

Federal Register

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- WHAT:** Free public briefings (approximately 3 hours) to present:
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 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

[Three Sessions]

- WHEN:** November 14 at 9:00 am
November 28 at 9:00 am
December 5 at 9:00 am
- WHERE:** Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)
- RESERVATIONS:** 202-523-4538



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documents on public inspection is available on 202-275-
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Federal Register

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1004

[Docket No. AO-160-A71; DA-93-30]

Milk in the Middle Atlantic Marketing Area; Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements changes in some provisions of the Middle Atlantic milk marketing order based on industry proposals considered at a public hearing. The changes reduce the standards for regulating distributing plants and cooperative reserve processing plants and increase the amount of producer milk that can be diverted to nonpool plants. Additionally, the market administrator will be authorized to adjust pool plant qualification standards and producer milk diversion limits to reflect changes in marketing conditions. Also, this final rule provides that a pool distributing plant that meets the pooling standards of more than one Federal order will continue to be regulated under this order for two consecutive months before regulation can shift to the other order. This amended order was approved by producers who were eligible to have their milk pooled during the representative month. Approval was determined by a poll of cooperative associations in the marketing area.

EFFECTIVE DATE: December 1, 1995.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1366.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of

Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

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

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

A suspension (DA-95-24) of certain parts of §§ 1004.7 and 1004.12 issued on August 17, 1995, which alleviated the market's pooling problems until this rulemaking proceeding could be completed, will end when this amended order takes effect on December 1, 1995.

Prior documents in this proceeding:
Notice of Hearing: Issued February 25, 1994; published March 4, 1994 (59 FR 10326).

Recommended Decision: Issued July 10, 1995; published July 14, 1995 (60 FR 36239).

Suspension of Rule: Issued August 17, 1995; published August 24, 1995 (60 FR 43953).

Final Decision: Issued September 13, 1995; published September 21, 1995 (60 FR 48924).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Middle Atlantic order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Middle Atlantic marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order, as hereby amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified, in a marketing agreement upon which a hearing has been held.

(b) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of

more than 50 percent of the milk which is marketed within the Middle Atlantic marketing area to sign a proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the Middle Atlantic marketing area.

List of Subjects in 7 CFR Part 1004

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Middle Atlantic marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, as follows:

1. The authority citation for 7 CFR Part 1004 continues to read as follows:

Authority: 7 U.S.C. 601-674.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

2. Section 1004.7 is amended by revising paragraphs (a)(1) and (a)(4); revising paragraph (d)(1) and by adding a new paragraph (g) to read as follows:

§ 1004.7 Pool Plant.

* * * * *

(a) * * *

(1) Milk received at such plant directly from dairy farmers (excluding milk diverted as producer milk pursuant to § 1004.12, by either the plant operator or by a cooperative association, and also excluding the milk of dairy farmers for other markets) and from a cooperative in its capacity as a handler pursuant to § 1004.9(c); or

* * * * *

(4) A plant's status as an other order plant pursuant to paragraph (f) of this section will become effective beginning the third consecutive month in which a plant is subject to the classification and pricing provisions of another order.

* * * * *

(d) * * *

(1) A reserve processing plant operated by a cooperative association at which milk from dairy farmers is received if the total of fluid milk

products (except filled milk) transferred from such cooperative association plant(s) to, and the milk of member producers physically received at, pool plants pursuant to § 1004.7(a) is not less than 25 percent of the total milk of member producers during the month.

* * * * *

(g) The applicable shipping percentage of paragraphs (a) and (b) or (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views and arguments. Any request for revision of shipping percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective.

3. Section 1004.12 is amended by revising paragraphs (d)(2)(i) and (d)(2)(ii) and by adding a new paragraph (g) to read as follows:

§ 1004.12 Producer.

* * * * *

(d) * * *

(2) * * *

(i) All of the diversions of milk of members of a cooperative association or a federation of cooperative associations to nonpool plants are for the account of such cooperative association or federation, and the amount of member milk so diverted does not exceed 55 percent of the volume of milk of all members of such cooperative association or federation delivered to or diverted from pool plants during the month.

(ii) All of the diversions of milk of dairy farmers who are not members of a cooperative association diverting milk for its own account during the month are diversions by a handler in his capacity as the operator of a pool plant from which the quantity of such nonmember milk so diverted does not exceed 45 percent of the total of such nonmember milk for which the pool plant operator is the handler during the month.

* * * * *

(g) The applicable percentages in paragraphs (d)(2)(i) and (d)(2)(ii) of this

section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the diversion limit percentages might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views and arguments. Any request for revision of the diversion limit percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective.

Dated: October 25, 1995.

Shirley R. Watkins,
Acting Assistant Secretary, Marketing and Regulatory Programs.
[FR Doc. 95-26918 Filed 10-30-95; 8:45 am]
BILLING CODE 3410-02-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

[DEA No. 131N]

Clarification of Coincident Activities for Researchers

AGENCY: Drug Enforcement Administration, DOJ.

ACTION: Policy Statement.

SUMMARY: The Drug Enforcement Administration (DEA) is issuing a policy statement to clarify policy regarding the manufacturing of controlled substances under a researcher registration. DEA regulations allow a person registered with DEA or authorized to conduct research with controlled substances listed in Schedules II through V to manufacture such substances if and to the extent that the manufacture of such substances is set forth in a statement filed with the application for registration. In addition, a registered researcher may distribute a substance specifically manufactured for research purposes to such other persons who are registered or authorized to conduct chemical analysis, instructional activities or research with that substance. This document clarifies the types of manufacturing activities that may not be carried out as a coincident activity under a researcher registration.

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

SUPPLEMENTARY INFORMATION: The Controlled Substances Act of 1970 (CSA) sets forth a system to control and prevent the diversion of controlled substances. Title 21, Code of Federal Regulations (21 CFR), Parts 1300 to End contains the specific regulatory requirements to implement the CSA, including the registration, recordkeeping, security, reporting and quota provisions. Title 21 CFR 1301.22(a) describes the eleven activities that require registration with DEA. Under this section, manufacturing and research are designated as independent activities for which separate registrations are required. However, 21 CFR 1301.22(b) describes specific coincident activities for which separate registrations are not required. Specifically, 21 CFR 1301.22(b)(5) states that a person registered or authorized to conduct research with controlled substances listed in Schedules II through V shall be authorized, among other things, to manufacture such substances if and to the extent that such manufacture is set forth in a statement filed with the application, and to distribute such substances to other persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances.

The present DEA policy permits the manufacture of small amounts of bulk material under a researcher registration if: (1) the quantities are set forth in, and consistent with, the statement filed with the application for registration; and (2) if the purpose, as set forth in the statement filed with the application, is to develop synthesis procedures or other research not related to dosage form development.

This policy is necessary to preserve the closed system of distribution, as well as protect the integrity of the attendant quota, security, recordkeeping and reporting requirements of the system. DEA is obligated to enforce the distinctions among those independent activities set forth in 21 CFR 1301.22(a). Manufacturers are held to more stringent requirements than researchers because of the greater threat of diversion associated with manufacturing.

It has come to the attention of DEA that certain registrants are manufacturing bulk material under a researcher registration for the purpose of: (1) performing dosage form

development (to include associated regulatory requirements such as production of batches as mandated by the Food and Drug Administration (FDA); or (2) distributing such material to other research registrants for furtherance of dosage form development and associated requirements. In addition, several dosage form manufacturers have procured large quantities of Schedule II controlled substances under researcher registrations for use in product development. Activities of this type are not consistent with the mandate of the CSA to maintain a closed regulatory system to prevent diversion. In order to ensure that all registrants understand the meaning and requirements of 21 CFR 1301.22 and to ensure adequate safeguards against diversion, DEA is issuing this clarification of the permissible scope of manufacturing under a researcher registration.

For the purposes of 21 CFR part 1301, the following dosage form development activities are not considered research and must be conducted under a manufacturer registration: (a) activities for the purpose of satisfying regulatory requirements such as FDA submissions or good manufacturing practice; (b) activities associated with establishing the manufacturing processes and procedures, including, but not limited to, production of material used for pilot, scale-up and reformulation studies, as well as the studies themselves; and (c) all activities associated with such development including, but not be limited to, bioavailability, formulation, stability, an validation studies. While these activities may be considered research under FDA requirements, 21 CFR part 1301 must be read within the context of the CSA and its attendant requirements concerning quotas, recordkeeping, security and reporting. DEA does not consider such dosage form development to be a coincident research activity as contemplated by 21 CFR 1301.22(b); the production of material for such activities is manufacturing. The exemption for separate registrations for certain coincident activities is intended to facilitate research by allowing for the limited manufacture of controlled substances for those activities related directly to the research set forth in the statement filed with application for researcher registration. However, once the manufacture of controlled substances for research moves beyond the scope of the research and becomes product development, as described above, those manufacturing activities are not longer considered to be

coincident activities. Any person seeking to manufacture controlled substances for such purposes must meet the primary requirements for registration as a manufacturer as set forth in 21 U.S.C. 823.

Requiring registration as a manufacturer for product development activities will present no additional obstacles, due to DEA's Final Rule, published on June 20, 1995 (60 FR 32099, Registration of Manufacturers and Importers of Controlled Substances), to amend the regulations to eliminate the requirement of an administrative hearing on objections, raised by third-party manufacturers, to the registration of certain bulk manufacturers of controlled substances. As noted in the Final Rule, DEA is aware that some manufacturers have attempted to use the hearing process to obstruct or delay action on new applications for registration as a bulk manufacturer. This may have contributed to the practice of conducting product development activities under researcher registrations to avoid such delays. The amendment of the hearing requirements removes any such justification for resorting to such practices.

DEA cannot predict when an individual's activities may shift from a researcher to a manufacturer. Therefore, it is imperative that a person who is conducting research, whose activities move from bench type to scale up and development, be aware and alert to the requirements of 21 CFR 1301.22. For any questions or guidance in this area, DEA should be contacted for a specific clarification.

Dated: October 24, 1995.

Gene R. Haislip,

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

[FR Doc. 95-26948 Filed 10-30-95; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8611]

RIN 1545-AS40

Conduit Arrangement Regulations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD

8611), which were published in the Federal Register for Friday, August 11, 1995 (60 FR 40997). The final regulations relate to conduit financing arrangements issued under the authority granted by section 7701(l).

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT:

Elissa J. Shendalman of the Office of the Associate Chief Counsel (International), (202) 622-3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 871, 881, 1441, 1442, and 7701(l) of the Internal Revenue Code.

Need for Correction

As published, TD 8611 contains typographical errors that are in need of correction.

Correction of Publication

Accordingly, the publication of the final regulations which is the subject of FR Doc. 95-19446, are corrected as follows:

§ 1.881-3 [Corrected]

1. On page 41013, column 3, § 1.881-3, paragraph (e), paragraph (i) of *Example 25.*, line 1, the figure "10,000,000" is corrected to read "5,000,000".

2. On page 41013, column 3, § 1.881-3, paragraph (e), paragraph (i) of *Example 25.*, line 5, the figure "5,000,000" is corrected to read "10,000,000".

3. On page 41013, column 3, § 1.881-3, paragraph (e), paragraph (iii) of *Example 25.*, the first sentence "Pursuant to paragraph (d)(1)(i) of this section, the amount subject to recharacterization is a fraction the numerator of which is the average principal amount advanced from FS to DS and denominator of which is the average principal amount advanced from FP to FS." is corrected to read "Pursuant to paragraph (d)(1)(i) of this section, the amount subject to recharacterization is a fraction the numerator of which is the lowest aggregate principal amount advanced and the denominator of which is the principal amount advanced from FS to DS.".

§ 1.1441-7 [Corrected]

4. On page 41015, column 2, § 1.1441-7, paragraph (d)(2)(ii), paragraph (i) of *Example 4.*, the language "size. BK2 considers BK1 to enter into a loan" is corrected to read

"size. BK2 considers asking BK1 to enter into a loan".

Cynthia E. Grigsby,
Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 95-26786 Filed 10-30-95; 8:45 am]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 162-1-7250a; FRL-5321-1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the South Coast Air Quality Management District (SCAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on these rules serves as a final determination that the deficiencies in previous versions have been corrected and that on the effective date of this action, any sanctions or Federal Implementation Plan (FIP) obligations are permanently stopped. The revised rules control VOC emissions from graphic arts and the coating of wood products. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on January 2, 1996 unless adverse or critical comments are received by November 30, 1995. If the effective date is delayed, a timely notice will be published in the Federal Register.

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT:

Daniel A. Meer, Chief Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1185.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: SCAQMD Rules 1130, Graphic Arts, and 1136, Wood Products Coating. These rules were submitted by the California Air Resources Board (CARB) to EPA on October 16, 1995.

Background

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

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b)

as interpreted in pre-amendment guidance.¹ EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The South Coast Air Basin is classified as extreme;² therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on October 13, 1995, including the rules being acted on in this document. This document addresses EPA's direct-final action for SCAQMD's Rules 1130, Graphic Arts, and 1136, Wood Products Coating. SCAQMD adopted Rules 1130 and 1136 on September 8, 1995. The submitted rules were found to be complete on October 23, 1995 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V³ and is being finalized for approval into the SIP.

Rule 1130 limits emissions of volatile organic compounds (VOCs) emitted from graphic arts operations and Rule 1136 limits emissions of VOCs from wood coating operations. VOCs contribute to the production of ground level ozone and smog. This rule was originally adopted as part of SCAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for this rule.

EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy

¹ Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

² The South Coast Air Basin retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

³ EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 1130 is entitled Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts-Rotogravure and Flexography. EPA-450/2-78-033. Rule 1136 controls emissions from a source category for which EPA has not finalized a CTG. Accordingly, this rule was evaluated against the interpretation of EPA policy found in the Blue Book, referred to in footnote 1 and against other EPA policy including the EPA Region 9/CARB document entitled: Guidance Document for Correcting VOC Rule Deficiencies (April 1991), and EPA's draft CTG for wood furniture finishing and cleaning operations, released for comments on September 7, 1995 in the Federal Register, 60 FR 46595. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD's submitted Rule 1130, Graphic Arts, includes the following significant changes from the current SIP:

- Reduction of the VOC content of graphic arts material to 300 grams per liter in conformance with the applicable CTG,
- Revision of the combined capture and control efficiency requirement of emission control systems to conform to the RACT level of control,
- Deletion of the exempt compound list and reference to Rule 102 which contains definitions and the exempt compound list,
- Lowering of the minimum metal content requirement in flexographic metallic ink from 35% to 28% by weight,
- Lowering of the VOC limit for flexographic metallic ink from 485 grams/liter (g/l) to 460 g/l,
- Addition of a prohibition of sale provision,

- Addition of the definition of "Potential to Emit",

• Addition of an exemption for the application of metallic and matte finish ink, provided that a written certification to limit the total facility-wide potential VOC emissions to 10 tons per year is on file.

SCAQMD's Rule 1136, Wood Coating Operations, includes the following significant changes from the current SIP:

- Addition of language and equation for control device equivalency,
- Addition of USEPA approved test method and language regarding multiple test methods,
- Addition of a VOC averaging provision,
- Addition of fiberboard and particleboard coating VOC limits,
- Extension of final compliance dates to July 1, 1996,
- Addition of economic incentives for facilities converting to compliant, waterborne coatings earlier than the final compliance date. The available incentives are alternative recordkeeping requirements and use of alternate spray equipment, with written approval from the executive officer.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD's Rules 1130, Graphic Arts, and 1136, Wood Products Coating, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

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

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective January 2, 1996, unless, by November 30, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on 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 January 2, 1996.

Regulatory Process

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

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

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.

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

List of Subjects in 40 CFR Part 52

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

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

Dated: October 19, 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 paragraph (c)(225) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(225) New and amended regulations for the following APCDs were submitted on October 13, 1995 by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(I) Rules 1130 and 1136 adopted September 8, 1995.

* * * * *

[FR Doc. 95-26887 Filed 10-30-95; 8:45 am]

BILLING CODE 6560-50-W

40 CFR Part 52

[CA 162-1-7250c; FRL-5321-3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Interim Final Determination That State Has Corrected the Deficiencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's Federal Register, EPA published a direct final rule fully approving revisions to the California State Implementation Plan (SIP). The revisions concern South Coast Air Quality Management District's (SCAQMD) Rules 1130 and 1136. On that date, EPA also published a proposed rulemaking to provide the public with an opportunity to comment on EPA's action. If a person submits adverse comments on EPA's proposed action within 30 days of publication of the proposed and direct final actions, EPA will withdraw its direct final action and will consider any comments received before taking final action on the State's submittal. Based on the proposed full approval, EPA is making an interim final determination by this action that the State has corrected the deficiency for which a sanctions clock began on January 20, 1994. This action will defer the application of the offset sanction and defer the application of the highway sanction. Although this action is effective upon publication, EPA will take comment. If no comments are received on EPA's proposed approval of the State's submittal, the direct final action published in today's Federal Register will also finalize EPA's determination that the State has corrected the deficiency that started the sanctions clock. If comments are received on EPA's proposed approval and this interim final action, EPA will publish a final document taking into consideration any comments received.

DATES: This interim final determination is effective on October 31, 1995. Comments must be received by November 30, 1995.

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

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

Environmental Protection Agency, Air Docket (6102) 401 "M" Street, SW., Washington 20460
 California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812-2815
 South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765-4812.

FOR FURTHER INFORMATION CONTACT:

Daniel A. Meer, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1185.

SUPPLEMENTARY INFORMATION:

I. Background

On September 14, 1992, the State submitted SCAQMD's Rule 1130, Graphics Arts, and on May 13, 1993 the State submitted SCAQMD's Rule 1136, Wood Products Coating. EPA published a limited approval/limited disapproval for these rules in the Federal Register on April 14, 1994; 59 FR 17697. EPA's disapproval action started an 18-month clock for the application of one sanction (followed by a second sanction 6 months later) under section 179 of the Clean Air Act (Act) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP) under section 110(c) of the Act. The State subsequently submitted revised SCAQMD's Rules 1130 and 1136 on October 16, 1995. EPA has taken direct final action on these submittals pursuant to its modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules section of today's Federal Register, EPA issued a direct final full approval of the State of California's submittal of SCAQMD's Rules 1130, Graphic Arts, and 1136, Wood Products Coating. In addition, in the Proposed Rules section of today's Federal Register, EPA proposed full approval of the State's submittal.

Based on the proposed and direct final approval, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this final action was inappropriate, EPA will either propose or take final

action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiency has not been corrected. Until EPA takes such an action, the application of sanctions will continue to be deferred and or stayed.

This action does not stop the sanctions clock that started for these areas on May 16, 1994. However, this action will defer the application of the offsets sanction and will defer the application of the highway sanction. See 59 FR 39832 (Aug. 4, 1994). If EPA's direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanctions clock and will permanently lift any applied, stayed or deferred sanctions. If EPA must withdraw the direct final action based on adverse comments and EPA subsequently determines that the State, in fact, did not correct the disapproval deficiency, EPA will also determine that the State did not correct the deficiency and the sanctions consequences described in the sanctions rule will apply. See 59 FR 39832, to be codified at 40 CFR 52.31.

II. EPA Action

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

Because EPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.¹ 5 U.S.C. 553(b)(B). EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public

¹ As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

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

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 the 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. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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

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

This action temporarily relieves sources of an additional burden potentially placed on them by the sanctions provisions of the Act. Therefore, I certify that it does not have an impact on any small entities.

List of Subjects in 40 CFR Part 52

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

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

Dated: October 19, 1995.

John Wise,

Acting Regional Administrator.

[FR Doc. 95-26886 Filed 10-30-95; 8:45 am]

BILLING CODE 6560-50-W

40 CFR Parts 52 and 81

[CT23-1-7084; FRL-5296-5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On September 30, 1994, the Connecticut Department of Environmental Protection (CT DEP), submitted a request to redesignate the Hartford/New Britain/Middletown area from nonattainment to attainment for carbon monoxide (CO). Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data is available to warrant such revisions. In this action, EPA is approving the Connecticut request because it meets the redesignation requirements set forth in the CAA.

In addition, EPA is approving two related State Implementation Plan (SIP) submissions by Connecticut DEP. On January 12, 1993, Connecticut DEP submitted a final 1990 base year emission inventory for CO emissions,

which includes emissions data for all sources of CO in Connecticut's two CO nonattainment areas (the Hartford/New Britain/Middletown area and the Connecticut portion of the New York/New Jersey/Connecticut Consolidated Metropolitan Statistical Area (CMSA)). On January 12, 1993, January 14, 1993, September 30, 1994 and August 1, 1995, Connecticut DEP submitted an oxygenated fuel program and revisions for both CO nonattainment areas. In this action, EPA is approving the CO emissions inventory for both areas and the oxygenated fuels program only as it applies to the Hartford/New Britain/Middletown nonattainment area.

DATES: This final rule will be effective January 2, 1996 unless critical or adverse comments are received by November 30, 1995. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be sent to Susan Studlien, Acting Director, at the EPA Regional Office listed below. Copies of the redesignation request and the State of Connecticut's submittals are available for public review during normal business hours at the addresses listed below.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and; Environmental Protection Agency, One Congress Street, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Damien Houlihan of the EPA Region I Air, Pesticides and Toxics Management Division at (617) 565-3266.

SUPPLEMENTARY INFORMATION:

I. Background

On March 31, 1978, (See 43 FR 8962), EPA published rulemaking which set forth attainment status for all States in relation to the National Ambient Air Quality Standards (NAAQS). The area of Hartford/New Britain/Middletown (the "Hartford area") was designated as nonattainment for Carbon Monoxide through this rulemaking notice. In a letter dated March 14, 1991 from the Connecticut Department of Environmental Protection to EPA Administrator, the State recommended that the area be classified as Category 3 nonattainment. Because the area had a design value of 9.7 ppm, the area was considered "moderate" nonattainment under the provisions outlined in sections 186 and 187 of the CAA. (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR part 81, §81.307.). The CAA established an attainment date of December 31, 1995, for all moderate CO

areas. The Hartford area has ambient monitoring data showing attainment of the CO NAAQS, since 1988. Therefore, in an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on September 30, 1994 the State of Connecticut submitted a CO redesignation request and a maintenance plan for the Hartford area. Connecticut submitted evidence that a public hearing was held on August 17, 1994.

II. Evaluation Criteria

Section 107(d)(3)(E) of the 1990 Clean Air Act Amendments provides five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;
2. The area must have a fully approved SIP under section 110(k) of CAA;
3. The air quality improvement must be permanent and enforceable;
4. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA;
5. The area must meet all applicable requirements under section 110 and Part D of the CAA.

III. Review of State Submittal

On October 28, 1994, Region I determined that the information received from the CT DEP constituted a complete redesignation request under the general completeness criteria of 40 CFR part 51, appendix V, §§2.1 and 2.2.

The Connecticut redesignation request for the Hartford/New Britain/Middletown area meets the five requirements of section 107(d)(3)(E), noted above. The following is a brief description of how the State has fulfilled each of these requirements.

1. Attainment of the CO NAAQS

Connecticut has quality-assured CO ambient air monitoring data showing that the Hartford area has met the CO NAAQS. The Connecticut request is based on an analysis of quality-assured monitoring data which is relevant to the maintenance plan and to the redesignation request. To attain the CO NAAQS, an area must have complete quality-assured data showing no more than one exceedance of the standard over at least two consecutive years. The ambient air CO monitoring data for calendar year 1989 through calendar year 1993, relied upon by Connecticut in its redesignation request, shows no violations of the CO NAAQS in the Hartford area. The most recent ambient CO data shows no exceedances in the calendar year 1994 and one exceedance

in calendar year 1995 (on January 13, 1995). Because the area has complete quality assured data showing no more than one exceedance of the standard per year over at least two consecutive years (1991 and 1992), the area has met the first statutory criterion of attainment of the CO NAAQS (40 CFR 50.9 and appendix C). Connecticut has committed to continue monitoring in this area in accordance with 40 CFR part 58.

Connecticut used EPA's "Guideline for Modeling Carbon Monoxide from Roadway Intersections" to select six "hot-spot" intersections for detailed analysis. Once the intersections were selected, evaluations for CO levels for existing and future year conditions were performed using the MOBILE5A emission model and the CAL3QHC (version 2.0) dispersion model. These modeling results show no violations for 1993 or future year (2005) of the NAAQS for CO.

2. Fully Approved SIP

Connecticut's CO SIP is fully approved by EPA as meeting all the requirements of Section 110 of the Act, including the requirement in Section 110(a)(2)(I) to meet all the applicable requirements of Part D (relating to nonattainment), which were due prior to the date of Connecticut's redesignation request. Connecticut's 1982 CO SIP was fully approved by EPA in 1984 as meeting the CO SIP requirements in effect under the CAA at that time. The 1990 CA required that CO nonattainment areas achieve specific new requirements depending on the severity of the nonattainment classification. Requirements for the Hartford area include the preparation of a 1990 emission inventory with periodic updates, adoption of an oxygenated fuels program, and development of conformity procedures. Each of these requirements, added by the 1990 Amendments to the CAA, are discussed in greater detail below.

Consistent with the October 14, 1994 EPA guidance from Mary D. Nichols entitled "Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment," EPA is not requiring as a prerequisite to redesignation to attainment EPA's full approval of a part D NSR program by Connecticut. Under this guidance, nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully-approved part D NSR program, so long as the program is not relied upon for maintenance. Connecticut has not relied on a NSR program for CO sources to maintain attainment. Although EPA is

not treating a part D NSR program as a prerequisite for redesignation, it should be noted that EPA is in the process of taking final action on the State's revised NSR regulation, which does include requirements for CO nonattainment areas. Because the Hartford area is being redesignated to attainment by this action, Connecticut's Prevention of Significant Deterioration (PSD) requirements will be applicable to new or modified sources in the Hartford area.

A. *Emission Inventory*—Connecticut submitted its base year inventory to EPA on January 13, 1994, which included estimates for CO in the Hartford-New Britain-Middletown area and the New York-New Jersey-Connecticut area, as required under section 187(a)(1) of the CAA. EPA is approving the CO portion of the inventory for both area with this redesignation request.

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Connecticut included the requisite inventory in the CO SIP. The base year for the inventory was 1990, using a three month CO season of November 1990 through January 1991. Stationary point sources, stationary area sources, on-road mobile sources, and nonroad mobile sources of CO were included in the inventory. Stationary sources with emissions of greater than 100 tons per year were also included in the inventory.

The following list presents a summary of the CO peak season daily emissions estimates in tons per day by source category: Point Sources, 28.91 tons per day; Area Sources, 498.05 tons per day; Mobile On-Road Sources, 1497.03 tons per day; Mobile Nonroad Sources, 221.36 tons per day; Total Sources, 2245.35 tons per day. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

Section 110(k) of the CAA sets out provisions governing the EPA's review of base year emission inventory submittals in order to determine approval or disapproval under section 187(a)(1). The EPA is granting approval of the Connecticut 1990 base year CO emissions inventory submitted on January 13, 1994, based on the 1993. At the time of submission of the redesignation request for the Hartford area, Connecticut submitted revisions to its oxygenated fuel regulation specifying that the oxygenated fuel requirement in the Hartford CMSA will not be implemented except as a contingency measure in the area's maintenance plan. On August 1, 1995, Connecticut

submitted another revision to its oxygenated fuel regulations changing the CO control period in the Connecticut portion of the New York/New Jersey/Connecticut CMSA from seven to four months. As part of this action, EPA is approving Connecticut's oxygenated fuel program except as it applies to the Connecticut portion of the NJ-NY-CT CMSA (the Southwestern Control Area). EPA will address the Southwestern Control Area definition and that area's control period as part of a separate action.

The oxygenated gasoline program is one in which all oxygenated gasoline must contain a minimum oxygen content of 2.7 percent by weight of oxygen. Under Section 211(m)(4) of the CAA, EPA also issued requirements for the labeling of gasoline pumps used to dispense oxygenated gasoline, as well as guidelines on the establishment of an appropriate control period. These labeling requirements and control period guidelines may be found in at 57 FR 47849, dated October 20, 1992. Connecticut's oxygenated gasoline regulation requires the minimum 2.7 percent oxygen content in gasoline sold in the Central Control and Southwestern Control Areas. The regulation also contains the necessary labeling regulations, enforcement procedures, and oxygenate test methods. For a more detailed description of the manner in which Connecticut's oxygenated fuels program meets the requirements of Section 211(m) of the CAA, the reader is referred to the Technical Support Document, which is available for review at the addresses provided above.

Connecticut has chosen to convert its oxygenated fuels requirement in the Hartford CMSA to a contingency measure in its maintenance plan upon redesignation. Connecticut's oxygenated fuels regulation provides that oxygenated gasoline is only required in the Hartford CMSA if a CO violation is monitored in the area. Because Connecticut attained the CO standard based on data before the oxygenated fuel program was implemented in the Hartford CMSA, oxygenated gasoline was not necessary to reach attainment. In its demonstration of maintenance, described below, the State has shown that oxygenated gasoline in the Hartford CMSA is not necessary for continued maintenance of the CO NAAQS. Consequently, by this action, EPA is both approving Connecticut's oxygenated fuels regulation and simultaneously approving its use as a contingency measure for the Hartford area.

The State of Connecticut has adopted an Oxygenated Fuel Program that covers

the Connecticut portion of the New Jersey-New York-Connecticut Consolidated Metropolitan Statistical Area (CMSA) and the Hartford CMSA. In this action, the EPA is approving the oxygenated fuel program, Connecticut's Regulation 22a-174-28, only as it applies to the Hartford CMSA. The control period for the program is from November 1 to the last day of February for the Central Control Area (Hartford CMSA) if a violation of the ambient air quality standard for carbon monoxide occurs within the control area after November 1, 1993. EPA will address the Southwestern Control Area separately.

C. Conformity—Under section 176(c) of the CAA, states were required to submit revisions to their SIPs that include criteria and procedures to ensure that Federal actions conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as all other Federal actions ("general conformity"). Congress provided for the State revisions to be submitted one year after the date of promulgation of final EPA conformity regulations. EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and final general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that the States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to § 51.396 of the transportation conformity rule, the State of Connecticut is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, pursuant to § 51.851 of the general conformity rule, Connecticut was required to submit a SIP revision containing general

conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Connecticut has not yet submitted either of these conformity SIP revisions.

Although Connecticut has not yet adopted and EPA approved conformity SIP revisions, EPA may approve this redesignation request. EPA interprets the requirement of a fully approved SIP in section 107(d)(3)(v) to mean that, for a redesignation request to be approved, the State must have met all requirements that become applicable to the subject area prior to or at time of the submission of the redesignation request. Because Connecticut submitted its redesignation request on October 20, 1994, prior to the due dates for conformity, it is not necessary that the State have an approved conformity SIP prior to redesignation. It should be noted that approval of Connecticut's redesignation request does not obviate the need for Connecticut to submit the required conformity SIPs to EPA.

3. Improvement in Air Quality Due to Permanent and Enforceable Measures

EPA approved Connecticut's CO SIP, submitted in 1982, under the CAA, as amended in 1977. Emission reductions achieved through the implementation of control measures contained in that SIP are enforceable. These measures were: transportation plan reviews, a basic Inspection and Maintenance Program, right turn on red, and the Federal Motor Vehicle Control Program. As discussed above, the State initially attained the NAAQS in 1989 with monitored attainment through 1993. This indicates that the improvements are due to the permanent and enforceable measures contained in the 1982 CO SIP.

The State of Connecticut has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to local economic downturn. EPA finds that the combination of certain existing EPA-approved SIP and federal measures contribute to the permanence and

enforceability of reduction in ambient CO levels that have allowed the area to attain the NAAQS.

4. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. In this notice, EPA is approving the State of Connecticut's maintenance plan for the Hartford/New Britain/Middletown area because EPA finds that Connecticut's submittal meets the requirements of section 175A.

A. Attainment Emission Inventory

As previously noted, on January 13, 1994, the State of Connecticut submitted a comprehensive inventory of CO emissions from the Hartford/New Britain/Middletown area. The inventory includes emissions from area, stationary, and mobile sources using 1990 as the base year for calculations.

The 1990 inventory is considered representative of attainment conditions because the NAAQS was not violated during 1990. The State submittal contains the detailed inventory data and summaries by county and source category. The comprehensive base year emissions inventory was submitted in the National Emission Data System format. Finally, this inventory was prepared in accordance with EPA guidance. It also contains summary tables of the 1990 base year and was projected to the year 2005.

1990 CO BASE YEAR EMISSIONS INVENTORY HARTFORD NONATTAINMENT AREA (TON PER DAY)

Year	Area	Nonroad	Mobile	Point	Total
1990	185.49	94.88	603.58	11.92	895.87

HARTFORD NONATTAINMENT AREA CO EMISSIONS INVENTORY SUMMARY (TONS PER DAY)

Year	Area	Nonroad	Mobile	Point	Total
1990	185.49	94.88	603.58	11.92	895.87
2005	186.20	115.80	306.30	13.0	621.40

B. Demonstration of Maintenance-Projected Inventories

Total CO emissions were projected from 1990 base year out to 2005. These projected inventories were prepared in accordance with EPA guidance. Connecticut will not implement the oxygenated fuel program in Hartford CMSA unless a violation is measured. The projections show that calculated CO emissions, assuming no oxygenated fuels program after 1993, are not expected to exceed the level of the base year inventory during this time period. Therefore, it is anticipated that Hartford/New Britain/Middletown will maintain the CO standard without the oxygenated fuel program.

C. Verification of Continued Attainment

Continued attainment of the CO NAAQS in the Hartford/New Britain/Middletown area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The State has also committed to submit periodic inventories of CO emissions every three years.

D. Contingency Plan

The level of CO emissions in the Hartford/New Britain/Middletown area will largely determine its ability to stay in compliance with the CO NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Also, section 175A(d) of the CAA requires that the contingency provisions include a requirement that the State implement all measures contained in the SIP prior to redesignation. Therefore, Connecticut has provided contingency measures with a schedule for implementation in the event of a future CO air quality problem. The plan contains triggering mechanisms to determine when contingency measures are needed.

Connecticut has developed a two-stage contingency plan. The first stage is the implementation of an enhanced I/M program. The second stage is the implementation of an oxygenated fuels program throughout the Hartford CMSA. The CMSA includes several municipalities outside the nonattainment area. Therefore, a oxygenated fuels program will provide reductions from vehicles which originate outside the nonattainment area but travel within it.

In order to be an adequate maintenance plan, the plan should include at least one contingency measure that will go into effect with a

triggering event. Connecticut is relying largely on a contingency measure that will go into effect regardless of any triggering event, namely, enhanced Inspection and Maintenance. Connecticut has one measure that will not go into effect unless a triggering event occurs, namely oxygenated fuels.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

5. Meeting Applicable Requirements of Section 110 and Part D

In Section III.2. above, EPA sets forth the basis for its conclusion that Connecticut has a fully approved SIP which meets the applicable requirements of Section 110 and Part D of the CAA.

Final Action

EPA is approving the Hartford/New Britain/Middletown CO maintenance plan because it meets the requirements set forth in section 175A of the CAA. In addition, the Agency is approving the request to redesignate the Hartford/New Britain/Middletown CO area to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective January 2, 1996 unless, by November 30, 1995, adverse or critical comments are received. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on 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 January 2, 1996.

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.

The CO SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the CO NAAQS. This final redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the CO emission limitations and restrictions contained in the approved CO SIP. Changes to CO SIP regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of non-implementation (section 179(a) of the CAA) and in a SIP deficiency call made pursuant to sections 110(a)(2)(H) and 110(k)(2) of the CAA.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, it does not have any economic impact on any small entities. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities.

Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Accordingly, I certify that the approval of the redesignation request will not have an impact on any small entities.

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 25, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may

result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A and section 187(a)(1) of the Clean Air Act. The rules and commitments approved in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to certain duties. To the extent that the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as mandate upon the private sector, EPA's action will impose no new requirements under State law; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, results from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: August 31, 1995.

John P. DeVillars,

Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(69) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(69) Connecticut submitted the Oxygenated Gasoline Program and revisions on January 11, 1993, January 12, 1993, January 14, 1993, and August 1, 1995. This submittal satisfied the requirements of section 211(m) of the Clean Air Act, as amended.

(i) Incorporation by reference.

(A) Letters dated January 11, 1993 and January 12, 1993 which included the oxygenated gasoline program, Regulations of Connecticut State Agencies (RCSA) Section 22a-174-28, with an effective date of November 2, 1992.

(B) A letter dated January 14, 1993 requesting that the RCSA Section 22a-174-28, as submitted on January 11, 1993 and January 12, 1993, be adopted as part of Connecticut's SIP.

(C) A letter dated August 1, 1995, requesting that a revision to RCSA Section 22a-174-28(a), with an effective date of July 26, 1995, be approved and adopted as part of Connecticut's SIP.

(ii) Additional materials.

(A) The Technical Support Document for the Redesignation of the Hartford Area as Attainment for Carbon Monoxide submitted on September 30, 1994.

(B) Nonregulatory portions of submittals.

3. Section 52.376 is added to read as follows:

§ 52.376 Control strategy: Carbon Monoxide.

(a) Approval-On January 12, 1993, the Connecticut Department of Environmental Protection submitted a revision to the carbon monoxide State Implementation Plan for the 1990 base year emission inventory. The inventory was submitted by the State of Connecticut to satisfy Federal requirements under section 182(a)(1) of the Clean Air Act as amended in 1990, as a revision to the carbon monoxide State Implementation Plan.

(b) Approval-On September 30, 1994, the Connecticut Department of Environmental Protection submitted a request to redesignate the Hartford/New Britain/Middletown Area carbon monoxide nonattainment area to attainment for carbon monoxide. As part of the redesignation request, the State submitted a maintenance plan as required by 175A of the Clean Air Act, as amended in 1990. Elements of the section 175A maintenance plan include a base year (1993 attainment year) emission inventory for carbon monoxide, a demonstration of maintenance of the carbon monoxide NAAQS with projected emission inventories to the year 2005 for carbon monoxide, a plan to verify continued attainment, a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If the area records a violation of the carbon monoxide NAAQS (which must be confirmed by the State), Connecticut will implement one or more appropriate contingency measure(s) which are contained in the contingency plan. The menu of contingency measure includes enhanced motor vehicle inspection and maintenance program and implementation of the oxygenated fuels program. The redesignation request and maintenance plan meet the redesignation requirements in sections 107(d)(3)(E) and 175A of the Act as amended in 1990, respectively. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Connecticut Carbon Monoxide State Implementation Plan for the above mentioned area.

PART 81—[AMENDED]

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

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

Subpart C—Section 107 Attainment Status Designations

2. In § 81.307 by revising the table for "Connecticut-Carbon Monoxide" to read as follows:

§ 81.307 Connecticut.

CONNECTICUT—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Hartford-New Britain-Middletown Area: Hartford County (part)	Attainment	January 2, 1996	

CONNECTICUT—CARBON MONOXIDE—Continued

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Bristol City, Burlington Town, Avon Town, Bloomfield Town, Canton Town, E. Granby Town, E. Hartford Town, E. Windsor Town, Enfield Town, Farmington Town, Glastonbury Town, Granby Town, Hartford city, Manchester Town, Marlborough Town, Newington Town, Rocky Hill Town, Simsbury Town, S. Windsor Town, Suffield Town, W. Hartford Town, Wethersfield Town, Windsor Town, Windsor Locks Town, Berlin Town, New Britain city, Plainville Town, and Southington Town.				
Litchfield County (part): Plymouth Town		Nonattainment		Moderate ≤ 12.7 ppm.
Middlesex County (part)		Nonattainment		Moderate ≤ 12.7 ppm.
Cromwell Town, Durham Town, E. Hampton Town, Haddam Town, Middlefield Town, Middleton city, Portland Town, E. Haddam Town.				
Tolland County (part)		Nonattainment		Moderate ≤ 12.7 ppm.
Andover Town, Boton Town, Ellington Town, Hebron Town, Somers Town, Tolland Town, and Vernon Town.				
New Haven-Meriden-Waterbury Area:				
Fairfield County (part) Shelton City		Nonattainment		Not classified.
Litchfield County (part)		Nonattainment		Not classified.
Bethlehem Town, Thomaston Town, Watertown, Woodbury Town.				
New Haven County		Nonattainment		Not classified.
New York-N. New Jersey-Long Island Area, Fairfield County (part).		Nonattainment		Moderate > 12.7 ppm.
All cities and townships except Shelton city.				
Litchfield County (part) Bridgewater Town, New Milford Town.		Nonattainment		Moderate > 12.7 ppm.
AQCR 041 Eastern Connecticut Intrastate		Unclassifiable/Attainment.		
Middlesex County (part): All portions except cities and towns in Hartford Area				
New London County:				
Tolland County (part): All portions except cities and towns in Hartford Area.				
Windham County:				
AQCR 044 Northwestern Connecticut Intrastate ..		Unclassifiable/Attainment.		
Hartford County (part): Hartland Township.				
Litchfield County (part) All portions except cities and towns in Hartford, New Haven, and New York Areas.				

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

* * * * *

[FR Doc. 95-26961 Filed 10-30-95; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 52 and 81

[MD44-1-3001a, MD44-2-3002a; FRL-5315-4]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Redesignation of the Baltimore Carbon Monoxide Area to Attainment and Approval of the Area's Maintenance Plan and Emission Inventory; State of Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a maintenance plan and a request to redesignate the Baltimore carbon monoxide (CO) nonattainment area, which is located within the Baltimore City Central Business District (CBD) within the Baltimore Metropolitan Statistical Area. The maintenance plan and redesignation requests were submitted by the State of Maryland on September 20, 1995. Under the 1990 amendments of the Clean Air Act (CAA) designations can be revised if sufficient data is available to warrant such revisions. In this action, EPA is approving Maryland's request because it meets the maintenance plan and

redesignation requirements set forth in the CAA. This action is being taken under section 110 of the CAA.

DATES: This action will become effective on December 15, 1995, unless, by November 30, 1995, adverse or critical comments are received. 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; Maryland Department of the Environment, 2500 Broening Highway, Baltimore Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 597-6863.

SUPPLEMENTARY INFORMATION: On September 20, 1995, the State of Maryland submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a maintenance plan, and a request to redesignate the Baltimore CO nonattainment area from nonattainment to attainment for carbon monoxide.

I. Background

The Baltimore area was designated a CO nonattainment area under the Clean Air Act Amendments of 1990 (see 40 CFR 81.321). The National Ambient Air Quality Standard (NAAQS) for CO is 9.5 parts per million (ppm). Carbon monoxide nonattainment areas can be classified as moderate or serious, based on their design values. Since the Baltimore CO nonattainment area had a design value of 9.6 ppm (based on 1988 and 1989 data), the area was classified as moderate. The CAA established an attainment date of December 31, 1995 for all moderate CO areas. The Baltimore area has ambient air quality monitoring data showing attainment of the CO NAAQS from 1989 through 1994. Therefore, in an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on September 20, 1995 the State of Maryland submitted a CO redesignation request and a maintenance plan for the Baltimore area. Maryland submitted evidence that a public hearing was held on August 9, 1995 in Baltimore on this revision to the State's SIP.

II. Evaluation Criteria

Section 107(d)(3)(E) of the 1990 Clean Air Act Amendments provides five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment:

1. The area must have attained the applicable NAAQS;
2. The area must have a fully approved SIP under section 110(k) of CAA;
3. The air quality improvement must be permanent and enforceable;
4. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA;
5. The area must meet all applicable requirements under section 110 and Part D of the CAA.

III. Review of State Submittal

On September 20, 1995, EPA determined that the information received from the State of Maryland constituted a complete redesignation request under the general completeness criteria of 40 CFR part 51, appendix V, §§ 2.1 and 2.2. Maryland's redesignation request for the Baltimore area meets the five requirements of section 107(d)(3)(E), noted above. The following is a brief description of how the State has fulfilled each of these requirements.

1. Attainment of the CO NAAQS

Maryland has quality-assured CO ambient air monitoring data showing that the Baltimore area has met the CO NAAQS. The Maryland request is based on an analysis of quality-assured CO air monitoring data which is relevant to the maintenance plan and to the redesignation request. To attain the CO NAAQS, an area must have complete quality-assured data showing no more than one exceedance of the standard per year over at least two consecutive years. The ambient air CO monitoring data for calendar year 1989 through calendar year 1995, relied upon by Maryland in its redesignation request, shows no violations of the CO NAAQS in the Baltimore area during this time. Because the area has complete quality assured data showing no more than one exceedance of the standard per year over at least two consecutive years (1994 and 1995), the area has met the first statutory criterion of attainment of the CO NAAQS (40 CFR 50.8 and appendix C). Maryland has committed to continue monitoring in this area in accordance with 40 CFR part 58.

2. Fully Approved SIP Under Section 110(k) of the CAA

Maryland's CO SIP is fully approved by EPA as meeting all the requirements of Section 110(a)(2)(I) of the Act,

including the requirements of Part D (relating to nonattainment), which were due prior to the date of Maryland's redesignation request. Maryland's CO SIP was fully approved by EPA on September 19, 1984, at 40 CFR 52.1070(c)(71), (49 FR 36645). The 1990 CAA required that nonattainment areas achieve specific new requirements depending on the severity of the nonattainment classification. Requirements for the Baltimore area included the preparation of a 1990 emission inventory with periodic updates, adoption of an oxygenated fuels program, the development of contingency measures, and development of conformity procedures. Each of these requirements added by the 1990 Amendments to the CAA are discussed in greater detail below.

Consistent with the October 14, 1994 EPA guidance from Mary D. Nichols entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," EPA is not requiring full approval of a Part D NSR program by Maryland as a prerequisite for redesignation to attainment. Under this guidance, nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully-approved Part D NSR program, so long as the program is not relied upon for maintenance. Because the Baltimore area is being redesignated to attainment by this action, Maryland's Prevention of Significant Deterioration (PSD) requirements will be applicable to new or modified sources in the Baltimore area. Maryland has been delegated PSD authority (see § 52.1116 Maryland, 45 FR 52741, August 7, 1980, as amended 47 FR 7835, February 23, 1982).

A. Emission Inventory

On March 24, 1994, Maryland submitted a 1990 base year emissions inventory to EPA for review and approval. This inventory was used as the basis for calculations to demonstrate maintenance. Maryland's submittal contains the detailed inventory data and summaries by source category. Maryland's submittal also contains information related to how it comported with EPA's guidance, and which model and emissions factors were used (note, the MOBILE 5a model was used), how vehicle miles travelled (VMT) data was generated, and other technical information verifying the emission inventory. A summary of the base year and projected maintenance year inventories are shown in the following table in this section.

Section 172(c)(3) of the CAA requires that nonattainment plan provisions

include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Maryland included the requisite inventory in the redesignation request and maintenance plan SIP revision. The base year for the inventory was 1990, using a three month CO season of December 1990 through February 1991. Stationary point sources, stationary area sources, on-road mobile sources, and off-road mobile sources of CO were included in the inventory. The following table, Table 1, presents a summary of the attainment year's (1990) and projected year's (2007) CO peak season daily emissions estimates in tons per winter day (tpd) by source category:

TABLE 1.—CO PEAK SEASON DAILY EMISSIONS

	1990 Base year emissions (tons per day)	2007 Projected emissions (tons per day)
On-road Mobile	1789.80	732.30
Off-road Mobile	223.28	245.19
Area	116.47	145.74
Stationary	375.25	381.14
Total	2504.8	1504.37

Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

Section 110(k) of the CAA sets out provisions governing the EPA's review of base year emission inventory submittals in order to determine approval or disapproval under section 187(a)(1). The EPA is granting approval of the Maryland 1990 base year CO emissions inventories as found in the Baltimore CO Redesignation Request, based on the EPA's technical review of the CO inventory. For further details on the emission inventory, the reader is referred to the Technical Support Document, which is available for review at the addresses provided above.

B. Oxygenated Gasoline

Section 211(m) of the CAA requires that each State in which there is located a CO nonattainment area with a design value of 9.5 ppm or above based on data for the 2-year period of 1988 and 1989 shall submit a SIP revision which requires the implementation of an oxygenated gasoline program in the Consolidated Metropolitan Statistical Area (CMSA) or Metropolitan Statistical Area (MSA) in which the nonattainment area is located. The Baltimore area has a design value above 9.5 ppm based on 1988 and 1989 data and consequently

was subject to the requirement to adopt an oxygenated fuel program. Maryland submitted an oxygenated gasoline SIP revision for the Baltimore MSA to EPA on November 13, 1992. EPA approved the SIP revision for Maryland on June 6, 1994. As noted in the Maryland redesignation request, the State has relegated the oxygenated fuel program to contingency status under the redesignation. Through emergency rulemaking procedures, Maryland modified these regulations to provide for the oxygenated gasoline control period to be required in future years as a contingency measure to ensure maintenance of the National Ambient Air Quality Standard (NAAQS) for CO. The rule change states that upon a monitored violation of the CO NAAQS (two or more exceedances of the CO NAAQS in a single calendar year), the oxygenated gasoline control period shall be reinstated. Under the amended regulations, a notice by July 1 of any year for an area would reinstate the oxygenated gasoline requirements beginning on November 1 of that year. This emergency regulation change is effective from September 13, 1995 through February 28, 1996. Maryland is currently pursuing permanent adoption of these regulations, and final adoption of the permanent rule change should become effective in January 1996.

Maryland's maintenance demonstration, described below, asserts that oxygenated gasoline in the Baltimore MSA is not necessary for continued maintenance of the CO NAAQS. Consequently, EPA is approving Maryland's use of oxygenated gasoline as a contingency measure for the Baltimore area.

C. Conformity

Under section 176(c) of the CAA, states were required to submit revisions to their SIPs that include criteria and procedures to ensure that Federal actions conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as all other Federal actions ("general conformity"). Congress provided for the State revisions to be submitted one year after the date of promulgation of final EPA conformity regulations. EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and final general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that the States adopt both

transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to § 51.396 of the transportation conformity rule and § 51.851 of the general conformity rule, the State of Maryland was required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Maryland was required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Maryland submitted transportation conformity SIP revisions to EPA on May 16, 1995. Furthermore, Maryland submitted, on May 15, 1995, SIP revisions for general conformity.

Although this redesignation request was submitted to EPA after the due dates for the SIP revisions for transportation conformity (58 FR 62188) and general conformity (58 FR 63214) rules, EPA believes it is reasonable to interpret the conformity requirements as not being applicable requirements for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment. Therefore, the State remains obligated to adopt the transportation and general conformity rules even after redesignation and would risk sanctions for failure to do so. While redesignation of an area to attainment enables the area to avoid further compliance with most requirements of section 110 and part D, since those requirements are linked to the nonattainment status of an area, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of state-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet adopted, EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request.

Therefore, with this notice, EPA is modifying its national policy regarding

the interpretation of the provisions of section 107(d)(3)(E) concerning the applicable requirements for purposes of reviewing a carbon monoxide redesignation request. Under this new policy, for the reasons just discussed, EPA believes that the CO redesignation request for the Baltimore area may be approved notwithstanding the lack of approved state transportation and general conformity rules.

3. Improvement in Air Quality Due to Permanent and Enforceable Measures

EPA approved Maryland's CO SIP under the 1977 CAA. Emission reductions achieved through the implementation of control measures contained in that SIP are enforceable. Maryland cites the Federal Motor Vehicle Control Program (FMVCP) as the major source of reductions that led to attainment of the CO standard. Stationary sources have also been required to improve combustion efficiency through the Best Available Control Technology (BACT) requirements. Both of these measures are considered permanent and enforceable.

As discussed above, the State initially attained the NAAQS in 1989 with monitored attainment through 1994. This indicates that the improvements are due to the permanent and enforceable measures contained in the 1982 CO SIP.

