Docket No. A–94–35 at Air Docket Section, U.S. Environmental Protection Agency, First Floor, Waterside Mall, Room M–1500, 401 M Street SW., Washington, DC 20460 (telephone 202–260–7548). Materials relevant to the evaporative emissions final rule and this direct final rule are available for inspection in Public Dockets A–89–18 and A–94–35 at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Stout, (313) 741–7805.

SUPPLEMENTARY INFORMATION:

Table of Contents

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II. Overview of Technical Amendments
III. List of Changes to Test Procedures
IV. Public Participation and Effective Date
V. Paperwork Reduction Act
VI. Administrative Designation
VII. Regulatory Flexibility Act
VIII. Unfunded Mandates Act
IX. Judicial Review

I. Introduction

On March 24, 1993 the Environmental Protection Agency (EPA) published a final rule establishing new requirements to test vehicles for evaporative emissions (58 FR 16002), which will apply to new motor vehicles beginning in model year 1996 according to a phased-in compliance schedule. The procedure was amended with several corrections and minor changes by a direct final rule, which was published June 28, 1993 (58 FR 34535). As EPA and manufacturers have come closer to implementing the new test procedure, it has become clear that there are several potential changes to the test procedure that would make testing simpler, safer, and less resource-intensive. In addition, the Agency wants to harmonize its evaporative emission test procedure with that of the California Air Resources Board (CARB).

EPA has worked closely with the California Air Resources Board and manufacturers to identify all the changes to the test procedure specifications that could improve the test without affecting test stringency. The regulations contained in this document reflect these discussions. This document is published as a direct final rule. In the case of adverse comments received in response to this document by September 22, 1995, EPA will remove from the regulations those provisions that receive comment. EPA may, at its discretion, propose such provisions in a future rulemaking action.

A copy of this document is also available electronically on the Technology Transfer Network (TTN), which is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. The service is free of charge, except for the cost of the phone call. Users are able to access and download TTN files on their first call using a personal computer and modem according to the following information.

TTN BBS: 919–541–5742
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<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
<M> OMS—Mobile Sources Information
<K> Rulemaking & Reporting
<1> Light Duty
<7> File area #7. . . Evaporative Emissions

At this point, the system will list all available files in the chosen category in reverse chronological order with brief descriptions. To download files, users must select a transfer protocol that is supported by the terminal software on their own computer, then set their own software to receive the file using that same protocol.

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II. Overview of Technical Amendments

In addition to the test procedure changes, EPA has in this rule addressed the issue of reliance on CARB's test procedure (i.e., the California Regulatory Requirements Applicable to the Evaporative Emissions Program, January 4, 1995) for testing 1996 model year vehicles for evaporative emissions. EPA is modifying the existing evaporative emission regulations to accept manufacturers' data showing compliance with CARB's 1996 model year certification requirements as demonstration of compliance with the evaporative emissions portion of the federal certification requirements for the 1996 model year. EPA's confirmatory and in-use testing of 1996 model year vehicles certified in this way will also rely on the CARB procedure for evaluating compliance with test requirements. EPA's evaporative emission regulations have been modified to incorporate by reference relevant CARB regulations. EPA intends to evaluate CARB's pending technical amendments, once finalized, and will approve use of the resulting modified procedure for 1996 model year vehicles, provided the modified procedure maintains at least the same level of control as CARB's existing procedure.

The more flexible arrangement for certifying 1996 model year vehicles should have no negative air quality impact. Because of the uncertainty surrounding EPA's technical amendments to the evaporative emission test procedure, especially where they affect procurement of test equipment, manufacturers have been constrained in their ability to conduct testing according to federal specifications. Given the direction CARB has taken with its own pending technical amendments, EPA is confident that the CARB procedure will be as stringent, or nearly as stringent, as the EPA procedure. Furthermore, since the enhanced test requirements apply to only 20 percent of each manufacturer's 1996 model year fleet, the air quality impact of any compromise in test stringency would be very limited.

Following promulgation of this rule and the pending changes to the CARB procedure, the remaining differences of significance between EPA's and CARB's evaporative emission test procedures are limited to the specifications for temperatures and fuel volatility. EPA is pursuing a test program to better understand the relative stringency of the two sets of test conditions and to decide if data generated according to the CARB test procedure will be acceptable for federal testing on a long-term basis. The same information will be factored into the decision related to carryover of data from the CARB test procedure for federal certification in subsequent model years.

The most significant changes to the test procedure fall into three categories: (1) Control of fuel tank temperature and pressure during running loss testing, (2) air circulation during the diurnal emission test, and (3) a provision for a simplified procedure for generating fuel temperature profiles for the running loss test. Each of these areas is briefly described below.

The issues of greatest concern relate to controlling fuel tank temperature and pressure during the running loss test. These technical amendments incorporate several changes to deal with these concerns. For example, the procedure for outdoor testing to generate fuel temperature profiles now allows the option of stabilizing vehicle and fuel temperatures to 95 °F before driving. Also, determination of compliance with the fuel tank pressure limit during driving on a dynamometer would depend on control of vapor temperatures throughout the running loss test; conversely, measurement of fuel tank pressure and vapor temperature may be omitted at the discretion of those responsible for testing. Another change allows temporary exceedances to the fuel tank pressure limit during driving on a dynamometer to account for potentially artificial tank heating effects in the laboratory. Finally, equipment specifications related to heating and cooling the vehicle's fuel tank have been broadened to increase the degree of control that technicians have in controlling fuel tank temperatures.

Another important issue was the requirement in the initial final rule to maintain a specified wind speed underneath the vehicle during diurnal emission testing. The regulations contain a new requirement to control ambient temperatures underneath the test vehicle and allow an option to use an established fan configuration to meet the required wind speed specification (5 mph). This change provides an option to comply with the wind speed requirement without measuring underbody air velocity on every test.

Also, EPA has included in the regulations a provision giving general guidance for use of a heated wind tunnel for generating fuel temperature profiles. Further work will be required in the certification process to implement the policy; for example, to determine what constitutes acceptable correlation between wind tunnel and outdoor fuel temperature profiles, how often and on what vehicles correlation would have to be demonstrated, and how fuel temperature profiles could be carried over to subsequent model years.

Manufacturers are required to submit either test data or an engineering evaluation to demonstrate compliance with evaporative emission standards at high altitudes. One manufacturer has expressed to EPA its concern that a fuel temperature profile generated at low altitude has limited applicability for testing at high altitude, which causes difficulty in testing methanol-fueled vehicles. The existing regulatory language for high-altitude requirements provides the Agency limited discretion to adjust the test procedure to accommodate changes related to fuel temperature profiles. EPA believes it is inappropriate to address this issue in a direct final rulemaking, since any change that cannot be accommodated under the Agency's existing discretion would require a formal proposal and a period for public comment. EPA encourages interested manufacturers to work with EPA's Certification Division to resolve this issue.

In addition to the changes to the evaporative emission test procedure, these technical amendments include revised language related to the test requirements for onboard refueling vapor recovery, initially finalized April 6, 1994 (59 FR 16262), to clarify test provisions and make typographical corrections.

III. List of Changes to Test Procedures

The following list describes the individual changes made to the test procedure. Explanation and, where appropriate, EPA's interpretation of the resulting regulatory language is provided.

Vehicle Preconditioning

1. Change initial soak to 6 hours minimum:

—The procedure previously called for a 12-hour minimum soak before the preconditioning drive, though EPA reserved the option of conducting testing with only a 6-hour soak. The shorter soak time is sufficient to stabilize the vehicle.

2. Make the initial soak and refueling event optional for a second test run on a vehicle (or optional for any SEA test):

—Vehicles that have already been tested in the laboratory have been sufficiently stabilized with respect to temperature and fuel effects.

3. Require vehicles to be parked within 5 minutes after the refueling procedure:

—The regulations previously required the test vehicle to be parked within 5 minutes after completion of the preconditioning drive. Since test vehicles must be refueled during the hour following the preconditioning drive, the timing of the parking event is best specified relative to completion of the refueling event.

4. Precondition multiple canisters as a set unless they are arranged in parallel:

—While canisters configured in parallel should be preconditioned individually, as the initial final rule required, EPA agrees that evaporative canisters arranged in a series configuration should be preconditioned as a set to best simulate normal vehicle operation.

5. Add requirement to use a service port on evaporative canisters (if so equipped) for loading and purging steps:

—Provided that manufacturers install such service ports on their production canisters, EPA agrees that it is appropriate to use the ports for the preconditioning procedure.

6. Allow replacement canister to collect vapors during canister preconditioning:

—The regulations have been modified to clarify that it is acceptable to collect fuel tank vapors that may escape during the period that the vehicle's canister is disconnected. This arrangement would provide a safety benefit without affecting the condition of the test vehicle.

7. Specify a representative vapor load to the canister for all flexible-fueled and methanol-fueled vehicles:

—The regulations previously called for representative vapor loading for dedicated methanol-fueled vehicles only. A vehicle using any amount of methanol should not have its canister loaded with pure butane, since the engine's electronic controls depend on a vapor composition from the canister being similar to that coming from the fuel tank. Using repeated diurnal heat builds to precondition the canister for the two-day diurnal sequence would provide, by definition, a representative vapor composition. EPA anticipates that the best way to conduct bench-loading for either test sequence would be to generate vapors from an off-board fuel tank or other reservoir partially filled with the type of fuel to be used in the subsequent test run.

8. Delete parenthetical reference to volumetric flow rate equivalent to 40 g/hr butane load:

—The regulations previously provided a conversion of the mass flow rate into volumetric units for the convenience of the reader. Because this conversion is valid only at sea level, it has been deleted.

Diurnal Emission Test

9. Provide flexibility to satisfy 5-mph wind speed requirement near tank with a demonstrated configuration:

—This provision allows one to conduct diurnal emission tests without routinely measuring wind speed under the fuel tank. Consistently using a given fan configuration that has been demonstrated to satisfy the wind speed requirement on the test vehicle or a broad range of vehicles would be sufficient to show adequate airflow underneath the test vehicle.

10. Add undertank thermocouple for instantaneous and average temperature tolerances and relax tolerance on sidewall temperatures to ±5 °F:

—The new requirement to measure air temperatures under the fuel tank becomes the primary measurement for following the ambient fuel temperature profile. The sidewall temperature measurement serves the purpose of ensuring adequate air mixing in the enclosure and providing a temperature measurement representative of the overall enclosure volume (for calculation of mass emissions).

11. Allow passive fixed-volume diurnal enclosures and change pressure tolerance to ±2 in. H_2O:

—The regulatory language has been broadened to accommodate a different design of a fixed-volume diurnal enclosure and to match the specifications in place for variable-volume enclosures.

12. Delete maximum surface temperature:

—EPA believes that the specified maximum surface temperature does not affect the test vehicle or the emission measurement, and so can be deleted without compromising test effectiveness.

Hot Soak Test

13. Allow a 7-minute interval before the hot soak test; add language to encourage making this interval as short as possible; add language to make sure fans are off at the end of the running loss test:

—EPA continues to believe that the time between the running loss and hot soak tests is very important for an accurate measurement of hot soak emissions. EPA believes a relaxed time specification does not compromise test stringency for several reasons. First, the language for the hot soak tests for both test sequences specifies that the intent of testing is to minimize the time before the hot soak test. Second, new language specifying that fans must be turned off after the running loss test should prevent technicians from artificially cooling the fuel during the period between the test segments. Third, the vehicle continues to operate at idle until just before entry into the hot soak enclosure. Fourth, EPA may make an extra effort to minimize the time interval before the hot soak measurement for its testing. Similarly, EPA may conduct the hot soak test with *no* elapsed time between the end of the running loss test and the beginning of the hot soak test by making a continuous measurement of running loss and hot soak emissions in a running loss enclosure.

14. Delete maximum surface temperature:

—EPA believes that the specified maximum surface temperature does not affect the test vehicle or the emission measurement, and so can be deleted without compromising test effectiveness.

Running loss test

15. Increase maximum flow rate for under-tank blower; increase minimum temperature to 85 °F:

—Increasing the maximum flow rate of the under-tank blower to 4,000 cubic feet per minute (cfm) increases the degree of flexibility available for controlling fuel temperatures. The regulations provide for a maximum flow rate of 6,000 cfm for exceptional circumstances. To prevent a high flow rate of chilled air from condensing generated fuel vapors, the minimum temperature of air from the blower was increased from 70° to 85 °F.

16. Define a tolerance for vapor temperature control, but make measurement of vapor temperature and pressure in the tank optional during lab driving:

—Manufacturers have indicated to EPA that it is important to control vapor temperatures during the running loss test, primarily to prevent artificially high fuel tank pressures and vapor generation. EPA believes it is appropriate to define a tolerance for controlling vapor temperatures similar to that for controlling liquid fuel temperatures. However, because of the technical difficulty of controlling vapor temperatures during driving, the regulations provide the

discretion for any laboratory testing to omit measurement of vapor temperatures. EPA recognizes fuel tank pressure is very dependent on vapor temperatures; therefore, vehicles must comply with the limit on fuel tank pressures only if vapor temperatures are measured and controlled to the specified profile. If a manufacturer chooses not to develop a vapor temperature profile, compliance with the limit on fuel tank pressure will be limited to the required outdoor driving.

To address manufacturers' concern that vapor generation may be affected by uncontrolled vapor temperatures, the regulations now state the expectation that a facility be designed in a way that avoids unrepresentative heating or cooling of the vapor space during the running loss test. Also, in the case of EPA testing without measured vapor temperatures, if a vehicle exceeds an emission standard, the regulations provide manufacturers the opportunity to conduct subsequent testing on that vehicle. If a manufacturer can show that the exceedance is attributable to inadequate control of vapor temperatures, EPA will invalidate its test run. To make such a demonstration, (1) a manufacturer would be expected to conduct a complete test for evaporative emissions, controlling vapor temperatures to the specified tolerances; (2) the vehicle would have to meet the applicable standards for running loss, hot soak and diurnal emissions; and (3) the manufacturer would be expected to explain why the test facility for the EPA test could have caused excessive vapor temperatures. To use this provision, manufacturers would need to have developed a vapor temperature profile prior to certification for the vehicle in question.

17. Allow temporary exceedances of fuel tank pressure limit:

—EPA is aware that characteristics of a laboratory's system for managing fuel tank temperatures could cause the tank pressure during driving on a dynamometer to show transient pressure behavior that does not exist during on-road driving. In response, EPA has modified the regulations to allow a vehicle to exceed the pressure limit for up to 10 percent of the total driving time during the running loss test.

18. Require proportional-speed fan for cooling engine:

—The fixed-speed fan originally specified in the regulations may in some cases provide inadequate cooling for test vehicles. Additional cooling capacity is needed because vehicles are operated on the dynamometer with the hood closed or nearly closed. The regulations, as amended by this final rule, now require a more complex fan; the new fan is considerably more expensive, but does not compromise the effectiveness of the test in any way. Because EPA believes that blowing air underneath the test vehicle, past the engine and the fuel tank, is the best primary source of heat for controlling fuel temperatures, the original provision for this underbody blower is preserved as a supplement to the proportional-speed fan.

19. Allow manufacturers to start the test with fuel at less than 95 °F:

—EPA recognizes that some future vehicles may be designed to keep fuel temperatures below daily peak temperatures. The regulations now describe what manufacturers must do to demonstrate the need for a temperature offset (parking and driving on hot summer days), and set a threshold of 3 °F as the minimum offset that must be demonstrated to make use of this provision.

20. Specify a 6-hour maximum soak before the running loss test; limit the fuel heating rate to 5 °F per hour; and require stabilized fuel temperatures for 1 hour before the running loss test:

—The set of changes to the vehicle stabilization requirement provide better control of fuel temperatures, and thus vapor generation, in the time between the exhaust emission test and the running loss test. The amended regulations provide for a faster heating rate or a longer stabilization period for those vehicles that may have unusually cool fuel following the exhaust emission test.

21. Set average ambient temperature to ±2 °F for the running loss test:

—This change resolves the inconsistency contained in EPA's original regulations regarding specifications for an average ambient temperature during the running loss test.

22. Require ambient temperature measurement at the inlet to the frontal fan; require sidewall temperature measurement for enclosure testing only:

—To clarify the original language, the regulations now specify that temperature measurement upstream of the frontal fan is to be used for demonstrating compliance with ambient temperature tolerances. In enclosure testing, measurement of sidewall temperatures is also required, but will likely be used only for calculation of mass emissions.

23. Allow direct tank heating for controlling fuel tank temperatures:

—The use of heat blankets or other direct methods of heating the fuel tank during the running loss test may be needed for some vehicles whose fuel temperatures cannot easily be controlled with circulating air. The need to supplement the underbody blowers is most likely for designs in which the fuel tank is isolated from the underbody in some way. This provision gives EPA, manufacturers, and contract laboratories the discretion to use direct tank heating if use of the specified fans is insufficient to adequately control fuel temperatures. Direct tank heating should be the exception and should be employed only after attempting to control fuel temperatures with the specified fan configuration. Also, the regulations add detailed cautionary language to prevent the possibility of artificially increasing vapor generation by this method.

24. Allow use of a naturally aspirated running loss enclosure, if it is shown to yield equivalent results:

—EPA anticipates the possibility that running loss enclosures will best be designed with a hybrid configuration; i.e., the test vehicle would consume air from the enclosure ambient, with monitored makeup air coming in through an orifice in a wall of the enclosure. The existing language specifies that air be routed directly from outside the enclosure into the engine's intake system. These technical amendments allow use of a hybrid enclosure if testing shows that emission measurement results are equivalent or superior to those from currently specified enclosures.

25. Correct reference to duration of driving schedule:

—The original language incorrectly identified the duration of the driving schedule for defining fuel temperature tolerances.

26. Adjust densities for 68° F ambient temperature for point-source calculations:

—The original regulations inadvertently based densities on a temperature of 74° F. The corrected densities are hydrocarbons = 16.88 g/ft^3; methanol = 37.71 g/ft^3.

27. Delete requirement for Type J thermocouple:

—Though EPA expects to continue to depend on installation of Type J thermocouples for confirmatory

testing, this specification has been deleted from the regulations to allow manufacturers to conduct their own testing using any temperature sensor that meets the functional specifications for temperature measurement.

Procedure for generating fuel temperature profiles

28. Add the option for developing vapor temperature profiles:

—If manufacturers wish to develop vapor temperature profiles, subsequent testing on those models may include measurement and control of vapor temperatures according to the profile.

29. Allow low-volatility fuel for generating profiles:

—Manufacturers expressed a desire to have the flexibility to use a test fuel with a different volatility than that specified for the outdoor driving procedure; in particular, manufacturers wish to use California's phase II reformulated gasoline. EPA has observed that gasoline with lower volatility corresponds to slightly higher fuel temperatures during driving. EPA therefore believes that using a fuel such as California phase II reformulated gasoline, which has a lower volatility than that of federal test fuel, would not sacrifice test stringency. The new regulatory language is intended to allow use of California's specified test fuel, even though other parameters besides volatility fall outside the federal test fuel specifications.

EPA will also accept demonstration of compliance with the fuel tank pressure requirement using California phase II reformulated gasoline. Using this fuel will cause somewhat lower fuel tank pressures, which makes it easier to comply with the pressure limit. EPA believes this is acceptable for a combination of reasons. First, vehicles tested on a dynamometer to certify compliance with evaporative emission standards will also demonstrate compliance with the fuel tank pressure requirement, but with federal fuel. Also, because EPA may conduct its own testing to measure pressure during outdoor driving, manufacturers have no incentive to take advantage of the lower volatility fuel to comply with the fuel tank pressure requirement.

30. Change speed measurement accuracy to ± 1 mph:

—Conventional equipment for measuring speeds during outdoor driving cannot resolve speeds to the ±0.1 mph tolerance originally specified. Relaxing the accuracy to ±1 mph would enable manufacturers to use existing equipment and will not affect the validity of the fuel temperature profiles.

31. Allow fuel heating/stabilization up to 95±3° F before drive:

—The regulations will continue to allow a 12-hour soak before starting the outdoor drive, with no control of the fuel temperature during that time. However, the regulations now include a provision to stabilize fuel temperatures in a temperature-controlled environment before the drive. When vehicles are stabilized in this way, manufacturers are expected to attempt to start outdoor vehicle operation with fuel temperatures at the nominal temperature of 95° F. Manufacturers may need to take steps to isolate the fuel tank from the pavement or other heat sources and to begin the test drive as soon as possible after exiting the enclosure.

32. Specify 125° F as minimum pavement temperature throughout the outdoor drive:

—EPA has learned that the requirement for pavement temperatures staying 30° F above ambient was sometimes difficult to meet, because pavement temperatures might not increase fast enough to stay 30° F ahead of increasing ambient temperatures. Since fuel temperature is limited to a nominal starting point of 95° F, fixing the minimum pavement temperature at 125° F satisfies EPA's desire to keep the pavement temperature at least 30° F above the initial fuel temperature.

33. Allow rolling fuel temperature profiles:

—New language clarifies that manufacturers may use a rolling average to derive fuel temperature profiles for testing.

34. Add general provision for hot wind tunnel approach to generating temperature profiles:

—See Section II above.

35. Add provision to allow temporary wind gusts:

—Originally, wind speed was limited to a maximum of 15 mph throughout the period of outdoor driving. EPA would like to avoid invalidating a test run for occasional gusts of wind exceeding the 15 mph limit, since fuel temperature profiles should be unaffected. To accommodate such a situation, the regulations now allow wind speeds between 15 and 25 mph for up to 5 percent of the total driving time.

36. Allow small-volume manufacturers to use alternate methods to generate profiles:

—EPA realizes that small-volume manufacturers may not have the resources to conduct a full test program according to the prescribed procedure to establish fuel temperature profiles for their vehicles. These manufacturers may use other means to generate fuel temperature profiles, though EPA expects such profiles to be at least as stringent as those that would be generated according to the full set of specifications for outdoor testing.

37. Allow the possibility of alternate methodologies for correcting fuel temperature profiles:

—One issue EPA has not resolved with manufacturers is the method of correcting measured fuel temperature profiles to create a target profile for running loss testing. EPA has agreed to add language to the regulations allowing an alternate correction methodology, subject to prior Agency approval. This change provides EPA the discretion to accommodate a future resolution without requiring a subsequent change to the regulations.

Spitback Test

38. Change refueling rate to 9.8±0.3 gallons per minute:

—The changed refueling rate matches that used for the refueling emission test. Specifying consistent refueling rates allows use of the same equipment for the two procedures.

39. Allow vehicle to be moved across lab with engine off:

—Safety regulations at some facilities prevent driving a test vehicle from the dynamometer to the refueling site. The test procedure therefore now includes an allowance for moving the vehicle with the engine off, without changing the time constraints.

40. Add time specification for the period between the end of the drive and the start of refueling (not just key-off):

—This time specification was missing from the original test procedure.

Equipment Calibration

41. Add the option to use alternate calibration data:

—The regulations have been modified to allow alternate calibration techniques that are acceptable to EPA. Under the modified regulations, EPA would approve use of the calibration methods currently required by CARB for demonstrating compliance with equipment specifications for federal testing.

42. Add the option to use new calibration procedures for pre-1996 testing:

—Manufacturers may use their upgraded facilities to continue testing according to the test procedure specified in § 86.130–78.

Miscellaneous

43. Allow limited subtraction of nonfuel background emissions for certification vehicles:

—For certification vehicles only, manufacturers may conduct testing on individual vehicles to quantify nonfuel background levels. Testing must indicate the expected decay rate of the nonfuel emissions. In addition manufacturers must indicate the primary source of the measured nonfuel emissions. EPA will not approve use of a correction for nonfuel emissions if (1) the emissions cannot be accounted for, (2) the source can be easily removed, or (3) the rate of decay indicates a significant potential for increased in-use emissions.

This change is consistent with EPA's long-standing position that nonfuel background emissions should be included in testing for evaporative emissions. By making no provision to treat nonfuel emissions separately for in-use vehicles, EPA maintains this fundamental position. EPA believes that the provision for special treatment of some certification vehicles gives manufacturers some flexibility to simplify vehicle selection and preparation, without compromising EPA's expectation that manufacturers prevent nonfuel emissions from constituting a significant source of in-use emissions. Moreover, EPA still expects manufacturers routinely to take basic steps to minimize nonfuel emissions from certification vehicles, for example, to use weathered vehicles.

44. Allow continuous measurement of evaporative emissions (hydrocarbon only):

—At various points through the procedure, the language has been revised to allow continuous emission measurement, rather than just testing at the beginning and end of a sampling period. Continuous measurement would make it possible to terminate a test, without making it invalid, if the vehicle has exceeded the standard well before the end of the test.

45. Remove obsolete sections from the Code of Federal Regulations (CFR):

—Sections of title 40 part 86 of the CFR that affect only 1990 model year and older vehicles will not be printed in future CFR publications.

46. Change from ''alternate sampling systems'' to ''alternate equipment or procedures'':

—The revised language clarifies the meaning of this provision in § 86.106–96.

47. Add simplified calculation for variable-volume enclosures for diurnal emission testing:

—Variable volume enclosures trap a fixed mass of air for the duration of the test; therefore, the ideal gas law dictates that the ratio of PV/T must remain constant during the test. Carrying this assumption into the calculation of mass emissions allows one to omit separate determination at the end of the test of pressure, temperature, and volume in the enclosure.

48. Revise the equation for calculating the mass of methanol emissions:

—The equation is simplified by eliminating the explicit temperature correction for the enclosure volume (V_n) and sample volume (V_e), and instead requires that the sample volumes be corrected for changes in temperature, to be consistent with V_n, prior to being used in the equation.

Refueling Emission Test

49. Allow road-speed modulated fan during vehicle operation:

—EPA would like to allow the same road-speed modulated fans for engine cooling during the refueling emission test that are specified for the running loss test. Because these fans provide a better simulation of on-road air cooling, the test vehicle's hood should be closed during testing with these fans. If one continues to rely on the conventional fixed-speed cooling fan, the test vehicle's hood should be left open to increase the capacity for engine cooling.

IV. Public Participation and Effective Date

To prepare this final rule, EPA has worked actively with CARB and the automobile manufacturers to reach a resolution on the many issues involved. EPA twice distributed draft regulatory language for review and met periodically with interested participants. EPA benefitted greatly from this extensive interaction, so that the resulting set of changes to the test procedure, reflecting this broad input, will significantly improve EPA's and manufacturers' ability to conduct testing more efficiently.

The Agency is publishing this action as a direct final rule because it views the changes as not affecting test stringency and anticipates no adverse or critical comments. This action will become effective unless the Agency receives notice that adverse or critical comments will be submitted, or that a party requests the opportunity to submit such oral comments pursuant to section 307(d)(5) of the Clean Air Act, as amended. If such notice is received regarding a change to a particular regulatory provision by September 22, 1995, EPA will withdraw the provision in question before the effective date by publishing a subsequent **Federal Register** document removing the identified provision from the direct final rule.

V. Paperwork Reduction Act

EPA is amending the table of currently approved information collection request (ICR) control numbers issued by the Office of Management and Budget (OMB) for various regulations. The amendments in this document update the table to accurately display those information requirements promulgated under the Evaporative Emissions Final Rule (March 24, 1993, 58 FR 16002). The affected regulations are codified at 40 CFR part 86, subpart A. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and OMB's implementing regulations at 5 CFR part 1320.

This ICR was subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedures Act (5 U.S.C. 553(b)(B)) to amend this table without additional notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

VI. Administrative Designation

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the Agency has determined that this direct final rule is not a ''significant regulatory action.''

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to examine significant adverse impacts of federal regulations on a substantial number of small entities. The Agency believes that the changes to the test requirements published in this final action are unlikely to have a significant economic impact on a substantial number of small entities. In fact, the revisions expand the flexibility of small businesses required to comply with existing regulations.

VIII. Unfunded Mandates Act

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

EPA has determined that this direct final rule imposes no new federal requirements and therefore does not include any federal mandate with costs to the private sector or to state, local, or tribal governments.

IX. Judicial Review

Under section 307(b) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements that are the subject of this document may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedures, Air pollution control, Confidential business information, Gasoline, Incorporation by reference, Labeling, Motor vehicle pollution, Motor vehicles, Reporting and recordkeeping requirements.

40 CFR Part 600

Administrative practice and procedures, Electric power, Energy conservation, Fuel economy, Gasoline, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

Dated: July 6, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, parts 9 and 86 of the Code of Federal Regulations, are amended as set forth below.

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by removing from the table entries 86.078–7, 86.082–14, 86.084–5, 86.084–14, 86.084–26, 86.085–8—86.085–9, 86.085–21—86.085–25, 86.085–27—86.085–30, 86.085–35, 86.085–37—86.085–38, 86.087–21, 86.087–23, 86.087–25, 86.087–28, 86.087–30, 86.087–35, 86.088–21, 86.088–23, 86.088–25, 86.088–28, 86.088–30, 86.088–35, 86.090–7, 86.090–14—86.090–15, 86.090–23, 86.090–25—86.090–28, 86.090–30, 86.142–82, 86.144–78, 86.537–78, 86.542–78, 86.1310–84, 86.1310–88, 86.1335–84, 86.1341–84, 86.1342–84, 86.1344–84, 86.1344–88 and by adding new entries in numerical order under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Control of Air Pollution From New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures	
* * * * *	
86.085–37	2060–0104
* * * * *	
86.090–14	2060–0104
* * * * *	
86.090–25	2060–0104
86.090–26	2060–0104
86.090–27	2060–0104
* * * * *	
86.096–7	2060–0104
86.096–10	2060–0104
86.096–14	2060–0104
86.096–26	2060–0104
86.096–30	2060–0104
86.099–10	2060–0104
* * * * *	

PART 86—[AMENDED]

3. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

4. Part 86 is amended by removing the following sections: 86.078–7, 86.081–8, 86.082–8, 86.082–14, 86.083–30, 86.084–5, 86.084–14, 86.084–15, 86.084–26, 86.085–8, 86.085–9, 86.085–10, 86.085–11, 86.085–21, 86.085–22, 86.085–23, 86.085–24, 86.085–25, 86.085–27, 86.085–28, 86.085–29, 86.085–30, 86.085–35, 86.085–38, 86.087–8, 86.087–9, 86.087–10, 86.087–21, 86.087–23, 86.087–25, 86.087–28, 86.087–29, 86.087–30, 86.087–35, 86.088–9, 86.088–11, 86.088–21, 86.088–23, 86.088–25, 86.088–28, 86.088–29, 86.088–30, 86.088–35, 86.090–7, 86.090–10, 86.090–11, 86.090–15, 86.090–23, 86.090–28, 86.090–29, 86.090–30, 86.090–35, 86.106–82, 86.109–82, 86.110–82, 86.111–82, 86.112–82, 86.116–82, 86.119–78, 86.126–78, 86.139–82, 86.142–82, 86.144–78, 86.401–78, 86.410–78, 86.509–78, 86.511–78,

86.513–82, 86.516–78, 86.521–78, 86.526–78, 86.527–78, 86.535–78, 86.537–78, 86.540–78, 86.542–78, 86.544–78, 86.1309–84, 86.1310–84, 86.1310–88, 86.1311–84, 86.1335–84, 86.1341–84, 86.1342–84, 86.1344–84, 86.1344–88, 86.1501–84, 86.1504–84, 86.1506–84, 86.1513–84, 86.1513–87.

5. Section 86.1 is amended by adding paragraph (b)(4) to read as follows:

§ 86.1 Reference materials.

* * * * *

(b) * * *

(4) *California regulatory requirements.* The following table sets forth California regulatory requirements that have been incorporated by reference. The first column lists the name and date of the material. The second column lists the sections of the part, other than § 86.1, in which the matter is referenced. The second column is presented for information only and may not be all-inclusive. Copies of these materials may be obtained from U.S. EPA, Office of Air and Radiation, 401 M Street, S.W., Washington, DC 20460.

Document No. and name	40 CFR part 86 reference
California Regulatory Requirements Applicable to the Evaporative Emissions Program, January 4, 1995.	86.096–8; 86.096–9; 86.096–10.

Subpart A—[Amended]

6. Section 86.096–8 of subpart A is amended by revising paragraph (b) introductory text and adding paragraph (b)(5)(iv) to read as follows:

§ 86.096–8 Emission standards for 1996 and later model year light-duty vehicles.

* * * * *

(b) Evaporative emissions from light-duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles. For certification vehicles only, manufacturers may conduct testing to quantify a level of nonfuel background emissions for an individual test vehicle. Such a demonstration must include a description of the source(s) of emissions and an estimated decay rate. The demonstrated level of nonfuel background emissions may be subtracted from emission test results from certification vehicles if approved in advance by the Administrator.

* * * * *

(5) * * *

(iv) For the 1996 model year, manufacturers may satisfy the testing requirements for federal certification to the evaporative standards of paragraph (b) of this section, except the fuel dispensing spitback test, by presenting test results from the certification procedures defined by the California Regulatory Requirements Applicable to the Evaporative Emissions Program (January 4, 1995). These requirements have been incorporated by reference (see § 86.1).

* * * * *

7. Section 86.096–9 of subpart A is amended by revising paragraphs (b) introductory text and (c) through (k), and adding paragraph (b)(5)(iv) to read as follows:

§ 86.096–9 Emission standards for 1996 and later model year light-duty trucks.

* * * * *

(b) Evaporative emissions from light-duty trucks shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles. For certification vehicles only, manufacturers may conduct testing to quantify a level of nonfuel background emissions for an individual test vehicle. Such a demonstration must include a description of the source(s) of emissions and an estimated decay rate. The demonstrated level of nonfuel background emissions may be subtracted from emission test results from certification vehicles if approved in advance by the Administrator.

* * * * *

(5) * * *

(iv) For the 1996 model year, manufacturers may satisfy the testing requirements for federal certification to the evaporative standards of paragraph (b) of this section, except the fuel dispensing spitback test, by presenting test results from the certification procedures defined by the California Regulatory Requirements Applicable to the Evaporative Emissions Program (January 4, 1995). These requirements have been incorporated by reference (see § 86.1).

(c) [Reserved]. For guidance see § 86.094–9.

(d) through (f) [Reserved].

(g) through (k) [Reserved]. For guidance see § 86.094–9.

8. Section 86.096–10 of subpart A is amended by revising paragraph (b) introductory text and adding paragraph (b)(5)(iv) to read as follows:

§ 86.096–10 Emission standards for 1996 and later model year Otto-cycle heavy-duty engines and vehicles.

* * * * *

(b) Evaporative emissions from heavy-duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles. For certification vehicles only, manufacturers may conduct testing to quantify a level of nonfuel background emissions for an individual test vehicle. Such a demonstration must include a description of the source(s) of emissions and an estimated decay rate. The demonstrated level of nonfuel background emissions may be subtracted from emission test results from certification vehicles if approved in advance by the Administrator.

* * * * *

(5) * * *

(iv) For the 1996 model year, manufacturers may satisfy the testing requirements for federal certification to the evaporative standards of paragraph (b) of this section, except the fuel dispensing spitback test, by presenting test results from the certification procedures defined by the California Regulatory Requirements Applicable to the Evaporative Emissions Program (January 4, 1995). These requirements have been incorporated by reference (see § 86.1).

* * * * *

9. Section 86.096–11 of subpart A is amended by revising paragraph (b)(5)(i) to read as follows:

§ 86.096–11 Emission standards for 1996 and later model year diesel heavy-duty engines and vehicles.

* * * * *

(b) * * *

(5)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 lbs, the standards set forth in paragraphs (b)(3) and (b)(4) of this section refer to a composite sample of evaporative emissions collected under the conditions and measured in accordance with the procedures set forth in subpart M of this part. For certification vehicles only, manufacturers may conduct testing to quantify a level of nonfuel background emissions for an individual test vehicle. Such a demonstration must include a description of the source(s) of emissions and an estimated decay rate. The demonstrated level of nonfuel background emissions may be subtracted from emission test results from certification vehicles if approved in advance by the Administrator.

* * * * *

10. Section 86.098–7 of subpart A is amended by adding paragraphs (h)(1) through (h)(5) to read as follows:

§ 86.098–7 Maintenance of records; submittal of information; right of entry.

* * * * *

(h)(1) through (h)(5) [Reserved]. For guidance see § 86.094–7.

* * * * *

11. Section 86.098–11 of subpart A is amended by revising paragraph (b)(3)(iii)(A) to read as follows:

§ 86.098–11 Emission standards for 1998 and later model year diesel heavy-duty engines and vehicles.

* * * * *

(b) * * *

(3) * * *

(iii)(A) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 lbs, the standards set forth in paragraph (b)(3) of this section refer to a composite sample of evaporative emissions collected under the conditions and measured in accordance with the procedures set forth in subpart M of this part. For certification vehicles only, manufacturers may conduct testing to quantify a level of nonfuel background emissions for an individual test vehicle. Such a demonstration must include a description of the source(s) of emissions and an estimated decay rate. The demonstrated level of nonfuel background emissions may be subtracted from emission test results from certification vehicles if approved in advance by the Administrator.

* * * * *

12. Section 86.098–26 is amended by removing paragraphs (a)(3)(i)(B) through (a)(3)(ii)(B) and adding paragraphs (a)(3)(i)(D) through (a)(3)(ii)(B) to read as follows:

§ 86.098–26 Mileage and service accumulation; emission measurements.