Maryland has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to local economic downturn. EPA finds that the combination of certain existing EPA-approved SIP and federal measures contribute to the permanence and enforceability of reduction in ambient CO levels that have allowed the area to attain the NAAQS.

4. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment.

The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate

to assure prompt correction of any air quality problems. In this notice, EPA is approving the State of Maryland's maintenance plan for the Baltimore area because EPA finds that Maryland's submittal meets the requirements of section 175A.

A. Attainment Emission Inventory

As previously noted, on March 24, 1994, Maryland submitted a 1990 base year emissions inventory to EPA for review and approval. The inventory includes emissions from area, stationary, and mobile sources using 1990 as the base year for calculations.

The State submittal contains the detailed inventory data and summaries by county and source category. The comprehensive base year emissions inventory was submitted in the National Emission Data System format. This inventory was prepared in accordance with EPA guidance.

The 1990 inventory can be considered representative of attainment conditions because the CO NAAQS was not violated during 1990. Maryland established the 1990 inventory as the attainment inventory, and forecasted future emissions out to the year 2007 in its redesignation request. The State projected emissions for the end of the maintenance period using appropriate growth factors, consistent with EPA guidance. To project future emissions from mobile sources, MOBILE5a was used to assess the benefits gained from federally mandated control measures. Maryland assumed the following control programs, when projecting the inventory: FMVCP, the 1992 Reid Vapor Pressure Program, Tier 1 controls on new vehicles, Evaporative Emissions Control Program, Federal Reformulated Gasoline, Enhance Inspection & Maintenance, Low Emission Vehicles, Stage II Vapor Recovery, and On-Board Controls. Since these programs are either a) federal measures that are currently adopted or will be adopted in the future under the CAA, or b) state regulations which are currently approved into the SIP, they constitute appropriate assumptions for future modeling scenarios. Stationary source emissions and off-road mobile source emissions were projected using the 1990 base year inventory and multiplying with appropriate projection factors. The area source future emissions were projected using the 1990 base year inventory and multiplying the inventory with household, population, and employment growth factors from the Round 5 Cooperative forecasting process conducted by the Baltimore Metropolitan Council.

B. Demonstration of Maintenance-Projected Inventories

Total CO emissions were projected from 1990 base year out to 2005 and 2010, and then interpolated for the maintenance plan's projection year, 2007. These projected inventories were prepared in accordance with EPA guidance. Maryland will not implement the oxygenated fuel program in the Baltimore MSA unless a violation of the standard triggers the program for the following CO season.

The projections show that calculated CO emissions, assuming no oxygenated fuels program, are not expected to exceed the level of the base year inventory during this time period. Therefore, it is anticipated that the Baltimore area will maintain the CO standard without the program, and the oxygenated fuel program will not need to be implemented following redesignation, except as a contingency measure.

C. Verification of Continued Attainment

Continued attainment of the CO NAAQS in the Baltimore area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. In addition, comprehensive reviews will be conducted periodically of the factors used to develop the attainment inventories and those used to project CO emissions levels for 2007. If any of the localities find significant differences between actual and projected growth, updated emission inventories will be developed to compare with the projections.

D. Contingency Plan

The level of CO emissions in the Baltimore area will largely determine its ability to stay in compliance with the CO NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Section 175(A)(d) of the CAA requires that the contingency provisions include a requirement that the State implement all measures contained in the SIP prior to redesignation. Therefore, Maryland has provided for oxygenated fuels as a contingency measure in the event of a future CO air quality problem. The plan contains an acceptable triggering mechanism (a violation of the CO standard) to determine when the contingency measure is needed.

Maryland has changed its oxygenated fuel rule, through emergency rulemaking procedures, to require oxygenated gasoline as a contingency

measure for the purposes of redesignation. Maryland has also provided a schedule to EPA for the permanent adoption of the oxygenated fuel regulation change. EPA finds this an acceptable contingency measure which fulfills the requirements of section 175(A)(d).

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State must submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such a revised SIP will provide for maintenance for an additional ten years.

5. Meeting Applicable Requirements of Section 110 and Part D

In Section III.2. above, EPA sets forth the basis for its conclusion that Maryland has a fully approved SIP which meets the applicable requirements of Section 110 and Part D of the CAA.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective December 15, 1995, unless, by November 30, 1995, 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 December 15, 1995.

Final Action

EPA is approving the Baltimore area CO maintenance plan because it meets the requirements set forth in section 175A of the CAA. In addition, the Agency is approving the request and redesignating the Baltimore CO nonattainment area to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. EPA is also approving Maryland's 1990 base year CO emissions inventory for

the Baltimore MSA, as found in the State's redesignation request and maintenance plan. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective December 15, 1995, unless, by November 30, 1995, adverse or critical comments are received. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on 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 December 15, 1995.

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

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

Under 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 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.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

The CO SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the CO NAAQS. This final redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the CO emission limitations and restrictions contained in the approved CO SIP. Changes to CO SIP regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of non-implementation (section 179(a) of the CAA) and in a SIP deficiency call made pursuant to sections 110(a)(2)(H) and 110(k)(2) of the CAA.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, it does not have any economic impact on any small entities. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities.

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 Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 2, 1996. 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 rulemaking redesignating the Baltimore CO nonattainment area to attainment, approving the maintenance plan submitted by the Maryland Department of the Environment on September 20, 1995, and approving the CO emissions inventory submitted on March 24, 1994 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control.

Dated: September 29, 1995.
W. Michael McCabe,
Regional Administrator, Region III.

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 V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(117) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(117) The carbon monoxide redesignation request and maintenance plan for the Baltimore Carbon Monoxide nonattainment area, submitted by the Maryland Department of the Environment on September 20, 1995, as part of the Maryland SIP. The emission inventory projections are included in the maintenance plan.

(i) Incorporation by reference.

(A) Letter of September 20, 1995 from the Maryland Department of the Environment requesting the redesignation and submitting the maintenance plan.

(B) The ten year carbon monoxide maintenance plan for the Baltimore

MARYLAND—CARBON MONOXIDE

Carbon Monoxide nonattainment area adopted on August 31, 1995.

(ii) Additional material.

(A) Remainder of September 20, 1995 State submittal.

3. Section 52.1075 is added to read as follows:

§ 52.1075 1990 base year emission inventory for carbon monoxide.

EPA approves as a revision to the Maryland State Implementation Plan the 1990 base year emission inventory for the Baltimore Metropolitan Statistical Area, submitted by the Secretary, Maryland Department of the Environment, on September 20, 1995. This submittal consists of the 1990 base year stationary, area, off-road mobile and on-road mobile emission inventories in the Baltimore Metropolitan Statistical Area for the pollutant, carbon monoxide (CO).

PART 81—[AMENDED]

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

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

Subpart C—Section 107 Attainment Status Designations

2. In § 81.321, the table for “Maryland-Carbon Monoxide” is amended by revising the entry for “Baltimore Area Baltimore City (part) Regional Planning District No. 118” to read as follows:

§ 81.321 Maryland.

* * * * *

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Baltimore Area Baltimore city (part) Regional Planning District No. 118 (generally corresponding to the Central Business District).	[insert date 45 days after publication date].	Attainment	.....	.....
*	*	*	*	*

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

* * * * *
[FR Doc. 95-26959 Filed 10-30-95; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 55

[FRL-5227-3]

Outer Continental Shelf Consistency Update for Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, consistency update.

SUMMARY: EPA is finalizing the update to a portion of the Outer Continental Shelf (“OCS”) Air Regulations. Requirements applying to OCS sources located within 25 miles of states’ seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (“COA”), as mandated by section 328(a)(1) of the Clean Air Act (“the Act”), the Clean Air Act Amendments of 1990, the applicable requirements for certain areas for Air Pollution from OCS Activities. The

portion of the OCS air regulation that is being updated pertains to the requirements for OCS sources for which the State of Florida will be the designated COA. This final action incorporates the requirements contained in “State of Florida Requirements Applicable to OCS Sources” (January 11, 1995).

EFFECTIVE DATE: This action is effective November 30, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal

business hours Monday through Friday at the following locations:

EPA Air Docket, Attn: Docket No. A-93-31, Environmental Protection Agency, 401 M Street, SW., Washington DC 20460, Room M-1500.

EPA Air Docket, Attn: Docket No. A-93-31, Environmental Protection Agency, Region 4 Library, 345 Courtland Street, NE, Atlanta, GA 30365.

FOR FURTHER INFORMATION CONTACT: R. Scott Davis, Air, Pesticides, and Toxics Management Division, U.S. EPA Region 4, 345 Courtland Street, NE, Atlanta, GA 30365. Telephone (404) 347-3555 ext. 4144.

SUPPLEMENTARY INFORMATION:

Background

On April 13, 1995, in 60 FR 18787, EPA proposed to approve the following requirements into the OCS Air Regulations: "State of Florida Requirements Applicable to OCS Sources" (January 11, 1995). These requirements are being promulgated in response to the submittal of a Notice Of Intent, submitted by Chevron U.S.A., Inc., Conoco Inc., and Murphy Exploration & Production Company on February 10, 1995, and represents the second update of part 55 for the State of Florida. EPA has evaluated the above requirements to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS, and that they are applicable to OCS sources (40 CFR 55.1). EPA has also evaluated the rules to ensure they are not arbitrary or capricious (40 CFR 55.12 (e)). In addition, EPA has excluded administrative or procedural rules.

Response to Public Comments

A 30-day public comment period was provided in 60 FR 18787. EPA received one comment from the public. The comment and response is summarized below.

1. Vessel Emissions Considered Direct Emissions From the OCS Source

1-1. Comment: The requirement of Section 328 of the Act that emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source, shall be considered direct emissions from the OCS source requires that certain

indirect sources be treated as direct sources.

Response: In a decision concerning marine vessels in transit among OCS sources, the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued an opinion which responds to Comment 1.1. In *Santa Barbara County Air Pollution Control District v. EPA*, (D.C. Circuit No. 92-1569), the court addresses whether EPA had appropriately addressed marine vessels in the OCS Air Regulations final rule (57 FR 40792, September 4, 1992). In 40 CFR 55.2 of the final rule, the definition of potential emissions states that:

Pursuant to section 328 of the Act, emissions from vessels servicing or associated with an OCS source shall be considered direct emissions from such a source while at the source, and while enroute to or from the source when within 25 miles of the source, and shall be included in the 'potential to emit' for an OCS source.

In the opinion of the Court, the definition in 40 CFR 55.2 was found to be a permissible reading of the statute and the Court agreed with the Agency's interpretation of the statute. It is important to note that the Court upheld EPA's interpretation that vessels were not to be treated in and of themselves as OCS sources, subject to control technology requirements.

EPA Action

In today's notice EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the proposal set forth in the April 13, 1995, notice of proposed rulemaking. EPA is approving the submittal as modified in the proposal under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore.

Administrative Requirements

A. Executive Order 12291 (Regulatory Impact Analysis)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. This exemption continues in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Small entities include small businesses, organizations, and governmental jurisdictions.

As was stated in the final regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final OCS rulemaking dated September 4, 1992, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 35012 *et seq.*, and has assigned OMB control number 2060-0249. This consistency update does not add any further requirements.

List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 16, 1995.

John H. Hankinson, Jr.,
Regional Administrator.

Title 40 of the Code of Federal Regulations, part 55, is to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101-549.

2. Section 55.14 is amended by revising paragraph (e)(6)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *
 (6) * * *
 (i) * * *

(A) State of Florida Requirements
 Applicable to OCS Sources, January 11,
 1995.

* * * * *

3. Appendix A to CFR Part 55 is
 amended by revising paragraph (a)(1)
 under the heading Florida to read as
 follows:

**Appendix A to 40 CFR Part 55—Listing
 of State and Local Requirements
 Incorporated by Reference Into Part 55,
 by State.**

* * * * *

Florida

(a) * * *

(1) The following requirements are
 contained in State of Florida
 Requirements Applicable to OCS
 Sources, January 11, 1995:

Florida Administrative Code—
 Department of Environmental
 Protection. The following sections of
 Chapter 62:

4.001 Scope of Part I (Adopted 8/31/
 88)

4.020 Definitions (Adopted 7/11/93)

4.021 Transferability of Definitions
 (Adopted 8/31/88)

4.030 General Prohibitions (Adopted
 8/31/88)

4.040 Exemptions (Adopted 8/31/88)

4.050 Procedure to Obtain Permit;
 Application, except (4)(b) through
 (4)(l) and 4(r) (Adopted 11/23/94)

4.070 Standards for Issuing or Denying
 Permits; Issuance; Denial (Adopted 3/
 28/91)

4.080 Modification of Permit
 Conditions (Adopted 3/19/90)

4.090 Renewals (Adopted 7/11/93)

4.100 Suspension and Revocation
 (Adopted 8/31/88)

4.110 Financial Responsibility
 (Adopted 8/31/88)

4.120 Transfer of Permits (Adopted 3/
 19/90)

4.130 Plant Operation—Problems
 (Adopted 8/31/88)

4.160 Permit Conditions, except (16)
 and (17) (Adopted 7/11/93)

4.200 Scope of Part II (Adopted 8/31/
 88)

4.210 Construction Permits (Adopted
 8/31/88)

4.220 Operation Permits for New
 Sources (Adopted 8/31/88)

4.510 Scope of Part III (Adopted 8/31/
 88)

4.520 Definitions (Adopted 7/11/93)

4.530 Procedures (Adopted 3/19/90)

4.540 General Conditions for all
 General Permits (Adopted 8/31/88)

210.100 Purpose and Scope (Adopted
 11/23/94)

210.200 Definitions (Adopted 11/23/
 94)

210.300 Permits Required (Adopted
 11/23/94)

210.360 Administrative Permit
 Corrections (Adopted 11/23/94)

210.370 Reports (Adopted 11/23/94)

210.400 Emission Estimates (Adopted
 11/23/94)

210.500 Air Quality Models (Adopted
 11/23/94)

210.550 Stack Height Policy (Adopted
 11/23/94)

210.600 Enhanced Monitoring
 (Adopted 11/23/94)

210.650 Circumvention (Adopted 9/
 25/92)

210.700 Excess Emissions (Adopted
 11/23/94)

210.900 Forms (Adopted 11/23/94)

210.980 Severability (Adopted 9/25/
 92)

212.100 Purpose and Scope (Adopted
 2/2/93)

212.200 Definitions (Adopted 2/2/93)

212.300 Sources Not Subject to
 Prevention of Significant
 Deterioration or Nonattainment
 Requirements (Adopted 9/25/92)

212.400 Prevention of Significant
 Deterioration (Adopted 2/2/93)

212.410 Best Available Control
 Technology (BACT) (Adopted 9/25/
 92)

212.500 New Source Review for
 Nonattainment Areas (Adopted 2/2/
 93)

212.510 Lowest Achievable Emission
 Rate (LAER) (Adopted 9/25/92)

212.600 Source Specific New Source
 Review Requirements (Adopted 9/25/
 92)

212.700 Source Reclassification
 (Adopted 9/25/92)

256.100 Declaration and Intent
 (Adopted 11/30/94)

256.200 Definitions (Adopted 11/30/
 94)

256.300 Prohibitions (Adopted 11/30/
 94)

256.450 Open Burning Allowed
 (Adopted 6/27/91)

256.600 Industrial, Commercial,
 Municipal and Research Open
 Burning (Adopted 8/26/87)

256.700 Open Burning Allowed
 (Adopted 11/30/94)

272.100 Purpose and Scope (Adopted
 11/23/94)

272.200 Definitions (Adopted 11/23/
 94)

272.300 Ambient Air Quality
 Standards (Adopted 11/23/94)

272.500 Maximum Allowable
 Increases (Prevention of Significant
 Deterioration) (Adopted 11/23/94)

272.750 DER Ambient Test Methods
 (Adopted 9/25/92)

273.200 Definitions (Adopted 9/25/92)

273.300 Air Pollution Episodes
 (Adopted 9/25/92)

273.400 Air Alert (Adopted 9/25/92)

273.500 Air Warning (Adopted 9/25/
 92)

273.600 Air Emergency (Adopted 9/
 25/92)

296.100 Purpose and Scope (Adopted
 11/23/94)

296.200 Definitions (Adopted 11/23/
 94)

296.310 General Particulate Emission
 Limiting Standards (Adopted 11/23/
 94)

296.320 General Pollutant Emission
 Limiting Standards, except (2)
 (Adopted 2/2/93)

296.330 Best Available Control
 Technology (BACT) (Adopted 11/23/
 94)

296.400 Specific Emission Limiting
 and Performance Standards (Adopted
 11/23/94)

296.500 Reasonably Available Control
 Technology (RACT)—Volatile Organic
 Compounds (VOC) and Nitrogen
 Oxides (NO_x) Emitting Facilities
 (Adopted 11/23/94)

296.570 Reasonably Available Control
 Technology (RACT)—Requirements
 for Major VOC- and NO_x-Emitting
 Facilities (Adopted 11/23/94)

296.600 Reasonably Available Control
 Technology (RACT)—Lead (Adopted
 8/8/94)

296.601 Lead Processing Operations in
 General (Adopted 8/8/94)

296.700 Reasonably Available Control
 Technology (RACT)—Particulate
 Matter, except (2)(f) (Adopted 11/23/
 94)

296.800 Standards of Performance for
 New Stationary Sources (NSPS)
 (Adopted 11/23/94)

296.810 National Emission Standards
 for Hazardous Air Pollutants
 (NESHAP)—Part 61 (Adopted 11/23/
 94)

296.820 National Emission Standards
 for Hazardous Air Pollutants
 (NESHAP)—Part 63 (Adopted 11/23/
 94)

297.100 Purpose and Scope (Adopted
 11/23/94)

297.200 Definitions (Adopted 11/23/
 94)

297.310 General Test Requirements
 (Adopted 11/23/94)

297.330 Applicable Test Procedures
 (Adopted 11/23/94)

297.340 Frequency of Compliance
 Tests (Adopted 11/23/94)

297.345 Stack Sampling Facilities
 Provided by the Owner of an Air
 Pollution Point Source (Adopted 11/
 23/94)

297.350 Determination of Process
 Variables (Adopted 11/23/94)

297.400 EPA Methods Adopted by
 Reference (Adopted 11/23/94)

- 297.401 EPA Test Procedures (Adopted 11/23/94)
- 297.411 DER Method 1 (Adopted 11/23/94)
- 297.412 DER Method 2 (Adopted 12/2/92)
- 297.413 DER Method 3 (Adopted 12/2/92)
- 297.414 DER Method 4 (Adopted 12/2/92)
- 297.415 DER Method 5 (Adopted 11/23/94)
- 297.416 DER Method 5A (Adopted 12/2/92)
- 297.417 DER Method 6 (Adopted 11/23/94)
- 297.418 DER Method 7 (Adopted 12/2/92)
- 297.419 DER Method 8 (Adopted 12/2/92)
- 297.420 DER Method 9 (Adopted 11/23/94)
- 297.421 DER Method 10 (Adopted 12/2/92)
- 297.422 DER Method 11 (Adopted 12/2/92)
- 297.423 DER Method 12—
Determination of Inorganic Lead Emissions from Stationary Sources (Adopted 11/23/94)
- 297.424 DER Method 13 (Adopted 12/2/92)
- 297.440 Supplementary Test Procedures (Adopted 11/23/94)
- 297.450 EPA VOC Capture Efficiency Test Procedures (Adopted 11/23/94)
- 297.520 EPA Performance Specifications (Adopted 11/23/94)
- 297.570 Test Report (Adopted 11/23/94)
- 297.620 Exceptions and Approval of Alternate Procedures and Requirements (Adopted 11/23/94)

* * * * *

[FR Doc. 95-26584 Filed 10-30-95; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7629]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of

the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646-3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial

assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act
 This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism
 This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform
 This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64
 Flood insurance, Floodplains.
 Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:
 Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]
 2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region V				
Indiana:				
Flora, town of, Carroll County	180021	April 9, 1975 Emerg; November 1, 1995, Reg; November 1, 1995. Susp.	11-01-95	Nov. 1, 1995.
Harrison County, unincorporated areas	180085	March 19, 1975, Emerg; November 1, 1995, Reg; November 1, 1995, Susp.	.....do	Do.
Perry County, unincorporated areas	180195	April 11, 1975, Emerg; November 1, 1995, Reg; November 1, 1995, Susp.	.....do	Do.
Scott County, unincorporated areas	180474	March 5, 1993, Emerg; November 1, 1995, Reg; November 1, 1995, Susp.	.....do	Do.
Vermillion County, unincorporated areas	180449	December 1, 1993, Emerg; November 1, 1995, Reg; November 1, 1995, Susp.	.....do	Do.
Ohio: Trimble, village of, Athens County	390021	March 2, 1977, Emerg; November 1, 1995, Reg; November 1, 1995, Susp.	.....do	Do.
Region I				
Connecticut: Bozrah, town of, New London County.	090094	April 23, 1974, Emerg; September 30, 1981, Reg; November 2, 1995, Susp.	11-02-95	Nov. 2, 1995.
Region II				
New Jersey: South Belmar, borough of, Monmouth County.	340328	July 2, 1974, Emerg; November 28, 1980, Reg; November 2, 1995, Susp.	.....do	Do.
Region III				
Pennsylvania: Jefferson, township of, Greene County.	421672	December 2, 1975, Emerg; September 16, 1981, Reg; November 2, 1995, Susp.	.....do	Do.
Region V				
Illinois: Hampshire, village of, Kane County	170327	January, 14, 1976, Emerg; March 2, 1981, Reg; November 2, 1995, Susp.	.....do	Do.
Indiana:				
Brookville, town of, Franklin County	180069	March 13, 1975, Emerg; November 15, 1984, Reg; November 2, 1995, Susp.	.....do	Do.
Cedar Grove, town of, Franklin County	180304	November 22, 1975, Emerg; August 5, 1986, Reg; November 2, 1995, Susp.	.....do	Do.
Franklin County, unincorporated areas	180068	May 15, 1975, Emerg; September 1, 1988, Reg; November 2, 1995, Susp.	.....do	Do.
Michigan: Montrose, township of, Genesee County.	260399	July 29, 1975, Emerg; July 2, 1980, Reg; November 2, 1995, Susp.	.....do	Do.
Ohio: Napoleon, city of, Henry County	390266	September 30, 1975, Emerg; March 4, 1985, Reg; November 2, 1995, Susp.	.....do	Do.
Wisconsin: Washburn, city of, Bayfield County .	550019	April 30, 1975, Emerg; November 2, 1995, Reg; November 2, 1995, Susp.	.....do	Do.
Region VIII				
Utah: Davis County, unincorporated areas	490038	April 22, 1975 Emerg; March 1, 1982 Reg; November 2, 1995 Susp.	.....do	Nov. 16, 1995.
Region II				
New York:				
Wilmington, town of, Essex County	361161	March 13, 1981 Emerg; July 3, 1985, Reg; November 16, 1995, Susp.	.....do	
Schroon, town of, Essex County	361158	January 27, 1966 Emerg; May 15, 1985, Reg; November 16, 1995, Susp.	.....do	Do.
Region III				
Pennsylvania:				

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Allenport, borough of, Washington County .	420845	March 10, 1975, Emerg; July 16, 1981, Reg; November 16, 1995, Susp.	.....do	Do.
Belle Vernon, borough of, Fayette County .	420457	July 19, 1974, Emerg; July 16, 1981, Reg; November 16, 1995, Susp.	.....do	Do.
Brownsville, borough of, Fayette County	420458	July 9, 1975, Emerg; September 16, 1981, Reg; November 16, 1995, Susp.	.....do	Do.
Brownsville, township of, Fayette County ...	421621	July 9, 1975, Emerg; February 17, 1982, Reg; November 16, 1995, Susp.	.....do	Do.
Marion Center, borough of, Indiana County	420503	September 29, 1975, Emerg; September 1, 1986, Reg; November 16, 1995, Susp.	.....do	Do.
Stroud, township of, Monroe County	420693	May 9, 1973, Emerg; April 15, 1977, Reg; November 16, 1995, Susp.	.....do	Do.
Region V				
Illinois: Mill Creek, village of, Union County	170659	September 6, 1974, Emerg; October 5, 1984, Reg; November 16, 1995, Susp.	10-05-84	Do.
Indiana: Carmel, city of, Hamilton County	180081	August 7, 1975, Emerg; May 19, 1981, Reg; November 16, 1995, Susp.	5-19-81	Do.
Ohio:				
Laurelville, village of, Hocking County	390273	May 14, 1975, Emerg; November 16, 1995, Reg; November 16, 1995, Susp.	11-16-95	Do.
Meigs County, unincorporated areas	390387	February 9, 1977, Emerg; November 16, 1995, Reg; November 16, 1995, Susp.	.....do	Do.
Wisconsin: Clintonville, city of, Waupaca County.	550494	April 2, 1974, Emerg; September 19, 1984, Reg; November 16, 1995, Susp.	.....do	Do.
Region VI				
Louisiana:				
Grant County, unincorporated areas	220076	November 15, 1973, Emerg; December 1, 1978, Reg; November 16, 1995, Susp.	.....do	Do.
New Roads, town of, Pointe Coupee Parish.	220144	November 20, 1970, Emerg; August 13, 1971, Reg; November 16, 1995, Susp.	.....do	Do.
Pointe Coupee Parish, unincorporated areas.	220140	November 6, 1970, Emerg; November 5, 1971, Reg; November 16, 1995, Susp.	.....do	Do.
Oklahoma: Comanche, city of, Comanche County.	400008	March 28, 1980, Emerg; September 27, 1991, Reg; November 16, 1995, Susp.	.....do	Do.

Code for reading third column: Emerg.- Emergency; Reg.- Regular; Rein.- Reinstatement; Susp.- Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")
 Issued: October 26, 1995.
 Robert H. Volland,
Acting Deputy Associate Director, Mitigation Directorate.
 [FR Doc. 95-26957 Filed 10-30-95; 8:45 am]
BILLING CODE 6718-05-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95-100; RM-8635]

Radio Broadcasting Services; Blackstone and Dillwyn, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Denbar Communications, Inc., licensee of Station WBBC(FM), Channel 228A, Blackstone, Virginia,

substitutes Channel 228C3 for Channel 228A at Blackstone, and modifies the license for Station WBBC(FM) to specify the higher powered channel. To accommodate the upgrade at Blackstone, the Commission also substitutes Channel 287A for vacant Channel 229A at Dillwyn, Virginia. See 60 FR 33388, June 28, 1995. Both channels can be allotted to the noted communities in compliance with the Commission's minimum distance separation requirements. Channel 228C3 can be allotted at the site specified in WBBC(FM)'s license. The coordinates for Channel 228C3 are 37-03-14 and 78-01-15. Channel 287A can be substituted for Channel 229A at Dillwyn with a site restriction of 15 kilometers (9.3 miles) northwest. The coordinates for Channel 287A at Dillwyn are 37-35-18 and 78-37-01. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95-100, adopted September 25, 1995, and released September 29, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Channel 228A and adding Channel 228C3 at Blackstone; and by removing Channel 229A and adding Channel 287A at Dillwyn.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95-26979 Filed 10-30-95; 8:45 am]

BILLING CODE 6712-01-F

47 CFR Part 73

[MM Docket No. 94-29; RM-8416]

Radio Broadcasting Services; Willows and Dunnigan, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request Pacific Spanish Network, Inc., and after considering the comments on

the proposal, substitutes Channel 288B1 for Channel 288A at Willows, California, reallocates Channel 288B1 from Willows to Dunnigan, California, and modifies Stations KQSC(FM)'s license to specify Dunnigan as its community of license. See 59 FR 18774 (April 20, 1994). Channel 288B1 can be allotted to Dunnigan in compliance with the Commission's minimum distance separation requirements. The coordinates for Channel 288B1 at Dunnigan are 38-55-34 and 121-54-10. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 8, 1995.

FOR FURTHER INFORMATION CONTACT:

Alan E. Aronowitz, Mass Media Bureau, (202) 776-1653.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94-29, adopted October 11, 1995, and released October 24, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased

from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Dunnigan, Channel 288B1 and removing Willows, Channel 288A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95-26696 Filed 10-30-95; 8:45 am]

BILLING CODE 6712-01-F

Proposed Rules

Federal Register

Vol. 60, No. 210

Tuesday, October 31, 1995

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. AO-205-A7; FV94-982-1]

Filberts/Hazelnuts Grown in Oregon and Washington; Secretary's Decision and Referendum Order on Proposed Further Amendment of Marketing Agreement and Order No. 982

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to Marketing Agreement and Order No. 982 (order). The agreement and order regulate the handling of filberts/hazelnuts grown in Oregon and Washington. The proposals would change order provisions regarding: Volume control; nomination and membership of the Filbert/Hazelnut Marketing Board (Board); assessment collections; and the administration and operation of the program. The proposed amendments were submitted by the Board to make the order more consistent with current industry conditions and needs. The Fruit and Vegetable Division (Division), Agricultural Marketing Service (AMS), is proposing conforming and other necessary changes. These proposed amendments are designed to improve order operations.

DATES: A referendum shall be conducted from November 27 through December 15, 1995. The representative period for the purpose of the referendum herein ordered is July 1, 1994, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1220 SW Third Ave., room 369, Portland, OR 97204; telephone (503) 326-2724, FAX (503) 326-7440; or Tom Tichenor, Marketing Order

Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, D.C. 20090-6456; telephone: 202-720-6862; FAX 202-720-5698.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Public Hearing issued on February 24, 1994, and published in the February 28, 1994, issue of the Federal Register (59 FR 9425). Recommended Decision and Opportunity to File Written Exceptions issued on May 24, 1995, and published in the Federal Register on June 7, 1995 (60 FR 30170).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code, and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

The proposed amendments were formulated on the record of a public hearing held in Newberg, Oregon, on March 8, 1994, to consider the proposed further amendment of the Marketing Agreement and Order No. 984, regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act", and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained several amendment proposals submitted by the Board established under the order to assist in local administration of the program.

The proposals would: (1) Change the name of the commodity covered under the order from "filberts" to "hazelnuts;" (2) for purposes of volume regulation, establish the trade demand area as the continental United States and allow the Board, with the Secretary's approval, to make changes in the inshell trade acquisition distribution area; (3) change the length of Board members' terms of office and the number of consecutive terms that may be held, make changes in the criteria used for nominating handler members and for weighting handler votes when electing handler nominees, and change the voting procedures used for nominating

members; (4) allow Board telephone votes to remain unconfirmed until the next public Board meeting; (5) remove the "verbatim" reporting requirement on Board marketing policy meetings; (6) provide the Board with some flexibility in recommending final free and restricted percentages; (7) authorize different identification standards for inspected and certified hazelnuts; (8) correct current language that specifies handler credit for ungraded hazelnuts; (9) change the procedures for establishing bonding requirements for deferred restricted obligations and allow the Board to purchase excess restricted credits from handlers; (10) clarify that mail order sales outside the production area are not exempt from order requirements; (11) allow the Board to accept advance assessment payments, provide discounts for such payments, and accept voluntary contributions; and (12) make such changes as are necessary to conform with any amendment that may result from the hearing.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on June 7, 1995, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by July 7, 1995. None were filed.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural service firms, which include handlers regulated under this order, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts for the last three years of less than \$5,000,000. Small agricultural producers are defined as those having annual receipts of less than \$500,000.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Interested persons were invited to present evidence at the hearing on the probable impact that the proposed amendments to the order would have on small businesses. The record indicates

that handlers would not be unduly burdened by any additional regulatory requirements, including those pertaining to reporting and recordkeeping, that might result from this proceeding. The record also indicates that a majority of handlers and producers would meet the SBA definitions of small agricultural service firms and small agricultural producers, respectively.

During the 1993-94 marketing year, approximately 25 handlers were regulated under the order. In addition, there were approximately 950 producers of hazelnuts in the production area. The Act requires the application of uniform rules on regulated handlers. Since handlers covered under the order are predominantly small businesses, the order itself is tailored to the size and nature of small businesses. Marketing orders and amendments thereto, are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

For discussion of the anticipated impact on small businesses, the proposed amendments have been grouped into program categories. Amendments concerning the order's marketing and volume control programs would: Change the name of the commodity to "hazelnuts" (§ 982.4 and every other place it appears in part 982); establish the trade demand area as the continental United States and allow the Board to make changes in the shell trade acquisition area, with approval of the Secretary (§ 982.16); provide the Board the flexibility to release up to 15 percent of the average three year inshell trade acquisitions for desirable carryout (§ 982.40); correct the current language that determines handler credit for ungraded hazelnuts (§ 982.51); establish the bonding rate for deferred restricted obligations at the estimated value of restricted credits for the current marketing year and allow the Board to use defaulted bond payments to purchase excess restricted credits (§ 982.54); and clarify that mail order sales are not exempt from order requirements (§ 982.57). These proposed amendments are designed to assist the Board in its domestic and export marketing efforts. The amendments would allow the Board to make program and management decisions that are more consistent with changing market conditions and better respond to changing marketing needs. Because the Board acts in the best interests of the industry, increased Board decision-making flexibility should benefit the

industry and, thus, small businesses in the industry.

Regarding nomination and Board membership, the proposed amendments would: Change from one to two years the length of Board member and alternate member terms of office (§ 982.33); limit the number of consecutive terms members and alternate members may hold to three two-year terms (§ 982.33); and make conforming changes and a correction in the qualifications for nominating members (§§ 982.30 and 982.32). The amendments are proposed to ease the burden of conducting nomination meetings every year and enhance the Board's efficiency. The amendments are administrative in nature and would not impose additional costs on small businesses.

Other recommended amendments to the order's administrative procedures and operations would: Allow Board telephone votes to remain unconfirmed in writing until the next public Board meeting (§ 982.37); remove the "verbatim" reporting requirement on Board marketing policy meetings (§ 982.39); allow the Board to accept advance assessment payments and provide discounts for such payments (§ 982.61); and allow the Board to accept voluntary contributions (new § 982.63). These proposed amendments are intended to improve the operations of the Board, lessen the administrative burden on Board members and staff, and improve management of the order's financial resources. As such, the proposed changes would have negligible, if any, economic impact on small entities.

Finally, one amendment would provide the Board with the authority to establish more up-to-date identification standards (§ 982.46), which would make order identification and certification provisions consistent with current industry practices and enable handlers more flexibility in meeting identification requirements.

All of these changes are designed to enhance the administration and functioning of the order and benefit the entire industry. Any added costs are not expected to be significant because the benefits of the proposed amendments are expected to outweigh the costs. Finally, the proposed amendments would have no significant impact or burden on small businesses' recordkeeping and reporting requirements.

The amendments proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform and are not intended to have retroactive effect. If adopted, the proposed

amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

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

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), any additional reporting and recordkeeping requirements that might result from the proposed amendments would be submitted to the Office of Management and Budget (OMB). The provisions would not be effective until after receiving OMB approval.

Findings and Conclusions and Rulings on Exceptions

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the June 7, 1995, issue of the Federal Register (60 FR 30170) are hereby approved and adopted without change.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Hazelnuts Grown in Oregon and Washington". This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the Federal Register.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400 *et seq.*) to determine whether the issuance of the annexed order amending the order

regulating the handling of hazelnuts grown in Oregon and Washington, is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production for market of hazelnuts grown in Oregon and Washington.

The representative period for the conduct of such referendum is hereby determined to be July 1, 1994, through June 30, 1995.

The agents of the Secretary to conduct such referendum are hereby designated to be Gary D. Olson and Teresa L. Hutchinson, Marketing Order Administration Branch, Northwest Marketing Field Office, 1220 S.W. Third Avenue, Room 369, Portland, Oregon 97204, telephone 503-326-2724; or Tom Tichenor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, D.C. 20090-6456; telephone: 202-720-6862; FAX 202-720-5698.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing Agreements, Nuts, Reporting and recordkeeping requirements.

Dated: October 23, 1995.

Shirley R. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

Order Amending the Order Regulating the Handling of Hazelnuts Grown in Oregon and Washington¹

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. All of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to Marketing Agreement

and Order No. 982 (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of hazelnuts grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(4) All handling of hazelnuts grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce.

Marketing Agreement and Order

Annexed hereto and made a part hereto is the document entitled "Order Amending the Order Regulating the Handling of Hazelnuts Grown in Oregon and Washington". This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the Federal Register.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of hazelnuts grown in Oregon and Washington, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing agreement and the order amending order contained in the Recommended Decision issued by the

Administrator on May 24, 1995, and published in the Federal Register on June 7, 1995, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In part 982 all references to "filbert", "filberts", "filbert/hazelnut", "filberts/hazelnuts" are revised to read as "hazelnut", "hazelnuts", "hazelnut", and "hazelnuts", respectively.

3. Section 982.4 is revised to read as follows:

§ 982.4 Hazelnuts.

Hazelnuts means hazelnuts or filberts produced in the States of Oregon and Washington from trees of the genus *Corylus*.

4. Section 982.16 is revised to read as follows:

§ 982.16 Inshell trade acquisitions.

Inshell trade acquisitions means the quantity of inshell hazelnuts acquired by the trade from all handlers during a marketing year for distribution in the continental United States and such other distribution areas as may be recommended by the Board and established by the Secretary.

5. Section 982.30, is amended by revising paragraphs (a), (b)(1), (b)(2), and (b)(3) to read as follows:

§ 982.30 Establishment and membership.

(a) There is hereby established a Hazelnut Marketing Board consisting of 10 members, each of whom shall have an alternate member, to administer the terms and provisions of this part. Each member and alternate shall meet the same eligibility qualifications. The 10 member positions shall be allocated as follows:

(b) * * *

(1) One member shall be nominated by the handler who handled the largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

(2) One member shall be nominated by the handler who handled the second largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

(3) One member shall be nominated by the handler who handled the third largest volume of hazelnuts during the two marketing years preceding the

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

marketing year in which nominations are made;

* * * * *

6. In § 982.32, paragraphs (a), (b), (c) and (f) are revised to read as follows:

§ 982.32 Initial members and nomination of successor members.

(a) Members and alternate members of the Board serving immediately prior to the effective date of this amended subpart shall continue to serve on the Board until their respective successors have been selected.

(b) Nominations for successor handler members and alternate members specified in § 982.30(b)(1) through (3) shall be made by the largest, second largest, and third largest handler determined according to the tonnage of certified merchantable hazelnuts and, when shelled hazelnut grade and size regulations are in effect, the inshell equivalent of certified shelled hazelnuts (computed to the nearest whole ton) recorded by the Board as handled by each such handler during the two marketing years preceding the marketing year in which nominations are made.

(c) Nominations for successor handler member and alternate handler member positions specified in § 982.30(b)(4) shall be made by the handlers in that category by mail ballot. All votes cast shall be weighted according to the tonnage of certified merchantable hazelnuts and, when shelled hazelnut grade and size regulations are in effect, the inshell equivalent of certified shelled hazelnuts (computed to the nearest whole ton) recorded by the Board as handled by each handler during the two marketing years preceding the marketing year in which nominations are made. If less than one ton is recorded for any such handler, the vote shall be weighted as one ton. Voting will be by position, and each eligible handler can vote for a member and an alternate member. The person receiving the highest number of weighted votes for each position shall be the nominee for that respective position.

* * * * *

(f) Nominations received in the foregoing manner by the Board for all handler and grower member and alternate member positions shall be certified and sent to the Secretary at least 60 days prior to the beginning of each two-year term of office, together with all necessary data and other information deemed by the Board to be pertinent or requested by the Secretary. If nominations are not made within the time and manner specified in this subpart, the Secretary may, without

regard to nominations, select the Board members and alternates on the basis of the representation provided for in this subpart.

* * * * *

7. In § 982.33, paragraph (b) is revised to read as follows:

§ 982.33 Selection and term of office.

* * * * *

(b) *Term of office.* The term of office of Board members and their alternates shall be for two years beginning on July 1 and ending on June 30, but they shall serve until their respective successors are selected and have qualified: *Provided*, That beginning with the 1996-97 marketing year, no member shall serve more than three consecutive two-year terms as member and no alternate member shall serve more than three consecutive two-year terms as alternate unless specifically exempted by the Secretary. Nomination elections for all Board grower and handler member and alternate positions shall be held every two years.

* * * * *

8. In § 982.37, paragraph (b) is revised to read as follows:

§ 982.37 Procedure.

* * * * *

(b) The Board may vote by mail, telephone, telegraph, or other means of communication: *Provided*, That any votes (except mail votes) so cast shall be confirmed at the next regularly scheduled meeting. When any proposition is submitted for voting by any such method, its adoption shall require 10 concurring votes.

* * * * *

9. In § 982.39, paragraph (i) is revised to read as follows:

§ 982.39 Duties.

* * * * *

(i) To furnish to the Secretary a report of the proceedings of each meeting of the Board held for the purpose of making marketing policy recommendations.

§ 982.40 [Amended]

10. In § 982.40, paragraph (c)(2) introductory text is amended by removing the word "shall" in the third sentence and adding in its place the word "may".

11. Section 982.46 is amended by revising paragraph (b) to read as follows:

§ 982.46 Inspection and certification.

* * * * *

(b) All hazelnuts so inspected and certified shall be identified as prescribed by the Board. Such identification shall be affixed to the

hazelnut containers by the handler under direction and supervision of the Board or the Federal-State Inspection Service, and shall not be removed or altered by any person except as directed by the Board.

* * * * *

§ 982.51 [Amended]

12. In § 982.51, paragraph (a) is amended by removing the word "percent" at the end of the first sentence.

13. Section 982.52 is amended by revising paragraph (b) to read as follows:

§ 982.52 Disposition of restricted hazelnuts.

* * * * *

(b) *Export.* Sales of certified merchantable restricted hazelnuts for shipment to destinations outside the continental United States and such other distribution areas as may be recommended by the Board and established by the Secretary shall be made only by the Board. Any handler desiring to export any part or all of that handler's certified merchantable restricted hazelnuts shall deliver to the Board the certified merchantable restricted hazelnuts to be exported, but the Board shall be obligated to sell in export only such quantities for which it may be able to find satisfactory export outlets. Any hazelnuts so delivered for export which the Board is unable to export shall be returned to the handler delivering them. Sales for export shall be made by the Board only on execution of an agreement to prevent exportation into the area designated in § 982.16. A handler may be permitted to act as an agent of the Board, upon such terms and conditions as the Board may specify, in negotiating export sales, and when so acting shall be entitled to receive a selling commission as authorized by the Board. The proceeds of all export sales, after deducting all expenses actually and necessarily incurred, shall be paid to the handler whose certified merchantable restricted hazelnuts are so sold by the Board.

* * * * *

14. Section 982.54 is amended by revising paragraphs (b), (c), (d), (e) and (f) to read as follows:

§ 982.54 Deferment of restricted obligation.

* * * * *

(b) *Bonding requirement.* Such bond or bonds shall, at all times during their effective period, be in such amounts that the aggregate thereof shall be no less than the total bonding value of the handler's deferred restricted obligation. The bonding value shall be the deferred

restricted obligation poundage multiplied by the applicable bonding rate. The cost of such bond or bonds shall be borne by the handler filing same.

(c) *Bonding rate.* Said bonding rate shall be an amount per pound as established by the Board. Such bonding rate shall be based on the estimated value of restricted credits for the current marketing year. Until bonding rates for a marketing year are fixed, the rates in effect for the preceding marketing year shall continue in effect. The Board should make any necessary adjustments once such new rates are fixed.

(d) *Restricted credit purchases.* Any sums collected through default of a handler on the handler's bond shall be used by the Board to purchase restricted credits from handlers, who have such restricted credits in excess of their needs, and are willing to part with them. The Board shall at all times purchase the lowest priced restricted credits offered, and the purchases shall be made from the various handlers as nearly as practicable in proportion to the quantity of their respective offerings of the restricted credits to be purchased.

(e) *Unexpended sums.* Any unexpended sums which have been collected by the Board through default of a handler on the handler's bond, remaining in the possession of the Board at the end of a marketing year, shall be used to reimburse the Board for its expenses, including administrative and other costs incurred in the collection of such sums, and in the purchase of restricted credits as provided in paragraph (d) of this section.

(f) *Transfer of restricted credit purchases.* Restricted credits purchased as provided for in this section shall be turned over to those handlers who have defaulted on their bonds for liquidation of their restricted obligation. The quantity delivered to each handler shall be that quantity represented by sums collected through default.

* * * * *

15. In § 982.57, paragraph (b) is revised to read as follows:

§ 982.57 Exemptions.

* * * * *

(b) *Sales by growers direct to consumers.* Any hazelnut grower may sell hazelnuts of such grower's own production free of the regulatory and assessment provisions of this part if such grower sells such hazelnuts in the area of production directly to end users at such grower's ranch or orchard or at roadside stands and farmers' markets. The Board, with the approval of the Secretary, may establish such rules,

regulations, and safeguards and require such reports, certifications, and other conditions, as are necessary to ensure that such hazelnuts are disposed of only as authorized. Mail order sales are not exempt sales under this part.

16. Section 982.58 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 982.58 Research, promotion, and market development.

(a) * * * The expenses of such projects shall be paid from funds collected pursuant to § 982.61, § 982.63, or credited pursuant to paragraph (b) of this section.

* * * * *

17. Section 982.61 is amended by designating the current text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 982.61 Assessments.

(a) * * *

(b) In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the Board may accept the payment of assessments in advance, and may also borrow money for such purpose. Further, payment discounts may be authorized by the Board upon the approval of the Secretary to handlers making such advance assessment payments.

18. A new § 982.63 is added to read as follows:

§ 982.63 Contributions.

The Board may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 982.58. Furthermore, such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use.

[FR Doc. 95-26788 Filed 10-30-95; 8:45 am]

BILLING CODE 3410-02-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

Meeting Regarding Access Authorization Program Issues

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of open meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) will conduct an open meeting to discuss access

authorization program issues with representatives of the Nuclear Energy Institute (NEI). The NEI requested the meeting to discuss program issues related to licensee implementation of 10 CFR 73.56, "Personnel access authorization requirements for nuclear power plants," and 10 CFR 73.57, "Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information by power reactor licensees." A summary of the meeting will be prepared and will be available upon request.

DATES: The meeting will be held at 10:00 a.m. on November 8, 1995, at NRC Headquarters.

ADDRESSES: One White Flint North, Room 1 F-5, 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Nancy E. Ervin, United States Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001, Telephone (301) 415-2946.

Dated at Rockville, Maryland, this 24th day of October, 1995.

For the Nuclear Regulatory Commission.

Loren L. Bush, Jr.,

Senior Program Manager, Safeguards Branch, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 95-26938 Filed 10-30-95; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-ANE-45]

Airworthiness Directives; Pratt & Whitney JT3D 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) JT3D series turbofan engines. This proposal would require inspection of steel high pressure compressor (HPC) disks for corrosion, recoating or replating those disks, or replacing those disks as necessary. This proposal is prompted by reports of a failure of a PW JT8D steel HPC disk, which is similar in design to the PW JT3D steel HPC disks. The actions specified by the proposed AD are

intended to prevent steel HPC disk failure due to corrosion, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by January 2, 1996.

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-45, 12 New England Executive Park, Burlington, MA 01803-5299.

Comments may be inspected at this location between 8:00 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: Barbara Caufield, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7146, 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-45." 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-45, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

The Federal Aviation Administration (FAA) has received a report of an uncontained failure of a Pratt & Whitney (PW) JT8D steel high pressure compressor (HPC) disk due to corrosion. Investigation revealed that fatigue can originate from a corrosion pit and progress to disk failure. Corrosion is more apt to occur if the steel HPC disk is not recoated or replated during its life span and retains the original production protective coating or plating. This proposed rule, applicable to PW JT3D series turbofan engines, is prompted by the similarity between the PW JT8D and JT3D disk design. This condition, if not corrected, could result in steel HPC disk failure due to corrosion, which could result in an uncontained engine failure and damage to the aircraft.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. A6208, Revision 2, dated July 7, 1995, that describes procedures for inspection of steel HPC disks, stages 10-15, for corrosion, recoating or replating those disks, or replacing those disks as 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 inspection of steel HPC disks, stages 10-15, for corrosion, recoating or replating those disks, or replacing those disks as necessary. Disks have different initial inspection thresholds and repetitive inspection intervals based on the type of coating or plating and the calendar time since new or since last recoating or replating. Pratt & Whitney conducted analytical studies of operator experience. Over 150 PW JT3D and JT8D HPC disks were analyzed for corrosion pit depth, and were correlated with disk history, utilization rates, and coating or plating replacement. The actions would be required to be accomplished in accordance with the ASB described previously.

There are approximately 2,000 engines of the affected design in the worldwide fleet. The FAA estimates that 1,000 engines installed on aircraft of

U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per engine to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$75,000 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$75,960,000 over a 13-year period.

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-45.

Applicability: Pratt & Whitney (PW) Models JT3D-1, -1A, -3, -3B, -3C, -1-MC6,

-1A-MC6, -1-MC7, -1A-MC7, -7, -7A turbofan engines, installed on but not limited to Boeing 707 and 720 series aircraft and McDonnell Douglas DC-8 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 (b) to request approval from the Federal Aviation Administration (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 steel high pressure compressor (HPC) disk failure due to corrosion, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Inspect steel HPC disks, stages 10-15, for corrosion, recoat or replate, or replace as necessary, in accordance with PW Alert Service Bulletin (ASB) No. A6208, Revision 2, dated July 7, 1995, and the following schedule:

(1) For disks coated with PW110 Aluminide (AL), and for disks with unknown coating or plating, as follows:

(i) Initially inspect, recoat or replate, or replace as necessary, 11 years since new or since last recoat or replate, or 24 months after the effective date of this AD, whichever occurs later.

(ii) Thereafter, inspect, recoat or replate, or replace as necessary, at intervals not to exceed 11 years since new or last coating, if AL protective coating is applied, or not to exceed 13 years since new or last plating, if Nickel Cadmium (NI-CAD) plating is applied.

(2) For disks plated with NI-CAD, as follows:

(i) Initially inspect, recoat or replate, or replace as necessary, 13 years since new or since last replate, or 24 months after the effective date of this AD, whichever occurs later.

(ii) Thereafter, inspect, recoat or replate, or replace as necessary, at intervals not to exceed 11 years since new or last coating, if AL protective coating is applied, or not to exceed 13 years since new or last plating, if NI-CAD plating is applied.

(3) For disks with unknown history and unknown coating or plating, as follows:

(i) Initially inspect, recoat or replate, or replace as necessary, 24 months after the effective date of this AD.

(ii) Thereafter, inspect, recoat or replate, or replace as necessary, at intervals not to exceed 11 years since new or last coating, if

AL protective coating is applied, or not to exceed 13 years since new or last plating, if NI-CAD plating is applied.

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

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

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

Issued in Burlington, Massachusetts, on October 18, 1995.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95-26942 Filed 10-30-95; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205-AA89

Wage and Hour Division

29 CFR Part 507

RIN 1215-AA69

Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models

AGENCIES: Employment and Training Administration, Labor; and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This rule is being proposed to obtain comments on certain provisions of the Department's Final Rule implementing provisions of the Immigration and Nationality Act (INA) as it relates to the temporary employment in the Untied States ("U.S.") of nonimmigrants admitted under H-1B visas.

DATES: Public comments are invited. Comments shall be received by November 30, 1995 in order to expedite the Department's ability to provide

additional guidance through issuance of a final rule.

ADDRESSES: Comments may be mailed to John R. Fraser, Deputy Administrator, 200 Constitution Ave., NW., Room S3510, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart H, and 29 CFR part 507, subpart H, contact Flora T. Richardson, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N-4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219-5263 (this is not a toll-free number).

On 20 CFR part 655, subpart I, and 29 CFR part 507, subpart I, contact Thomas Shierling, Office of Enforcement Policy, Immigration Team, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S-3510, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act of 1995

As discussed above, this Proposed Rule is a republication for notice and comment of various provisions published in the Final Rule. It is also proposed that § _____.731(b)(1) be revised to require less recordkeeping than had been required in the Final Rule. Reporting and recordkeeping requirements contained in the regulations have been submitted for review to the Office of Management and Budget under Section 3507(d) of the Paperwork Reduction Act of 1995.

Title: Wage recordkeeping requirements applicable to employers of H-1B nonimmigrants.

Summary: This Proposed Rule requires that employers document an objective actual wage system to be applied to H-1B nonimmigrants and U.S. workers. It also requires that employers keep payroll records for non-FLSA exempt H-1B workers and other employees for the specific employment in question.

Need: The statute requires that the employer pay H-1B nonimmigrants the higher of the actual or prevailing wage. In order to determine whether the employer is paying the required wage, the Department requires an employer to have and document an objective wage system used to determine the wages of non-H-1B workers. The Department also believes that it is essential to require the employer to maintain payroll records for the employer's employees in the specific employment

in question at the place of employment to ensure that H-1B nonimmigrants are being paid at least the actual wage being paid to non-H-1B workers or the prevailing wage, whichever is higher.

Respondents and proposed frequency of response: The Department estimates that approximately 26,480 of the 110,000 employers who file labor condition applications actually employ H-1B nonimmigrants. The Department further estimates that the public burden is approximately 1 hour per employer per year to document the actual wage system for a total burden to the regulated community of 26,480 hours per year.

The payroll recordkeeping requirements are virtually the same as those required by the Fair Labor Standards Act and any burden required is subsumed in OMB Approval No. 1215-0017 for those regulations at 29 CFR Parts 516, except with respect to records of hours worked required to be maintained for H-1B nonimmigrants who are exempt from the FLSA. The Department estimates that the number of employers who are required to keep such hourly records is approximately 2,251. The Department estimates that each employer accounts for approximately 2.45 workers and that the burden to employers to keep hourly records is 2.5 hours per employee per year. Thus, the total burden for keeping hourly records per employer is 6.125 hours per year for a total yearly burden to the regulated community of 13,787 hours per year.

Estimated total annual burden: The Department estimates, based on the figures above, that the total annual burden on the regulated community is 40,267 hours per year.

The public is invited to provide comments on the collection of information requirements of these provisions so the Department may:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses.

Written comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20503.

II. Background

On November 29, 1990, the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) (INA or Act) was amended by the Immigration Act of 1990 (IMMACT), Public Law 101-649, 104 Stat. 4978. On December 12, 1991, the INA was further amended by the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), Public Law 102-232, 105 Stat. 1733. These amendments assign responsibility to the Department of Labor (Department of DOL) for the implementation of several provisions of the Act relating to the entry of certain categories of employment-based immigrants, and to the entry and temporary employment of certain categories of nonimmigrants. One of the provisions of the Act governs the temporary entry of foreign "professionals" to work in "specialty occupations" in the U.S. under H-1B nonimmigrant status. 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184(c).

The H-1B category of specialty occupations consists of those occupations which require the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree (or its equivalent) in the specific specialty as a minimum for entry into the occupation in the U.S. 8 U.S.C. 1184(i)(1). In addition, a nonimmigrant in a specialty occupation must possess full State licensure to practice in the occupation (if required), completion of the required degree, or experience equivalent to the degree and recognition of expertise in the specialty. 8 U.S.C. 1184(i)(2). The category of "fashion model" requires that the nonimmigrant be of distinguished merit and ability. 8 U.S.C. 1101(a)(15)(H)(i)(b).

The rulemaking history, as published in the Federal Register, is as follows:

March 20, 1991, Advance Notice of Proposed Rulemaking, 56 FR 11705.

August 5, 1991, Proposed Rule, 56 FR 37175.

October 22, 1991, Interim Final Rule, 56 FR 54720.

January 13, 1992, Interim Final Rule, 57 FR 1316.

October 6, 1993, Proposed Rule, 58 FR 52152.

December 30, 1993, Interim Final Rule, 58 FR 69226.

December 20, 1994, Final Rule, 59 FR 65646.

January 19, 1995, Final Rule, 60 FR 4028.

September 26, 1995, Notice, 60 FR 49505.

III. Proposed Provisions

The Department hereby republishes and repropose several provisions adopted in the Final Rule (59 FR 65646, December 20, 1994) to provide the regulated community and the public an opportunity to comment on these provisions which were not specifically set forth in this format in the proposed rule. The Department also proposes to make an amendment to § _____.731(b)(1) as it appeared in the Final Rule.

With the exception of the Department's limited enforcement position on the recordkeeping provision of § _____.731(b)(1) (see 60 FR 49505, September 26, 1995), all provisions remain in effect and the issuance of this notice does not affect their enforcement. The Department will carefully consider all comments and will make any appropriate revisions to these provisions.

The preamble explaining each of these provisions in the Final Rule is set forth below for the convenience of the public, with minor modifications where appropriate.

1. Labor Condition Application Filing Dates

(See § _____.730(b).)

Through administration and enforcement of the H-1B program, the Department became aware that some employers were filing labor condition applications for periods of anticipated employment which were well in the future (e.g., one year after the application filing date). This practice poses dangers of abuse and frustrates Congressional intent to protect the jobs and wages of U.S. workers. The prevailing wage, strike/lockout, and notice obligations are based, in large part, upon actions taken and conditions which exist at the time the labor condition application is filed. Therefore, in the Final Rule the Department established a time limit in advance of the beginning date of the period of employment that an employer may file a labor condition application. The Final Rule required and continues to require that a labor condition application can be filed no earlier than 6 months before the beginning date of the period of

employment. Labor condition applications which are received by an ETA regional office more than 6 months prior to the beginning date of the period of employment will be returned to the employer as unacceptable for filing. This procedural change imposes few, if any, additional burdens on employers and facilitates the achievement of the statutory purposes.

2. Actual Wage

(See § _____.731(a)(1) & Appendix A)

As the H-1B program evolved, the Department became aware that inconsistent and perhaps confusing interpretations had, on occasion, been provided in response to public inquiries concerning the Department's enforcement position on the employer's responsibilities under the "actual wage" provisions of the statute and regulation. To rectify any misunderstanding within the regulated community, the Department provided in the Final Rule the following guidance regarding its enforcement policy concerning determination of the actual wage.

In determining the required wage rate, the employer must not only obtain the prevailing wage, but also determine the actual wage for the occupation in which the H-1B nonimmigrant is to be employed by the employer. In establishing its compensation system for workers in an occupational category, of course, an employer may take into consideration objective standards relating to experience, qualifications, education, specific job responsibilities and functions, specialized knowledge, and other legitimate business factors. The use of any or all these factors is at the discretion of the employer. The employer must have and document an objective system used to determine the wages of non-H-1B workers, and apply that system to H-1B nonimmigrants as well. It is not sufficient for the employer simply to calculate an average wage of all non-H-1B employees in an occupation; the "actual wage" is not an "average wage."

The documents explaining the wage system must be maintained in the public disclosure file. The explanation of the compensation system must be sufficiently detailed to enable a third party to apply the system to arrive at the actual wage rate computed by the employer for any H-1B nonimmigrant. The computation of the H-1B nonimmigrant's individual actual wage rate shall be documented in the H-1B nonimmigrant's personnel file.

In the event the employer has not developed and documented an objective system and/or has not calculated the actual wage rate for an H-1B

nonimmigrant, the Administrator—in determining the actual wage rate for enforcement and back wage computation purposes—may need to average the wages of all non-H-1B workers who are employed in the same occupation, rather than make determinations for each individual H-1B nonimmigrant; the employer in such circumstances would be cited for failure to comply with the requirements for determination of the actual wage.

Assuming the actual wage is higher than the prevailing wage and thus is the required wage rate, if an employer gives its employees a raise at year's end, or if the employer's compensation system provides for other adjustments in wages, H-1B nonimmigrants must also receive the adjustment (consistent with legitimate employer-established criteria such as level of performance, attendance, etc.). This is consistent with Congressional intent that H-1B nonimmigrants be provided the same wages as similarly-employed U.S. workers.

Where the employer's pay system or wage scale provides adjustments during the validity period of the labor condition application—e.g., cost-of-living increase or other annual adjustment, increase in the entry-level rate for the occupation due to market forces, or the employee moves into a more advanced level in the same occupation—the employer shall retain documentation explaining the changes and clearly showing that, after such adjustments, the wages paid to the H-1B nonimmigrant are at least the greater of the adjusted actual wage or the prevailing wage for the occupation in the area of intended employment.

3. Validity Period of a SESA Prevailing Wage

(See § _____.731(a)(2)(iii)(A)(I).)

Through administration and enforcement of the H-1B program, the Department became aware of confusion and potential adverse effect on workers' wages in situations in which employers filing LCAs relied on SESA prevailing wage determinations which were obtained on dates considerably earlier than the time of the filing (e.g., six months prior to LCA date). Employers were obtaining prevailing wage rates and holding them indefinitely before using them in conjunction with filing an LCA. The Department concluded that a practicable limit should be set on the use of prevailing wage rates, and that 90 days is a reasonable practicable limit.

In order to alleviate confusion and to better assure the achievement of the Congressional purposes of protecting the wages of U.S. workers, the

Department clarified the regulation to set a deadline for an employer's reliance on a SESA prevailing wage determination. An employer that obtains a SESA prevailing wage determination must file the labor condition application under which that rate will be paid within 90 days from the date of the SESA's determination.

4. Challenges of Prevailing Wage Determinations Only Through Employment Service Complaint System

(See § _____.731(a)(2)(iii)(A)(I), § _____.731(d)(2) and § _____.840(c).)

Section _____.731(a)(2)(iii)(A) lists the State Employment Security Agency (SESA) as one source for obtaining a prevailing wage determination. Although DOL regulations provide an avenue for an employer to challenge an SESA determination through the Employment Service (ES) complaint process (under 20 CFR part 658, subpart E), the Interim Final Rule did not make it sufficiently clear that challenges to SESA prevailing wage determinations were to be made *only* through that process. In designing the program, the Department had envisioned that the ES complaint process would be used for all prevailing wage challenges. However, after substantial enforcement litigation experience, the Department found that some employers were instead attempting to contest such determinations through the hearing provided under § _____.835. These enforcement procedures were not intended to handle such challenges.

The Final Rule provided needed clarification by directing the employer to the ES complaint process and alerting the employer that a challenge of an SESA prevailing wage determination could be made only prior to filing an LCA in which that SESA determination is used. Implicit and essential in this process is the requirement that once an employer obtains a prevailing wage determination from the SESA and files an LCA using such determination without challenging it through the ES complaint process, the employer, in effect, has accepted the determination and waived its right to challenge the determination. Permitting an employer to operate under a SESA prevailing wage determination and later contest it in the course of an investigation or enforcement action is contrary to sound public policy; such a delayed, disruptive challenge would have a harmful effect on U.S. and H-1B employees, competing employers, and other parties who may have received notice of and/or relied on the prevailing wage at issue. Section _____.731(a)(2)(iii)(A) of the Final Rule

explicitly stated the Department's clarification of the use and consequences of the ES complaint process. Challenges to SESA prevailing wage determinations can be made only through the State agency's ES process. See 20 CFR 658.410 *et seq.*

Where the prevailing wage determination is made by the SESA prior to the filing of the LCA, the employer's avenue of appeal is through the ES complaint system, entering the system at the State level. See 20 CFR 658.410 *et seq.* However, where the prevailing wage determination is made by ETA (with or without consultation with the SESA) during the course of a Wage and Hour Division enforcement action, the employer's avenue of appeal also is through the ES complaint system, but the employer enters the system at the ETA regional office level. The employer will be notified where to file any appeal. For purposes of the H-1B program only, this is a collateral change to the ES complaint system regulations, which generally require all complaints to be filed at the SESA level (see 20 CFR 658.420 *et seq.*) and is notwithstanding the provisions of 20 CFR 658.421(a) and 658.426. Similarly, § _____.731(d) provides that, where the employer does not have a valid prevailing wage determination, the Administrator, during the course of an investigation, may obtain a prevailing wage determination from ETA, which, in turn, may consult with the SESA and then determine the appropriate prevailing wage. Some employers also were contesting these ETA prevailing wage determinations at the Wage and Hour enforcement hearing provided under § _____.835. The Department believes that the proper forum for *all* prevailing wage determination challenges—whether the wage determination was obtained by the employer or by the Administrator (where the employer does not have a valid prevailing wage determination)—is the ES complaint process. Once the prevailing wage determination is final, either through the lack of a timely challenge or through the completion of the ES process, the determination will be conclusive for purposes of enforcement. In such cases where the prevailing wage determination is made by ETA at the Administrator's request, any challenge must be initiated at the ETA regional office level within 10 days after the employer receives the ETA prevailing wage determination. Section _____.731(d) was amended in the Final Rule to reflect this clarification.

Finally, § _____.840(c) provides that where the Administrator has found a wage violation based on a prevailing

wage determination obtained by the Administrator from ETA, the Administrative Law Judge (ALJ) in the enforcement proceeding "shall not determine the prevailing wage *de novo*, but shall * * * either accept the wage determination or vacate the wage determination." This provision had been interpreted by some employers as permitting a challenge of prevailing wage determinations obtained by the Administrator for ETA. Section _____.840(c) was not intended to function as a mechanism from such challenges. Accordingly, § _____.840(c) was clarified in the Final Rule to reflect that once the Administrator obtains a prevailing wage determination from ETA and the employer either fails to challenge such determination through the ES complaint process within the specified time of 10 days, or, after such a challenge, the determination is found to be accurate by the ES complaint process, the ALJ must accept the determination as accurate and cannot vacate it. As with other final decisions of the Department, the employer continues to have access to Federal district court if the issues are not satisfactorily resolved.

5. Documentation of the Wage Statement

(See § _____.731(b)(1).)

Section _____.731(b)(1) of the Final Rule requires that, in documenting its compliance with the wage requirements, an employer shall maintain certain documentation, not only for the H-1B nonimmigrant(s), but for "all other employees for the specific employment in question at the place of the employment." In the preamble to the Final Rule, the Department stated that "[t]his information is ordinarily maintained by the employer for purposes of showing compliance with other applicable statutes (e.g., the Fair Labor Standards Act) and will permit the Department to determine whether in fact the required wage has been paid" (59 FR 65654, December 20, 1994).

Upon further consideration, the Department issued a Notice of Enforcement Position (60 FR 49505, September 26, 1995) announcing that, with respect to any additional workers for whom the Final Rule may have applied recordkeeping requirements, the Department would enforce the provision to require the employer to keep only those records which are required by the Fair Labor Standards Act ("FLSA"), 29 CFR part 516. The Department concluded that, in virtually all situations, the records required by the FLSA would include those listed under the H-1B Final Rule.

An amendment is proposed to be made to § _____.731(b)(1)(v). This section requires employers to retain records of hours worked for all employees in the same specific employment as the H-1B nonimmigrant if employees are paid on other than a salary basis or if the actual or prevailing wages are expressed as an hourly wage. The Department finds that it is unnecessary to require employers to retain records of hours worked for FLSA-exempt, similarly employed non-H-1B workers when the employer expresses its actual wage as a salary, even if the prevailing wage is expressed as an hourly wage. Therefore, the Department is proposing to amend § _____.731(b)(1)(v) so that employers are not required to retain records of hours worked for FLSA-exempt, similarly employed non-H-1B workers if the actual wage is expressed as a salary but the prevailing wage is expressed as an hourly rate.

6. Enforcement of Wage Obligation

(See § _____.731(c)(5).)

The Act requires an employer to state that it is offering and will offer the H-1B nonimmigrant, during the period of authorized employment, wages that are at least the required wage rate. The required wage rate is the actual wage rate or the prevailing wage rate, whichever is greater. Furthermore, the employer is required to indicate on the LCA whether an H-1B nonimmigrant will work full-time or part-time. Under the Secretary's statutory authority to implement the Act, the regulations do not authorize an employer to fail to pay the required wage rate. In enforcement proceedings, however, the Department has encountered confusion over an employer's obligations in circumstances where the H-1B nonimmigrant is in a nonproductive status or circumstance.

There is no statutory or regulatory authorization for a reduction in the prescribed wage rate for any H-1B nonimmigrant who is not engaged in productive work for the LCA-filing employer due to employment-related conditions such as training, lack of work, or other such reasons. The H-1B program was not intended and should not operate to provide an avenue for nonimmigrants to enter the U.S. and await work at the employer's choice or convenience, as has been found to be occurring. Compare 8 U.S.C. 1101(a)(15)(H)(iii). Instead, the H-1B program's purpose is to enable employers to temporarily employ fully-qualified workers for whom employment opportunities currently exist. The employer, having attested to the duration and scope of the intended

employment (*i.e.*, beginning and ending dates; full or part-time), controls the nonimmigrant's employment status. The Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) requires that once the H-1B status has been approved for the period specified by the employer, the employer controls the status and work of the H-1B nonimmigrant, who is unable to accept employment elsewhere without a certified labor condition application and approved I-129 petition filed on the worker's behalf by another employer.

For the purpose of DOL administration and enforcement of the H-1B program pursuant to these regulations, an H-1B nonimmigrant is considered to be under the control or employ of the LCA-filing employer from the time of arrival in the United States and throughout the period of his or her employment—regardless of whether the nonimmigrant is in training or other nonproductive status, *unless* during the period employment an H-1B nonimmigrant experiences a period of nonproductive status due to conditions which are unrelated to the employment and render the nonimmigrant unable to work—e.g., maternity leave, automobile accident which temporarily incapacitates the nonimmigrant, caring for an ill relative. In such circumstances where a period of nonproductive status is due to conditions unrelated to employment, the employer shall not be obligated to pay the required wage rate during that period, provided that the INS permits the employee to remain in the U.S. without being paid and provided further that such period is not subject to payment under other statutes such as the Family and Medical Leave Act (29 U.S.C. 2601 *et seq.*) or the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

It is the Department's position that an LCA-filing employer has no prerogative—other than in circumstances described above—but to pay the required wage beginning no later than the day the H-1B nonimmigrant is in the United States under the control and employ of that LCA-filing employer, and continuing throughout the nonimmigrant's period of employment. Any H-1B nonimmigrant to be employed under an LCA in a full-time capacity (the part-time block not having been checked on Item 7(b) of the LCA) shall be guaranteed full-time pay (ordinarily 40 hours' pay) each week, or the weekly equivalent if paid a monthly or annual salary. If an employer's LCA shows "part-time employment," the employer will be required to pay the nonproductive employee for at least the

number of hours to be worked per week indicated on the I-129 petition filed by the employer with the INS. If the employer indicates on the LCA that an employee is to work only part-time and subsequent investigation discloses that, in fact, the employee was working full-time in a majority of the weeks during the period covered by the investigation, the employer will be responsible for full-time pay including during nonproductive periods for which the worker received either no pay or less than the required wage.

7. Notification

(See § _____. 734(a)(1)(ii)(D).)

Section 212(n)(1)(C) of the INA requires that an employer seeking to hire an H-1B nonimmigrant shall notify, at the time of filing the application, the bargaining representative of its employees of the filing of the labor condition application or, if there is no bargaining representative, post notice of filing in conspicuous locations at the place of employment. 8 U.S.C. 1182(n)(1)(C). The interim final regulations at § _____. 730(h)(1) implemented this statutory requirement.

Based on program experience, the Final Rule clarified the regulations to better assure the worker protections which Congress intended the notice requirement to achieve. The Department had become aware that some employers which place H-1B nonimmigrants at new worksites within areas covered by existing LCA's failed to fulfill their LCA obligations, but, because notices were not posted at the new worksites, potentially adversely affected workers were not informed of the LCA conditions or of their own rights to examine certain documents and to file complaints. The Department recognized that it could take the position that an employer wishing to place H-1B nonimmigrants at worksites where notice had not been given could be required to both post a notice *and* file a new LCA before placing H-1B nonimmigrants at a new worksite within an area of intended employment. However, such a two-step requirement appeared to the Department to be burdensome. The protections intended by Congress can be effected by notice posted by the employer at each new worksite within an area of intended employment at the time the H-1B nonimmigrants are sent there to work, without the employer being required to file new LCA's. The Final Rule, therefore, imposed a less burdensome but equally worker-protective standard, by providing that the employer shall post worksite notices on the first day of work by an H-1B nonimmigrant at a

new worksite, which will remain posted for at least ten days.

A clarification of the regulation, based upon program experience, was also made in the Final Rule with regard to the timing of an employer's notice of filing an LCA. The Department became aware of confusion and potential adverse effects in situations in which employers provided the required notice of filing the application to the bargaining representative, or to its employees by posting at the place of employment, considerably in advance of the date the application was filed (*e.g.*, six months prior to filing). In order to alleviate confusion and to better assure the achievement of Congressional intent that U.S. workers who work side-by-side with H-1B nonimmigrants be notified of the employer's intent and their ability to file complaints if they believe violations have occurred, the Final Regulation required that notice, provided by the employer under the fourth labor condition statement, was to be provided on or within 30 days prior to the date the labor condition application is filed.

8. Short-Term Placement of H-1B Nonimmigrants at Worksites Outside the Location(s) Listed on the LCA

(See § _____. 735.)

Until the October 1993 NPRM, the Department had indicated that job contractors would be treated like any other employer under the H-1B program. After obtaining considerable programmatic experience regarding the operations and effects of job contractors using H-1B nonimmigrants, the Department proposed in its NPRM to clarify how LCA's should be completed by job contractors, and proposed to amend the regulations to create certain additional standards for such employers.

In the NPRM, as part of the proposal to develop special procedures for job contractors, the Department defined the term "job contractor" and the proposed requirements to be met, including the general requirement to assure that the information provided on the LCA in Item 7 (occupational information) must pertain to the location(s) (city and State) of any and all worksites where H-1B nonimmigrants would be employed. The Department further proposed that a job contractor filing an LCA must indicate thereon the place of employment at which the H-1B nonimmigrant will actually work (and for which the prevailing wage must be determined) as opposed to the employer's headquarters or other office location, if such location is different from the place of employment. The Department also proposed that, if the

contractor wishes to relocate an H-1B nonimmigrant to work at any location not listed on a certified LCA, a corresponding LCA shall be filed and certified (and the appropriate prevailing wage determined) before any H-1B nonimmigrant may be employed at that location. The NPRM addressed other job contractor matters, such as the contractor's actual wage obligation.

Of the 264 comments received in response to the NPRM, 171 commented on these proposals and 153 (nearly 90%) opposed it—128 of those 153 coming from business commenters. The negative comments related to the concept as a whole or related to a part of it—such as the nationwide actual wage, worksite posting, and place of employment designation on the labor condition application.

Concerns were expressed about an employer's ability to find workers to fill health care needs, especially in the physical therapist occupation. Other commenters expressed concern that the proposed rule would impose special hardships on job contractors, would be onerous, and would be discriminatory. Several commenters suggested that the Department consider a time test methodology, rather than a "job contractor" concept, in identifying the responsibilities of an employer which places H-1B nonimmigrants at worksites owned or controlled by entities other than the employer. Suggestions for the allowable duration of temporary placement ranged from 30 days to 180 days.

Of the comments received in response to the January 13, 1992, Interim Final Rule, concerning the worksite movement of H-1B nonimmigrants, 13 commenters (11 of which were businesses) expressed the view that the initial LCA filing should be sufficient when an H-1B nonimmigrant is transferred between temporary worksites such as branch offices or customer offices. These comments advocated the position that an employer should be able to move H-1B nonimmigrant employees to worksites where the tour of duty would be of a short or temporary nature.

In promulgating the Final Rule, the Department carefully considered the comments concerning the job contractor concept as proposed, and decided based thereupon not to establish special procedures applicable only to those businesses operating as job contractors. Based on the overwhelming weight of the comments and the Department's experience in the program, the Final Rule contained a modification of the proposed rule, consistent with commentors' suggestions, to implement

a "time test" for short-term assignments of H-1B nonimmigrants to worksite(s) outside the area(s) of employment covered by already-certified LCAs, whether the new worksite is another establishment of the employer or is the worksite of another entity (e.g., a customer of a job contractor providing H-1B nonimmigrants or services provided by H-1B nonimmigrants at the customer's location.) The Final Rule is both less burdensome for employers and more protective of workers than was the provision as proposed in the NPRM.

The Department recognizes that it is common practice for employers—not only job contractors, but also other employers which operate in more than one place of employment within the United States—to move employers from one place of employment (worksite) to another for short periods of time in response to business demands. The Final Rule takes into consideration the practical and real world experience of such short-term placement of employees.

The Final Rule applying to all LCA-filing employers includes a 90 workday placement option within a three-year period, beginning with the first work day at any worksite in a new area of intended employment, for an employer who shifts H-1B nonimmigrant workers to any worksite(s) outside the location listed on the employer's already-certified LCA. The 90-day option applies separately for each area of intended employment (e.g., 90 cumulative days for Los Angeles, 90 cumulative days for San Francisco). Under this option an employer may place H-1B nonimmigrant(s) at such worksite(s)—*without filing a new LCA* (and thus without meeting the notice, prevailing wage, and actual wage requirements for such area of intended employment)—provided that the employer complies with three requirements:

1. Unless an LCA has been filed and certified for the new area of intended employment, no H-1B nonimmigrant continues to work at a worksite in such area after 90 cumulative workdays by H-1B nonimmigrants at all worksites within the area (starting with the first day on which any H-1B nonimmigrant worked at any worksite in the area) and the employer makes no further placement of H-1B worker(s) in such area within the three-year period which began with the first day of placement.

2. The H-1B nonimmigrant(s) working in the area is (are) compensated at the required wage rate applicable under the employer's already-certified LCA plus expenses for the other area of employment when placed. The

Department has incorporated the regulations promulgated by the General Services Administration ("GSA") for Federal employees as the basis for such travel expenses as it is unaware of any other universally available source of this information for employers. GSA advises us that the rates are based on surveys of two-star hotels and comparable restaurants. Furthermore, under IRS guidelines, employers are not required to provide receipts for employee travel expenses if the employer has used the Federal per diem rates. (See IRS Rev. Proc. 94-77). Finally, some Federal District Courts have found Federal per diem rates to be a "fair method of compensation." (See *PPG Industries, Inc. v. Celanese Polymer Specialties Co.*, 658 F.Supp. 555 (W.D.Ky. 1987), rev'd on other grounds, 840 F.2d 1565 (Fed. Cir. 1988) and *Arthur S. Langenderfer, Inc. v. S.E. Johnson Co.*, 684 F.Supp. 953 (N.D.Ohio 1988)). Thus, GSA per diem rates are recognized as providing reasonable reimbursement for travel expenses.

3. No H-1B nonimmigrant is placed at a worksite where there is a strike or lockout in the same occupational classification.

Of course, at any time an employer may file a new LCA covering the new area of intended employment (complying with all LCA requirements, including determination of actual and prevailing wage rates as well as notice to employees). This filing can be done in advance of the placement or, if such new LCA is filed and certified after placement and the employer complies with any obligations attendant to the new LCA, the employer could cease payment of per diem and transportation rates. If, at the accumulation of 90 workdays, the employer has H-1B nonimmigrants at any worksite(s) in the new area of intended employment, the employer must have filed and received approval of a new LCA and complied with all requirements attendant to such filing.

This 90 workday placement option does *not* apply to the placement of H-1B nonimmigrants at any new worksite(s) within an area covered by an already-certified LCA filed by the employer. Such worksite(s) would be encompassed within and fully subject to the requirements of that LCA, including prevailing wage and worksite notice(s) (see § c.1.b NOTIFICATION, above, regarding notification at new worksites). The only additional action required for the employer in this circumstance is to post notice for a period of 10 days at the new worksite.

IV. Executive Order 12866

The Department has determined that this Proposed Rule is not an "economically significant regulatory action" within the meaning of Executive Order 12866, in that it will not 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.

V. Regulatory Flexibility Act

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant economic impact on a substantial number of small entities.

Catalog of Federal Domestic Assistance Number

This program is not listed in the *Catalog of Federal Domestic Assistance*.

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Fashion models, Forest and forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

29 CFR Part 507

Administrative practice and procedures, Aliens, Employment, Enforcement, Fashion models, Immigration, Labor, Penalties, Reporting and recordkeeping requirements, Specialty occupation, Wages, Working conditions.

Adoption of the Joint Rule

The agency-specific adoption of the joint rule, which appears at the end of the common preamble, appears below:

Signed at Washington, DC, this 24th day of October, 1995.

Tim Barnicle,

Assistant Secretary for Employment and Training.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Accordingly, certain amendments to part 655 of chapter V of title 20, and part 507 of chapter V of title 29 of the Code of Federal Regulations, as published earlier in the Federal

Register, are republished for comment, and other amendments are proposed, as follows:

TITLE 20—EMPLOYEES' BENEFITS

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The authority citation for Part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m) and (n), 1184, 1188, and 1288(c); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); and 8 CFR 214.2(h)(4)(i).

Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 303(a)(8), Pub. L. 102-232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note).

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

TITLE 29—LABOR

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

Part 507—Enforcement of H-1B Labor Condition Applications

Subparts A, B, C, D, E, F, and G—(Reserved)

2. The authority citation for part 507 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184, and 29 U.S.C. 49 *et seq.*; and Pub. L. 102-232, 105 stat. 1733, 1748 (8 U.S.C. 1182 note).

3. In § _____.730, in paragraph (b), the first sentence is republished as follows:

§ _____.730 **Labor condition application.**
* * * * *

(b) *Where and when should a labor condition application be submitted?* A labor condition application shall be submitted, by U.S. mail, private carrier, or facsimile transmission, to the ETA regional office shown in § _____.720 of this part in whose geographic area of

jurisdiction the H-1B nonimmigrant will be employed no earlier than six months before the beginning date of the period of intended employment shown on the LCA. * * *

* * * * *

4. In § _____.731, paragraph (a)(2)(iii)(A)(I) is republished as follows:

§ _____.731 **The first labor condition statement: wages.**

(a) * * *

(2) * * *

(iii) * * *

(A) * * *

(I) An employer who chooses to utilize a SESA prevailing wage determination shall file the labor condition application not more than 90 days after the date of issuance of such SESA wage determination. Once an employer obtains a prevailing wage determination from the SESA and files an LCA supported by that prevailing wage determination, the employer is deemed to have accepted the prevailing wage determination (both as to the occupational classification and wage) and thereafter may not contest the legitimacy of the prevailing wage determination through the Employment Service complaint system or in an investigation or enforcement action. Prior to filing the LCA, the employer may challenge an SESA prevailing wage determination through the Employment Service complaint system, by filing a complaint with the SESA. See 20 CFR 658.410 through 658.426. Employers which challenge an SESA prevailing wage determination must obtain a final ruling from the Employment Service complaint system prior to filing an LCA based on such determination. In any challenge, the SESA shall not divulge any employer wage data which was collected under the promise of confidentiality.

* * * * *

5. In § _____.731, paragraph (b)(1) is revised to read as follows:

§ _____.731 **The first labor condition statement: wages.**

* * * * *

(b) *Documentation of the wage statement.* (1) The employer shall develop and maintain documentation sufficient to meet its burden of proving the validity of the wage statement required in paragraph (a) of this section and attested to on Form ETA 9035. The documentation shall be made available to DOL upon request. Documentation shall also be made available for public examination to the extent required by § _____.760(a) of this part. The employer shall also document that the

wage rate(s) paid to H-1B nonimmigrant(s) is (are) no less than the required wage rate(s). The documentation shall include information about the employer's wage rate for all other employees for the specific employment in question at the place of employment, beginning with the date the labor condition application was submitted and continuing throughout the period of employment. The records shall be retained for the period of time specified in § _____.760 of this part. The payroll records for each such employee shall include:

- (i) Employee's full name;
- (ii) Employee's home address;
- (iii) Employee's occupation;
- (iv) Employee's rate of pay;
- (v) Hours worked each day and each week by the employee if:
 - (A) The employee is paid on other than a salary basis; or
 - (B) The actual wage is expressed as an hourly rate; or
 - (C) With respect only to H-1B nonimmigrants, the prevailing wage is expressed as an hourly rate.
- (vi) Total additions to or deductions from pay each pay period by employees; and
- (vii) Total wages paid each pay period, date of pay and pay period covered by the payment by employee.

6. In § _____.731, paragraph (c)(5) is republished as follows:

§ _____.731 The first labor condition statement: wages.

* * * * *

(c) * * *
(5)(i) For the purpose of DOL administration and enforcement of the H-1B program, an H-1B nonimmigrant is considered to be under the control or employ of the LCA-filing employer, and therefore shall receive the full wage which the LCA-filing employer is required to pay beginning no later than the first day the H-1B nonimmigrant is in the United States and continuing throughout the nonimmigrant's period of employment. Therefore if the H-1B nonimmigrant is in a nonproductive status for reasons such as training, lack of license, lack of assigned work or any other reason, the employer will be required to pay the salaried employee the full pro-rata amount due, or to pay the hourly-wage employee for a full-time week (40 hours or such other numbers of hours as the employer can demonstrate to be full-time employment for the occupation and area involved) at the required wage for the occupation listed on the LCA. If the employer's LCA carries a designation of "part-time employment," the employer will be

required to pay the nonproductive employee for at least the number of hours indicated on the I-129 petition filed by the employer with the INS. If during a subsequent enforcement action by the Administrator it is determined that an employee designated in the LCA as part-time was in fact working full-time or regularly working more hours than reflected on the I-129 petition, the employer will be held to the factual standard disclosed by the enforcement action.

(ii) If, however, during the period of employment, an H-1B nonimmigrant experiences a period of nonproductive status due to conditions unrelated to employment which render the nonimmigrant unable to work—e.g., maternity leave, automobile accident which temporarily incapacitates the nonimmigrant, caring for an ill relative—then the employer shall not be obligated to pay the required wage rate during that period *provided that* the INS permits the employee to remain in the U.S. without being paid and provided further that such period is not subject to payment under other statutes such as the Family and Medical Leave Act (29 U.S.C. 2601 *et seq.*) or the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

* * * * *

7. In § _____.731, paragraph (d)(2) is republished as follows:

§ _____.731 The first labor condition statement: wages.

* * * * *

(d) * * *
(2) In the event the Administrator obtains a prevailing wage from ETA pursuant to paragraph (d)(1) of this section, the employer may challenge the ETA prevailing wage only through the Employment Service complaint system. See 20 CFR part 658, subpart E. Notwithstanding the provisions of 20 CFR 658.421 and 658.426, the appeal shall be initiated at the ETA regional office level. Such challenge shall be initiated within 10 days after the employer receives ETA's prevailing wage determination from the Administrator. In any challenge to the wage determination, neither ETA nor the SESA shall divulge any employer wage data which was collected under the promise of confidentiality.
(i) Where the employer timely challenges an ETA prevailing wage determination obtained by the Administrator, the 30-day investigative period shall be suspended until the employer obtains a final ruling from the Employment Service complaint system. Upon such final ruling, the investigation and any subsequent enforcement

proceeding shall continue, with ETA's prevailing wage determination serving as the conclusive determination for all purposes.

(ii) Where the employer does not challenge ETA's prevailing wage determination obtained by the Administrator, such determination shall be deemed to have been accepted by the employer as accurate and appropriate (both as to the occupational classification and wage) and thereafter shall not be subject to challenge in a hearing pursuant to § _____.835 of this part.

* * * * *

8. In § _____.734, paragraphs (a)(1)(ii) (C) and (D) are republished as follows:

§ _____.734 The fourth labor condition statement: notice.

(a) * * *
(1) * * *
(ii) * * *

(C) The notices shall be posted on or within 30 days before the date the labor condition application is filed and shall remain posted for a total of 10 days.

(D) Where the employer places any H-1B nonimmigrant(s) at one or more worksites not contemplated at the time of filing the application, but which are within the area of intended employment listed on the LCA, the employer is required to post notice(s) at such worksite(s) on or before the date any H-1B nonimmigrant begins work, which notice shall remain posted for a total of ten days.

* * * * *

9. § _____.735 is republished as follows:

§ _____.735 Special provisions for short-term placement of H-1B nonimmigrants at place(s) of employment outside the area(s) of intended employment listed on labor condition application.

(a) Subject to the conditions specified in paragraph (b) of this section, an employer may place H-1B nonimmigrant(s) at worksite(s) (place(s) of employment) within areas of employment not listed on the employer's labor condition application(s)—whether or not the employer owns or controls such worksite(s)—without filing new labor condition application(s) for the area(s) of intended employment which would encompass such worksite(s).

(b) The following restrictions shall be fully satisfied by an employer which places H-1B nonimmigrant(s) at worksite(s) (place(s) of employment) within areas of employment not listed on the employer's labor condition application(s):

(1) The employer has fully satisfied the requirements of §§ _____.730

through _____.734 of this part with regard to worksite(s) located *within* the area(s) of intended employment listed on the employer's labor condition application(s).

(2) The employer shall not place, assign, lease, or otherwise contract out any H-1B nonimmigrant(s) to any worksite where there is a strike or lockout in the course of a labor dispute in the same occupational classification(s) as the H-1B nonimmigrant(s).

(3) For every day of the H-1B nonimmigrant's(s') placement outside the LCA-listed area of employment, the employer shall pay such worker(s) the required wage (based on the prevailing wage at such worker's(s') permanent work site, or the employer's actual wage, whichever is higher) *plus* per diem and transportation expenses (for both workdays and non-workdays) at rate(s) no lower than the rate(s) prescribed for Federal Government employees on travel or temporary assignment, as set out in 41 CFR Part 301-7 and Ch. 301, App. A.

(4) The employer's placement(s) of H-1B nonimmigrant(s) at any worksite(s) in an area of employment not listed on the employer's labor condition application(s) shall be limited to a cumulative total of ninety workdays within a three-year period, beginning on the first day on which the employer placed an H-1B nonimmigrant at any worksite within such area of employment. For purposes of this section, "workday" shall mean any day on which one or more H-1B nonimmigrants perform any work at any worksite(s) within the area of employment. For example, one "workday" would be counted for a day on which seven H-1B nonimmigrants worked at three worksites within one city, and one "workday" would be counted for a day on which one H-1B nonimmigrant worked at one worksite within a city. The employer may rotate such workers into worksites within such area of employment or may maintain a constant work force. *However*, on the first day after the accumulation of 90 workdays, the employer shall not have any such H-1B nonimmigrant(s) at any worksite(s) within such area of employment not included on a certified LCA.

(c) At the accumulation of the 90 workdays described in paragraph (b)(4) of this section, the employer shall have ended its placement of all H-1B nonimmigrant(s) at any worksite(s) within the area of employment not listed on the labor condition application, *or* shall have filed and received a certified labor condition

application for the area(s) of intended employment encompassing such worksite(s) and performed all actions required in connection with such filing(s) (*e.g.*, determination of the prevailing wage; notice to collective bargaining representative or on-site notice to workers).

(d) At any time during the 90-day period described in paragraph (b)(4) of this section, the employer may file a labor condition application for the area of intended employment encompassing such worksite(s), performing all actions required in connection with such labor condition application. Upon certification of such LCA, the employer's obligation to pay Federal per diem rates to the H-1B nonimmigrant(s) shall terminate. (However, see § _____.731(c)(7)(iii)(C) regarding payment of business expenses for employee's travel on employer's business.)

10. Appendix A to Subpart H—Guidance for Determination of the "Actual Wage" is republished as follows:

Appendix A to Subpart H—Guidance for Determination of the "Actual Wage"

In determining the required wage rate, in addition to obtaining the prevailing wage, the employer must establish the actual wage for the occupation in which the H-1B nonimmigrant is employed by the employer. For purposes of establishing its compensation system for workers in an occupational category, an employer may take into consideration objective standards relating to experience, qualifications, education, specific job responsibility and function, specialized knowledge, and other legitimate business factors. The use of any or all these factors is at the discretion of the employer. The employer must have and document an objective system used to determine the wages of non-H-1B workers, and apply that system to H-1B nonimmigrants as well. It is not sufficient for the employer simply to calculate an average wage of all non-H-1B employees in an occupation; the actual wage is not an "average wage".

The documents explaining the system must be maintained in the public disclosure file. The explanation of the compensation system must be sufficiently detailed to enable a third party to apply the system to arrive at the actual wage rate computed by the employer for any H-1B nonimmigrant. The computation of the H-1B nonimmigrant's individual actual wage rate must be documented in the H-1B nonimmigrant's personnel file.

Assuming the actual wage is higher than the prevailing wage and thus is the required wage rate, if an employer gives its employees a raise at year's end or if the system provides for other adjustments in wages, H-1B nonimmigrants must also be given the raise (consistent with legitimate employer-established criteria such as level of

performance, attendance, *etc.*). This is consistent with Congressional intent that H-1B nonimmigrants and similarly employed U.S. workers be provided the same wages.

Where the employer's pay system or scale provides adjustments during the validity period of the LCA—*e.g.*, cost-of-living increase or other annual adjustments, increase in the entry-level rate for the occupation due to market forces, or the employee moves into a more advanced level in the same occupation—the employer shall retain documentation explaining the changes and clearly showing that, after such adjustments, the wages paid to the H-1B nonimmigrant are at least the greater of the adjusted actual wage or the prevailing wage for the occupation in the area of intended employment.

The following examples illustrate these principles:

(2) Worker A is paid \$10.00 per hour and supervises two employees. Worker B, who is similarly qualified and performs substantially the same job duties except for supervising other employees, is paid \$8.00 per hour because he/she has no supervisory responsibility.

The compensation differential is acceptable because it is based upon a relevant distinction in job duties, responsibilities, and functions: the difference in the supervisory responsibilities of the two employees. The actual wage in this occupation at the worksite for workers with supervisory responsibility is \$10.00 per hour; the actual wage in this occupation at the worksite for workers without supervisory responsibility is \$8.00 per hour.

(2) Systems Analyst A has experience with a particular software which the employer is interested in purchasing, of which none of the employer's current employees have knowledge. The employer buys the software and hires Systems Analyst A on an H-1B visa to train the other employees in its application. The employer pays Systems Analyst A more than its other Systems Analysts who are otherwise similarly qualified.

The compensation differential is acceptable because of the distinction in the specialized knowledge and the job duties of the employees. Systems Analyst A, in addition to the qualifications and duties normally associated with this occupation at the employer's worksite, is also specially knowledgeable and responsible for training the employer's other Systems Analysts in a new software package. As a result, Systems Analyst A commands a higher actual wage. However, if the employer employs other similarly qualified systems analysts who also have unique knowledge and perform similar duties in training other analysts in their area of expertise, the actual wage for Systems Analyst A would have to be at least equivalent to the actual wage paid to such similarly employed analysts.

(3) An employer seeks a scientist to conduct AIDS research in the employer's laboratory. Research Assistants A (a U.S. worker) and B (an H-1B nonimmigrant) both hold Ph.D.'s in the requisite field(s) of study and have the same number of years of experience in AIDS research. However,

Research Assistant A's experience is on the cutting edge of a breakthrough in the field and his/her work history is distinguished by frequent praise and recognition in writing and through awards. Research Assistant B (the nonimmigrant) has a respectable work history but has not conducted research which has been internationally recognized.

Employer pays Research Assistant A \$10,000 per year more than Research Assistant B in recognition of his/her unparalleled expertise and accomplishments. The employer now wants to hire a third Research Assistant on an H-1B visa to participate in the work.

The differential between the salary paid Research Assistant A (the U.S. worker) and Research Assistant B (an H-1B nonimmigrant) is acceptable because it is based upon the specialized knowledge, expertise and experience of Research Assistant A, demonstrated in writing. The employer is not required to pay Research Assistant B the same wage rate as that paid Research Assistant A, even though they may have the same job titles. The actual wage required for the third Research Assistant, to be hired on an H-1B visa, would be the wage paid to Research Assistant B unless he/she has internationally recognized expertise similar to that of Research Assistant A. As set out in § _____.731(1)(A) the employer must have and document the system used in determining the actual wage of H-1B nonimmigrants. The explanation of the system must be such that a third party may use the system to arrive at the actual wage paid the H-1B nonimmigrant.

(4) Employer located in City X seeks experienced mechanical engineers. In City X, the prevailing wage for such engineers is \$49,500 annually. In setting the salaries of U.S. workers, employer pays its nonsupervisory mechanical engineers with 5 to 10 years of experience between \$50,000 and \$75,000 per year, using defined pay scale "steps" tied to experience. Employer hires engineers A, B, and C, who each have five years of experience and similar qualifications and will perform substantially the same nonsupervisory job duties. Engineer A is from Japan, where he/she earns the equivalent of \$80,000 per year. Engineer B is from France and had been earning the equivalent of \$50,000 per year. Engineer C is from India and had been earning the equivalent of \$20,000 per year. Employer pays Engineer A \$80,000 per year, Engineer B \$50,000, and Engineer C \$20,000 as the employer has had a long-established system of maintaining the home-country pay levels of temporary foreign workers.

The INA requires that the employer pay the H-1B nonimmigrant at least the actual wage or the prevailing wage, whichever is greater, but there is no prohibition against paying an H-1B nonimmigrant a greater wage. Therefore, Engineer A may lawfully be paid the \$80,000 per year. Engineer B's salary of \$50,000 is acceptable, since this is the employer's actual wage for an engineer with Engineer B's experience and duties. Engineer C's salary, however, at a rate of \$20,000 per year, is unacceptable under the law, even given the employer's "long-established 'home country' system," since \$20,000 would be below both the actual wage and the

prevailing wage. The latter situation is an example of an illegitimate business factor, *i.e.*, a system to maintain salary parity with peers in the country of origin, which yields a wage below the required wage levels.

11. In § _____.840, paragraph (c) is republished as follows:

§ _____.840 Decision and order of administrative law judge.

* * * * *

(c) In the event that the Administrator's determination(s) of wage violation(s) and computation of back wages are based upon a wage determination obtained by the Administrator from ETA during the investigation (pursuant to § _____.731(d) of this part), and the administrative law judge determines that the Administrator's request was not warranted (under the standards in § _____.731(d) of this part), the administrative law judge shall remand the matter to the Administrator for further proceedings on the issue(s) of the existence of wage violation(s) and/or the amount(s) of back wages owed. If there is no such determination and remand by the administrative law judge, the administrative law judge shall accept such wage determination as accurate. Such wage determination is one made by ETA, from which the employer did not file a timely complaint through the Employment Service complaint system or from which the employer has appealed through the ES complaint system and a final decision therein has been issued. See § _____.731 of this part; see also 20 CFR 658.420 through 658.426. Under no circumstances shall the administrative law judge determine the validity of the wage determination or require source data obtained in confidence by ETA or the SESA, or the names of establishments contacted by ETA or the SESA, to be submitted into evidence or otherwise disclosed.

* * * * *

[FR Doc. 95-26921 Filed 10-30-95; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1309, 1310, and 1313

[DEA-138P]

RIN 1117-AA32

Removal of Exemption for Certain Pseudoephedrine Products Marketed Under the Food, Drug, and Cosmetic Act (FD&C Act)

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to remove the exemption for certain products containing pseudoephedrine (which are lawfully marketed under the Federal Food, Drug, and Cosmetic Act) from the chemical control provisions of the Controlled Substances Act (CSA) and the Controlled Substances Import and Export Act. Due to the large scale utilization of over-the-counter (OTC) pseudoephedrine products for the clandestine manufacture of controlled substances, the DEA has determined that certain products should be subject to recordkeeping, reporting, registration and notification requirements of the CSA to prevent their diversion. Such products include OTC tablets, capsules and powder packets containing pseudoephedrine alone or in combination with antihistamines, quiafenesis or dextromethorphan. This action also proposes that the threshold for pseudoephedrine be reduced to 24.0 grams pseudoephedrine base. Such a threshold is sufficient to permit the purchase of up to a 120 day supply of pseudoephedrine without the application of regulatory requirements.

To further ensure the availability of pseudoephedrine products to legitimate consumers at the retail level, this action also proposes to waive the registration requirement for retail distributors of regulated pseudoephedrine products.

DATES: Written comments and objections must be received by January 2, 1996.

FOR FURTHER INFORMATION CONTACT: Howard McClain Jr., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537. Telephone (202) 307-7183.

SUPPLEMENTARY INFORMATION:

Background

The Chemical Diversion and Trafficking Act (PL 100-690) (CDTA)

amended the Controlled Substances Act and the Controlled Substances Import and Export Act, and was passed by Congress to control the diversion of certain chemicals (herein referred to as listed chemicals) that are necessary for the illicit production of controlled substances. The CDTA and its implementing regulations as set forth in Title 21, Code of Federal Regulations (21 CFR), parts 1310 and 1313, established a system of recordkeeping and reporting requirements through which DEA and the chemical industry could identify persons seeking to divert listed chemicals for the manufacture of illicit drugs. While bulk ephedrine and pseudoephedrine were regulated under the CDTA, ephedrine and pseudoephedrine products which are lawfully marketed or distributed under the Federal Food, Drug, and Cosmetic Act (FD&C Act), were originally exempt from CDTA regulations.

Since 1989, ephedrine has been the primary precursor used in the clandestine synthesis of methamphetamine in the United States. Clandestine laboratory operators have exploited the lack of controls on OTC ephedrine products (such as tablets/capsules) to purchase millions of dosage units for the synthesis of methamphetamine and methcathinone.

The Domestic Chemical Diversion Control Act (DCDCA) of 1993 (Public Law 103-200) became effective on April 16, 1994. This Act further amended the Controlled Substances Act and the Controlled Substances Import and Export Act and removed the exemption for those transactions involving products which are marketed or distributed lawfully in the U.S. under the Federal Food, Drug, and Cosmetic Act, if these products contain ephedrine (or its salts, optical isomers, or salts of optical isomers) as the only active medicinal ingredient or contain ephedrine in combination with therapeutically insignificant quantities of another active medicinal ingredient. Thus single entity ephedrine products became subject to reporting, recordkeeping and notification requirements of the CSA. The DCDCA, however, did not remove the exemption provided for pseudoephedrine OTC products, since the known illicit use of pseudoephedrine was relatively infrequent when the DCDCA was enacted.

The DCDCA also provided the Attorney General with the authority to remove the exemption for any drug product containing a listed chemical upon a determination that the drug product is being diverted for use in the illicit production of a controlled

substance. In addition, the DCDCA imposed registration requirements for List I chemical handlers.

The CDTA established a system of thresholds for each listed chemical to determine which transactions would be subject to regulatory controls. Reporting, recordkeeping and notification requirements apply to all regulated transactions which meet or exceed these threshold amounts of a listed chemical. The threshold for ephedrine was originally established as 1.0 kilogram for domestic, import and export transactions. The threshold of 1.0 kilogram of ephedrine base is equivalent to greater than 48,800 ephedrine 25 mg dosage units. Even though the dosage form exemption was eliminated by the DCDCA, a 1.0 kilogram threshold was not adequate to prevent the significant diversion of ephedrine to clandestine laboratories in the United States.

Given evidence of the large-scale diversion of ephedrine from various types of outlets and the public health threat imposed by the diversion of these products, the DEA determined that additional action was needed to prevent further diversion. Effective November 10, 1994 (59 FR 51365) the DEA eliminated the threshold for ephedrine. Subsequently, all regulated transactions of ephedrine became subject to reporting, recordkeeping and notification requirements of the CSA regardless of size.

In response to regulatory and other actions taken against single-entity ephedrine products, clandestine laboratory operators have again attempted to circumvent CSA chemical controls in an effort to obtain precursor material. The search for unregulated sources of precursor material has led to the diversion and illicit utilization of OTC ephedrine combination products and OTC pseudoephedrine products. The DEA is currently reviewing the regulatory options which address the diversion of OTC ephedrine combination products. This issue will be addressed in the near future.