* * * * *

(a)(3)(i)(D) through (a)(3)(ii)(B) [Reserved]. For guidance see § 86.094–26.

* * * * *

13. Section 86.099–8 of subpart A is amended by revising paragraph (b) introductory text to read as follows:

§ 86.099–8 Emission standards for 1999 and later model year light-duty vehicles.

* * * * *

(b) Evaporative emissions from light-duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles. For certification vehicles only, manufacturers may conduct testing to quantify a level of nonfuel background emissions for an individual test vehicle. Such a demonstration must include a description of the source(s) of emissions and an estimated decay rate. The demonstrated level of nonfuel background emissions may be subtracted from emission test results from certification vehicles if approved in advance by the Administrator.

* * * * *

14. Section 86.099–9 of subpart A is amended by revising paragraph (b) introductory text to read as follows:

§ 86.099–9 Emission standards for 1999 and later model year light-duty trucks.

* * * * *

(b) Evaporative emissions from light-duty trucks shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles. For certification vehicles only, manufacturers may conduct testing to quantify a level of nonfuel background emissions for an individual test vehicle. Such a demonstration must include a description of the source(s) of emissions and an estimated decay rate. The demonstrated level of nonfuel background emissions may be subtracted from emission test results from certification vehicles if approved in advance by the Administrator.

* * * * *

15. Section 86.099–10 of subpart A is amended by revising paragraph (b) introductory text to read as follows:

§ 86.099–10 Emission standards for 1999 and later model year Otto-cycle heavy-duty engines and vehicles.

* * * * *

(b) Evaporative emissions from heavy-duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles. For certification vehicles only, manufacturers may conduct testing to quantify a level of nonfuel background emissions for an individual test vehicle. Such a demonstration must include a description of the source(s) of emissions and an estimated decay rate. The demonstrated level of nonfuel background emissions may be subtracted from emission test results from certification vehicles if approved in advance by the Administrator.

* * * * *

16. Section 86.099–11 of subpart A is amended by revising paragraph (b)(3)(iii)(A) to read as follows:

§ 86.099–11 Emission standards for 1999 and later model year diesel heavy-duty engines and vehicles.

* * * * *

(b) * * *

(3) * * *

(iii)(A) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 lbs, the standards set forth in paragraph (b)(3) of this section refer to a composite sample of evaporative emissions collected under the conditions and measured in accordance with the procedures set forth in subpart M of this part. For certification vehicles only, manufacturers may conduct testing to quantify a level of nonfuel background emissions for an individual test vehicle. Such a demonstration must include a description of the source(s) of emissions and an estimated decay rate. The demonstrated level of nonfuel background emissions may be subtracted from emission test results from certification vehicles if approved in advance by the Administrator.

* * * * *

Subpart B—[Amended]

17. Section 86.106–96 of subpart B is amended by revising paragraph (a) introductory text to read as follows:

§ 86.106–96 Equipment required; overview.

(a) This subpart contains procedures for exhaust emission tests on petroleum-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty vehicles and light-duty trucks, and for evaporative emission tests on gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty vehicles and light-duty trucks. Certain items of equipment are not necessary for a particular test, e.g., evaporative enclosure when testing petroleum-fueled diesel vehicles. Alternate equipment, procedures, and calculation methods may be used if shown to yield equivalent or superior results, and if approved in advance by the Administrator. Equipment required and specifications are as follows:

* * * * *

18. Section 86.107–96 of subpart B is amended by revising paragraphs (a)(1) introductory text, (a)(1)(ii)(A), (a)(1)(ii)(B), (a)(2), (a)(3)(i), (a)(3)(ii), (c)(1), (d), (e), and (f) to read as follows:

§ 86.107–96 Sampling and analytical systems; evaporative emissions.

(a) *Testing enclosures*—(1) *Diurnal emission test.* The enclosure shall be readily sealable, rectangular in shape, with space for personnel access to all sides of the vehicle. When sealed, the

enclosure shall be gas tight in accordance with § 86.117–96. Interior surfaces must be impermeable and nonreactive to hydrocarbons (and to methanol, if the enclosure is used for methanol-fueled vehicles). The temperature conditioning system shall be capable of controlling the internal enclosure air temperature to follow the prescribed temperature versus time cycle as specified in § 86.133–96 and Appendix II of this part, within an instantaneous tolerance of ±3.0° F of the nominal temperature versus time profile throughout the test, and an average tolerance of 2.0° F over the duration of the test (where the average is calculated using the absolute value of each measured deviation). The control system shall be tuned to provide a smooth temperature pattern that has a minimum of overshoot, hunting, and instability about the desired long-term ambient temperature profile. Interior surface temperatures shall not be less than 40° F at any time during the diurnal emission test. To accommodate the volume changes due to enclosure temperature changes, either a variable-volume or fixed-volume enclosure may be used for diurnal emission testing:

* * * * *

(ii) *Fixed-volume enclosure.* * * *

(A) The enclosure shall be equipped with a mechanism to maintain a fixed internal air volume. This may be accomplished either by withdrawing air at a constant rate and providing makeup air as needed, or by reversing the flow of air into and out of the enclosure in response to rising or falling temperatures. If inlet air is added continuously throughout the test, it should be filtered with activated carbon to provide a relatively low and constant hydrocarbon level. Any method of volume accommodation shall maintain the differential between the enclosure internal pressure and the barometric pressure to a maximum value of ±2.0 inches of water.

(B) The equipment shall be capable of measuring the mass of hydrocarbon and methanol (if the enclosure is used for methanol-fueled vehicles) in the inlet and outlet flow streams with a resolution of 0.01 gram per hour. A bag sampling system may be used to collect a proportional sample of the air withdrawn from and admitted to the enclosure. Alternatively, the inlet and outlet flow streams may be continuously analyzed using an on-line FID analyzer and integrated with the flow measurements to provide a continuous record of the mass hydrocarbon and methanol removal.

(2) *Running loss test.* The enclosure shall be readily sealable, rectangular in shape, with space for personnel access to all sides of the vehicle. When sealed, the enclosure shall be gas tight in accordance with § 86.117–96. The enclosure may be equipped with a personnel door, provided that the enclosure can still meet the requirements of § 86.117–96 with the door installed. Interior surfaces must be impermeable and nonreactive to hydrocarbons and to methanol (if the enclosure is used for methanol-fueled vehicles). Interior surface temperatures shall not be less than 40° F. If a running loss enclosure meets all the requirements of paragraph (a)(1) of this section, it may be used as a diurnal evaporative emission enclosure. The enclosure must contain a dynamometer that meets the requirements of § 86.108. Provisions shall be made to remove exhaust gases from the enclosure. During the running loss test, ambient temperatures must be maintained at 95±5° F (95±2° F on average). An air or oxygen cylinder with an attached self-contained breathing apparatus may be provided for the vehicle operator. The air required for vehicle operation shall be provided by one of the following methods:

(i) The running loss enclosure may be equipped to supply air to the vehicle, at a temperature of 95±5° F, from sources outside of the running loss enclosure directly into the operating engine's air intake system. Supplemental air requirements (e.g., for an air pump) shall be supplied by drawing air from the engine intake source.

(ii) If it is shown to yield equivalent or superior results, the running loss enclosure may be designed with an air makeup system that brings outside air into the enclosure to accommodate the aspiration needs of the engine and any auxiliary devices. The makeup air shall be monitored to establish the background hydrocarbon levels (or hydrocarbon and methanol, levels, if applicable) of the makeup air. A filter may be used to provide dry air with a stable concentration of background hydrocarbon. The makeup-air vent shall be readily sealable for calibration of the enclosure and other purposes. For calculation of running loss emissions, it may be assumed that the hydrocarbon and methanol concentration in the air consumed by the vehicle is the same as that of the rest of the air in the enclosure.

(3) *Hot soak test.* * * *

(i) If the hot soak test is conducted in the same enclosure as the immediately preceding running loss test, interior surface temperatures shall not be below 70° F for the last 55 minutes of the hot soak test.

(ii) If the hot soak test is not conducted in the same enclosure as the immediately preceding running loss test, interior surface temperatures shall not be below 70° F for the duration of the hot soak test.

* * * * *

(c) *Evaporative emission hydrocarbon and methanol data recording system.*

(1) The electrical output of the FID used for measuring hydrocarbons (or hydrocarbons plus methanol, as appropriate) shall be recorded at least at the initiation and termination of each running loss and hot soak test, and at least at the initiation and termination of the enclosure sampling period(s) for the diurnal emission test, as described in § 86.133. The recording may be taken by means of a strip chart potentiometric recorder, by use of an on-line computer system or other suitable means. In any case, the recording system must have operational characteristics (signal-to-noise ratio, speed of response, etc.) equivalent to or better than those of the signal source being recorded, and must provide a permanent record of results. The record shall show a positive indication of the initiation and completion of each hot soak, running loss, or diurnal emission test (including initiation and completion of sampling period(s)), along with the time elapsed during each soak.

* * * * *

(d) *Fuel temperature control system.* Fuel temperatures of the test vehicle shall be controlled, as specified in § 86.134(g)(1)(xv), with the following combination of fans. The control system shall be tuned and operated to provide a smooth and continuous fuel temperature profile that is representative of the on-road temperature profile. The running loss test configuration should be designed to avoid heating or cooling the fuel tank's vapor space in a way that would cause vapor temperature behavior to be unrepresentative of the vehicle's on-road profile.

(1) A vehicle cooling fan shall discharge air to the front of the vehicle. The fan shall be a road-speed modulated fan that is controlled to a discharge velocity that follows the dynamometer roll speed, at least up to speeds of 30 mph, throughout the driving cycle. If a warning light or gauge indicates that the vehicle's engine coolant has overheated, subsequent test runs on the vehicle must include a vehicle cooling fan that follows the dynamometer roll speed at all speeds throughout the test cycle. The fan may direct airflow to both the

vehicle radiator air inlet(s) and the vehicle underbody.

(2) An additional fan may be used to discharge airflow from the front of the vehicle directly to the vehicle underbody to control fuel temperatures. Such a fan shall provide a total discharge airflow not to exceed 8,000 cfm.

(3) Additional fans may be used to route heating or cooling air directly at the bottom of the vehicle's fuel tank. The air supplied to the tank shall be between 85° and 160° F, with a total discharge airflow not to exceed 4,000 cfm. For exceptional circumstances, manufacturers may direct up to 6,000 cfm at the bottom of the fuel tank with the advance approval of the Administrator.

(4) Direct fuel heating may be needed for canister preconditioning, as specified in § 86.132(j)(2). Also, under exceptional circumstances in which airflow alone is insufficient to control fuel temperatures during the running loss test, direct fuel tank heating may be used (see § 86.134–96(g)(1)(xv)). The heating system must not cause hot spots on the tank wetted surface that could cause local overheating of the fuel. Heat must not be applied directly to the tank's vapor space, nor to the liquid-vapor interface.

(e) *Temperature recording system.* A strip chart potentiometric recorder, an on-line computer system, or other suitable means shall be used to record enclosure ambient temperature during all evaporative emission test segments, as well as vehicle fuel tank temperature during the running loss test. The recording system shall record each temperature at least once every minute. The recording system shall be capable of resolving time to ±15 s and capable of resolving temperature to ±0.75° F (±0.42° C). The temperature recording system (recorder and sensor) shall have an accuracy of ±3° F (±1.7° C). The recorder (data processor) shall have a time accuracy of ±15 s and a precision of ±15 s. Enclosures shall be equipped with two ambient temperature sensors, connected to provide one average output, located 3 feet above the floor at the approximate mid-length of each side wall of the enclosure and within 3 to 12 inches of each side wall. For diurnal emission testing, an additional temperature sensor shall be located underneath the vehicle to provide a temperature measurement representative of the air temperature under the fuel tank. For running loss testing, an ambient temperature sensor shall be located at the inlet to the fan that provides engine cooling. Manufacturers shall arrange that vehicles furnished for testing at federal certification facilities be equipped with temperature sensors for measurement of fuel tank temperatures. Vehicles shall be equipped with two temperature sensors installed to provide an average liquid fuel temperature. The temperature sensors shall be placed to measure the temperature at the mid-volume of the liquid fuel at a fill level of 40 percent of nominal tank capacity. An additional temperature sensor may be placed to measure vapor temperatures approximately at the mid-volume of the vapor space, though measurement of vapor temperatures is optional during the running loss test. In-tank temperature sensors are not required for the supplemental two-diurnal test sequence specified in § 86.130–96.

(f) *Pressure recording system.* A strip chart potentiometric recorder, an on-line computer system, or other suitable means, shall be used to record the enclosure gage pressure for any testing in an enclosure, as well as the vehicle's fuel tank pressure during the running loss test and the outdoor driving procedure specified in § 86.129–94(d). Fuel tank pressure measurement and recording equipment are optional during the running loss test. The recording system shall record each pressure at least once every minute. The recording system shall be capable of resolving time to ±15 s and capable of resolving pressure to ±0.1 inches of water. The pressure recording system (recorder and sensor) shall have an accuracy of ±1.0 inch of water. The recorder (data processor) shall have a time accuracy of ±15 s and a precision of ±15 s. The pressure transducer shall be installed to measure the pressure in the vapor space of the fuel tank.

* * * * *

19. Section 86.107–98 of subpart B is amended by revising paragraph (e)(1) to read as follows:

§ 86.107–98 Sampling and analytical system.

* * * * *

(e) *Temperature recording system*—(1) *For all emission testing.* A strip chart potentiometric recorder, an on-line computer system, or other suitable means shall be used to record enclosure ambient temperature during all evaporative emission test segments, as well as vehicle fuel tank temperature during the running loss test. The recording system shall record each temperature at least once every minute. The recording system shall be capable of resolving time to ±15 s and capable of resolving temperature to ±0.75° F (±0.42° C). The temperature recording system (recorder and sensor) shall have an accuracy of ±3° F (±1.7° C). The recorder (data processor) shall have a time accuracy of ±15 s and a precision of ±15 s. Enclosures shall be equipped with two ambient temperature sensors, connected to provide one average output, located 3 feet above the floor at the approximate mid-length of each side wall of the enclosure and within 3 to 12 inches of each side wall. For diurnal emission testing, an additional temperature sensor shall be located underneath the vehicle to provide a temperature measurement representative of the temperature of the air under the fuel tank. For running loss testing, an ambient temperature sensor shall be located at the inlet to the fan that provides engine cooling. Manufacturers shall arrange that vehicles furnished for testing at federal certification facilities be equipped with temperature sensors for measurement of fuel tank temperature. Vehicles shall be equipped with 2 temperature sensors installed to provide an average liquid fuel temperature. The temperature sensors shall be placed to measure the temperature at the mid-volume of the liquid fuel at a fill level of 40 percent of nominal tank capacity. An additional temperature sensor may be placed to measure vapor temperatures approximately at the mid-volume of the vapor space, though measurement of vapor temperatures is optional during the running loss test. In-tank temperature sensors are not required for the supplemental two-diurnal test sequence specified in § 86.130–96 or for the refueling test specified in § 86.151–98.

* * * * *

20. Section 86.117–96 of subpart B is amended by revising the introductory text and paragraphs (a)(1)(ii), (a)(1)(iii), (a)(7), (b), (c) heading, (c)(1) introductory text, (c)(1)(iv), (c)(1)(v), (c)(1)(vii), (d)(1) introductory text and equation, (d)(1)(v), and (e)(1)(iii), adding paragraph (d)(3), and removing and reserving paragraphs (d)(1)(iii) and (d)(1)(iv) to read as follows:

§ 86.117–96 Evaporative emission enclosure calibrations.

The calibration of evaporative emission enclosures consists of three parts: initial and periodic determination of enclosure background emissions (hydrocarbons and methanol); initial determination of enclosure internal volume; and periodic hydrocarbon and methanol retention check and calibration. Methanol measurements may be omitted if methanol-fueled vehicles will not be tested in the evaporative enclosure. Alternate calibration methods may be used if

shown to yield equivalent or superior results, and if approved in advance by the Administrator; specifically, more extreme temperatures may be used for determining calibration without affecting the validity of test results.

(a) *Initial and periodic determination of enclosure background emissions.* * * *

(1) * * *

(ii) Fixed-volume enclosures may be operated with inlet and outlet flow streams either closed or open; if inlet and outlet flow streams are open, the air flowing into and out of the enclosure must be monitored in accordance with § 86.107–96(a)(1)(ii)(B). Ambient temperatures shall be maintained at 96±3° F throughout the 4-hour period.

(iii) For running loss enclosures ambient temperatures shall be maintained at 95±3° F throughout the 4-hour period. For running loss enclosures designed with a vent for makeup air, the enclosure shall be operated with the vent closed.

* * * * *

(7) Allow the enclosure to stand undisturbed for four hours.

* * * * *

(b) *Initial determination of enclosure internal volume.* Prior to its introduction into service the enclosure internal volume shall be determined by the following procedure:

(1) Carefully measure the internal length, width and height of the enclosure, accounting for irregularities (such as braces) and calculate the internal volume. For variable-volume enclosures, latch the enclosure to a fixed volume when the enclosure is held at a constant temperature; this nominal volume shall be repeatable within ±0.5 percent of the reported value.

(2) [Reserved].

(3) [Reserved].

(c) *Hydrocarbon and methanol (organic gas) retention check and calibration.* * * *

(1) An enclosure to be used for the diurnal emission test (see § 86.133–96) shall be calibrated according to the following procedure. Calibration for hydrocarbon and methanol may be conducted simultaneously or in sequential test runs.

* * * * *

(iv) [Reserved].

(v) Turn on the ambient temperature control system (if not already on) and adjust it for an initial temperature of 96° F (36° C). On variable-volume enclosures, latch the enclosure to the appropriate volume position for the set temperature. On fixed-volume enclosures close the outlet and inlet flow streams.

* * * * *

(vii) Inject into the enclosure 2 to 6 grams of pure methanol at a temperature of at least 150° F (65° C) and/or 2 to 6 grams of pure propane. The injected quantity may be measured by volume flow or by mass measurement. The method used to measure the quantity of methanol and propane shall have an accuracy of ±0.2 percent of the measured value (less accurate methods may be used with the advance approval of the Administrator).

* * * * *

(d) *Calculations.* (1) The calculation of net methanol and hydrocarbon mass change is used to determine enclosure background and leak rate. It is also used to check the enclosure volume measurements. The methanol mass change is calculated from the initial and final methanol samples, the net withdrawn methanol (in the case of diurnal emission testing with fixed-volume enclosures), and initial and final temperature and pressure according to the following equation:

$$M_{CH_3OH} = V_n \times \left[\frac{\left(C_{MS1f} \times AV_{1f}\right) + \left(C_{MS2f} \times AV_{2f}\right)}{V_{E_f}}\right] - \left[\frac{\left(C_{MS1i} \times AV_{1i}\right) + \left(C_{MS2i} \times AV_{2i}\right)}{V_{E_i}}\right] + \left(M_{CH_3OH,out} - M_{CH_3OH,in}\right)$$

Where:

* * * * *

(iii) [Reserved].

(iv) [Reserved].

(v) V_E=Volume of sample withdrawn, ft^3. Sample volumes must be corrected for differences in temperature to be consistent with determination of V_n, prior to being used in the equation.

* * * * *

(3) For variable-volume enclosures, defined in § 86.107(a)(1)(i), the following simplified form of the hydrocarbon mass change equation may be used:

$$M_{HC} = \left(\frac{kP_B V_n \times 10^{-4}}{T}\right) \times \left[\left(C_{HC_f} - rC_{CH_3OH_f}\right) - \left(C_{HC_i} - rC_{CH_3OH_i}\right)\right]$$

(e) *Calibration of equipment for point-source testing of running losses.* * * *

(1) * * *

(iii) Operate the vapor sampling system in the normal manner and release a known quantity of pure propane into the most frequently used fuel vapor collector during the sampling period (approximately 5 minutes).

* * * * *

21. Section 86.129–94 of subpart B is amended by revising paragraphs (d)(1), (d)(2)(iii), (d)(3)(ii), (d)(3)(iii), (d)(4)(i), (d)(4)(ii), (d)(4)(iii), (d)(7)(iii), and (d)(7)(iv) and adding paragraph (d)(7)(v) to read as follows:

§ 86.129–94 Road load power, test weight, inertia weight class determination, and fuel temperature profile.

* * * * *

(d) *Fuel temperature profile*—(1) *General requirements.* (i) To be tested for running losses, as specified in § 86.134, a vehicle must have a fuel temperature profile. The following procedure is used to generate the fuel temperature profile, which serves as a target for controlling fuel temperatures during the running loss test. This profile represents the fuel temperature change that occurs during on-road driving. If a vehicle has more than one fuel tank, a profile shall be established for each tank. Manufacturers may also simultaneously generate a profile for vapor temperatures.

(ii) If a manufacturer uses a vehicle model to develop a profile to represent multiple models, the vehicle model selected must have the greatest expected fuel temperature increase during driving of all those models it represents. Also, manufacturers must select test vehicles

with any available vehicle options that increase fuel temperatures during driving (for example, any feature that limits underbody airflow).

(iii) Manufacturers may conduct testing to develop fuel temperature profiles in a laboratory setting, subject to approval by the Administrator. The laboratory facility should simulate outdoor testing to reproduce fuel and vapor temperature behavior over the specified driving schedule. The design of the laboratory facility should include consideration of any parameters that may affect fuel temperatures, such as solar loading, pavement heat, and relative wind velocities around and underneath the test vehicle. Indoor testing to develop the fuel temperature profiles must be conducted with little or no vehicle-specific adjustment of laboratory parameters. Manufacturers would need to maintain an ongoing demonstration of correlation between laboratory and outdoor measurement of fuel temperatures. Specifically, fuel temperatures and pressures from indoor driving should be at least as high as measured when driving outdoors according to the procedures described in this section.

(iv) Small-volume manufacturers, as defined in § 86.094–14(b)(1), may use an alternate method for generating fuel temperature profiles, subject to the approval of the Administrator.

(v) The Administrator may conduct testing to establish any vehicle's temperature profiles or to verify compliance with fuel tank pressure requirements.

(2) * * *

(iii) The data recording system described in paragraph (d)(2)(ii) of this section shall be capable of resolving time to ±1 s, capable of resolving temperature to ±2° F, capable of resolving pressure to ±1.0 inch of water, and capable of resolving speed to ±1 mph. The temperature and pressure signals shall be recorded at intervals of up to 1 minute; speed signals shall be recorded at intervals of up to 1 second.

(3) * * *

(ii) Wind conditions shall be calm to light with maximum wind speed of 15 mph. In the case of temporary gusting, wind speeds between 15 and 25 mph may occur for up to 5 percent of the total driving time without invalidating the data collection. Wind speed shall be measured and recorded in regular intervals of at least once per minute. Measure wind speed with the following requirements (based on *Federal Standard for Siting Meteorological Sensors at Airports*, FCM–S4–1987). The site should be relatively level, but small gradual slopes are acceptable. The sensor shall be mounted 30 to 33 feet (9 to 10 meters) above the average ground height within a radius of 500 feet (150 meters). The sensor height shall not exceed 33 feet, except as necessary to be at least 15 feet (5 meters) above the height of any obstruction (e.g. vegetation, buildings, etc.) within a 500 foot (150 meter) radius. An object is considered to be an obstruction if the included lateral angle from the sensor to the ends of the object is 10 degrees or more.

(iii) Road surface temperature shall be at least 125 °F throughout the driving period. Pavement temperature shall be measured and recorded in regular intervals of at least once per minute. The track temperature may be measured with an embedded sensor, a portable temperature probe, or an infrared pyrometer that can provide an accuracy of ±2 °F. Temperatures must be measured on a surface representative of the surface where the vehicle is driven.

* * * * *

(4) *Profile determination procedure.* (i) Drain the fuel tank(s) and fill with test fuel to the ''tank fuel volume'' defined in § 86.082–2. The test fuel should meet the specifications of § 86.113, except that fuel with a lower volatility may be used, subject to Administrator approval. Manufacturers using a lower volatility fuel must generate a vapor temperature profile for demonstrating compliance with the limit on fuel tank pressure during the running loss test (see § 86.134–96).

(ii) The vehicle shall be moved to the location where the data is to be collected. It may be driven a maximum distance of 5 miles and may also be transported by other means. The vehicle shall be stabilized by one of the following methods:

(A) The vehicle shall be parked for a minimum of 12 hours in an open area on a surface that is representative of the test road, without any artificial heating or cooling of the fuel. The orientation of the front of the vehicle during parking (e.g., N, SW, etc.) shall be documented.

(B) The vehicle may be soaked in a temperature-controlled environment to stabilize fuel temperatures. Before starting the drive, the vehicle shall be stabilized with fuel temperatures 95 ±3 °F for at least one hour. The fuel temperature may not exceed 98 °F at any time before the beginning of the driving schedule, during which only whole-vehicle heating and cooling may be used to control fuel temperatures. If a manufacturer uses the provisions of paragraph (d)(7)(v) of this section to establish a lower initial fuel temperature for the running loss test, the fuel in the test vehicle may not be stabilized at a temperature higher than the newly established initial fuel temperature.

(iii) Once the ambient conditions specified in paragraph (d)(3) of this section are met and the vehicle has been stabilized according to paragraph (d)(4)(ii) of this section, the vehicle's engine may be started. The vehicle's air conditioning system (if so equipped) shall be set to the ''normal'' air conditioning mode and adjusted to the minimum discharge air temperature and high fan speed. Vehicles equipped with automatic temperature controlled air conditioning systems shall be set to operate in ''automatic'' temperature and fan modes with the system set at 72 °F.

* * * * *

(7) * * *

(iii) If all these requirements are met, the following calculations shall be performed to determine a profile for liquid fuel temperatures and, if applicable, for vapor temperatures:

$T_{i,profile}=T_i-T_o$.

Where:

(A) $Ti,_{profile}$=the series of temperatures that comprise the relative temperature profile.

(B) T_i=the series of observed liquid fuel or vapor temperatures during the drive.

(C) T_o=the liquid fuel or vapor temperature observed at the start of the specified driving schedule.

(iv) The relative temperature profile consists of the set of temperatures at each 1-minute interval. If temperatures are sampled more frequently than once per minute, the temperature data points may represent a rolling average of temperatures sampled for up to one-minute intervals. If multiple valid test runs are conducted for any model, then all the collected data shall be used to calculate a composite profile, based on the average temperatures at each point. The absolute temperature profile is determined by adding 95 °F (35 °C) to each point of the relative profile. Other methodologies for developing corrected liquid fuel and vapor space temperature profiles may be used if demonstrated to yield equivalent results and approved in advance by the Administrator.

(v) Manufacturers may use a lower initial fuel temperature for the running loss test, if approved in advance by the Administrator. To demonstrate the need for such an adjustment, manufacturers would be expected to determine the maximum fuel temperature experienced by a vehicle during an extended park or after driving one UDDS cycle when exposed to the ambient conditions described in paragraph (d)(3) of this section. To use this provision,

manufacturers would have to show maximum fuel temperatures no greater than 92 °F.

22. Section 86.130–96 of subpart B is amended by revising figure B96–10 at the end of the section and adding paragraph (e) to read as follows:

§ 86.130–96 Test sequence; general requirements.

* * * * *

(e) If tests are invalidated after collection of emission data from previous test segments, the test may be repeated to collect only those data points needed to complete emission measurements. Compliance with emission standards may be determined by combining emission measurements from different test runs. If any emission measurements are repeated, the new measurements supersede previous values.

BILLING CODE 6560–50–P

Federal Test Procedure

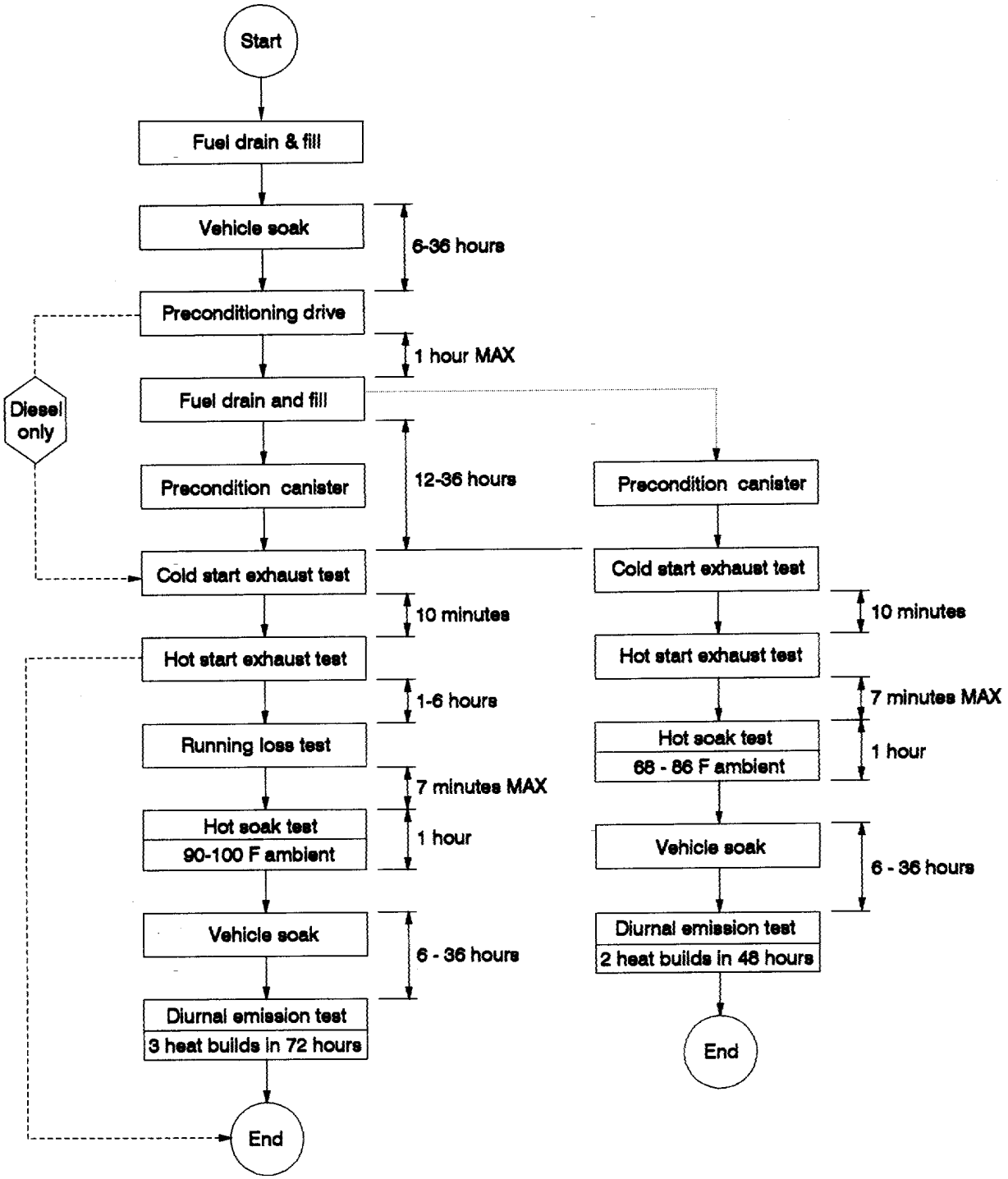

Figure B96-10 Test sequence

BILLING CODE 6560–50–C

23. Section 86.131–96 of subpart B is amended by revising paragraph (d) to read as follows:

§ 86.131–96 Vehicle preparation.

* * * * *

(d) For vehicles to be tested for running loss emissions, prepare the fuel tank(s) for measuring and recording the temperature and pressure of the fuel tank as specified in § 86.107–96 (e) and (f). Measurement of vapor temperature is optional during the running loss test. If vapor temperature is not measured, fuel tank pressure need not be measured.

* * * * *

24. Section 86.132–96 of subpart B is amended by revising paragraphs (c), (f), (h) introductory text, (h)(1)(i), (h)(2), (j) introductory text, (j)(1) introductory text, (j)(1)(i), and (j)(1)(vi) to read as follows:

§ 86.132–96 Vehicle preconditioning.

* * * * *

(c)(1) Gasoline- and methanol-fueled vehicles shall be soaked for at least 6 hours after being refueled. Petroleum-fueled diesel vehicles and gaseous-fueled vehicles shall be soaked for at least 1 hour after being refueled. Following this soak period, the test vehicle shall be placed, either by being driven or pushed, on a dynamometer and operated through one Urban Dynamometer Driving Schedule (UDDS), specified in § 86.115 and Appendix I of this part.

(2) Once a test vehicle has completed the refueling and vehicle soak steps specified in paragraphs (b) and (c)(1) of this section, these steps may be omitted in subsequent testing with the same vehicle and the same fuel specifications, provided the vehicle remains under laboratory ambient temperature conditions for at least 6 hours before starting the next test. In such cases, each subsequent test shall begin with the preconditioning drive specified in this paragraph. The test vehicle may not be used to set dynamometer horsepower.

* * * * *

(f)(1) *Gasoline- and methanol-fueled vehicles.* After completion of the preconditioning drive, the vehicle shall be driven off the dynamometer. The vehicle's fuel tank(s) shall be drained and then filled with test fuel, as specified in § 86.113, to the ''tank fuel volume'' defined in § 86.082–2. The vehicle shall be refueled within 1 hour after completion of the preconditioning drive. The fuel cap(s) shall be installed within 1 minute after refueling. The vehicle shall be parked within five minutes after refueling.

(2) *Petroleum-fueled diesel vehicles.* Within five minutes after completion after the preconditioning drive, the vehicle shall be driven off the dynamometer and parked.

(3) *Gaseous-fueled vehicles.* After completion of the preconditioning drive, the vehicle shall be driven off the dynamometer. Vehicle fuel tanks shall be refilled with fuel that meets the specifications in § 86.113. Fuel tanks shall be filled to a minimum of 75% of service pressure for natural gas-fueled vehicles or a minimum of 75% of available fill volume for liquefied petroleum gas-fueled vehicles. Prior draining of the fuel tanks is not called for if the fuel in the tanks already meets the specifications in § 86.113. The vehicle shall be parked within five minutes after refueling, or, in the absence of refueling, within five minutes after completion of the preconditioning drive.

* * * * *

(h) During the soak period for the three-diurnal test sequence described in § 86.130–96, evaporative canisters, if the vehicle is so equipped, shall be preconditioned according to the following procedure. For vehicles with multiple canisters in a series configuration, the set of canisters must be preconditioned as a unit. For vehicles with multiple canisters in a parallel configuration, each canister must be preconditioned separately. If production evaporative canisters are equipped with a functional service port designed for vapor load or purge steps, the service port shall be used during testing to precondition the canister. In addition, for model year 1998 and later vehicles equipped with refueling canisters, these canisters shall be preconditioned for the three-diurnal test sequence according to the procedure in paragraph (j)(1) of this section. If a vehicle is designed to actively control evaporative or refueling emissions without a canister, the manufacturer shall devise an appropriate preconditioning procedure, subject to the approval of the Administrator.

(1)(i) Prepare the evaporative emission canister for the canister purging and loading operation. The canister shall not be removed from the vehicle, unless access to the canister in its normal location is so restricted that purging and loading can only reasonably be accomplished by removing the canister from the vehicle. Special care shall be taken during this step to avoid damage to the components and the integrity of the fuel system. A replacement canister may be temporarily installed during the soak period while the canister from the test vehicle is preconditioned.

* * * * *

(2) For methanol-fueled and flexible-fueled vehicles, canister preconditioning shall be performed with a fuel vapor composition representative of that which the vehicle would generate with the fuel mixture used for the current test. Manufacturers shall develop a procedure to precondition the evaporative canister, if the vehicle is so equipped, for the different fuel. The procedure shall represent a canister loading equivalent to that specified in paragraph (h)(1) of this section and shall be approved in advance by the Administrator.

* * * * *

(j) For the supplemental two-diurnal test sequence described in § 86.130–96, one of the following methods shall be used to precondition evaporative canisters during the soak period specified in paragraph (g) of this section. For vehicles with multiple canisters in a series configuration, the set of canisters must be preconditioned as a unit. For vehicles with multiple canisters in a parallel configuration, each canister must be preconditioned separately. In addition, for model year 1998 and later vehicles equipped with refueling canisters, these canisters shall be preconditioned for the supplemental two-diurnal test sequence according to the procedure in paragraph (j)(1) of this section. Canister emissions are measured to determine breakthrough. Breakthrough is here defined as the point at which the cumulative quantity of hydrocarbons emitted is equal to 2 grams.

(1) *Butane loading to breakthrough.* The following procedure provides for emission measurement in an enclosure. Breakthrough may also be determined by measuring the weight gain of an auxiliary evaporative canister connected downstream of the vehicle's canister, in which case, the following references to the enclosure can be ignored. The auxiliary canister shall be well purged prior to loading. If production evaporative canisters are equipped with a functional service port designed for vapor load or purge steps, the service port shall be used during testing to precondition the canister.

(i) Prepare the evaporative/refueling emission canister for the canister loading operation. The canister shall not be removed from the vehicle, unless access to the canister in its normal location is so restricted that purging and loading can only reasonably be accomplished by removing the canister from the vehicle. Special care shall be

taken during this step to avoid damage to the components and the integrity of the fuel system. A replacement canister may be temporarily installed during the soak period while the canister from the test vehicle is preconditioned.