Pseudoephedrine and ephedrine are related as diastereomers. Because of this structural relationship, pseudoephedrine can serve as a direct substitute for ephedrine in the synthesis of methamphetamine. Clandestine laboratory operators are exploiting the lack of regulatory controls on OTC pseudoephedrine products by obtaining pseudoephedrine for use as precursor material for the synthesis of methamphetamine.

Due to the significant increase in the utilization of pseudoephedrine products for the illicit manufacture of these controlled substances, the DEA Deputy

Administrator has determined that some of these products should be subject to recordkeeping, reporting, registration and notification requirements of the Controlled Substances Act and the Controlled Substances Import and Export Act, in order to prevent their diversion. This action proposes to remove the exemption for certain OTC products containing pseudoephedrine. These pseudoephedrine products shall therefore be subject to regulatory provisions of the CSA.

Removal of Exemption

21 U.S.C. 814(a) provides that the Attorney General may remove from exemption under 21 U.S.C. 802(39)(A)(iv) any drug or group of drugs that the Attorney General finds is being diverted to obtain a listed chemical for use in the illicit production of a controlled substance. 21 U.S.C. 814(b) further provides that in removing the exemption for a drug or group of drugs, the Attorney General shall consider (1) the scope, duration, and significance of the diversion, (2) whether the drug or group of drugs is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and (3) whether the listed chemical can be readily recovered from the drug or group of drugs. A summary analysis of these factors follows.

Methamphetamine is the most prevalent controlled substance clandestinely synthesized in the United States. Between January 1, 1994 and September 15, 1995 the DEA has been involved in the domestic seizure of 453 methamphetamine laboratories. Ephedrine and/or pseudoephedrine were utilized as the precursor material at approximately 85 percent of these laboratories.

Evidence of the illicit utilization of pseudoephedrine in clandestine laboratories is increasing. The identification of OTC pseudoephedrine products at clandestine methamphetamine laboratories increased dramatically in 1995. Pseudoephedrine was utilized in at least 11 percent of the laboratories seized in 1994 and 22 percent in 1995. The DEA and local law enforcement have intercepted and seized millions of pseudoephedrine dosage units from mail order shipments destined for individuals for subsequent use in the illicit manufacture of methamphetamine.

Pseudoephedrine is available in a variety of dosage forms either as single entity products or in combination with one or more other active medicinal ingredients. While the majority of OTC

pseudoephedrine products currently used for the illicit production of methamphetamine are single entity products, some combination products have been identified at clandestine laboratories. The DEA has reviewed the various pseudoephedrine dosage forms and available combinations of ingredients. Some of these products are formulated in such a way that the product itself can be used in the illicit production of methamphetamine; others are formulated in such a way that pseudoephedrine can be readily recovered from the product; and some of these products are formulated in such a way that the manufacture of methamphetamine is impeded. Based on this analysis, the DEA has determined that OTC solid dosage form products (i.e. tablets, capsules and powder packets) lawfully marketed under the Federal Food, Drug, and Cosmetic Act and which contain pseudoephedrine in combination with acetaminophen, aspirin or ibuprofen are formulated in such a way that pseudoephedrine cannot be readily recovered and these products are not easily used as precursors for the illicit production of methamphetamine. In addition, the DEA has determined that OTC liquids, syrups and soft gelatin capsules, which are lawfully marketed under the Food, Drug, and Cosmetic Act and which contain pseudoephedrine either as the sole active ingredient or in combination with other active ingredients, are formulated in such a way that the pseudoephedrine cannot be readily recovered and the products cannot be easily used in the illicit production of methamphetamine.

Thus the DEA is proposing to remove the exemption under 21 CFR 1310.01(f)(1)(iv) for OTC solid dosage form pseudoephedrine products (i.e. tablets, capsules and powder packets) lawfully marketed under the Food, Drug, and Cosmetic Act, which do not contain therapeutically significant quantities of acetaminophen, aspirin or ibuprofen. These products, which include tablets, capsules and powder packets containing pseudoephedrine as the sole active ingredient or in combination with one or more active ingredients such as antihistamines, guaifenesin or dextromethorphan, will be subject to the regulatory requirements of the CSA.

For purposes of this paragraph, the term "therapeutically significant quantities" shall apply if the product formulation (i.e. the qualitative and quantitative composition of active ingredients within the product) is listed in current editions of the American Pharmaceutical Association (APhA)

Handbook of NonPrescription Drugs; Drug Facts and Comparisons (published by Wolters Kluwer Company); or USP DI (published by the authority of the United States Pharmacopeial Convention, Inc.). For drug products having a formulation not found in the above compendiums, the DEA Administrator shall determine, pursuant to a written request as specified in Section 1310.14, whether the active medicinal ingredients are present in quantities considered therapeutically significant for purposes of this paragraph.

The exemption provided under 21 CFR 1310.01(f)(1)(iv) will remain for liquids, syrups, and soft gelatin capsules containing pseudoephedrine and any type of solid dosage form product which contains pseudoephedrine in combination with therapeutically significant quantities of either acetaminophen, aspirin or ibuprofen provided that the product is lawfully marketed under the Food, Drug, and Cosmetic Act. In addition, the proposed regulations allow pseudoephedrine prescription products, regardless of the product formulation, to remain exempt from the proposed regulations, given existing distribution and dispensing requirements already imposed under the Federal Food, Drug and Cosmetic Act.

Pursuant to 21 U.S.C. 814(c), the DEA has considered the evidence of diversion of the above listed pseudoephedrine products, the pattern of diversion of ephedrine products, including combination products and other relevant data, and has determined that the affected group of pseudoephedrine products is limited to that necessary to prevent the diversion of pseudoephedrine products to illicit methamphetamine laboratories.

Revision of Threshold

The current threshold for pseudoephedrine is 1.0 kilogram for domestic, import and export transactions. Even if the exemption for certain OTC pseudoephedrine products is eliminated, a 1.0 kilogram threshold is not adequate to prevent the significant diversion of these pseudoephedrine products to clandestine laboratories. The threshold of 1.0 kilogram of pseudoephedrine base is equivalent to greater than 20,000 pseudoephedrine HCl 60 mg dosage units. Therefore, the DEA proposes to reduce the threshold for pseudoephedrine. In order to ensure that OTC pseudoephedrine products remain available to those individuals who utilize these decongestants for legitimate medical purposes, the DEA proposes to establish the threshold for

pseudoephedrine at a level consistent with personal use. As such, individuals who purchase below-threshold quantities intended for legitimate personal medical use, and retailers who sell below-threshold quantities for use by individuals for legitimate personal medical use, will not be adversely impacted by these regulations.

The Food and Drug Administration (FDA) has established a labeling requirement which sets the maximum adult daily dosage of pseudoephedrine at 60 mg every 6 hours or 240 mg per day. A 120 day supply of pseudoephedrine at the maximum daily recommended dose of 240 mg pseudoephedrine hydrochloride per day is equivalent to 28.8 gm of pseudoephedrine hydrochloride or 23.7 gm pseudoephedrine base. Therefore, the DEA proposes to establish a threshold of 24.0 grams pseudoephedrine base. Such a threshold will allow the purchase and sale of up to 120 day supply of pseudoephedrine for personal legitimate medical use, without the application of regulatory requirements. This will allow continued access to these products for legitimate use.

Waiver of Registration

In an effort to ensure the continued availability of pseudoephedrine products for legitimate personal use at the retail level, the DEA also proposes a waiver from registration for any retail distributor of regulated pseudoephedrine products. The authority for providing a waiver is clearly set forth in 21 U.S.C. Section 822(d) whereby "The Attorney General may, by regulation, waive the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety."

Therefore retail distributors (defined under 21 CFR 1309.02 as selling only personal use quantities to walk-in customers) of regulated pseudoephedrine products would not be required to obtain a DEA registration for such transactions.

As discussed later, it is estimated that there are approximately 750,000 retail distributors of pseudoephedrine in the U.S. Such a waiver would benefit the vast majority of these distributors. Firms engaging in above-threshold transactions of non-exempt pseudoephedrine products, however, would not be retail distributors. Therefore they would be required to obtain a DEA registration as a distributor, maintain records as specified in 21 CFR 1310.04 and report suspicious transactions as specified in

21 CFR 1310.05 notification requirement. In addition, all importers, exporters and other types of distributors of non-exempt pseudoephedrine products would be required to register with the DEA and would be subject to the full regulatory provisions of the Controlled Substances Act and the Controlled Substances Import and Export Act.

The clandestine manufacture and abuse of methamphetamine are serious national public health problems which require Federal action. Companies operating on the fringe of legitimate commerce are supplying these clandestine laboratories. In an effort to minimize the impact of the proposed regulations on the legitimate industry, the DEA has examined various options available.

The DEA is aware of the large scale legitimate use of OTC pseudoephedrine products and their widespread distribution at retail outlets. However, the DEA believes that the registration, recordkeeping, reporting and notification requirements that have been successfully used to limit the diversion of other chemicals to clandestine laboratories are needed to control this problem.

The DEA has determined that approximately 750,000 retail distributors and an undetermined number of other distributors would be impacted if pseudoephedrine products were made subject to the full extent of the CSA chemical regulatory provisions. However, in recognizing the need to limit the regulatory burden on handlers of pseudoephedrine products to the minimum level necessary to prevent the large scale diversion of these products for clandestine use, the DEA has taken significant steps to minimize the burden on the 750,000 retailers who sell these pseudoephedrine products.

First, given the large number of retail distributors who handle these products in the United States, the DEA has proposed that relief be provided by providing a waiver from registration for these distributors. Thus, the proposed regulations primarily impact distributors who are not classified as retail distributors. These distributors include mail-order and wholesale distributors. The DEA has attempted to identify the number of firms which will be impacted by these regulations. This review included consultation with industry associations and other Federal and local government agencies. These entities were only able to identify a limited number of newly affected firms.

Secondly, the DEA has limited controls to a specific group of products which have been demonstrated to be

most readily used for illicit purposes. The DEA believes that this approach provides effective protection against diversion while minimizing the burden on industry. Thirdly, the proposed regulations allow for the purchase and sale of up to a 120 day supply of pseudoephedrine for personal legitimate medical use, without the application of regulatory requirements.

The DEA has consulted with the National Wholesale Druggists Association (NWDA) in an effort to determine the potential size of the impacted industry. According to NWDA sources, there are approximately 750,000 retail distributors in the U.S. which sell over-the-counter pseudoephedrine products.

In addition, the DEA has met with the Nonprescription Drug Manufacturers Association (NDMA) regarding the U.S. pseudoephedrine market and to obtain input on the distribution of pseudoephedrine for legitimate medical use. NDMA has further confirmed that there are approximately 750,000 retail distributors of over-the-counter products in the U.S. NDMA, which stated that its members account for the manufacture of over 90 percent of the over-the-counter drugs marketed domestically, informed DEA that member companies primarily distribute pseudoephedrine in package sizes ranging from 10 to 60 solid dosage units per package. In an effort to reduce the adverse impact upon those who sell and purchase pseudoephedrine products at the retail level, the DEA ensured that the proposed threshold was well above the standard package size manufactured by NDMA members and distributed by retail distributors. The proposed threshold of 24.0 grams pseudoephedrine base is equivalent to 488 pseudoephedrine hydrochloride 60 mg dosage units.

The primary impact of the proposed regulations will be upon those entities not classified as retail distributors. Such entities include mail-order distributors and wholesale distributors. The DEA has attempted to quantify the number of these distributors in the U.S. The NWDA informed the DEA that its 1993 Operating Survey indicated that 70 full-line drug wholesalers (who distribute both prescription and over-the-counter products) distributed nearly 80 percent of the prescription drugs in the U.S. in 1993. These full-line drug wholesalers operated approximately 230 distribution centers. Current information provided by NWDA indicates that due to consolidation within the drug wholesale industry, there are currently only approximately 50 full-line wholesale

distributors supplying this market in the U.S.

These firms are already CSA registrants and as such would not need to obtain a separate registration under the proposed regulations (21 CFR 1309.25). In addition, the impact upon these full-line distributors will be minimized since, pursuant to 1310.06(b), normal business records shall be considered adequate if they contain the information required in 21 CFR 1310.06(a) and are readily retrievable from other business records.

The NWDA was unable to provide estimates of the percentage of the over-the-counter market supplied by these full-line distributors but informed DEA of the existence of other smaller wholesale distributors who only distribute over-the-counter pseudoephedrine products. These wholesale distributors will be impacted by the proposed regulations since they will be required to register with the DEA and ensure that records maintained are adequate to meet the requirements under Section 1310.06.

In addition to contact with the industry associations, the DEA has contacted the National Association of Boards of Pharmacy and individual State Boards of Pharmacy in an attempt to quantify the number of these distributors currently operating in the U.S. which will be impacted by these regulations. The DEA has not been successful in quantifying the number of these firms operating in the U.S. or in finding a professional association which represents these business entities. However, the State of Idaho licenses all business entities which distribute over-the-counter products into or within the state. The Idaho Board of Pharmacy indicated that the majority of the distributors are actually outside of Idaho and that only 418 distributors are licensed to distribute drug products into Idaho.

The DEA has attempted to limit the regulatory burden on pseudoephedrine handlers. The proposed regulations include provisions which ensure that the 750,000 retailers of pseudoephedrine will not be adversely impacted. These 750,000 retail distributors will not be required to register or maintain records unless they engage in transactions of a limited group of pseudoephedrine products in quantities which exceed a 120 day supply. Therefore the vast majority of retail distributors will not be impacted by these regulations.

While other types of distributors will be subject to the proposed regulatory controls, the DEA (in consultation with industry associations and other

government agencies) has been able to identify only a limited number of these newly affected firms. The DEA welcomes any information regarding the number of entities affected.

The Attorney General has delegated authority under the CSA and all subsequent amendments to the CSA to the Administrator of the DEA (28 CFR 0.100). The Administrator, in turn, has redelegated this authority to the Deputy Administrator pursuant to 28 CFR 0.104.

The Deputy Administrator has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

This proposed rule has been reviewed pursuant to the principles of Executive Order 12866. It has been determined that the proposed rule is not significant regulatory action and therefore has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

This proposed action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, Security measures, List I and List II chemicals.

21 CFR Part 1310

Drug traffic control, Reporting and recordkeeping requirements, List I and List II chemicals.

21 CFR Part 1313

Drug traffic control, Imports, Exports, Transshipment and in-transit shipments, List I and List II chemicals.

For reasons as set out above, 21 CFR Parts 1309, 1310 and 1313 are proposed to be amended as follows:

PART 1309—[AMENDED]

1. The authority citation for Part 1309 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

2. Section 1309 is proposed to be amended by adding a new paragraph 1309.28 to read as follows:

§ 1309.28 Exemption of retail distributors of certain pseudoephedrine products.

The requirement of registration is waived for any retail distributor, for the distribution of any product containing

pseudoephedrine that is regulated pursuant to Section 1310.01(f)(1)(iv)(A)(2). The term retail distributor, as defined in Section 1309.02(g), means a distributor whose List I chemical activities are restricted to the sale of drug products that are regulated as List I chemicals pursuant to Section 1310.01(f)(1)(iv), directly to walk-in customers for personal use. For purposes of this paragraph, sale for personal use means the sale of below-threshold quantities in a single transaction to an individual for legitimate medical use. (The threshold of 24.0 grams pseudoephedrine base is equivalent to 488 pseudoephedrine hydrochloride 60 mg dosage units.)

3. Section 1309.71 is proposed to be amended by revising paragraph (a)(2) to read as follows:

§ 1309.71 General security requirements.

* * * * *

(a) * * *

(2) In retail settings open to the public where drugs containing List I chemicals that are regulated pursuant to Section 1310.01(f)(1)(iv)(A)(1) are distributed, such drugs will be stocked behind a counter where only employees have access.

* * * * *

PART 1310—[AMENDED]

1. The authority citation for Part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.01 is proposed to be amended by revising paragraph (f)(1)(iv)(A) to read as follows:

§ 1310.01 Definitions.

* * * * *

(f) * * *

(1) * * *

(iv) * * *

(A)(I) The drug contains ephedrine or its salts, optical isomers, or salts of optical isomers as the only active medicinal ingredient or contains ephedrine or its salts, optical isomers, or salts of optical isomers and therapeutically insignificant quantities of another active medicinal ingredient. For purposes of this paragraph, the term "therapeutically insignificant quantities" shall apply if the product formulation (i.e., the qualitative and quantitative composition of active ingredients within the product) is not listed in current editions of the American Pharmaceutical Association (APhA) Handbook of NonPrescription Drugs; Drug Facts and Comparisons (published by Wolters Kluwer Company); or USP DI (published by the authority of the United States

Pharmacopeial Convention, Inc.); or the product is not listed in Section 1310.15 as an exempt drug product. For drug products having formulations not found in the above compendiums, the Administrator shall determine, pursuant to a written request as specified in Section 1310.14, whether the active medicinal ingredients are present in quantities considered therapeutically significant for purposes of this paragraph; or

(2) The drug is an over-the-counter (OTC) solid dosage form product (tablet, capsule or powder packet) which contains pseudoephedrine or its salts, optical isomers, or salts of optical isomers but does not contain either acetaminophen, aspirin or ibuprofen in therapeutically significant quantities. For purposes of this paragraph, the quantities of either acetaminophen, aspirin or ibuprofen present in a pseudoephedrine drug product shall be considered to be present in "therapeutically significant quantities" if the product formulation (i.e. the qualitative and quantitative composition of active ingredients within the product) is listed in current editions of the American Pharmaceutical Association (APhA) Handbook of NonPrescription Drugs; Drug Facts and Comparisons (published by Wolters Kluwer Company); or USP DI (published by the authority of the United States Pharmacopeial Convention, Inc.); or the product is listed in Section 1310.15 as an exempt drug product. For drug products having a formulation not found in the above compendiums, the Administrator shall determine, pursuant to a written request as specified in Section 1310.14, whether the active medicinal ingredients (acetaminophen, aspirin or ibuprofen) are present in quantities considered therapeutically significant for purposes of this paragraph; or

* * * * *

3. Section 1310.04 is proposed to be amended by revising paragraph (f)(1)(x) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(f) * * *

(1) List I Chemicals:

Chemical	Threshold by base weight
(x) Pseudoephedrine, its salts, optical isomers and salts of optical isomers.	24 grams.

* * * * *

4. Section 1310.14 is proposed to be amended by revising the heading and by revising paragraph (a) to read as follows:

§ 1310.14 Exemption of certain ephedrine or pseudoephedrine combination drug products.

(a) Any manufacturer of a drug product containing ephedrine in combination with another active medicinal ingredient, the product formulation of which is not listed in the compendiums set forth in Section 1310.01(f)(1)(iv)(A)(1), or any manufacturer of a drug product containing pseudoephedrine in combination with acetaminophen, aspirin or ibuprofen, the product formulation of which is not listed in the compendiums set forth in Section 1310.01(f)(1)(iv)(A)(2), may request that the Administrator exempt the product as one which contains ephedrine together with therapeutically significant quantities of the other active medicinal ingredients or pseudoephedrine in combination with therapeutically significant quantities of acetaminophen, aspirin or ibuprofen.

* * * * *

5. Section 1310.15 is proposed to be amended by revising the heading, by revising paragraph (a), and by revising paragraph (d) to read as follows:

§ 1310.15 Exempt combination drug products containing ephedrine or pseudoephedrine.

(a) The drug products containing ephedrine in combination with therapeutically significant quantities of another active medicinal ingredient, or pseudoephedrine in combination with therapeutically significant quantities of acetaminophen, aspirin, or ibuprofen; listed in paragraph (e) of this section, have been exempted by the Administrator from application of sections 302, 303, 310, 1007, and 1008 of the Act (21 U.S.C. 822-3, 830, and 957-8) to the extent described in paragraphs (b), (c), and (d) of this section.

* * * * *

(d) In addition to the drug products listed in the compendium set forth in Section 1310.01(f)(1)(iv)(A)(1) and 1310.01(f)(1)(iv)(A)(2), the following drug products, in the form and quantity listed in the application submitted (indicated as the "date") are designated as exempt drug products for the purposes set forth in this section:

EXEMPT DRUG PRODUCTS CONTAINING EPHEDRINE IN COMBINATION WITH THERAPEUTICALLY SIGNIFICANT QUANTITIES OF ANOTHER ACTIVE MEDICINAL INGREDIENT AND EXEMPT DRUG PRODUCTS CONTAINING PSEUDOEPHEDRINE IN COMBINATION WITH THERAPEUTICALLY SIGNIFICANT QUANTITIES OF ACETAMINOPHEN, ASPIRIN OR IBUPROFEN

Supplier	Product name	Form	Date
[Reserved]

PART 1313—[AMENDED]

1. The authority citation for Part 1313 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b), 971.

2. Section 1313.02 is proposed to be amended by revising paragraph (d)(1)(iv)(A) to read as follows:

§ 1313.02 Definitions.

* * * * *

(d) * * *

(1) * * *

(iv) * * *

(A)(1) The drug contains ephedrine or its salts, optical isomers, or salts of optical isomers as the only active medicinal ingredient or contains ephedrine or its salts, optical isomers, or salts of optical isomers and therapeutically insignificant quantities of another active medicinal ingredient. For purposes of this paragraph, the term "therapeutically insignificant quantities" shall apply if the product formulation (i.e. the qualitative and quantitative composition of active ingredients within the product) is not listed in current editions of the American Pharmaceutical Association (APhA) Handbook of NonPrescription Drugs; Drug Facts and Comparisons (published by Wolters Kluwer Company); or USP DI (published by the authority of the United States Pharmacopeial Convention, Inc.); or the product is not listed in Section 1310.15 as an exempt drug product. For drug products having formulations not found in the above compendiums, the Administrator shall determine, pursuant to a written request as specified in Section 1310.14, whether the active medicinal ingredients are present in quantities considered therapeutically significant for purposes of this paragraph; or

(2) The drug is an over-the-counter (OTC) solid dosage form product (tablet, capsule or powder packet) which contains pseudoephedrine or its salts,

optical isomers, or salts of optical isomers, but does not contain either acetaminophen, aspirin or ibuprofen in therapeutically significant quantities. For purposes of this paragraph, the quantities of either acetaminophen, aspirin or ibuprofen present in a pseudoephedrine drug product shall be considered to be present in "therapeutically significant quantities" if the product formulation (i.e. the qualitative and quantitative composition of the active ingredients within the product) is listed in current editions of the American Pharmaceutical Association (APhA) Handbook of NonPrescription Drugs; Drug Facts and Comparisons (published by Wolters Kluwer Company); or USP DI (published by the authority of the United States Pharmacopeial Convention, Inc.); or the product is listed in Section 1310.15 as an exempt drug product. For drug products having a formulation not found in the above compendiums, the Administrator shall determine, pursuant to a written request as specified in Section 1310.14, whether the active medicinal ingredients (acetaminophen, aspirin or ibuprofen) are present in quantities considered therapeutically significant for purposes of this paragraph; or

Dated: October 25, 1995.

Stephen H. Greene,
Deputy Administrator.
[FR Doc. 95-26890 Filed 10-30-95; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 14, 18, and 75

RIN 1219-AA92

Requirements for Approval of Flame-Resistant Conveyor Belts

AGENCY: Mine Safety and Health Administration, Labor.
ACTION: Proposed rule; reopening of the record; request for public comment.

SUMMARY: The Mine Safety and Health Administration (MSHA) is reopening the rulemaking record to receive additional test data, technical information, and further comment on proposed revisions to its regulations for the approval of flame-resistant conveyor belts for use in underground coal mines. After the close of the public record, some commenters indicated to MSHA that they had obtained or would be obtaining flame test data and technical

information which MSHA should review and evaluate. This new information is relevant to MSHA's proposed rule and the Agency's technical assessment of other flammability test data. Also, MSHA has placed the Agency's response to questions from certain commenters in the rulemaking record for public review.

DATES: Written material and comments must be submitted by December 15, 1995.

ADDRESSES: Send written comments to MSHA; Office of Standards, Regulations, and Variances; 4015 Wilson Boulevard, Room 631; Arlington, VA 22203. Commenters are encouraged to submit comments on a computer disk along with a hard copy.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director; Office of Standards, Regulations, and Variances; 703-235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

On December 24, 1992, MSHA published a proposed rule (57 FR 61524) to implement new procedures and requirements for testing and approval of flame-resistant conveyor belts and requirements for their use in underground coal mines. The proposed revision would replace the existing flame test for acceptance of flame-resistant belts specified in Agency regulations. The comment period on the proposed rule closed on March 26, 1993. Several commenters requested that the Agency hold a public hearing on its proposal. The comment period on the proposed rule was reopened until April 21, 1995, and on May 2, 1995, MSHA held a public hearing in Washington, PA (60 FR 16589, March 31, 1995). The post-hearing comment period closed on June 5, 1995.

II. Issues

Following the close of the post-hearing comment period, a manufacturer indicated that additional flammability testing of conveyor belts was scheduled using the Factory Mutual conveyor belt flammability test (FM test) and invited MSHA to witness that testing. To avoid participation in testing where all parties to the rulemaking were not invited, and because the record was closed, MSHA neither witnessed these tests nor received the results of this testing. Another manufacturer also requested that MSHA accept additional flammability test data generated from the FM test that were not available during the comment period.

Also, in the comments submitted during the post hearing comment

period, the United Mine Workers of America (UMWA) and the Bituminous Coal Operators' Association (BCOA) jointly submitted 10 questions to MSHA. MSHA's response is being placed in the rulemaking record and is available to the public from MSHA, Office of Standards, Regulations, and Variances.

MSHA is reopening the record for 45 days to provide all interested parties an opportunity to review the record and to submit additional data, test results, and technical information. MSHA encourages all interested parties to submit comments prior to the close of the record.

Dated: October 18, 1995.
J. Davitt McAteer,
Assistant Secretary for Mine Safety and Health.
[FR Doc. 95-26373 Filed 10-24-95; 8:45 am]
BILLING CODE 4510-43-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-5296-6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Connecticut

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 Connecticut to redesignate the Hartford/New Britain/Middletown area from nonattainment to attainment for carbon monoxide (CO). Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data is available to warrant such revisions.

In addition, EPA is approving two related State Implementation Plan (SIP) submissions by Connecticut DEP. On January 12, 1993, Connecticut DEP submitted a final 1990 base year emission inventory for CO emissions, which includes emissions data for all sources of CO in Connecticut's two CO nonattainment areas (the Hartford/New Britain/Middletown area and the Connecticut portion of the New York/New Jersey/Connecticut Consolidated Metropolitan Statistical Area (CMSA). On January 12, 1993, January 14, 1993, September 30, 1994 and August 1, 1995, Connecticut DEP submitted an

oxygenated fuel program and revisions for both CO nonattainment areas.

In the Final Rules Section of this Federal Register, EPA is approving the CO emissions inventory for both areas and the oxygenated fuels program only as it applies to the Hartford/New Britain/Middletown nonattainment area as a direct final rule. In addition, EPA is also approving Connecticut's redesignation, as a direct final rule without prior proposal. A detailed rationale for the action is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be submitted by November 30, 1995.

ADDRESSES: Written comments should be sent to Damien Houlihan, at the EPA Regional Office listed below. Copies of the redesignation request and the State of Connecticut's submittal are available for public review during normal business hours at the addresses listed below.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and; Environmental Protection Agency, One Congress Street, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Damien Houlihan of the EPA Region I Air, Pesticides and Toxics Management Division at (617) 565-3266.

Dated: August 31, 1995.
John P. DeVillars,
Regional Administrator, Region I.
[FR Doc. 95-26962 Filed 10-30-95; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 52

[CA 162-1-7250b; FRL-5321-2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concerns the control of volatile organic compound (VOC) emissions from graphic arts and wood products coating operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by November 30, 1995.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also 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 95105.

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 95812-2815.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765-4812.

FOR FURTHER INFORMATION CONTACT: Daniel A. Meer, Chief Rulemaking Section (A-5-3), Air and Toxics

Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1185.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District's Rules 1130, Graphic Arts and 1136, Wood Products Coating, submitted by the California Air Resources Board on October 13, 1995. For further information please see the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

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

Dated: October 19, 1995.

John Wise,

Acting Regional Administrator.

[FR Doc. 95-26885 Filed 10-30-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[CA 79-3-7211; AD-FRL-5322-1]

Clean Air Act Approval and Promulgation of New Source Review Implementation Plan for Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes to approve with a contingency, and disapprove in the alternative, Mojave Desert Air Quality Management District (MDAQMD) rules 1301, 1302, 1304, 1305, 1306, 1307, 1308, 1310, 1311, and 1312 (submitted rules) as a revision to the California State Implementation Plan (SIP). The State of California has submitted these rules for the purpose of meeting the new source review (NSR) requirements of the Clean Air Act, as amended in 1990 (CAA or the Act) for areas that have not attained the national ambient air quality standards (NAAQS). The submitted rules contain a number of deficiencies that prevent EPA from approving them as revisions to the SIP. However, MDAQMD has agreed to correct these deficiencies, and has sent draft rules (Initial Draft 3, 10/11/95—hereafter: "proposed revisions") to EPA which contain acceptable language. This proposed approval is therefore contingent upon MDAQMD adopting and submitting to EPA revised rules which correct the deficiencies identified in this document before EPA promulgates a final rulemaking on the submitted rules. Should MDAQMD fail to adopt and submit its proposed revisions, then this document will serve as a proposed disapproval of the

submitted rules. If the District adopts and submits rules which differ substantially from those contained in its proposed revisions, then EPA will publish an additional notice of proposed rulemaking for public review and comment.

DATES: Comments on this proposed action must be received in writing by November 30, 1995.

ADDRESSES: To submit comments or receive additional information, please contact: Steve Ringer, Environmental Engineer, Air & Toxics Division (A-5-1), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Copies of MDAQMD's submittal and other information are available for inspection during normal business hours at the following locations: (1) EPA Region 9, 75 Hawthorne Street, San Francisco, CA; (2) Mojave Desert AQMD, 15428 Civic Drive, Suite 200, Victorville, CA 92932; (3) Air Resources Board, 2020 "L" Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Steve Ringer at (415) 744-1260.

SUPPLEMENTARY INFORMATION: The air quality planning requirements for nonattainment NSR are set out in Part D of Title I of the Act. EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion. EPA is currently developing proposed regulations to implement the changes under the 1990 Amendments in the NSR provisions in Parts C and D of Title I of the Act. EPA expects to propose these regulations sometime during 1995 or 1996. Upon promulgation of these regulations, EPA will review those NSR SIP submittals on which it has taken final action to determine whether additional SIP revisions are necessary.

Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act provide that each implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall

meet the applicable provisions of Section 110(a)(2).

The MDAQMD Governing Board held a public hearing on September 22, 1993 to entertain public comment on the NSR implementation plan. The plan was adopted by the State and submitted to EPA on March 29, 1994 as a proposed revision to the SIP.

The SIP revision was not reviewed by EPA within six months to determine completeness, and was therefore deemed complete by default. The submittal has since been reviewed and found to be complete but lacking certain requirements that would make it fully approvable. However, as noted above, MDAQMD has agreed to make the required changes and has submitted draft versions of its rules which address the deficiencies described below. Therefore, contingent on the submittal of a fully approvable SIP in the form of approved rules consistent with the revised rules, EPA proposes to approve the MDAQMD's nonattainment NSR SIP submittal. If the District fails to correct the deficiencies in the submitted rules, then EPA's final action will be a disapproval. If the District adopts and submits rules which differ substantially from those contained in its proposed revisions, then EPA will publish an additional notice of proposed rulemaking for public review and comment.

Summary of Rule Contents

MDAQMD submitted to EPA for adoption into the applicable NSR SIP Rules 1301, 1302, 1304, 1305, 1306, 1307, 1308, 1310, 1311, and 1312. These submitted rules constitute MDAQMD's new source permitting regulations. Rule 1301 outlines the general requirements for preconstruction review of permit applications. Rule 1302 defines terms relating to new sources and modifications to existing sources of air pollution, and their regulation. Rule 1304 allows an exemption from NSR for a change of ownership. Rule 1305 describes the procedures for submittal and review of permit modifications. Rule 1306 outlines calculation methods for emissions increases and decreases, and for offset requirements. Rule 1307 contains a description of which new and modified sources require offsets. Rule 1308 outlines which sources are eligible to create offsets. Rule 1310 describes District requirements for completeness determinations, final action and public notice on a permit submittal. Rule 1311 outlines the requirements for electrical energy generating facilities. Rule 1312 contains an alternative siting analysis requirement for major new sources and

modifications. The submitted rules are intended to replace the existing rules 1301 through 1313, which were adopted into the San Bernardino SIP by EPA on June 9, 1982. MDAQMD has adopted these new regulations in part to meet the 1990 CAA Amendments and the November 15, 1992 deadline for submittal. A summary of the changes between the current SIP and the submitted rules is contained in the Technical Support Document (TSD) for this action.

MDAQMD is currently designated as attainment or unclassifiable for CO, NO₂, Pb, and SO₂, and moderate nonattainment for PM₁₀. In addition, part of the MDAQMD is designated severe nonattainment for ozone [40 CFR 81.305]. The CAA requirements for nonattainment NSR permitting are found at sections 172 and 173. With certain exceptions, described below, MDAQMD's submittal satisfies these requirements. For a detailed description of how the submitted rules and MDAQMD's proposed revisions meet the CAA requirements, refer to EPA's TSD.

Rule Deficiencies Requiring Correction

Below is a list of the deficiencies which must be corrected for EPA to approve MDAQMD's NSR rules into the SIP.

Rule 1302

Actual Emissions

The definition of "Actual Emissions" in the submitted rules should require that emissions calculations reflect actual production rates, the actual amount of fuel burned, actual amounts of material processed, and the actual hours of operation over the two years prior to such a determination. Emission factors should be established by source testing or obtained from a reliable source of emission factor data such as EPA's AP-42.

Major Modification

The submitted rules do not contain this definition. Although the submitted definition of "Modification" contains much of the language from the definition of a major modification in 40 CFR 51.165(a)(1)(v), the District must define a "Major Modification" as any modification that results in a significant net emissions increase.

Modification

The definition of "Modification" in the submitted rules differs from the published definition in 40 CFR 52.21(2)(i). The CFR defines a modification as a "physical change in or change in the method of operation." The

submitted rules, however, define this as "any equipment or process which undergoes a physical revision." The rules should be changed to clarify that the term "Modification" refers to the change, rather than to the equipment itself.

Volatile Organic Compound

The definition of "Reactive Organic Compound" in the submitted rules contains a list of substances exempt from regulation as ROC's which is inconsistent with the exemption list in 40 CFR 51.100(s). This discrepancy should be corrected to avoid granting ROC emission reduction credits, as well as requiring ROC offsets, for non-ozone-precursor emissions. The definition in 40 CFR 51.100(s) should be adopted verbatim into this section.

Additional Definitions:

In addition to the changes indicated above, it is necessary to add the following terms to this section: Begin Actual Construction, Commence Construction, Construction, Enforceable (or Federally Enforceable), Net Emissions Increase, Secondary Emissions, and Significant. These definitions should follow the language found at 40 CFR 51.165.

Rule 1306

Calculating Emissions Changes

This section uses a source's pre-modification potential to emit (PTE), rather than its pre-modification actual emissions, as the baseline for calculating the offset requirement for major modifications in nonattainment areas. This method is not acceptable unless the source has already offset its entire pre-modification PTE. The District must amend the rule to calculate the offset requirement in this case as the source's new PTE minus the source's pre-modification actual emissions.

Rule 1307

Determination of Offset Requirements (Non-major Facility)

Section (B)(2)(a) overlooks the case in which a non-major facility undergoes a modification which is in itself major. In this case, the entire modification must be offset, and not, as the rule states, only the portion of the facility's PTE which exceeds the major source threshold.

Obtaining Offsets

The submitted rules contain no provision, pursuant to section 173 of the Act, which requires that offsets be federally enforceable prior to the issuance of an authority to construct

permit, and in effect by the time operation commences. Such provisions must be added.

Rule 1308

Mobile Source Emission Reductions

EPA has not developed mobile source emission reduction crediting guidance. The rules should therefore include a case by case approval by EPA.

Mobile Source Emission Reductions

Section (A)(3)(b) allows emissions reduction credits to be generated by the "substitution and use of high occupancy vehicles for low occupancy vehicles." Due to the extreme difficulty in quantifying these types of emissions reductions, and in making them permanently enforceable, EPA cannot approve this as a means of generating offsets. This provision should be removed from the District's rules.

Emission Reduction Credits From Vehicle Scrapage

In order for EPA to determine if the offsets to be generated from a vehicle scrapage program will be federally approvable, the details of the program must be submitted with this rule. Section (A)(3)(c), which states that these are a potential source of offsets, should either include these details, or reference another section or rule which contains the details of the program.

Interpollutant Offsets

The use of interpollutant trading to satisfy nonattainment offset requirements is generally allowable only under very specific conditions. On April 13, 1995, the Director of EPA Region 9's Air and Toxics Division sent a letter to MDAQMD outlining an acceptable method for the use of interpollutant trading. MDAQMD should either incorporate this method into its NSR rules, or require case-by-case advance approval by EPA.

Source Eligibility

Energy conservation projects could be an acceptable source of offsets, but a definition should be included to clarify what is meant by these. Section (A)(4) should also include a statement that these projects are subject to the same standards as other sources of offsets (i.e., the reductions must be real, enforceable, quantifiable, surplus, and permanent).

Intra-basin and Inter-district Offsets

Section (D) should include the CAA section 173(c)(1) requirements that sources locating in a nonattainment area may only obtain offsets from other nonattainment areas which (A) have

equal or higher nonattainment classification, and (B) contribute to a violation of the NAAQS in the nonattainment area in which the source is located.

Additional Requirements

Surplus Requirement: The submitted rules contain insufficient provisions to ensure that all emission reduction credits (ERC's) used to satisfy the nonattainment offset requirements will be surplus. These provisions must be added to MDAQMD's NSR rules.

Prior Shutdowns: The submitted rules do not prohibit the use of "prior shutdown" credits as required in 40 CFR 51.165(a)(1)(xxv). This provision applies either when the District attainment plan has been disapproved, or when this plan is not yet due, but a due date during the creation of this plan is missed. In these cases, sources which seek ERC's due to a shutdown must do so at the time operation of the source ceases. This provision must be added to the District's rules.

Class I Area Visibility Protection: The submitted rules lack the Class I Area visibility protection provisions of 40 CFR 51.307(b)(2) for any new major source or major modification, proposing to locate in a non-attainment area, that may have an impact on visibility in any mandatory Class I Federal Area. This requirement must be added to the District's rules.

Applicability: The submitted rules contain no provisions which require NSR for a source or modification which becomes major due to a relaxation in a federally-enforceable limit. As described in 40 CFR 51.165(a)(5)(ii), such sources and modifications are subject to NSR "as though construction had not yet commenced." This requirement must be added to the District's rules.

Proposed Action

EPA is proposing to approve with contingencies, and to disapprove in the alternative, the SIP revisions submitted by MDAQMD on March 29, 1994. Full approval as a final action on this SIP revision is contingent upon MDAQMD making the required changes to the submitted rules as listed above.

If the specified changes to the submitted rules are not made before EPA's final action on this SIP revision, then EPA's final action will be a disapproval. If finalized, this disapproval would constitute a disapproval under section 179(a)(2) of the Act (see 57 FR 13566-13567). As provided under section 179(a), MDAQMD would have up to 18 months after a final SIP disapproval to correct the deficiencies that are the subject of

the disapproval before EPA is required to impose sanctions. If the MDAQMD does not correct its SIP deficiencies within 18 months, then section 179(a)(4) requires the immediate application of sanctions. According to section 179(b), sanctions can take the form of a loss of highway funds or a two to one emissions offset ratio. Once the Administrator applies one of the section 179(b) sanctions, the State will then have an additional six months to correct any deficiencies. Section 179(a)(4) requires that both highway and offsets sanctions must be applied if any deficiencies are still not corrected after the additional six month period.

EPA is requesting comments on all aspects of this proposed rulemaking action. Comments received by the date indicated above will be considered in EPA's final action.

Administrative Review

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., 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 Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct 1976); 42 U.S.C. 7410(a)(2). The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Unfunded Mandates

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 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. EPA has determined that the approval proposed in this document does not include such a federal mandate, as this proposed federal action would approve pre-existing requirements under state or local law, and would impose no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: October 17, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95-26952 Filed 10-31-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Parts 52 and 81

[MD44-1-3001b, MD44-2-3002b; FRL-5315-5]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Redesignation of the Baltimore Carbon Monoxide Area to Attainment and Approval of the Area's Maintenance Plan and Emission Inventory; State of Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of approving a maintenance plan and a request to redesignate the Baltimore carbon monoxide nonattainment area, from nonattainment to attainment for CO. 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 November 30, 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; Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 597-6863.

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

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

Dated: September 29, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 95-26960 Filed 10-30-95; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95-153; RM-8702]

Radio Broadcasting Services; Tillamook, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Brian Lord requesting the allotment of Channel 231A to Tillamook, OR, as the community's second local FM service. Channel 231A can be allotted to

Tillamook in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.8 kilometers (3.6 miles) west, at coordinates 45-27-27 North Latitude; 123-55-00 West Longitude, to avoid a short-spacing to Station KPDQ-FM, Channel 229C, Portland, Oregon. Canadian concurrence is required since Tillamook is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before December 18, 1995, and reply comments on or before January 2, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brian Lord, 3824 SW Myrtle Street, Seattle, WA 98126-3210 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-153, adopted September 26, 1995, and released September 29, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95-26978 Filed 10-30-95; 8:45 am]

BILLING CODE 6712-01-F

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 641**

[Docket No. 94113-4354; I.D. 102395D]

Reef Fish Fishery of the Gulf of Mexico; Red Snapper

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

ACTION: Announcement of a proposed reopening of a fishery.

SUMMARY: NMFS announces that the closed commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico will be reopened. Reopening of the fishery is necessary because the 1995 annual commercial quota for red snapper has not been taken. The commercial fishery for red snapper from the Gulf of Mexico will close 36 hours after the reopening is effective.

DATES: The reopening of the commercial red snapper fishery, to be announced through publication in the Federal Register, will be effective for a 36-hour period that will commence at 12:01 a.m., local time, on a date yet to be determined. Such period will be between October 29, 1995, and November 4, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Sadler or Michael Justen, 813-570-5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 641 under the authority of the Magnuson Fishery

Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 3.06 million lb (1.39 million kg) for the current fishing year, January 1 through December 31, 1995.

Under 50 CFR 641.26, NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by publishing a notification to that effect in the Federal Register. Based on statistics available at that time, NMFS projected that the commercial quota for red snapper would be reached on April 14, 1995. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper was closed effective 12:01 a.m., local time, April 15, 1995, through December 31, 1995—the end of the fishing year. Notification of closure was filed with the Office of the Federal Register on April 12, 1995 (60 FR 19363, April 18, 1995).

Upon further analysis of the landings data, including new information that became available since announcement of the closure date, NMFS has determined that approximately 210,000 lb (95,254 kg) of the 1995 red snapper commercial quota remain unharvested. Accordingly, the Council requested that NMFS reopen the fishery.

Catch rates during the first 7 days of the 1995 season averaged approximately 90,000 lb (40,823 kg) per day. At that catch rate, and under the restrictions in effect through 1995, the harvest of red snapper during a 36-hour period would be approximately 135,000 lb (61,235 kg). The restrictions in effect through 1995 specify that a vessel with a red snapper endorsement on its reef fish permit may not land, in any day, red snapper in excess of 2,000 lb (907 kg) and other permitted vessels may not land, in any day, red snapper in excess of 200 lb (91 kg). While a 36-hour reopening of the commercial fishery may not result in the

full commercial quota being harvested, such period provides reasonable assurance that the commercial quota on the overfished red snapper resource is not exceeded.

The Council requested that this reopening of the commercial fishery for red snapper occur around November 1, 1995, with the opening date to be selected based on projected weather conditions. The Council and NMFS do not want to create a situation where vessels owners and operators would feel compelled to fish during marginal weather conditions. Accordingly, this notification advises fishermen in the Gulf of Mexico reef fish fishery that the commercial red snapper fishery in the EEZ of the Gulf of Mexico will be reopened for a period of 36 hours commencing at 12:01 a.m., local time, at a date to be selected between October 29, 1995, and November 4, 1995. A notification of the date will be filed with the Office of the Federal Register not less than 48 hours prior to the effective date of the reopening and notification will be disseminated via a news release distributed to reef fish dealers, state enforcement agencies, Sea Grant offices, and other constituents. In addition, NMFS will request that advance notification of the effective date and time of the reopening be broadcast by coastal NOAA Weather Radio stations in the Gulf of Mexico.

Classification

This action is taken under 50 CFR 641.26 and is exempt from review under E.O. 12866.

Dated: October 25, 1995.

Richard W. Surdi,

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

[FR Doc. 95-26891 Filed 10-25-95; 4:49 pm]

BILLING CODE 3510-22-F

Notices

Federal Register

Vol. 60, No. 210

Tuesday, October 31, 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-95-18]

Public Hearing Regarding Establishment of a New Tobacco Auction Market

Notice is hereby given of a public hearing regarding an application to combine the Sanford, Carthage, and Aberdeen, North Carolina, tobacco markets.

DATES: November 7, 1995.

TIME: 9 a.m. local time.

PLACE: Dennis A. Wicker Civic Center (formerly the Lee County Civic Center), 1801 Nash Street, Sanford, 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 Sanford, Carthage, and Aberdeen, North Carolina. The application was made by Jeffrey S. Smith, warehouseman, Sanford, North Carolina.

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: October 27, 1995.

Shirley R. Watkins,
Acting Assistant Secretary, Marketing and Regulatory Programs.
[FR Doc. 95-27037 Filed 10-30-95; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-082]

Sugar From Germany; Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: In response to a request from the One World Group, an interested party, the Department of Commerce (the Department) initiated an administrative review for Pfeifer & Langeon on July 14, 1995, for the period of June 1, 1994 through May 31, 1995. On October 10, 1995, the One World Group filed a timely withdrawal of its request for review. Because there were no requests for review from other interested parties, we are terminating this review.

EFFECTIVE DATE: October 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-4733.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 1995, the Department published in the Federal Register (60 FR 29821) the opportunity to request an administrative review for the period June 1, 1994 through May 31, 1995. On June 30, 1995, the One World Group, an interested party in accordance with 19 CFR 353.2(k) (1994), requested an administrative review for Pfeifer & Langen. On July 14, 1995, the Department initiated an administrative review in accordance with 19 CFR 353.22, and published the notice of initiation in the Federal Register (60 FR 36260).

Termination of Review

The interested party that requested the review has timely withdrawn its request pursuant to 19 CFR 353.22(a)(5). As a result, the Department has terminated the review.

This notice is published in accordance with 19 CFR 353.22(a)(5).

Dated: October 24, 1995.

Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.
[FR Doc. 95-26976 Filed 10-30-95; 8:45 am]
BILLING CODE 3510-DS-M

[A-583-810]

Chrome-Plated Lug Nuts From Taiwan; 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 August 29, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on chrome-plated lug nuts from Taiwan. The review covers 21 manufacturers/exporters of the subject merchandise and the period September 1, 1993, through August 31, 1994.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The final results are unchanged from those presented in the preliminary.

EFFECTIVE DATE: October 31, 1995.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-4195 or 482-3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 1991, the Department published in the Federal Register the antidumping duty order on chrome-plated lug nuts from Taiwan (56 FR 47737). On September 2, 1994, the Department published a notice in the Federal Register notifying interested parties of the opportunity to request an administrative review of chrome-plated lug nuts from Taiwan for the period

September 13, 1993, through August 31, 1994 (59 FR 45664). Consolidated Automotive, Inc., the petitioner in this case, requested, in accordance with 19 CFR 353.22(a), that we conduct an administrative review of exports to the United States by Gourmet Equipment (Taiwan) Corp., Buxton International, Chu Fong Metallic Electric Co., Transcend International, Kuang Hong Industrial Works, San Chien Industrial Works, Ltd., Everspring Corporation, Anmax Industrial Co., Ltd., Everspring Plastic Corp., Gingen Metal Corp., Goldwinat Associates, Inc., Hwen Hsin Enterprises Co., Ltd., Kwan How Enterprises Co., Ltd., Kwan Ta Enterprises Co., Ltd., Kuang Hong Industries Ltd., Multigrand Industries Inc., San Shing Hardware Works Co., Ltd., Trade Union International Inc./Top Line, Uniauto, Inc., Wing Tang Electrical Manufacturing Co., and Chu Fong Metallic Industrial Corp., for the period September 1, 1993, through August 31, 1994. We published a notice of initiation of the antidumping duty administrative review on October 13, 1994 (59 FR 51939). On August 29, 1995, the Department published in the Federal Register the preliminary results of its administrative review of the antidumping duty order on chrome-plated lug nuts from Taiwan (60 FR 44837). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

The Department is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (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 the Review

Imports covered by this administrative review are shipments of one-piece and two-piece chrome-plated lug-nuts, finished or unfinished, more than $1\frac{1}{16}$ inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at least $\frac{3}{4}$ inches (19.05 millimeters) but not more than one inch (25.4mm), plus or minus $\frac{1}{16}$ of an inch (1.59mm). The term "unfinished" refers to unplated and/or assembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Zinc-plated lug nuts, finished or unfinished, and stainless-steel capped lug nuts are not in the scope of this review. Chrome-plated lock nuts are also not in the scope of

this review. This scope description includes the April 4, 1994, scope clarifications.

During the period of review (POR), chrome-plated lug nuts were classifiable under Harmonized Tariff Schedule (HTS) subheading 7318.16.00.10. The HTS subheadings are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of this proceeding.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments on the preliminary results from any interested party. The final results are therefore unchanged from those presented in the preliminary results, and the margins from the preliminary results have not changed for the final results of review.

Manufacturer/exporter	Margin
Gourmet Equipment (Taiwan) Corp.	6.47
Buxton International	6.93
Chu Fong Metallic Electric Co.	10.67
Transcend International	10.67
Kuang Hong Industrial Works	10.67
San Chien Industrial Works, Ltd.	10.67
Everspring Corp.	10.67
Anmax Industrial Co., Ltd.	10.67
Everspring Plastic Corp.	10.67
Gingen Metal Corp.	10.67
Goldwinat Associates, Inc.	10.67
Hwen Hsin Enterprises Co., Ltd.	6.93
Kwan How Enterprises Co., Ltd.	6.93
Kwan Ta Enterprises Co., Ltd.	6.93
Kuang Hong Industries Ltd.	6.93
Multigrand Industries Inc.	10.67
San Shing Hardware Works Co., Ltd.	10.67
Trade Union International Inc./Top Line	10.67
Uniauto, Inc.	6.93
Wing Tang Electrical Manufacturing Co.	6.93
Chu Fong Metallic Industrial Corp. ...	6.93

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions for each exporter directly to the U.S. 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 this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed firms will be those firm's rates 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 for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or in the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters not previously reviewed will be 6.93 percent, the "new shipper" rate established in the first notice of final results of administrative review.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice 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 final 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 353.35(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 20, 1995.

Susan G. Esserman,
Assistant Secretary for Import
Administration.

[FR Doc. 95-26975 Filed 10-30-95; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-059]

Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Duty Administration Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 17, 1995, the Department of Commerce (the Department) published in the Federal Register the preliminary results of administrative review of the antidumping finding on pressure sensitive plastic tape (PSPT) from Italy. The review covers two manufacturers/exporters of the subject merchandise shipped to the United States during the period October 1, 1993, through September 30, 1994. We did not receive any comments on the preliminary results. Therefore, the dumping margins for the reviewed companies are unchanged from the preliminary results.

EFFECTIVE DATE: October 31, 1995.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-4195 or 482-3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the preliminary results of this review on August 17, 1995 (60 FR 42845). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended.