* * * * *

(vi)(A) For gasoline-fueled vehicles, load the canister with a mixture composed of 50 percent butane and 50 percent nitrogen by volume at a rate of 40 grams butane per hour.

(B) For methanol-fueled and flexible-fueled vehicles, canister preconditioning shall be performed with a fuel vapor composition representative of that which the vehicle would generate with the fuel mixture used for the current test. Manufacturers shall develop a procedure to precondition the evaporative canister, if the vehicle is so equipped, for the different fuel.

* * * * *

25. Section 86.133–96 of subpart B is amended by revising paragraphs (c), (h), and (i)(5) to read as follows:

§ 86.133–96 Diurnal emission test.

* * * * *

(c) The test vehicle shall be exposed to ambient temperatures cycled according to the profile specified in § 86.133 and Appendix II of this part.

(1) Temperatures measured with the underbody temperature sensor shall follow the profile with a maximum deviation of 3° F at any time and an average temperature deviation not to exceed 2° F, where the average deviation is calculated using the absolute value of each measured deviation. In addition, the temperature from the sidewall temperature sensors shall follow the profile with a maximum deviation of 5° F at any time.

(2) Ambient temperatures shall be measured at least every minute. Temperature cycling shall begin when time=0 minutes, as specified in paragraph (i)(5) of this section.

* * * * *

(h) Prior to sampling for emissions and throughout the period of cycled ambient temperatures, the mixing fan(s) shall circulate the air at a rate of 0.8±0.2 cfm per cubic foot of ambient volume. The mixing fan(s), plus any additional fans if needed, shall also maintain a minimum wind speed of 5 mph (8 km/hr) under the fuel tank of the test vehicle. The Administrator may adjust fan speed and location to ensure sufficient air circulation around the fuel tank. The wind speed requirement may be satisfied by consistently using a fan configuration that has been demonstrated to maintain a broad 5-mph air flow in the vicinity of the vehicle's fuel tank, subject to verification by the Administrator.

(i) * * *

(5) Within 10 minutes of closing and sealing the doors, analyze enclosure atmosphere for hydrocarbons and record. This is the initial (time=0 minutes) hydrocarbon concentration, C_{HCi}, required in § 86.143. Hydrocarbon emissions may be sampled continuously during the test period.

* * * * *

26. Section 86.134–96 of subpart B is amended by revising paragraphs (a), (f), (g)(1)(v), (g)(1)(vii), (g)(1)(viii), (g)(1)(xii) introductory text, (g)(1)(xii)(A), (g)(1)(xiv), (g)(1)(xv), (g)(1)(xvi), (g)(2)(v), (g)(2)(vii), (g)(2)(x), and (g)(2)(xii) and adding paragraphs (g)(1)(xx)(C) and (g)(2)(xv) to read as follows:

§ 86.134–96 Running loss test.

(a) *Overview.* Gasoline- and methanol-fueled vehicles are to be tested for running loss emissions during simulated high-temperature urban driving; this test is not required for gaseous-fueled vehicles. During operation, tank temperatures are controlled according to a prescribed profile to simulate in-use conditions. If the vehicle is determined to have exceeded the standard before the end of the running loss test, the test may be terminated without invalidating the data. The test can be run either in a sealed enclosure or with the point-source method, as specified in paragraph (g) of this section. Measurement of vapor temperature is optional during the running loss test; however, if testing by the Administrator shows that a vehicle has exceeded an emission standard without measurement of vapor temperatures, the manufacturer may, utilizing its own resources, conduct subsequent testing on that vehicle to determine if the exceedance is attributable to inadequate control of vapor temperatures.

* * * * *

(f) *Temperature stabilization.* Immediately after the hot transient exhaust emission test, the vehicle shall be soaked in a temperature controlled area for a maximum of 6 hours until the fuel temperature is stabilized. The fuel may be heated or cooled to stabilize fuel temperatures, but the fuel heating rate must not exceed 5° F in any 1-hour interval during the soak period. A manufacturer may use a faster heating rate or a longer period for stabilizing fuel temperatures if the needed heating cannot be easily accomplished in the 6-hour period, subject to Administrator approval.

(1) Fuel temperatures must be held at 95± 3° F for at least one hour before the start of the running loss test.

(2) If a vehicle's fuel temperature profile has an initial temperature lower than 95° F, as described in § 86.129–94(d)(7)(v), the fuel in the test vehicle must be stabilized to within 3° F of that temperature for at least one hour before the start of the running loss test.

(g) *Running loss test.* * * *

(1) *Enclosure method.* * * *

(v) Fans shall be positioned as described in §§ 86.107–96 (d) and (h).

* * * * *

(vii) Connect the air intake equipment to the vehicle, if applicable. This connection shall be made to minimize leakage.

(viii) The temperature and pressure recording systems shall be started. Measurement of vapor temperature is optional during the running loss test. If vapor temperature is not measured, fuel tank pressure need not be measured.

* * * * *

(xii) When the ambient temperature is 95±5° F (35±3° C) and the fuel has been stabilized according to paragraph (f) of this section, the running loss test may begin. Measure the initial ambient temperature and pressure.

(A) Analyze enclosure atmosphere for hydrocarbons and record. This is the initial (time=0 minutes) hydrocarbon concentration, C_{HCi}, required in § 86.143. Hydrocarbon emissions may be sampled continuously during the test period.

* * * * *

(xiv) The ambient temperature shall be maintained at 95±5° F (95±2° F on average) during the running loss test, measured at the inlet to the cooling fan in front of the vehicle; it shall be recorded at least every 60 seconds.

(xv) The fuel temperature during the dynamometer drive shall be controlled to match the fuel tank temperature profile determined in § 86.129. Measured fuel temperatures must be within ±3° F of the target profile throughout the test run. Vapor temperatures, if measured, must be within ±5° F of the target profile during the first 4186 seconds of the running loss test, and within ±3° F for the remaining 120 seconds of the test run. For any vehicle complying with the test standards, vapor temperatures may be higher than the specified tolerances without invalidating test results. For testing by the Administrator, vapor temperatures may be lower than the specified tolerances without invalidating test results. If the test vehicle has more than one fuel tank, the temperatures for both fuel tanks shall

follow the target profiles determined in § 86.129. The control system shall be tuned and operated to provide smooth and continuous tank temperature profiles that are representative of the on-road profiles.

(xvi) Tank pressure shall not exceed 10 inches of water at any time during the running loss test unless a pressurized system is used and the manufacturer demonstrates that vapor would not be vented to the atmosphere upon fuel cap removal. A vehicle may exceed the pressure limit for temporary periods during the running loss test, up to 10 percent of the total driving time, provided that the vehicle has demonstrated conformance with the pressure limit during the entire outdoor driving period specified in § 86.129. Measurement of fuel tank pressures will be considered valid only if vapor temperatures are measured and controlled to the tolerances specified in paragraph (g)(1)(xv) of this section.

* * * * *

(xx) * * *

(C) Turn off all the fans specified in § 86.107–96(d). Also, the time that the vehicle's engine compartment cover is open for removal of air intake equipment, if applicable, shall be minimized to avoid loss of heat from the engine compartment.

* * * * *

(2) *Point-source method.* * * *

(v) Fans shall be positioned as described in § 86.107–96(d).

* * * * *

(vii) The temperature and pressure recording systems shall be started. Measurement of vapor temperature is optional during the running loss test. If vapor temperature is not measured, fuel tank pressure need not be measured.

* * * * *

(x) The ambient temperature shall be maintained at 95±5° F (95±2° F on average) during the running loss test, measured at the inlet to the cooling fan in front of the vehicle; it shall be recorded at least every 60 seconds.

* * * * *

(xii) The tank pressure requirements described in paragraph (g)(1)(xvi) of this section apply also to running loss testing by the point source method.

* * * * *

(xv) At the end of the running loss test, turn off all the fans specified in § 86.107–96(d).

* * * * *

27. Section 86.138–90 of subpart B is amended by revising paragraph (b) to read as follows:

§ 86.138–90 Hot soak test.

* * * * *

(b) The enclosure doors shall be closed and sealed within two minutes of engine shutdown and within seven minutes after the end of the exhaust emission test. The steps after the end of the driving cycle should be done as quickly as possible to minimize the time needed to start the hot soak test.

* * * * *

28. Section 86.138–96 of subpart B is amended by revising paragraphs (a)(2), (b)(2)(v)(A), and (b)(2)(viii) to read as follows:

§ 86.138–96 Hot soak test.

(a) * * *

(2) *Gaseous-fueled vehicles.* Since gaseous-fueled vehicles are not required to perform a running loss test, the hot soak test shall be conducted within seven minutes after completion of the hot start exhaust test.

(b) * * *

(2) * * *

(v) * * *

(A) Analyze the enclosure atmosphere for hydrocarbons and record. This is the initial (time = 0 minutes) hydrocarbon concentration, C_{HCi}, required in § 86.143. Hydrocarbon emissions may be sampled continuously during the test period.

* * * * *

(viii) The vehicle shall enter the enclosure; the enclosure doors shall be closed and sealed within 2 minutes of engine shutdown and within seven minutes after the end of the running loss test.

* * * * *

29. Section 86.143–96 of subpart B is amended by revising paragraphs (b)(1)(i) introductory text and equation, (b)(1)(i)(D), (b)(2)(i)(B), and (b)(2)(ii)(B), adding paragraph (b)(1)(iii), and removing and reserving paragraphs (b)(1)(i)(C) and (b)(1)(i)(E) to read as follows:

§ 86.143–96 Calculations; evaporative emissions.

* * * * *

(b) * * *

(1) * * *

(i) Methanol emissions:

$$M_{CH_3OH} = V_n \times \left[\frac{\left(C_{MS1f} \times AV_{1f}\right) + \left(C_{MS2f} \times AV_{2f}\right)}{V_{E_f}} \right] - \left[\frac{\left(C_{MS1i} \times AV_{1i}\right) + \left(C_{MS2i} \times AV_{2i}\right)}{V_{E_i}} \right] + \left(M_{CH_3OH,out} - M_{CH_3OH,in}\right)$$

Where:

* * * * *

(C) [Reserved].

(D) V_E=Volume of sample withdrawn, ft^3. Sample volumes must be corrected for differences in temperature to be consistent with determination of V_n, prior to being used in the equation.

(E) [Reserved].

* * * * *

(iii) For variable-volume enclosures, defined in § 86.107(a)(1)(i), the following simplified form of the hydrocarbon mass change equation may be used:

$$M_{HC} = \left(\frac{kP_B V_n \times 10^{-4}}{T} \right) \times \left[\left(C_{HC_f} - rC_{CH_3OH_f}\right) - \left(C_{HC_i} - rC_{CH_3OH_i}\right) \right]$$

(2) * * *

(i) * * *

(B) ρ_{CH3OH}= 37.71 g/ft^3, density of pure vapor at 68° F.

* * * * *

(ii) * * *

(B) ρ_{HC}= 16.88 g/ft^3, density of pure vapor at 68° F (for hydrogen to carbon ratio of 2.3).

* * * * *

30. Section 86.146–96 of subpart B is amended by revising paragraphs (f), (i)(1), and (i)(2) to read as follows:

§ 86.146–96 Fuel dispensing spitback procedure.

* * * * *

(f) Following the preconditioning drive, the vehicle shall be moved or driven at minimum throttle to the refueling area.

* * * * *

(i) * * *

(1) The fueling operation shall be started within 4 minutes after the vehicle is turned off and within 8 minutes after completion of the preconditioning drive. The average temperature of the dispensed fuel shall be 65±5° F (18±3° C).

(2) The fuel shall be dispensed at a rate of 9.8±0.3 gallons/minute (37.1±1.1 L/min) until the automatic shutoff is activated.

* * * * *

31. Section 86.152–98 of subpart B is amended by revising paragraph (a) to read as follows:

§ 86.152–98 Vehicle preparation; refueling test.

(a) Provide additional fittings and adapters, as required, to accommodate a fuel drain at the lowest point possible in the tank(s) as installed on the vehicle. The canister shall not be removed from the vehicle, unless access to the canister in its normal location is so restricted that purging and loading can only reasonably be accomplished by removing the canister from the vehicle. Special care shall be taken during this step to avoid damage to the components and the integrity of the fuel system. A replacement canister may be temporarily installed during the soak period while the canister from the test vehicle is preconditioned.

* * * * *

32. Section 86.153–98 is amended by revising paragraphs (a) and (c)(2) to read as follows:

§ 86.153–98 Vehicle and canister preconditioning; refueling test.

(a) *Vehicle and canister preconditioning.* Vehicles and vapor storage canisters shall be preconditioned in accordance with the preconditioning procedures for the supplemental two-diurnal evaporative emissions test specified in § 86.132–96 (a) through (j). For vehicles equipped with non-integrated refueling emission control systems, the canister must be loaded using the method involving butane loading to breakthrough (see § 86.132–96(j)(1)).

* * * * *

(c) * * *

(2) To provide additional opportunity for canister purge, conduct additional driving on a dynamometer, within one hour of completion of the hot start exhaust test, by operating the test vehicle through one UDDS, a 2 minute idle, two NYCCs, another 2 minute idle, another UDDS, then another 2 minute idle (see § 86.115–78 and Appendix I of this part). Fifteen seconds after the engine starts, place the transmission in gear. Twenty seconds after the engine starts, begin the initial vehicle acceleration of the driving schedule. The transmission shall be operated according to the specifications of § 86.128–79 during the driving cycles. The vehicle's air conditioner (if so equipped) shall be turned off. Ambient temperature shall be controlled as specified in § 86.151–98. It is not necessary to monitor and/or control in-tank fuel temperatures.

(i) The fixed-speed fan specified in § 86.135–94(b) may be used for engine cooling. If a fixed-speed fan is used, the vehicle's hood shall be opened.

(ii) Alternatively, the roadspeed-modulated fan specified in § 86.107–96(d)(1) may be used for engine cooling. If a road-speed modulated fan is used, the vehicle's hood shall be closed.

* * * * *

33. Section 86.154–98 is amended by revising paragraph (e)(3) to read as follows:

§ 86.154–98 Measurement procedure; refueling test.

* * * * *

(e) * * *

(3) An electrical ground shall be attached to the vehicle. The vehicle fuel filler cap shall be removed and the enclosure door shall be closed and sealed within two minutes of cap removal. The FID (or HFID) trace shall be allowed to stabilize.

* * * * *

Subpart G—[Amended]

34. Section 86.608–90 of subpart G is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 86.608–90 Test procedures.

(a) * * *

(2) * * *

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in § 86.131–96(a) with only a single temperature sensor, and may drain the test fuel from other than the lowest point of the tank, as specified in § 86.131–96(b), provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturers and shall be made available to the Administrator upon request. Additionally, for any test vehicle that has remained under laboratory ambient temperature conditions for at least 6 hours prior to testing, the vehicle soak described in § 86.132–96(c) may be eliminated upon approval of the Administrator. In such cases, the vehicle shall be operated through the preconditioning drive described in § 86.132–96(c) immediately following the fuel drain and fill procedure described in § 86.132–96(b).

* * * * *

35. Section 86.608–98 of subpart G is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 86.608–98 Test procedures.

(a) * * *

(2) * * *

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in § 86.131–96(a) with only a single temperature sensor, and may drain the test fuel from other than the lowest point of the tank, as specified in § 86.131–96(b) and § 86.152–98(a), provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturers and shall be made available to the Administrator upon request. Additionally, for any test vehicle that has remained under laboratory ambient temperature conditions for at least 6 hours prior to testing, the vehicle soak described in § 86.132–96(c) may be eliminated upon approval of the Administrator. In such cases, the vehicle shall be operated through the preconditioning drive described in § 86.132–96(c) immediately following the fuel drain and fill procedure described in § 86.132–96(b).

* * * * *

Subpart M—[Amended]

36. Section 86.1207–96 of subpart M is amended by revising paragraphs (a)(1) introductory text, (a)(1)(ii)(A), (a)(1)(ii)(B), (a)(2), (a)(3)(i), (a)(3)(ii), (c)(1), (d), (e), and (f) to read as follows:

§ 86.1207–96 Sampling and analytical systems; evaporative emissions.

(a) *Testing enclosures*—(1) *Diurnal emission test.* The enclosure shall be readily sealable, rectangular in shape, with space for personnel access to all sides of the vehicle. When sealed, the enclosure shall be gas tight in accordance with § 86.1217–96. Interior surfaces must be impermeable and nonreactive to hydrocarbons (and to methanol, if the enclosure is used for methanol-fueled vehicles). The temperature conditioning system shall

be capable of controlling the internal enclosure air temperature to follow the prescribed temperature versus time cycle as specified in § 86.1233–96 and Appendix II of this part, within an instantaneous tolerance of ±3.0 °F of the nominal temperature versus time profile throughout the test, and an average tolerance of 2.0 °F over the duration of the test (where the average is calculated using the absolute value of each measured deviation). The control system shall be tuned to provide a smooth temperature pattern that has a minimum of overshoot, hunting, and instability about the desired long-term ambient temperature profile. Interior surface temperatures shall not be less than 40 °F at any time during the diurnal emission test. To accommodate the volume changes due to enclosure temperature changes, either a variable-volume or fixed-volume enclosure may be used for diurnal emission testing:

* * * * *

(ii) *Fixed-volume enclosure.* * * *

(A) The enclosure shall be equipped with a mechanism to maintain a fixed internal air volume. This may be accomplished either by withdrawing air at a constant rate and providing makeup air as needed, or by reversing the flow of air into and out of the enclosure in response to rising or falling temperatures. If inlet air is added continuously throughout the test, it should be filtered with activated carbon to provide a relatively low and constant hydrocarbon level. Any method of volume accommodation shall maintain the differential between the enclosure internal pressure and the barometric pressure to a maximum value of ±2.0 inches of water.

(B) The equipment shall be capable of measuring the mass of hydrocarbon and methanol (if the enclosure is used for methanol-fueled vehicles) in the inlet and outlet flow streams with a resolution of 0.01 gram per hour. A bag sampling system may be used to collect a proportional sample of the air withdrawn from and admitted to the enclosure. Alternatively, the inlet and outlet flow streams may be continuously analyzed using an on-line FID analyzer and integrated with the flow measurements to provide a continuous record of the mass hydrocarbon and methanol removal.

(2) *Running loss test.* The enclosure shall be readily sealable, rectangular in shape, with space for personnel access to all sides of the vehicle. When sealed, the enclosure shall be gas tight in accordance with § 86.1217–96. The enclosure may be equipped with a personnel door, provided that the enclosure can still meet the requirements of § 86.1217–96 with the door installed. Interior surfaces must be impermeable and nonreactive to hydrocarbons and to methanol (if the enclosure is used for methanol-fueled vehicles). Interior surface temperatures shall not be less than 40 °F. If a running loss enclosure meets all the requirements of paragraph (a)(1) of this section, it may be used as a diurnal evaporative emission enclosure. The enclosure must contain a dynamometer that meets the requirements of § 86.1208. Provisions shall be made to remove exhaust gases from the enclosure. During the running loss test, ambient temperatures must be maintained at 95±5 °F (95±2 °F on average). An air or oxygen cylinder with an attached self-contained breathing apparatus may be provided for the vehicle operator. The air required for vehicle operation shall be provided by one of the following methods:

(i) The running loss enclosure may be equipped to supply air to the vehicle, at a temperature of 95±5° F, from sources outside of the running loss enclosure directly into the operating engine's air intake system. Supplemental air requirements (e.g., for an air pump) shall be supplied by drawing air from the engine intake source.

(ii) If it is shown to yield equivalent or superior results, the running loss enclosure may be designed with an air makeup system that brings outside air into the enclosure to accommodate the aspiration needs of the engine and any auxiliary devices. The makeup air shall be monitored to establish the background hydrocarbon levels (or hydrocarbon and methanol, levels, if applicable) of the makeup air. A filter may be used to provide dry air with a stable concentration of background hydrocarbon. The makeup-air vent shall be readily sealable for calibration of the enclosure and other purposes. For calculation of running loss emissions, it may be assumed that the hydrocarbon and methanol concentration in the air consumed by the vehicle is the same as that of the rest of the air in the enclosure.

(3) *Hot soak test.* * * *

(i) If the hot soak test is conducted in the same enclosure as the immediately preceding running loss test, interior surface temperatures shall not be below 70° F for the last 55 minutes of the hot soak test.

(ii) If the hot soak test is not conducted in the same enclosure as the immediately preceding running loss test, interior surface temperatures shall not be below 70° F for the duration of the hot soak test.

* * * * *

(c) *Evaporative emission hydrocarbon and methanol data recording system.* (1) The electrical output of the FID used for measuring hydrocarbons (or hydrocarbons plus methanol, as appropriate) shall be recorded at least at the initiation and termination of each running loss and hot soak test, and at least at the initiation and termination of the enclosure sampling period(s) for the diurnal emission test, as described in § 86.1233. The recording may be taken by means of a strip chart potentiometric recorder, by use of an on-line computer system or other suitable means. In any case, the recording system must have operational characteristics (signal-to-noise ratio, speed of response, etc.) equivalent to or better than those of the signal source being recorded, and must provide a permanent record of results. The record shall show a positive indication of the initiation and completion of each hot soak, running loss, or diurnal emission test (including initiation and completion of sampling period(s)), along with the time elapsed during each soak.

* * * * *

(d) *Fuel temperature control system.* Fuel temperatures of the test vehicle shall be controlled, as specified in § 86.1234(g)(1)(xv), with the following combination of fans. The control system shall be tuned and operated to provide a smooth and continuous fuel temperature profile that is representative of the on-road temperature profile. The running loss test configuration should be designed to avoid heating or cooling the fuel tank's vapor space in a way that would cause vapor temperature behavior to be unrepresentative of the vehicle's on-road profile.

(1) A vehicle cooling fan shall discharge air to the front of the vehicle. The fan shall be a road-speed modulated fan that is controlled to a discharge velocity that follows the dynamometer roll speed, at least up to speeds of 30 mph, throughout the driving cycle. If a warning light or gauge indicates that the vehicle's engine coolant has overheated, subsequent test runs on the that vehicle must include a vehicle cooling fan that follows the dynamometer roll speed at all speeds throughout the test cycle. The fan may direct airflow to both the vehicle radiator air inlet(s) and the vehicle underbody.

(2) An additional fan may be used to discharge airflow from the front of the vehicle directly to the vehicle underbody to control fuel temperatures.

Such a fan shall provide a total discharge airflow not to exceed 8,000 cfm.

(3) Additional fans may be used to route heating or cooling air directly at the bottom of the vehicle's fuel tank. The air supplied to the tank shall be between 85° and 160° F, with a total discharge airflow not to exceed 4,000 cfm. For exceptional circumstances, manufacturers may direct up to 6,000 cfm at the bottom of the fuel tank with the advance approval of the Administrator.

(4) Direct fuel heating may be needed for canister preconditioning, as specified in § 86.1232(j)(2). Also, under exceptional circumstances in which airflow alone is insufficient to control fuel temperatures during the running loss test, direct fuel tank heating may be used (see § 86.1234–96(g)(1)(xv)). The heating system must not cause hot spots on the tank wetted surface that could cause local overheating of the fuel. Heat must not be applied directly to the tank's vapor space, nor to the liquid-vapor interface.

(e) *Temperature recording system.* A strip chart potentiometric recorder, an on-line computer system, or other suitable means shall be used to record enclosure ambient temperature during all evaporative emission test segments, as well as vehicle fuel tank temperature during the running loss test. The recording system shall record each temperature at least once every minute. The recording system shall be capable of resolving time to ±15 s and capable of resolving temperature to ±0.75° F (±0.42° C). The temperature recording system (recorder and sensor) shall have an accuracy of ±3° F (±1.7° C). The recorder (data processor) shall have a time accuracy of ±15 s and a precision of ±15 s. Enclosures shall be equipped with two ambient temperature sensors, connected to provide one average output, located 3 feet above the floor at the approximate mid-length of each side wall of the enclosure and within 3 to 12 inches of each side wall. For diurnal emission testing, an additional temperature sensor shall be located underneath the vehicle to provide a temperature measurement representative of the air temperature under the fuel tank. For running loss testing, an ambient temperature sensor shall be located at the inlet to the fan that provides engine cooling. Manufacturers shall arrange that vehicles furnished for testing at federal certification facilities be equipped with temperature sensors for measurement of fuel tank temperatures. Vehicles shall be equipped with two temperature sensors installed to provide an average liquid fuel temperature. The temperature sensors shall be placed to measure the temperature at the mid-volume of the liquid fuel at a fill level of 40 percent of nominal tank capacity. An additional temperature sensor may be placed to measure vapor temperatures approximately at the mid-volume of the vapor space, though measurement of vapor temperatures is optional during the running loss test. In-tank temperature sensors are not required for the supplemental two-diurnal test sequence specified in § 86.1230–96.

(f) *Pressure recording system.* A strip chart potentiometric recorder, an on-line computer system, or other suitable means, shall be used to record the enclosure gage pressure for any testing in an enclosure, as well as the vehicle's fuel tank pressure during the running loss test and the outdoor driving procedure specified in § 86.1229–85(d). Fuel tank pressure measurement and recording equipment are optional during the running loss test. The recording system shall record each pressure at least once every minute. The recording system shall be capable of resolving time to ±15 s and capable of resolving pressure to ±0.1 inches of water. The pressure recording system (recorder and sensor) shall have an accuracy of ±1.0 inch of water. The recorder (data processor) shall have a time accuracy of ±15 s and a precision of ±15 s. The pressure transducer shall be installed to measure the pressure in the vapor space of the fuel tank.

* * * * *

37. Section 86.1217–96 of subpart M is amended by revising the introductory text and paragraphs (a)(1)(ii), (a)(1)(iii), (a)(7), (b), (c) heading, (c)(1) introductory text, (c)(1)(v), (c)(1)(vii), (d)(1) introductory text and equation, (d)(1)(v), and (e)(1)(iii), adding paragraphs (d)(1)(xiii), (d)(1)(xiv), and (d)(3), and removing and reserving paragraphs (c)(1)(iv), (d)(1)(iii) and (d)(1)(iv) to read as follows:

§ 86.1217–96 Evaporative emission enclosure calibrations.

The calibration of evaporative emission enclosures consists of three parts: initial and periodic determination of enclosure background emissions (hydrocarbons and methanol); initial determination of enclosure internal volume; and periodic hydrocarbon and methanol retention check and calibration. Methanol measurements may be omitted if methanol-fueled vehicles will not be tested in the evaporative enclosure. Alternate calibration methods may be used if shown to yield equivalent or superior results, and if approved in advance by the Administrator; specifically, more extreme temperatures may be used for determining calibration without affecting the validity of test results.

(a) *Initial and periodic determination of enclosure background emissions.* * * *

(1) * * *

(ii) Fixed-volume enclosures may be operated with inlet and outlet flow streams either closed or open; if inlet and outlet flow streams are open, the air flowing into and out of the enclosure must be monitored in accordance with § 86.107–96(a)(1)(ii)(B). Ambient temperatures shall be maintained at 96±3° F throughout the 4-hour period.

(iii) For running loss enclosures ambient temperatures shall be maintained at 95±3° F throughout the 4-hour period. For running loss enclosures designed with a vent for makeup air, the enclosure shall be operated with the vent closed.

* * * * *

(7) Allow the enclosure to stand undisturbed for four hours.

* * * * *

(b) *Initial determination of enclosure internal volume.* Prior to its introduction into service the enclosure internal volume shall be determined by the following procedure:

(1) Carefully measure the internal length, width and height of the enclosure, accounting for irregularities (such as braces) and calculate the internal volume. For variable-volume enclosures, latch the enclosure to a fixed volume when the enclosure is held at a constant temperature; this nominal volume shall be repeatable within ±0.5 percent of the reported value.

(2) [Reserved].

(3) [Reserved].

(c) *Hydrocarbon and methanol (organic gas) retention check and calibration.* * * *

(1) An enclosure to be used for the diurnal emission test (see § 86.1233–96) shall be calibrated according to the following procedure. Calibration for hydrocarbon and methanol may be conducted simultaneously or in sequential test runs.

* * * * *

(iv) [Reserved].

(v) Turn on the ambient temperature control system (if not already on) and adjust it for an initial temperature of 96° F (36° C). On variable-volume enclosures, latch the enclosure to the appropriate volume position for the set temperature. On fixed-volume enclosures close the outlet and inlet flow streams.

* * * * *

(vii) Inject into the enclosure 2 to 6 grams of pure methanol at a temperature of at least 150° F (65° C) and/or 2 to 6 grams of pure propane. The injected quantity may be measured by volume flow or by mass measurement. The method used to measure the quantity of methanol and propane shall have an accuracy of ±0.2 percent of the measured value (less accurate methods may be used with the advance approval of the Administrator).

* * * * *

(d) *Calculations*. (1) The calculation of net methanol and hydrocarbon mass change is used to determine enclosure background and leak rate. It is also used to check the enclosure volume measurements. The methanol mass change is calculated from the initial and final methanol samples, the net withdrawn methanol (in the case of diurnal emission testing with fixed-volume enclosures), and initial and final temperature and pressure according to the following equation:

$$M_{CH_3OH} = V_n \times \left[\frac{\left(C_{MS1f} \times AV_{1f}\right) + \left(C_{MS2f} \times AV_{2f}\right)}{V_{E_f}}\right] - \left[\frac{\left(C_{MS1i} \times AV_{1i}\right) + \left(C_{MS2i} \times AV_{2i}\right)}{V_{E_i}}\right] + \left(M_{CH_3OH,out} - M_{CH_3OH,in}\right)$$

Where:

* * * * *

(iii) [Reserved].

(iv) [Reserved].

(v) V_E=Volume of sample withdrawn, ft^3. Sample volumes must be corrected for differences in temperature to be consistent with determination of V_n, prior to being used in the equation.

* * * * *

(xiii) $M_{CH3OH,out}$=mass of methanol exiting the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, μg.

(xiv) $M_{CH3OH,in}$=mass of methanol entering the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, μg.

* * * * *

(3) For variable-volume enclosures, defined in § 86.1207(a)(1)(i), the following simplified form of the hydrocarbon mass change equation may be used:

$$M_{HC} = \left(\frac{kP_B V_n \times 10^{-4}}{T}\right) \times \left[\left(C_{HC_f} - rC_{CH_3OH_f}\right) - \left(C_{HC_i} - rC_{CH_3OH_i}\right)\right]$$

(e) *Calibration of equipment for point-source testing of running losses.* * * *

(1) * * *

(iii) Operate the vapor sampling system in the normal manner and release a known quantity of pure propane into the most frequently used fuel vapor collector during the sampling period (approximately 5 minutes).

* * * * *

38. Section 86.1229–85 of subpart M is amended by revising paragraphs (d)(1), (d)(2)(iii), (d)(3)(ii), (d)(3)(iii), (d)(4)(i), (d)(4)(ii), (d)(4)(iii), (d)(7)(iii), and (d)(7)(iv) and adding paragraph (d)(7)(v) to read as follows:

§ 86.1229–85 Dynamometer load determination and fuel temperature profile.

* * * * *

(d) *Fuel temperature profile*—(1) *General requirements*. (i) To be tested for running losses, as specified in § 86.1234, a vehicle must have a fuel temperature profile. The following procedure is used to generate the fuel temperature profile, which serves as a target for controlling fuel temperatures during the running loss test. This profile represents the fuel temperature change that occurs during on-road driving. If a vehicle has more than one fuel tank, a profile shall be established for each tank. Manufacturers may also simultaneously generate a profile for vapor temperatures.

(ii) If a manufacturer uses a vehicle model to develop a profile to represent multiple models, the vehicle model selected must have the greatest expected fuel temperature increase during driving of all those models it represents. Also, manufacturers must select test vehicles with any available vehicle options that increase fuel temperatures during driving (for example, any feature that limits underbody airflow).

(iii) Manufacturers may conduct testing to develop fuel temperature profiles in a laboratory setting, subject to approval by the Administrator. The laboratory facility should simulate outdoor testing to reproduce fuel and vapor temperature behavior over the specified driving schedule. The design of the laboratory facility should include consideration of any parameters that may affect fuel temperatures, such as solar loading, pavement heat, and relative wind velocities around and underneath the test vehicle. Indoor testing to develop the fuel temperature profiles must be conducted with little or no vehicle-specific adjustment of laboratory parameters. Manufacturers would need to maintain an ongoing demonstration of correlation between laboratory and outdoor measurement of fuel temperatures. Specifically, fuel temperatures and pressures from indoor driving should be at least as high as measured when driving outdoors according to the procedures described in this section.

(iv) Small-volume manufacturers, as defined in § 86.094–14(b)(1), may use an alternate method for generating fuel temperature profiles, subject to the approval of the Administrator.

(v) The Administrator may conduct testing to establish any vehicle's temperature profiles or to verify compliance with fuel tank pressure requirements.

(2) * * *

(iii) The data recording system described in paragraph (d)(2)(ii) of this section shall be capable of resolving time to ±1 s, capable of resolving temperature to ±2° F, capable of resolving pressure to ±1.0 inch of water, and capable of resolving speed to ±1 mph. The temperature and pressure signals shall be recorded at intervals of up to 1 minute; speed signals shall be recorded at intervals of up to 1 second.

(3) * * *

(ii) Wind conditions shall be calm to light with maximum wind speed of 15 mph. In the case of temporary gusting, wind speeds between 15 and 25 mph may occur for up to 5 percent of the total driving time without invalidating the data collection. Wind speed shall be measured and recorded in regular intervals of at least once per minute. Measure wind speed with the following

requirements (based on *Federal Standard for Siting Meteorological Sensors at Airports*, FCM–S4–1987). The site should be relatively level, but small gradual slopes are acceptable. The sensor shall be mounted 30 to 33 feet (9 to 10 meters) above the average ground height within a radius of 500 feet (150 meters). The sensor height shall not exceed 33 feet, except as necessary to be at least 15 feet (5 meters) above the height of any obstruction (e.g. vegetation, buildings, etc.) within a 500 foot (150 meter) radius. An object is considered to be an obstruction if the included lateral angle from the sensor to the ends of the object is 10 degrees or more.

(iii) Road surface temperature shall be at least 125° F throughout the driving period. Pavement temperature shall be measured and recorded in regular intervals of at least once per minute. The track temperature may be measured with an embedded sensor, a portable temperature probe, or an infrared pyrometer that can provide an accuracy of ±2° F. Temperatures must be measured on a surface representative of the surface where the vehicle is driven.

* * * * *

(4) *Profile determination procedure.* (i) Drain the fuel tank(s) and fill with test fuel to the ''tank fuel volume'' defined in § 86.082–2. The test fuel should meet the specifications of § 86.1213, except that fuel with a lower volatility may be used, subject to Administrator approval. Manufacturers using a lower volatility fuel must generate a vapor temperature profile for demonstrating compliance with the limit on fuel tank pressure during the running loss test (see § 86.1234–96).

(ii) The vehicle shall be moved to the location where the data is to be collected. It may be driven a maximum distance of 5 miles and may also be transported by other means. The vehicle shall be stabilized by one of the following methods:

(A) The vehicle shall be parked for a minimum of 12 hours in an open area on a surface that is representative of the test road, without any artificial heating or cooling of the fuel. The orientation of the front of the vehicle during parking (e.g., N, SW, etc.) shall be documented.

(B) The vehicle may be soaked in a temperature-controlled environment to stabilize fuel temperatures. Before starting the drive, the vehicle shall be stabilized with fuel temperatures 95±3° F for at least one hour. The fuel temperature may not exceed 98° F at any time before the beginning of the driving schedule, during which only whole-vehicle heating and cooling may be used to control fuel temperatures. If a manufacturer uses the provisions of paragraph (d)(7)(v) of this section to establish a lower initial fuel temperature for the running loss test, the fuel in the test vehicle may not be stabilized at a temperature higher than the newly established initial fuel temperature.

(iii) Once the ambient conditions specified in paragraph (d)(3) of this section are met and the vehicle has been stabilized according to paragraph (d)(4)(ii) of this section, the vehicle's engine may be started. The vehicle's air conditioning system (if so equipped) shall be set to the ''normal'' air conditioning mode and adjusted to the minimum discharge air temperature and high fan speed. Vehicles equipped with automatic temperature controlled air conditioning systems shall be set to operate in ''automatic'' temperature and fan modes with the system set at 72° F.

* * * * *

(7) * * *

(iii) If all these requirements are met, the following calculations shall be performed to determine a profile for liquid fuel temperatures and, if applicable, for vapor temperatures:

$T_{i,profile}=T_i-T_o$.

Where:

(A) $T_{i,profile}$=the series of temperatures that comprise the relative temperature profile.

(B) T_i=the series of observed liquid fuel or vapor temperatures during the drive.

(C) T_o=the liquid fuel or vapor temperature observed at the start of the specified driving schedule.

(iv) The relative temperature profile consists of the set of temperatures at each 1-minute interval. If temperatures are sampled more frequently than once per minute, the temperature data points may represent a rolling average of temperatures sampled for up to one-minute intervals. If multiple valid test runs are conducted for any model, then all the collected data shall be used to calculate a composite profile, based on the average temperatures at each point. The absolute temperature profile is determined by adding 95° F (35° C) to each point of the relative profile. Other methodologies for developing corrected liquid fuel and vapor space temperature profiles may be used if demonstrated to yield equivalent results and approved in advance by the Administrator.

(v) Manufacturers may use a lower initial fuel temperature for the running loss test, if approved in advance by the Administrator. To demonstrate the need for such an adjustment, manufacturers would be expected to determine the maximum fuel temperature experienced by a vehicle during an extended park or after driving one UDDS cycle when exposed to the ambient conditions described in paragraph (d)(3) of this section. To use this provision, manufacturers would have to show maximum fuel temperatures no greater than 92° F.

39. Section 86.1230–96 of subpart M is amended by revising figure M96–1 at the end of the section and adding paragraph (e) to read as follows:

§ 86.1230–96 Test sequence; general requirements.

* * * * *

(e) If tests are invalidated after collection of emission data from previous test segments, the test may be repeated to collect only those data points needed to complete emission measurements. Compliance with emission standards may be determined by combining emission measurements from different test runs. If any emission measurements are repeated, the new measurements supersede previous values.

BILLING CODE 6560–50–P

Federal Test Procedure

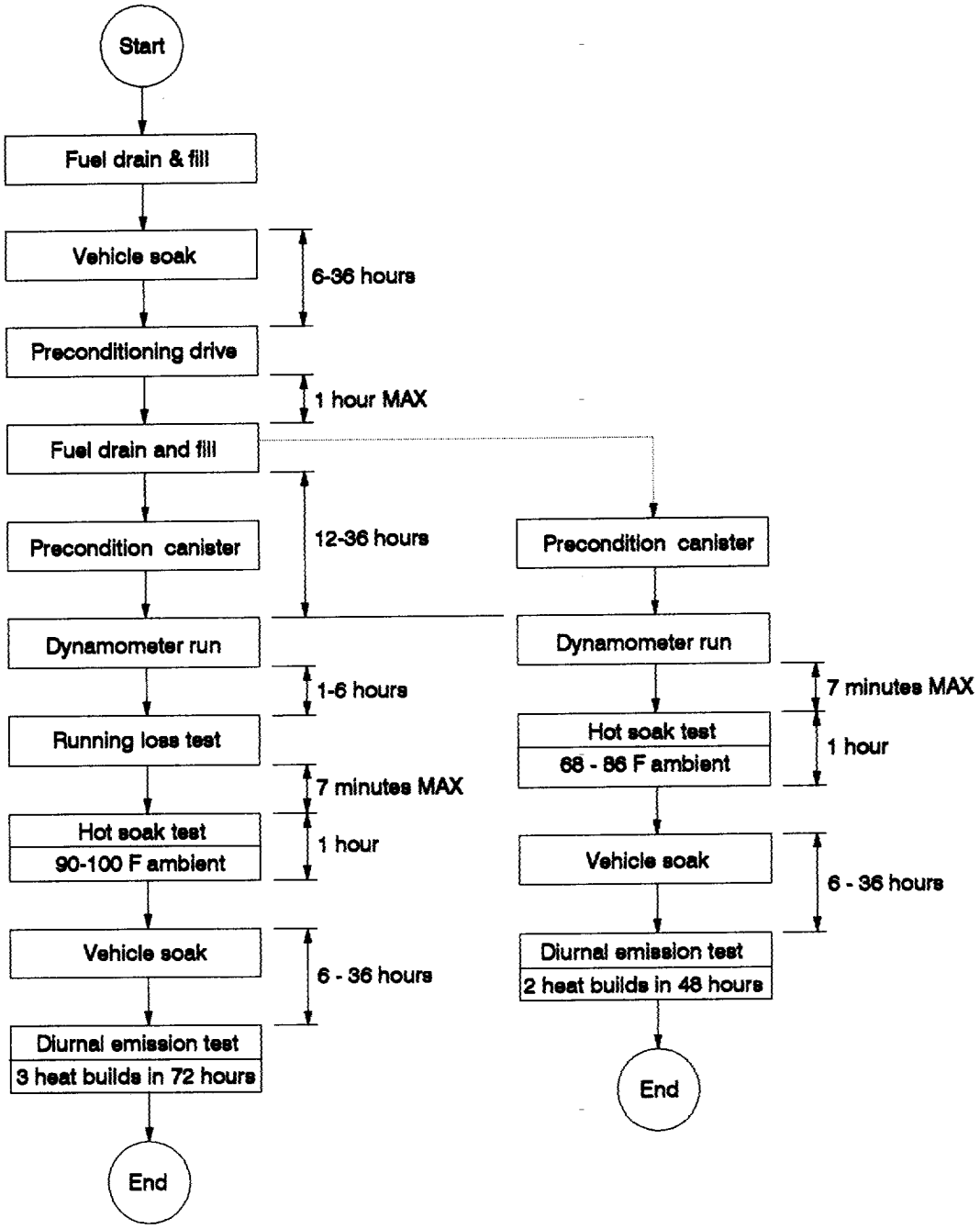

Figure M96-1 Test sequence

BILLING CODE 6560–50–C

40. Section 86.1231–96 of subpart M is amended by revising paragraph (d) to read as follows:

§ 86.1231–96 Vehicle preparation.

* * * * *

(d) For vehicles to be tested for running loss emissions, prepare the fuel tank(s) for measuring and recording the temperature and pressure of the fuel tank as specified in § 86.1207–96 (e) and (f). Measurement of vapor temperature is optional during the running loss test. If vapor temperature is not measured, fuel tank pressure need not be measured.

* * * * *

41. Section 86.1232–96 of subpart M is amended by revising paragraphs (c), (f), (h) introductory text, (h)(1)(i), (h)(2), (j) introductory text, (j)(1) introductory text, (j)(1)(i), and (j)(1)(vi) to read as follows:

§ 86.1232–96 Vehicle preconditioning.

* * * * *

(c) Gasoline- and methanol-fueled vehicles shall be soaked for at least 6 hours after being refueled. Gaseous-fueled vehicles shall be soaked for at least 1 hour after being refueled. Following this soak period, the test vehicle shall be placed, either by being driven or pushed, on a dynamometer and operated through one Heavy-Duty Vehicle Urban Dynamometer Driving schedule, specified in § 86.1215 and Appendix I of this part. Once a test vehicle has completed the refueling and vehicle soak steps specified in paragraphs (b) and (c) of this section, these steps may be omitted in subsequent testing with the same vehicle and the same fuel specifications, provided the vehicle remains under laboratory ambient temperature conditions for at least 6 hours before starting the next test. In such cases, each subsequent test shall begin with the preconditioning drive specified in this paragraph. The test vehicle may not be used to set dynamometer horsepower.

* * * * *

(f)(1) *Gasoline- and methanol-fueled vehicles.* After completion of the preconditioning drive, the vehicle shall be driven off the dynamometer. The vehicle's fuel tank(s) shall be drained and then filled with test fuel, as specified in § 86.1213, to the ''tank fuel volume'' defined in § 86.082–2. The vehicle shall be refueled within 1 hour after completion of the preconditioning drive. The fuel cap(s) shall be installed within 1 minute after refueling. The vehicle shall be parked within five minutes after refueling.

(2) *Gaseous-fueled vehicles.* After completion of the preconditioning drive, the vehicle shall be driven off the dynamometer. Vehicle fuel tanks shall be refilled with fuel that meets the specifications in § 86.1213. Fuel tanks shall be filled to a minimum of 75% of service pressure for natural gas-fueled vehicles or a minimum of 75% of available fill volume for liquefied petroleum gas-fueled vehicles. Prior draining of the fuel tanks is not called for if the fuel in the tanks already meets the specifications in § 86.1213. The vehicle shall be parked within five minutes after refueling, or, in the absence of refueling, within five minutes after completion of the preconditioning drive.

* * * * *

(h) During the soak period for the three-diurnal test sequence described in § 86.1230–96, evaporative canisters, if the vehicle is so equipped, shall be preconditioned according to the following procedure. For vehicles with multiple canisters in a series configuration, the set of canisters must be preconditioned as a unit. For vehicles with multiple canisters in a parallel configuration, each canister must be preconditioned separately. If production evaporative canisters are equipped with a functional service port designed for vapor load or purge steps, the service port shall be used during testing to precondition the canister. In addition, for model year 1998 and later vehicles equipped with refueling canisters, these canisters shall be preconditioned for the three-diurnal test sequence according to the procedure in paragraph (j)(1) of this section. If a vehicle is designed to actively control evaporative or refueling emissions without a canister, the manufacturer shall devise an appropriate preconditioning procedure, subject to the approval of the Administrator.

(1)(i) Prepare the evaporative emission canister for the canister purging and loading operation. The canister shall not be removed from the vehicle, unless access to the canister in its normal location is so restricted that purging and loading can only reasonably be accomplished by removing the canister from the vehicle. Special care shall be taken during this step to avoid damage to the components and the integrity of the fuel system. A replacement canister may be temporarily installed during the soak period while the canister from the test vehicle is preconditioned.

* * * * *

(2) For methanol-fueled and flexible-fueled vehicles, canister preconditioning shall be performed with a fuel vapor composition representative of that which the vehicle would generate with the fuel mixture used for the current test. Manufacturers shall develop a procedure to precondition the evaporative canister, if the vehicle is so equipped, for the different fuel. The procedure shall represent a canister loading equivalent to that specified in paragraph (h)(1) of this section and shall be approved in advance by the Administrator.

* * * * *

(j) For the supplemental two-diurnal test sequence described in § 86.1230–96, one of the following methods shall be used to precondition evaporative canisters during the soak period specified in paragraph (g) of this section. For vehicles with multiple canisters in a series configuration, the set of canisters must be preconditioned as a unit. For vehicles with multiple canisters in a parallel configuration, each canister must be preconditioned separately. In addition, for model year 1998 and later vehicles equipped with refueling canisters, these canisters shall be preconditioned for the supplemental two-diurnal test sequence according to the procedure in paragraph (j)(1) of this section. Canister emissions are measured to determine breakthrough. Breakthrough is here defined as the point at which the cumulative quantity of hydrocarbons emitted is equal to 2 grams.

(1) *Butane loading to breakthrough.* The following procedure provides for emission measurement in an enclosure. Breakthrough may also be determined by measuring the weight gain of an auxiliary evaporative canister connected downstream of the vehicle's canister, in which case, the following references to the enclosure can be ignored. The auxiliary canister shall be well purged prior to loading. If production evaporative canisters are equipped with a functional service port designed for vapor load or purge steps, the service port shall be used during testing to precondition the canister.

(i) Prepare the evaporative/refueling emission canister for the canister loading operation. The canister shall not be removed from the vehicle, unless access to the canister in its normal location is so restricted that purging and loading can only reasonably be accomplished by removing the canister from the vehicle. Special care shall be taken during this step to avoid damage to the components and the integrity of the fuel system. A replacement canister may be temporarily installed during the soak period while the canister from the test vehicle is preconditioned.

* * * * *

(vi)(A) For gasoline-fueled vehicles, load the canister with a mixture composed of 50 percent butane and 50 percent nitrogen by volume at a rate of 40 grams butane per hour.

(B) For methanol-fueled and flexible-fueled vehicles, canister preconditioning shall be performed with a fuel vapor composition representative of that which the vehicle would generate with the fuel mixture used for the current test. Manufacturers shall develop a procedure to precondition the evaporative canister, if the vehicle is so equipped, for the different fuel.

* * * * *

42. Section 86.1233–96 of subpart M is amended by revising paragraphs (c), (h), and (i)(5) to read as follows:

§ 86.1233–96 Diurnal emission test.

* * * * *

(c) The test vehicle shall be exposed to ambient temperatures cycled according to the profile specified in § 86.1233 and Appendix II of this part.

(1) Temperatures measured with the underbody temperature sensor shall follow the profile with a maximum deviation of 3° F at any time and an average temperature deviation not to exceed 2° F, where the average deviation is calculated using the absolute value of each measured deviation. In addition, the temperature from the sidewall temperature sensors shall follow the profile with a maximum deviation of 5° F at any time.

(2) Ambient temperatures shall be measured at least every minute. Temperature cycling shall begin when time=0 minutes, as specified in paragraph (i)(5) of this section.

* * * * *

(h) Prior to sampling for emissions and throughout the period of cycled ambient temperatures, the mixing fan(s) shall circulate the air at a rate of 0.8±0.2 cfm per cubic foot of ambient volume. The mixing fan(s), plus any additional fans if needed, shall also maintain a minimum wind speed of 5 mph (8 km/hr) under the fuel tank of the test vehicle. The Administrator may adjust fan speed and location to ensure sufficient air circulation around the fuel tank. The wind speed requirement may be satisfied by consistently using a fan configuration that has been demonstrated to maintain a broad 5-mph air flow in the vicinity of the vehicle's fuel tank, subject to verification by the Administrator.

(i) * * *

(5) Within 10 minutes of closing and sealing the doors, analyze enclosure atmosphere for hydrocarbons and record. This is the initial (time=0 minutes) hydrocarbon concentration, C_{HCi}, required in § 86.1243. Hydrocarbon emissions may be sampled continuously during the test period.

* * * * *

43. Section 86.1234–96 of subpart M is amended by revising paragraphs (a), (f), (g)(1)(v), (g)(1)(vii), (g)(1)(viii), (g)(1)(xii) introductory text, (g)(1)(xii)(A), (g)(1)(xiv), (g)(1)(xv), (g)(1)(xvi), (g)(2)(v), (g)(2)(vii), (g)(2)(x), and (g)(2)(xii) and adding paragraphs (g)(1)(xx)(C) and (g)(2)(xv) to read as follows:

§ 86.1234–96 Running loss test.

(a) *Overview.* Gasoline- and methanol-fueled vehicles are to be tested for running loss emissions during simulated high-temperature urban driving; this test is not required for gaseous-fueled vehicles. During operation, tank temperatures are controlled according to a prescribed profile to simulate in-use conditions. If the vehicle is determined to have exceeded the standard before the end of the running loss test, the test may be terminated without invalidating the data. The test can be run either in a sealed enclosure or with the point-source method, as specified in paragraph (g) of this section. Measurement of vapor temperature is optional during the running loss test; however, if testing by the Administrator shows that a vehicle has exceeded an emission standard without measurement of vapor temperatures, the manufacturer may, utilizing its own resources, conduct subsequent testing on that vehicle to determine if the exceedance is attributable to inadequate control of vapor temperatures.

* * * * *

(f) *Temperature stabilization.* Immediately after the hot transient exhaust emission test, the vehicle shall be soaked in a temperature controlled area for a maximum of 6 hours until the fuel temperature is stabilized. The fuel may be heated or cooled to stabilize fuel temperatures, but the fuel heating rate must not exceed 5° F in any 1-hour interval during the soak period. A manufacturer may use a faster heating rate or a longer period for stabilizing fuel temperatures if the needed heating cannot be easily accomplished in the 6-hour period, subject to Administrator approval.

(1) Fuel temperatures must be held at 95±3° F for at least one hour before the start of the running loss test.

(2) If a vehicle's fuel temperature profile has an initial temperature lower than 95° F, as described in § 86.1229–85(d)(7)(v), the fuel in the test vehicle must be stabilized to within 3° F of that temperature for at least one hour before the start of the running loss test.

(g) *Running loss test.* * * *

(1) *Enclosure method.* * * *

(v) Fans shall be positioned as described in §§ 86.1207–96 (d) and (h).

* * * * *

(vii) Connect the air intake equipment to the vehicle, if applicable. This connection shall be made to minimize leakage.

(viii) The temperature and pressure recording systems shall be started. Measurement of vapor temperature is optional during the running loss test. If vapor temperature is not measured, fuel tank pressure need not be measured.

* * * * *

(xii) When the ambient temperature is 95±5° F (35±3° C) and the fuel has been stabilized according to paragraph (f) of this section, the running loss test may begin. Measure the initial ambient temperature and pressure.

(A) Analyze enclosure atmosphere for hydrocarbons and record. This is the initial (time=0 minutes) hydrocarbon concentration, C_{HCi}, required in § 86.1243. Hydrocarbon emissions may be sampled continuously during the test period.

* * * * *

(xiv) The ambient temperature shall be maintained at 95±5° F (95±2° F on average) during the running loss test, measured at the inlet to the cooling fan in front of the vehicle; it shall be recorded at least every 60 seconds.

(xv) The fuel temperature during the dynamometer drive shall be controlled to match the fuel tank temperature profile determined in § 86.1229. Measured fuel temperatures must be within ±3° F of the target profile throughout the test run. Vapor temperatures, if measured, must be within ±5° F of the target profile during the first 4186 seconds of the running loss test, and within ±3° F for the remaining 120 seconds of the test run. For any vehicle complying with the test standards, vapor temperatures may be higher than the specified tolerances without invalidating test results. For testing by the Administrator, vapor temperatures may be lower than the specified tolerances without invalidating test results. If the test vehicle has more than one fuel tank, the temperatures for both fuel tanks shall follow the target profiles determined in § 86.1229. The control system shall be tuned and operated to provide smooth and continuous tank temperature profiles that are representative of the on-road profiles.

(xvi) Tank pressure shall not exceed 10 inches of water at any time during

the running loss test unless a pressurized system is used and the manufacturer demonstrates that vapor would not be vented to the atmosphere upon fuel cap removal. A vehicle may exceed the pressure limit for temporary periods during the running loss test, up to 10 percent of the total driving time, provided that the vehicle has demonstrated conformance with the pressure limit during the entire outdoor driving period specified in § 86.1229. Measurement of fuel tank pressures will be considered valid only if vapor temperatures are measured and controlled to the tolerances specified in paragraph (g)(1)(xv) of this section.

* * * * *

(xx) * * *

(C) Turn off all the fans specified in § 86.1207–96(d). Also, the time that the vehicle's engine compartment cover is open for removal of air intake equipment, if applicable, shall be minimized to avoid loss of heat from the engine compartment.

* * * * *

(2) *Point-source method.* * * *

(v) Fans shall be positioned as described in § 86.1207–96(d).

* * * * *

(vii) The temperature and pressure recording systems shall be started. Measurement of vapor temperature is optional during the running loss test. If vapor temperature is not measured, fuel tank pressure need not be measured.

* * * * *

(x) The ambient temperature shall be maintained at 95±5° F (95±2° F on average) during the running loss test, measured at the inlet to the cooling fan in front of the vehicle; it shall be recorded at least every 60 seconds.

* * * * *

(xii) The tank pressure requirements described in paragraph (g)(1)(xvi) of this section apply also to running loss testing by the point source method.

* * * * *

(xv) At the end of the running loss test, turn off all the fans specified in § 86.1207–96(d).

* * * * *

44. Section 86.1238–90 of subpart M is amended by revising paragraph (i) to read as follows:

§ 86.1238–90 Hot soak test.

* * * * *

(i) The enclosure doors shall be closed and sealed within two minutes of engine shutdown and within seven minutes after the end of the exhaust emission test. The steps after the end of the driving cycle should be done as quickly as possible to minimize the time needed to start the hot soak test.

* * * * *

45. Section 86.1238–96 of subpart M is amended by revising paragraphs (a)(2), (b)(2)(v)(A), and (b)(2)(viii) to read as follows:

§ 86.1238–96 Hot soak test.

(a) * * *

(2) *Gaseous-fueled vehicles.* Since gaseous-fueled vehicles are not required to perform a running loss test, the hot soak test shall be conducted within seven minutes after completion of the hot start exhaust test.

(b) * * *

(2) * * *

(v) * * *

(A) Analyze the enclosure atmosphere for hydrocarbons and record. This is the initial (time = 0 minutes) hydrocarbon concentration, $C_{HCi,}$ required in § 86.1243. Hydrocarbon emissions may be sampled continuously during the test period.

* * * * *

(viii) The vehicle shall enter the enclosure; the enclosure doors shall be closed and sealed within 2 minutes of engine shutdown and within seven minutes after the end of the running loss test.

* * * * *

46. Section 86.1243–96 of subpart M is amended by revising paragraphs (b)(1)(i) introductory text and equation, (b)(1)(i)(D), (b)(2)(i)(B), and (b)(2)(ii)(B), adding paragraph (b)(1)(iii), and removing and reserving paragraphs (b)(1)(i)(C) and (b)(1)(i)(E) to read as follows:

§ 86.1243–96 Calculations; evaporative emissions.

* * * * *

(b) * * *

(1) * * *

(i) Methanol emissions:

$$M_{CH_3OH} = V_n \times \left[\frac{\left(C_{MS1f} \times AV_{1f}\right) + \left(C_{MS2f} \times AV_{2f}\right)}{V_{E_f}} \right] - \left[\frac{\left(C_{MS1i} \times AV_{1i}\right) + \left(C_{MS2i} \times AV_{2i}\right)}{V_{E_i}} \right] + \left(M_{CH_3OH,out} - M_{CH_3OH,in}\right)$$

Where:

* * * * *

(C) [Reserved].

(D) V_E=Volume of sample withdrawn, ft³. Sample volumes must be corrected for differences in temperature to be consistent with determination of V_n, prior to being used in the equation.

(E) [Reserved].

* * * * *

(iii) For variable-volume enclosures, defined in § 86.1207(a)(1)(i), the following simplified form of the hydrocarbon mass change equation may be used:

$$M_{HC} = \left(\frac{kP_B V_n \times 10^{-4}}{T} \right) \times \left[\left(C_{HC_f} - rC_{CH_3OH_f}\right) - \left(C_{HC_i} - rC_{CH_3OH_i}\right) \right]$$

(2) * * *

(i) * * *

(B) ρ_{CH3OH}= 37.71 g/ft³, density of pure vapor at 68° F.

* * * * *

(ii) * * *

(B) ρ_{HC}= 16.88 g/ft³, density of pure vapor at 68° F (for hydrogen to carbon ratio of 2.3).

* * * * *

47. Section 86.1246–96 of subpart M is amended by revising paragraphs (f), (i)(1), and (i)(2) to read as follows:

§ 86.1246–96 Fuel dispensing spitback procedure.

* * * * *

(f) Following the preconditioning drive, the vehicle shall be moved or driven at minimum throttle to the refueling area.

* * * * *

(i) * * *

(1) The fueling operation shall be started within 4 minutes after the vehicle is turned off and within 8 minutes after completion of the preconditioning drive. The average temperature of the dispensed fuel shall be 65±5° F (18±3° C).

(2) The fuel shall be dispensed at a rate of 9.8±0.3 gallons/minute (37.1±1.1 *l*/min) until the automatic shutoff is activated.

* * * * *

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Wednesday
August 23, 1995

Part IV

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Draft Guideline on Structure and Content of Clinical Study Reports; Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95D–0218]

International Conference on Harmonisation; Draft Guideline on Structure and Content of Clinical Study Reports; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline entitled ''Structure and Content of Clinical Study Reports.'' This guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guideline is intended to facilitate the compilation of a single worldwide core clinical study report acceptable to all regulatory authorities.

DATES: Written comments by October 10, 1995.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Copies of the draft guideline are available from the CDER Executive Secretariat Staff (HFD–8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:

Regarding the guideline: Robert Temple, Center for Drug Evaluation and Research (HFD–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6758.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held on March 29, 1995, the ICH Steering Committee agreed that a draft guideline entitled ''Structure and Content of Clinical Study Reports'' should be made available for public comment. The draft guideline is the product of the Efficacy Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Expert Working Group. Ultimately, FDA intends to adopt the ICH Steering Committee's final guideline.

The draft guideline is intended to facilitate the compilation of a single worldwide core clinical study report acceptable to all regulatory authorities. In general, once the guideline is in use, the only differences between submissions to various authorities should be in the amount of data submitted initially in tabular listings, in the number of case report forms submitted, and in specific supplemental analyses requested for particular cases by an authority, if any. The clinical study report described in this draft guideline is an integrated full report of an individual study of any therapeutic, prophylactic, or diagnostic agent conducted in patients. The clinical and statistical description, presentations, and analyses should be integrated into a single report, incorporating tables and figures into the main text of the report, or at the end of the text. Appendices should contain the protocol, sample case report forms, investigator information, trial material information, technical statistical documentation, related publications, patient data listings, and technical statistical details such as derivations, computations, analyses, and computer output, and so on. The draft guideline is intended to assist sponsors in the development of a report that is complete, free from ambiguity, well organized, and easy to review.

In the past, guidelines have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, this guideline is not being issued under the authority of § 10.90(b), and it does not create or confer any rights, privileges, or benefits for or on any person, nor does it operate to bind FDA in any way.

Interested persons may, on or before October 10, 1995, submit written comments to the Dockets Management Branch (address above) on the draft guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the draft guideline follows:

Structure and Content of Clinical Study Reports

Introduction to the Guideline

The objective of this guideline is to allow the compilation of a single worldwide core clinical study report acceptable to all regulatory authorities. The regulatory authority specific additions will consist of modules to be considered as appendices, available upon request.

The clinical study report described in this guideline is an ''integrated'' full report of an individual study of any therapeutic, prophylactic, or diagnostic agent (referred to herein as drug or treatment) conducted in patients, in which the clinical and statistical description, presentations, and analyses are integrated into a single report, incorporating tables and figures into the main text of the report, or at the end of the text, and with appendices containing the protocol, sample case report forms, investigator information, trial material information, technical statistical documentation, related publications, patient data listings, and technical statistical details such as derivations, computations, analyses, and computer output. The integrated full report

of a study should not be derived by simply joining a separate clinical and statistical report. Although this guideline is mainly aimed at efficacy and safety trials, the basic principles and structure described can be applied to other kinds of trials, such as clinical pharmacology studies.

The guideline is intended to assist sponsors in the development of a report that is complete, free from ambiguity, well organized, and easy to review. The report should provide a clear explanation of how the critical design features of the study were chosen and enough information on the plan, methods, and conduct of the study so that there is no ambiguity in how the study was carried out. The report with its appendices should also provide enough individual patient data, including the demographic and baseline data, and details of analytical methods, to allow replication of the critical analyses when authorities wish to do so. It is also particularly important that all analyses, tables, and figures carry, in text or as part of the table, clear identification of the set of patients from which they were generated.

Depending on the regulatory authority's review policy, abbreviated reports using summarized data or with some sections deleted may be acceptable for uncontrolled studies or other studies not designed to establish efficacy (but a controlled safety study should be reported in full), for seriously flawed or aborted studies, or for controlled studies which examine conditions clearly unrelated to those for which a claim is made. However, a full description of safety aspects should be included in these cases. If an abbreviated report is submitted, there should be enough detail of design and results to allow the regulatory authority to determine whether a full report is needed. If there is any question regarding whether the reports are needed, it may be useful to consult the regulatory authority.

In presenting the detailed description of how the study was carried out, it may be possible simply to restate the description in the initial protocol. Often, however, it is possible to present the methodology of the study more concisely in a separate document. In each section describing the design and conduct of the study, it is particularly important to clarify features of the study that are not well-described in the protocol and identify ways in which the study as conducted differed from the protocol, and to discuss the statistical methods and analyses used to account for these deviations from the planned protocol.

The full integrated report of the individual study should include the most detailed discussion of individual adverse events or laboratory abnormalities, but these should usually also be reexamined as part of an overall safety analysis of all available data in any application.

The report should describe demographic characteristics of the study population and, where the study is large enough to permit this, present data for demographic (e.g., age, sex, race, weight) and other (e.g., renal or hepatic function) subgroups so that possible differences in efficacy or safety can be identified. Usually, however, subgroup responses should be examined in the larger data base used in the overall analysis.

The data listings requested as part of the report (usually in an appendix) are those needed to support critical analyses, not the more comprehensive archival data listings required by some regulatory authorities. Data listings which are part of the report should be readily usable by the reviewer. Thus, although it may be desirable to include many variables in a single listing to limit size, this should not be at the expense of clarity. An excess of data should not be allowed to lead, for example, to overuse of symbols instead of words or easily understood abbreviations or to too small displays. In this case, it is preferable to produce several listings.

Data should be presented in the report at different levels of detail: overall summary figures, and tables for important demographic, efficacy, and safety variables may be placed in the text to illustrate important points; other summary figures, tables, and listings for demographic, efficacy, and safety variables should be provided in section 14; individual patient data for specified groups of patients should be provided as listings in Appendix 16.2; and all individual patient data (U.S. archival listings) should be provided in Appendix 16.4.

In any table, figure, or data listing, estimated or derived values, if used, should be identified in a conspicuous fashion. Detailed explanations should be provided as to how such values were estimated or derived and what underlying assumptions were made.

The guidance provided below is detailed and is intended to notify the applicant of virtually all of the information that should routinely be provided so that postsubmission requests for further data clarification and analyses can be reduced as much as possible. Nonetheless, specific requirements for data presentation and/or analysis may depend on specific situations, may evolve over time, may vary from drug class to drug class, may differ among regions, and cannot be described in general terms. It is therefore important to refer to specific clinical guidelines and to discuss data presentation and analyses with the reviewing authority, whenever possible. Detailed written guidance on statistical approaches is available from some authorities.

Each report should consider all of the topics described (unless clearly not relevant) although the specific sequence and grouping of topics may be changed if alternatives are more logical for a particular study. Some data in the appendices are specific requirements of individual regulatory authorities and should be submitted as appropriate. The numbering should then be adapted accordingly.

In the case of very large trials, some of the provisions of this guideline may be impractical or inappropriate. When planning and when reporting such trials, contact with regulatory authorities to discuss an appropriate report format is encouraged.

The provisions of this guideline should be used in conjunction with other ICH guidelines.

Structure and Content of Clinical Study Reports

1. Title Page

The title page should contain the following information:

- Report title
- Name of drug
- Indication studied
- If not apparent from the title, a brief (one to two sentences) description giving design (parallel, cross-over, blinding, randomized) comparison (placebo, active, dose/response), duration, dose, and patient population
- Name of the sponsor
- Protocol identification
- Drug development phase
- Study initiation date (first patient enrolled, or any other verifiable definition)
- Date of early study termination, if any
- Study completion date (last patient completed)
- Name and affiliation of signatory (principal) investigator(s) or responsible medical officer
- Name of company signatory (the person responsible for the study report within the company.) The name, telephone number, and fax number of the company contact persons for questions arising during review of the study report should be indicated on this page or in the letter of application.
- Statement indicating whether the study was performed in compliance with good clinical practices (GCP's), including the archiving of essential documents
- Date of the report (identify any earlier reports from the same study by title and date)

2. Synopsis

A brief synopsis (maximum: three pages) that summarizes the study should be provided (see Annex I of the guideline for an example). The synopsis should include numerical data to illustrate results, not just text or p-values.

3. Table of Contents for the Individual Clinical Study Report

The table of contents should include:

- The page number or other locating information of each section, including summary tables, figures, and graphs;
- A list and the locations of appendices, tabulations, and any case report forms provided.

4. List of Abbreviations and Definitions of Terms

A list of the abbreviations and definitions of unusual or specialized terms or measurements units used in the report should be provided. In addition, abbreviated terms should be spelled out and the abbreviation indicated at first appearance in the text.

5. Ethics

5.1 Independent Ethics Committee (IEC) or Institutional Review Board (IRB)

It should be confirmed that the study and any amendments were reviewed by an independent ethics committee or institutional review board. A list of all IEC's or IRB's consulted should be given in Appendix 16.1.3 and, if required by the regulatory authority, the name of the committee Chair should be provided.

5.2 Ethical Conduct of the Study

It should be confirmed that the study was conducted in accordance with the ethical principles that have their origins in the Declaration of Helsinki.

5.3 Patient Information and Consent

How and when informed consent was obtained in relation to patient enrollment (e.g., at allocation, prescreening) should be described.

Representative written information for the patient (if any) and a sample patient consent form should be provided in Appendix 16.1.3.

6. Investigators and Study Administrative Structure

The administrative structure of the study (e.g., principal investigator, coordinating investigator, controller, steering committee, administration, monitoring and evaluation committees, institutions, statistician, central laboratory facilities, clinical research organization, clinical trial supply management) should be described briefly.

A list of the investigators with their affiliations, their role in the study, and their qualifications (curriculum vitae or equivalent), and a similar list for other persons whose participation materially affected the conduct of the study should be provided in Appendix 16.1.4. In the case of very large trials with many investigators, the above information may be abbreviated to consist of general statements of qualifications for persons carrying out particular roles in the study with only the name, degree, and institutional affiliation and roles of each investigator or other participant.

The listing should include:

(a) Investigators.

(b) Any person carrying out important study observations, such as a nurse, physician's assistant, clinical psychologist, clinical pharmacist, or house staff physician. It is not necessary to include in this list a person with only an occasional role, e.g., an on-call physician who dealt with a possible adverse effect or a temporary substitute for any of the above.

(c) The author(s) of the report, including the responsible biostatistician(s).

Where signatures of the principal investigators are required by regulatory authorities, these should be included in Appendix 16.1.5 (see Annex II for a sample form). Where these are not required, the signature of the responsible medical officer should be provided in Appendix 16.1.5.

7. Introduction

The introduction should contain a brief statement (maximum: one page) placing the study in the context of the drug's development, relating the critical features of the study (e.g., rationale and aims, target population, treatment, duration, primary endpoints) to that development. Any guidelines which were followed in the development of the protocol or any other agreements/meetings between the Company and regulatory authorities which are relevant to the particular study should be identified or described.

8. Study Objectives

A statement describing the overall purpose(s) of the study should be provided.

9. Investigational Plan

9.1 Overall Study Design and Plan - Description

The overall study plan and design (configuration) of the study (e.g., parallel, cross-over) should be described briefly but clearly using charts and diagram as needed. If other studies used a very similar protocol, it may be useful to note this and describe any important differences. The actual protocol and any changes should be included as Appendix 16.1.1 and a sample case report form (unique pages only; i.e., it is not necessary to include identical pages from forms for different evaluations or visits) as Appendix 16.1.2. If any of the information in this section comes from sources other than the protocol, these should be identified.

The information provided should include:

- Treatments studied (specific drugs, doses, and procedures).
- Patient population studied and the number of patients to be included.
- Level and method of blinding/masking (e.g., open, double-blind, single-blind, blinded evaluators, and unblinded patients and/or investigators).
- Kind of control(s) (e.g., placebo, no treatment, active drug, dose-response, historical) and study configuration (parallel, cross-over).
- Method of assignment to treatment (randomization, stratification).
- Sequence and duration of all study periods, including prerandomization and post-treatment periods, therapy withdrawal periods, and single- and double-blind treatment periods. The timing of randomization should be specified. It is usually helpful to display the design graphically with a flow chart which includes timing of assessments (see Annexes IIIa and IIIb for an example).
- Any safety, data monitoring, or special steering or evaluation committees.
- Any interim analyses.

9.2 Discussion of Study Design, Including the Choice of Control Groups

The specific control chosen and the study design used should be discussed, as necessary. Examples of design issues meriting discussion follow.

Generally, the control (comparison) groups that are recognized are placebo concurrent control, no treatment concurrent control, active treatment concurrent control, dose comparison concurrent control, and historical control. In addition to the type of control, other critical design features that may need discussion are use of a cross-over design and selection of patients with particular prior history, such as response or nonresponse to a specific drug or member of a drug class. If randomization was not used, it is important to explain how other techniques, if any, guarded against systematic selection bias.

Known or potential problems associated with the study design or control group chosen should be discussed in light of the specific disease and therapies being studied. For a cross-over design, for example, there should be consideration, among other things, of the likelihood of spontaneous change in the disease and of carry-over effects of treatment during the study.

If efficacy was to be demonstrated by showing equivalence, i.e., the absence of a specified degree of inferiority of the new treatment compared to an established treatment, problems associated with such study designs should be addressed. Specifically there should be provided a basis for considering the study capable of distinguishing active from inactive therapy. Support may be provided by an analysis of previous studies similar to the present study with respect to important design characteristics (e.g., patient selection, study endpoints, duration, dose of active control, concomitant therapy) showing a consistent ability to demonstrate superiority of the active control to placebo. How to assess the ability of the present study to distinguish effective from ineffective therapy should also be discussed. For example, it may be possible to identify a treatment response (based on past studies) that would clearly distinguish between the treated population and an untreated group. Such a response could be the change of a measure from baseline or some other specified outcome like healing rate or survival rate. Attainment of such a response would support the expectation that the study could have distinguished the active drug from an inactive drug. There should also be a discussion of the degree of inferiority of the therapy (often referred to as the delta value) the study was intended to show was not exceeded.

The limitations of historical controls are well known (e.g., difficulty of assuring comparability of treated groups, inability to blind investigators to treatment, change in therapy/disease, difference due to placebo effect) and deserve particular attention.

Other specific features of the design may also deserve discussion, including presence or absence of washout periods and the duration of the treatment period, especially for a chronic illness. The rationale for dose and dose-interval selection should be explained, if it is not obvious. For example, once daily dosing with a short half-life drug whose effect is closely related in time to blood level is not usually effective; if the study design uses such dosing, this should be explained, e.g., by pointing to pharmacodynamic evidence that effect is prolonged compared to blood levels. The procedures used to seek evidence of ''escape'' from drug effect at the end of the dose-interval, such as measurements of effect just prior to dosing, should be described. Similarly, in a parallel design dose-response study, the choice of doses should be explained.