Applicable Statute and Regulations

The Department is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (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 the Review

Imports covered by the review are shipments of PSPT measuring 1 $\frac{3}{8}$ inches in width and not exceeding 4 mils in thickness. During the period of review (POR), the above described PSPT was classified under HTS subheadings 3919.90.20 and 3919.90.50. The HTS subheadings are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as the scope of the product coverage. The period of review is October 1, 1993, through September 30, 1994.

Final Results of Review

The Department received no comments on its preliminary results. Therefore, the margins from the

preliminary results have not changed for the final results of review.

Manufacturer/exporter	Margin (percent)
Autoadesivi Magri	12.66
N.A.R. S.p.A.	12.66

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions for each exporter directly to the U.S. 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 this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed firms will be those firm's rates 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 for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters not previously reviewed will be 12.66 percent, the "new shipper" rate established in the first notice of final results of administrative review published by the Department (48 FR 35686, August 5, 1983).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice 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 order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written

notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 20, 1995.

Susan G. Esserman,
Assistant Secretary for Import
Administration.

[FR Doc. 95-26974 Filed 10-30-95; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company

Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 86-3A011."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 86-00011, which was issued on June 30, 1987 (52 FR 25621, July 8, 1987) and previously amended on October 31, 1988 (53 FR 44639, November 4, 1988) and February 21, 1990 (55 FR 21766, May 29, 1990). The applicant has requested expedited review of the application.

Summary of the Application

Applicant: Millers' National Federation ("MNF"), 600 Maryland Avenue, SW, 305 West, Washington, DC 20024-2573, Contact: Roy M. Henwood, President, Telephone: (202) 484-2200.

Application No.: 86-3A011.

Date Deemed Submitted: October 18, 1995.

Request For Amended Conduct: MNF seeks to amend its Certificate to add Fisher Mills Inc. of Seattle, Washington as a "Member" within the meaning of § 325.21 of the Regulations (15 CFR 325.2 (l)).

Dated: October 20, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 95-26922 Filed 10-30-95; 8:45 am]

BILLING CODE 3510-DR-P

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001-21) authorizes the Secretary of Commerce to

issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 94-A0007."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 94-00007, which was issued on February 23, 1995 (60 FR 12735 March 8, 1995). The applicant has requested expedited review of the application.

Summary of the Application

Applicant: Florida Citrus Exports, L.C. ("FCE"), 1991 74th Avenue, Vero Beach, Florida 32966, Contact: Charles M. Sanders, Jr., Attorney, Telephone: (407) 569-2244.

Application No.: 94-A0007.

Date Deemed Submitted: October 17, 1995.

Request For Amended Conduct: FCE seeks to amend its Certificate to add A. Duda & Sons, Inc. of Ft. Pierce, Florida as a "Member" within the meaning of § 325.21 of the Regulations (15 CFR 325.2 (l)).

Dated: October 20, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 95-26923 Filed 10-30-95; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment and Adjustment of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in El Salvador

October 25, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), the current limit is being amended for textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the period January 1, 1995 through December 31, 1995. Pursuant to the ATC, this new limit supersedes that notified to the Uruguay Round Textiles Monitoring Body (TMB) contained in the Memorandum of Understanding dated September 26, 1994 between the Governments of the United States and El Salvador. This limit is being amended because El Salvador is now a member of the World Trade Organization. Also, the amended level for Categories 340/640 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 63078, published on December 7, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant

to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Donald R. Foote,
Acting Chairman, Committee for the Implementation of Textile Agreements.
 Committee for the Implementation of Textile Agreements
 October 25, 1995.
 Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in El Salvador and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on November 1, 1995, you are directed to increase the limit for Categories 340/640 to 984,431 dozen¹, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The guaranteed access level remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
 Donald R. Foote,
Acting Chairman, Committee for the Implementation of Textile Agreements.
 [FR Doc. 95-26924 Filed 10-30-95; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

October 25, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: October 26, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the

¹ The limit has not been adjusted to account for any imports exported after December 31, 1994.

quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6703. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 65760, published on December 21, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Donald R. Foote,
Acting Chairman, Committee for the Implementation of Textile Agreements.
 Committee for the Implementation of Textile Agreements
 October 25, 1995.
 Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 16, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on October 26, 1995, you are directed to amend further the directive dated December 16, 1994 to increase the limits for the following categories, as provided under the terms of the bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit ¹
Sublevels in Group I	
200	668,463 kilograms.
237	1,795,714 dozen.
239	2,844,022 kilograms.
331	5,029,574 dozen pairs.
334	307,097 dozen.
340	826,879 dozen.

Category	Adjusted twelve-month limit ¹
341	680,124 dozen of which not more than 408,074 dozen shall be in Category 341-Y ² .
359-V ³	815,621 kilograms.
360	7,315,597 numbers of which not more than 4,989,943 numbers shall be in Category 360-P ⁴ .
435	24,954 dozen.
438	27,172 dozen.
440	38,819 dozen of which not more than 22,181 dozen shall be in Category 440-M ⁵ .
443	139,743 numbers.
445/446	298,259 dozen.
631	1,213,304 dozen pairs.
635	625,829 dozen.
641	1,351,919 dozen.
643	487,785 numbers.
645/646	836,959 dozen.
647	1,569,304 dozen.
648	1,121,257 dozen.
659-H ⁶	2,755,625 kilograms.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1994.

² Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

³ Category 359-V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

⁴ Category 360-P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

⁵ Category 440-M: HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

⁶ Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
 Donald R. Foote,
Acting Chairman, Committee for the Implementation of Textile Agreements.
 [FR Doc. 95-26925 Filed 10-30-95; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE**Department of the Navy****Notice of Intent To Prepare an Environmental Impact Statement for the Disposal and Reuse of the Department of Defense Housing Facility, Novato, CA**

Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500-1508), the Department of the Navy in coordination with the City of Novato, is preparing an Environmental Impact Statement (EIS) for the proposed disposal and reuse of the Department of Defense Housing Facility (DODHF) property and structures at Novato, California. This proposed action is in accordance with the Defense Base Closure and Realignment Act (Public Law 101-510) of 1990, as implemented by the 1993 Base Closure process, which directed the Navy to close DODHF.

DODHF is within the jurisdiction of the City of Novato, Marin County, California, approximately 20 miles north of San Francisco. DODHF is one of several facilities on a larger area formerly known as the Hamilton Air Force Base. DODHF consists of approximately 481 acres of Navy-owned land in two sites. The 383 acre primary DODHF facility includes military family housing, commissary, exchange, community services areas, bowling alley, officer's club, and recreational fields. An additional 98 acre Rafael Village military housing area is located 1 mile north of the main DODHF facility. Other portions of the former Hamilton Air Force Base adjacent to DODHF and not included with the disposal of the DODHF property or in this disposal and reuse EIS, include the 720 acre former Hamilton Army Air Field, which was closed under the Defense Base Closure and Realignment Act (Public Law 100-526) of 1988, and a 415 acre site being developed under the New Hamilton Partnership Master Plan.

The EIS will address the potential impacts to the environment that may result from the disposal of the Navy's DODHF property and subsequent reuse. The Hamilton Army Air Field Reuse Plan, developed by the Hamilton Reuse Planning Authority, proposes 406 acres of housing with up to 1,490 total units, 51 acres of mixed use community support facilities, and 24 acres of recreational fields on the DODHF property.

The Reuse Plan will constitute the preferred alternative for the EIS. However, the EIS will also analyze alternatives to the Reuse Plan. The alternatives analyzed in the EIS will include a less intensive development of the DODHF property, still based in large part on the Reuse Plan, and a No Action Alternative. The No Action alternative would result in federal government retention of the DODHF property in an "inactive" status. Other alternatives may be evaluated if warranted.

Federal, state and local agencies, and interested individuals are encouraged to participate in the scoping process for the EIS to determine the range of issues and reuse alternatives to be addressed. A public scoping meeting to receive oral and written comments will be held on Thursday, November 16, 1995, at the Student Center, San Marin High School, 15 San Marin Drive, Novato, California at 7:00 p.m. In the interest of the available time, each speaker will be asked to limit their oral comments to five minutes.

In addition, written comments may be submitted no later than December 1, 1995 to Mr. Gary Munekawa, Environmental Planning Branch, Code 185GM, Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, California 94066-5006; telephone (415) 244-3022, fax (415) 244-3737. For further information regarding the Hamilton Army Air Field Reuse Plan which includes the reuse of the Navy's DODHF property, please contact Mr. K.H. Bell, Program Manager, Hamilton Reuse Planning Authority at (415) 457-5661, fax (714) 472-8122.

Dated: October 26, 1995.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95-26926 Filed 10-30-95; 8:45 am]

BILLING CODE 3810-FF-M

DEPARTMENT OF EDUCATION**National Assessment Governing Board; Meeting**

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the

general public of their opportunity to attend.

DATES: November 16-18, 1995.

Time: November 16, 1995—Achievement Levels Committee, 2:00-4:00 P.M., (open); and Subject Area Committee #1, 5:00 P.M.-6:00 P.M., (open). November 17, 1995—Executive Committee, 7:30 A.M.-8:30 A.M. (closed), 8:30-9:00 A.M. (open); Full Board, 9:00 A.M.-10:00 A.M., (open); Design and Methodology Committee, Reporting and Dissemination Committee, and Subject Area Committee #2, 10:00 A.M.-12:00 Noon, (open); Full Board, 12:00 Noon-4:30 P.M. (open). November 18, 1995—Nominations Committee 8:00-9:00 A.M. (open); Full Board, 9:00 A.M. until adjournment, approximately 12:00 Noon (open).

Location: Four Seasons Olympic Hotel, 411 University Street, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:

Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, DC 20002-4233, Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103-382).

The Board is established to formulate policy guidelines for the National Assessment of Education Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On November 16, the Achievement Levels Committee of the National Assessment Governing Board will meet in open session from 2:00 p.m. to 4:00 p.m. The Committee will meet to discuss control procedures for ensuring error-free NAEP data, and planning issues affecting the NAEP level-setting activities in the 1996 science assessment. Subject Area Committee #1 will meet in open session from 5:00 p.m.-6:00 p.m. to discuss the progress of the NAEP civics planning project.

On November 17, the Executive Committee will meet in closed session from 7:30 a.m. to 8:30 a.m. to continue discussion about the development of cost estimates for NAEP and future contract initiatives that were begun at the August 1995 meeting of the Board. Public disclosure of this information would likely have an adverse financial affect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency

action if conducted in open session. Such matters are protected by exemption 9(B) of Section 552b(c) of title 5 U.S.C. Beginning at 8:30 a.m., the Executive Committee will convene in open session to hear a presentation by a representative from the National Science Foundation regarding a proposal to use NARP assessments to measure progress in certain NSF-sponsored initiatives during 1996-1997.

The full Board will convene in open session from 9:00 a.m. to 10:00 a.m. The agenda for this session includes approval of the agenda, introduction of new Board members, the report of the Executive Director, a presentation by the Superintendent of Public Instruction, State of Washington, and an update on NAEP by the Acting Commissioner of the National Center for Education Statistics. Between 10:00 A.M. and 12:00 noon, there will be open meetings of the following subcommittees: Design and Methodology, Reporting and Dissemination, and Subject Area Committee #2. The Design and Methodology Committee will consider revisions to the sampling policy for states, and be briefed by NCEES on ETS-proposed NAEP design changes for 1996 and 1998. The agenda for the Reporting and Dissemination Committee consists of three items: (1) Plans for release of 1994 NAEP Reports, (2) long-range planning for NAEP reporting of 1996 and 1998 results, and (3) implementation of policy on including disabled and limited English-speaking students in NAEP. Subject Area Committee #2 will discuss the progress of the NAEP writing specifications development project.

Beginning at 12:00 noon, until 4:30 P.M., the full Board will meet in open session. The Board will hear an update on the NAGB planning initiative activities, and a presentation by a representative from the National Academy of Sciences on the proposed NAEP evaluation design.

On November 18, the Nominations Committee will meet in open session from 8:00 A.M. to 9:00 A.M. The Committee will review procedures to be used for the solicitation of the names of individuals to succeed the Board members whose terms expire September 30, 1996. The expiring terms are in the following categories: local superintendent, general public (2), testing and measurement expert (2), state superintendent, and 12th grade teacher.

Beginning at 9:00 a.m., until adjournment, approximately 12:00 noon, the full Board will reconvene in open session. Agenda items for this portion of the meeting include a

presentation on the implementation of 'Standards Based Education' in the Everett School District, Everett Washington, and reports from the Board's standing committees—Subject Area #1, Subject Area #2, Achievement Levels, Reporting and Dissemination, Design and Methodology, Nominations, and the Executive Committee.

Summaries of the activities of the closed session and related matters which are informative to the public and consistent with the policy of section 5 U.S.C. 552b will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 A.M. to 5:00 P.M.

Dated: October 25, 1995.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 95-26893 Filed 10-30-95; 8:45 am]

BILLING CODE 4000-01-M

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of closed meeting by teleconference.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of the meeting.

DATE: November 6, 1995.

TIME: 4 p.m. to 5 p.m.

LOCATION: Room 604E, 555 New Jersey Ave., N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John Christensen, Designated Federal Official, Office of Educational Research and Improvement, 555 New Jersey Ave., N.W., Washington, D.C. 20208-7579. Telephone: (202) 219-2065.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational research and Improvement to forge a national consensus with

respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The meeting of the Executive Committee is closed to the public under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix 2) and under exemptions (2) and (6) of Section 552b(c) of the Government in the Sunshine Act (Pub. L. 94-409; 5 U.S.C. 552b(c)(2) and (6)).

The Committee will discuss the process of the selection of an Executive Director of the Board and the personal qualifications of candidates for the position. These discussions relate solely to the internal personnel rules and practices of the Board and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting.

The public is being given less than the required 15 days' notice because of the difficulty in accommodating the schedules of all members of the Executive Committee, which must complete its recommendations prior to the next full Board meeting on November 30.

Records are kept of all Board proceedings, and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 555 New Jersey Ave., N.W., Washington, DC 20208-7564.

Dated: October 26, 1995.

Sharon P. Robinson,

Assistant Secretary.

[FR Doc. 95-26967 Filed 10-30-95; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Availability of the Final Environmental Impact Statement for Interim Management of Nuclear Materials at the Savannah River Site, Aiken, SC

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability of final Environmental Impact Statement (EIS).

SUMMARY: The U.S. Department of Energy (DOE) announces the availability of a Final EIS entitled "Interim Management of Nuclear Materials, Savannah River Site, Aiken, South

Carolina," DOE/EIS-0220. The Final EIS evaluates the potential environmental impacts of actions necessary to safely manage nuclear materials at the Savannah River Site (SRS) over the next ten years. The Final EIS was prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969; Council on Environmental Quality regulations implementing NEPA, 40 CFR Parts 1500-1508; and DOE NEPA Implementing Procedures, 10 CFR Part 1021.

The Final EIS has been distributed to the public and filed with the Environmental Protection Agency (EPA). An EPA notice of availability was published in the Federal Register October 20, 1995 (60 FR 54226). The Final EIS will also be available to the public in DOE reading rooms identified in this notice. DOE plans to issue a Record of Decision on the Final EIS no sooner than November 20, 1995.

ADDRESSES: Requests for copies of the Final EIS and for further information on the Final EIS should be directed to: Andrew R. Grainger, NEPA Compliance Officer, Savannah River Operations Office, U.S. Department of Energy, P.O. Box 5031, Aiken, South Carolina 29804-5031, telephone (803) 725-1523 or the Information Line (800) 242-8269.

General information on the DOE NEPA process may be obtained from Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH-42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585-0119. Ms. Borgstrom may be reached by telephone at (202) 586-4600 or by leaving a message at (800) 472-2756.

SUPPLEMENTARY INFORMATION:

Background

DOE issued the Draft Interim Management of Nuclear Materials EIS for public comment and the EPA published a Notice of Availability in the Federal Register on March 17, 1995 (60 FR 14432). DOE published a corresponding NOA for the Draft EIS on April 6, 1995 (60 FR 17523). The public comment period, which began with publication of the EPA NOA, ended on May 1, 1995. Two public meetings, one in North Augusta, South Carolina, and one in Savannah, Georgia, were held during the comment period. DOE revised the Draft EIS as appropriate in response to comments received electronically, in letters, and at the public meetings. DOE also considered a Defense Nuclear Facilities Safety Board (DNFSB) staff report dated August 3, 1995.

Comments on the Draft EIS were considered by DOE in preparing the Final EIS. Comments on the Draft EIS and DOE's responses to those comments are contained in Appendix F to the Final EIS.

The Final EIS, like the Draft EIS, addresses the potential environmental impacts of alternatives for the management of nuclear materials at the SRS for a period of 10 years. Ten years was selected as the period of analysis because it may require that period of time to make and begin implementation of decisions on the long-term storage or ultimate disposition of these nuclear materials.

Alternatives Considered

The purpose and need for the Department's action was to manage the nuclear materials at the Savannah River Site to eliminate (where possible) the vulnerabilities posed by the storage condition of the materials by taking action to alter the physical or chemical form of the materials or to improve the manner in which they are stored. The continued storage of some of these materials in their current condition might cause radiological exposure of workers or the public or contamination of the environment. In some cases, the material's physical or chemical form poses a problem; in other cases the material simply requires repackaging or movement to another location to ensure safe continued storage.

In the Final EIS, DOE has organized the inventory of nuclear materials at the SRS into three categories: stable materials, candidates for stabilization, and programmatic materials. Stable materials are already in physical and chemical forms that, combined with their storage configurations, do not currently pose an environmental, safety, or health concern and are not likely to pose a concern over the next 10 years. Materials that are candidates for stabilization are those for which DOE has identified a number of environmental, safety, and health vulnerabilities associated with their continued storage in their current physical state or the manner in which they are stored. Programmatic materials contain special isotopes that could be needed to support DOE programs. In many cases, the current forms of programmatic materials pose the same vulnerabilities as the candidates for stabilization.

Since stable materials do not require stabilization to ensure their continued safe management the only alternative considered was continued storage (no action). Under this alternative, DOE would maintain management facilities

in good working condition and provide utilities and services, including trained personnel, to ensure the continuation of the current stable configuration of the materials and storage areas. Materials which are candidates for stabilization were further subdivided into seven categories. In the Final EIS, DOE evaluated alternatives for stabilization of each material in each of the seven categories. Alternatives evaluated in the Final EIS for the candidates for stabilization are processing to metal, processing to oxide, blending down to low-enriched uranium, processing and storage for vitrification (Defense Waste Processing Facility), vitrification (F-Canyon), improving storage, and continuing storage (no action). Alternatives evaluated for programmatic materials in the Final EIS are processing to metal, processing to oxide, processing and storage for vitrification (Defense Waste Processing Facility), vitrification (F-Canyon), and continuing storage (no action).

Preferred Alternatives

DOE selected the following preferred alternatives for each category and subcategory of nuclear material considered in the Final EIS:

Stable materials—Continued storage (no action)

Programmatic materials

Plutonium-242—processing to oxide
Americium and curium—continuing storage (targets); vitrification (F-Canyon) (solutions)

Neptunium—processing to oxide

Candidates for Stabilization

H-Canyon plutonium-239 solutions—processing to oxide

H-Canyon enriched uranium solutions—blending down to low-enriched uranium

Plutonium and uranium stored in vaults—four preferred alternatives (improved storage, processing to metal, processing to oxide, vitrification

(F-Canyon); selection to be based on inspection of material

Mark-31 targets—processing to metal
Mark-16 and Mark-22 fuel—continuing storage (no action)

Other aluminum-clad targets—continuing storage (no action)

Taiwan Research Reactor and Experimental Breeder Reactor II targets—processing to metal

DOE considered environmental factors, programmatic requirements, costs, management schedules, and other factors described in the Final EIS in determining the preferred alternatives for management of the nuclear materials at the SRS. DOE is continuing to

evaluate alternatives for management of Mark-16 and Mark-22 fuels and other aluminum-clad targets and will announce selection of a stabilization alternative (other than "no action") at least 30 days prior to issuing a record of decision for the management of these materials.

Availability of Copies of the Final EIS

Copies of the Final EIS have been distributed to Federal, State, and local officials and agencies; to organizations and individuals known to be interested in the EIS, and to persons and agencies that commented on the draft EIS. Additional copies may be obtained by contacting Mr. Grainger as indicated above. Copies of the Final EIS will be available for public review at the following locations:

U.S. Department of Energy, Headquarters, Freedom of Information Reading Room, 1E-190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586-6020. Monday-Friday: 9:00 a.m. to 4:00 p.m.

U.S. Department of Energy, Savannah River Operations Office, Public Reading Room, Gregg-Graniteville Library, 2nd Floor, University of South Carolina-Aiken Campus, University Parkway, Aiken, South Carolina, (803) 648-6851. Monday-Thursday: 9:00 a.m. to 11:00 p.m. Friday: 8:00 a.m. to 5:00 p.m. Saturday: 9:00 a.m. to 1:00 p.m. Sunday 2:00 p.m. to 11:00 p.m.

Issued at Washington, D.C., October 24, 1995.

John A. Ford,

Director, Savannah River Office, Office of Environmental Management.

[FR Doc. 95-26963 Filed 10-30-95; 8:45 am]

BILLING CODE 6450-01-P

Environmental Management Site-Specific Advisory Board, Department of Energy/Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Tuesday, November 14, 1995: 6:30 pm-10:00 pm; 7:00 pm to 8:00 pm (public comment session).

ADDRESSES: Los Alamos County Community Building, 475 20th Street, Los Alamos, New Mexico 87544.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Roybal, EM SSAB, Los Alamos

National Laboratory, Northern New Mexico Community College, 1002 Onate Street, Espanola, NM 87352, (800)753-8970, or (505)753-8970.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Tuesday, November 14, 1995

6:30 pm Call to Order and Welcome

7:00 pm Input from the Public

8:00 pm Sub-Committee Reports

10:00 pm Adjourn

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Lisa Roybal, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting, due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Herman Le-Doux, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185-5400.

Issued at Washington, DC on October 26, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95-26966 Filed 10-30-95; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. RP96-15-000]

Alabama-Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 25, 1995.

Take notice that on October 19, 1995, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, to be made effective December 1, 1995:

First Revised Sheet No. 91
Second Revised Sheet No. 92

According to Alabama-Tennessee, the purpose of its submission is to amend its tariff to reflect the requirements of Order Nos. 577, 60 FR 16,979 (April 4, 1995), and 577-A, 60 FR 30,186 (June 8, 1995), and the Commission's requirements set forth at 18 CFR 284.243(h), with respect to short-term capacity releases.

Alabama-Tennessee has requested that the Commission grant such waivers as may be necessary to accept and approve the filing as submitted.

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, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 1, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants a party to the proceeding. Any person wishing to become a party to the proceeding 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. 95-26902 Filed 10-30-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM96-1-119-002]

Young Gas Storage Company, Ltd.; Notice of Filing

October 25, 1995.

Take notice that on October 19, 1995, Young Gas Storage Company, Ltd. (Young) filed to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet.

Substitute Original Sheet No. 5

Young states the tariff sheet filed in its September 25, 1995 ACA surcharge compliance filing, pursuant to Federal Energy Regulatory Commission order dated September 15, 1995, contained a pagination error. Young's filing corrects the previously filed tariff sheet.

Young states that copies of this filing have been served on Young's jurisdictional customers and public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 1, 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 in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 95-26903 Filed 10-30-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-14-000]

Southern Natural Gas Company; Notice of Settlement Compliance Filing

October 25, 1995.

Take notice that on October 19, 1995, Southern Natural Gas Company

(Southern) submitted for filing the following substitute tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, with proposed effective dates as noted, setting forth recalculated interruptible rates, inclusive of gas supply realignment (GSR) costs, for contesting parties under the Stipulation Agreement in Docket Nos. RP89-224-012, et al., dated March 15, 1995 for all rate effective periods covered by Docket Nos. RP94-67-000, et al., based on the interruptible billing determinants established by the Commission in its Order.

Tariff sheet	Effective date
Second Substitute Second Revised Sheet No. 18	January 1, 1994.
Second Substitute Fourth Revised Sheet No. 18	March 1, 1994.
Third Substitute Fifth Revised Sheet No. 18	April 1, 1994.
Third Substitute Seventh Revised Sheet No. 18	July 1, 1994.
First Substitute First Alternate First Substitute Eighth Revised Sheet No. 18	October 1, 1994.
First Revised First Substitute First Alternate First Substitute Eighth Revised Sheet No. 18	November 1, 1994.
Second Substitute First Alternate Ninth Revised Sheet No. 18	January 1, 1995.
First Revised First Substitute First Alternate Ninth Revised Sheet No. 18	March 1, 1995.
First Substitute Tenth Revised Sheet No. 18	April 1, 1995.
Second Substitute Eleventh Revised Sheet No. 18	July 1, 1995.
Second Substitute Twelfth Revised Sheet No. 18	October 1, 1995.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 1, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 95-26904 Filed 10-30-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-197-005]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 25, 1995.

Take notice that on October 19, 1995, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A attached to the filing. Such tariff sheets are proposed to be effective October 4 and November 1, 1995.

Transco states that the purpose of the instant filing is to revise currently effective tariff provisions to comply with the October 4, 1995 "Order Following Technical Conference" (October 4 Order) which directed Transco, among other things, to (i) clarify that Section 49 of its General Terms and Conditions only applies to existing capacity and to provide a detailed explanation of the type of existing capacity that may become available that would be subject to the requirements of Section 49(ii) revised Section 49.1(b) to provide a minimum bid period of 5 business days for firm

capacity which will be available for more than 1 month but less than 12 months (iii) revise Section 49.1(c) to provide a minimum bid period of 30 business days for firm capacity which becomes available for 12 months or longer (iv) revise Section 48.2 of its General Terms and Conditions to provide for a minimum bid period of 15 days for capacity subject to the right of first refusal and (v) revise Section 43.3 of the General Terms and Conditions to provide that the posting requirement applies to any affiliate, not just a marketing affiliate. In compliance with the October 4 Order, Transco is submitting the revised tariff sheets contained in Appendix A.

Transco respectfully requests that the Commission grant a waiver of Section 154.22 of its Regulations, and any other waivers that may be necessary, in order that the enclosed tariff sheets, be made effective as proposed herein.

Transco states that it is serving copies of the instant filing to its customers, State Commissions and interested parties to Docket No. RP95-197.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 1, 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 in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 95-26905 Filed 10-30-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-185-009]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 25, 1995.

Take notice that on October 20, 1995, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that this filing was made in compliance of the Commission's Order issued October 5, 1995 in Docket No. RP95-185-004 to clarify on Sheet No. 148 that a Small Customer's tolerance and negative DDVC levels apply at all times, including when an SUL is called.

Northern states that copies of this filing were served upon the company's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 1, 1995. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 95-26906 Filed 10-30-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-149-000]

ANR Pipeline Company; Notice Rescheduling Settlement Conference

October 25, 1995.

Take notice that an informal settlement conference previously scheduled for Monday, November 6, 1995, has been rescheduled, and will now be convened in this proceeding on Monday, November 13, 1995, at 1:00 p.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, please contact William J. Collins (202) 208-0248 or Mary C. Hain (202) 208-1087.

Lois D. Cashell,
Secretary.

[FR Doc. 95-26907 Filed 10-30-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-120-001]

NorAm Gas Transmission Company; Notice of Filing

October 25, 1995.

Take notice that on October 19, 1995, NorAm Gas Transmission Company (NGT) tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets to be effective October 4, 1995:

First Revised Sheet No. 231
First Revised Sheet No. 231A
Second Revised Sheet No. 232

NGT states that it is filing such tariff sheets in compliance with the Commission's October 4, 1995, Order Following Technical Conference.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 1, 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 in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 95-26908 Filed 10-30-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-28-002]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 25, 1995.

Take notice that on October 19, 1995, Williams Natural Gas Company (WNG) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

To Be Effective April 30, 1995

First Revised Original Sheet Nos. 201-203
Second Substitute Original Sheet No. 229B
and 229C

Substitute First Revised Sheet No. 230

To Be Effective July 1, 1995

Substitute First Revised Sheet Nos. 201-203

WNG states that by order issued November 30, 1994, the Commission accepted and suspended tariff sheets filed on October 31, 1994, by WNG in this docket to provide for daily balancing penalties at receipt and delivery points where 95 percent of volumes are measured by electronic flow measurement equipment, subject to refund and to the outcome of a technical conference. The Commission set the effective date of the tariff sheets as the earlier of April 30, 1995 or the completion of the review of the technical conference. By order issued October 4, 1995, the Commission accepted WNG's proposal for daily balancing penalties, subject to WNG submitting revised tariff sheets with clarifications. WNG states that the instant filing is being made to clarify WNG's daily balancing penalty provisions.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the docket referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 1, 1995. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 95-26909 Filed 10-30-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP92-134-014 and RP93-15-010]

**Southern Natural Gas Company;
Notice of Settlement Compliance Filing**

October 25, 1995.

Take notice that on October 19, 1995, Southern Natural Gas Company (Southern) submitted for filing to become part of its FERC Gas Tariff, Seventh Revised Volume No. 1, certain revised tariff sheets with the proposed effective dates as noted.

Southern states that these tariff sheets (1) set forth recalculated base tariff rates for contesting parties under the Stipulation and Agreement in Docket Nos. RP89-224-012, et al., dated March 15, 1995 (Stipulation), (2) implement various provisions of the Stipulation, and (3) comply with various merit determinations made by the Commission in its Order.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before November 1, 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 Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 95-26910 Filed 10-30-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-108-028]

Columbia Gas Transmission Corporation; Notice of Refund Report

October 25, 1995.

Take notice that on September 29, 1995, Columbia Gas Transmission Corporation (Columbia Gas) tendered

for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report made to comply with the Commission's order dated April 16, 1992, and the April 17, 1995, Offer of Settlement filed in Docket Nos. GP94-02, et al. (Customer Settlement) as approved by the Commission on June 15, 1995.

Columbia Gas states that the report shows that on August 28, 1995, Columbia made lump sum partial refunds to its customers for the period July 1, 1991 through November 30, 1991 in the amount of \$30,116,553.70 (\$23,159,674.39 principal and \$6,956,879.31 interest).

Article III of the Customer Settlement provides for the partial payment of refunds in Columbia Docket No. RP90-108 within 30 days after the date of an initial order of the United States Bankruptcy Court for the District of Delaware (Bankruptcy Court) approving such partial payment. The Bankruptcy Court issued an order approving a partial payment on August 4, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First 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 November 1, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the 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. 95-26911 Filed 10-30-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-107-026]

Columbia Gulf Transmission Company; Notice of Refund Report

October 25, 1995.

Take notice that on September 29, 1995, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report made to comply with the Commission's order dated April 16, 1992, and the April 17, 1995 Offer of Settlement filed in Docket Nos. RP90-107, et al. (Customer Settlement) as approved by the Commission on June 15, 1995.

Columbia Gulf states that the report shows that on August 28, 1995,

Columbia Gulf made lump sum partial refunds to its customers for the period November 30, 1990 through November 30, 1991 in the amount of \$6,719,302.27, including interest.

Article III of the Customer Settlement provides for the partial payment of refunds in Columbia Gulf Docket No. RP90-107 within 30 days after the date of an initial order of United States Bankruptcy Court for the District of Delaware (Bankruptcy Court) approving such partial payment. The Bankruptcy Court issued an order approving a partial payment on August 4, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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 November 1, 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 Columbia Gulf's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 95-26912 Filed 10-30-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT96-14-000]

Northwest Pipeline Corporation; Notice of Refund Report

October 25, 1995.

Take notice that on October 19, 1995, Northwest Pipeline Corporation (Northwest) tendered for filing with the Federal Energy Regulatory Commission (Commission) a refund report in the above referenced docket.

Northwest states that on September 29, 1995, it received \$775,611 from the Gas Research Institute (GRI) which represented an overcollection of the 1994 GRI funding target level set for Northwest by GRI. This refund is in compliance with the Stipulation and Agreement Concerning Post-1993 GRI Funding Mechanism in Docket No. RP92-133-001 (Phase I) and the Commission's February 22, 1995 Order Approving Refund Methodology for 1994 Overcollections in Docket No. RP95-124-000. On October 13, 1995, Northwest states that it credited this amount to those firm customers of Northwest who received nondiscounted service during 1994 in proportion to the GRI surcharges such customers paid during 1994.

Northwest states that a copy of this filing has been served upon Northwest's affected customers and upon interested state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 1, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95-26913 Filed 10-30-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT96-13-000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 25, 1995.

Take notice that on October 19, 1995, Algonquin Gas Transmission Company (Algonquin) tendered for filing a Report of Gas Research Institute (GRI) Refund. The refund report is being made in accordance with Ordering Paragraph C of the Commission's February 22, 1995, Order Approving Refund Methodology for 1994 Overcollections in GRI's Docket No. RP95-124-000.

Algonquin states it has flowed through its share of the GRI refund as a credit on the October 7, 1995, invoices to its eligible firm customers. Algonquin states that the refund totalling \$683,921.00 represented GRI's overcollection of GRI surcharges for the period January 1, 1994 through December 31, 1994.

Algonquin notes that a copy of this filing is being served upon each affected customer and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on

or before November 1, 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. 95-26914 Filed 10-30-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES96-2-000]

Central Illinois Light Company; Notice of Application

October 25, 1995.

Take notice that on October 6, 1995, Central Illinois Light Company filed an application under § 204 of the Federal Power Act seeking authorization to issue short-term notes, from time to time, in an aggregate amount not exceed \$66 million principal amount outstanding at any one time, during the period from January 1, 1996 to December 31, 1997, with final maturities not later than December 31, 1998.

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, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 5, 1995. Protests will be considered by the Commission 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 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. 95-26915 Filed 10-30-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP95-650-002]

Questar Pipeline Company; Notice of Amendment to Application

October 25, 1995.

Take notice that on October 20, 1995, Questar Pipeline Company (Questar Pipeline), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP95-650-002 a second

amendment to its application in Docket No. CP95-650-000, pursuant to Section 7(b) of the Natural Gas Act (NGA), seeking authority to abandon certain certificated facilities by transfer to Questar Gas Management Company (QGM), all as more fully set forth in the amendment that is on file with the Commission and open to public inspection.

Questar Pipeline proposes, by this amendment, to include in the assets to be transferred to QGM: (1) Jurisdictional Lateral No. 17 (JL No. 17), comprising 14,585 feet of 8-inch diameter pipeline, and associated metering and regulating facilities, originally referred to as the Dry Piney Exchange Station, and (2) the Riley Ridge M&R Station, comprising one 2-inch and one 6-inch meter run, various valves and appurtenant facilities located in Section 12, Township 27 North, Range 114 West, Sublette County, Wyoming. It is stated that the gross plant investment values for JL No. 17 and the Riley Ridge M&R Station, as of May 31, 1995, are \$88,381 and \$64,615, respectively.

Questar Pipeline explains that this amendment is submitted in response to the intervention and protest filed by Exxon Company, U.S.A. (Exxon), in this proceeding on September 6, 1995. It is further explained that Questar Pipeline concurs with Exxon's assertions that Questar Pipeline's 8-inch, 2.76-mile JL No. 17 and associated facilities should more properly be classified as gathering because JL No. 17 connects Questar Pipeline's Dry Piney gathering system with two Williams Field Services' gathering laterals.

Questar Pipeline asserts that, upon receipt of the requested authorizations, QGM will own and operate these facilities as part of its nonjurisdictional gathering system, exempt from the Commission's jurisdiction under NGA Section 1(b).

Any person desiring to be heard or to make any protest with reference to said amendment to the application should on or before November 15, 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 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 Questar Pipeline to appear or be represented at the hearing. Lois D. Cashell,

Secretary.

[FR Doc. 95-26916 Filed 10-30-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-1181-005, et al.]

**C.C. Pace Energy Services, et al.;
Electric Rate and Corporate Regulation
Filings**

October 23, 1995

Take notice that the following filings have been made with the Commission:

1. C.C. Pace Energy Services

[Docket No. ER94-1181-005]

Take notice that on October 18, 1995, C.C. Pace Energy Services, Inc. filed certain information as required by the Commission's order dated July 25, 1994, in Docket No. ER94-1181-000. Copies of C.C. Pace Energy Services, Inc.'s informational filing are on file with the Commission and are available for public inspection.

2. Ashton Energy Corporation

[Docket No. ER94-1246-005]

Take notice that on October 10, 1995, Ashton Energy Corporation (Ashton Energy) filed certain information as required by the Commission. Copies of Ashton Energy's informational filing are on file with the Commission and are available for public inspection.

3. AIG Trading Corporation

[Docket No. ER94-1691-007]

Take notice that on October 10, 1995, AIG Trading Corporation (AIG) filed

certain information as required by the Commission's January 19, 1995, order in Docket No. ER94-1691-000. Copies of AIG's informational filing are on file with the Commission and are available for public inspection.

4. KCS Power Marketing, Inc.

[Docket No. ER95-208-003]

Take notice that on October 11, 1995, KCS Power Marketing, Inc. (KPM) filed certain information as required by the Commission's March 2, 1995, order in Docket No. ER95-208-000. Copies of KPM's informational filing are on file with the Commission and are available for public inspection.

5. Wilson Power & Gas Smart, Inc.

[Docket No. ER95-751-003]

Take notice that on October 10, 1995, Wilson Power & Gas Smart, Inc. filed certain information as required by the Commission's letter order dated April 25, 1995, in Docket No. ER95-751-000. Copies of Wilson Power & Gas Smart Inc.'s informational filing are on file with the Commission and are available for public inspection.

6. Delhi Energy Services, Inc.

[Docket No. ER95-940-002]

Take notice that on October 18, 1995, Delhi Energy Services, Inc. (Delhi) filed certain information as required by the Commission's order dated June 1, 1995, in Docket No. ER95-940-000. Copies of Delhi's informational filing are on file with the Commission and are available for public inspection.

7. Southwestern Public Service
Company

[Docket No. ER95-1138-002]

Take notice that on October 2, 1995, Southwestern Public Service Company tendered for filing a compliance filing in the above-referenced docket. Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Cleveland Electric Illuminating
Company

[Docket No. ER95-1194-001]

Take notice that on October 12, 1995, Cleveland Electric Illuminating Company tendered for filing revisions to the June 9, 1995, filing in the above-referenced docket.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power
Company

[Docket No. ER95-1383-002]

Take notice that on October 13, 1995, Virginia Electric and Power Company tendered for filing its refund report in the above-referenced docket.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Otter Tail Power Company

[Docket No. ER95-1555-000]

Take notice that on October 10, 1995, Otter Tail Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. USGen Power Services, L.P.

[Docket No. ER95-1625-000]

Take notice that on October 17, 1995, USGen Power Services, L.P. filed an amendment to its application under Section 205 of the Federal Power Act.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. New York State Electric & Gas
Corporation

[Docket No. ER95-1678-000]

Take notice that on October 6, 1995, New York State Electric & Gas Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company

[Docket No. ER96-42-000]

Take notice that on October 6, 1995, Commonwealth Edison Company (ComEd) submitted a Service Agreement establishing InterCoast Power Marketing Company (InterCoast) as a customer under the terms of ComEd's Power Sales Tariff PS-1 (PS-1 Tariff). The Commission has previously designated the PS-1 Tariff as FERC Electric Tariff, Original Volume No. 2.

ComEd requests an effective date of September 6, 1995, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon InterCoast and the Illinois Commerce Commission.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Power and Light Company

[Docket No. ER96-51-000]

Take notice that on October 10, 1995, Wisconsin Power and Light Company (WP&L), tendered for filing a signed Service Agreement under WP&L's Bulk Power Tariff between itself and Engelhard Power Marketing, Inc. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of September 10, 1995.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Rochester Gas and Electric Corporation

[Docket No. ER96-52-000]

Take notice that on October 10, 1995, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Service Agreement for acceptance by the Federal Energy Regulatory Commission (Commission) between RG&E and Koch Power Service, Inc. The terms and conditions of service under this Agreement are made pursuant to RG&E's FERC Electric Rate Schedule, Original Volume I (Power Sales Tariff) acceptance by the Commission in Docket No. ER94-1279. RG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. MidAmerican Energy Company

[Docket No. ER96-53-000]

Take notice that on October 10, 1995, MidAmerican Energy Company (MidAmerican) filed with the Commission a Service Agreement with Electric Clearinghouse, Inc. (ECI) dated September 25, 1995, entered into pursuant to Section 4.0 of MidAmerican's Point-to-Point Transmission Service Tariff which was accepted for filing by the Commission in Docket No. ER95-1542-000.

MidAmerican requests an effective date of September 25, 1995, for the Agreement with ECI, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on ECI, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. MidAmerican Energy Company

[Docket No. ER96-54-000]

Take notice that on October 10, 1995, MidAmerican Energy Company (MidAmerican) filed with the Commission an Umbrella Service Agreement with Electric Clearinghouse, Inc. (ECI) dated September 25, 1995, entered into pursuant to Section 4.0 of MidAmerican's Point-to-Point Transmission Service Tariff which was accepted for filing by the Commission in Docket No. ER95-1542-000.

MidAmerican requests an effective date of September 25, 1995, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on ECI, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Public Service Electric and Gas Company

[Docket No. ER96-55-000]

Take notice that on October 10, 1995, Public Service Electric and Gas Company (PSE&G), tendered for filing an initial rate schedule to provide fully interruptible transmission service to Englehard Power Marketing, Inc., for delivery of non-firm wholesale electrical power and associated energy output utilizing the PSE&G bulk power transmission system.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Cinergy Services, Inc.

[Docket No. ER96-56-000]

Take notice that on October 10, 1995, Cinergy Services, Inc. (CINERGY), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Electric Sales Agreement, dated September 1, 1995, between CINERGY, CG&E, PSI and Central Illinois Light Company (CILCO).

The Electric Sales Agreement provides for the following service between CINERGY and CILCO.

1. Service Schedule A—Emergency Service
2. Service Schedule B—System Energy
3. Service Schedule C—Negotiated Capacity and Energy

CINERGY and CILCO have requested an effective date of November 1, 1995.

Copies of the filing were served on Central Illinois Light Company, the Illinois Commerce Commission, the

Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Allegheny Power Service Corporation on behalf of West Penn Power Company

[Docket No. ER96-57-000]

Take notice that on October 10, 1995, Allegheny Power Service Corporation, on behalf of West Penn Power Company, submitted Supplement No. 5 to reduce rates for FERC Electric Tariff First Revised Volume No. 1. The annual rate decrease proposed in Supplement No. 5 results from a March 1995 legislated reduction in the West Virginia Business & Occupation Tax.

Copies of the filing were served upon the jurisdictional customers and the Public Utility Commission.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Allegheny Power Service Corporation, on behalf Monongahela Power Company The Potomac Edison Company West Penn Power Company

[Docket No. ER96-58-000]

Take notice that on October 10, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies) filed a Network Transmission Service Tariff and Point-to-Point Transmission Service Tariff under which the APS Companies propose to offer open access transmission services to eligible customers at cost-based rates. The APS Companies propose a December 6, 1995, effective date. Sixty (60) days following acceptance for filing of the Tariffs, the APS Companies propose to cancel their Standard Transmission Service Rate Schedule. APS will honor current reservations for service under the Rate Schedule for the duration of each customer's reservation.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all affected parties.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Central Power and Light Company and West Texas Utilities Company

[Docket No. ER96-61-000]

Take notice that on October 11, 1995, Central Power and Light Company (CPL) and West Texas Utilities Company (WTU) (jointly, "the Companies") submitted a Transmission Service Agreement, dated September 14, 1995, establishing NorAm Energy Services ("NorAm") as a customer under the terms of the ERCOT Coordination Transmission Service Tariff.

The Companies request an effective date of September 14, 1995, for the service agreement. Accordingly, the Companies request waiver of the Commission's notice requirements. Copies of this filing were served upon NorAm and the Public Utility Commission of Texas.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Public Service Company of Oklahoma and Southwestern Electric Power Company

[Docket No. ER96-62-000]

Take notice that on October 11, 1995, Public Service Company of Oklahoma (PSO) and Southwestern Public Service Company (SWEPCO) (jointly, "the Companies") submitted Transmission Service Agreements establishing three new customers under the terms of the Companies' SPP Interpool Transmission Service Tariff.

The Companies request waiver of the Commission's notice requirements. Copies of this filing were served upon the three customers, the Public Utility Commission of Texas, and the Oklahoma Corporation Commission.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Public Service Company of Oklahoma and Southwestern Electric Power Company

[Docket No. ER96-63-000]

Take notice that on October 11, 1995, Public Service Company of Oklahoma and Southwestern Public Service Company (collectively the "the Companies") submitted a Transmission Service Agreement dated September 28, 1995, establishing Rainbow Energy Marketing Corporation (Rainbow) as a customer under the terms of the SPP Coordination Transmission Service Tariff.

The Companies request an effective date of September 28, 1995, for the service agreement. Accordingly, the Companies request waiver of the Commission's notice requirements.

Copies of this filing were served upon Rainbow, the Louisiana Public Service Commission, the Arkansas Public Service Commission, and the Oklahoma Corporation Commission.

A copy of the filing has been sent to Rainbow, the Louisiana Public Service Commission, the Arkansas Public Service Commission and the Oklahoma Corporation Commission.

Comment date: November 6, 1995, in accordance this Standard Paragraph E at the end of this notice.

25. Central Power and Light Company and West Texas Utilities Company

[Docket No. ER96-64-000]

Take notice that on October 11, 1995, Central Power and Light Company (CPL) and West Texas Utilities Company (WTU) (jointly "the Companies") submitted Transmission Service Agreements establishing three new customers under the terms of the ERCOT Interpool Transmission Service Tariff.

The Companies request waiver of the Commission's notice requirements. Copies of this filing were served upon the three customers and the Public Utility Commission of Texas.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. San Diego Gas & Electric Company

[Docket No. ER96-65-000]

Take notice that on October 11, 1995, San Diego Gas & Electric Company (SDG&E) tendered for filing an Interchange Agreement (Agreement) between SDG&E and Calpine Power Marketing Inc. (Calpine).

SDG&E requests that the Commission allow the Agreement to become effective on the 15th day of December 1995 or at the earliest date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Calpine.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

27. San Diego Gas & Electric Company

[Docket No. ER96-66-000]

Take notice that on October 11, 1995, San Diego Gas & Electric Company (SDG&E) tendered for filing an Interchange Agreement (Agreement) between SDG&E and the City of Needles, (Needles).

SDG&E requests that the Commission allow the Agreement to become effective on the 15th day of December 1995 or at the earliest date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Needles.

Comment date: November 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

28. PECO Energy Company

[Docket No. ER96-67-000]

Take notice that on October 11, 1995, PECO Energy Company (PECO) filed a Service Agreement dated August 29, 1995, with Central Illinois Public Service Company (CIPS) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds CIPS as a customer under the Tariff.

PECO requests an effective date of September 15, 1995 for the Service Agreement.

PECO requests that copies of this filing have been supplied to CIPS and to the Pennsylvania Public Utility Commission.

Comment date: November 6, 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. 95-26917 Filed 10-30-95; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-00179; FRL-4987-3]

Establishment of a National Advisory Committee for Acute Exposure Guideline Levels (AEGs) for Hazardous Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) is giving notice of the establishment of the National Advisory Committee for Hazardous Substances for Acute Exposure Guideline Levels (AEGs) that can serve as biological reference values for extremely hazardous substances. The objective of this committee is the efficient and effective development of AEGs and the preparation of supplementary qualitative information on the hazardous substances for federal, state, and local agencies and organizations in the private sector concerned with emergency planning, prevention, and response. The quantitative exposure levels will represent biological reference values for the general population. The Agency has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Paul Tobin, Office of Prevention, Pesticides and Toxic Substances (7406), 401 M St., SW., Washington, DC 20460, (202) 260-1736, e-mail: tobin.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), EPA's Office of Prevention, Pesticides, and Toxic Substance (OPPTS) is giving notice of the establishment of the National Advisory Committee for Acute Exposure Guideline Levels (AEGs) for Hazardous Substances (NAC/AEGL Committee). Copies of NAC/AEGL Committee's Charter will be filed with the appropriate committees of Congress and the Library of Congress.

The NAC/AEGL Committee will be composed of scientist-representatives from federal, state, and local agencies and organizations from the private sector with an interest in emergency planning, prevention, and response programs for acutely toxic chemicals. Organizations with scientist-representatives from the private sector include medical associations, labor unions, environmental groups, academia, private corporations, and the American Industrial Hygiene Association. The Committee will employ consistent methodology and utilize comprehensive data gathering, data evaluation AEGL development, and peer review process on a chemical-by-chemical basis. EPA anticipates the outcome of this committee's efforts to be the development of technical support documents and the development and publication of AEGL values that will serve as threshold levels for certain health effect endpoints or biological

reference values for use on a national basis. In addition, it is intended to have the AEGs reviewed by a National Academy of Sciences (NAS) subcommittee prior to publication under the auspices of NAS. The NAS subcommittee will serve as a peer review of the AEGs and as the final arbiter in the resolution of issues regarding the basic methodology used for setting AEGs. In 1992, the NAS published *Guidelines for Developing Community Emergency Exposure Levels for Hazardous Substances* which will serve as the methodology guidance for the development of the AEGs. The collaborative efforts of government agencies and private organizations through the work of the AEGL committee is seen as a good example of "reinventing government" and represents a new, cost effective approach to avoiding duplication of efforts, establishing uniform values, and employing the most scientifically sound methods available for the development of short-term exposure levels for extremely hazardous substances.

Dated: October 25, 1995.

Susan H. Wayland,
*Assistant Administrator for Prevention,
Pesticides and Toxic Substances.*
[FR Doc. 95-26958 Filed 10-30-95; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[Correction to Report No. 2108]

Petition for Reconsideration of Action in Rulemaking Proceedings

October 26, 1995.

Report No. 2108, released October 23, 1995 omitted the below Petition for Reconsideration. Therefore this petition is hereby added and the opposition date remains the same.

Subject: Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Area in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool (PR Docket No. 89-553)

Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93-253)

Implementation of Sections 3(n) and 332 of the Communications Act (GN Docket No. 93-252)

Number of Petitions Filed: 2

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95-26977 Filed 10-30-95; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

[Notice 1995-16]

Filing Dates for the California Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of Filing Dates for Special Elections.

SUMMARY: California has scheduled special elections on December 12 and February 6 in the Fifteenth Congressional District to fill the U.S. House seat vacated by Congressman Norman Mineta.

Committees required to file reports in connection with the Special General Election on December 12 should file a 12-day Pre-General Report on November 30. Committees required to file reports in connection with both the Special General and Special Runoff Election to be held on February 6, should no candidate achieve a majority vote, must file a 12-day Pre-General Report, a 12-day Pre-Runoff Report on January 25, and a Post-Runoff Report on March 7, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Information Division, 999 E Street, N.W., Washington, DC 20463, Telephone: (202) 219-3420; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates in the Special General and Special Runoff Elections and all other political committees not filing monthly which support candidates in these elections shall file a 12-day Pre-General Report on November 30, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through November 22, a 12-day Pre-Runoff Report on January 25, with coverage dates from November 23 through January 17, and a Post-Runoff Report on March 7, with coverage dates from January 18 through February 26, 1996.

All principal campaign committees of candidates in the Special General Election *only* and all other political committees not filing monthly which support candidates in the Special General Election shall file a 12-day Pre-General Report on November 30, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is

later, through November 22 and a consolidated Post-General and Year-End Report on January 11, 1996, with coverage dates from November 23 through December 31, 1995.