9.3 Selection of Study Population

9.3.1 Inclusion Criteria

The patient population and the selection criteria used to enter the patients into the study should be described, and the suitability of the population for the purposes of the study discussed. Specific diagnostic criteria used, as well as specific disease requirements (e.g., disease of a particular severity or duration, results of a particular test or physical examination, particular features of clinical history, such as failure or success on prior therapy, or other potential prognostic factors, and any age, sex, or ethnic factors) should be presented.

Screening criteria and any additional criteria for randomization or entry into the drug treatment part of the trial should be described. If there is reason to believe that there were additional entry criteria, not defined in the protocol, the implications of these should be discussed. For example, some investigators may have excluded, or entered into other studies, patients who were particularly ill or who had particular baseline characteristics.

9.3.2 Exclusion Criteria

The criteria for exclusion at entry into the study should be specified and the rationale (e.g., safety concerns, administrative reasons, or lack of suitability for the trial) provided. The impact of exclusions on the generalisability of the study should be discussed in the study report or in an overview of safety and effectiveness.

9.3.3 Removal of Patients From Therapy or Assessment

The predetermined reasons for removing patients from therapy or assessment observation, if any, should be described, as should the nature and duration of any planned followup observations in those patients.

9.4 Treatments

9.4.1 Treatments Administered

The precise treatments or diagnostic agents to be administered (active drug(s), placebo(s), procedures) in each arm of the study, and for each period of the study, should be fully described by name of drug(s), marketing formulation, route and mode of administration, dose, and dosage schedule.

9.4.2 Identity of Investigational Product(s)

In the text of the report, a brief description of the investigational product(s) (formulation, batch number) should be given.

In Appendix 16.1.6 of the report, the batch/serial number(s) of treatment(s) administered and a description of their formulation, content, external appearance (manufacturing and packaging batch records) should be provided. If more than one batch of test drug was used, patients receiving each batch should be identified.

The source of placebos and active control drugs should be provided. Any modification of active control drugs from their usual commercial state should be noted, and the steps taken to assure that their bioavailability was unaltered should be described.

For long-duration trials of investigational products with limited shelf-lives or incomplete stability data, the logistics of resupply of the materials should be described. Any use of test materials past their expiry date should be noted, and patients receiving them identified. If there were specific storage requirements, these should also be described.

9.4.3 Method of Assigning Patients to Treatment Groups

The specific methods used to assign patients to treatment groups, e.g., centralized allocation, allocation within sites, adaptive allocation (that is, assignment on the basis of earlier assignment or outcome), should be described in the text of the report, including any stratification or blocking procedures. Any unusual features should be explained.

A detailed description of the randomization method, including how it was executed, should be given in Appendix 16.1.7 with references cited if necessary. A table exhibiting the randomization codes, patient identifier, and treatment assigned should also be presented in the appendix. For a multicenter study, the information should be given by center. The method of generating random numbers should be explained.

For a historically controlled trial, it is important to explain how the particular control was selected and what other historical experiences were examined, if any, and how their results compared to the control used.

9.4.4 Selection of Doses in the Study

The doses or dose ranges used in the study should be given and the basis for choosing them described (e.g., prior experience in humans, animal data).

9.4.5 Selection and Timing of Dose for Each Patient

Procedures for selecting each patient's dose of test drug and control agent should be described. These procedures can vary from simple random assignment to a selected fixed drug/dose regimen, to some specified titration procedure, to more elaborate response-determined selection procedures, e.g., where dose is titrated upward at intervals until intolerance or some specified endpoint is achieved. Procedures for back-titration, if any, should also be described.

The timing (time of day, interval) of dosing and the relation of dosing to meals should be described, and if it was not specified, this should be noted.

Any specific instructions to patients about when or how to take the dose(s) should be described.

9.4.6 Blinding

A description of the specific procedures used to carry out blinding should be provided (e.g., how bottles were labeled, double dummy techniques), including the circumstances in which the blind would be broken for an individual or all patients, the procedures used, and who had access to patient codes. If the study allowed for some investigators to remain unblinded (e.g., to allow them to adjust medication), the means of shielding other investigators should be explained. Measures taken to ensure that drug and placebo were indistinguishable and evidence that they were indistinguishable, should be described, as should the appearance, shape, smell, and taste of the test material. Measures to prevent unblinding by laboratory measurements, if used, should be described.

If blinding was considered unnecessary to reduce bias for some or all of the observations, this should be explained; e.g., use of a random-zero sphygmomanometer eliminates possible observer bias in reading blood pressure and Holter tapes are often read by automated systems that are presumably immune to observer bias. If blinding was considered desirable, but not feasible, the reasons and implications should be discussed. Sometimes blinding is attempted but is known to be imperfect because of obvious drug effects in at least some patients (dry mouth, bradycardia, fever, injection site reactions, changes in laboratory data). Such problems or potential problems should be identified and if there were any attempts to assess the magnitude of the problem or manage it (e.g., by having some end point measurements carried out by people shielded from information that might reveal treatment assignment), they should be described.

A description of any packaging and labeling techniques used for blinding, e.g., double dummy techniques, special labels that reveal blind-breakage, sealed code lists/envelopes, etc., should be provided in Appendix 16.1.7.

9.4.7 Prior and Concomitant Therapy

Which drugs or procedures were allowed before and during the study, whether and how their use was recorded, and any other specific rules and procedures related to permitted or forbidden concomitant therapy should be described. How allowed concomitant therapy might affect the outcome due either to drug-drug interaction or to direct effects on the study endpoints should be discussed, and how the independent effects of concomitant and study therapies could be ascertained should be explained.

9.4.8 Treatment Compliance

The measures taken to ensure and document treatment compliance should be described, e.g., drug accountability, diary cards, blood, urine, or other body fluid drug level measurements, or medication event monitoring.

9.5 Efficacy and Safety Variables

9.5.1 Efficacy and Safety Measurements Assessed and Flow Chart

The specific efficacy and safety variables to be assessed and laboratory tests to be conducted, their schedule (days of study, time of day, relation to meals, and the timing of critical measures in relation to test drug administration, e.g., just prior to next dose, 2 hours after dose), the methods for measuring them, and the persons responsible for the measurements should be described. If there were changes in personnel carrying out critical measurements, these should be reported.

It is usually helpful to display graphically in a flow chart (see Annex III of the guideline) the frequency and timing of efficacy and safety measurements; visit numbers and times should be shown, or, alternatively, times alone can be used (visit numbers alone are more difficult to interpret). Any specific instructions (e.g., guidance or use of a diary) to the patients should also be noted.

Any definitions used to characterize outcome (e.g., criteria for determining occurrence of acute myocardial infarction, designation of the location of the infarction, characterization of a stroke as thrombotic or hemorrhagic, distinction between TIA and stroke, assignment of cause of death) should be explained in full. Any techniques used to standardize or compare results of laboratory tests or other clinical measurements (e.g., ECG, chest X-ray) should also be described. This is particularly important in multicenter studies.

If anyone other than the investigator was responsible for evaluation of clinical outcomes (e.g., the sponsor or an external committee to review X-rays or ECG's or to

determine whether the patient had a stroke, acute infarction, or sudden death) the person or group should be identified. The procedures, including means of maintaining blindness, and centralizing readings and measurements, should be described fully.

The means of obtaining adverse event data should be described (volunteered, checklist, questioning), as should any specifically planned followup procedures for adverse events or any planned rechallenge procedure.

Any rating of adverse events by the investigator, sponsor, or external group (e.g., severity rating, likelihood of drug causation) should be described and criteria for such ratings, if any, given. If efficacy or safety was to be assessed in terms of categorical ratings or numerical scores, the criteria used for point assignment (e.g., definitions of point scores) should be provided. For multicenter studies, how methods were standardized should be indicated.

9.5.2 Appropriateness of Measurements

If any of the efficacy or safety assessments were not standard, i.e., widely used and generally recognized as reliable, accurate, and relevant (able to discriminate between effective and ineffective agents), its reliability, accuracy, and relevance should be documented. It may be helpful to describe alternatives considered but rejected.

If a surrogate end point (a laboratory measurement or physical measurement or sign that is not a direct measure of clinical benefit) was used as a study end point, this should be justified, e.g., by reference to clinical data publications, guidelines, or previous actions by regulatory authorities.

9.5.3 Primary Efficacy Variable(s)

The primary measurements and end points used to determine efficacy should be clearly specified. Although the critical efficacy measurements may seem obvious, when there are multiple variables, or when variables are measured repeatedly, the protocol should identify the primary ones, with an explanation of why they were chosen, or designate the pattern of significant findings or other method of combining information that would be interpreted as supporting efficacy. If the protocol did not identify the primary variables, the study report should explain how these critical variables were selected (e.g., by reference to publications, guidelines, or previous actions by regulatory authorities) and when they were identified (i.e., before or after the study was completed and unblinded). If an efficacy threshold was defined in the protocol, this should be described.

9.5.4 Drug Concentration Measurements

Any drug concentrations to be measured, and the sample collection times and periods in relation to the timing of drug administration, should be described. Any relation of drug administration and sampling to ingestion of food, posture, and the possible effects of concomitant medication/alcohol/caffeine/nicotine should also be addressed. The biological sample measured and the method of measurement used should be described, referring to published and/or internal assay validation documentation for methodological details. Where other factors are believed important in assessing pharmacokinetics (e.g., soluble circulating receptors, renal or hepatic function), the timing and plans to measure these factors should also be specified.

9.6 Data Quality Assurance - Audit Certificate

The quality assurance and quality control systems implemented to assure the quality of the data should be described in brief. If none were used, this should be stated.

Any steps taken at the investigation site or centrally to ensure the use of standard terminology and the collection of accurate, consistent, complete, and reliable data, such as training sessions, monitoring of investigators by sponsor personnel, instruction manuals, data verification, cross-checking, use of a central laboratory for certain tests, centralized ECG reading, or data audits, should be described. It should be noted whether investigator meetings or other steps were taken to prepare investigators and standardize performance.

If the sponsor used an independent internal or external auditing procedure, it should be mentioned here and described in Appendix 16.1.8 and audit certificates (if available; see Annexes IVa and IVb for descriptions) provided in the same appendix.

9.7 Statistical Methods Planned in The Protocol and Determination of Sample Size

9.7.1 Statistical and Analytical Plans

The statistical analyses planned in the protocol and any changes made before outcome results were available should be described. In this section emphasis should be on which analyses, comparisons, and statistical tests were planned, not on which ones were actually used. If critical measurements were made more than once, the particular measurements (e.g., average of several measurements over the entire study, values at particular times, values only from study completers, or last on-therapy value) planned as the basis for comparison of drug and control should be specified. Similarly, if more than one analytical approach is plausible, e.g., changes from baseline response, slope analysis, life table analysis, the planned approach should be identified. Also, whether the primary analysis is to include adjustment for covariates should be specified.

If there were any planned reasons for excluding from analysis patients for whom data are available, these should be described. If there were any subgroups whose results were to be examined separately, these should be identified. If categorical responses (global scales, severity scores, responses of a certain size) were to be used in analyzing responses, they should be clearly defined.

Planned monitoring of the results of the study should be described. If there was a data monitoring committee, either within or outside the sponsor's control, its composition and operating procedures should be described and procedures to maintain study blinding should be given. The frequency and nature of any planned interim analysis, any specified circumstances in which the study would be terminated, and any statistical adjustments to be employed because of interim analyses should be described.

9.7.2 Determination of Sample Size

The planned sample size and the basis for it, such as statistical considerations or practical limitations, should be provided. Formulae for sample size and power calculation should be given together with their derivations or source of reference. Estimates used in the formulae should be given and explanations provided as to how they were obtained. For a positive control study intended to show that a new therapy is at least as effective as the standard therapy, the sample size determination should specify a ''delta value'' (a difference between treatments that would be considered unacceptably large) and therefore the difference the study is designed to be able to exclude.

9.8 Changes in the Conduct of the Study or Planned Analyses

Any change in the conduct of the study or planned analyses (e.g., dropping a treatment group, changing the entry criteria or drug dosages, adjusting the sample size, etc.) instituted after the start of the study should be described. The time(s) and reason(s) for the change(s), the procedure used to decide on the change(s), the person(s) or group(s) responsible for the change(s), and the nature and content of the data available (and to whom they were available) when the change was made should also be described, whether the change was documented as a formal protocol amendment or not. (Personnel changes need not be included.) Any possible implications of the change(s) for the interpretation of the study should be discussed briefly in this section and more fully in other appropriate sections of the report. In every section of the report, a clear distinction between conditions (procedures) planned in the protocol and amendments or additions should be made.

10. Study Patients

10.1 Disposition of Patients

There should be a clear accounting of all patients who entered the study, using figures or tables in the text of the report. The numbers of patients who were screened, were randomized, and who entered and completed each phase of the study (or each week/month of the study) should be provided, as well as the reasons for all postrandomization discontinuations, grouped by treatment and by major reason (e.g., lost to followup, adverse event, poor compliance). In some cases, it may also be relevant to provide a breakdown of the reasons for excluding patients during screening, if this could help clarify the appropriate patient population for eventual drug use. A flow chart is often helpful (see Annexes Va and Vb of the guideline). Whether patients are followed for the duration of the study, even if drug is discontinued, should be made clear.

In Appendix 16.2.1, there should also be a listing of all patients discontinued from the study after enrollment, broken down by center and treatment group, giving a patient identifier, the specific reason for discontinuation, the treatment (drug and dose), cumulative dose (where appropriate), and the duration of treatment before discontinuation. Whether or not the blind for the patient was broken at the time of discontinuation should be noted. It may also be useful to include other information, such as critical demographic data (e.g., age, sex, race), concomitant medication, and the major

response variable(s) at termination. See Annex VI for an example of such a listing.

10.2 Protocol Deviations

All important deviations related to study inclusion or exclusion criteria, conduct of the trial, patient management, or patient assessment should be described.

In the body of the text, protocol deviations should be appropriately summarized by center and grouped into different categories, such as:

- Those who entered the study even though they did not satisfy the entry criteria.
- Those who developed withdrawal criteria during the study but were not withdrawn.
- Those who received the wrong treatment or incorrect dose.
- Those who received an excluded concomitant treatment.

In Appendix 16.2.2, individual patients with these protocol deviations should be listed, broken down by center for multicenter studies.

11. Efficacy Evaluation

11.1 Data Sets Analyzed

Exactly which patients were included in each efficacy analysis should be precisely defined, e.g., all patients receiving any drug, all patients with any efficacy observation or with a certain minimum number of observations, only patients completing the trial, all patients with an observation during a particular time window, only patients with a specified degree of compliance, etc. It should be clear, if not defined in the study protocol, when (relative to study unblinding), and how inclusion/exclusion criteria for the data sets analyzed were developed. As a general rule, even if the applicant's proposed primary analysis is based on a reduced subset of the patients with data, there should also be for any trial intended to establish efficacy an additional analysis using all randomized (or otherwise entered) patients with any on-treatment data.

There should be a tabular listing of all patients, visits, and observations excluded from the efficacy analysis provided in Appendix 16.2.3 (see Annex VII of the guideline for an example). The reasons for exclusions should also be analyzed for the whole treatment group over time (see Annex VIII of the guideline for an example).

11.2 Demographic and Other Baseline Characteristics

Group data for the critical demographic and baseline characteristics of the patients, as well as other factors arising during the study that could affect response, should be presented in this section and comparability of the treatment groups for all relevant characteristics should be displayed by use of tables or graphs in section 14.1. The data for the patient sample included in the ''all patients with data'' analysis should be given first. This can then be followed by data on other groups used in principal analyses, such as the ''per-protocol'' analysis or other analyses, e.g., groups defined by compliance, concomitant disease/therapy, or demographic/baseline characteristics. When such groups are used, data for the complementary excluded group should also be shown. In a multicenter study, comparability should be assessed by center, and centers should be compared.

A diagram showing the relationship between the entire sample and any other analysis groups should be provided.

The critical variables will depend on the specific nature of the disease but will usually include:

- Demographic variables
  - Age
  - Sex
  - Race
- Disease factors
  - Specific entry criteria (if not uniform), duration, stage, and severity of disease and other clinical classifications and subgroupings in common usage or of known prognostic significance.
  - Baseline values for critical clinical measurements carried out during the study or identified as important indicators of prognosis or response to therapy.
  - Concomitant illness at trial initiation such as renal disease, diabetes, heart failure.
  - Relevant previous illness.
  - Relevant previous treatment for illness treated in the study.
  - Concomitant treatment maintained, even if the dose was changed during the study, including oral contraceptive and hormone replacement therapy; treatments stopped at entry into the study period (or changed at study initiation).
- Other factors that might affect response to therapy (e.g., weight, renin status, antibody levels, metabolic status).
- Other possibly relevant variables (e.g., smoking, alcohol intake, special diets) and, for women, menstrual status and date of last menstrual period, if pertinent for the study.

In addition to tables and graphs giving group data for these baseline variables, relevant individual patient demographic and baseline data, including laboratory values, and all concomitant medication for all individual patients randomized (broken down by treatment and by center for multicenter studies) should be presented in by-patient tabular listings in Appendix 16.2.4. Although some regulatory authorities will require all baseline data to be presented elsewhere in tabular listings, the appendix to the study report should be limited to only the most relevant data, generally the variables listed above.

11.3 Measurements of Treatment Compliance

Any measurements of compliance of individual patients with the treatment regimen under study and drug concentrations in body fluids should be summarized, analyzed by treatment group and time interval, and tabulated in Appendix 16.2.5.

11.4 Efficacy Results and Tabulations of Individual Patient Data

11.4.1 Analysis of Efficacy

Treatment groups should be compared for all critical measures of efficacy (primary and secondary end points; pharmacodynamics), as well as benefit/risk assessment measured in each patient where these are utilized. In general, the results of all analyses contemplated in the protocol and an analysis including all patients with on-study data should be performed in studies intended to establish efficacy.

Analyses based on continuous variables (e.g., mean blood pressure or depression scale score) and categorical responses (e.g., cure of an infection) can be equally valid; ordinarily both should be presented if both were planned and are available. If categories are newly created (i.e., not in the statistical plan), the basis for them should be explained. Even if one variable receives primary attention (e.g., in a blood pressure study, supine blood pressure at week x), other reasonable measures (e.g., standing blood pressure and blood pressures at other particular times) should be assessed, at least briefly. In addition, the time course of response should be described, if possible. For a multicenter study, data display and analysis of individual centers should be included to give a clear picture of the results at each site, especially the larger sites.

If any critical measurements or assessments of efficacy or safety outcomes were made by more than one party (e.g., both the investigator and an expert committee may offer an opinion on whether a patient had an acute infarction), overall differences between the ratings should be shown, and each patient having disparate assessments should be identified. The assessments used should be clear in all analyses.

In many cases, efficacy and safety end points are difficult to distinguish (e.g., stroke in a thrombolytic trial, deaths in a fatal disease study). Many of the principles addressed below should be adopted for critical safety measures as well.

11.4.2 Statistical/Analytical Issues

The statistical analysis used should be described for clinical and statistical reviewers in the text of the report, with detailed documentation of statistical methods (see section Annex IX) presented in Appendix 16.1.9. Important features of the analysis, including the particular tests used, adjustments made for demographic or baseline measurements or concomitant therapy, handling of dropouts and missing data, adjustments for multiple comparisons, special analyses of multicenter studies, and adjustments for interim analyses, should be discussed. Any changes in the analysis made after blind-breaking should be identified.

In addition to the general discussion, the following specific issues should be addressed (unless not applicable):

11.4.2.1 Adjustments for Covariates

Selection of, and adjustments for, demographic or baseline measurements, concomitant therapy, or any other covariate or prognostic factor should be explained in the report, and methods of adjustment, results of analyses, and supportive information (e.g., ANCOVA or Cox regression output) should be included in the detailed documentation of statistical methods. If the covariates or methods used in these analyses differed from those planned in the protocol, the differences should be explained and where possible and relevant, the results of planned analyses should also be presented. Although not part of the individual study report, comparisons of covariate adjustments and prognostic factors across individual studies may be an informative analysis in a summary of clinical efficacy data.

11.4.2.2 Handling of Dropouts or Missing Data

There are several factors that may affect dropout rates. These include the duration of

the study, the nature of the disease, the efficacy and toxicity of the drug under study, and other factors that are not therapy related. Ignoring the patients who dropped out of the study and drawing conclusions based only on patients who completed the study can be misleading. A large number of dropouts, however, even if included in an analysis, may introduce bias, particularly if there are more early dropouts in one treatment group or the reasons for dropping out are treatment or outcome related. Although the effects of early dropouts, and sometimes even the direction of bias, can be difficult to determine, possible effects should be explored as fully as possible. It may be helpful to examine the observed cases at various time points or, if dropouts were very frequent, to concentrate on analyses at time points when most of the patients were still under observation and when the full effect of the drug was realized. It may also be helpful to examine modeling approaches to the evaluation of such incomplete data sets.

The results of a clinical trial should be assessed not only for the subset of patients who completed the study, but also for the entire patient population as randomized (the intent-to-treat analysis) or at least for all those with any on-study measurements. Several factors should be considered and compared for the treatment groups in analyzing the effects of dropouts: the reasons for the dropouts, the time to dropout, and the proportion of dropouts among treatment groups at various time points.

Procedures for dealing with missing data, e.g., use of estimated or derived data, should be described. Detailed explanation should be provided as to how such estimations or derivations were done and what underlying assumptions were made.

11.4.2.3 Interim Analyses and Data Monitoring

The process of examining and analyzing data accumulating in a clinical trial, either formally or informally, can introduce bias and/or increase type I error. Therefore, all interim analyses, formal or informal, preplanned or ad hoc, by any study participant, sponsor staff member, or data monitoring group should be described in full, even if the treatment groups were not identified. The need for statistical adjustment because of such analyses should be addressed. Any operating instructions or procedures used for such analyses should be described. The minutes of meetings of any data monitoring group and any data reports reviewed at those meetings, particularly a meeting that led to a change in the protocol or early termination of the study, may be helpful and should be provided in Appendix 16.1.9. Data monitoring without code-breaking should also be described, even if this kind of monitoring is considered to cause no increase in type I error.

11.4.2.4 Multicenter Studies

A multicenter study is a single study under a common protocol, involving several centers (e.g., clinics, practices, hospitals) where the data collected are intended to be analyzed as a whole (as opposed to a post-hoc decision to combine data or results from separate studies). Individual center results should be presented, however, and statistical tests for homogeneity across centers, i.e., for detecting treatment-by center interaction, should be provided, if feasible. The significance level used to declare the significance of a given test for treatment-by-center interaction should be considered in light of the sample sizes involved. Any extreme or opposite results among centers should be noted and discussed, considering such possibilities as differences in study conduct, patient characteristics, or clinical settings. As mentioned in previous sections, demographic, baseline, and postbaseline data, as well as efficacy data, should be presented by center, even though the combined analysis is the primary one.

11.4.2.5 Multiple Comparisons

False positive findings increase in number as the number of significance tests (number of comparisons) performed increases. If there was more than one primary endpoint (outcome variable), or if there were multiple treatment groups, or subsets of the patient population being examined, the statistical analysis should reflect awareness of this and either explain the statistical adjustment used for type I error criteria or give reasons why it was considered unnecessary.

11.4.2.6 Use of an ''Efficacy Subset'' of Patients

Particular attention should be devoted to the effects of dropping patients with available data from analyses because of poor compliance, missed visits, ineligibility, or any other reason. As noted above, an analysis using all available data should be carried out for all studies intended to establish efficacy, even if it is not the analysis proposed as the primary analysis by the applicant.

11.4.2.7 Active-Control Studies Intended to Show Equivalence

If an active control study is intended to show equivalence (i.e., lack of a difference greater than a specified size) between a new drug and a control, the analysis should show the confidence interval for the comparison between the two agents for critical end points and the relation of that interval to the prespecified degree of inferiority that would be considered unacceptable. (See 9.2, for important considerations when using the active control equivalence design.)

11.4.2.8 Examination of Subgroups

If the size of the study permits, important demographic or baseline value-defined subgroups should be examined for unusually large or small responses and the results presented, e.g., comparison of effects by age, sex, or race, by severity or prognostic groups, by history of prior treatment with a drug of the same class. If these analyses were not carried out because the study was too small, it should be noted. These analyses are not intended to ''salvage'' an otherwise nonsupportive study but may suggest hypotheses worth examining in other studies or be helpful in refining, for example, labeling information, patient selection, or dose selection. Where there is a prior hypothesis of a differential effect in a particular subgroup, this hypothesis and its assessment should be part of the planned statistical analysis.

11.4.3 Tabulation of Individual Response Data

In addition to tables and graphs representing group data, individual response data and other relevant study information should be presented in tables. Some regulatory authorities may require all individual data in archival case report tabulations. What needs to be included in the report will vary from study to study and from one drug class to another and the applicant should decide, if possible after consultation with the regulatory authority, what to include in an appendix to the study report. The study report should indicate what material is included as an appendix, what is in the more extensive archival case report tabulations, if required by the regulatory authority, and what is available on request.

For a controlled study in which critical efficacy measurements or assessments (e.g., blood or urine cultures, pulmonary function tests, angina frequency, or global evaluations) are repeated at intervals, the data listings accompanying the report should include, for each patient, a patient identifier, all measured or observed values of critical measurements, including baseline measurements, with notation of the time during the study (e.g., days on therapy and time of day, if relevant) when the measurements were made, the drug/dose at the time (if useful, given as milligrams per kilogram (mg/kg)), any measurements of compliance, and any concomitant medications at the time of, or close to the time of, measurement or assessment. If, aside from repeated assessments, the study included some overall responder versus nonresponder evaluation(s) (bacteriologic cure or failure), it should also be included. In addition to critical measurements, the tabulation should note whether the patient was included in the efficacy evaluation (and which evaluation, if more than one), provide patient compliance information, if collected, and a reference to the location of the case report form, if included. Critical baseline information such as age, sex, weight, disease being treated (if more than one in study), and disease stage or severity, is also helpful. The baseline values for critical measurements would ordinarily be included as zero time values for each efficacy measurement.

The tabulation described should usually be included in Appendix 16.2.6 of the study report, rather than in the more extensive case report tabulations required by some regulatory authorities, because it represents the basic efficacy data supporting summary tables. Such a thorough tabulation can be unwieldy for review purposes, however, and more targeted displays should be developed as well. For example, if there are many measurements reported, tabulations of the most critical measurements for each patient (e.g., the blood pressure value at certain visits might be more important than others) will be useful in providing an overview of each individual's results in a study, with each patient's response summarized on a single line or small number of lines.

11.4.4 Drug Dose, Drug Concentration, and Relationships to Response

When the dose in each patient can vary, the actual doses received by patients should be shown and individual patient's doses should be tabulated. Although studies not designed as dose-response studies may have limited ability to contribute dose-response

information, the available data should be examined for whatever information they can yield. In examining the dose response, it may be helpful to calculate dose as mg/kg body weight or milligrams per meter squared (mg/m^2) body surface.

Drug concentration information, if available, should also be tabulated (Appendix 16.2.5), analyzed in pharmacokinetic terms and, if possible, related to response.

Further guidance on the design and analysis of studies exploring dose-response or concentration response can be found in the ICH Guideline ''Dose-Response Information to Support Drug Registration.''

11.4.5 Drug-Drug and Drug Disease Interactions

Any apparent relationship between response and concomitant therapy and between response and past and/or concurrent illness should be described.

11.4.6 By-Patient Displays

While individual patient data ordinarily can be displayed in tabular listings, it has on occasion been helpful to construct individual patient profiles in other formats, such as graphic displays. These might, for example, show the value of (a) particular parameter(s) over time, the drug dose over the same period, and the times of particular events (e.g., an adverse event or change in concomitant therapy). Where group mean data represent the principal analyses, this kind of ''case report extract'' may offer little advantage; it may be helpful, however, if overall evaluation of individual responses is a critical part of the analysis.

11.4.7 Efficacy Conclusions

The important conclusions concerning efficacy should be concisely described, considering primary and secondary endpoints, prespecified and alternative statistical approaches, and results of exploratory analyses.

12. Safety Evaluation

Analysis of safety-related data can be considered at three levels. First, the amount of exposure (dose, duration) should be examined to determine the extent to which safety can be assessed from the study. Second, the more common adverse events, e.g., laboratory test changes, should be identified, classified in some reasonable way, compared for treatment groups, and analyzed, as appropriate, for that may affect the frequency of adverse reactions, such as time dependence, relation to demographic characteristics, relation to dose or drug concentration. Finally, serious adverse events and other significant adverse events should be identified, usually by close examination of patients who left the study prematurely because of an adverse event, whether or not identified as drug related, or who died.

The ICH Guideline on Clinical Safety Data Management, Definitions and Standards for Expedited Reporting defines serious adverse events as follows: A ''serious adverse event'' (experience) or reaction is any untoward medical occurrence that at any dose: results in death, is life-threatening, requires inpatient or prolongation of existing hospitalization, results in persistent or significant disability/incapacity, or is a congenital anomaly/birth defect.

For the purpose of this guideline, ''other significant adverse events'' are marked hematological and other laboratory abnormalities and any medical events that led to an intervention, including withdrawal of drug treatment, dose reduction, or significant additional concomitant therapy.

In the following sections, three kinds of analysis and display are suggested:

(1) Summarized data, often using tables and graphical presentations presented in the main body of the report;

(2) Listings of individual patient data; and

(3) Narrative statements of events of particular interest.

In all tabulations and analyses, events associated with both test drug and control treatment should be displayed.

12.1 Extent of Exposure

The extent of exposure to study drugs (and to active control and placebo) should be characterized according to the number of patients exposed, the duration of exposure, and the dose to which they were exposed.

• Duration: Duration of exposure to any dose can be expressed as a median or mean, but it is also helpful to describe the number of patients exposed for specified periods of time, such as for 1 day or less, 2 days to 1 week, more than 1 week to 1 month, more than 1 month to 6 months. The numbers exposed to drug for the various durations should also be broken down into age, sex, and racial subgroups, and any other pertinent subgroups, such as disease (if more than one is represented), disease severity, concurrent illness.

• Dose: The mean or median dose used and the number of patients exposed to specified daily dose levels should be given; the daily dose levels used could be the maximum dose for each patient, the dose with longest exposure for each patient, or the mean daily dose. It is often useful to provide combined dose-duration information, such as the numbers exposed for a given duration (e.g., at least 1 month) to the most common dose, the highest dose, the maximum recommended dose. In some cases, cumulative dose might be pertinent. Dosage may be given as the actual daily dose or on a mg/kg or mg/m^2 basis as appropriate. The numbers of patients exposed to various doses should be broken down into age, sex, and racial subgroups, and any other pertinent subgroups.

• Drug concentration: If available, drug concentration data (e.g., concentration at the time of an event, maximum plasma concentration, area under curve) may be helpful in individual patients for correlation with adverse events or changes in laboratory variables. (Appendix 16.2.5.)

It is assumed that all patients entered into treatment who received at least one dose of the treatment are included in the safety analysis; if that is not so, an explanation should be provided.

12.2 Adverse Events (AE's)

12.2.1 Brief Summary of Adverse Events

The overall adverse event experience in the study should be described in a brief narrative, supported by the following more detailed tabulations and analyses. In these tabulations and analyses, events associated with both the test drug and control treatment should be displayed.

12.2.2 Display of Adverse Events

All adverse events (including events likely to be related to the underlying disease or likely to represent concomitant illness, unless there is a prior agreement with the regulatory authority to consider specified events as disease related) should be displayed in summary tables (section 14.3.1). The tables should include changes in vital signs and any laboratory changes that were considered serious adverse events or that resulted in withdrawal of treatment.

In most cases, it will also be useful to describe in such tables, ''treatment emergent signs and symptoms'' (TESS; those not seen at baseline, and those which worsened even if present at baseline).

The tables should list each adverse event, the number of patients in each treatment group in whom the event occurred, and the rate of occurrence. Adverse events should be grouped by body system. Each event may then be divided into defined severity categories (e.g., mild, moderate, severe) if these were used. The tables may also divide the adverse events into those considered at least possibly related to drug use and those considered not related, or use some other causality (e.g., unrelated or possibly, probably, or definitely related). For any such categorization, the categories should be defined and the person(s) responsible for classification of each event identified. Even when such a causality assessment is used, the tables should include all adverse events, whether or not considered drug related, including events thought to represent intercurrent illnesses. Subsequent analyses of the study or of the overall safety data base may help to distinguish between adverse events that are, or are not, considered drug related. So that it is possible to analyze and evaluate the data in these tables, it is important to identify each patient having each adverse event. An example of such a tabular presentation is shown below.

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ADVERSE EVENTS: NUMBER OBSERVED AND RATE
WITH PATIENT IDENTIFICATIONS

TREATMENT GROUP X N=50

	Mild		Moderate		Severe		Total		Total
	Related	NR*	Related	NR	Related	NR	Related	NR	R+NR
Body System A									
Event 1	6(12%)	2(4%)	3(6%)	1(2%)	3(6%)	1(2%)	12(24%)	4(8%)	
	N11**	N21	N31	N41	N51	N61			
	N12	N22	N32		N52				
	N13		N33		N53				
	N15								
	N16								
Event 2									

*NR = not related; related could be expanded, e.g., as definite, probable, possible
**Patient identification number

BILLING CODE 4160-01-C

In addition to these complete tables provided in 14.3.1, an additional summary table comparing treatment and control groups, without the patient identifying numbers limited to relatively common adverse events (e.g., those in at least 1 percent of the treated group), should be provided in the body of the report.

In presenting adverse events, it is important both to display the original terms used by the investigator and to attempt to group related events (i.e., events that probably represent the same phenomena) so that the true occurrence rate is not obscured. One way to do this is with a standard adverse reaction dictionary.

12.2.3 Analysis of Adverse Events

The basic display of adverse event rates described in section 12.2.2 (and located in section 14.3.1) of the report should be used to compare rates in treatment and control groups. For this analysis it may be helpful to combine the event severity categories and the causality categories, leading to a simpler side-by-side comparison of treatment groups. In addition, if study size and design permit, it may be useful to examine the more common adverse events that seem to be drug related for relationship to dosage and to mg/kg or mg/m² dose, to dose regimen, to duration of treatment, to total dose, to demographic characteristics, such as age, sex, race, to other baseline features, such as renal status to effectiveness outcomes, and to drug concentration, if data are available. It may also be useful to examine time of onset and duration of adverse events. A variety of additional analyses may be suggested by the study results or by the pharmacology of the drug.

It is not intended that every adverse event be subjected to rigorous statistical evaluation. It may be apparent from initial display and inspection of the data that a significant relation to demographic or other baseline features is not present. If the studies are small and if the number of events is relatively small, it may be sufficient to limit analyses to a comparison of treatment and control.

Under certain circumstances, life table or similar analyses may be more useful than reporting of crude adverse event rates.

12.2.4 Listing of Adverse Events by Patient

All adverse events for each patient, including the same event on several occasions, should be listed in Appendix 16.2.7, giving both preferred term and the original term used by the investigator. The listing should be by investigator and by treatment group and should include:

- Patient identifier
- Age, race, sex, weight (height, if relevant)
- Location of case report forms (CRF's), if provided.
- The adverse event -
  - preferred term
  - reported term
- Duration of the adverse event
- Severity (e.g., mild, moderate, severe)
- Seriousness (serious/nonserious)
- Action taken (none, dose reduced, treatment stopped, specific treatment instituted, etc.)
- Outcome (e.g., CIOMS format)
- Causality assessment (e.g., related/not related). How this was determined should be described in the table or elsewhere.
- Date of onset or date of clinic visit at which the event was discovered
- Timing of onset of the adverse event in relation to last dose of study drug (when applicable)
- Study treatment at time of event or most recent study treatment taken
- Study drug dose in absolute amount, mg/kg or mg/m² at time of event
- Drug concentration (if known)
- Duration of study drug treatment
- Other drug treatment during study

Any abbreviations and codes should be clearly explained at the beginning of the listing or, preferably, on each page.

12.3 Deaths, Other Serious Adverse Events, and Other Significant Adverse Events

Deaths, other serious adverse events, and other significant adverse events (see definition in section 12) deserve special attention.

12.3.1 Listing of Deaths, Other Serious Adverse Events, and Other Significant Adverse Events

Listings, containing the same information as called for in section 12.2.4 above, should be provided for the following events.

12.3.1.1 Deaths

All deaths during the study, including the posttreatment followup period, and deaths that resulted from a process that began during the study, should be listed by patient in section 14.3.2.

21.3.1.2 Other Serious Adverse Events

All serious adverse events (other than death but including the serious adverse events temporally associated with or preceding the deaths) should be listed in section 14.3.2. The listing should include laboratory abnormalities, abnormal vital signs, and abnormal physical observations that were considered serious adverse events.

12.3.1.3 Other Significant Adverse Events

Marked hematological and other laboratory abnormalities (other than those meeting the definition of serious) and any events that led to an intervention, including withdrawal of drug treatment, dose reduction, or significant additional concomitant therapy, other than those reported as serious adverse events, should be listed in section 14.3.2.