All political committees not filing monthly which support candidates in the Special Runoff *only* shall file a 12-day Pre-Runoff Report on January 25, with coverage dates from the last report

filed or the date of the committee's first activity, whichever is later, through January 17, and a Post-Runoff Report on March 7, with coverage dates from January 18 through February 26, 1996.

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTIONS

Report	Close of books ¹	Reg./cert. mailing date ²	Filing date
I. All Committees Involved in the Special General (12/12) and Special Runoff (2/6) Must File			
Pre-General	11/22/95	11/27/95	11/30/95
Pre-Runoff ³	01/17/96	01/22/96	01/25/96
Post-Runoff	02/26/96	03/07/96	03/07/96
II. All Committees Involved in the Special General (12/12) Only Must File			
Pre-General	11/22/95	11/27/95	11/30/95
Post-General and Year-End ⁴	12/31/95	01/11/96	01/11/96
III. All Committees Involved in the Special Runoff (2/6) Only Must File			
Pre-Runoff ³	01/17/96	01/22/96	01/25/96
Post-Runoff	02/26/96	03/07/96	03/07/96

¹ The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

² Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

³ Because reports should not include activity for more than one calendar year, committees should file the Pre-Runoff Report on two forms. One form should cover 11/23/95-12/31/95 and be labeled "Year-End Report." The other form should cover 1/1/96-1/17/96 and be labeled "Pre-Runoff Report." The filing of two forms satisfies both Pre-Runoff and Year-End filing requirements.

⁴ Committees should file a consolidated Post-General and Year-End Report by the filing date of the Post-General Report.

Dated: October 26, 1995.
 Danny L. McDonald,
Chairman, Federal Election Commission.
 [FR Doc. 95-26929 Filed 10-30-95; 8:45 am]
BILLING CODE 6715-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1071-DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA-1071-DR), dated October 10, 1995, and related determinations.

EFFECTIVE DATE: October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia dated October 10, 1995, is hereby amended to include the following area among those areas

determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 10, 1995:

Rockdale County for Individual Assistance and Hazard Mitigation Assistance.
 (Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)
 Laura B. Buchbinder,
Director, Interagency Planning and Liaison.
 [FR Doc. 95-26953 Filed 10-30-95; 8:45 am]
BILLING CODE 6718-02-P

[FEMA-1070-DR]

Alabama; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama (FEMA-1070-DR), dated October 4, 1995, and related determinations.

EFFECTIVE DATE: October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alabama dated October 4, 1995, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 4, 1995:

Chilton County for Individual Assistance and Hazard Mitigation Assistance.
 (Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)
 Laura B. Buchbinder,
Director, Interagency Planning and Liaison Division, Response and Recovery Directorate.
 [FR Doc. 95-26954 Filed 10-30-95; 8:45 am]
BILLING CODE 6718-02-P

[FEMA-1062-DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA-1062-DR), dated August 10, 1995, and related determinations.

EFFECTIVE DATE: October 24, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida dated August 10, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 10, 1995:

The counties of Bay, Brevard, Escambia, Okaloosa, Santa Rosa and Walton for category B under the Public Assistance program. (already designated for Individual Assistance, Hazard Mitigation Assistance and categories A, C, D, E, F, and G under Public Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 95-26955 Filed 10-30-95; 8:45 am]

BILLING CODE 6718-02-P

[FEMA-1072-DR]

Alaska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska, (FEMA-1072-DR), dated October 13, 1995, and related determinations.

EFFECTIVE DATE: October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alaska dated October 13, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 13, 1995:

The Chugach Education Attendance Area, the Copper River Education Attendance Area, (the above areas include the City of Cordova, the City of Valdez and the Richardson, Copper River and Edgerton Highway Areas), and the Kodiak Island Borough for Public Assistance and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Laura B. Buchbinder,

Director, Interagency Planning and Liaison Division, Response and Recovery Directorate.

[FR Doc. 95-26956 Filed 10-30-95; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011305-002

Title: Tricontinental Service Agreement

Parties:

Cho Yang Shipping Co., Ltd.
DSR-Senator Lines

Synopsis: The proposed amendment removes a restriction on the capacity utilization of vessels operated pursuant to the Agreement under Article 5.2 and provides that voluntary ratemaking authority under Article 5.4 shall not apply in those sectors of the trade covering routes to and from the European Community. The parties have requested a shortened review period.

Agreement No.: 203-011517

Title: APL/Crowley Space Charter and Sailing Agreement

Parties:

American President Lines, Ltd.
Crowley American Transport, Inc.

Synopsis: The proposed Agreement permits the parties to consult and agree upon the deployment and utilization of vessels, to charter space from one another and to rationalize sailings in the trade between the Caribbean Sea, Central America, and South America ports and ports in Puerto Rico. In addition, the parties may discuss and agree upon rates, rules service items, terms and conditions of service contracts and tariffs maintained by either party or

by any conference to which any party may be a member. Adherence to any agreement reached is voluntary. The parties have requested a shortened review period.

Agreement No.: 224-002153-009

Title: Memorandum Agreement between City of Long Beach/Westway Trading Corporation

Parties:

City of Long Beach
Westway Trading Corporation

Synopsis: The proposed amendment deletes a portion of the leased premises and adjusts the compensation accordingly.

Agreement No.: 224-003877-005

Title: Memorandum Agreement between City of Long Beach/Crescent Terminals, Inc.

Parties:

City of Long Beach
Crescent Terminals, Inc.

Synopsis: The proposed amendment adjusts the compensation to be paid from July 1, 1995 through June 30, 2000. It also resolves the amount of compensation to be paid under the Guaranteed Annual Minimum Compensation provisions of the Agreement during the term of January 1, 1994 through June 30, 1995.

Agreement No.: 224-004003-005

Title: City of Long Beach/Toyota Motor Sales, U.S.A., Inc. Terminal Agreement

Parties:

City of Long Beach
Toyota Motor Sales, U.S.A., Inc.

Synopsis: The proposed amendment deletes certain areas and adds other areas to the leased premises and adjusts the compensation accordingly.

Agreement No.: 224-010806-004

Title: Port of Portland/Stevedoring Services of America, Inc. Management Agreement

Parties:

Port of Portland
Stevedoring Services of America, Inc.

Synopsis: The proposed amendment extends the term of the Agreement until September 30, 2000. It also clarifies the parties responsibilities for the management of Terminal 2.

Dated: October 26, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95-26950 Filed 10-30-95; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the

Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Seacrest Associates, Inc., 5550 Merrick Road, Suite 304, Massapequa, NY 11758, Officers: Lothar H. Kammerer, President, Rose-Marie Lebel, Vice President

Miami Shuttle Express, Inc., 6016 S.W. 14th Street, West Miami, FL 33144, Officer: Maria J. Gavito-Hernandez, President

Perform'Air International, Inc., 2111 Welch Street #B222, Houston, TX 77019, Officers: Jean-Jacques Goelle, President, Shlomit Shimrat, Secretary

Pacific Multi-Modal, Inc., 840 West 12th Street, Long Beach, CA 90813, Officers: Abraham L. Walker, CEO, Karen L. Walker, President

Traffic Systems Corporation, 500 Tanca Street #207, San Juan, Puerto Rico 00901, Officers: Antonio Rosa Montanez, President, Vilma Reyes Diaz, Vice President

Dated: October 26, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 95-26949 Filed 10-30-95; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-934-95-1610-00]

Dixie Resource Area Draft Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

ADDRESSES: Copies of the Dixie Draft Resource Management Plan and Draft Environmental Impact Statement (DRMP/DEIS) may be obtained from the following Bureau of Land Management (BLM) locations: BLM, Utah State Office, 324 South State, Information Access Center (4th Floor), Salt Lake City, Utah, telephone (801) 524-4110; Cedar City District Office, 176 East DL Sargent Drive, Cedar City, Utah 84720, telephone (801) 865-3053; Dixie Resource Area Office, 345 East Riverside Drive, St. George, Utah 84770, telephone (801) 673-4654.

Comments must be received by the Dixie Resource Area Office at the above address by Wednesday, January 31, 1996.

SUMMARY: In accordance with section 102 of the National Environmental Policy Act of 1970, section 202 of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610, a draft resource management plan/draft environmental impact statement for the Dixie Resource Area, Cedar City District, Utah, has been prepared and is available for review and comment. The DRMP/DEIS describes and analyzes future options for managing 629,005 acres of public land and an additional 49,130 acres of Federal mineral estate in

Washington County, Utah. The DRMP/DEIS also examines the potential for designations of Areas of Critical Environmental Concern (ACECs) and Wild and Scenic Rivers. Decisions generated during this planning process will supersede land use planning guidance presented in the Virgin River Management Framework Plan and subsequent amendments.

FOR FURTHER INFORMATION CONTACT: David Everett, Team Leader, or Jim Crisp, Area Manager, Bureau of Land Management, Dixie Resource Area Office, 345 East Riverside Drive, St. George, Utah 84770, telephone (801) 673-4654.

SUPPLEMENTARY INFORMATION: The DRMP/DEIS analyzes four alternatives to resolve the following three major issues: (1) What is the most appropriate use of public lands where rapid urban development is generating problems with the management of natural resources? (2) What will the future management be for outdoor recreation on public lands? (3) How will proposed water storage projects influence natural resource management? Each alternative represents a complete management plan for the area. The alternatives can be summarized as (A) no action or change from current management, (B) emphasis on development and production, (C) the preferred alternative, which is a balanced mix of management choices, and (D) emphasis on preservation of biological systems and scenic values.

Areas of Critical Environmental Concern Considered

Eleven potential ACECs were considered. The proposed acreage of these units varies by alternative and is displayed on the following table:

Area name	Critical concern	Proposed acreage by alternative			
		A	B	C	D
Red Bluff	Endangered plant species (dwarf bear-poppy); saline soils	0	0	6,185	6,185
Warner Ridge-Fort Pearce	Endangered plant species (dwarf bear-poppy, siler cactus); saline soils; riparian system; candidate animal species (spotted bat, gila monster); waterfowl, raptors, and non-game species.	0	0	4,200	4,200
Santa Clara River-Gunlock	Cultural resources; candidate fish (Virgin River spinedace); riparian systems; wildlife habitat (including southwestern willow flycatcher habitat).	0	0	2,015	2,015
Santa Clara River-Land Hill	Cultural resources; candidate fish (Virgin River spinedace); riparian systems; wildlife habitat (including southwestern willow flycatcher habitat).	0	0	1,605	1,605
Lower Virgin River	Riparian system; endangered fish (woundfin minnow and Virgin River chub); cultural resources (Virgin River Anasazi riverine sites); wildlife habitat.	0	0	1,825	1,825
Little Creek Mountain	Cultural resources (Virgin Anasazi upland sites)	0	0	19,405	19,405
Canaan Mountain	High scenic values; cultural resources (Virgin Anasazi sites) ...	0	0	31,395	31,395
Red Mountain	High scenic value	0	0	4,960	4,960
Beaver Dam Slope	Threatened animal species (desert tortoise); National Natural Landmark; scientific research; desert ecosystem.	0	0	27,440	25,240

Area name	Critical concern	Proposed acreage by alternative			
		A	B	C	D
City Creek	Threatened animal species (desert tortoise); wildlife habitat; scientific research; desert ecosystem.	0	0	2,605	22,790
Upper Beaver Dam Wash	Watershed; riparian values	0	0	33,125	33,125

Management prescriptions for the proposed ACECs vary by alternative and are described in the DRMP/DEIS.

Wild and Scenic Rivers

In Alternative A (No Action Alternative), BLM would not make a determination as to the suitability of the eligible river segments. In Alternative B, no eligible river segments would be

recommended as suitable for Congressional designation into the National Wild and Scenic River System. In Alternative C (Preferred Alternative), six segments, totalling 49.81 public land river miles, could be determined suitable. In Alternative D, all of the eligible river segments could be determined suitable. The following table

outlines the river segments, totalling 62.63 public land river miles, that were determined eligible for Congressional designation. The table also identifies, by alternative, which eligible river segments could be determined suitable and recommended to Congress for designation into the NWSRS.

Eligible river segments	Segment description public lands	Length in miles ¹	Tentative classification	Potential suitability by alternative			
				A	B	C	D
West Fork of Beaver Dam Wash.	Segment from the Nevada State line to near Motoqua.	12.79	9.31 miles Wild	N	N	Y	Y
			3.48 miles Recreational	N	N	Y	Y
La Verkin Creek/Smith Creek.	La Verkin Creek from where the creek enters public lands to the north boundary of Zion National Park; then from below the Park boundary to near the confluence with the Virgin River. Smith Creek from Red Butte to confluence with La Verkin Creek.	13.98	12.98 miles Wild	N	N	Y	Y
			1.00 mile Recreational	N	N	Y	Y
Virgin River	Segment A Virgin River—public lands from the River's beginning near Springdale, Utah to the Washington Fields Diversion.	10.07	10.07 miles Recreational ...	N	N	N	Y
	Segment B Virgin River—near Atkinville south to the Arizona state line.	7.67	211 miles Wild	N	N	Y	Y
Deep Creek/ Crystal Creek.	Deep Creek from where the creek enters public lands to the north boundary of Zion National Park. Crystal Creek from where the creek enters public lands to the confluence with Deep Creek.	11.69	4.46 miles Scenic	N	N	Y	Y
			1.10 miles Recreational	N	N	Y	Y
			11.69 miles Wild	N	N	Y	Y
Fort Pearce Wash.	Fort Pearce Wash from near the historic site downstream to where the free-flowing section ends.	0.50	0.50 mile Scenic	N	N	N	Y
Moody Wash	Segment B of Moody Wash below private lands and above its confluence with the Santa Clara River.	0.25	0.25 mile Recreational	N	N	N	Y
Santa Clara River.	Segment B of the Santa Clara River south and east of the Paiute Indian Reservation.	2.00	2.00 miles Recreational	N	N	N	Y
North Fork of the Virgin.	The North Fork of the Virgin River from where it enters public lands in Washington County to the confluence of the Virgin River.	0.88	0.64 mile Wild north of Park.	N	N	Y	Y
			0.24 mile Recreational south of Park.	N	N	Y	Y
Oak Creek/ Kolob Creek.	River segments north of Zion National Park	2.80	2.80 miles Wild	N	N	Y	Y

¹ Lengths are approximate and include public land only.

Public meetings will be held on the following dates at the following locations: December 12, 1995, St. George, Dunford Auditorium, Val Browning Building, Dixie College, 2:00 p.m. to 4:00 p.m.; December 13, 1995, Hurricane, Senior Citizen Center, 95 North 300 West, 7:00 p.m. to 9:00 p.m.; December 14, 1995, Salt Lake City, Main Branch Salt Lake City Public Library

Auditorium, 209 East 500 South, 6:30 p.m. to 8:30 p.m.
 Dated: October 24, 1995.
 G. William Lamb,
State Director.
 [FR Doc. 95-26968 Filed 10-30-95; 8:45 am]
BILLING CODE 4310-DQ-P

Fish and Wildlife Service
Endangered and Threatened Species Permit Applications
AGENCY: Fish and Wildlife Service, Interior.
ACTION: Notice of receipt of applications.

The following applicants have applied for a permit to conduct certain

activities with endangered or threatened 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.*).

Permit No. PRT-799486

Applicant: Janet Randall, San Francisco, California.

The applicant requests an amendment to her permit to take (capture and remove up to 10 individuals from the wild, obtain biological samples for DNA analysis, and attach radio collars) the giant kangaroo rat (*Dipodomys ingens*) in Merced, Fresno, Monterey, San Luis Obispo, Kings, Kern, and Santa Barbara Counties, California for scientific research to enhance the survival of the species.

Permit No. PRT-802455

Applicant: Delbert Huebner, Clinton, Iowa.

The applicant requests a permit to purchase in interstate commerce one pair of Hawaiian (=nene) geese (*Nesochen* (= *Branta sandvicensis*) from Robert and Mary Popple of Chippewa Falls, Wisconsin, and one pair of nene geese from Roberta Howell of Muldrow, Oklahoma for the purpose of enhancement of propagation and survival of the species.

Permit No. PRT-807635

Applicant: Thomas Boullion, Cottonwood, California.

The applicant requests a permit to take (harass by survey, collect, and sacrifice voucher specimens) the Conservancy fairy shrimp (*Branchinecta conservatio*), the vernal pool fairy shrimp (*Branchinecta lynchi*), the longhorn fairy shrimp (*Branchinecta longiantenna*), and the vernal pool tadpole shrimp (*Lepidurus packardii*) in Butte, Colusa, Glenn, Lassen, Modoc, Plumas, Shasta, Siskiyou, Sutter, Tehama, Trinity, and Yuba Counties, California, for the purpose of enhancing the survival of the species.

Permit No. PRT-797999

Applicant: Merkel & Associates, Inc., San Diego, California.

The applicant requests an amendment to their permit to include the take (survey using taped vocalizations) of the southwestern willow flycatcher (*Empidonax traillii*) for presence or absence surveys throughout the range of the species in California, for the purpose of enhancing the survival of the species.

DATES: Written comments on the permit applications must be received on or before November 30, 1995.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and

Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: 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, within 30 days of the date of publication of this notice, to the following office: U.S. Fish and Wildlife Service, Ecological Services, Division of Consultation and Conservation Planning, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181. Telephone: 503-231-2063; FAX: 503-231-6243. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: October 24, 1995.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95-26940 Filed 10-30-95; 8:45 am]

BILLING CODE 4310-55-P

Silvio Conte National Fish and Wildlife Refuge Advisory Committee Meeting

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of The Federal Advisory Committee Act, this notice announces a meeting of the Silvio Conte National Fish and Wildlife Refuge Advisory Committee established under the authority of the Silvio O. Conte National Fish and Wildlife Refuge Act.

DATES: The Silvio Conte National Fish and Wildlife Refuge Advisory Committee will meet from 10:00 a.m. to 2:00 p.m., Tuesday, December 5, 1995.

ADDRESSES: The meeting will be held at the Montshire Museum of Science, Montshire Road, Norwich, Vermont 05055.

Summary minutes of the meeting will be maintained in the office of the Coordinator for the Silvio O. Conte National Fish and Wildlife Refuge Advisory Committee at 38 Avenue A, Turners Falls, Massachusetts 01376.

FOR FURTHER INFORMATION CONTACT: Committee Coordinator Lawrence Bandolin at 413-863-0209, FAX 413-863-3070.

SUPPLEMENTARY INFORMATION:

Committee members will comment on the final Environmental Impact Statement (FEIS) for the Silvio O. Conte National Fish and Wildlife Refuge, be updated on the status of the Conte Refuge funding, receive information regarding potential cooperative agreements involving outreach and environmental education, and receive an educational concept plan and an ecosystem outreach plan (draft).

The meetings are open to the public. Interested persons may make oral statements to the Committee or may file written statements for consideration. Summary minutes of the meeting will be available for public inspection during regular business hours (8:30-4:00) Monday through Friday within 30 days following the meeting at the committee coordinator's office listed above. Personal copies may be purchased for the cost of duplication.

Dated: October 24, 1995.

Cathleen I. Short,

Acting Regional Director, Region 5 Hadley, Massachusetts.

[FR Doc. 95-26928 Filed 10-30-95; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 21, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by November 15, 1995.

Antoinette Lee,

Acting Chief of Registration, National Register.

ARIZONA

Yavapai County

Arizona Pioneers' Home,

300 S. McCormick St.,

Prescott, 95001363

Camp Date Creek,

N of US 89,

Date Creek vicinity, 95001361

ARKANSAS

Benton County

Pyeatte House

(Benton County MPS)

311 S. Mt. Olive St.,

Siloam Springs, 95001382
Faulkner County
Faulkner County Courthouse,
801 Locust St.,
Conway, 95001381
Lonoke County
Walls Farm Barn and Corn Crib,
AR 31 N of Tomberlin,
Tomberlin vicinity, 95001379

CALIFORNIA

Shasta County
Gladstone Houses,
12962—12964 Cline Gulch Rd.,
French Gulch vicinity, 95001374

FLORIDA

Levy County
Citizens Bank,
5 N. Main St.,
Williston, 95001369
Orange County
Palmer, Cal. Memorial Building,
502 Main St.,
Windermere, 95001364
Pasco County
Jeffries, Capt. Harold B., House,
38537 5th Ave.,
Zephyrhills, 95001370

GEORGIA

Madison County
Comer Historic District,
Roughly, Main St. from Forest Ave. to
Laurel Ave., GA 72 from Oak St.
past GA 98, and GA 98 from GA 72
past Paoli St.,
Comer, 95001378

GUAM

Guam County
Atantano Shrine,
300 ft. SE of GU 1 (Marine Dr.), N of
jct. with GU 2A,
Piti vicinity, 95001367

INDIANA

Marion County
Camp Edwin F. Glenn,
Fort Benjamin Harrison,
Indianapolis, 95001360
Fort Benjamin Harrison Historic
District (Boundary Increase),
Roughly bounded by Shafter Rd.,
Aultman Ave. and Glenn Rd.,
Indianapolis, 95001359

MINNESOTA

Crow Wing County
Deerwood Auditorium,
27 E. Forest Rd.,
Deerwood, 95001376
Hennepin County
Minneapolis YMCA Central Building,
36 S. Ninth St. (formerly 30 S. Ninth
St.),
Minneapolis, 95001375
Todd County
Germania Hall,

Co. Hwy. 11 N of Clarissa, Germania
Township,
Clarissa, 95001377

OHIO

Cuyahoga County
East Boulevard Historic District,
Roughly bounded by East Blvd., St.
Clair Ave., E. 99th St. and
University Cir.,
Cleveland, 95001366
Lake County
Downtown Willoughby Historic
District,
Approximately nine blocks centered
around the jct. of Erie and River Sts.
and Euclid Ave.,
Willoughby, 95001362
Lorain County
Lorain & West Virginia Railway
Historic District,
From Wellington to Lorain, in
Wellington, Pittsfield, Russia,
Amherst, Elyria and Sheffield
Townships,
Wellington, 95001383

PENNSYLVANIA

Fayette County
Colley, Abel, Tavern
(National Road in Pennsylvania MPS)
US 40, approximately 0.5 mi. W of
Searights Crossroads, Menallen
Township,
Searights Crossroads, 95001352
Downer Tavern
(National Road in Pennsylvania MPS)
US 40, Wharton Township,
Chalkhill, 95001351
Fayette—Springs Hotel
(National Road in Pennsylvania MPS)
US 40, approximately 0.5 mi. E of
Chalk Hill, Wharton Township,
Chalk Hill vicinity, 95001358
Hopwood—Miller Tavern
(National Road in Pennsylvania MPS)
US 40 (Main St.), South Union
Township,
Hopwood, 95001355
Johnson—Hatfield Tavern
(National Road in Pennsylvania MPS)
US 40, 0.5 mi. E of Brier Hill,
Redstone Township,
Brier Hill vicinity, 95001354
Monroe Tavern
(National Road in Pennsylvania MPS)
US 40 (Main St.), South Union
Township,
Hopwood, 95001357
Morris—Hair Tavern
(National Road in Pennsylvania MPS)
US 40 (Main St.), South Union
Township,
Hopwood, 95001356
Wallace—Baily Tavern
(National Road in Pennsylvania MPS)
US 40, 1.5 mi. W of Brier Hill,

Redstone Township,
Brier Hill vicinity, 95001350
Somerset County
Wable—Augustine Tavern
(National Road in Pennsylvania MPS)
US 40, approximately 1 mi. E of
Addison, Addison Township,
Addison vicinity, 95001353

TENNESSEE

DeKalb County
DeKalb County Fairgrounds,
103 Fairground Rd.,
Alexandria, 95001372
Marshall County
Ladies Rest Room,
105 1st Ave. N.,
Lewisburg, 95001380
Perry County
Bromley, Dr. Richard Calvin, House,
TN 13 near jct. with Slink Shoals Rd.,
Flatwoods, 95001373
Shelby County
Veterans Administration Hospital
Complex, No. 88—Memphis,
1025 E. H. Crump Blvd. E.,
Memphis, 95001371

TEXAS

Collin County
Estes House,
903 N. College St.,
McKinney, 95001365.
In order to assist in the preservation
of the following property, the
commenting period is being waived:
MICHIGAN
Wayne County
Engine House No. 18
3812 Mt. Elliott Ave.
Detroit, 95001368
[FR Doc. 95-26951 Filed 10-30-95; 8:45 am]
BILLING CODE 4310-70-P

DEPARTMENT OF LABOR

**Labor Advisory Committee for Trade
Negotiations and Trade Policy;
Meeting Notice**

Pursuant to the provisions of the
Federal Advisory Committee Act (P.L.
92-463 as amended), notice is hereby
given of a meeting of the Labor Advisory
Committee for Trade Negotiations and
Trade Policy.

Date, time and place: November 9, 1995,
10:00 am—12:00 noon, U.S. Department of
Labor, Room N-3437 A/B, 200 Constitution
Ave., NW., Washington, DC 20210.

Purpose: The meeting will include a
review and discussion of current issues
which influence U.S. trade policy. Potential
U.S. negotiating objectives and bargaining
positions in current and anticipated trade
negotiations will be discussed. Pursuant to
section 9(B) of the Government in the

Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 219-4752.

Signed at Washington, D.C. this 24th day of October 1995.

Joaquin Otero,

Deputy Under Secretary, International Affairs.

[FR Doc. 95-26941 Filed 10-30-95; 8:45 am]

BILLING CODE 4510-28-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40-8027]

Sequoyah Fuels Corporation; Issuance of Director's Decision Under 10 CFR Part 2.206

I. Introduction

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC) has issued a Director's Decision under 10 CFR 2.206 regarding the Sequoyah Fuels Facility in response to a petition received from Ms. Diane Curran (Petitioner), dated March 14, 1995, on behalf of the Native Americans for a Clean Environment. (NACE) The petition also considered a subsequent letter from Petitioner dated March 31, 1995.

The petition was referred to the staff for consideration pursuant to 10 CFR 2.206 of the Commission's regulations. For the reasons stated in the enclosed "Director's Decision under 10 CFR 2.206," items 1, 3, and 4 of the Petition have been denied, and item 2 is moot.

Native Americans for a Clean Environment (NACE) submitted to the Nuclear Regulatory Commission (NRC), a "Petition for an Order Requiring Sequoyah Fuels Corporation to File a Final Site Characterization Plan (SCP) and for an Order to Obtain a License Amendment" (Petition) dated March 11, 1995. NACE requested NRC to take action with respect to the Sequoyah Fuels Corporation (SFC or Licensee) pursuant to 10 CFR 2.206. The Petitioner requests that NRC:

(1) Reverse the NRC staff's decision to permit SFC to proceed with site characterization without submitting a final Site Characterization Plan (SCP), by issuing an Order or a Confirmatory Action Letter obliging SFC to submit a final SCP by a date certain;

(2) Obtain a copy of the Environmental Protection Agency's (EPA) title search or perform a title search of all property used in connection with the SFC license, in order to clarify the identity and ownership of all property subject to NRC License No. SUB-1010;

(3) Issue an order forbidding SFC, Sequoyah Fuels International Corporation, Sequoyah Holding Corporation, or any other associated corporation that holds title to property under NRC License No. SUB-1010 from transferring any interest in any of its property before SFC applies for and receives a license amendment authorizing transfer; and

(4) Before issuing any such license amendment, find reasonable assurance that any entity acquiring an interest in the SFC property fully understands the nature of the liabilities and responsibilities it is undertaking for cleanup and long-term care of the site and that it has the financial capability to carry out those responsibilities.

The Petition alleges the following bases for its requests:

(1) The NRC staff illegally and improperly excused SFC from its obligation to submit a final SCP;

(2) SFC is presenting a "Trust Indenture" to several towns and the county of Sequoyah for the creation of an industrial park;

(3) Neither SFC's letter to Mr. Main (Secretary of Commerce, Oklahoma Department of Commerce), the Fact Sheet, nor the Trust Agreement, itself, refers to the fact that SFC has been ordered by NRC and EPA to characterize the extent of the contamination in the 1,400 acres that surround the 85-acre processing area, the focus of site characterization and remediation efforts; nor do those documents refer to the other sources of potential contamination, consisting of groundwater migration from the admittedly contaminated processing area, effluent streams and ditches, and the Carlisle School (located on the land proposed for an industrial park, and used by SFC as a laboratory);

(4) The Trust Indenture depicts the 1,400 acres of land subject to NRC License No. SUB-1010 as the candidate area for the industrial park; SFC has made conflicting representations regarding the size of the "facility" or "site" to NRC and in the Trust Indenture. SFC responded to the Petition by a letter dated March 29, 1995, and requests that the Petition be denied in all respects.

By letter dated March 31, 1995, NACE supplemented its Petition. NACE states that SFC is conducting site

characterization by utilizing the EPA Facility Investigation Workplan (FIW), which was prepared for the EPA pursuant to requirements of the Resource Conservation and Recovery Act (RCRA). Petitioner asserts that by relying on the FIW to conduct site characterization, SFC has neither understood nor implemented NRC staff criticisms of the draft SCP. Petitioner asserts that NRC should require SFC to submit a written final SCP because the FIE does not:

(1) Resolve NRC comments related to site hydrogeology and vertical and lateral contamination;

(2) Resolve NRC sample density concerns; or

(3) Provide for characterization of the DUF₄ processing, decorative pond, and parking lot areas.

By letter dated May 10, 1995, the Director, Office of Nuclear Material Safety and Safeguards acknowledged receipt of the Petition, and informed the Petitioner that the Petition would be evaluated under 10 CFR 2.206 of the Commission's regulations.

I have completed my evaluation of the matters raised by the Petitioner and have determined that, for the reasons stated below, the Petition is denied in part, was satisfied in part, and NRC regulations address the Petitioner's concerns related to the requests for issuance of orders related to transfer of property.

II. Background

From 1970 until July 6, 1993, SFC operated a uranium conversion facility at a site located in Gore, Oklahoma, under the authority of NRC License No. SUB-1010, issued pursuant to 10 CFR Part 40. The main process was the conversion of uranium oxide (yellowcake) to uranium hexafluoride. A second process, initiated in 1987, consisted of the conversion of depleted uranium hexafluoride to uranium tetrafluoride, the first step in producing depleted uranium metal.

After the discovery of contaminated soil surrounding structures used by SFC for its licensed activities, NRC staff issued an order suspending SFC's authorization to operate its conversion facilities. See "Order Modifying License (Effective Immediately) and Demand for Information," EA 91-067 (October 3, 1991). After studies by SFC, operational and organizational changes by SFC, extensive NRC inspections, and several public meetings, NRC, on April 16, 1992, lifted the order suspending the SFC license and authorized SFC to resume operation of its conversion facility.

In November 1992, SFC (and subsequently in writing) informed NRC that operation of its main process for the conversion of uranium oxide (yellowcake) to uranium hexafluoride was permanently terminated and that the second process, the conversion of depleted uranium hexafluoride to uranium tetrafluoride, would be terminated by July 1993. SFC formally notified NRC of its intentions to terminate all conversion processes and seek license termination in accordance with 10 CFR 40.42(e), in a letter dated February 16, 1993. In addition, a proposed plan to address decommissioning issues related to the SFC facility, entitled "Preliminary Plan for Completion of Decommissioning (PPCD)," was enclosed in its letter of February 16, 1993.

By letter dated March 23, 1993, NRC staff notified SFC that its 10 CFR 40.42(e) notification had been accepted, and that activities at the site should be limited to those related to decommissioning. By letter dated July 7, 1993, SFC notified NRC staff that SFC had ceased all operational licensed activities. Since that time, SFC has restricted its activities to disposal of contaminated material and planning for decommissioning.

On August 4, 1993, SFC and EPA Region VI signed an Administrative Order on Consent (AOC), establishing a schedule for compliance with Section 3008(h) of the Solid Waste Disposal Act, as amended by the RCRA, as further amended by the Hazardous and Solid Waste Amendments of 1984, 42 USC 6928(h). The AOC required SFC to perform a number of tasks aimed at monitoring site conditions, site characterization, corrective measures, and financial assurance. A key element of the AOC is the RCRA Facility Investigation (RFI) Workplan. The RFI Workplan data needs closely parallel those of an NRC SCP. For SFC's site, both the RFI Workplan and the SCP involve characterization of much of the same property. The major difference between the RFI Workplan and the SCP rests only on the constituents that are analyzed (nonradioactive materials for EPA and radioactive materials for NRC).

Common to both plans is the characterization of the soil, bedrock, and groundwater underlying the site. SFC agreed to drill a series of wells to the next lower water-bearing strata to better define the geology underlying the site and to sample for contamination. These wells are in addition to the 100 wells previously installed by SFC at the site. Whether or not the deeper wells planned by SFC to address EPA concerns will also satisfy NRC concerns

related to the vertical extent of radiological contamination will have to await the evaluation of sample analyses.

To avoid unnecessary duplicative regulatory actions, EPA and NRC drafted a site-specific Memorandum of Understanding (MOU). Under the terms of this MOU, EPA and NRC will exchange pertinent documents, keep each other informed of planned actions, and, to the extent possible, coordinate major characterization and remediation tasks on similar schedules. The MOU was signed by EPA on September 21, 1995, and by NRC on September 25, 1995.

SFC submitted to EPA a draft RFI Workplan in January 1994. EPA reviewed the draft RFI Workplan and provided SFC comments in a letter dated August 25, 1994. Based on the comments provided by EPA, SFC made changes to the draft RFI Workplan and a final Workplan was approved by EPA in December 1994. In accordance with the requirements of the AOC, SFC must submit a final RFI Report to EPA by December 1995.

SFC submitted a draft SCP to NRC in January 1994. Interested persons, including EPA, the United States Geological Survey (USGS), and NACE reviewed the draft SCP and provided comments to NRC. Consistent with the staff's commitment to NACE, in a letter from J.H. Austin (NRC) to D. Curran (NACE), dated December 9, 1993, to keep NACE involved in the review process, the NACE comments were discussed with representatives of NACE, NRC and SFC in a May 31, 1994, meeting.

NRC staff performed an extensive review of the draft SCP and of all the comments regarding the draft SCP. Where appropriate, NRC staff factored those comments into NRC staff's comments, which were transmitted to SFC by letter dated November 3, 1994. The essence of NRC staff's comments was that SFC must do substantially more sampling than proposed in the draft SCP. Additional sampling is necessary to reliably identify the types and extent of contamination on and around the SFC site. NRC staff requested that SFC address the staff's comments, or provide the basis for not making changes to the SCP.

In its November 1994 quarterly report to EPA, required by the AOC, SFC raised concerns related to possible duplication of SFC's decontamination and decommissioning efforts that could result in unnecessarily increased costs.

In January and February 1995, NRC staff engaged in technical discussions with SFC regarding the November 3, 1994, comments of the staff concerning

the draft SCP. The discussions covered a broad range of issues related to site characterization and scheduling.

By letter dated February 5, 1995, the Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, confirmed NRC staff's understanding of SFC's verbal commitment, by telephone in early February 1995, to use NRC staff's comments of November 3, 1994, during site characterization and in SFC's preparation of its Site Characterization Report (SCR). Furthermore, NRC agreed with SFC that the schedule for the SCR should parallel that for the RFI Report, in order to minimize possible redundancy and associated costs, and to facilitate the effective utilization of SFC resources. Accordingly, NRC gave SFC a due date of January 15, 1996, for submission of a draft SCR. The staff also reminded SFC that NRC may establish legally binding requirements, if necessary, to ensure timely and effective remediation of Site Decommissioning Management Plan (SDMP) sites. The SFC facility is an SDMP site. In its March 29, 1995, response to the Petition, SFC again committed to address the NRC's comments on the SCP during conduct of the site characterization effort. SFC confirmed its understanding of the staff's November 3, 1994, comments by a letter dated June 2, 1995, in which SFC again committed to incorporate those staff comments into its SCR.

III. Discussion

A. Petitioner Requests That NRC Staff Reverse Its Decision To Permit SFC To Proceed With Site Characterization Without Submitting a Revised SCP, by Issuing an Order or Confirmatory Action Letter Requiring SFC To Submit a Written Final SCP

Petitioner contends that by not requiring SFC to submit a written final SCP, NRC staff illegally and improperly excused SFC from its obligations in violation of the:

(a) Timeliness in Decommissioning Rule;

(b) NRC's "Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites" (Action Plan), 57 Fed. Reg. 13389 (April 16, 1992);

(c) NRC's December 29, 1992, Demand for Information to SFC;

(d) MOU between NRC and EPA; and

(e) NRC's commitments to Petitioner in a letter dated December 9, 1993, that SFC would be required to demonstrate how it would sample all potentially contaminated areas as part of the SCP.

NRC staff weighed the potential benefits, and the increased costs of and

delays in decommissioning, of requesting SFC to revise its draft SCP in accordance with NRC staff comments, which SFC understood and had already agreed to incorporate into the site characterization process and SCR. NRC staff concluded that the objectives of site characterization could be met, and data appropriate to support a proposed decommissioning alternative could be produced, if NRC staff's comments were implemented during site characterization. NRC staff's action was intended to avoid potentially costly delays in decommissioning and to prevent duplication of regulatory actions, based on work already underway as a part of the EPA-approved RFI Workplan.

Additionally, the staff's action was consistent with agency efforts to streamline the Site Decommissioning Management Plan (SDMP) regulatory review process.¹ The SFC site is an SDMP site. This streamlining involves, among other things, discontinuance of NRC staff review of SCPs and SCRs prior to the submittal of decommissioning plans. Site characterization information will be considered by NRC staff in its review of decommissioning plans. NRC regulations do not require the submission of SCPs or SCRs, but do require site characterization data to be submitted with the decommissioning plan. See 10 CFR 40.42(f)(4)(i). Streamlining the SDMP process is consistent with NRC regulations.

Streamlining promotes a more coordinated and focused review of the licensee's characterization information and place greater emphasis on issues that affect the selection and implementation of a decommissioning approach.

Contrary to Petitioner's assertion, NRC staff's action was consistent with the Timeliness in Decommissioning rule. Those amendments to NRC regulations establish specific time periods for submission of a decommissioning plan and completion of decommissioning, and were intended to reduce potential risk to public health and the environment at facilities after licensed activities have ceased. See "Timeliness in Decommissioning of Materials Facilities," 59 Fed. Reg. 36026 (July 15, 1994). The staff's February 5, 1995, letter allowed SFC to proceed with site characterization on the condition that SFC include in its SCR the staff's November 3, 1994, comments

regarding the draft SCP. The staff determined that inclusion of those comments would produce adequate site characterization and would reduce delay. Although site characterization and the data derived during site characterization are necessary inputs to a decommissioning plan,² SCPs and SCRs are not expressly required by NRC regulations. The staff did not release SFC from the "timeliness" rule or from the requirement to submit a decommissioning plan. See 10 CFR 40.42(f)(1). The staff's action reduced potential delays in site characterization and decommissioning, and cannot be considered to have contributed to any delay in SFC's decommissioning the SFC site.

Contrary to being in violation of the NRC's Action Plan, NRC staff's February 5, 1995, letter to SFC was consistent with the plan. The Action Plan was intended to encourage compliance with NRC timeliness in decommissioning regulations. The Action Plan is not itself a rule and contains no enforceable standards. The Action Plan refers to submittal of an SCP, but does not require NRC approval. The Action Plan encourages licensees to enter into early consultation with NRC staff regarding site characterization and decommissioning issues. Such consultation is intended to address site-specific conditions to ensure that site characterization is appropriately planned and conducted, and of sufficient depth to support a selected decommissioning option. Consistent with the Action Plan, NRC staff engaged in site-specific technical discussions with SFC regarding not only NRC's comments on the draft SCP, but also the comments of NACE, the USGS and EPA. See Section II, *supra*. The NRC staff's February 5, 1995, letter to SFC was consistent with the Action Plan, and cannot be considered to have contributed to any delay in compliance with timeliness requirements for decommissioning, for the same reasons that the staff's action was consistent with the Timeliness in Decommissioning Rule.

Petitioner does not explain, nor is it apparent how, the NRC staff's February 5, 1995, letter contravened the December 29, 1992, Demand for Information (DFI) to SFC. As Petitioner notes, the February 13, 1993, Preliminary Plan for Decommissioning, submitted by SFC in response to the DFI, commits SFC to submission of an

SCP to NRC and to implementation of the SCP by early 1994. The staff in its February 5, 1995, letter did not delay the submission or implementation of the SCP. To the contrary, the staff permitted SFC to proceed expeditiously with an SCP which NRC had reviewed and considers adequate, as long as the staff's November 3, 1994, comments are incorporated, which SFC has undertaken to do.

Contrary to Petitioner's assertion, NRC staff's action in its letter of February 5, 1995, did not violate the (then draft) MOU between NRC and EPA. The then draft MOU, as well as the final MOU, state that NRC will ensure that SFC develops and implements an SCP, which NRC staff has done. Moreover, in the spirit of the EPA and NRC site-specific MOU, NRC and EPA have worked together to avoid unnecessary duplicative regulatory actions and their attendant costs. Specifically, after consultation with the EPA, NRC staff agreed in its February 5, 1995, letter to SFC's request that the schedule for site characterization and submission of the SCR should parallel that of the EPA RFI Workplan. The development of the EPA MOU and NRC MOU was a major consideration in NRC staff's action allowing SFC to proceed with site characterization and to incorporate NRC staff's comments in the SCR, rather than to require submission of yet another version of the SCP.

Contrary to the Petitioner's assertions, NRC staff's action by its letter of February 5, 1995, did not violate NRC's commitments to Petitioner, made in a letter dated December 9, 1993, that SFC would be required to demonstrate how it would sample all potentially contaminated areas as part of the SCP. The December 9, 1993, letter also stated that NACE's concerns would be addressed during NRC staff's review of the SCP.

NRC staff met these commitments to NACE. NACE reviewed the SFC draft SCP and provided comments to NRC staff. NACE's comments were discussed in a meeting on May 31, 1994, with representatives from NACE, NRC, and SFC. All applicable NACE comments were incorporated into NRC staff's comments and transmitted to SFC by letter dated November 3, 1994. SFC verbally committed, by telephone in early February 1995, to use NRC staff's comments of November 3, 1994, during site characterization and in SFC's preparation of its SCR. SFC confirmed its understanding of the staff's November 3, 1994, comments by a letter dated June 2, 1995, in which SFC again committed to incorporate those staff comments into its SCR. Accordingly,

¹ On May 19, 1995, the NRC staff briefed the Commission on SDMP Policy and Program issues, including the staff's implementation of streamlining. 10 CFR 40.42(f)(4)(i). Streamlining the SDMP process is consistent with NRC regulations.

² The licensee's decommissioning plan must include a description of the site, buildings, and outside areas affected by licensed activities. 10 CFR 40.42(f)(4)(i).

contrary to Petitioner's assertion, there is no basis to conclude that NACE's concerns will not in fact be addressed. Moreover, NRC remains committed to ensuring that SFC conduct a complete and accurate characterization of all radiological contamination on the SFC site and on property affected by SFC's licensed activities, through reviews of SFC's SCR and a subsequent decommissioning plan.

By letter dated March 31, 1995, NACE supplemented its Petition. NACE states that SFC is conducting site characterization by utilizing the RCRA Facility Investigation Workplan. Petitioner asserts that by relying on the EPA Workplan to conduct site characterization, SFC has neither understood nor implemented NRC staff criticisms of the draft SCP. Petitioner asserts that NRC should require SFC to submit a written final SCP because the EPA Workplan does not:

(1) Resolve NRC comments related to site hydrogeology and vertical and lateral contamination;

(2) Resolve NRC sample density concerns; or

(3) Provide for characterization of the DUF₄ processing, decorative pond, and parking lot areas.

As explained above, NRC staff concluded after a series of discussions with SFC, that SFC does understand the staff's November 3, 1994, comments regarding the draft SCP. Moreover, SFC has committed itself to incorporating those staff comments during site characterization and in the SCR. In addition, NRC staff concludes, after review of the EPA-approved RFI Workplan, that:

(a) The approved RFI Workplan adequately addresses NRC comments regarding questions of hydrogeology and the vertical and lateral extent of contamination;

(b) The RFI Workplan, draft SCP, and the SFC commitment to incorporate NRC staff's comments on the draft SCP into site characterization activities will together ensure adequate sampling for site characterization; and

(c) The SCP, provides for adequate characterization of the DUF₄ processing area (Unit 29), the decorative pond (Unit 26), and parking lot (Unit 31) (see Figure 2 of the SCP).

NRC staff has neither violated, nor excused SFC from complying with, any NRC regulatory requirements, the MOU between NRC and EPA, any NRC staff commitments to Petitioners, or the December 29, 1992, DFI to SFC. Petitioner has raised no health and safety concern arising from NRC staff's action by letter of February 5, 1995, permitting SFC to address and

implement the staff's November 3, 1994, comments during site characterization and in the SCR. Additionally, the staff's action was consistent with agency efforts to streamline the SDMP review process. Furthermore, to require submission of a written final SCP would unnecessarily delay decommissioning of the SFC site and unduly raise the costs of decommissioning.

In view of the above, there is no basis to require SFC to submit a written final SCP.

B. Petitioner Requests That NRC Obtain From EPA a Copy of Its Title Search or Perform a Title Search of all Property Used in Connection With the SFC License

By letter dated April 20, 1995, Mark W. Potts (EPA Region VI), provided to Lance Hughes, on behalf of NACE, a copy of a document entitled "Preliminary Property Search Document; Sequoyah Fuels Corporation; Gore, Oklahoma." The document is dated July 26, 1994, and was prepared by PRC Environmental Management, Inc. for EPA. The document identifies SFC as the sole owner of the 85-acre process area of the Sequoyah Fuels facility and the approximately 2,100 acres of land surrounding the facility. A copy of this report has been placed in the SFC licensing docket and is available through either NRC's Public Document Room (PDR) at 2120 L St. NW., Washington, DC 20037, or the local PDR (LPDR) at the Stanley Tubbs Memorial Library, 101 E. Cherokee, Sallisaw, OK 21801.

Petitioner has identified no inconsistencies between the Trust Indenture and any representations to NRC regarding the size of the "facility" or "site". The land subject NRC license SUB-1010 is principally the 85-acre site along with any adjacent lands that have been affected by licensed activities.³ The copy of a "Trust Indenture" submitted by Petitioners neither describes the SFC facility or site, nor does it describe any lands subject to the Trust Indenture.⁴ Article V merely

³ Licensed activities do not include raffinate spreading because the treated raffinate is released for unrestricted use prior to spreading. However, if NRC determined that treated raffinate spreading significantly affected adjacent lands, then NRC would consider the need for additional characterization and remediation.

⁴ SFC denies having contributed any corporate resources to drafting or developing the proposed Trust Indenture or in circulating it to local communities, but states that it has openly pursued development of an industrial park with local and state officials to replace jobs lost as a result of closing the SFC plant. SFC states that a local community group, SAFEST, has been working on the Trust Indenture with the Sequoyah County Commission. See Letter of John H. Ellis, President,

identifies the Trust Estate as all property coming into the possession of the trustees pursuant to the Trust Indenture. The enclosure to a letter dated August 18, 1994, from John Ellis, President, SFC, to the Oklahoma Department of Commerce, both of which were attached to the Petition, describes the proposed industrial park as a site of 1,430 acres on the east bank of the Kerr-McClelland Waterway. Clearly the proposed industrial park surrounds or includes, in part, the SFC site, but is not identified by the Trust Indenture as all or part of the property subject to NRC License No. SUB-1010.

Petitioners have not raised a safety concern regarding the identity and ownership of lands subject to NRC License No. SUB-1010. Moreover, because EPA provided a copy of its title search the Petitioner's request has been satisfied.

C. Petitioner Requests That, Before Permitting Transfer of Land Subject to License No. SUB-1010, NRC Find Reasonable Assurance That Any Entity Acquiring an Interest in the SFC Property Fully Understands the Nature of the Liabilities and Responsibilities It Is Undertaking for Cleanup and Long-term Care of the Site and That It Has the Financial Capability to Carry Out Those Responsibilities

NRC regulations at 10 CFR 40.42(c)(2) and 40.42(d), and License Condition No. 14 of NRC License No. SUB-1010, require that any real property subject to the License or affected by licensed activities must be remediated by SFC in accordance with an approved decommissioning plan, such that the property is suitable for release in accordance with NRC requirements. This means that SFC may not transfer nor release, by sale or any other means, property subject to NRC License No. SUB-1010, or property affected by SFC's licensed activities, until SFC remediates such property and SFC demonstrates that the property meets NRC criteria for release.

It is not apparent from the NACE Petition, and no information has come to the attention of NRC staff to indicate, that there has been a transfer of any real property subject to or affected by activities conducted pursuant to NRC License No. SUB-1010. It does appear that several local governmental authorities, including Sequoyah County and the cities of Gore, Vian and Webbers Falls, have entered into an agreement to participate in the proposed Trust Indenture.

SFC, dated March 29, 1995, to James M. Taylor, Executive Director for Operations, NRC.

In its response to the Petition, SFC committed to inform NRC of any proposal SFC receives for transfer of property adjacent to the industrial area, before SFC acts on any such proposal. SFC also states that at some future time, SFC may dispose of real property unaffected by licensed operations at the SFC facility, and would do so only after notifying NRC. In the case of affected areas, SFC states that it will dispose of such property that has been released by NRC, after SFC demonstrates that appropriate criteria have been met.

Before real property used in connection with or affected by activities conducted pursuant to NRC License No. SUB-1010 could be transferred to a person without authority to engage in NRC-licensed activities, that property must be decommissioned to meet the criteria for release for unrestricted use. See 10 CFR 40.4 and 40.42, and License SUB-1010, Condition 14. Since the proposed Trust Indenture would involve the transfer of land for the purposes of an industrial park, it appears that the potential transferees have no plan to engage in NRC-licensed activities. Thus, the decommissioning criteria for release of such property would be for unrestricted use.⁵ If SFC were to decommission property used in connection with its licensed activities to meet NRC criteria for release for unrestricted use, the transferee would assume no obligation to remediate or to engage in long-term care of such property, and NRC would have no regulatory authority over the transfer of or the transferees of such property.

If property used in connection with activities conducted pursuant to NRC License No. SUB-1010 were transferred to a person who seeks authority to engage in NRC-licensed activities, including decommissioning activities such as remediation or long-term care, SFC would be required to obtain written permission from NRC prior to the transfer. See 10 CFR 40.46. At that time, it would be appropriate for NRC to ensure that the transferee is capable of meeting NRC requirements for decommissioning and all other applicable licensing requirements and the transferee must obtain an NRC license. In view of the above, Petitioners concerns about the potential transfer of property to the Trust and state, and potential transferees of such property,

⁵ The Commission is currently evaluating proposed changes to the rules governing release criteria. See "Radiological Criteria for Decommissioning," 59 Fed. Reg. 43200 (August 22, 1994). SFC will have to comply with all NRC requirements for release to unlicensed individuals under any revised rules.

are adequately addressed by applicable regulations.

D. Petitioner Requests That NRC Staff Issue an Order Forbidding SFC, Sequoyah Fuels International Corporation, Sequoyah Holding Corporation, or Any Other Associated Corporation That Holds Title to Property Subject to NRC License No. SUB-1010, From Transferring Any Interest in Such Property Before SFC Applies for and Receives a License Amendment Authorizing Such a Transfer

As explained above, SFC owns the land subject to NRC License No. SUB-1010. Before SFC may transfer or release any property used in connection with, or affected by, its licensed activity to a person not authorized to engage in NRC-licensed activity, that property must be remediated in accordance with an approved decommissioning plan to meet NRC criteria for release for unrestricted use. See Section III.C, *supra*. There is no NRC requirement that a licensee obtain NRC permission to transfer property which has been remediated to meet NRC's criteria for release for unrestricted use.