12.3.2 Narratives of Deaths, Other Serious Adverse Events, and Certain Other Significant Adverse Events

There should be brief narratives describing each death, each other serious adverse event, and those of the other significant adverse events that are of special interest because of clinical importance. These narratives can be placed either in the text of the report or in section 14.3.3, depending on their number. Events that were clearly unrelated to the study drug may be omitted or described very briefly. In general, the narrative should describe:

- The nature and intensity of event, the clinical course leading up to the event, with an indication of timing relevant to drug administration; relevant laboratory measurements whether the drug was stopped, and when; countermeasures; post mortem findings; investigator's opinion on causality, and sponsor's opinion on causality, if appropriate.

In addition, the following information should be included:

- Patient identifier
- Age and sex of patient; general clinical condition of patient, if appropriate
- Disease being treated (if the same for all patients this is not required) with duration of current episode of illness
- Relevant concomitant/previous illnesses with details of occurrence/duration
- Relevant concomitant/previous medication with details of dosage
- Study drug administered, drug dose, if this varied among patients, and length of time administered

12.3.3 Analysis and Discussion of Deaths, Other Serious Adverse Events, and Other Significant Adverse Events

The significance of the deaths, other serious adverse events, and other significant adverse events leading to withdrawal, dose reduction, or institution of concomitant therapy should be assessed with respect to the safety of the drug. Particular attention should be paid to whether any of these events may represent a previously unsuspected important adverse effect of the drug. For serious adverse events that appear of particular importance, it may be useful to use life table or similar analyses to show their relation to time on drug and to assess their risk over time.

12.4 Clinical Laboratory Evaluation

12.4.1 Listing of Individual Laboratory Measurements by Patient (16.2.8) and Each Abnormal Laboratory Value (14.3.4)

When required by regulatory authorities, the results of all safety-related laboratory tests should be available in tabular listings, using a display similar to the following, where each row represents a patient visit at which a laboratory study was done, with patients grouped by investigator (if more than one) and treatment group, and columns include critical demographic data, drug dose data, and the results of the laboratory tests. As not all tests can be displayed in a single table, they should be grouped logically (e.g., hematological tests, liver chemistries, electrolytes, urinalysis). Abnormal values should be identified, e.g., by underlining, bracketing. These listings should be submitted as part of the registration/marketing application, when this is required, or may be available on request.

LIST OF LABORATORY MEASUREMENTS

Patient	Time	Age	Sex	Race	Weight	Dose	Laboratory Tests		
							SGOT	SGPT	AP.....X
#1	T0	70	M	W	70 kg	400 mg	V1*	V5	V9
	T1						V2	V6	V10
	T2						V3	V7	V11
	T3						V4	V8	V12
#2	T10	65	F	B	50 kg	300 mg	V13	V16	V19
	T21						V14	V17	V20
	T32						V15	V18	V21

*Vn = value of a particular test

For all regulatory authorities, there should be a by-patient listing of all abnormal laboratory values in section 14.3.4, using the format described above. For laboratory abnormalities of special interest (abnormal laboratory values of potential clinical importance), it may also be useful to provide additional data, such as normal values before and after the abnormal value, and values of related laboratory tests. In some cases, it may be desirable to exclude certain abnormal values from further analysis. For example, single, nonreplicated, small abnormalities of some tests (e.g., uric acid or electrolytes) or occasional low values of some tests (e.g., transaminase, alkaline phosphatase, blood urea nitrogen (BUN)) can probably be defined as clinically insignificant and excluded. Any such decisions should be clearly explained, however, and the complete list of values provided (or available to authorities on request) should identify every abnormal value.

12.4.2 Evaluation of Each Laboratory Parameter

The necessary evaluation of laboratory values must in part be determined by the results seen, but, in general, the following analyses should be provided. For each analysis, comparison of the treatment and control groups should be carried out, as appropriate, and as compatible with study size. In addition, normal laboratory ranges should be given for each analysis.

12.4.2.1 Laboratory Values Over Time

For each parameter at each time over the course of the study (e.g., at each visit) the following should be described: the group mean or median values, the range of values, and the number of patients with abnormal values, or with abnormal values that are of a certain size (e.g., twice the upper limit of normal, 5 times the upper limit; choices should be explained). Graphs may be used.

12.4.2.2 Individual Patient Changes

An analysis of individual patient changes by treatment group should be given. A variety of approaches may be used, including:

I. ''Shift tables'' - These tables show the number of patients who are low, normal, or high at baseline and then at selected time intervals.

II. Tables showing the number or fraction of patients who had a change in parameter of a predetermined size at selected time intervals. For example, for BUN, it might be decided that a change of more than 10 mg per deciliter BUN should be noted. For this parameter, the number of patients having a change less than this or greater than this would be shown for one or more visits, usually grouping patients separately depending on baseline BUN (normal or elevated). The possible advantage of this display, compared to the usual shift table, is that changes of a certain size are noted, even if the value is not abnormal.

III. A graph comparing the initial value and the on-treatment values of a laboratory measurement for each patient by locating the point defined by the initial value on the abscissa and a subsequent value on the ordinate. If no changes occur, the point representing each patient will be located on the 45° line. A general shift to higher values will show a clustering of points above the 45° line. As this display can show only a single time point for a single treatment, interpretation requires a time series of these plots for treatment and control groups. This kind of display identifies outliers readily (it is useful to include patient identifiers for the outliers).

12.4.2.3 Individual Clinically Significant Abnormalities

Clinically significant changes (defined by the applicant) should be discussed. A narrative of each patient whose laboratory abnormality was considered a serious adverse event and, in certain cases, considered another significant event should be provided under section 12.3.2 or 14.3.3. When toxicity grading scales are used (e.g., World Health Organization, National Cancer Institute), changes graded as severe should be discussed regardless of seriousness. An analysis of the clinically significant changes, together with a recapitulation of discontinuations due to laboratory measurements, should be provided for each parameter. The significance of the changes and likely relation to the treatment should be assessed, e.g., by analysis of such features as relationship to dose, relationship to drug concentration, disappearance on continued therapy, positive dechallenge, positive rechallenge, and the nature of concomitant therapy.

12.5 Vital Signs, Physical Findings, and Other Observations Related to Safety

Vital signs, other physical findings, and other observations related to safety should be analyzed and presented in a way similar to laboratory variables. If there is evidence of a drug effect, any dose-response or drug concentration-response relationship or relationship to patient variables (e.g., disease, demographics, concomitant therapy) should be identified and the clinical relevance of the observation described. Particular attention should be given to changes not evaluated as efficacy variables and to those considered to be adverse events.

12.6 Safety Conclusions

The overall safety evaluation of the study drug(s) should be reviewed, with particular attention to events resulting in changes of dose or need for concomitant medication, serious adverse events, events resulting in withdrawal, and deaths. Any patients or patient groups at increased risk should be identified and particular attention paid to potentially vulnerable patients who may be present in small numbers, e.g., children, pregnant women, frail elderly, people with marked abnormalities of drug metabolism or excretion. The implication of the safety evaluation for the possible uses of the drug should be described.

13. Overall Conclusions

The efficacy and safety results of the study and the relationship of risks and benefit should be briefly summarized, referring to the tables, figures, and sections above as needed. The presentation should not simply repeat the description of results nor introduce new results.

The conclusions should clearly identify any new or unexpected findings, comment on their significance, and discuss any potential problems such as inconsistencies between related measures. The clinical relevance and importance of the results should also be discussed in the light of other existing data. Any specific benefits or special precautions required for individual subjects or at-risk groups and any implications for the conduct of future studies should be identified.

14. Tables, Figures, and Graphs Referred to but not Included in the Text

Figures should be used to visually summarize the important results, or to clarify results that are not easily understood from tables.

Important demographic, efficacy, and safety data should be presented in summary figures or tables in the text of the report. However, if these become obtrusive because of size or number they should be presented here, cross-referenced to the text, along with supportive, or additional, figures, tables, or listings.

The following information may be incorporated in this section:

14.1 Demographic Data

Summary figures and tables
14.2 Efficacy Data
Summary figures and tables
14.3 Safety Data
Summary figures and tables
14.3.1 Displays of Adverse Events
14.3.2 Listings of Deaths, Other Serious and Significant Adverse Events
14.3.3 Narratives of Deaths, Other Serious and Certain Other Significant Adverse Events
14.3.4 Abnormal Laboratory Value Listing (each patient)

15. Reference List

A list of articles from the literature pertinent to the evaluation of the study should be provided. Copies of important publications should be attached in an appendix (16.1.10 and 16.1.11). References should be given in accordance with the internationally accepted standards of the 1979 Vancouver Declaration on ''Uniform Requirements for Manuscripts Submitted to Biomedical Journals'' or the system used in ''Chemical Abstracts.''

16. Appendices

This section should be prefaced by a full list of all appendices available for the study report. Where permitted by the regulatory authority, some of the following appendices should not be submitted with the report but should be provided only on request.

The applicant should therefore clearly indicate those appendices that are submitted with the report.

N.B. To have appendices available on request, they should be finalized by the time of filing of the submission.

16.1 Study Information
16.1.1 Protocol and protocol amendments
16.1.2 Sample case report form (unique pages only)
16.1 .3 List of IEC's or IRB's (plus the name of the committee Chair if required by the regulatory authority) - Representative written information for patient and sample consent forms
16.1.4 List and description of investigators and other important participants in the study, including brief (1 page) curriculum vitaes or equivalent summaries of training and experience relevant to the performance of the clinical study
16.1.5 Signatures of principal investigator(s) (or coordinating investigators) or responsible medical officer, depending on the regulatory authority's requirement
16.1.6 Analytical documentation--batch certificate for the investigational product(s)
16.1.7 Randomization scheme and codes (patient identification and treatment assigned)
16.1.8 Audit certificates (if available) (see Annex IVa and IVb of the guideline)
16.1.9 Documentation of statistical methods
16.1.10 Publications based on the study
16.1.11 Important publications referenced in the report
16.2. Patient Data Listings
16.2.1 Discontinued patients
16.2.2 Protocol deviations
16.2.3 Patients excluded from the efficacy analysis
16.2.4 Demographic data
16.2.5 Compliance and/or Drug Concentration Data (if available)
16.2.6 Individual Efficacy Response data
16.2.7 Adverse event listings (each patient)
16.2.8. Listing of individual laboratory measurements by patient, when required by regulatory authorities
16.3 Case Report Forms
16.3.1 CRF's of serious adverse events and withdrawals for adverse events
16.3.2 Other CRF's submitted
16.4. Individual Patient Data Listings (U.S. Archival Listings)

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SYNOPSIS

ANNEX I

Name of Company:	Individual Study Table Referring to Part of the Dossier Volume: Page:	(For National Authority Use only)
Name of Finished Product:		
Name of Active Ingredient:		

Title of Study:	
Investigators:	
Study centre(s):	
Publication (reference)	
Studied period (years): (date of first enrollment) (date of last completed)	Phase of development:
Objectives:	
Methodology:	
Number of patients (planned and analysed):	
Diagnosis and main criteria for inclusion:	
Test product, dose and mode of administration, batch number:	
Duration of treatment:	
Reference therapy, dose and mode of administration, batch number	

Name of Company:	Individual Study Table Referring to Part of the Dossier Volume: Page:	*(For National Authority Use Only)*
Name of Finished Product:		
Name of Active Ingredient:		

Criteria for evaluation:
Efficacy:

Safety:

Statistical methods:

SUMMARY - CONCLUSIONS

EFFICACY RESULTS:

SAFETY RESULTS:

CONCLUSION:

Date of the report:

ANNEX II

PRINCIPAL INVESTIGATOR(S) SIGNATURE(S)

OR COORDINATING INVESTIGATOR(S)

TITLE: .....

AUTHOR(S): .....

I have read this report and confirm that to the best of my knowledge it accurately describes the conduct and results of the study

INVESTIGATOR:_____ SIGNATURE(S)_____

AFFILIATION:_____ _____

_____

DATE:_____

ANNEX III a

STUDY DESIGN AND SCHEDULE OF ASSESSMENTS

TREATMENT PERIOD	A	B		C	
		B1	B2	C1	C2
	Run-in	Test Drug A 5 mg	Test Drug A 10 mg	Test Drug A 5 mg	Test Drug A 10 mg
		Test Drug B 5 mg	Test Drug B 10 mg	Test Drug B 5 mg	Test Drug B 10 mg

Weeks	-2(-3)	0	3	6	9	12
Visit	1	2	3	4	5	6
Exercise test 24 h	x[1]	x[2]	x	x	x	x
Medical history	x					
Physical examination	x					x
ECG	x					x
Lab. invest.	x					x
Adverse events		x	x	x	x	x

1 = 14-20 days after visit 1
2 = 1-7 days after the first exercise test

ANNEX III b

STUDY DESIGN AND SCHEDULE OF ASSEMENTS

Phase	Screening			Single-Blind placebo run-in		Double-blind			Follow-up		
						Placebo					
						Dose 1					
						Dose 2					
						Dose 3					
Assessment											
Visit	1	2		3		4		5		6		7
Week	0	1		2	3	4	5	6	7	8	9	10
Informed consent	x											
Inclusion criteria	x			x		x						
History	x											
Physical exam	x			x		x				x		x
Effectiveness:												
Primary variable	x	x	x			x		x		x		x
Secondary variable	x	x	x			x		x		x		x
Safety:												
Adverse effects	x	x	x			x		x		x		x
Lab. tests	x	x	x			x		x		x		x
Body weight	x		x			x				x		x

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ANNEX IV a

AUDIT CERTIFICATES (if available)

The audit certificate is a document indicating:

- The audit (type, identification number)
- The audited system, clinical trial, or organization
- The audit dates
- The date of release of the audit report

The Audit Certificate should be prepared and used in accordance with standard operating procedures. To be valid the Audit Certificate should be signed by the responsible auditor(s) or the head of the independent audit organization as defined in the standard operating procedures.

Audit Certificates may be added to the clinical study report.

Since it is recognized that not every clinical study will be subject to an independent audit, Audit Certificates for systems audits can demonstrate the independent assessment of the systems or part of the systems used to ensure that the trial is performed and the data are generated in compliance with good clinical practice.

Audit Certificates pertaining to audits of systems implemented and existing during the planning, conduct, data analysis, and reporting of the reported clinical trial may be added to the clinical study report together with the certificate for the audit of the reported study, if such an audit was conducted.

The Audit Certificate should be retained in accordance with any regulatory requirements.

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ANNEX IV b

EXAMPLE

Company Name:

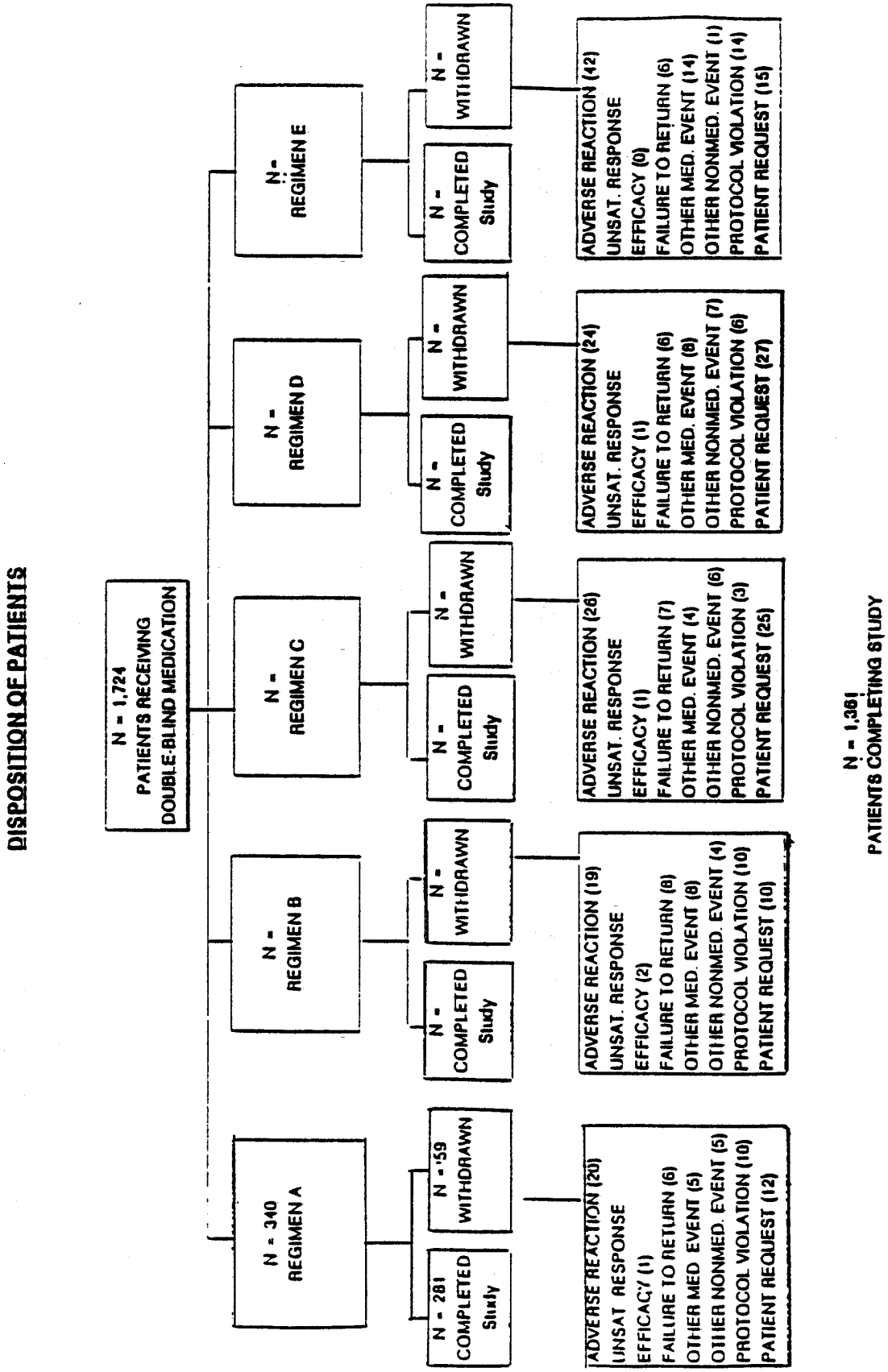
Audit Number:	AUDIT CERTIFICATE

Drug : Study Number: Audit Type :	Protocol Number : IND Number :
Study Title:	
Investigator: Address:	
Contractor(s):	

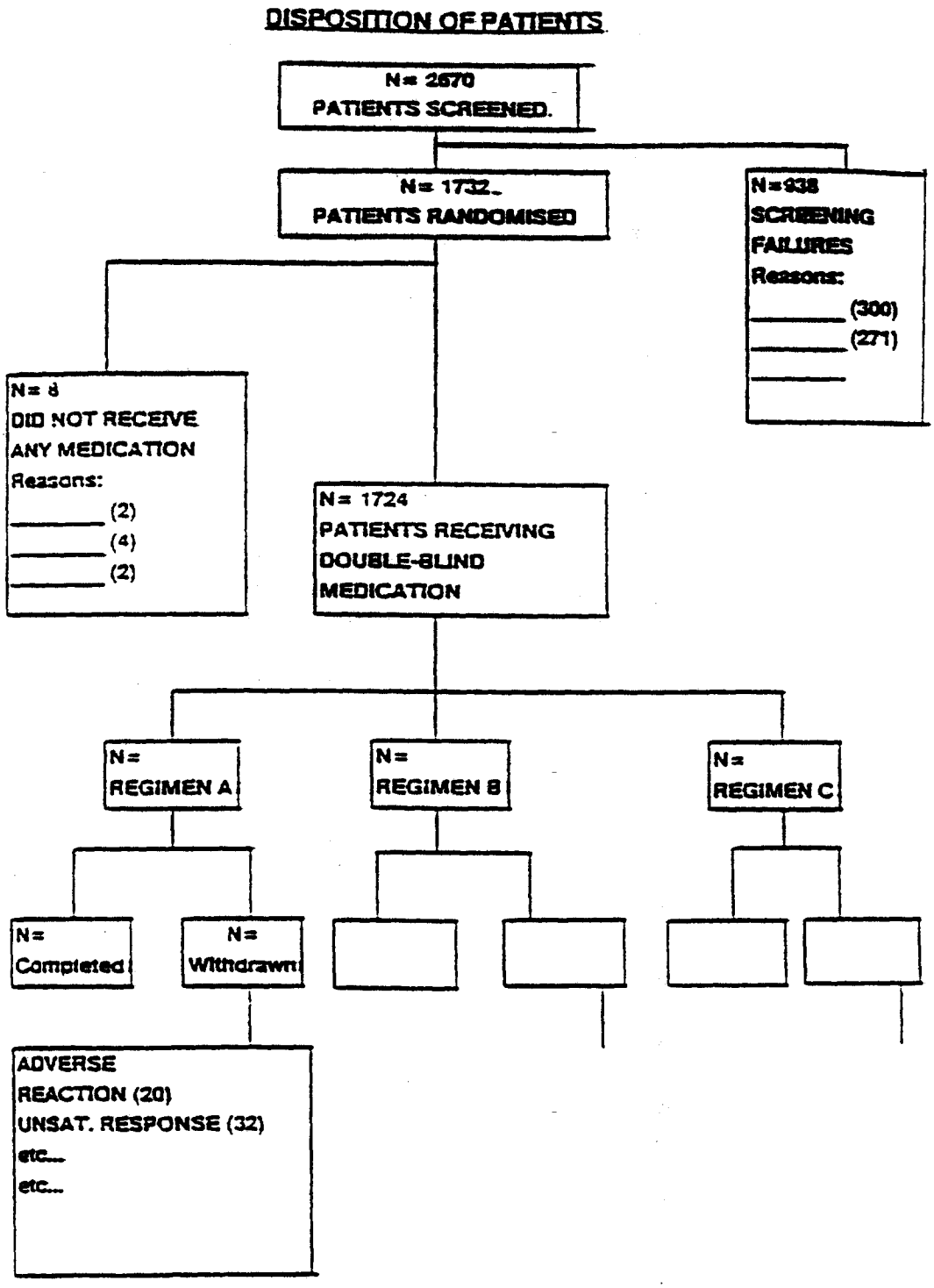
Audit Department Address Tel. Fax	Auditor(s) :
Internal Audit Dates :	Activities :
External Audit Dates :	Activities :
Date report released :	

Audit closure date :

NA = Not Applicable **(Please note the following charts are not available.)**


DISPOSITION OF PATIENTS
N = 1,724
PATIENTS RECEIVING
DOUBLE-BLIND MEDICATION
N = 340
REGIMEN A
N = 281
COMPLETED
Study
N = 59
WITHDRAWN
ADVERSE REACTION (20)
UNSAT. RESPONSE
EFFICACY (1)
FAILURE TO RETURN (6)
OTHER MED. EVENT (5)
OTHER NONMED. EVENT (5)
PROTOCOL VIOLATION (10)
PATIENT REQUEST (12)
N =
REGIMEN B
N =
COMPLETED
Study
N =
WITHDRAWN
ADVERSE REACTION (19)
UNSAT. RESPONSE
EFFICACY (2)
FAILURE TO RETURN (8)
OTHER MED. EVENT (8)
OTHER NONMED. EVENT (4)
PROTOCOL VIOLATION (10)
PATIENT REQUEST (10)
N =
REGIMEN C
N =
COMPLETED
Study
N =
WITHDRAWN
ADVERSE REACTION (26)
UNSAT. RESPONSE
EFFICACY (1)
FAILURE TO RETURN (7)
OTHER MED. EVENT (4)
OTHER NONMED. EVENT (6)
PROTOCOL VIOLATION (3)
PATIENT REQUEST (25)
N =
REGIMEN D
N =
COMPLETED
Study
N =
WITHDRAWN
ADVERSE REACTION (24)
UNSAT. RESPONSE
EFFICACY (1)
FAILURE TO RETURN (6)
OTHER MED. EVENT (8)
OTHER NONMED. EVENT (7)
PROTOCOL VIOLATION (6)
PATIENT REQUEST (27)
N =
REGIMEN E
N =
COMPLETED
Study
N =
WITHDRAWN
ADVERSE REACTION (42)
UNSAT. RESPONSE
EFFICACY (0)
FAILURE TO RETURN (6)
OTHER MED. EVENT (14)
OTHER NONMED. EVENT (1)
PROTOCOL VIOLATION (14)
PATIENT REQUEST (15)
N = 1,361
PATIENTS COMPLETING STUDY

ANNEX V b


DISPOSITION OF PATIENTS
N= 2670
PATIENTS SCREENED.
N= 1732
PATIENTS RANDOMISED
N=938
SCREENING
FAILURES
Reasons:
(300)
(271)
N= 8
DID NOT RECEIVE
ANY MEDICATION
Reasons:
(2)
(4)
(2)
N= 1724
PATIENTS RECEIVING
DOUBLE-BLIND
MEDICATION
N=
REGIMEN A
N=
REGIMEN B
N=
REGIMEN C
N=
Completed
N=
Withdrawn
ADVERSE
REACTION (20)
UNSAT. RESPONSE (32)
etc...
etc...

ANNEX VI

STUDY #
(Data Set Identification)

LISTING OF PATIENTS WHO DISCONTINUED THERAPY

INV:

Treatment	Patient #	Sex	Age	Last Visit	Duration	Dose	Concomitant Medication	Reason for Discontin.
Test Drug								Adverse reaction . . . Therapy failure

Treatment	Patient #	Sex	Age	Last Visit	Duration	Dose	Concomitant Medication	Reason for Discontin.
Active Control								

Treatment	Patient #	Sex	Age	Last Visit	Duration	Dose	Concomitant Medication	Reason for Discontin.
Placebo								

The specific reaction leading to discontinuation

(Repeat for other investigators)

ANNEX VII

STUDY #
(Data Set Identification)

LISTING OF PATIENTS AND OBSERVATIONS EXCLUDE FROM EFFICACY ANALYSIS:

Inv:

Treatment	Patient #	Sex	Age	Observation Excluded Reason(s)
Test Drug				

Treatment	Patient #	Sex	Age	Observation Excluded Reason(s)
Active Control				

Treatment	Patient #	Sex	Age	Observation Excluded Reason(s)
Placebo				

(Repeat for other investigators)

Reference Tables

Summary:

ANNEX VIII

STUDY #

(Data Set Identification)

Number of Patients Excluded from Efficacy Analysis

Test Drug N =

	Week			
Reason	1	2	4	8
Total				

Similar tables should be prepared for the other treatment groups

BILLING CODE 4160–01–C

ANNEX IX

Guidance for Section 11.3.2—Statistical/Analytical Issues

A. Statistical Considerations

Details of the statistical analysis performed on each primary efficacy measure should be presented in an appendix. Details reported should include at least the following information:

(a) The statistical model underlying the analysis. This should be presented precisely and completely, using references if necessary.

(b) A statement of the clinical claim tested in precise statistical terms, e.g., in terms of null and alternative hypotheses.

(c) When statistically reasonable and appropriate, the power against specific clinically meaningful alternatives for those tests that fail to reject the null hypothesis to indicate whether the study size was adequate.

(d) The statistical methods applied to estimate effects, construct confidence intervals, etc. Literature references should be included where appropriate.

(e) The assumptions underlying the statistical methods. It should be shown, insofar as statistically reasonable, that the data satisfy crucial assumptions, especially when necessary to confirm the validity of an inference. When extensive statistical analyses have been performed by the applicant, the extent to which the analyses were planned prior to the availability of data should be considered, and, if they were not, how bias was avoided in choosing the particular analysis used as a basis for conclusions should be described. This is particularly important in the case of any subgroup analyses, because if such analyses are not preplanned, they will ordinarily not provide an adequate basis for definitive conclusions.

(i) In the event data transformation was performed, a rationale for the choice of data transformation along with interpretation of the estimates of treatment effects based on transformed data should be provided.

(ii) A discussion of the appropriateness of the choice of statistical procedure and the validity of statistical conclusions will guide the regulatory authority's statistical reviewer in determining whether reanalysis of data is needed.

(f) The test statistic, the sampling distribution of the test statistic under the null hypothesis, the value of the test statistic, significance level (i.e., p-value), and intermediate summary data, in a format that enables the regulatory authority's statistical reviewer to verify the results of the analysis quickly and easily. The p-values should be designated as one- or two-tailed. The rationale for using a one-tailed test should be provided.

For example, the documentation of a two-sample t-test should consist of the value of the t-statistic, the associated degrees of freedom, the p-value, the two sample sizes, mean and variance for each of the samples, and the pooled estimate of variance. The documentation of multi-center studies analysed by analysis of variance techniques should include, at a minimum, an analysis of variance table with terms for centers, treatments, their interaction, error, and total. For crossover designs, the documentation should include information regarding sequences, patients with sequences, baselines at the start of each period, washouts and length of washouts, dropouts during each period, treatments, periods, treatment by period interaction error, and total. For each source of variation, aside from the total, the table should contain the degrees of freedom, the sum of squares, the mean square, the appropriate F-test, the p-value, and the expected mean square. Generally, it is recommended that regression type sums of squares be provided in addition to any other analyses.

Intermediate summary data should display the demographic data and response data, averaged or otherwise summarized, for each center-by-treatment combination (or other design characteristic such as sequence) at each observation time.

B. Format and Specifications for Submission of Data Requested by Regulatory Authority's Statistical Reviewers

In the report of each controlled clinical study, there should be data listings (tabulations) of patient data utilized by the sponsor for statistical analyses and tables supporting conclusions and major findings. These data listings are necessary for the regulatory authority's statistical review, and the sponsor may be asked to supply these patient data listings in a computer-readable form.

Dated: August 15, 1995.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 95–20813 Filed 8–22–95; 8:45 am]

BILLING CODE 4160–01–F

federal register

Wednesday
August 23, 1995

Part V

Office of Personnel Management

5 CFR Parts 430 et al.

Deregulation of Performance Management and Incentive Awards: Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430, 432, 451 and 531

RIN 3206–AG34

Performance Management

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to deregulate performance management and incentive awards, including provisions allowing agencies to use as few as two levels for critical element appraisals for and summary performance assessments of non-SES employees, and to make conforming changes to related regulations. These changes provide agencies additional flexibility as called for by the National Performance Review.

EFFECTIVE DATE: September 22, 1995.

FOR FURTHER INFORMATION CONTACT: Barbara Colchao, (202) 606–2720.

SUPPLEMENTARY INFORMATION: OPM published for comment in the **Federal Register** on January 27, 1995, at 60 FR 5542–5557, proposed revisions to the regulations on performance management systems. A total of 52 comments and/or suggestions were received: 37 from agencies, 6 from unions, 6 from individuals, and 3 from management associations. The comments generally supported the proposed changes. On some topics, commenters suggested additional changes. In other instances, commenters either suggested that no change be made to the current regulations or suggested some modification to the proposed changes. Comments and suggestions, along with the rationale for and explanation of revisions to the final regulations, are discussed below.

I. Background

Following several years of study and recommendations for ways to improve the Federal Government's performance management system for non-Senior Executive Service (SES) employees, OPM reviewed the regulatory structure for appraisal and awards for opportunities to implement the various recommendations. OPM concluded that the regulations implementing the basic statutory requirements could be made much more flexible and constructive for managing and recognizing group as well as individual performance. Consequently, OPM proposed a variety of changes to the regulations covering performance appraisal (part 430) and incentive awards (part 451), as well as related regulations that referenced appraisal results (e.g., granting within-grade and quality step increases).

OPM's intent in deregulating performance management was to give agencies a great deal of flexibility for both appraisal and awards so that the working organizations of the Federal Government could operate in a decentralized environment where the performance management procedures for planning, monitoring, evaluating, and rewarding individual, team, and organizational performance were tailored to fit local work technologies and cultures. A chief means of achieving this flexibility was to remove a great deal of regulatory language. As a result of comments received, OPM is restoring language in several instances that had been deleted in the proposed regulations (e.g., restoring a reference to ''employee'' in the definition of *critical element*). Whenever reasonable, the restoration is establishing a permissive authority, rather than a Governmentwide requirement. OPM's original strategy was to adopt a ''permissive silence'' approach to many issues. That is, by leaving the regulations silent, agencies would not be constrained from designing and implementing a variety of procedures and mechanisms. However, the comments clearly indicated that in some cases, agencies believe a direct reference to certain permissible techniques, such as permitting the assigning of a summary level as part of a performance rating, is needed to permit their use. Consequently, OPM is reinserting some broad language in certain cases.

Even with these additions, however, OPM believes that our goal of creating a deregulated Governmentwide policy framework in which performance management can be revitalized and reinvented is being achieved, without sacrificing agency accountability and adequate employee protections. OPM encourages agencies to seize these flexibilities and work to make performance appraisal and awards an integral part of their general efforts to address the serious challenges Government is facing to create and sustain high performance organizations.

II. Statutory Limitations

OPM's proposals for regulatory changes to performance management implemented specific National Performance Review recommendations which were achievable within the limits of existing statute and which we believe substantially reform performance management in the Federal Government. However, there were several requests made by commenters to take actions that are outside OPM's authority. For example, a few commenters suggested that the regulations be further modified to require mandatory collective bargaining of aspects of performance appraisal and awards such as performance standards. Several other commenters made suggestions that also would require changes to statute; for example—

- integrate sections from different chapters of title 5, United States Code;
- eliminate the requirement that OPM approve performance appraisal systems;
- require that agencies take a chapter 43 action against employees whose performance is less than fully successful, but better than unacceptable as defined in statute;
- lift the prohibition on granting honorary, nonmonetary awards to political officers during a Presidential election period;
- modify regulations to permit that within-grade increases that are delayed do not have to be granted retroactively; and
- eliminate the connection between performance appraisal and retention standing in a reduction in force.

OPM does not have the authority under existing statute to take these actions. Therefore, they are not being adopted.

III. Employee Involvement and Labor Relations Issues

As OPM stated when publishing the proposed regulations, agencies are strongly urged to develop their performance management systems and programs in partnership with their employees and union representatives in accordance with law. Many studies have shown that the success of a performance management system in achieving its goals is dependent upon acceptance by the management and employees who use it. There is no better way to garner support for a system than by giving all stakeholders a role in developing it. Further, the National Performance Review stated in its accompanying report, *Reinventing Human Resource Management*, that under the ideal performance management system ''Employees and their representatives will be involved in design and implementation of performance management programs and in development of performance expectations.'' Consequently, OPM advises agencies that these regulatory changes in performance management should be implemented through full partnership with employees and their union representatives.

Several comments pointed out that the elimination of a Governmentwide

regulation could affect the negotiability of a particular aspect of an appraisal or award program. OPM is aware of this potential implication of removing such regulations. In balancing among the interests of establishing flexibility for effective program design, decentralizing programs to facilitate their being properly tailored to local work settings and cultures, achieving meaningful employee involvement to increase program acceptance, and maintaining an appropriate framework of Governmentwide regulation to ensure that statutory requirements are met, OPM is deciding more often than not to remove regulatory constraints.

A number of comments focused on OPM's objective of providing for involving employees in the design and implementation of performance management programs and the implications of the proposed regulations for how that involvement could and should be achieved. The principle that successful performance management approaches are best served by the involvement of the employees that will be affected by them is well established. In the Federal Government, under the Federal Service Labor-Management Relations Statute (chapter 71 of title 5, United States Code), for employees in bargaining units where a labor organization has been given exclusive recognition, employee involvement must be through that exclusive representative for subject matters that are within the statutory duty to bargain. As well as striving to develop performance management systems and programs in partnership, agencies must be mindful of the requirements of chapter 71 as they implement these final regulations.

Several comments raised questions about the means and methods of involving employees who are not in recognized bargaining units. One commenter suggested that OPM mandate that agencies use representatives of professional and management associations to involve employees who make up their memberships. OPM has no authority to set such a requirement. OPM strongly encourages agencies to involve all employees, including managers and supervisors, in the design and implementation of performance management programs. Where appropriate, this should include the involvement of representatives of professional and managerial associations, OPM, however, does not have the authority to require such involvement.

Also, agency officials are reminded that 18 U.S.C. 201–216 place restrictions on a wide range of activities by Federal employees, including representational activities on behalf of organizations that are not labor organizations. OPM therefore advises agency officials to consult with their designated agency ethics official for guidance regarding any conflicts of interest that may arise. Accordingly, OPM is revising text to clarify that agencies are free to choose appropriate forms of employee involvement in accordance with law. (See § 430.204(c), § 430.205(d), and § 451.103(b).)

Several comments raised related labor relations issues concerning employees who serve as representatives of labor organizations in their agencies under chapter 71 of title 5, United States Code. For example, one commenter suggested adding a requirement that union officials be granted presumptive ratings at the ''Fully Successful'' (or equivalent) level. Under performance appraisal provisions in part 430, the performance to be planned, monitored, and rated covers the work, duties, and responsibilities that accomplish the agency mission and for which the employee is accountable to the employing organization. When an employee is serving as the representative of a labor organization, he or she is performing duties for that labor organization. To intermingle performance of the representational duties into the appraisal program would be inappropriate because appraisal of the employee's performance must be based solely upon the employee's performance of agency duties. For employees who spend 100 percent of their time as labor representatives, and for employees who spend a significant amount of time as determined by the agency, this means that they cannot, and should not, be given performance appraisal ratings of record. In the interest of preserving the distinction between the agency-assigned duties of an official position and union duties and responsibilities, OPM is not adopting this suggestion. The regulations at part 430 continue to preclude a ''presumptive'' or ''assumed'' rating of record and such employees are considered ''unratable.'' The only place in regulations where an ''assumed'' rating is used is in the regulations at § 351.504 for granting addition service credit based on performance in a reduction in force.

Other commenters asked whether the waiver of an acceptable level of competence (ALOC) determination at § 531.409(d) is discretionary or mandatory. OPM is clarifying that waiving the ALOC determination for labor representatives is not discretionary for representatives who are unratable based upon the fact that ALOC must be based on a performance determination.

An additional comment stated that the provision addressing the ALOC waiver for union officials should also refer to representational duties. OPM is adopting the suggestion to clarify the representational duties are performed under the authority of chapter 71 of title 5, United States Code. (See § 531.409(d)(1)(v).)

One commenter suggested that where the proposed regulations at § 451.104(h) clarified that employees do not have appeal rights with respect to awards, language be added concerning the right to grieve an award. In considering this suggestion, OPM has concluded that it is not necessary to promulgate a Governmentwide regulation in this subpart that reminds employees about matters where they do and do not have appeal or grievance rights. Consequently, OPM is eliminating all reference to appealing awards by deleting § 451.104(h). Because appeal rights to the Merit Systems Protection Board must be granted specifically by law or regulation, deletion of this regulatory language does not have the effect of creating such an appeal right. (See § 541.104 (paragraph (h) as proposed, removed).)

IV. OPM Role Examined

Several comments raised questions that concern OPM's role in administering the Federal Government's performance management system under the provisions of chapters 43 and 45 of title 5, United States Code. One commenter asked whether these regulatory changes would affect the administrative exclusions that OPM had already granted some agencies for some excepted service employees under its authority at 5 U.S.C. 4301(2)(G). OPM has concluded that all existing administrative exclusions the Director of OPM has already granted will remain in effect and that agencies need not reapply for those exclusions.

One commenter suggested that OPM seek a reinterpretation of the statutory requirement that OPM review and approve agency appraisal systems in advance of program implementation. OPM believes that case law and established practice are sufficiently clear in this regard and that appraisal system approval must still be required in advance of program implementation.

One commenter expressed concern about the distinctions OPM is making between appraisal *system* and appraisal *program*. The commenter suggested that OPM would not be carrying out our

review and approval responsibilities properly if only a framework of parameters that an agency's programs must comply with were to be reviewed. OPM believes that the system descriptions that agencies will submit to OPM will provide sufficient information about the policies under which appraisals will be conducted to permit an adequate determination of whether the agency meets the requirements of subchapter I of chapter 43 of title 5, United States Code, which is OPM's responsibility under the law. As a consequence, the final regulations at §§ 430.203–205 continue to distinguish agency appraisal systems from appraisal programs and require at §§ 430.209–210 the submission and review of agency systems. (See § 430.203 (*appraisal program, appraisal system*) and §§ 430.205 (a) and (c).)

Other commenters asked about what documents agencies would be required to submit for OPM review. OPM will be distributing specific guidance and instructions, providing models, holding informational meetings, and supplying technical assistance to the agencies to facilitate the submission and approval of their systems and to support the design and implementation of revised appraisal and award programs.

One commenter suggested that the definition of ''Performance Management Plan'' be removed as paragraph § 430.102(c) and grouped with other definitions in § 430.203. OPM is taking this suggestion one step further by removing the provision and all references to ''Performance Management Plan'' in part 430, subparts A and B, which cover non-SES employees. Also, OPM is making conforming changes in subpart C by removing references to subpart A as a source of the continued SES requirement for a Performance Management Plan. From a Governmentwide regulatory perspective, reference to a document (e.g., a Performance Management Plan) that serves as the repository for an agency's non-SES performance management systems is no longer necessary because the regulations are clear in requiring agencies only to submit appraisal systems for OPM review and approval. However, agencies are free to continue to use a Performance Management Plan for internal purposes. The requirements for submitting appraisal systems for SES employees and for non-SES employees are spelled out separately in their respective subparts. (See § 430.102 (paragraph (c) as proposed, removed), § 430.209(d), § 430.303 (*Performance Management Plan*), and § 430.310.)

On OPM's evaluation responsibilities, one commenter suggested the wording ''must evaluate'' and another suggested the wording ''will evaluate'' to replace the wording ''may evaluate'' systems and programs at § 430.210(b) and § 451.107(d). Another commenter suggested that OPM include in the regulations at § 430.209(d) the criteria against which programs would be evaluated. OPM is fully committed to executing our evaluation role in a meaningful way. Moreover, OPM believes that agencies will be in the best position to establish criteria for evaluating their programs against the specific objectives that program design features were intended to achieve. Consequently, the suggested changes are not being adopted.

V. More Flexibility Requested

Some commenters did not feel that OPM had gone far enough in our proposals and urged OPM to consider providing further flexibilities. By far, the most commonly raised concern addressed the fact that OPM had not proposed any changes to the regulations at § 351.504 governing how additional service credit is granted during a reduction in force (RIF) on the basis of performance appraisal ratings of record. Most commenters noted that OPM's proposal to provide flexibility about the number of summary levels used in an appraisal program was a highly desirable system improvement. However, 27 of the 52 commenters suggested that OPM revisit the issue of crediting performance in a RIF. A few commenters urged that the connection between appraisal and retention be completely eliminated. Others suggested particular approaches for dealing with situations where employees in the same competitive area in a RIF were given ratings of record under programs that use different patterns of summary levels. To respond to the concerns expressed, OPM will review the RIF regulations in part 351 and consider whether any changes to the RIF retention provisions would be beneficial and appropriate. As part of this review, OPM will confer with stakeholders to assure that a full range of interests is considered.

In four other instances, changes were suggested that would have lifted regulatory requirements beyond what OPM had proposed. One commenter requested that the required progress review in the regulation at § 430.207(b) about monitoring performance during the appraised period be eliminated on grounds that agencies ''should not be required to conduct a formalized review.'' OPM had maintained the requirement for a progress review as a reasonable implementation of the specific statutory requirement that employees be evaluated *during* (and not just at the end of) their appraisal period. Given the more flexible definition of progress review, which could now be much simpler than a formally conducted or written review, OPM is preserving the requirement.

Another commenter suggested that after one appraisal period, journey-level employees should not be required under § 430.206(b)(2) to receive performance plans at the start of each subsequent period. Instead, a performance plan would be provided upon reaching the journey level and ''carry over'' after that. OPM understands that situations may continue where performance plans are constructed in such a way that they need not change from period to period. However, OPM believes that the statutory requirement for employees to be evaluated during each appraisal period on their standards is reasonably implemented by the current requirement. Also, eliminating the current requirement would strongly suggest that such plans are by their nature unchanging, at least at the journey level. One of OPM's goals in deregulating performance management is to reemphasize the value and importance of effective planning and goal setting. Consequently, OPM is not adopting the suggestion.

Two commenters sought greater flexibility with respect to assigning summary levels. One thought that the regulations at § 430.208(d)(1) should allow an appraisal program to use more than five summary levels. Other personnel systems and actions, including granting quality step increases, granting within-grade increases, and granting additional service credit in a reduction in force, are regulated to operate with reference to the five numerically-designated summary levels. The proposed regulations offered the flexibility for an appraisal program to assess performance at more than five levels, so long as the program included some method of translating such assessments to one of the patterns of summary levels that programs are permitted to use to designate their official ratings of record that the other personnel systems use. Given that flexibility, OPM is not adopting the suggestion to permit more than five summary levels.

The other commenter suggested that the proposed deregulation at § 430.208(e) to eliminate the Governmentwide requirement that all assigned summary levels be reviewed by a reviewing official should be extended

to Level 1 (''Unacceptable'') ratings of record. OPM has proposed maintaining the requirement for reviewing Level 1 ratings as an appropriate employee protection in cases where the assigned rating of record could affect an employee's retention in the Federal service. OPM believes such a measure of protection is still justified and is not adopting the suggestion.

VI. Restoring or Adding Restrictions and Requirements

A considerable number of comments requested that Governmentwide restrictions or requirements be restored or that new ones be established. OPM considered each of these suggestions carefully, attempting to implement the National Performance Review recommendation to eliminate unnecessary regulation consistent with our responsibility to regulate the Governmentwide implementation of chapters 43 and 45 of title 5, United States Code, as required by law.

A. Team and Organizational Performance

A number of commenters wanted OPM to restore language that we had proposed be removed from the regulations. For example, in the provision dealing with performance plans, OPM had proposed to eliminate the language referring to supervisor. Several commenters suggested that OPM restore the language that referred to supervisors. Current regulation at § 430.204(c)(4) states that ''Final authority for establishing such plans rests with the supervising officials.'' By proposing the removal of this type of language, OPM had hoped to broaden the coverage of the regulations to the management of team and organizational performance in other than traditional hierarchical organizations, as well as individual performance, without detracting from the management rights preserved by law.

The deletion of the reference to supervisors was not intended to, and cannot have the effect of, subtracting from management's inherent rights because those rights are preserved elsewhere in the law. For example, 5 U.S.C. 7106(a)(2) (A) and (B) protect management's right to direct employees and to assign work. Therefore, reference to the supervisor did not confer upon management any rights that did not already exist. Consequently, OPM is not adopting the suggestion to restore the reference to the supervisor establishing a performance plan.

The requirement for higher-level review of awards had been proposed for removal to accommodate restructured organizational environments. Several commenters suggested that the requirement be restored because its removal could have the effect of making award programs negotiable. OPM is not adopting this suggestion because of our focus on eliminating unnecessary layers of review to create flatter, more effective organizations. Such delayering could be used to establish more effective recognition systems.

Four commenters suggested OPM restore an exclusive reference to the performance of ''an employee.'' One of these suggestions applied to the definition of *performance rating* and another to the provision for ongoing appraisal at § 430.207(b). OPM is not adopting either change because each would limit performance to the individual, excluding the use of team or organizational performance from the appraisal process. A third commenter wanted to restore classification-centered references to duties and responsibilities in the definition of *critical element*. The third proposed change could result in limiting critical elements by tying them to position descriptions that are frequently outdated rather than allowing them to reflect the employee responsibilities needed by the organization. Accordingly, OPM is not adopting this suggestion. The fourth commenter, however, suggested restoring reference to ''an employee's'' overall performance in the definition of *critical element* as that which is found unacceptable if performance on one or more critical elements is unacceptable. OPM is adopting this suggestion because it emphasizes the necessary connection in the law between critical elements and the individual employee for retention purposes. (See § 430.203 (*critical element*) and § 432.103(b).)

B. Meaning and Use of Terms

1. Critical Elements and Other Performance Factors. OPM received a number of comments about the meaning and use of terms such as ''other performance factors'' and ''non-critical elements'' and the relationships among those and ''critical elements,'' especially with respect to their use in performance plans and their impact on summary ratings of record. Two commenters requested OPM to restore the definition of ''non-critical element.''

In response to these comments, OPM is amending definitions and provisions to establish three distinct kinds of performance elements: critical, non-critical, and additional. The concept of ''other performance factors'' that the proposed regulations had included has been replaced and refined by using ''non-critical elements'' and ''additional performance elements.''

The meaning and use of a ''critical element'' cannot change; as set forth in 5 U.S.C. 4301(3), failure to meet established performance standards on one or more critical elements means unacceptable performance. Because an appraisal system must be able to identify unacceptable performance, an appraisal program must use at least one critical element, and any critical element must have an established performance standard and be appraisable as ''Unacceptable.'' Critical elements must be used in deriving a summary level, and they form the only basis for taking a performance-based action under 5 CFR part 432 or 752.

The definition of *non-critical element* is being adjusted to reflect a new, broader meaning. (This change renders moot another commenter's suggestion to remove all references to noncritical elements.) As in current regulation, establishing a non-critical element is optional. If used, it must be included in the employee's performance plan. It cannot be used as a basis for taking a performance-based action under 5 CFR part 432 or 752. However, a non-critical element would be used in deriving a summary level. As in the proposed regulations and because it must be factored into the summary level, it must be appraisable at a minimum of two levels with a performance standard established for at least one level, which need not be the ''Fully Successful'' level. This change is being made in recognition of 5 U.S.C. 4302(b)(3), which requires that employees be evaluated against their performance standards.

OPM is changing the definition and use of non-critical elements to permit them to focus on levels of performance other than individual and on a standard other than that required for retention. Critical elements are designed to be focused on individual performance and an established performance standard for retention because of the definition of unacceptable performance at 5 U.S.C. 4301(3). Agencies may continue to use non-critical elements as they are used now under current regulation, provided they are used to derive a summary level.

Under these regulations, an optional ''additional performance element'' gives agencies additional flexibility for communicating performance expectations important to the organization. This kind of performance element differs from the other two in that it may not be used in deriving a summary level. However, it may be used for other purposes, such as making award determinations. Therefore, as was

proposed for ''other performance factors'' in general in the proposed regulations, an additional performance element need not include a performance standard, be appraised at any particular level, or necessarily be included in the employee performance plan. Also, by making clear that performance on an additional performance element may not be used in assigning a summary level, this change addresses one commenter's concerns that summary level derivations could be affected by performance expectations (''other performance factors'') not expressed at the beginning of the appraisal period in the performance plan.

Accordingly, OPM is adding definitions of *additional performance element* and *non-critical element*; revising procedures at § 430.206(b) required to establish performance plans to clarify options and requirements; and making conforming changes in other definitions and provisions. (See § 430.203) (*additional performance element, non-critical element, performance plan, performance rating, progress review*), § 430.204(b)(3)(iii), §§ 430.206 (b)(4) through (b)(7), § 430.207(b), and § 430.208(b).)

2. Summary Rating. Two commenters suggested that the definition of ''summary rating'' be retained. Another commenter suggested that either the definition be retained or all references to summary rating be removed. In current regulation at § 430.203, the definition of *summary rating* requires a label describing an employee's overall level of performance. In practice, the term ''summary rating'' frequently means the label only, without reference to the appraisal process or documentation that generated it. OPM proposed to replace *summary rating* with *performance rating*, which requires only the appraisal of critical and non-critical elements in an employee's performance plan. To help minimize confusion in this area, OPM is removing references to summary rating. OPM also is replacing references to ''summary rating level'' with ''summary level.'' A summary level must be assigned with a performance rating is prepared as part of a rating of record. At other times, assigning a summary level is optional. (See § 430.203 (*performance plan, rating of record*); § 430.204(b)(3)(iv); §§ 430.208 (b), (c), and (d); and § 531.504(b).)

3. Other Terms. In several instances, commenters requested that definitions of terms such as ''team,'' ''informal recognition item,'' and the performance and summary levels themselves be provided in the regulations. Commenters also requested that—

- the regulations include precise requirements for performance standards;
- ''as soon as practicable'' be defined;
- the proposed provision at § 531.409(d)(1)(v) for waiving the acceptable level of competence (ALOC) determination for labor representatives be permitted only for employees who are performing representational duties a full 100 percent of their time; and
- ''performance-based'' be added to modify ''actions based on unacceptable performance'' that must be provided for under § 430.207(d)(2), which would have restricted the actions an agency could take to deal with a poor performer.

OPM is committed to emphasizing flexibility for the performance appraisal and award programs that will be established under these regulations. Accordingly, OPM is not adopting these suggestions.

C. Appraisal Program Procedures

A number of commenters suggested restoring or adding procedural requirements within an appraisal program, such as—

- requiring paper copies of performance plans and ratings of record;
- requiring a minimum appraisal period of at least 90 days;
- requiring close-out ratings;
- specifying how to treat employees on detail;
- coordinating the assignment of summary levels between programs to assure equitable distribution of rewards; and
- establishing specific requirements and criteria for granting quality step increases under appraisal programs that do not use a Level 5 summary.

OPM believes that agencies should have the flexibility and authority to design their own means of addressing these procedures so that they fit their work technologies or cultures well. Consequently, OPM is not adopting these suggestions.

Five commenters urged OPM to reconsider removing the requirement to assist employees whose performance is better than ''Unacceptable,'' but not ''Fully Successful'' (or equivalent). OPM had removed the requirement on the basis that it went further than the statute required and that agencies would have the full discretion to provide such assistance without a Governmentwide regulation. However, OPM agrees that a commitment to improving performance includes assisting a marginal performer. Accordingly, OPM is adding language to emphasize that agencies should offer assistance to employees whose performance is less than ''Fully Successful'' (or equivalent). (See § 430.207(c).)

Some commenters suggested that the proposed provision to permit the delay of an acceptable level of competence (ALOC) determination for employees completing an opportunity to improve or under notice of a performance-based action to be taken under 5 CFR part 432 or 752 is unfair to employees whose performance is less than ''Fully Successful'' but better than ''Unacceptable.'' These marginal performers would not have access to such a delay and, upon improvement to the ''Fully Successful'' level, to a retroactive within-grade increase. Thus, those whom management deemed to be performing at an unacceptable level would be endowed with greater rights than those whose performance is somewhat better, thereby creating an inequity in the application of the law.

OPM agrees. The proposed regulation does not further our policy objectives. All employees whose performance is deemed less than ''Fully Successful'' should be treated equally for ALOC determinations. No group of less than ''Fully Successful'' performers should be granted advantage over any others. Accordingly, these final regulations do not include the provision at § 531.409(c) as described above for delaying the ALOC determination. (See § 531.409 (amendments to paragraphs (c)(2) through (c)(3) as proposed, withdrawn).)

Four commenters addressed the provision requiring agencies to communicate to employees about relevant parts of applicable performance management systems and programs. All stressed, to varying degrees, the importance of training and the concern that OPM's omitting specific mention of it would send inappropriate signals about its importance, if not necessity, in implementing effective systems and programs. One commenter specifically recommended that OPM re-insert the training requirement. OPM is not adopting this suggestion because we had proposed to remove the training requirement to allow agencies the flexibility to use resources in addition to formal training funds to communicate system and program operations to supervisors and employees. OPM recognizes, however, that while formal training is rarely sufficient, it often is necessary to ensure adequate communication. Accordingly, OPM is adding a specific reference to formal training as an example of communicating to employees and supervisors about the relevant parts of applicable appraisal systems and programs and award programs. (See § 430.209(c) and § 451.106(c).)

D. Forced Distributions of Ratings

Several commenters questioned OPM's proposal at § 430.208(c) to permit agency appraisal programs to use ''forced distributions'' of summary levels for ratings of record and urged that OPM restore the existing prohibition on their use. These commenters believed that forced distributions were incompatible with effective performance management. OPM is persuaded by the arguments that criticized the use of forced distributions and is adopting the suggestions that the regulations continue to prohibit forced distributions, as the current regulations do at § 430.206(d). Therefore, the proposed language at § 430.208(c) is being changed from being a permissive authority. Under these final regulations, *no* limitations on ratings at any level used by an appraisal program are permitted. The regulations still require that a summary level be derived solely from comparing performance to the pre-established standards required for critical and non-critical elements and not be based at all on additional performance elements. Definitions of *additional performance element* and *non-critical element* are added or restored as outlined above to clarify this issue. OPM is permitting more flexibility to use non-critical elements to derive a summary level and in making performance distinctions above a Level 3 summary (''Fully Successful'' or equivalent), while heeding the commenters' calls for not permitting quotas for summary levels. However, OPM is also adding language to clarify that using methods where relative comparisons are made among individuals or groups, such as rank ordering or categorizing employees, may be used for purposes outside appraisal and assigning a summary level, such as making decisions about distributing rewards. (See § 430.208(c).)

VII. Performance and Awards Data

Nine commenters requested additional information and OPM guidance regarding how to report award and performance data to the Central Personnel Data File (CPDF) and clarification of the transfer of rating requirements when employees change agencies or leave Federal service.

The inclusion of these reporting requirements in the performance management and award regulations is intended to reinforce their mandatory nature. However, official OPM policy on how agencies are to comply with these reporting requirements is contained in three OPM Operating Manuals. Policy and instructions on how to submit data to the CPDF are contained in FEDERAL WORKFORCE REPORTING SYSTEMS. Policy and instructions on how to process personnel actions, including appropriate nature-of-action codes (NOAC's) for awards, within-grade increases, and quality step increases, are in THE GUIDE TO PROCESSING PERSONNEL ACTIONS. Finally, policy and instructions on the transfer of performance records are addressed in the regulations at 5 CFR part 293 and, along with records documentation requirements for the Official Personnel Folder (OPF), in THE GUIDE TO PERSONNEL RECORDKEEPING.

The new regulations in part 451 remove the specific requirement to prepare an SF–50 for a time-off award. This is consistent with OPM's intent to review the data collection and reporting and documentation requirements for appraisal and awards in the coming months with the objective of simplifying requirements to the extent possible, given OPM's responsibilities for maintaining Governmentwide data in these areas. In the meantime, agencies are reminded that they should follow the reporting and documentation requirements specified in the relevant OPM Operating Manuals, which at this point still require SF–50's for all cash and time-off awards. Accordingly, the regulations are amended to clarify that transfer, documentation, and reporting of records must be done in compliance with these OPM Operating Manuals. Further, language is added to indicate where they can be obtained. (See §§ 430.209(b) and (e); §§ 451.106(e), (f), and (g); and § 531.507(b).)

VIII. Miscellaneous, Technical, and Editorial Changes

OPM is incorporating two structural changes in these final regulations. OPM is replacing text describing the summary levels available for program use with a table of permissible patterns of summary levels and explanatory text. In addition to providing a clearer presentation of what combinations of summary levels may be used, this table establishes a convenient pattern label (A through H) for possible reference in future data reporting instructions in the OPM Operating Manual, FEDERAL WORKFORCE REPORTING SYSTEMS. A conforming change requires agencies to specify in their systems which patterns, not levels, programs are permitted to adopt. (See § 430.204(b)(3)(iv) and §§ 430.208(d)(1) and (2).)

OPM is revising the definitions of *appraisal period* and *rating of record* to accommodate their establishment under programs in accordance with an agency system. (See § 430.203 (*appraisal period*, *rating of record*).)

One commenter found it confusing that the definition of *performance rating* makes no mention of deriving a summary level. OPM had intended that silence on the derivation of a summary level would be taken to imply consent. To make our intent clearer, however, OPM is revising the definition of *performance rating* to specify explicitly that assigning a summary level is permitted. A summary level is required only for a rating of record. (See § 430.203 (*performance rating*).)

The definition of *performance rating* is being revised to include the new flexibility to use additional performance elements. (See § 430.203 (*Performance standard).)*

The provision requiring an appraisal program to establish a minimum period is being revised so that the minimum period applies to performance ratings only, rather than a more general performance determination. This change accommodates a commenter's suggestion to ensure that agencies retain the flexibility to make a determination about performance at any time, as permitted, for example, in an unacceptable performance determination. (See § 430.207(a).)

The provision prohibiting the assignment of a Level 1 (''Unacceptable'') summary if all critical elements are rated ''Fully Successful'' (or equivalent) or better is being corrected to align with statute, which links unacceptable performance overall with an ''Unacceptable'' (not just ''less than 'Fully Successful' '') appraisal on one or more critical elements. (See § 430.208(b)(1).)

One commenter asserted that OPM must, but does not, allow itself to disapprove an appraisal system at § 430.210. OPM does not contemplate such disapproval because an agency must have an approved appraisal system under which it can manage performance, take performance-based actions under 5 CFR part 432 or 752, and make other personnel decisions. In this respect, an appraisal system is unlike an award, which OPM may disapprove in some cases. This does not mean that OPM cannot withhold approval of a proposed appraisal system until it is made to conform to regulatory requirements; it only means that ultimately an appraisal system must be approved. Of course, OPM would work with the agency to ensure that such approval could be given. Accordingly, OPM is not adopting the suggestion.

The provisions cross-referencing current regulation at § 534.403 are being revised to clarify that Senior Executive

Service (SES) performance awards are authorized by 5 U.S.C. 5384, not subchapter I of chapter 45, United States Code. Awards to SES members for goals, objectives, and accomplishments attained through sustained superior performance of regular job duties and responsibilities are properly made under 5 U.S.C. 5384. (See §§ 451.101(d) and 451.104(a)(3).)

One commenter suggested that the reference to ''productivity gainshares'' be removed from the definition of *award* proposed at § 451.102. OPM is adopting this suggestion and is including ''productivity gain'' among the contributions that can form the basis for granting an award. (See § 451.102 (*award*) and § 451.104(a)(1).)

One commenter asked whether time-off and honorary awards should be excluded from tax withholding. OPM does not have the authority to determine the applicability of tax withholding or any other tax rules. The provision specifying that awards are subject to tax withholding has always been intended to serve as a reminder to agencies of their obligations to the Internal Revenue Service and other tax collecting authorities. Accordingly, it is being broadened to reflect the fact that non-cash awards may be considered supplemental wages and subject to applicable tax rules (See § 451.104(c).)

One commenter suggested that the awards regulations be amended to permit giving awards to private citizens and former Federal employees. OPM addressed a similar comment in the final regulations on incentive awards, pay, and leave published on June 27, 1995, at 60 FR 33097–33098. In the supplementary information published with those regulations, OPM explained that awards authorized by chapter 45 of title 5, United States Code, may be granted only to Federal employees or former Federal employees for contributions made while in the Federal service. To accord with current regulation (as amended June 27, 1995) and statutory intent, OPM is extending the provision permitting agencies to grant awards to the legal heirs or estates of deceased employees to include former employees, but not private citizens. (See § 451.104(e).)

To protect the integrity of quality step increases (QSI's), OPM is adding a provision that requires an employee covered by an appraisal program not using a Level 5 (''Outstanding, or equivalent) summary to receive the highest rating of record that the program *does* use as well as to meet whatever eligibility criteria the agency establishes before the employee can receive a QSI. QSI's are intended to recognize or provide incentives for sustained, extraordinary performance. Granting one to an employee who has not demonstrated both by receiving the highest rating of record that can be achieved would be inconsistent with that intent. (See § 531.504(b).)

OPM is amending § 531.507 to eliminate the requirement that agencies establish plans for granting quality step increases. Executive Order 11721 (Providing for Federal Pay Administration, May 23, 1973), as amended, which required that OPM establish such an agency responsibility, has been revoked. Accordingly, OPM may now deregulate further in this area and will no longer require these plans. Of course, agencies may continue to establish such plans. Additional references to Executive Order 11721 are also being removed. (See § 531.404(a), § 531.501, and § 531.507 (paragraph (a) as proposed, removed).)

OPM is not revising, as was proposed, the authority citation for part 531 and two of the provisions establishing principal authorities for regulating within-grade increases. The authority citation and the provision at § 531.401(c) need not be revised because of final regulations on incentive awards, pay, and leave published on June 27, 1995, at 60 FR 33097–33098. Those regulations corrected references in the authority citation and revised § 531.401(c) to replace references to 5 U.S.C. 5335 and E.O. 11721 (revoked) with a general reference to 5 U.S.C. 5338. The provision at § 531.401(d) need not be revised because the title of Public Law 103–89 is already identified properly. Accordingly, the authority citation as proposed is being revised to match current regulation (as amended June 27, 1995), and its instruction line revised to indicate no change. Also, the entire instruction to revise paragraphs (c) and (d) in § 531.401 is being removed. (See part 531 (authority citation) and § 531.401 (amendments to paragraphs (c) and (d) as proposed, withdrawn).)

The undesignated provision at the end of § 531.409(d) is being designated, which requires redesignation of the rest of § 531.409(d). (See §§ 531.409 (d)(1) through (d)(2).)

Finally, OPM received several comments suggesting minor editorial changes to improve understanding and readability of regulatory text. OPM is adopting many of them and making conforming changes. Also, minor editorial changes are being made to correct typographical errors or to clarify text: (See § 430.102(b)(4); § 430.201(b); § 430.202(c); §§ 430.204 (b) and (b)(3) through (b)(5); § 430.205(b); § 430.206(b)(6); § 430.207(d); § 430.208(b); part 451 (authority citation); §§ 451.101 (a) and (c); § 451.102 (award program); § 451.104(b); §§ 451.105 (a) and (b), §§ 451.106 (b) and (h); §§ 451.107 (a) and (b); § 451.201(b); § 531.402(a); § 531.403 (*acceptable level of competence, equivalent increase*) § 531.409(d)(2); and §§ 531.507 (a) and (b).)

IX. Requests for Guidance

Fourteen commenters requested that OPM provide additional guidance on a variety of topics, including:

- how to proceed from a centralized to a decentralized approach to systems and programs;
- model appraisal and award programs and information about agency experience;
- examples of what the phrase ''or otherwise recorded'' might cover and how agencies can appropriately move to a paperless format;
- examples of Governmentwide regulations with compliance implications for designing an award program; and
- examples of criteria and procedures that could be used to identify ''sustained performance of high quality'' when determining eligibility for quality step increases under appraisal programs that do not use a Level 5 summary.

OPM will issue additional guidance in various formats on all of these issues. In particular, agency personnel directors will receive specific guidance for submitting agency system descriptions. OPM will also provide program designers with examples of the wide variety of programs that can be designed under a single, flexible agency appraisal system.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects

5 CFR Parts 430 and 451

Decorations, medals, awards, Government employees.

5 CFR Part 432

Administrative practice and procedure, Government employees.

5 CFR Part 531

Government employees, Law enforcement officers, Wages.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending parts 430, 432, 451 and 531 of title 5, Code of Federal Regulations, as follows:

PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for part 430 is revised to read as follows:

Authority: 5 U.S.C. chapter 43.

2. Subpart A, is revised to read as follows:

Subpart A—Performance Management

Sec.
430.101 Authority.
430.102 Performance management.

Subpart A—Performance Management

§ 430.101 Authority.

Chapter 43 of title 5, United States Code, provides for the performance appraisal of Federal employees. This subpart supplements and implements this portion of the law.

§ 430.102 Performance management.

(a) Performance management is the systematic process by which an agency involves its employees, as individuals and members of a group, in improving organizational effectiveness in the accomplishment of agency mission and goals.

(b) Performance management integrates the processes in agency uses to—

(1) Communicate and clarify organizational goals to employees;

(2) Identify individual and, where applicable, team accountability for accomplishing organizational goals;

(3) Identify and address developmental needs for individuals and, where applicable, teams;

(4) Assess and improve individual, team, and organizational performance;

(5) Use appropriate measures of performance as the basis for recognizing and rewarding accomplishments; and

(6) Use the results of performance appraisal as a basis for appropriate personnel actions.

3. Subpart B, consisting of §§ 430.201 through 430.210, is revised to read as follows:

Subpart B—Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees

Sec.
430.201 General.
430.202 Coverage.
430.203 Definitions.
430.204 Agency performance appraisal system(s).
430.205 Agency performance appraisal program(s).
430.206 Planning performance.
430.207 Monitoring performance.
430.208 Rating performance.
430.209 Agency responsibilities.
430.210 OPM responsibilities.

Subpart B—Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees

§ 430.201 General.

(a) *Statutory authority.* Chapter 43 of title 5, United States Code, provides for the establishment of agency performance appraisal systems and requires the Office of Personnel Management (OPM) to prescribe regulations governing such systems. The regulations in this subpart in combination with statute set forth the requirements for agency performance appraisal system(s) and program(s) for employees covered by subchapter I of chapter 43.

(b) *Savings provision.* The performance appraisal system portion of an agency's Performance Management Plan approved by OPM as of August 23, 1995 shall constitute an approved performance appraisal system under the regulations in this subpart until such time changes to the system are approved. No provision of the regulations in this subpart shall be applied in such a way as to affect any administrative proceeding related to any action taken under regulations in this chapter pending on August 23, 1995.

§ 430.202 Coverage.

(a) *Employees and agencies covered by statute.* (1) Section 4301(1) of title 5, United States Code, defines agencies covered by this subpart.

(2) Section 4301(2) of title 5, United States Code, defines employees covered by statute by this subpart. Besides General Schedule (GS/GM) and prevailing rate employees, coverage includes, but is not limited to, senior-level and scientific and professional employees paid under 5 U.S.C. 5376.

(b) *Statutory exclusions.* This subpart does not apply to agencies or employees excluded by 5 U.S.C. 4301(1) and (2), the United States Postal Service, or the Postal Rate Commission.

(c) *Administrative exclusions.* OPM may exclude any position or group of positions in the excepted service under the authority of 5 U.S.C. 4301(2)(G). The regulations in this subpart exclude excepted service positions for which employment is not reasonably expected to exceed the minimum period established under § 430.207(a) in a consecutive 12-month period.

(d) *Agency requests for exclusions.* Heads of agencies or their designees may request the Director of OPM to exclude positions in the excepted service. The request must be in writing, explaining why the exclusion would be in the interest of good administration.

§ 430.203 Definitions.

In this subpart, terms are defined as follows:

Additional performance element means a dimension or aspect of individual, team, or organizational performance that is not a critical or non-critical element. Such elements are not used in assigning a summary level but, like critical and non-critical elements, are useful for purposes such as communicating performance expectations and serving as the basis for granting awards. Such elements may include, but are not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance.

Appraisal means the process under which performance is reviewed and evaluated.

Appraisal period means the established period of time for which performance will be reviewed and a rating of record will be prepared.

Appraisal program means the specific procedures and requirements established under the policies and parameters of an agency appraisal system.

Appraisal system means a framework of policies and parameters established by an agency as defined at 5 U.S.C. 4301(1) for the administration of performance appraisal programs under subchapter I of chapter 43 of title 5, United States Code, and this subpart.

Critical element means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable.

Non-critical element means a dimension or aspect of individual, team, or organizational performance, exclusive of a critical element, that is used in assigning a summary level. Such elements may include, but are not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance.

Performance means accomplishment of work assignments or responsibilities.

Performance appraisal system: See *Appraisal system.*

Performance plan means all of the written, or otherwise recorded,

performance elements that set forth expected performance. A plan must include all critical and non-critical elements and their performance standards.

Performance rating means the written, or otherwise recorded, appraisal of performance compared to the performance standard(s) for each critical and non-critical element on which there has been an opportunity to perform for the minimum period. A performance rating may include the assignment of a summary level (as specified in § 430.208(d)).

Performance standard means the management-approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, timeliness, and manner of performance.

Progress review means communicating with the employee about performance compared to the performance standards of critical and non-critical elements.

Rating of record means the performance rating prepared at the end of an appraisal period for performance over the entire period and the assignment of a summary level (as specified in § 430.208(d)). This constitutes the official rating of record referenced in this chapter.

§ 430.204 Agency performance appraisal system(s).

(a) Each agency as defined at section 4301(1) of title 5, United States Code, shall develop one or more performance appraisal systems for employees covered by this subpart.

(b) An agency appraisal system shall establish agencywide policies and parameters for the application and operation of performance appraisal within the agency for the employees covered by the system. At a minimum, a agency system shall—

(1) Provide for—

(i) Establishing employee performance plans, including, but not limited to, critical elements and performance standards;

(ii) Communicating performance plans to employees at the beginning of an appraisal period;

(iii) Evaluating each employee during the appraisal period on the employee's elements and standards;

(iv) Recognizing and rewarding employees whose performance so warrants;

(v) Assisting employees in improving unacceptable performance; and

(vi) Reassigning, reducing in grade, or removing employees who continue to have unacceptable performance, but only after an opportunity to demonstrate acceptable performance.

(2) Identify employees covered by the system;

(3) Specify the flexibilities an agency program established under the system has for setting—

(i) The length of the appraisal period (as specified in § 430.206(a));

(ii) The length of the minimum period (as specified in § 430.207(a));

(iii) The number(s) of performance levels at which critical and non-critical elements may be appraised (as specified in § 430.206(b)(7) (i)(A) and (ii)(A)); and

(iv) The pattern of summary levels that may be assigned in a rating of record (as specified in § 420.208(d));

(4) Include, where applicable, criteria and procedures for establishing separate appraisal programs under an appraisal system; and

(5) Require that an appraisal program shall conform to statute, the regulations of this chapter, and the requirements established by the appraisal system.

(c) Agencies are encouraged to involve employees in developing and implementing their system(s). When agencies involve employees, the method of involvement shall be in accordance with the law.

§ 430.205 Agency performance appraisal program(s).

(a) Each agency shall establish at least one appraisal program of specific procedures and requirements to be implemented in accordance with the applicable agency appraisal system. At a minimum, each appraisal program shall specify the employees covered by the program and include the procedures and requirements for planning performance (as specified in § 430.206), monitoring performance (as specified in § 430.207), and rating performance (as specified in § 430.208).

(b) An agency program shall establish criteria and procedures to address employee performance for employees who are on detail, who are transferred, and for other special circumstances as established by the agency.

(c) An agency may permit the development of separate appraisal programs under an appraisal system.

(d) Agencies are encouraged to involve employees in developing and implementing their program(s). When agencies involve employees, the method of involvement shall be in accordance with law.

§ 430.206 Planning performance.

(a) *Appraisal period.* (1) An appraisal program shall designate an official appraisal period for which a performance plan shall be prepared, during which performance shall be monitored, and for which a rating of record shall be prepared.

(2) The appraisal period shall generally be designated so that employees shall be provided a rating of record on an annual basis. An appraisal program may provide that longer appraisal periods may be designated when work assignments and responsibilities so warrant or performance management objectives can be achieved more effectively.

(b) *Performance plan.* (1) Agencies shall encourage employee participation in establishing performance plans.

(2) Performance plans shall be provided to employees at the beginning of each appraisal period (normally within 30 days).

(3) An appraisal program shall require that each employee be covered by an appropriate written, or otherwise recorded, performance plan based on work assignments and responsibilities.