If SFC were to transfer property subject to the license or affected by licensed activity to persons for the purpose of engaging in licensed activity, 10 CFR 40.46 requires that SFC obtain written permission from NRC before transferring such property and the transferees must obtain an NRC license. Petitioners, however, have provided no evidence that such a transfer is contemplated or imminent.

Petitioners have raised no safety concern regarding a potential transfer of property used in connection with or affected by activities pursuant to NRC License No. SUB-1010, or potential transferees of such property. See Section III.C., *supra*. Moreover, since protection of the public health and safety, in the event of a transfer of such property to the proposed Trust Indenture, is already accomplished by NRC regulations, there is no justification to issue the requested order.

IV. Conclusion

The institution of proceedings pursuant to 10 CFR 2.202 is appropriate only where substantial health and safety issues have been raised. See *Consolidated Edison Company of New York* (Indian Point, Units 1, 2, and 3), CLI-75-8, 2 NRC 173, 175-176 (1975); *Washington Public Power Supply Systems* (WPPSS Nuclear Project No. 2), DD-84-7, 19 NRC 899 (1984). This is the standard I have applied to determine whether the action requested by

Petitioner is warranted. For the reasons given above, Petitioner's request that SFC ordered to submit a written final SCP by a date certain is denied. Petitioner's request that NRC perform a title search of property subject to NRC License No. SUB-1010 was satisfied. Action on Petitioner's request for an order forbidding the transfer of any interest in land subject to NRC License No. SUB-1010 before SFC applies for and receives a license amendment permitting such transfers is unnecessary because applicable regulations address Petitioners concerns. Likewise, Petitioner's request that, before granting such a license amendment application, NRC ensure that potential purchasers of property be subject to NRC License No. SUB-1010 to fully be apprised of their obligations for site remediation and long-term care and that NRC ensure such potential purchasers are financially qualified to do so, is unnecessary because applicable regulations address Petitioner's concerns.

As provided by 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. The Decision will become the final action of the Commission 25 days after issuance, unless the Commission on its own motion institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 23 day of October, 1995.

For the Nuclear Regulatory Commission,
Carl J. Paperiello,
Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95-26937 Filed 10-30-95; 8:45 am]
BILLING CODE 7590-01-P

[Docket Nos. 50-255, 72-7, and 72-1007]

Consumers Power Company, Palisades Nuclear Plant; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by a Petition dated September 19, 1995, Lake Michigan Federation and Don't Waste Michigan request that the NRC take action regarding the use of VSC-24 casks to store spent nuclear fuel at the Palisades Nuclear Plant. Petitioners ask that the NRC find that Consumers Power Company violated NRC regulations by using the casks without first establishing adequate unloading procedures and resolving all unreviewed safety questions regarding the use of the casks.

On the basis of these violations, Petitioners ask that the NRC impose

finances amounting to \$1.3 million and suspend Consumers Power Company's use of the 10 CFR Part 72 general license to store spent fuel until all outstanding issues are resolved and until a cask in which a suspected defect has been identified is unloaded. Petitioners have also asked that they be provided an opportunity to participate in reviewing the unloading procedure the licensee has developed and in any proceeding initiated in response to their Petition.

The Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations and has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by § 2.206, appropriate action will be taken on this Petition within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, N.W., Washington, DC, and at the local public document room at the Van Wylen Library, Hope College, Holland, Michigan 49423-3698.

Dated at Rockville, Maryland this 24th day of October 1995.

For the Nuclear Regulatory Commission.
William T. Russell,
Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95-26939 Filed 10-30-95; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 21448/International Series Release No. 876; 812-9714]

Internationale Nederlanden Bank N.V., et al.; Notice of Application

October 24, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Internationale Nederlanden Bank N.V. ("ING Bank") and Internationale Nederlanden Bank (Hungary) Rt. ("ING Bank Hungary").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act to exempt applicants from section 17(f).

SUMMARY OF APPLICATION: Applicants request an order to permit ING Bank Hungary to act as custodian in Hungary for certain U.S. registered investment companies.

FILING DATES: The application was filed on August 7 1995 and amended on October 10, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 20, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing request should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary: SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants: ING Bank, Strawinskylaan 2631, 1077 ZZ Amsterdam, the Netherlands; and ING Bank Hungary, Andrassy út 9, H-1061 Budapest, Hungary.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney (202) 942-0572, or C. David Messman, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. ING Bank is a Dutch banking institution and is part of Internationale Nederlanden Groep N.V., a major European financial institution. ING Bank is regulated in the Netherlands by the Dutch Ministry of Finance and the Dutch Central Bank. As of December 31, 1994, ING Bank had shareholders' equity in excess of U.S. \$5.4 billion.

2. ING Bank Hungary is a Hungarian banking organization. ING Bank Hungary is supervised by the National Bank of Hungary, the Hungarian Ministry of Finance, and the State Banking Supervision. ING Bank Hungary is a wholly-owned direct subsidiary of ING Bank. As of December 31, 1994, ING Bank Hungary had shareholders' equity of U.S. \$10.3 million.

3. Applicants request an order to permit ING Bank Hungary to maintain custody of assets ("Assets") of investment companies registered under the Act, other than those registered under section 7(d) of the Act, ("Investment Companies"). As used herein, "Assets" includes cash; cash equivalents; securities issued and sold

primarily outside the United States by a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country; and securities issued or guaranteed by the government of the United States or by any State, political subdivision, or agency thereof, or entity organized under the laws of the United States or any State thereof that have been issued and sold primarily outside the United States.

4. ING Bank, as custodian or subcustodian for a U.S. Investment Company, would deposit assets of a U.S. Investment Company with ING Bank Hungary or, alternatively, ING Bank Hungary would receive and hold the Assets of a U.S. Investment Company directly from such U.S. Investment Company. In either case, ING Bank will assume liability for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by ING Bank Hungary of its duties and obligations as custodian to the same extent as if ING Bank itself had provided such custody services. ING Bank would not be responsible for losses that may result from political risk (e.g., exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife, or armed hostilities) and other risk of loss (excluding bankruptcy or insolvency of ING Bank Hungary), for which neither ING Bank nor ING Bank Hungary would be liable (e.g., despite the exercise of reasonable care, loss due to Acts of God, nuclear incidents, and the like).

5. Applicants request that the order extend to: (a) any U.S. Investment Company for which ING Bank or ING Bank Hungary acts as foreign custodian or subcustodian; and (b) any custodian or subcustodian for such U.S. Investment Company.

Applicants' Legal Analysis

1. Section 17(f) of the Act provides that a registered investment company may maintain securities and similar assets in the custody of a bank meeting the requirements of section 26(a) of the Act, a member firm of a national securities exchange, the investment company itself, or a system for the central handling of securities established by a national securities exchange. Section 2(a)(5) of the Act defines "bank" to include banking institutions organized under the laws of the United States, member banks of the Federal Reserve System, and certain banking institutions or trust companies doing business under the laws of any state or of the United States. ING Bank

Hungary does not fall within the definition of "bank" as defined in the Act and, under section 17(f), may not act as custodian for registered investment companies.

2. Rule 17f-5 under the Act permits certain entities located outside the United States to serve as custodians for investment company assets. One such entity is a banking institution or trust company that is incorporated or organized under the laws of a country other than the United States, that is regulated as such by the country's government or an agency thereof, and that has shareholders' equity in excess of U.S. \$200 million. ING Bank qualifies as an eligible foreign custodian under rule 17f-5. ING Bank Hungary, however, does not qualify as an eligible foreign custodian solely because it does not meet the minimum shareholders' equity requirement.

3. In support of the requested relief, applicants state that ING Bank Hungary is one of only a small number of banks in Hungary currently offering custody services. In addition, prior to permitting ING Bank Hungary to act as custodian for the Assets of a U.S. Investment Company, ING Bank will ensure that ING Bank Hungary is capable and well-qualified to provide such custody services.

4. Applicants request an order under section 6(c) of the Act that would exempt them from the provisions of section 17(f) to the extent necessary for ING Bank Hungary to maintain custody of U.S. Investment Company Assets. Section 6(c) permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy of the Act. Applicants believe that the requested order meets the section 6(c) standards.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. At all times, the foreign custody arrangements proposed regarding ING Bank Hungary will satisfy all of the requirements of rule 17f-5, except for the shareholders' equity requirement.

2. ING Bank, any U.S. Investment Company, and any custodian for such U.S. Investment Company will deposit Assets with ING Bank Hungary only in accordance with an agreement required to remain in effect at all times during which ING Bank Hungary fails to satisfy the requirements of rule 17f-5 (and during which time such Assets remain

deposited with ING Bank Hungary) (the "Agreement"). Each such Agreement will be a three-party agreement among ING Bank, ING Bank Hungary, and a U.S. Investment Company or a custodian for such U.S. Investment Company. Pursuant to such Agreement, ING Bank or ING Bank Hungary, as the case may be, will undertake to provide specified custody or subcustody services on behalf of a U.S. Investment Company. If ING Bank is to provide services, the Agreement will authorize ING Bank to delegate to ING Bank Hungary such of the duties and obligations of ING Bank as will be necessary to permit ING Bank Hungary to hold in custody Assets of a U.S. Investment Company. If, instead, under such Agreement, ING Bank Hungary is to provide such services directly, no such delegation will be necessary. In either case, however, the Agreement will provide that ING Bank will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by ING Bank Hungary of its responsibilities under the Agreement to the same extent as if ING Bank had itself been required to provide custody or subcustody services under the Agreement. Further, the Agreement will provide that, in the event of a loss, a U.S. Investment Company may pursue a claim for recovery against ING Bank, regardless of whether ING Bank Hungary acted as ING Bank's delegate or as direct custodian or subcustodian.

3. ING Bank currently satisfies and will continue to satisfy the shareholders' equity requirement set forth in rule 17f-5(c)(2)(i).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-26935 Filed 10-30-95; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-21449; 811-5995]

The Advantage Municipal Bond Fund; Notice of Application

October 25, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICATION: Advantage Municipal Bond Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 1, 1995, and amended on October 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 20, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit, or for layers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 100 Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942-0572, or Alison E. Baur, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company that was organized as a business trust under the laws of Massachusetts. Applicant registered under the Act and filed a registration statement under the Securities Act of 1933 on March 3, 1993. Applicant's registration statement under the Securities Act of 1933 was declared effective on June 2, 1993 and applicant commenced a public offering of its shares on July 1, 1993.

2. On February 23, 1995, applicant's board of trustees considered and approved a transfer of assets from applicant's portfolios, the National Portfolio, the New York Portfolio, and the Pennsylvania Portfolio, to the following series of MFS Municipal Series Trust (the "Acquiring Fund"), respectively: MFS Municipal Income Fund, MFS New York Municipal Bond Fund, and MFS Pennsylvania Municipal Bond Fund. The Acquiring Fund is a registered investment company.

3. On March 29, 1995, applicant mailed proxy materials to its shareholders. The definitive proxy materials were filed with the Commission on March 31, 1995. On April 28, 1995, applicant's shareholders approved the reorganization.

4. On May 1, 1995, applicant transferred all of the assets and liabilities of each of its portfolios to the corresponding series of the Acquiring Fund based on the aggregate net asset value of the funds. Immediately after the transfer of assets, applicant distributed to shareholders of each of applicant's portfolios the shares it received from the corresponding Acquiring Fund's series in the reorganization. Each shareholder received the proportion of shares of the Acquiring Fund's series corresponding to the number of shares of beneficial interest of applicant's portfolio owned by such shareholder in relation to the number of such shares of applicant outstanding on that date.

5. Expenses consisted of legal costs, accounting costs, printing and mailing costs, and costs of proxy solicitation. In an agreement dated February 7, 1995, the Advest Group, Inc. and Massachusetts Financial Services agreed to pay certain expenses in connection with the reorganization. Applicant paid no portion of the expenses incurred on its behalf.

6. After receipt of the requested order, applicant will file the necessary documentation with the Commonwealth of Massachusetts to terminate its existence as a Massachusetts business trust.

7. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has retained no assets. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-26936 Filed 10-30-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36410; File No. 265-19]

Consumer Affairs Advisory Committee; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of the Securities and Exchange Commission ("Commission") Consumer Affairs Advisory Committee ("Committee").

SUMMARY: This is to give notice that the Securities and Exchange Commission Consumer Affairs Committee will meet on November 15, 1995, in Room 1C30 at the Commission's Headquarters, 450 Fifth Street, N.W., Washington, D.C., beginning at 9:00 a.m. The meeting will be opened to the public. This notice also serves to invite the public to submit written comments to the Committee.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265-19. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Nancy M. Smith, Director of the Office of Investor Education and Assistance (202) 942-7040; Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app 10a, the Securities and Exchange Commission Consumer Affairs Advisory Committee hereby gives notice that it will meet on November 15, 1995, in Room 1C30 at the Commission's Headquarters, 450 Fifth Street, N.W., Washington, D.C., beginning at 9:00 a.m. The meeting will be opened to the public.

The Committee's responsibilities include assisting the Commission in identifying investor problems and being more responsive to their needs. The Committee will explore fundamental issues of concern to investors, including matters currently under consideration by the Commission and topics of emerging concern to investors and the financial services industry.

The purpose of this meeting, among other things, will be to consider and review Commission developments on investor initiatives such as descriptions of risk in mutual funds, profile prospectuses, new rules governing municipal securities, proposals to improve trading prices for investors, compensation practices, arbitration and other current issues.

Dated: October 25, 1995.

Jonathan G. Katz,
Advisory Committee Management Officer.
[FR Doc. 95-26897 Filed 10-30-95; 8:45 am]
BILLING CODE 8010-01-M

[Release Nos. 33-7236; 34-36412; International Series Release No. 875]

Exemptions From Rules 10b-6, 10b-7, and 10b-8 During Distributions of Certain Dutch Securities

October 25, 1995.

Pursuant to delegated authority, on October 19, 1995, the Division of Market Regulation issued a letter granting class exemptions from Rules 10b-6, 10b-7, and 10b-8 ("Trading Practice Rules") under the Securities Exchange Act of 1934 to facilitate distributions in the United States of the securities of certain highly capitalized Dutch issuers. The exemptions permit transactions that otherwise would be prohibited by the Trading Practice Rules, subject to certain disclosure, recordkeeping, record production, and notice requirements.

The exemptions have been issued pursuant to the Commission's Statement of Policy contained in Securities Exchange Act Release No. 33137 (November 3, 1993), and are published to provide notice of their availability.

Margaret H. McFarland,
Deputy Secretary.

October 19, 1995.

John D. Wilson, Esq.
Shearman & Sterling, 12 rue d'Astorg, 75008 Paris, France

Re: Distributions of Certain Dutch Securities
File No. TP 95-439

Dear Mr. Wilson: In regard to your letter dated October 16, 1995, as supplemented by conversations with the staff, this response thereto is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in your letter. Each defined term in this letter has the same meaning as defined in your letter, unless otherwise noted herein.

Response

On the basis of your representations and the facts presented, the Commission hereby grants exemptions from Rules 10b-6, 10b-7, and 10b-8 under the Securities Exchange Act of 1934 ("Exchange Act") to distribution participants, as defined in Rule 10b-6(c)(6)(ii), and their affiliated purchasers, as defined in Rule 10b-6(c)(6)(i) (collectively, "Relevant Parties"), in connection with transactions in Relevant Securities (as defined below) outside the United States during distributions of Qualified Dutch Securities (as defined below) subject to the following terms, conditions, and limitations:

I. Securities

A. The security being distributed ("Qualified Dutch Security") must:

1. be issued by (a) a "foreign issuer" within the meaning of Rule 3b-4 under the Exchange Act incorporated under the laws of The Netherlands, which issuer ("Dutch Issuer") has outstanding a component security of the Amsterdam EOE-Index ("AEX");¹ or (b) a subsidiary of a Dutch Issuer described in paragraph I.A.1.a.; and

2. satisfy one of the following:

a. be an equity security of a Dutch Issuer which security has an aggregate market value that equals or exceeds the equivalent of NLG 1.6 billion (which exceeded US\$1 billion as of October 16, 1995), and a worldwide average daily trading volume that equals or exceeds the equivalent of NLG 8 million (which exceeded US\$5 million as of October 16, 1995), as published by foreign financial regulatory authorities ("FFRAs")² and any U.S. securities exchanges or automated inter-dealer quotation systems during the Reference Period; or

b. be a security that is convertible into, exchangeable for, or a right to acquire a security of a Dutch Issuer described in paragraph I.A.2.a. above.

B. "Relevant Security" means:

1. a Qualified Dutch Security; or

2. a security of the same class and series as, or a right to purchase, a Qualified Dutch Security.³

II. Transactions Effected in the United States

All transactions in Relevant Securities effected in the United States shall comply with Rules 10b-6, 10b-7, and 10b-8.

III. Transactions Effected in the Netherlands

¹ References to the AEX refer to the composition of the index on the date of this letter; *provided, however*, that any security added to the AEX after the date of this letter also will be treated as a Qualified Dutch Security if its issuer satisfies the requirements in paragraph I.A.1. and such security has an aggregate market value that equals or exceeds the equivalent of NLG 1.6 billion (which exceeded US\$1 billion as of October 16, 1995) and an average daily trading volume that equals or exceeds the equivalent of NLG 8 million (which exceeded US\$5 million as of October 16, 1995) as published by "foreign financial regulatory authorities" (as defined below) and any U.S. securities exchanges or automated inter-dealer quotation systems, during a period ("Reference Period") that is 20 consecutive business days in Amsterdam within 60 consecutive calendar days prior to the commencement of the Covered Period as defined in paragraph III.A. below.

² An FFRA is defined in Section 3(a)(51) of the Exchange Act, 5 U.S.C. 78(c)(51), as any (A) foreign securities authority; (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities; or (C) membership organization a function of which is to regulate participation of its members in activities listed above. The Amsterdam Stock Exchange ("ASE") together with the Stock Exchange Association ("SEA") is considered to be an FFRA.

³ You do not request and this letter does not grant any relief with respect to transactions in options effected on the Amsterdam EOE Optiebeurs.

A. All transactions during the Covered Period (as defined below) in Relevant Securities effected in The Netherlands shall be conducted in compliance with Dutch law and the rules of the ASE. For purposes of these exemptions, "Covered Period" means: (i) in the case of a rights distribution, the period commencing when the subscription price is determined and continuing until the completion of the distribution in the United States, and (ii) in the case of any other distribution, the period commencing three business days in Amsterdam before the price is determined and continuing until the completion of the distribution in the United States; *provided, however*, that the Covered Period shall not commence with respect to any Relevant Party until such person becomes a distribution participant.

B. All transactions in Relevant Securities during the Covered Period effected in The Netherlands on a principal basis shall be effected or reported on the trading facilities of the ASE (including the Automatic Interprofessional Dealing System Amsterdam and the Amsterdam Stock Exchange Trading System).

C. Disclosure of Trading Activities.⁴

1. The inside front cover page of the offering materials used in the offer and sale in the United States of a Qualified Dutch Security shall prominently display a statement in substantially the following form, subject to appropriate modification where circumstances require. Such statement shall be in capital letters, printed in bold-face roman type at least as large as ten-point modern type and at least two points leaded:

In connection with this offering, certain persons may engage in transactions for their own accounts or for the accounts of others in [identify relevant securities] pursuant to exemptions from rules 10b-6, 10b-7, and 10b-8 under the Securities Exchange Act of 1934. See "[identify section of offering materials that describes the transactions to be effected]."

2. In addition, there shall be included in the identified section of the offering materials a comprehensive description of the activities that may be undertaken by the Relevant Parties in the Relevant Securities during the distribution.

D. Recordkeeping and Reporting.

1. Each Relevant Party shall provide to the SEA the information described in paragraph III.D.2. below with respect to its transactions in Relevant Securities in The Netherlands; *provided, however*, that in the case of a distribution made pursuant to rights, such information is only required to be reported to the SEA during the period or periods commencing at any time during the Covered Period that the rights exercise price does not represent a discount of at least 10 percent from the then current market price of the security underlying the rights and continuing until (a) the end of the Covered Period or (b) until the rights exercise price represents a discount of at least 12 percent from the then

⁴ Unless subsequently modified by the Commission, this disclosure requirement shall not apply to distributions effected solely pursuant to Rule 144A under the Securities Act of 1933 ("Securities Act").

current market price of the security underlying the rights.⁵

2. When required pursuant to paragraph III.D.1. above, the Relevant Parties will provide the following information to the SEA, in a Comma Delimited ASCII (American Standard Code for Information Interchange) format including a common record layout acceptable to the SEA and the Division of Market Regulation ("Division"), with respect to transactions during the Covered Period in Relevant Securities:

a. name of the security, date, time (of execution and reporting, where available to the Relevant Party), price, and volume of each transaction; *provided, however*, that no information regarding a customer transaction need be provided unless such transaction has a value of NLG 500,000 or more (approximately US\$315,000 as of October 16, 1995);

b. the exchange or inter-dealer quotation system on which the transaction was effected, if any;

c. an indication whether such transaction was for a proprietary account or the account of a customer, *provided that* any transaction effected by an underwriter for a customer account for which it has exercised discretionary authority shall be reported as a proprietary trade; and

d. the identity of a counterparty only where such counterparty is an underwriter or a selling group member.

3. The SEA and the Relevant Parties shall keep all documents produced or prepared pursuant to paragraph III.D.2. above for a period of not less than two years.

4. Upon the request of the Division, the SEA shall transmit the information provided by the Relevant Parties pursuant to paragraph III.D.2. above to the Division within 30 days of the request.

5. If the information required to be produced in paragraph III.D.2. above is not available from the SEA, upon the request of the Division such information shall be provided by the Relevant Party and be made available to the Division at its office in Washington, DC.

6. Representatives of a Relevant Party will be made available (in person at the office of the Division or by telephone) to respond to inquiries of the Division relating to its records.

IV. Transactions Effected in Significant Markets

A. All transactions in Relevant Securities in a "Significant Market," as defined below, shall be effected in accordance with the requirements of Rules 10b-6, 10b-7, and 10b-8, except as permitted by paragraph IV.B. below or by other available exemptions. For purposes of these exemptions, "Significant Market" means: (i) SEAQ International or any other dealer market outside the United States and The Netherlands for which price and volume information is published by an FFRA or (ii) any other securities market(s) in a single country other than the United States or The

⁵ For purposes of these exemptions, unless stated otherwise, the market price for a security shall be the closing price on the ASE.

Netherlands to which a Dutch Issuer has applied for listing the Qualified Dutch Security and been accepted, if during the Reference Period the volume in either (i) or (ii) in such Qualified Dutch Security, as published by the relevant FFRA(s) in such securities market is 10 percent or more of the aggregate worldwide trading volume in that security published by all FFRAs in (i) and (ii), FFRAs in The Netherlands, and U.S. securities markets to which such Dutch Issuer has applied for listing such Qualified Dutch Security and been accepted.

B. Any transactions by Relevant Parties in a "Relevant SEAQ International Security," as defined in *Letter regarding Distributions of Certain United Kingdom Securities and Certain Securities Traded on SEAQ International* (January 10, 1995) ("United Kingdom Exemptions Letter"), that are effected in the United Kingdom shall be made subject to the terms and conditions of the United Kingdom Exemptions Letter.

V. General Conditions

A. For purposes of these exemptions, a two business day cooling-off period shall apply under Rule 10b-6(a)(4) (xi) and (xii) in the United States and each Significant Market, provided that trading in Relevant Securities in Significant Markets shall be subject to the exemptive relief then available in such market, if any, or the record maintenance and record production requirements contained in *Letter regarding Application of Cooling-Off Periods Under Rule 10b-6 to Distributions of Foreign Securities* (April 4, 1994).

B. The lead underwriter or the global coordinator or equivalent person shall promptly, but in any event before the commencement of the Covered Period, provide a written notice ("Notice") to the Division containing the following information: (i) The name of the issuer and the Qualified Dutch Security; (ii) whether the Qualified Dutch Security is an AEX component security or information with respect to the market capitalization and the average daily trading volume of the Qualified Dutch Security to be distributed; (iii) the identity of the Significant Markets where the Qualified Dutch Security trades; (iv) if the Notice is for more than one entity, the identity of all underwriters and selling group members relying on these exemptions;⁶ and (v) a statement that the Relevant Parties are aware of the terms and conditions of these exemptions. Reference is made to the notice requirement of the United Kingdom Exemptions Letter for any transactions in a Relevant Security that is a Relevant SEAQ International Security for purposes of that letter.

C. Any person who fails to comply with the conditions of the exemptions, including a failure to provide requested information, would not be permitted to rely on the exemptions in future distributions. Upon a showing of good cause, however, the Commission or the Division may determine that it is not necessary under the circumstances that the exemptions be denied.

⁶Supplemental Notices shall be provided for underwriters and selling group members identified after a Notice has been filed.

The foregoing exemptions from Rules 10b-6, 10b-7, and 10b-8 are based solely on your representations and the facts presented, and are strictly limited to the application of those rules to the proposed transactions. Any different facts or representations might require a different response. Responsibility for compliance with any other applicable provisions of the federal securities laws must rest with the Relevant Parties. The Division expresses no view with respect to any other questions that the proposed transactions may raise, including, but not limited to, the adequacy of disclosure of any other federal or state laws to the proposed transactions.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Nancy J. Sanow,
Assistant Director.

October 16, 1995.

Division of Market Regulation
*Securities and Exchange Commission, 450
Fifth Street, NW., Washington, DC 20549,
U.S.A.*

Attention: Ms. Nancy J. Sanow, Assistant
Director, Office of Trading Practices
Exemptions from Rules 10b-6, 10b-7 and
10b-8 for Distributions of Certain Dutch
Securities

Dear Ms. Sanow: We are acting as counsel to ABN AMRO Bank N.V. and the Amsterdam Stock Exchange ("ASE") in connection with possible registered equity offerings of actively-traded securities of certain Dutch companies, involving a distribution of some or all of the equity securities of such companies in the United States. On behalf of ABN AMRO Bank N.V. and the ASE we hereby submit the following application to the Securities and Exchange Commission (the "Commission") for exemptions from Rules 10b-6, 10b-7 and 10b-8 (the "Trading Rules") under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for distributions of qualified Dutch securities consistent with the Commission's International Series Release No. 606.

We seek exemptions for distributions of Dutch securities that are component securities of the Amsterdam EOE-Index (the "AEX")¹, where the Dutch issuer has a market capitalization that equals or exceeds U.S. \$1 billion (approximately NLG 1.6 billion at October 16, 1995)² and a worldwide average daily trading volume that equals or exceeds \$5 million (approximately NLG 8 million at October 16, 1995), as more fully discussed below.

I. Offerings By Dutch Companies

A. Primary and Secondary Offerings

In primary offerings, Dutch companies can issue shares either pursuant to rights

¹The AEX is a continuously updated, market-capitalization-weighted performance index based on the prices of shares of 25 leading Dutch companies listed on the ASE. The AEX component securities are selected on the basis of their effective trading volumes on the ASE. See Exhibit 1 for a list of the AEX component securities on the date hereof.

²1 NLG = U.S. 1.5979 (on October 13, 1995).

offerings or offerings of shares. Pursuant to Dutch corporate law, subject to certain exceptions, existing shareholders have pre-emptive rights to subscribe pro-rata to any capital increase or to sell their pre-emptive rights, which are separately tradeable securities, on the market. Dutch law also authorizes shareholders voting at a general shareholders' meeting to approve a capital increase and/or to restrict or exclude the current shareholders' pre-emptive rights. The general shareholders' meeting can also delegate authority to the issuer's management board or supervisory board, for up to five years, to decide in favor of a capital increase, set the terms of capital increases within an overall limit of authorized capital and restrict or exclude pre-emptive rights. Restricted pre-emptive rights might, for example, limit the number of shares in the offering reserved for existing shareholders. In primary offerings in The Netherlands, pre-emptive rights are often restricted or excluded. In the context of an offering without pre-emptive rights the issuer and the underwriting syndicate can nevertheless agree to provide certain priority rights to existing shareholders.

In primary offerings (other than rights offerings) and secondary offerings in The Netherlands, securities are typically distributed in the following manner. A syndicate of underwriters typically undertakes (in exchange for underwriters' compensation the terms of which vary from offering to offering) on a guaranteed basis to purchase and pay or procure purchasers and payment for the securities. In practice, the lead underwriter will normally have settled all major points (apart from price) with the issuer or the selling shareholder at least two or three weeks in advance of the issuer's or selling shareholder's decision to proceed with the offering. The lead underwriter typically advises the issuer or the selling shareholder and will guide the listing process. The publication of the preliminary prospectus (day 1) is followed by a period typically (but not always) lasting two weeks, during which the retail subscription is open and institutional bookbuilding is carried out. At the close of this period the offer price is decided following discussion between the lead underwriter, the issuer and any selling shareholders. On the next day, called "impact day", the offer price is announced, the underwriting agreement is signed, allocations are communicated to retail and institutional investors and trading in the securities commences. Closing and payment occurs three days later (day 18).

Before and during the offering period, the lead underwriter will normally advise the issuer or the selling shareholders as to various aspects of the offering, will assist the issuer in obtaining a listing of the securities if they are not already listed, and will have knowledge of the seller's intentions with respect to timing and size of the offering. Although the lead underwriter will have price-sensitive information regarding the securities and the offering, Article 10 of the Membership Rules SEA, together with the Code of Conduct on Confidential Information promulgated by the SEA in its Circulars numbered 91-30 and 91-43 dated March 28, 1991, require the underwriter's corporate

finance division to comply with a code of confidentiality, and thus to keep such information confidential from its credit and stockbroking divisions.

The Listing and Issuing Rules of the ASE require an application for the listing of shares in primary or secondary offerings to be made. This application must be submitted by both the issuer and a member of the Vereniging voor de Effectenhandel (Stock Exchange Association or "SEA"), usually the lead underwriter, who supports the application. The documents to be filed must include, among other things, a copy of the prospectus relating to the issuer, and the audited annual accounts of the issuer for the last five financial years. In most cases, a draft of the prospectus will already have been reviewed and approved by the SEA before the application is submitted. The SEA will decide upon the application. In the event the SEA grants authorization for listing, the issuer and the SEA will enter into a listing agreement pursuant to which the issuer will be required to comply with the SEA's Listing and Issuing Rules, circulars in connection therewith and Dutch law.

B. Rights Offerings

Offerings with pre-emptive rights permit the current shareholders in a Dutch company to participate in a capital increase *pro rata* or to sell their pre-emptive rights, which are securities separable from the shares, on the ASE. The structure and techniques of an offering with pre-emptive rights are similar to the structure and techniques as described under I.A. above of this letter.

II. The Amsterdam Market

The ASE is an organized stock exchange operated by the SEA. The ASE is subject to Dutch law and is not registered under the Exchange Act in any capacity. The SEA was founded on May 17, 1876 and is an association established under Dutch law.

The admission of equity securities to listing on the Official Market of the ASE is governed by the SEA's Listing and Issuing Rules, in addition to general Dutch law. Pursuant to the Listing and Issuing Rules, a company's stock may only be admitted to the Official Market of the ASE if the market value of the stock available for trading is at least NLG 50,000,000 (approximately US\$ 31,500,000 at October 16, 1995) and constitutes at least 5% of the company's issued capital. In addition, the available nominal amount of the stock must be at least 10,000 times larger than the smallest deliverable denomination of the stock. The Listing and Issuing Rules also include requirements as to prospectus disclosure and periodic reporting for companies listed on the ASE.

Trading on the floor of the ASE takes place on a continuous basis from 9.30 a.m. to 4.30 p.m. (Amsterdam time) each business day. The ASE distinguishes between trading in and processing large wholesale orders and smaller retail orders. For each of the two market segments a separate system has been developed. Whether a market transaction is carried out in the wholesale market or the retail market depends on whether the "wholesale limit", a turnover limit

determined per type of stock, is met. Orders that are below the wholesale limit set for a particular stock are generally executed in the retail segment of the market. Orders equal to or in excess of the wholesale limit set for a particular stock must be executed in the wholesale segment of the market.

The retail market segment operates through a hoekman and the Limit Order Book system. Opening prices in major securities listed on the ASE are fixed by the relevant hoekman, who is member of the ASE and designated by the SEA to act as a specialist for the relevant security. The hoekman fixes the opening quotation by balancing the available supply and demand for a security against the bid and asked prices for a security. After fixing the opening price, continuous trading in the security commences. The hoekman indicates prices, takes and matches orders from exchange members and reports the prices of actual transactions. Each hoekman is familiar with the range of bid and asked prices being quoted and is expected, in accordance with ASE practice, to maintain a fair and orderly market in the security, using his own funds as required. All trades are reported immediately by the hoekman to the ASE, are shown on the ASE's screen and are disseminated worldwide by trading data vendors. The closing price for a security is fixed by the hoekman at the actual price of the last trade in the relevant security on a given day. The Order Book is an electronic system through which all retail orders for a particular security are collected, sorted and executed. The hoekman may match orders for a security with retail orders in his Order Book or with orders for a security in the wholesale market.

Wholesale orders may be executed through the retail segment, by trading outside the ASE by telephone, or through two additional trading systems:

- The Automatic Interprofessional Dealing System Amsterdam ("AIDA"); and
- The Amsterdam Stock Exchange Trading System ("ASSET").

AIDA is a screen-based, quote-driven electronic trading system (comparable to the German IBIS system) through which ASE members can execute orders automatically for certain ASE designated securities. ASSET, comparable to the London-based SEAQ system, is a screen-based, competitive market making system, which permits ASE members to advertise bids and offers for certain ASE designated securities. Trading on AIDA and ASSET form part of trading on the ASE and trades thereon are subject to compliance with the ASE's rules and regulations. ASSET information is communicated to non-members via trading data vendors. Approximately 40 of the most actively traded ASE securities are traded through AIDA and ASSET.

Trading by telephone outside the ASE may take place between two ASE members, between an ASE member and an investor, or between an ASE member and a foreign intermediary. Most equity trades are, however, carried out through the ASE (*i.e.*, on the trading floor or through AIDA).

Details of all trades on the ASE (*i.e.*, retail trades and wholesale trades), including the time, price and volume of each trade, are

communicated to the SEA. The time, price and volume of retail and certain wholesale trades are reported on the ASE's screen-based information system. The time, price and volume of trades executed by an ASE principal and "megatrades" (trades far in excess of the wholesale trade threshold) must be reported within five minutes of the trade, to the Commissaris van de Notering (Commissioner of Quotation) of the SEA. Details of all trades on AIDA and ASSET are published by the SEA on the day following the trade.

At the close of each trading day, the ASE publishes the Officiële Prijscourant (Official Price List) containing a summary of the total volume of all trading per share during the trading day, together with the average price per hour of retail trades only. In the case of megatrades, members of the ASE may apply to the Commissioner of Quotation for publication of a trade to be delayed until settlement has been made between the parties. The ASE also publishes weekly and monthly summaries of the total volume of all retail trades, wholesale trades and megatrades.

III. Securities Regulation in the Netherlands

A. The Act on the Supervision of Securities Trade and the Securities Board

Securities regulation in The Netherlands is governed by the Wet Toezicht Effectenverkeer (the Act on the Supervision of the Securities Trade, or "ASST") and the implementing regulations thereunder. The Minister of Finance has delegated supervision of the securities regulation under the ASST to the Stichting Toezicht Effectenverkeer (the "Securities Board").

The Securities Board, a foundation established under Dutch law, is an independent legal entity, governed by a four to six member Bestuur (the "Governing Board"). Members of the Governing Board must be independent from operators of securities exchanges, brokers and underwriters in The Netherlands, and are appointed and dismissed by the Minister of Finance upon the recommendation of the Governing Board.

The Securities Board supervises the securities exchanges, including the ASE. In connection with its supervisory functions, the Securities Board has the power to obtain information from a securities exchange and to investigate its operations to determine whether the content, application and enforcement of the exchange's rules and regulations properly ensure the orderly functioning of the securities markets and safeguard the interests of investors active on such markets. The Securities Board also is empowered to determine whether there are grounds for filing a complaint of insider trading. The Securities Board has similar powers of investigation with respect to members of a securities exchange and is empowered to determine whether members are in compliance with the ASST, and the rules and regulations of the relevant securities exchange.

Securities exchanges in The Netherlands may only operate with the approval of the Minister of Finance. In order to obtain such approval, the securities exchange must

demonstrate that its operations and the content, application and enforcement of its rules and regulations properly ensure the orderly functioning of the securities markets and safeguard the interests of investors active on such markets. Once such approval has been granted, Dutch securities exchanges operate as self-regulating organizations and listed securities and members of a securities exchange are subject to the rules and regulations of the relevant securities exchange. The ASE is an approved stock exchange and has its own rules and regulations. The Compliance Department of the ASE is currently authorized to act on the Securities Board's behalf in connection with its investigatory, compliance and enforcement functions.

Failure by the operator of a securities exchange to comply with certain provisions of the ASST, including operating a securities exchange without the required approval, failure to comply with the terms and conditions of such approval, failure to comply with instructions given by the Securities Board or the Minister of Finance, or failure to provide information requested by the Securities Board or to cooperate with an investigation by the Securities Board, constitutes an economic offence under the Wet op de Economische Delicten (Financial Offences Act) and may lead to imprisonment and/or a fine.

B. The Stock Exchange Association

The SEA, as operator of the ASE, has adopted rules and regulations which apply to securities listed on the ASE. These rules and regulations include, but are not limited to, the Membership Rules, the Listing and Issuing Rules, the Securities Trading Rules, the Quotation Rules, and the Securities Complaints Rules. The SEA is responsible, among other things, for publishing price quotations, issuing a price list, providing general and specific information on securities trading, adopting rules and regulations for securities trading, and supervising observance of the rules and regulations (including adopting and administering measures of control and discipline, as well as penal provisions).

IV. Customary Market Activities of, and Trading Restrictions Imposed Upon, Underwriters During Offerings

A. Customary Market Activities During an Offering

In The Netherlands, banks are the underwriters of securities. The vast majority of Dutch banks provide a full range of commercial, investment banking and securities services in the tradition of universal banking. The financial activities of Dutch banks include traditional deposit and credit activities, securities activities (such as brokerage, underwriting and custodial services) and investment advisory services. The majority of trading in Dutch securities and derivatives is conducted by Dutch banks (or their affiliates) either for their own accounts or for the accounts of customers.

Subject to application of the trading restrictions described below, during an offering, the Dutch banks acting as underwriters would typically continue to

engage in a wide range of trading activities in relation to the offered securities or derivative instruments related to such securities. These activities include trading in securities in the ordinary course for their own account, market making and marketing, as well as brokerage, custodial, and investment advisory services (including managing customers' portfolios on a discretionary basis and managing mutual funds).

In addition, the lead underwriter would typically be involved in the maintenance of an orderly market in the securities during the distribution. Dutch underwriters manage their underwriting risks, and the lead underwriter manages the risks associated with maintaining an orderly market, in two principal ways: by going long or short, and by hedging through the Amsterdam EOE Optiebeurs. The underwriters may be active in trading all kinds of securities of an issuer, or derivative instruments related to such securities, in the cash market (*i.e.*, common or preferred shares, bonds with equity warrants, convertible bonds and straight bonds) and in the options and futures market (*i.e.*, equity options, futures, index options and index futures). In these markets, underwriters would both execute orders for customers and trade securities and derivatives for their own account. Other activities involve arbitrage trading between the various national and international exchanges where securities may be listed, index-arbitrage and basket-trading.

B. Trading Restrictions During an Offering

The Securities Trading Rules generally forbid ASE members from manipulating the trading price of a particular stock or from cooperating in such price manipulation. The SEA has issued a guideline with regard to price manipulation. According to the guideline, price manipulation includes the dissemination of false information in order to affect the trading price of a particular stock and any act or action which creates a false or misleading impression of the market in a particular stock, taking into consideration the circumstances of the case. The act of purchasing or selling a security during a distribution does not by itself constitute price manipulation; certain additional factors must be present. The Securities Trading Rules do not specifically define those additional factors.

The Securities Trading Rules provide, however, that trading activities during a permitted period (*i.e.*, the period commencing on the date of the announcement of the offering until thirty days after the closing date), undertaken to stabilize the price of a security during an offering, will not constitute price manipulation, provided that such activities are carried out in accordance with the Securities Trading Rules' stabilization provisions. Stabilization activities carried out outside the permitted period may, under certain circumstances, be considered to be price manipulation.

The rules on price stabilization define price stabilization as intervention in the market for the account of a syndicate within the framework of a securities transaction so

as to correct market imbalances in supply and demand. Price stabilization must be carried out with the intention of promoting stable price behavior and a fair and orderly market in the interests of investors and issuers. Price stabilization must be conducted by designated stabilizing underwriters and must be limited to purchase and sale transactions in the relevant stock and its related securities, provided that such transactions are made for the account and at the risk of the syndicate. The price stabilization rules also apply to transactions in the relevant stock and its related securities made by the stabilizing underwriters and bookrunners for their own accounts.

In principle, a stabilizing bid is allowed at any proposed price. However, price stabilization during the period commencing on the date of the announcement of the offering until the date of allocation of the securities is permitted only at or below the trading price at the time of the announcement of the offering (the "Reference Price") or the last preceding official quotation, whichever is the higher. If the stock is already listed on the ASE, the Reference Price must be in line with the last preceding official quotation on the ASE.

The underwriters' intention to engage in price stabilization must be disclosed prominently in the prospectus and on the Official Price List. If price stabilization commences before distribution of the prospectus, disclosure of the underwriters' intention to engage in price stabilization must be made to potential investors by alternative means on the date of the announcement of the offering.

Bookrunners and stabilizing underwriters must maintain a register, recording the date, time, price, volume and other details of each stabilization transaction made for the account and at the risk of the syndicate and of each transaction made by the stabilizing underwriters or bookrunners for their own accounts. This register must be available for immediate inspection by the Compliance and Enforcement Department of the ASE. In addition, the lead underwriter must enter into a written agreement with all syndicate members who are not ASE members, obliging them to make all transaction data and records necessary to verify compliance with the stabilization rules and regulations immediately available to the Compliance and Enforcement Department. If the examination by the Compliance and Enforcement Department of transaction data and records furnished by a syndicate member that is not an ASE member strongly suggests non-compliance, the SEA shall request the relevant foreign authorities to conduct a further investigation and to take measures, if necessary. Lead underwriters and co-leads may request the Compliance and Enforcement Department to institute an investigation if there is reason to suspect that the regulations have not been adequately observed. On behalf of the syndicate, the lead underwriters will have full access to the findings of the Compliance and Enforcement Department. Accordingly, the obligation of that Compliance and Enforcement Department under the SEA to observe secrecy does not apply to the identity of syndicate

members or to individual transaction information in the event of non-compliance with the rules and regulations.

In case of a primary or secondary offering of shares previously listed on the ASE, syndicate members not acting as stabilizing underwriters are required to refrain from active market making in the relevant stock during a specified restricted period. This prohibition applies from the date that written invitation to participate in the syndicate is received until the invitation to participate has been declined or until the lead underwriter has announced its decision to discontinue any stabilizing activities. The obligation to refrain from active market making applies to all syndicate members. With respect to non-members of the ASE, the lead underwriter will be obliged to ensure that the rules are complied with by stipulating observance of the rules in the invitation telex. ASE members not participating in the syndicate are prohibited from trading in an intermediary capacity for a syndicate member if such trading could reasonably be assumed to be in contravention of the prohibition against active market making by a syndicate member. The general prohibition on market making activities means facilitating activities are permitted only if they are performed at the request of clients. Accordingly, a syndicate member's activities must be confined to executing orders rather than building up its own position. Positions taken up must be reduced as soon as possible. During the restricted period, quotations on ASSET must be made conservatively.

A breach of the Securities Trading Rules by underwriters who are ASE members may result in the imposition of penalties. Depending on the circumstances of the breach, such penalties may vary from a warning, reprimand, fine of up to NLG 500,000 (approximately US \$315,000 at October 16, 1995), suspension from the ASE for up to six months (together with a fine, if appropriate) or expulsion from the ASE.

Trading restrictions imposed on an issuer arise from the fact that Dutch law prohibits a Dutch company from purchasing its own shares, except in limited circumstances. These circumstances are set forth in Section 98 of Book 2 of the Dutch Civil Code (concerning Companies and Other Legal Persons) and are limited to purchases where (i) shareholders' equity less the payment required to make the acquisition does not fall below the sum of paid-up capital and any reserves required by Dutch law or the company's Articles of Association and (ii) the company would not thereafter hold (whether itself, as pledgee, or through a subsidiary) shares with an aggregate par value exceeding one-tenth of the company's issued share capital.

V. Availability of Trading Information

A. Record-Keeping Requirements

Pursuant to the Membership Rules of the ASE and guidelines issued thereunder, members are required to keep adequate records and accounts of all transactions. In addition, when conducting a purchase or sale transaction in a listed security for its own account, an ASE member is required to report

such transaction to the ASE's Trade Supervision Department providing certain information including the name and clearing code of the stock broking firm, the name of the stock, the ISIN code, the size of the transaction, the transaction time, the transaction price and the counterparty. These records and accounts must be sufficient to demonstrate compliance with the Securities Trading Rules. ASE members are required to record transaction information adequately and in verifiable form. The Chairman of the Governing Board of the SEA may issue instructions to a corporate member to remedy any inadequacies in the member's administrative system so as to comply with the above.

The Articles of Association of the ASE require corporate members to allow the Compliance and Enforcement Department of the ASE, or external auditors or experts appointed by such Department, to verify such records. In addition, the ASST obliges brokers to allow an inspection of all books and documents relating to their business by the Securities Board or on its orders, and to provide all required assistance in any investigation.

As described above, details of all trades on the ASE, including the time and price of each trade and the volume of shares traded, are communicated to the SEA.

B. Availability of Records

Pursuant to the ASST, the Securities Board is generally authorized to provide information acquired in the course of enforcing the ASST to competent authorities responsible for supervising the securities industry in other states, provided that confidentiality is sufficiently ensured. In addition, where The Netherlands has entered into a treaty on the exchange of securities trading information with another state, the ASST specifically empowers the Securities Board to obtain information from and to investigate or order an investigation into the activities of any person for the purpose of implementing the treaty. The Kingdom of The Netherlands and the United States of America have entered into a treaty dated December 11, 1989 on mutual administrative assistance in the exchange of information in securities matters.

VI. Impact in the Netherlands of The U.S. Trading Rules

Application of the Trading Rules to the activities of distribution participants and their affiliates outside the United States could seriously jeopardize the success of any offering in The Netherlands. In particular, application of the Trading Rules outside the United States would have, *inter alia*, the following consequences:

1. Application of the Trading Rules would prevent distribution participants from fulfilling their normal market activities and dealings with customers who may wish to trade in the Relevant Securities (as defined in VIII.b. below) during an offering. Moreover, distribution participants might not be able to continue certain of their regular contacts with customers, such as discussions regarding investment strategies with respect to the Relevant Securities, and might not be

permitted to buy and sell Relevant Securities, as either principal or agent, in connection with their customers' trading activities. Such restrictions would also conflict with an ASE member's duties, pursuant to the ASE Code of Conduct for Personal and Corporate Members, to ensure that the client's interests prevail and, pursuant to the Dutch General Banking Conditions, to act in the best interests of its clients.

2. Distribution participants' risk management activities would be restricted to those permitted by Rule 10b-8.

3. Distribution participants' customary proprietary trading activities, involving arbitrage and other trading strategies, would be curtailed.

4. Accounts managed by distribution participants and their affiliates on a discretionary basis and investment funds for which they act as investment advisors could be considered "affiliated purchasers" under Rule 10b-6(c)(6)(i). Such affiliated purchasers would be subject to the same restrictions under Rule 10b-6 as the relevant distribution participant and would not be permitted to bid for or purchase Relevant Securities.

5. Distribution participants, including the underwriters and in particular the lead underwriters, would be unable to maintain an orderly market in the Relevant Securities during an offering.

6. Application of the Trading Rules could also distort the liquidity and depth of market for the Relevant Securities on the Dutch market. The Dutch securities market is highly concentrated and it is customary practice in The Netherlands that the majority of, if not all, major banks will participate in and share the risk of a large, highly-visible offering. Given that these same banks and their affiliates conduct the bulk of the trading in AEX's securities in The Netherlands, application of the Trading Rules to The Netherlands during an offering could cause the liquidity and depth of market for the Relevant Securities to be adversely affected. In addition, pricing of the Relevant Securities on the Dutch market could be adversely affected. Such an event could also distort the AEX and other market performance indices of which the Qualified Dutch Securities are a component.

VII. Scope and Conditions of Exemption

We propose that the Commission grant exemptions to the effect that the Trading Rules shall not apply to distribution participants, as defined in Rule 10b-6(c)(6)(ii), and their affiliated purchasers, as defined in Rule 10b-6(c)(6)(i) (collectively, "Relevant Parties") in connection with transactions in Relevant Securities (as defined below) outside the United States during distributions in the United States of Qualified Dutch Securities (as defined below), subject to the following terms, conditions and limitations:

1. Securities

- a. The security being distributed (a "Qualified Dutch Security") must:
 - (i) be issued by (aa) a "foreign private issuer" within the meaning of Rule 3b-4 under the Exchange Act, incorporated under

the laws of The Netherlands, which issuer has outstanding a component security of the AEX³ (a "Dutch Issuer") or (bb) a subsidiary of such a Dutch Issuer; and

(ii) satisfy one of the following:

(aa) be an equity security of a Dutch Issuer, having an aggregate market capitalization equal to or greater than \$1 billion (approximately NLG 1.6 billion at October 16, 1995) and a worldwide average daily trading volume that equals or exceeds \$5 million (approximately NLG 8 million at October 16, 1995), as published by a foreign financial regulatory authority ("FFRA")⁴ and any U.S. securities exchanges or automated inter-dealer quotation systems during a period that is 20 consecutive business days in Amsterdam within 60 consecutive calendar days prior to the commencement of the Amsterdam Covered Period (as defined below) for Dutch Issuers; or

(bb) be a security that is convertible into, exchangeable for, or is a right to acquire a security of a Dutch Issuer described in subparagraph (ii)(aa) above.

b. "Relevant Security" means:

(i) a Qualified Dutch Security; or

(ii) a security of the same class and series as, or a right to purchase, a Qualified Dutch Security.⁵

2. Transactions Effected in the United States

All transactions in Relevant Securities effected in the United States shall comply with the Trading Rules unless otherwise excepted or exempted from the operation of these rules.

3. Transactions Effected in The Netherlands

a. All transactions during the Amsterdam Covered Period (as defined below) in Relevant Securities effected by the Relevant Parties in The Netherlands shall be conducted in compliance with Dutch law and the rules of the ASE. For the purposes of this exemption, "Amsterdam Covered Period" means (i) in the case of a rights offering, the period commencing when the subscription price is determined and continuing until completion of the distribution in the United States and (ii) in the case of any other distribution, the period commencing three Amsterdam business days before the price is determined and

continuing until the completion of the distribution in the United States; *provided, however*, that the Amsterdam Covered Period shall not commence with respect to any Relevant Party until such person becomes a distribution participant.

b. All transactions in Relevant Securities during the Amsterdam Covered Period effected in The Netherlands shall be effected on or reported to the ASE.

c. Disclosure of trading activities:

(i) The inside front cover page or forefront of the preliminary prospectus and the prospectus used in the offer and sale of a Qualified Dutch Security in the United States shall prominently display a statement in substantially the following form, subject to appropriate modification where circumstances require. Such statement shall be printed in capital letters in bold-face roman type at least as large as ten-point modern type and at least two points leaded:

"In connection with this offering, certain persons may engage in transactions for their own accounts or for the accounts of others in [identify relevant securities] pursuant to exemptions from rules 10b-6, 10b-7 and 10b-8 under the Securities Exchange Act of 1934. See [identify section of offering materials that describes the transactions to be effected]."