(4) Each performance plan shall include all elements which are used in deriving and assigning a summary level, including—

(i) At least one critical element that addresses individual performance; and

(ii) Any non-critical element(s).

(5) Each performance plan may include one or more additional performance elements, which—

(i) Are not used in deriving and assigning a summary level, and

(ii) Are used to support performance management processes as described at § 430.102(b).

(6) An appraisal program shall establish how many and which performance levels may be used to appraise critical and non-critical elements.

(7) Elements and standards shall be established as follows—

(i) For a critical element—

(A) At least two levels for appraisal shall be used with one level being ''Fully Successful'' or its equivalent and another level being ''Unacceptable,'' and

(B) A performance standard shall be established at the ''Fully Successful'' level and may be established at other levels.

(ii) For non-critical elements, when established,—

(A) At least two levels for appraisal shall be used, and

(B) A performance standard(s) shall be established at whatever level(s) is appropriate.

(iii) The absence of an established performance standard at a level specified in the program shall not preclude a determination that performance is at that level.

§ 430.207 Monitoring performance.

(a) *Minimum period.* An appraisal program shall establish a minimum period of performance that must be completed before a performance rating may be prepared.

(b) *Ongoing appraisal.* An appraisal program shall include methods for appraising each critical and non-critical element during the appraisal period. Performance on each critical and non-critical element shall be appraised against its performance standard(s). Ongoing appraisal methods shall include, but not be limited to, conducting one or more progress reviews during each appraisal period.

(c) *Marginal performance.* Appraisal programs should provide assistance whenever performance is determined to be below ''Fully Successful'' or equivalent but above ''Unacceptable.''

(d) *Unacceptable performance.* An appraisal program shall provide for—

(1) Assisting employees in improving unacceptable performance at any time during the appraisal period that performance is determined to be unacceptable in one or more critical elements; and

(2) Taking action based on unacceptable performance.

§ 430.208 Rating performance.

(a) As soon as practicable after the end of the appraisal period, a written, or otherwise recorded, rating of record shall be given to each employee.

(b) Rating of record procedures for each appraisal program shall include a method for deriving and assigning a summary level as specified in paragraph (d) of this section based on appraisal of performance on critical elements and, as applicable, non-critical elements.

(1) A Level 1 summary (''Unacceptable'') shall be assigned if and only if performance on one or more critical elements is appraised as ''Unacceptable.''

(2) Consideration of non-critical elements shall not result in assigning a Level 1 summary (‘‘ Unacceptable'').

(c) The method for deriving and assigning a summary level may not limit or require the use of particular summary levels (i.e., establish a forced distribution of summary levels). However, methods used to make distinctions among employees or groups of employees such as comparing, categorizing, and ranking employees or groups on the basis of their performance may be used for purposes other than assigning a summary level including, but not limited to, award determinations and promotion decisions.

(d) *Summary levels.* (1) An appraisal program shall use one of the following patterns of summary levels:

Pattern	Summary level				
	1	2	3	4	5
A	X	.....	X	.....	.....
B	X	.....	X	.....	X
C	X	.....	X	X	.....
D	X	X	X	.....	.....
E	X	.....	X	X	X
F	X	X	X	.....	X
G	X	X	X	X	.....
H	X	X	X	X	X

(2) Summary levels shall comply with the following requirements:

(i) Level 1 through Level 5 are ordered categories, with Level 1 as the lowest and Level 5 as the highest;

(ii) Level 1 is ''Unacceptable'';

(iii) Level 3 is ''Fully Successful'' or equivalent; and

(iv) Level 5 is ''Outstanding'' or equivalent.

(3) The term ''Outstanding'' shall be used only to describe a Level 5 summary.

(4) Summary levels (Level 1 through Level 5) shall be used to provide consistency in describing ratings of record and in referencing other related regulations (including, but not limited to, § 351.504 of this chapter).

(e) A rating of record of ''Unacceptable'' (Level 1) shall be reviewed and approved by a higher level management official.

(f) The rating of record or performance rating for a disabled veteran shall not be lowered because the veteran has been absent from work to seek medical treatment as provided in Executive Order 5396.

(g) When a rating of record cannot be prepared at the time specified, the appraisal period shall be extended. Once the conditions necessary to complete a rating of record have been met, a rating of record shall be prepared as soon as practicable.

(h) A performance rating may be prepared at such other times as an appraisal program may specify for special circumstances including, but not limited to, transfers and performance on details.

§ 430.209 Agency responsibilities.

An agency shall—

(a) Submit to OPM for approval a description of its appraisal system(s) as specified in § 430.204(b) of this subpart, and any subsequent changes that modify any element of the agency's system(s) that is subject to a regulatory requirement in this part;

(b) Transfer the employee's most recent ratings of record, and any subsequent performance ratings, when an employee transfers to another agency or is assigned to another organization within the agency in compliance with part 293 of this chapter and instructions in the OPM Operating Manual, THE GUIDE TO PERSONNEL RECORDKEEPING, for sale by the U.S. Government Printing Office, Superintendent of Documents;

(c) Communicate with supervisors and employees (e.g., through formal training) about relevant parts of its performance appraisal system(s) and program(s);

(d) Evaluate the performance appraisal system(s) and performance appraisal program(s) in operation in the agency;

(e) Report ratings of record data to the Central Personnel Data File in compliance with instructions in the OPM Operating Manual, FEDERAL WORKFORCE REPORTING SYSTEMS, for sale by the U.S. Government Printing Office, Superintendent of Documents;

(f) Maintain and submit such records as OPM may require; and

(g) Take any action required by OPM to ensure conformance with applicable law, regulation, and OPM policy.

§ 430.210 OPM responsibilities.

(a) OPM shall review and approve an agency's performance appraisal system(s).

(b) OPM may evaluate the operation and application of an agency's

performance appraisal system(s) and program(s).

(c) If OPM determines that an appraisal system or program does not meet the requirements of applicable law, regulation, or OPM policy, it shall direct the agency to implement an appropriate system or program or to take other corrective action.

4. In § 430.303, the last sentence of the definition of *Performance Management Plan* is revised to read as follows:

§ 430.303 Definitions.

* * * * *

Performance Management Plan * * * The Performance Management Plan, which includes the SES performance appraisal plan, must be submitted to OPM for review and approval as required in § 430.310 of this subpart.

* * * * *

5. Section 430.310 is revised to read as follows:

§ 430.310 SES Performance appraisal systems.

Agencies must submit proposed SES performance appraisal plans to OPM for approval as part of Performance Management Plans in accordance with provisions of this subpart.

6. Subpart D [Reserved], and Subpart E, consisting of §§ 430.501 through 430.506, are removed.

PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND REMOVAL ACTIONS

7. The authority citation for part 432 continues to read as follows:

Authority: 5 U.S.C. 4303, 4305.

8. In § 432.103, paragraph (b) is revised to read as follows:

§ 432.103 Definitions.

* * * * *

(b) *Critical element* means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable.

* * * * *

PART 451—AWARDS

9. The title of part 451 is revised to read as follows:

PART 451—AWARDS

10. The authority citation for part 451 is revised to read as follows:

Authority: 5 U.S.C. 4302, 4501–4509; E.O. 11438, 12828.

11. Subpart A, consisting of §§ 451.101 through 451.107, is revised to read as follows:

Subpart A—Agency Awards

Sec.
451.101 Authority and coverage.
451.102 Definitions.
451.103 Agency award program(s).
451.104 Awards.
451.105 Award restrictions.
451.106 Agency responsibilities.
451.107 OPM responsibilities.

Subpart A—Agency Awards

§ 451.101 Authority and coverage.

(a) Chapter 45 of title 5, United States Code authorizes agencies to pay a cash award to, grant time-off to, and incur necessary expense for the honorary recognition of, an employee (individually or as a member of a group) and requires the Office of Personnel Management to prescribe regulations governing such authority. Chapter 43 of title 5, United States Code, provides for recognizing and rewarding employees whose performance so warrants. The regulations in this subpart, in combination with chapters 43 and 45 of title 5, United States Code, and any other applicable law, establish the requirements for agency award programs.

(b) Section 4 of E.O. 11438 (Prescribing Procedures Governing Interdepartmental Cash Awards to the Members of the Armed Forces, December 3, 1968) requires the Office of Personnel Management to prescribe procedures for covering the cost of a cash award recommended by more than one agency for a member of the armed forces for the adoption or use of a suggestion, invention, or scientific achievement. Section 1 of E.O. 12828 (Delegation of Certain Personnel Management Authorities, January 5, 1993) delegates to the Office of Personnel Management the authority of the President to permit performance-based cash awards under 5 U.S.C. 4505a to be paid to categories of employees who would not be eligible otherwise.

(c) This subpart applies to employees as defined by section 2105 and agencies as defined by section 4501 title 5, United States Code, except as provided in §§ 451.105 and 451.201(b).

(d) For the regulatory requirements for granting performance awards to Senior Executive Service (SES) employees under 5 U.S.C. 5384, refer to § 534.403 of this chapter.

§ 451.102 Definitions.

Award means something bestowed or an action taken to recognize and reward individual or team achievement that contributes to meeting organizational goals or improving the efficiency, effectiveness, and economy of the Government or is otherwise in the public interest. Such awards include, but are not limited to, employee incentives which are based on predetermined criteria such as productivity standards, performance goals, measurement systems, award formulas, or payout schedules.

Award program means the specific procedures and requirements established by an agency or a component of an agency for granting awards under subchapter I of chapter 43 and subchapter I of chapter 45 of title 5, United States Code, and this subpart.

§ 451.103 Agency award program(s).

(a) Agencies shall develop one or more award programs for employees covered by this subpart.

(b) Agencies are encouraged to involve employees in developing such programs. When agencies involve employees, the method of involvement shall be in accordance with law.

(c) An agency award program shall provide for—

(1) Obligating funds consistent with applicable agency financial management controls and delegations of authority; and

(2) Documenting justification for awards that are not based on a rating of record (as defined in § 430.20 of this chapter).

§ 451.104 Awards.

(a) An agency may grant a cash, honorary, or informal recognition award, or grant time-off without charge to leave or loss of pay consistent with chapter 45 of title 5, United States Code, and this part to an employee, as an individual or member of a group, on the basis of—

(1) A suggestion, invention, superior accomplishment, productivity gain, or other personal effort that contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork;

(2) A special act or service in the public interest in connection with or related to official employment; or

(3) Performance as reflected in the employee's most recent rating of record (as defined in § 430.203 of this chapter), except that performance awards may be paid to SES employees only under § 534.403 of this chapter and not on the basis of this subpart.

(b) A cash award under this subpart is a lump sum payment and is not basic pay for any purpose.

(c) An award is subject to applicable tax rules, such as withholding.

(d) When an award is approved for—

(1) An employee of another agency, the benefiting agency shall make arrangements to transfer funds to the employing agency to cover the award. If the administrative costs of transferring funds would exceed the amount of the award, the employing agency shall absorb the award costs and pay the award; and

(2) A member of the armed forces for a suggestion, invention, or scientific achievement, arrangements shall be made to transfer funds to the agency having jurisdiction over the member in accordance with E.O. 11438, ''Prescribing Procedures Governing Interdepartmental Cash Awards to the Members of the Armed Forces''.

(e) An award may be granted to a separated employee or the legal heir(s) or estate of a deceased employee.

(f) A time-off award granted under this subpart shall not be converted to a cash payment under any circumstances.

(g) When granting an award on the basis of a rating of record that is paid as a percentage of basic pay under 5 U.S.C. 4505a(a)(2)(A), the rate of basic pay used shall be determined without taking into account any locality-based comparability payment under 5 U.S.C. 5304 or an interim geographic adjustment or special law enforcement adjustment under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990, respectively.

§ 451.105 Award restrictions.

(a) In accordance with 5 U.S.C. 4508, agencies shall not grant awards under this subpart during a Presidential election period to employees who are—

(1) In a Senior Executive Service position and not a career appointee as defined under 5 U.S.C. 3132(a)(4); or

(2) In an excepted service position of a confidential or policy-determining character (schedule C).

(b) In accordance with 5 U.S.C. 4509, agencies shall not grant cash awards under this subpart to employees appointed by the President with Senate confirmation who serve in—

(1) An Executive Schedule position, or

(2) A position for which pay is set in statute by reference to a section or level of the Executive Schedule.

§ 451.106 Agency responsibilities.

(a) In establishing and operating its award program(s), an agency shall assure that a program does not conflict with or violate any other law or Governmentwide regulation.

(b) When a recommended award would grant more than $10,000 to an individual employee, the agency shall submit the recommendation to OPM for approval.

(c) Agencies shall provide for communicating with employees and supervisors (e.g., through formal training) about the relevant parts of their award program(s).

(d) Agencies shall evaluate their award program(s).

(e) Agencies shall document all cash and time off awards in compliance with instructions in the OPM Operating Manual, THE GUIDE TO PROCESSING PERSONNEL ACTIONS, for sale by the U.S. Government Printing Office, Superintendent of Documents.

(f) Agencies shall file award documents in the Official Personnel Folder in compliance with instructions in the OPM Operating Manual, THE GUIDE TO PERSONNEL RECORDKEEPING, for sale by the U.S. Government Printing Office, Superintendent of Documents.

(g) Agencies shall report award data to the Central Personnel Data File in Compliance with instructions in the OPM Operating Manual, FEDERAL WORKFORCE REPORTING SYSTEMS, for sale by the U.S. Government Printing Office, Superintendent of Documents.

(h) Agencies shall maintain and submit to OPM such records as OPM may require.

(i) Agencies shall give due weight to an award granted under this part in qualifying and selecting an employee for promotion as provided in 5 U.S.C. 3362.

(j) Agencies shall take any corrective action required by OPM to ensure conformance with applicable law, regulation, and OPM policy.

§ 451.107 OPM responsibilities.

(a) OPM shall review and approve or disapprove each agency recommendation for an award that would grant more than $10,000 to an individual employee.

(b) When a recommended award would grant more than $25,000 to an individual employee, OPM shall review the recommendation and submit it (if approved) to the President for final approval.

(c) OPM shall review and approve or disapprove a request from the head of an Executive agency to extend the provisions of 5 U.S.C. 4505a to any category of employees within that agency that would not be covered otherwise.

(d) OPM may evaluate the operation and application of an agency's award program(s).

12. In § 451.201, the second introductory paragraph (a) is removed, paragraph (b), (c), and (d) are redesignated as paragraphs (c), (d), and (e) respectively, and a new paragraph (b) is added to read as follows:

§ 451.201 Authority and coverage.

* * * * *

(b) Awards granted under paragraph (a) of this section are subject to the restrictions as specified in § 451.105.

* * * * *

13. Subpart C, consisting of §§ 451.301 through 451.307, is removed.

PART 531—PAY UNDER THE GENERAL SCHEDULE

14. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart A also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682.

15. In § 531.402, paragraph (a) is revised to read as follows:

§ 531.402 Employee coverage.

(a) Except as provided in paragraph (b) of this section, this subpart applies to employees who occupy permanent positions classified and paid under the General Schedule and who are paid less than the maximum rate of their grades.

* * * * *

16. In § 531.403, the definitions of *acceptable level of competence*, *critical element*, and *equivalent increase* are revised to read as follows:

§ 531.403 Definitions.

* * * * *

Acceptable level of competence means performance by an employee that warrants advancement of the employee's rate of basic pay to the next higher step of the grade or the next higher rate within the grade (as defined in this section) of his or her position, subject to the requirements of § 531.404 of this subpart, as determined by the head of the agency.

* * * * *

Critical element has the meaning given that term in § 430.203 of this chapter.

* * * * *

Equivalent increase means an increase or increases in an employee's rate of basic pay equal to or greater than the difference between the employee's rate of basic pay and the rate of pay for the next higher step of that grade or the next higher rate within the grade (as defined in this section).

* * * * *

17. In § 531.404, the introductory text, and the introductory text of paragraph (a) are revised to read as follows:

§ 531.404 Earning within-grade increase.

An employee paid at less than the maximum rate of the grade of his or her position shall earn advancement in pay to the next higher step of the grade or the next higher rate within the grade (as defined in § 531.403) upon meeting the following three requirements established by law:

(a) The employee's performance must be at an acceptable level of competence, as defined in this subpart. To be determined at an acceptable level of competence, the employee's most recent rating of record (as defined in § 430.203 of this chapter) shall be at least Level 3 (''Fully Successful'' or equivalent).

* * * * *

18. Section 531.408 is removed and reserved.

§ 531.408 [Reserved].

19. In § 531.409, paragraphs (b) and (d) are revised to read as follows:

§ 531.409 Acceptable level of competence determinations.

* * * * *

(b) *Basis for determination.* When applicable, an acceptable level of competence determination shall be based on a current rating of record made under part 430, subpart B, of this chapter. For those agencies not covered by chapter 43 of title 5, United States Code, and for employees in positions excluded from 5 U.S.C. 4301, an acceptable level of competence determination shall be based on performance appraisal requirements established by the agency. If an employee has been reduced in grade because of unacceptable performance and has served in one position at the lower grade for at least the minimum period established by the agency, a rating of record at the lower grade shall be used as the basis for an acceptable level of competence determination.

* * * * *

(d) *Waiver of requirement for determination.* (1) An acceptable level of competence determination shall be waived and a within-grade increase granted when an employee has not served in any position for the minimum period under an applicable agency performance appraisal program during the final 52 calendar weeks of the waiting period for one or more of the following reasons:

(i) Because of absences that are creditable service in the computation of a waiting period or periods under § 531.406 of this subpart;

(ii) Because of paid leave;

(iii) Because the employee received service credit under the back pay provisions of subpart H of part 550 of this chapter;

(iv) Because of details to another agency or employer for which no rating has been prepared;

(v) Because the employee has had insufficient time to demonstrate an acceptable level of competence due to authorized activities of official interest to the agency not subject to appraisal under part 430 of this chapter (including, but not limited to, labor-management partnership activities under section 2 of Executive Order 12871 and serving as a representative of a labor organization under chapter 71 of title 5, United States Code); or

(vi) Because of long-term training.

(2) When an acceptable level of competence determination has been waived and a within-grade increase granted under paragraph (d)(1) of this section, there shall be a presumption that the employee would have performed at an acceptable level of competence had the employee performed the duties of his or her position of record for the minimum period under the applicable agency performance appraisal program.

* * * * *

20. Section 531.501 is revised to read as follows:

§ 531.501 Applicability.

This subpart contains regulations of the Office of Personnel Management to carry out section 5336 of title 5, United States Code, which authorizes the head of an agency, or another official to whom such authority is delegated, to grant quality step increases.

21. Section 531.503 is revised to read as follows:

§ 531.503 Purpose of quality step increases.

The purpose of quality step increases is to provide appropriate incentives and recognition for excellence in performance by granting faster than normal step increases.

22. Section 531.504 is revised to read as follows:

§ 531.504 Level of performance required for quality step increase.

A quality step increase shall not be required but may be granted only to—

(a) An employee who receives a rating of record at Level 5 (''Outstanding'' or equivalent), as defined in part 430, subpart B, of this chapter; or

(b) An employee who, when covered by a performance appraisal program that does not use a Level 5 summary—

(1) Receives a rating of record at the highest summary level used by the program; and

(2) Demonstrates sustained performance of high quality significantly above that expected at the ''Fully Successful'' level in the type of position concerned, as determined under performance-related criteria established by the agency.

23. Section 531.506 is revised to read as follows:

§ 531.506 Effective date of a quality step increase.

The quality step increase should be made effective as soon as practicable after it is approved.

24. Section 531.507 is revised to read as follows:

§ 531.507 Agency responsibilities.

(a) Agencies shall maintain and submit to OPM such records as OPM may require.

(b) Agencies shall report quality step increases to the Central Personnel Data File in compliance with instructions in the OPM Operating Manual, FEDERAL WORKFORCE REPORTING SYSTEMS, for sale by the U.S. Government Printing Office, Superintendent of Documents.

25. Section 531.508 is revised to read as follows:

§ 531.508 Evaluation of quality step increase authority.

The Office of Personnel Management may evaluate an agency's use of the authority to grant quality step increases. The agency shall take any corrective action required by the Office.

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Part VI

Department of Commerce

International Trade Administration

Certified Trade Mission Program; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket Number 950330084–5084–01]

Certified Trade Mission Program

AGENCY: International Trade Administration, Commerce.

ACTION: Notice; adjusts the Certified Trade Mission Program to be more flexible in assisting states, local entities and private sector organizations.

SUMMARY: This notice adjusts the Certified Trade Mission Program (CTM), that currently requires organizers (federal agencies, industry associations, agencies of state and local governments, chambers of commerce and other organizations) to process their applications through the U.S. Department of Commerce (the Department) in Washington for approval. Effective September 1, 1995, all entities with the exception of federal government agencies, should deal directly with our Embassy Commercial Sections (posts) overseas to arrange event approval, including, but not limited to, timing, scheduling, budgets, etc. In unique or special circumstances, such as governor or Congressionally led missions, Washington staff will be available to provide assistance as necessary. Federal government agencies seeking certification should continue to coordinate their events through the Trade Promotion Coordinating Committee (TPCC) events working group. Otherwise, all contact should be between the sponsoring organizer and overseas post(s). These events henceforth will be called Commercial Service Certified Trade Missions.

DATES: These adjustments will take place effective September 1, 1995.

ADDRESSES: Office of Export Promotion Services, International Trade Administration, U.S. Department of Commerce, Room H2810, 14th and Constitution Ave, NW., Washington, DC 20230. Tel: (202) 482–4231 or Fax: (202) 482–0872.

FOR FURTHER INFORMATION CONTACT: Brenda Coleman, Certified Trade Mission Product Manager, Office of Public/Private Initiatives, U.S. Department of Commerce, Room H2116, 14th and Constitution Avenue, NW., Washington, DC 20230. Tel: (202) 482–3973 or Fax: (202) 482–0872.

SUPPLEMENTARY INFORMATION: Certified Trade Mission are overseas events planned, organized and led by federal agencies or non-federal export promotion organizations, such as associations, state and local governments, chambers of commerce and other export-orientated groups, under the sponsorship of the Department of Commerce. Currently, to receive Department approval, an application must be submitted through the Department in Washington. With the effective date of this announcement, it will be incumbent upon the organizer to contact the post directly, sufficiently ahead of schedule (approximately 6 months), to receive approval of the post. Negotiations between both parties may be required to meet mutual objectives. In some cases it may be necessary to put the organizer in touch with a local contractor if the post is not in a position to provide overall management of the event. The Conditions of Participation which outline the program's criteria as well as the responsibilities of all involved parties and the Application for Status which must be completed and sent to the post(s) approximately 6 months in advance of scheduled mission are set forth below. This program operates under legal authority of 15 USC 1512 et seq. and the various collections associated with it have been cleared under Office of Management and Budget Control No. 0625–0215, 0625–0034, 0625–0147, and 0625–0217.

For additional information, please contact your nearest U.S. Department of Commerce Domestic Office or call 202–482–3973.

John Klingelhut,

Acting Director, Office of Public/Private Initiatives, Export Promotion Services.

Commercial Service Certified Trade Mission Program Conditions of Participation

A. Overview

Commercial Service (formally) referred to as the U.S. and Foreign Commercial Service) Certified Trade Missions are overseas events planned, organized, and led by federal agencies or non-federal export promotion organizations (such as industry trade associations, agencies of state and local governments, chambers of commerce, regional groups, and other export-oriented groups), in partnership with the U.S. Department of Commerce. The Certified Trade Missions program provides a flexible and adaptable format in which to conduct overseas business. U.S. companies can be provided with face to face meetings with potential agents, distributors, joint venture partners, licensees, relevant businesses and government contacts. Seminars on local business practices with participation by banks, lawyers, and other authorities can be arranged. Special working level events are also available to further enhance the event. Also, it may include plant and factory tours or may follow a seminar format for technical products. Within the mission's framework, Commercial Service overseas posts provide guidance and support to mission organizers and participating companies on the mission.

B. Criteria

To qualify for Commercial Service certification, the mission must have, as a primary objective, the promotion of U.S.-produced goods and services and/or the establishment of marketing representation abroad. Goods and/or services promoted must:

1. Be manufactured or produced in the United States, or

2. If manufactured or produced outside of the United States, be marketed under the name of a U.S. firm and have U.S. content representing at least fifty-one percent of the value of the finished goods or services.

Products/services represented on the mission must be a compatible group within a product theme (or themes) that, in the Commercial Service's determination, offers substantial market opportunities. One-industry theme (vertical) missions are preferable because promotional efforts can be targeted more effectively toward appropriate end-user audiences. Advance concurrence of the overseas posts on the product mix of the mission and its itinerary and timing is required.

To participate in a Commercial Service Certified Trade Mission, the organizer must enter into a participation agreement that incorporates the following ''Conditions of Participation''. Any changes to the conditions outlined here should be in writing and made a part of this document prior to signing. Sponsoring organizations should apply by submitting an ''Application for Certified Trade Mission Status'' to the appropriate overseas post(s).

Federal Government agencies seeking certification will coordinate through the Trade Promotion Coordinating Committee (TPCC) events working group prior to approaching the overseas Commercial Service post(s).

For additional information, please contact your nearest U.S. Department of Commerce Domestic Office, or call 202/482–3973.

C. Conditions

A. Responsibilities of the Organizer

The organizer shall:

1. Submit to the appropriate overseas post(s) a typed and signed ''Application for Certified Trade Mission Status'' (Department of Commerce Form ITA–4127P; OMB No. 0625–0215) as early as 12 months *but no later than 6 months* prior to the departure of the mission (see attached form). Note: In unusual circumstances and when it is advantageous to the USG, the Commercial Service Post in question may alter this requirement.

2. Upon notification of approval of the ''Application for Certified Trade Mission Status'' by the Commercial Service post involved, enter into a binding Participation Agreement (Department of Commerce Form ITA–4008P; OMB No. 0625–0147) that incorporates the Conditions of Participation. A separate ''Conditions of Participation'' must be signed for each Commercial Service post involved.

3. Provide, at its expense, and identify to the overseas post a project officer, an advance officer, and a mission director not later than 90 days prior to the departure of the mission.

Further, ensure that the advance officer and mission director carry out the responsibilities set forth in Sections C and D, below. Note: This requirement may be adjusted to meet the preferences of the Commercial Service post in question. Such adjustment will be agreed in writing between the organizer and the Commercial Service Post involved and made a part of the Conditions of Participation.

4. Work directly with the affected Commercial Service post to develop a comprehensive budget for the mission. It is understood and agreed that the budget will cover all services required to meet the needs of the mission.

5. Submit to the Department (either to the overseas post(s) or the Office of Public/Private Initiatives), complete payment of mission-related costs that the Commercial Service post(s) have agreed to incur overseas on the mission's behalf, not later than 60 days prior to the departure of the mission. Such costs may include, for example, costs incurred for: mission promotion, translation services, appointment scheduling, site rentals, secretarial assistance, overtime of Commercial Service personnel, hospitality and transportation. Costs incurred directly by the sponsoring organization in connection with the mission will not be reimbursed by the Department.

6. Submit to the overseas office a final list of mission participants, product/service data, and precise business objectives of the mission participants, (including any relevant company brochures) not later than 60 days prior to the departure of the mission. Note: At the discretion of the Commercial Service post this requirement may be adjusted provided it is agreed in writing between the organizer and the Commercial Service post and made a part of the ''Conditions of Participation.''

7. With guidance from the Commercial Service post, assure that printed mission directories in appropriate quantities are received by the Commercial Service post 45 days prior to departure of the mission. The Commercial Service post will advise whether or not these should be translated into the language of the country.

8. Ensure that mission participation includes a minimum of eight U.S.-based firms with the maximum number of participants to be determined in agreement between the organizer and the Commercial Service post and made a part of the ''Conditions of Participation.''

9. Comply, as appropriate, with the financial provisions of Section E and the bonding provisions of Section F, below.

10. Ensure that fee arrangements with participants do not include a commission on eventual sales or quantifiable results generated by the mission.

11. Ensure that all products and services promoted by mission participants are:

(a) manufactured or produced in the United States, or

(b) if manufactured or produced outside of the United States, marketed under the name of a U.S. firm, with U.S. content representing at least fifty-one percent of the value of the finished goods or services.

12. Carry out the mission as described in the ''Application for Certification Trade Mission Status'' unless otherwise approved by the Commercial Service post in writing.

13. Hold the U.S. Government harmless from liability for any illness, injury, loss of life, or damage or loss of property occasioned by or connected with the mission, participation therein by any person, and support provided by the Department, and its employees, agents and contractors.

14. Provide the Department with a completed ''Mission Organizer Survey'' (Department of Commerce Form ITA–4122P; OMB No. 0625–0217) and final mission report, if applicable, within 30 days after the conclusion of the mission.

B. Responsibilities of the Commercial Service

The Certified Trade Mission Program is administered and managed by the Commercial Service at the overseas post(s). All decisions regarding the proposed mission are at the discretion of the Commercial Service.

The Commercial Service post shall, within the limits of the agreed budget and personnel resources:

1. Designate the mission as an official Certified Trade Mission, recognizing the services of the sponsoring organization and of the mission participants in helping to increase the international commerce of the United States.

2. Assure that the Certified Trade Mission is placed on the ''official'' Export Promotion Calendar of trade promotions events carried in the ''National Trade Data Bank'' (NTDB) and ''Economic Bulletin Board'' (EBB) as well as ''Internet'' through the NTDB.

3. Provide advice and assistance from the planning stage to the conclusion of the mission.

4. Provide available economic, commercial and political data to aid the partnership organization in its selection of an itinerary that offers the best marketing potential for the products, services, or investment opportunities to be promoted, and update such information as necessary prior to departure of the mission.

5. Provide assistance to the advance officer designated by the partnership organization; e.g., lists of local-hire personnel, translators, hotels and caterers.

6. Assist in arranging business appointments for each mission participant; or, if resources are limited, assist a contractor of the sponsoring organization, working under the supervision of the affected overseas post(s), in identifying prospective customers, agents, distributors, investors and key government officials with whom business appointments can be made.

7. Arrange for commercial, economic, and political briefings, and assist in arranging relevant tours, inspections and seminars.

8. Facilitate use of the Embassy Press Office to publicize the mission abroad.

9. Collect a Mission/Exhibition Evaluation Report, (Form ITA 4075P, OMB No. 0625–0034) from each participant before they depart the country. Note: Participants are not required to complete this form, but they will be encouraged to do so.

C. Responsibilities of the Sponsoring Organizer's Advance Officer

Where it is agreed between the Commercial Service post and the sponsoring organization that an advance officer is necessary, the advance officer shall:

1. Arrange a time in writing beneficial to both the affected Commercial Service post(s) and the partnership organization to begin his or her advance travel. Generally this will be approximately 90 days prior to departure of the mission.

2. Confirm to each affected overseas post of his or her specific itinerary and travel schedule not later than 15 days prior to his or her departure.

3. Carry information and product literature for each mission participant in sufficient quantities to leave at least one set at each affected overseas post.

4. Carry funds and international credit cards, with full authority to commit funds for mission expenses.

5. Work directly with each affected overseas post to develop the mission program and finalize the mission budget at each stop.

D. Responsibilities of the Mission Director

The sponsoring organization's mission director shall:

1. Ensure that mission participants adhere to the mission program and promptly keep all individual appointments at each stop.

2. Carry additional mission funds and international credit cards to ensure that all mission expenses not previously deposited with the Commercial Service post are paid before leaving each stop, and that mission participants' bills are similarly paid.

3. Ensure that each mission participant:

(a) is fully responsible for his or her individual travel and personal expenses;

(b) makes all necessary arrangements for entry permit visas and other travel documentation;

(c) is an active member or representative of his or her firm; and (d) is qualified and authorized to quote prices and negotiate sales and other terms on behalf of his or her firm.

E. Financial Provisions

1. Sponsoring organizations that are federal agencies or quasi federal agencies shall:

(a) describe at the time of application where individual participation fees will be deposited e.g. with the sponsoring agency or Commercial Service;

(b) describe at the time of application the method of payment to be used. Options include:

(i) full payment by check (made payable to the U.S. Department of Commerce) with submission of Participation Agreement;

(ii) cable from agency to overseas post(s) transferring payment and authorizing spending; or

(iii) inter-agency transfer of funds with submission of Participation Agreement and Memorandum of Understanding; and

(c) provide original copies of payment documents to the Department for processing not less than 60 days prior to mission departure.

2. Sponsoring state organizations that are legally prohibited from providing prepayment as described in Section A shall provide to the Department not less than 60 days prior to mission departure a legally binding document, such as a purchase order in U.S. dollars or a letter of intent, committing to provide 50 percent of the

mission budget, within 5 working days of the conclusion of the mission. The remaining balance is due upon receipt of final invoice(s) from the affected overseas post(s). Sponsoring organizations should contact the overseas post(s) for prior approval of language that purports to legally bind the organization.

3. All other sponsoring organizations will handle payment as described in C.A.5 and C.D.2 above unless agreed in writing and made a part of the ''Conditions of Participation.''

F. Bonding Provisions

1. For-profit sponsoring organizations shall obtain a bond from a surety company holding a certificate of authority from the U.S. Department of the Treasury, Office of Financial Management Service, as periodically published in the **Federal Register**.

2. The bond will ensure that a mission participant can recover a participation fee paid to the sponsoring organization, as well as any other reasonable pre-paid transportation costs, should the sponsoring organization fail to meet its obligations to the mission participant concerning the mission.

The amount of the bond must be sufficient to cover these fees and estimated transportation costs.

3. The bonding agreement must be signed by the sponsoring organization (principal) and a bonding company (surety). A bond beneficiary is defined as an individual or entity from which, or on behalf of which, the principal receives and retains a participant fee for the mission.

4. Bonds will be reviewed on a case by case basis, as there is no standard form agreement.

5. An executed and pre-paid-in-full bond must be completed, and a copy of this bonding document shall be presented to the Commercial Service post before approval of the trade mission will be granted.

6. A copy of the bond must be made available to mission participants either by the sponsoring organization or the bonding company.

7. The bond requirement does not constitute a guarantee by the Department of reimbursement for financial losses to mission participants in connection with the mission.

8. Should either party terminate the bond agreement, the terminating party must notify the Department and make a reasonable effort to notify the bond beneficiaries. Therefore, the organizer must provide a listing of all mission participants, including valid mailing addresses, to the bonding company no later than 30 days prior to departure of the mission.

G. Cancellations

1. All notice of cancellations must be in writing. Upon written notice of cancellation of the mission, the Department will secure an accounting by the affected overseas post(s) of costs incurred by them in connection with the mission. Such costs may include those incurred for fax/phone, postage, personnel overtime, printing, and contract services. If such costs exceed the amount previously received, or if no funds have been received, the Department will bill the sponsoring organization for the amount of the excess or its costs, as applicable.

Acceptance of Terms

On behalf of the partnership organization named in the attached Participation Agreement, I certify that I have read and understand these Conditions of Participation, which are incorporated into and form a part of such Agreement.

By: _____

Organization: _____

Title: _____

Date: _____

[OMB No. 0625–0215]

Expire: 8/31/96.

Commercial Service Certified Trade Missions Program Application For Status

Please print or type response to the information requested below on organizational letterhead. Fax or mail a completed Application for Status to each Commercial Service post in question.

1. Name, address, telephone and fax numbers of sponsoring organization.

2. Name, address, telephone & fax numbers of mission sponsor, i.e. (trade association, state or local government, regional group, etc.). Please also list any co-sponsoring organizations, if applicable.

3. Name of proposed Trade Mission.

4. Please provide a description of your mission. Outline your goals and objectives and indicate names of VIP leaders, if appropriate.

5. Proposed itinerary. (Please give as much detail as possible.)

6. Services/Assistance requested from the post if status is approved, (i.e. one-on-one business appointments, plant visits, translators, reception, hotel and transportation arrangements, etc.).

7. Projected number of participants/companies.

8. Product categories/industries to be promoted.

9. Target date of advance trip, name of advance officer, and proposed itinerary.

Public reporting burden for this collection of information is estimated to average *1 hour* per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Reports Clearance Officer, International Trade Administration, Room 4001, U.S. Department of Commerce, Washington, DC 20230.

10. Name, address, phone and fax numbers of contact(s) currently assisting in mission organization overseas, if applicable.

11. List any specific organizations, from the private and public sectors, with whom you know you wish to meet.

12. Outline of promotional campaign to be conducted in recruiting mission, (i.e. mailing, fax campaign, brochure distribution at other trade events, radio spots, etc.). Be as specific as possible and include target dates, when available.

13. Deadline for accepting applications from participants.

14. Proof, such as a copy of letter of invitation, that your mission has a host organization in countries that require such an arrangement e.g., China. Give host's name, address, telephone & fax and contact name(s).

15. Specify any special space and/or equipment for audio-visual presentations or technical programs.

16. APPLICANT MUST TYPE THE FOLLOWING STATEMENT ON APPLICATION AND SIGN: I hereby agree to abide by all ''Conditions of Participation'' set forth by the U.S. Department of Commerce (see attached) and guarantee to provide funds to finance all overseas costs incurred on my mission's behalf.

Signature _____

Date _____

Name/Title _____

[FR Doc. 95–20868 Filed 8–22–95; 8:45 am]

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