(ii) In addition, the "Underwriting" section of the preliminary prospectus and the prospectus used in the offer and sale of a Qualified Dutch Security in the United States shall include a description of the activities that may be undertaken by the Relevant Parties in the Relevant Securities during the distribution, substantially in the form of Exhibit B hereto.

d. Record-keeping and reporting:

(i) Each Relevant Party shall provide to the SEA the information described in paragraph 3.d (ii) below with respect to its transactions in Relevant Securities in The Netherlands during the Amsterdam Covered Period, provided that in the case of a distribution made pursuant to a rights offering, such information is only required to be reported to the SEA during the period or periods (aa) commencing at any time during the Amsterdam Covered Period that the rights exercise price does not represent a discount of at least 10% from the then current market price of the security underlying the rights and continuing (x) until the end of the Amsterdam Covered Period or (y) until the rights exercise price represents a discount of at least 12% from the then current market price of the security underlying the right.⁶

(ii) When required pursuant to paragraph 3.d (i) above, the Relevant Parties will provide the following information to the SEA in Comma Delimited ASCII (American Standard Code for Information Interchange) format including a common record layout acceptable to the SEA the Commission's Division of Market Regulation (the "Division"), with respect to transactions during the Amsterdam Covered Period in Relevant Securities:

(aa) the name of the security, the date, time (of execution and reporting, where available to the Relevant Party), price and volume of each transaction, provided that no information regarding a customer transaction need be provided unless such transaction has a value of NLG 500,000 (approximately US\$ 315,000 at October 16, 1995) or more;

(bb) the exchange or inter-dealer quotation system on which the transaction was effected, if any;

(cc) an indication of whether such transaction was for a proprietary account or for the account of a customer; *provided, however*, that any transaction effected by a Relevant Party for a customer account for which it has exercised discretionary authority shall be reported as a proprietary trade; and

(dd) where the counterparty is an underwriter or a selling group member, the identity of the counterparty.

(iii) The SEA and the Relevant Parties shall keep all documents produced or prepared pursuant to paragraph 3.d(ii) for a period not less than two years.

(iv) Upon the request of the Division, the SEA shall transmit the information provided by the Relevant Parties pursuant to paragraph 3.d(ii) to the Division within 30 days of the request.

(v) If the information required to be produced in paragraph 3.d(ii) is not available from the SEA, upon the request of the Division such information shall be provided by the Relevant Party and be made available to the Division at its office in Washington, D.C. within 30 days of the request.

(vi) Representatives of the affected Relevant Party will be made available (in person at the office of the Division in Washington, D.C., or by telephone) to respond to inquiries of the Division relating to the records provided by such Relevant Party.

4. Transactions Effected in Significant Markets

All transactions in Relevant Securities in a significant market shall be effected in accordance with Rules 10b-6, 10b-7 and 10b-8, or other available exemptions. For the purpose of this exemption, the term "significant market" means any securities market in a country other than the United States or The Netherlands to which a Dutch Issuer has applied for a listing or obtained a quotation for a Qualified Dutch Security and has been accepted if, during a period that is 20 consecutive business days in Amsterdam within 60 consecutive calendar days prior to the commencement of the Amsterdam Covered Period for the Qualified Dutch Security the volume in such Qualified Dutch Security, as published by the relevant FFRA in such securities market, is 10% or more of the aggregate worldwide trading volume in that security as published by all FFRAs in such significant markets, the Dutch market and the U.S. securities market.

5. General Conditions

a. For purposes of these exemptions, a two business day cooling-off period shall apply under Rule 10b-6(a)(4)(xi) and (xii) in the United States. Each significant market shall

³References to the AEX refer to the composition of the index on the date of this letter; *provided, however*, that any security added to the AEX after the date of this letter also will be treated as a Qualified Dutch Security if its issuer satisfies the requirements in VIII.a.

⁴An FFRA is defined in Section 3(a)(51) of the Exchange Act, 5 U.S.C. 78(c)(51), as any (A) foreign securities authority; (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate participation of its members in activities listed above. For purposes of this letter, the ASE and the SEA are considered to be FFRA.

⁵We are not requesting an exemption for trading in options on the Amsterdam EOE Optiebeurs.

⁶For the purposes of this exemption, unless stated otherwise the current market price for a Relevant Security shall be the closing price on the floor of the ASE.

be subject to the exemptive relief then available in such market, if any, or the record maintenance and record production requirement in the letter regarding Application of Cooling-off Periods Under Rule 10b-6 to Distributions of Foreign Securities (April 4, 1994).

b. The lead underwriter, global coordinator or equivalent person shall promptly but in any event before the commencement of the Amsterdam Covered Period for the Qualified Dutch Security and within such time limitations as are prescribed by the ASE, provide written notice ("Notice") to the SEA and the Division containing the following information:

(aa) the name of the issuer and the Qualified Dutch Security;

(bb) whether the Qualified Dutch Security is an AEX component security or information about the market capitalization and the world-wide average daily trading volume of the Qualified Dutch Security to be distributed;

(cc) the identity of each significant market where the Qualified Dutch Security trades;

(dd) if the Notice is for more than one entity, the identity of all underwriters and selling group members relying on these exemptions; and

(ee) a statement that the Relevant Parties are aware of the terms and conditions of these exemptions;

Supplemental Notices shall be made for underwriters and selling group members identified after a Notice has been filed.

* * * * *

We believe that this proposed exemption would make it possible to maintain liquidity for shares of Dutch companies throughout a public offering, while minimizing the risk of abuses of the kind at which the Trading Rules are aimed.

We appreciate your prompt attention to this matter. If you have any questions or comments relating to the above, please call (collect) the undersigned or Andrea K. Muller in our Paris office (telephone: 011-33-1-44-71-17-17).

Very truly yours,

John D. Wilson.

Exhibit A

ABN AMRO Holding N.V.

AEGON N.V.

Koninklijke Ahold N.V.

Akzo Nobel N.V.

Koninklijke Bols Wessanen N.V.

CSM N.V.

DSM N.V.

Elsevier N.V.

Fortis Amev N.V.

Koninklijke Gist Brocades N.V.

Heineken N.V.

Koninklijke Nederlandse Hoogovens en Staal fabrieken N.V.

Internationale Nederlanden Groep N.V.

KLM N.V.

Koninklijke KNP BT N.V.

Koninklijke PTT Nederland NV

Koninklijke Nedlloyd Groep N.V.*

Koninklijke Pakhoed N.V.*

Philips Electronics N.V.

Polygram N.V.

Koninklijke Nederlandse Petroleum Maatschappij

Stork N.V.*

Unilever N.V.

Verenigd Bzeit VNU N.V.

Wolters Kluwer N.V.

Exhibit B

The Dutch Underwriters (and their affiliates) will, and the Underwriters (and their affiliates) other than the Dutch Underwriters may, continue to engage in the transactions and other activities described below, in The Netherlands and elsewhere outside the United States, in respect of the Ordinary Shares, securities of the same class and series as the Ordinary Shares, and securities convertible into, exchangeable for, or giving a right to acquire, the foregoing securities, and derivatives thereof (collectively, the "Relevant Securities") during the distribution period, in accordance with exemptions granted by the U.S. Securities and Exchange Commission (the "Commission") from the application outside the United States of Rules 10b-6, 10b-7 and 10b-8 under the U.S. Securities Exchange Act of 1934. Such exemptions are subject to certain exceptions, limitations and conditions set out in the Commission's exemptive order, including compliance with Dutch law and the rules of the Amsterdam Stock Exchange where applicable.

The activities referred to above include (a) buying and selling Relevant Securities for the accounts of such Underwriters (or their affiliates), whether for purposes of risk management in connection with the offering, arbitrage, or otherwise, (b) buying and selling Relevant Securities on behalf of customers, (c) advising customers as to the purchase or sale of Relevant Securities including the publication of specific company and industry research reports, (d) engaging in securities lending transactions in Relevant Securities and (e) stabilizing the market (as described below). As a result of these activities the Underwriters may at any time be short or long in Relevant Securities.

It is general market practice in The Netherlands for underwriters, and the lead underwriter in particular, to maintain an orderly market in subscription rights and existing shares, and it is expected that the lead underwriter will take measures to avoid extreme price fluctuations during the distribution period.

The activities referred to above may result in the market prices of the Relevant Securities being different from those that might otherwise have prevailed in the open market if Rules 10b-6, 10b-7 and 10b-8 had applied in The Netherlands and elsewhere outside the United States.

October 19, 1995.

Division of Market Regulation
*Securities and Exchange Commission, 450
Fifth Street, N.W., Washington, DC
20549, U.S.A.*

Attention: Ms. Nancy J. Sanow, Assistant
Director, Office of Trading Practices
Amsterdam Stock Exchange
*Beursplein 5, 1012 JW Amsterdam, The
Netherlands*

* Do not currently meet the market capitalization and worldwide average daily trading volume requirements described in this letter.

Attention: Mr. H.W. te Beest, General
Manager, Compliance and Enforcement
The London Stock Exchange
*Old Broad Street, London EC2N 1HP, United
Kingdom*

Attention: Paul Henderson

Exemptions from Rules 10b-6, 10b-7 and
10b-8 for the Secondary Offering of
Shares of Koninklijke PTT Nederland NV

Ladies and Gentlemen: We are writing on behalf of ABN AMRO Bank N.V. as global coordinator in connection with the proposed global equity offering by the State of The Netherlands of Ordinary Shares, par value NLG 10, or American Depositary Receipts evidencing American Depositary Shares, each of which represents the right to receive one Ordinary Share, of Koninklijke PTT Nederland NV, a Dutch corporation (the "Issuer"). We are submitting this Notice to each of you in accordance with the requirements of the Letter regarding Exemptions from Rules 10b-6, 10b-7 and 10b-8 for Distributions of certain Dutch Securities (October 17, 1995):

(aa) The name of the issuer is Koninklijke PTT Nederland NV. The Qualified Dutch Security is an Ordinary Share, par value NLG 10, of the Issuer.

(bb) The Issuer's Ordinary Shares are an AEX component security. On the date hereof the Issuer had a market capitalization equal to NLG 25 billion (approximately U.S. 15.8 billion)¹ and a worldwide average daily trading volume² equal to NLG 48 million (approximately U.S. 30.3 million).

(cc) The Amsterdam Stock Exchange and SEAQ International are the only significant markets where the Qualified Dutch Security trades or is quoted.

(dd) See Annex A hereto for the identity of all underwriters and selling group members relying on these exemptions.

(ee) We hereby confirm that all distribution participants, as defined in Rule 10b-6(c)(6)(ii), and their affiliated purchasers, as defined in Rule 10b-6(c)(6)(i), are aware of the terms and conditions of the exemptions.

If you have any questions relating to the above please call (collect) the undersigned or Andrea K. Muller in our Paris office (telephone 011-33-1-44-71-17-17).

Very truly yours,

John D. Wilson

Annex A

ABN AMRO Bank N.V.
Internationale Nederlanden Bank N.V.
Rabo Effecten Bank N.V.
Morgan Stanley & Co. Incorporated
Swiss Bank Corporation
ABN AMRO Hoare Govett Corporate Finance
Limited
CS First Boston Limited

¹ 1 NLG = U.S. 1.5835 (on October 17, 1995)

² Worldwide average daily trading volume is calculated using information published by a foreign financial regulatory authority as defined in Section 3(a)(51) of the Securities Exchange Act of 1934, as amended, and any U.S. securities exchange or automated inter-dealer quotation system during a period that is 20 consecutive business days in Amsterdam within 60 consecutive calendar days prior to October 18, 1995.

Kempen & Co. N.V.
 MeesPierson N.V.
 NIBStrating Financial Markets N.V.
 KBW Effectenbank N.V.
 F. van Lanschot Bankiers N.V.
 SNS Bank Nederland N.V.
 ABN AMRO Securities (USA) Inc.
 Lehman Brothers Inc.
 RBC Dominion Securities Corporation
 Smith Barney Inc.
 Alex. Brown & Sons Incorporated
 CS First Boston Corporation
 A.G. Edwards & Sons, Inc.
 Baring Securities Inc.
 Dean Witter Reynolds Inc.
 Barclays de Zoete Wedd Limited
 Cazenove & Co.
 NatWest Securities Limited
 Baring Brothers Limited
 Credit Lyonnais Securities
 Daiwa Europe Limited
 Morgan Grenfell & Co. Limited
 Banque Indosuez
 Morgan Stanley & Co. International Limited
 Banca Commerciale Italiana S.p.A.
 Bank Brussel Lambert N.V.
 Creditanstalt-Bankverein
 DG BANK—Deutsche Genossenschaftsbank

[FR Doc. 95-26898 Filed 10-30-95; 8:45 am]

BILLING CODE 8010-01-P

[Release No. 34-36411; International Series Release No. 874; File No. 600-20]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing of a Request for Extension of Temporary Registration as a Clearing Agency

October 25, 1995.

Notice is hereby given that on October 23, 1995, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") an application pursuant to Section 19(a)(1) of the Securities Exchange Act of 1934 ("Act"),¹ to extend ISCC's temporary registration as a clearing agency for a period of twenty-four months or such longer period as the Commission deems appropriate.² The Commission is publishing this notice to solicit comments on the request for extension of registration from interested persons.

On May 12, 1989, the Commission granted the application of ISCC for registration as a clearing agency pursuant to Sections 17A and 19(a) of the Act³ and Rule 17Ab2-1(c) thereunder on a temporary basis for a period of eighteen months.⁴ At that

time, the Commission granted to ISCC a temporary exemption from compliance with Section 17A(b)(3)(C) of the Act which requires fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.⁵ Since that time, the Commission has extended ISCC's temporary registration through November 30, 1995.⁶

One of the primary reasons for ISCC's registration as a clearing agency was to enable it to provide for the safe and efficient clearance and settlement of international securities transactions by providing links to centralized, efficient processing systems in the United States and in foreign financial institutions. ISCC continues to develop its capacity to offer these services.⁷

As a part of its temporary registration, ISCC has an exemption from Section 17A(b)(3)(C) of the Act due to ISCC's limited participant base.⁸ ISCC has represented to the Commission that it believes it still does not have a meaningful participant base with only thirty-seven of the forty-four ISCC members currently using ISCC services.⁹ This is an increase of seventeen active members since ISCC received its most recent registration extension in 1993. ISCC continues to believe that if its participants are given an ability to participate in the selection of the board of directors in accordance with Section 17A(b)(3)(C) of the Act, these

⁵ Currently, ISCC's Board of Directors is authorized for a maximum of twenty-two members. Twelve of those directors are selected from the general partners or officers of participants by ISCC's nominating committee. Two directors must be officers of ISCC. Eight directors are nominees of National Securities Clearing Corporation ("NSCC"), the sole shareholder of ISCC. Participants may submit names to ISCC's Nominating Committee by submitting a petition to ISCC's Secretary signed by the lesser of 5% of the participants or fifteen participants. If a participant nominates a candidate for participant director, ballots are sent out to all participants to vote in accordance with their usage of ISCC's system. NSCC will vote its shares to elect the participant directors selected by the participants.

⁶ Securities Exchange Act Release Nos. 28606 (November 16, 1990), 55 FR 47976; 30005 (November 27, 1991), 56 FR 63747; and 33233 (November 22, 1993), 58 FR 63195.

⁷ For example, ISCC has added three service providers, Standard Bank of South Africa, Westpac Custodian Nominees Limited of Australia, and Westpac Nominees-NZ-Limited, to its Global Clearance Network Service to provide settlement and custody services in South Africa, Australia, and New Zealand, respectively. Securities Exchange Act Release Nos. 35392 (February 16, 1995), 60 FR 10415 and 36339 (October 5, 1995), 60 FR 53447.

⁸ 15 U.S.C. § 78q-1(b)(3)(C) (1988).

⁹ Eleven of these members use ISCC's link with the London Stock Exchange. Three members use ISCC's link with CEDEL. Five members use ISCC's link with Euroclear. Thirty-two members use ISCC's Global Clearance Network Service.

participants will have an inordinate and unintended control of the nomination and voting processes. Accordingly, ISCC requests an extension of its registration approval with a continuation of this exemption.¹⁰

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with Section 19(a)(1) of the Act.¹¹ Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the applicant and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. All submissions should refer to File No. 600-20 and should be submitted by November 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-26896 Filed 10-30-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36409; File Nos. SR-NYSE-95-31; SR-PSE-95-25; SR-Amex-95-42; SR-Phlx-95-71]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes by the New York Stock Exchange, Inc., the Pacific Stock Exchange, Inc., the American Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc., To Add Two Positions and Exercise Limit Tiers for Qualifying Equity Option Classes and To Expand the Equity Option Hedge Exemption

October 23, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 26, October 5, October 16, October 17, 1995, respectively, the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), the American Stock Exchange,

¹⁰ *Supra* note 2.

¹¹ 15 U.S.C. § 78s(a)(1) (1988).

¹² 17 C.F.R. § 200.30-3(a)(16) (1994).

¹ 15 U.S.C. § 78s(b)(1) (1988).

17 CFR 240.19b-4 (1994).

¹ 15 U.S.C. 78s(a)(1) (1988).

² Letter from Julie Beyers, Associate Counsel, ISCC, to Christine Sibille, Senior Counsel, Office of Securities Processing, Division of Market Regulation, Commission (October 20, 1995).

³ 15 U.S.C. 78q-1 and 78s(a) (1988).

⁴ Securities Exchange Act Release No. 26812 (May 12, 1989), 54 FR 21691.

Inc. ("Amex"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (collectively the "Exchanges"), filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I and II below, which Items have been prepared by the self-regulatory organizations. The PSE subsequently filed Amendment No. 1 to their proposed rule change on October 17, 1995.³ The Exchanges have requested accelerated approval of the proposals. The Commission is approving the proposals on an accelerated basis and soliciting comments.

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

The Exchanges propose to add two upper position and exercise limit⁴ tiers for those equity option classes that meet certain criteria for high liquidity in the underlying stocks. In addition, the Exchanges propose to expand the current equity option hedge exemption from twice to three times the standard or base position limit.⁵

The Exchanges request the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule changes prior to the thirtieth day after publication in the Federal Register.

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filings with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item

III below. The self-regulatory organizations have prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

The Exchanges are proposing to add two new tiers to their current three tier position and exercise limits.⁶ The requested tiers are identical to the new tiers that the Commission recently approved for the Chicago Board Options Exchange, Inc. ("CBOE").⁷

The Exchanges propose to add two position and exercise limit tiers at 25,000 and 20,000 contract levels. The criterion to qualify for the proposed 25,000 contract limit will require that the underlying security must have at least 300 million shares outstanding with 75 million shares traded in the past six months, or have 100 million shares traded in the past six months. To qualify for the proposed 20,000 contract limit, the underlying security must have at least 240 million shares outstanding with 60 million shares traded in the past six months, or have 80 million shares traded in the past six months.

According to the Exchanges, the number of equity option classes currently listed that would qualify for either of these new higher position and exercise limit tiers is small. The NYSE has 11 options classes, the PSE has 30 options classes, the Amex has 62 options classes, and the Phlx has 16 options classes that would qualify for the 25,000 contract tier. Similarly, the NYSE has five options classes, the PSE has 13 options classes, the Amex has 28 options classes, and the Phlx has 11 options classes that would satisfy the 20,000 contract tier requirements.⁸

In addition to the proposed 25,000 and 20,000 contract tiers, the Exchanges are also proposing to expand the equity option position limit hedge exemption.⁹

This proposal is also identical to the CBOE's recently approved rule amendment.¹⁰ The exemption provides that the maximum allowable position where each option contract is hedged by 100 shares of stock or securities convertible into stock, will be three times instead of twice the standard or base limit currently provided.¹¹

The Exchanges are requesting approval of the proposed 20,000 and 25,000 position and exercise limit tiers for qualifying equity option classes and an expansion of the current equity option hedge exemption to three times the base position limit because the Exchanges strongly believe that the investing community will benefit from the rule proposals. In particular, according to the Exchanges, investors with sizable holdings, accounts, or assets who employ equity options to hedge large holdings, and who have found the existing equity option position limit tiers and hedge exemption to be too restrictive will be greatly benefited through the rule proposals. The Exchanges do not believe that the increased limits and expanded equity hedge exemption proposed herein will increase the risk of, or exposure to, market disruption resulting from the higher number of equity option contracts permitted to be under common control.

2. Statutory Basis

The Exchanges believe that the proposed rule changes are consistent with Section 6 of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act in particular,¹² in that the proposals are designed to remove the impediments to and perfect the mechanisms of a free and open market and a national market system by providing investors with enhanced hedging capabilities.

B. Self-Regulatory Organizations' Statements on Burden on Competition

The Exchanges do not believe that the proposed rule changes will impose any burden on competition.

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

No written comments were either solicited or received.

³ See letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Michael A. Walinskas, Branch Chief, Options Regulation, Division of Market Regulation, Commission, dated October 13, 1995 ("Amendment No. 1"). In Amendment No. 1, the PSE requested accelerated approval for their proposed rule change.

⁴ Positions limits impose a ceiling on the aggregate number of option contracts on the same side of the market that an investor, or group of investors acting in concert, may hold or write. Similarly, exercise limits impose a ceiling on the aggregate long positions in option contracts that an investor, or group of investors acting in concert, can or will have exercised within five consecutive business days.

⁵ The equity hedge exemption currently exempts certain specified equity options positions from the stated (or base) position limits where the option contracts are hedged by 100 shares of stock or securities convertible into such stock (or hedged by the same number of shares represented by an adjusted option contract), up to a maximum allowable position of twice the standard or base limit.

⁶ See NYSE Rules 704 and 705; PSE Rules 6.8 and 6.9; Amex Rules 904 and 905; and Phlx Rules 1001 and 1002.

⁷ See Securities Exchange Act Release No. 36371 (October 13, 1995) (File No. SR-CBOE-95-42) ("CBOE Approval Order").

⁸ The number of options classes listed on the Exchanges that would qualify for the two new position and exercise limit tiers should be considered in conjunction with the fact that the NYSE currently has 170 equity option classes listed, the PSE currently has 354 equity option classes listed, the Amex currently has 539 equity option classes listed, and the Phlx currently has 350 equity option classes listed.

⁹ See NYSE Rule 704(b)(ii); PSE Rule 6.8, Commentary .07; Amex Rule 904, Commentary .09; and Phlx Rule 1001, Commentary .07.

¹⁰ See CBOE Approval Order, *supra* note 7.

¹¹ The Commission notes that the proposed increase in the maximum hedge exemption will apply to all position limit tiers, not just to the proposed 25,000 and 20,000 contract tiers.

¹² 15 U.S.C. 78f(b)(5) (1988).

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings also will be available for inspection and copying at the principal offices of the Exchanges. All submissions should refer to File Nos. SR-NYSE-95-31, SR-PSE-95-25, SR-Amex-95-42, and SR-Phlx-95-71, and should be submitted by November 21, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Changes

A. Description and Background

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of large options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations¹³ and for corners or squeezes of the underlying market. In addition, they serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.

In establishing position and exercise limits, the Commission has been careful to balance two competing concerns. First, the Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of

¹³ Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established derivatives position.

options contracts disproportionate to the deliverable supply and average trading volume of the underlying security. At the same time, the Commission has realized that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.¹⁴

In October 1980, the Commission approved proposed rule changes by several options exchanges to increase position and exercise limits from 1,000 to 2,000 contracts for all individual equity options classes.¹⁵ In conjunction with the approval, the Commission received commitments from the options exchanges to study the effects of the increased limits. The Commission indicated that the experience gained under the increased limits, if coupled with adequate monitoring and surveillance procedures, could serve as a basis for considering further position and exercise limit modifications.

In July 1983, the Commission approved a further increase in position and exercise limits for individual stock options based on a tiering approach.¹⁶ Limits for options on stocks with the greatest trading volume and public float were increased to 4,000 contracts and limits on all other options classes were increased to 2,500 contracts.¹⁷ In approving the increased limits under a two-tiered framework, the Commission noted that tiering was consistent with the gradual, evolutionary approach that the Commission and the exchanges have adopted in increasing position and exercise limits.

In 1985, the Commission approved a further increase in position and exercise limits for individual equity options. This approval extended the tiering approach commenced by the options

¹⁴ See H.R. Rep. No. IFC-3, 96th Cong., 1st Sess. at 189-91 (Comm. Print 1978) ("Options Study").

¹⁵ See Securities Exchange Act Release No. 17237 (October 22, 1980), 45 FR 71454 (October 28, 1980) (order approving File Nos. SR-PSE-80-15, SR-Amex-80-23, and SR-Phlx-80-21) ("1980 Release").

¹⁶ See Securities Exchange Act Release No. 19975 (July 15, 1983), 48 FR 33389 (July 21, 1983) (order approving File Nos. SR-PSE-83-09, SR-Amex-83-05, and SR-Phlx-83-04) ("1983 Release").

¹⁷ To be eligible for the 4,000 contract limit an underlying security was required to have had either (i) trading volume of at least 20 million shares during the most recent six month trading period; or (ii) trading volume of at least 15 million shares during the most recent six month trading period and at least 60 million shares currently outstanding. All other options not meeting these requirements were subject to the 2,500 contract limits.

exchanges in 1983.¹⁸ The Commission noted in the 1985 Release that liberalizing position and exercise limits would further increase the potential depth and liquidity of the individual stock options markets without significantly increasing concerns regarding intermarket manipulations or disruptions of the market for the options or underlying securities.

Lastly, in December 1993, the Commission approved the Exchanges' existing position and exercise limit framework for individual equity options.¹⁹ Depending on certain criteria related to the trading volume of the underlying stock or a combination of both the trading volume and the number of shares outstanding of the underlying stock, the Exchanges' current position and exercise limits were established at levels of 10,500 contracts, 7,500 contracts, and 4,500 contracts.²⁰

The Exchanges proposed to add two position and exercise limit tiers at 25,000 and 20,000 contract levels. As stated above, the criterion to qualify for

¹⁸ See Securities Exchange Act Release No. 21907 (March 29, 1985), 50 FR 13440 (April 4, 1985) (order approving File Nos. SR-PSE-85-01, SR-Amex-84-30, and SR-Phlx-84-25) ("1985 Release"). The 1985 Release created a three-tiered system of position and exercise limits of 8,000, 5,500, and 3,000 contracts. To be eligible for the 8,000 contract limit an underlying security was required to have had either (i) trading volume of at least 40 million shares during the most recent six month trading period; or (ii) trading volume of at least 30 million shares during the most recent six month trading period and at least 120 million shares currently outstanding. To be eligible for the 5,500 contract limit an underlying security was required to have had either (i) trading volume of at least 20 million shares during the most recent six month trading period; or (ii) trading volume of at least 15 million shares during the most recent six month trading period and at least 40 million shares currently outstanding. All other options not meeting these requirements were subject to the 3,000 contract limits.

¹⁹ See Securities Exchange Act Release Nos. 33284 (December 3, 1993), 58 FR 65215 (December 13, 1993) (order approving File No. SR-NYSE-93-41); 33282 (December 3, 1993), 58 FR 65218 (December 13, 1993) (order approving File No. SR-PSE-92-38); 33285 (December 3, 1993), 58 FR 65201 (December 13, 1993) (order approving File No. SR-Amex-93-27); and 33288 (December 3, 1993), 58 FR 65221 (December 13, 1993) (order approving File No. SR-Phlx-93-07) (collectively "1993 Release").

²⁰ To be eligible for the 10,500 contract limit an underlying security must have either (i) trading volume of at least 40 million shares during the most recent six month trading period; or (ii) trading volume of at least 30 million shares during the most recent six month trading period and at least 120 million shares currently outstanding. To be eligible for the 7,500 contract limit an underlying security must have either (i) trading volume of at least 20 million shares during the most recent six month trading period; or (ii) trading volume of at least 15 million shares during the most recent six month trading period and at least 40 million shares currently outstanding. All other options not meeting these requirements are subject to the 4,500 contract limits.

the proposed 25,000 contract limit will require that the underlying security must have at least 300 million shares outstanding with 75 million shares traded in the past six months, or have 100 million shares traded in the past six months. To qualify for the proposed 20,000 contract limit, the underlying security must have at least 240 million shares outstanding with 60 million shares traded in the past six months, or have 80 million shares traded in the past six months.

In addition to the proposed 25,000 and 20,000 contract tiers, the Exchanges are also proposing to expand the equity hedge exemption. Under this proposal, the maximum allowable position, after exempting from the base limit specified positions where the option contract is hedged by 100 shares of stock or securities convertible into stock, will be three times instead of twice the standard or base limit currently provided.

B. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the national securities exchanges, and, in particular, with the requirements of Section 6(b)(5).²¹ Specifically, the Commission believes that the proposed addition of position and exercise limit tiers of 25,000 contracts and 20,000 contracts for qualifying equity options, and the proposed expansion of the equity hedge exemption to three times the standard or base limit will accommodate the needs of investors and market participants. The Commission also believes that the proposed rule changes will increase the potential depth and liquidity of the equity options market as well as the underlying cash market without significantly increasing concerns regarding intermarket manipulations or disruptions of the market for the options or underlying securities. Accordingly, as discussed below, the rule proposal is consistent with the requirements of Section 6(b)(5) that exchange rules facilitate transactions in securities while continuing to further investor protection and the public interest.

In approving the increased limits, the Commission recognizes that securities with active and deep trading markets, as well as with broad public ownership, are more difficult to manipulate or disrupt than securities having less active and deep markets and having smaller public floats.²² The proposed

additional position and exercise limit tiers recognize this by seeking to minimize the restraints on those options classes that can accommodate larger limits without significantly increasing manipulation concerns.²³ In particular, the proposed limit of 25,000 contracts and 20,000 contracts for options on the most actively traded, widely held securities, permits the Commission to avoid placing unnecessary restraints on those options where the manipulative potential is the least and the need for increased positions likely is the greatest. Accordingly, the Commission believes that the additional position and exercise limit tiers and the expanded equity hedge exemption is warranted.

The Commission believes that the proposed additions to the Exchanges' position and exercise limit tiers and increased hedge exemption appear to be both appropriate and consistent with the Commission's gradual, evolutionary approach. There are no ideal limits in the sense that options positions of any given size can be stated conclusively to be free of any manipulative concerns. The Commission, however, is relying on the absence of discernible manipulation problems under the current framework as an indicator that the proposed additional limit tiers and the expanded hedge exemption is justified.

The Commission does not believe that the addition of the two new higher limit tiers and the expanded hedge exemption will have any adverse effects on the options markets. In approving the two-tiered system in 1983, the Commission stated that it did not believe that requiring traders to keep track of two limits rather than one was burdensome or confusing or would lead to accidental violations.²⁴ The Commission does not

(1) A minimum of 7 and 6.3 million shares outstanding, respectively, which are owned by persons other than "insiders," as defined in Section 16 of the Act; (2) a minimum of 2,000 and 1,600 shareholders, respectively; (3) trading volume of at least 2.4 and 1.8 million shares, respectively, during the past twelve months; (4) for an original listing, the market price per share of the underlying security must have closed at or above \$7.50 during the majority of business days over the preceding three months; and (5) to maintain its listing, the market price per share of the underlying security must have closed at or above \$5 during the majority of business days over the preceding six months.

²³ The Commission continues to believe that proposals to increase position and exercise limits must be justified and evaluated separately. After reviewing the proposed exercise limits, along with the eligibility criteria for the two new tiers, the Commission has concluded that the proposed exercise limit additions do not raise manipulation problems or increase concerns over market disruption in the underlying securities.

²⁴ In this regard, the Commission notes that the Exchanges routinely, and on a continuous basis, review the trading characteristics of the underlying stocks to determine the appropriate position and exercise limit tiers for the option classes.

believe that a change from the current three tiers to five tiers should change this conclusion. Similarly, as the Commission views the expansion of the equity hedge exemption as consistent with its steady progression in this area, the enactment of this portion of the proposed rule changes should not prove difficult to implement or cumbersome to monitor.

The Commission believes that although position and exercise limits for options must be sufficient to protect the options and related markets from disruptions by manipulations, the limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent market makers from adequately meeting their obligations to maintain a fair and orderly market. In this regard, the Exchanges have noted that customers and member firms view the current position and exercise limits for certain options classes as too low. The Commission believes that the Exchanges' proposals are a reasonable and appropriately tailored effort to accommodate the identified needs of options market participants. In this regard it is important to note that the proposals only add higher position and exercise limit tiers for classes of options overlying the most liquid stocks. As a result, the proposals affect only a small number of equity option classes that are traded on the Exchanges.

From 1988 through 1990, the Commission approved pilot programs proposed by the Exchanges which provided exemptions from position limits for certain fully hedged equity option positions.²⁵ The pilot programs created an exemption from equity option position and exercise limits for accounts that had established one of the four most commonly used hedged positions.²⁶ Under this exemption, the maximum position limit (including the allowable exemptions) could not exceed twice the established option position limit.²⁷

²⁵ See Securities Exchange Act Release Nos. 25811 (June 20, 1988), 53 FR 23821 (June 24, 1988) (order approving File No. SR-PSE-88-09); 25738 (May 24, 1988), 53 FR 20201 (June 2, 1988) (order approving File Nos. SR-Amex-87-13 and SR-Phlx-87-37); and 27786 (March 8, 1990), 55 FR 9523 (March 14, 1990) (order approving File No. SR-NYSE-89-09) ("Pilot Approval Orders.").

²⁶ The four hedged positions are: (1) long stock and short call; (2) long stock and long put; (3) short stock and long call; and (4) short stock and short put.

²⁷ In May 1995, after several extensions, the Commission granted permanent approval to the Exchanges' hedge exemption pilot programs. See Securities Exchange Act Release No. 35738 (May 18, 1995), 60 FR 27573 (May 24, 1995) (order

²¹ 15 U.S.C. 78f(b)(5) (1988).

²² The Commission notes that the quantitative options listing and maintenance standards require:

The Exchanges currently propose to increase the hedge exemption to three times the applicable position limits. According to the Exchanges, as institutional accounts are unable to fully hedge their stock holdings due to the restrictive limits, investors are unnecessarily forced to keep a portion of their portfolio at risk. The Commission believes that the Exchanges' proposal to expand the hedge exemption is an appropriate method to accommodate the identified needs of options market participants. By increasing the hedge exemption, the Commission believes, large hedge funds and institutional accounts will be provided with the means necessary to adequately hedge their stock holdings without adding risk to the options market.

Lastly, the Commission notes that despite an appreciable growth in equity options trading and the sophisticated and automated surveillance procedures employed by the Exchanges, the last change in position limits occurred in 1993. Based on the Exchanges' experience, the Commission believes that the proposed increased hedge exemption and additional limit tiers should result in little or no additional risk to the marketplace.²⁸

The Commission finds good cause to approve the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, by accelerating the approval of the Exchanges' rule proposals, the Commission is conforming the Exchanges' position and exercise limits with those levels recently approved for the CBOE.²⁹ Accelerated approval of the proposed rule changes will thereby provide for the desired uniformity of the exchanges' position and exercise limits as well as hedge exemption rules. Any other course of action could lead to unnecessary investor confusion. In addition, the CBOE's proposal was noticed for the entire twenty-one day comment period and generated no negative responses.³⁰ Accordingly, the

approving File Nos. SR-NYSE-95-04, SR-PSE-95-05, SR Amex-95-13, and SR-Phlx-95-10).

²⁸ The Commission notes that to the extent the potential for manipulation increases because of the additional tiers and expanded hedge exemption, the Commission believes the Exchanges' surveillance programs will be adequate to detect as well as to deter attempted manipulative activity. The Commission will, of course, continue to monitor the Exchanges' surveillance programs to ensure that problems do not arise.

²⁹ See CBOE Approval Order, *supra* note 7.

³⁰ In response to the CBOE's proposal, the Commission received two comment letters. Both comment letters were generally supportive of the CBOE's proposed rule change, and are described

Commission believes that it is consistent with Section 6(b)(5) of the Act to approve the proposed rule changes on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)³¹ of the Act that the proposed rule changes (File Nos. SR-NYSE-95-31, SR-PSE-95-25, SR-Amex-95-42, and SR-Phlx-95-71) are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-26899 Filed 10-30-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36407; File No. SR-NYSE-95-32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Additions to the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A."

October 23, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 1, 1995 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The rule change revises the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A" by adding order entry and cancellation procedures for market-at-the-close ("MOC") orders on non-expiration days (expiration day procedures for MOC orders are already included) and for limit-at-the-close ("LOC") orders for expiration and non-expiration days. The rule change also

more fully in the CBOE Approval Order, *supra* note 7.

³¹ 15 U.S.C. § 78s(b)(2) (1988).

³² 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1).

amends the NYSE's Minor Rule Violation Enforcement and Reporting Plan ("Plan") to include these entry and cancellation procedures for MOC and LOC orders.² The Exchange believes that a violation of the above-named rules merit possible imposition of a fine under Rule 476A procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 476A³ provides that the Exchange may impose a fine, not to exceed \$5,000,⁴ on any member,

² See Letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Glen Barrentine, Team Leader, Division of Market Regulation, SEC, dated October 1, 1995.

³ Rule 476A was approved by the Commission on January 25, 1985. See Securities Exchange Act Release No. 21688 (January 25, 1985), 50 FR 5025 (February 5, 1985). Subsequent additions of rules to the Rule 476A Violations List were made in Securities Exchange Act Release Nos. 22037 (May 14, 1985), 50 FR 21008 (May 21, 1985); 23104 (April 11, 1986), 51 FR 13307 (April 18, 1986); 24985 (October 5, 1987), 52 FR 41643 (October 29, 1987); 25763 (May 27, 1988), 53 FR 20925 (June 7, 1988); 27878 (April 4, 1990), 55 FR 13345 (April 10, 1990); 28003 (May 8, 1990), 55 FR 20004 (May 14, 1990); 28505 (October 2, 1990), 55 FR 41288 (October 10, 1990); 28995 (March 21, 1991), 56 FR 12967 (March 28, 1991); 30280 (January 22, 1992), 57 FR 3452 (January 29, 1992); 30536 (March 31, 1992), 57 FR 12357 (April 9, 1992); 32421 (June 7, 1993), 58 FR 32973 (June 14, 1993); 33403 (December 28, 1993), 59 FR 641 (January 1, 1994); 33816 (March 25, 1994), 59 FR 15471 (April 1, 1994); 34230 (June 17, 1994), 59 FR 32727 (June 24, 1994); and 34327 (July 7, 1994), 59 FR 35956 (July 14, 1994).

⁴ Fines imposed pursuant to Rule 476A in excess of \$2,500 are deemed final, and therefore are subject to the reporting requirements of section 19(d)(1) of the Act and Rule 19d-1(c) thereunder. Pursuant to Rule 19d-1(c)(1), and SRO is required to file promptly with the commission notice of any "final" disciplinary action taken by that SRO. Any disciplinary action taken by an SRO for a violation of an SRO rule, which has been designated as a minor rule violation pursuant to a Commission approved plan, however, shall not be considered "final" if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person does not seek an adjudication, including a hearing, or

member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules.

The purpose of the Rule 476A procedure is to provide for a response to a rule violation when a meaningful sanction is appropriate, but when initiation of a disciplinary proceeding under Rule 476 is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the minor nature of the violation. Rule 476A provides for an appropriate response to minor violations of a certain Exchange rules or policies, while preserving the due process rights of the party accused through specified, required procedures. The list of rules that are eligible for 476A procedures specifies those rule violations that may be the subject of fines under the rule and also includes a schedule of fines.

In File No. SR-NYSE-84-27, which initially set forth the provisions and procedures of Rule 476A,⁵ the Exchange indicated it would amend the list of rules from time to time, as it considered appropriate, in order to phase-in the implementation of Rule 476A as experience with it was gained.

The Exchange is presently adding to the list of rules subject to possible imposition of fines under Rule 476A procedures the failure by members or member organizations to adhere to the order entry and cancellation procedures for MOC orders on non-expiration days⁶ and for LOC orders on expiration and non-expiration days.⁷ MOC order entry

otherwise exhaust his or her administrative remedies. By deeming that unadjudicated minor rule violations are not final, the Commission permits the SRO to report such violations on a periodic basis. See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23838 (June 8, 1984).

⁵ See Securities Exchange Act Release No. 21688, *supra*, note 3.

⁶ The closing procedures for non-expiration days require that all MOC orders be entered, reduced or cancelled no later than 3:50 p.m. As soon as practicable after 3:50, the specialist must disseminate any MOC order imbalance of 50,000 shares or more in certain so-called pilot stocks, stocks being added to or dropped from an index and, upon the request of a specialist, any other stock with the approval of a Floor Official. After 3:50 p.m., MOC orders may be entered in any stock in which there is a published imbalance, but only to offset the imbalance. See Securities Exchange Act Release No. 35589 (April 10, 1995), 60 FR 19313 (April 17, 1995) (order approving File No. SR-NYSE-94-44).

⁷ The closing procedures for non-expiration and expiration days allow LOC orders to be entered up to 3:55 p.m., but only to offset a published imbalance of MOC orders in that stock. Moreover, on expiration days LOC orders are irrevocable after 3:40 p.m., while on non-expiration days LOC orders

and cancellation procedures for expiration days are already included in the Rule 476A List.⁸ The Exchange is also amending its Minor Rule Violation and Reporting Plan to include these entry and cancellation procedures for MOC and LOC orders.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(6) of the Act⁹ in that it will provide a procedure whereby member organizations can be "appropriately disciplined" in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. The rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of Sections 6(b)(7) and 6(d)(1) of the Act.¹⁰

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from October 1, 1995, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and subparagraph (e)(6) of Rule 19b-4 thereunder.¹²

At any time within 60 days of the filing of such rule change, the

are irrevocable after 3:55 p.m. See Securities Exchange Act Release No. 35854 (June 16, 1995), 60 FR 32723 (June 23, 1995) (order approving File No. SR-NYSE-95-09).

⁸ See Securities Exchange Act Release No. 33403 (December 28, 1993), 59 FR 641 (January 5, 1994) (order approving File No. SR-NYSE-93-35).

⁹ 15 U.S.C. 78f(b)(6).

¹⁰ 15 U.S.C. 78f(b)(7) and 78f(d)(1).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4.

Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the New York Stock Exchange, Inc. All submissions should refer to File No. SR-NYSE-95-32 and should be submitted by November 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

[FR Doc. 95-26895 Filed 10-30-95; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2813]

Florida; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on October 4, 1995, and amendments thereto on October 6, 8, 12, 13, 16 and 17, I find that Bay, Escambia, Franklin, Gulf, Holmes, Jackson, Okaloosa, Santa Rosa, Washington, and Walton Counties in the State of Florida constitute a disaster area due to damages caused by Hurricane Opal which occurred on October 4, 1995 through October 11; and Collier and Lee Counties for damages which occurred on October 4 and continuing. Applications for loans for physical damages may be filed until the close of

¹³ 17 CFR 200.30-3(a)(12).

business on December 3, 1995, and for loans for economic injury until the close of business on July 5, 1996 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Broward, Calhoun, Charlotte, Dade, Gadsden, Glades, Hendry, Liberty, Monroe and Wakulla in the State of Florida; and Decatur and Seminole Counties in Georgia. Any counties contiguous to the above-named counties and not listed herein have been previously declared in a separate declaration for the same occurrence.

Interest rates are:

	Percent
<i>For physical damage:</i>	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
<i>For economic injury:</i>	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 281308 and for economic injury the numbers are 864400 for Florida and 8664 for Georgia. (Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 24, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95-26972 Filed 10-30-95; 8:45 am]

BILLING CODE 8025-01-P

Escambia, Etowah, Geneva, Henry, Houston, Jefferson, Lee, Lowndes, Macon, Mobile, Montgomery, Pike, Randolph, Russell, St. Clair, Talladega and Tallapoosa Counties in the State of Alabama constitute a disaster area due to damages caused by Hurricane Opal which occurred on October 4 through 8, 1995. Applications for loans for physical damages may be filed until the close of business on December 3, 1995, and for loans for economic injury until the close of business on July 5, 1996 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bibb, Blount, Choctaw, Dallas, Jackson, Lawrence, Marengo, Marshall, Monroe, Morgan, Perry, Shelby, Tuscaloosa, Walker, Washington, Wilcox, and Winston Counties in the State of Alabama, and George, Greene, and Jackson Counties in the State of Mississippi. Any counties contiguous to the above-named counties and not listed herein have been previously declared in a separate declaration for the same occurrence.

Interest rates are:

	Percent
<i>For physical damage:</i>	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
<i>For Economic Injury:</i>	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 281408 and for economic injury the numbers are 864500 for Alabama, and 866800 for Mississippi.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 24, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95-26971 Filed 10-30-95; 8:45 am]

BILLING CODE 8025-01-P

[Declaration of Disaster Loan Area #2815]

Georgia; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on October 10, 1995, and amendments thereto on October 12, 13 and 23, I find that Banks, Barrow, Bartow, Carroll, Catoosa, Chattooga, Cherokee, Clay, Clayton, Cobb, Coweta, Dade, Dawson, Douglas, DeKalb, Fannin, Fayette, Floyd, Forsyth, Fulton, Gilmer, Gordon, Gwinnett, Habersham, Hall, Haralson, Harris, Heard, Lumpkin, Meriwether, Murray, Muscogee, Paulding, Pickens, Pike, Polk, Quitman, Rabun, Randolph, Rockdale, Spalding, Stewart, Talbot, Towns, Troup, Union, Upson, Walker, White, and Whitfield in the State of Georgia constitute a disaster area due to damages caused by severe thunderstorms, high winds and flooding resulting from Hurricane Opal which occurred on October 4 through 5, 1995. Applications for loans for physical damages may be filed until the close of business on December 11, 1995, and for loans for economic injury until the close of business on July 10, 1996 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Butts, Calhoun, Chattahoochee, Clarke, Crawford, Early, Franklin, Henry, Jackson, Lamar, Madison, Marion, Monroe, Newton, Oconee, Stephens, Taylor, Terrell, Walton, and Webster in the State of Georgia; Cherokee, Clay, Jackson and Macon in North Carolina; Oconee County in South Carolina; and Bradley, Hamilton, Marion and Polk Counties in Tennessee. Any counties contiguous to the above-named counties and not listed herein have been previously declared in a separate declaration for the same occurrence.

Interest rates are:

	Percent
<i>For physical damage:</i>	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000

[Declaration of Disaster Loan Area #2814]

Alabama; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on October 4, 1995, and amendments thereto on October 6, 8, 10, 12, 16, 18 and 23, I find that Autauga, Baldwin, Barbour, Bullock, Butler, Calhoun, Chambers, Cherokee, Chilton, Clarke, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, DeKalb, Elmore,

	Percent
Others (including non-profit organizations) with credit available elsewhere	7.125
<i>For economic injury:</i>	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 281508 and for economic injury the numbers are 866400 for Georgia, 866700 for North Carolina, 866600 for South Carolina and 866500 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 24, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95-26970 Filed 10-30-95; 8:45 am]

BILLING CODE 8025-01-P

SOCIAL SECURITY ADMINISTRATION

Social Security Ruling (SSR) 95-5p. Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Residual Functional Capacity and Individualized Functional Assessments and Explaining Conclusions Reached

AGENCY: Social Security Administration.

ACTION: Notice of Social Security ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 95-5p. This Policy Interpretation Ruling restates and clarifies that our longstanding policies of considering allegations of pain in assessing residual functional capacity (RFC) and of requiring explanations of the conclusions reached about pain, apply to the evaluation of all symptoms, not just pain. The Ruling also restates and clarifies that these policies apply to the preparation of the individualized functional assessment in the evaluation of disability for individuals under age 18 claiming benefits under Title XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act (the Act) as well as to the assessment of RFC for other persons claiming benefits based on disability under Title II (Federal Old-Age, Survivors, and Disability Insurance Benefits) or title XVI of the Act, and that an explanation of the functional impact of symptoms, such as pain, when applicable, is required.

This Ruling supersedes SSR 88-13 (C.E. 1988, p. 90) and SSR 90-1p (C.E.

1990-1991, p. 67), both entitled "Titles II and XVI: Evaluation of Pain and Other Symptoms."

EFFECTIVE DATE: October 31, 1995.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the Federal Register to that effect.

(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; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income)

Dated: October 23, 1995.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling—Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Residual Functional Capacity and Individualized Functional Assessments and Explaining Conclusions Reached

This Ruling supersedes SSR 88-13 (C.E. 1988, p. 90) and SSR 90-1p (C.E. 1990-1991, p. 67), both entitled "Titles II and XVI: Evaluation of Pain and Other Symptoms."

Purpose: To restate and clarify that the longstanding policies of the Social Security Administration (SSA) of considering allegations of pain in assessing residual functional capacity

(RFC), and of requiring explanations of the conclusions reached about pain, apply to the evaluation of all symptoms, not just pain; that they apply to the preparation of the individualized functional assessment (IFA) in the evaluation of disability for individuals under age 18 claiming benefits under title XVI of the Social Security Act (the Act) as well as to the assessment of RFC for other persons claiming benefits based on disability under title II or title XVI of the Act; and that an explanation of the functional impact of symptoms, such as pain, when applicable, is required.

Citations (Authority): Sections 216(i), 223(d), and 1614(a) of the Social Security Act, as amended; Regulations No. 4, sections 404.1508, 404.1528, 404.1529, and 404.1545; and Regulations No. 16, sections 416.908, 416.924(b), 416.924d, 416.928, 416.929, and 416.945.

Pertinent History: On November 14, 1991, we published final regulations regarding the evaluation of symptoms, including pain, for all disability claims under titles II and XVI (56 FR 57928). These regulations codified the policy interpretations set out in SSR 88-13 and SSR 90-1p, making it unnecessary to retain the statements of policy interpretations in these Rulings. We are publishing this Ruling, which supersedes SSR 88-13 and SSR 90-1p, to replace the section of these earlier Rulings that is entitled "Importance of Considering Allegations of Pain in Assessing RFC and Explaining Conclusions Reached," which provides procedures which we determined were not appropriate for inclusion in the regulations (see 56 FR 57934).

Policy Interpretation: Symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, are the individual's own description of the effects of a physical or mental impairment(s). Under title XVI, in the case of an individual under age 18 who is unable to adequately describe his or her symptoms, the description of the symptom(s) given by the person who is most familiar with the individual, such as a parent, other relative, or guardian, will be accepted as a statement of the individual's symptoms.

Because symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, careful consideration must be given to any available information about symptoms.

The RFC assessment or, in the case of an individual under age 18 claiming benefits based on disability under title XVI, the IFA, must describe the relationship between the medically

determinable impairment(s) and the conclusions regarding functioning which have been derived from the evidence, and must include a discussion of why reported daily activity limitations or restrictions are or are not reasonably consistent with the medical and other evidence.

In instances in which the adjudicator has observed the individual, the adjudicator is not free to accept or reject that individual's complaints solely on the basis of such personal observations. Rather, in all cases in which pain or other symptoms are alleged, the determination or decision rationale must contain a thorough discussion and analysis of the objective medical and the other evidence, including the individual's complaints of pain or other symptoms and the adjudicator's personal observations. The rationale must include a resolution of any inconsistencies in the evidence as a whole and set forth a logical explanation of the individual's ability to work or, in the case of an individual under age 18 claiming benefits based on disability under title XVI, the individual's ability to function independently, appropriately, and effectively in an age-appropriate manner.

EFFECTIVE DATE: The policy interpretation and procedures explained herein are effective October 31, 1995.

CROSS-REFERENCES: Program Operations Manual System, sections DI 24515.061, DI 24515.062, DI 24515.064, DI 25225.001 and DI 26516.015.

[FR Doc. 95-26930 Filed 10-30-95; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF STATE

[PN 2276]

International Joint Commission; Notice of Public Hearing; Public Comment Invited on Canada-United States Air Quality Agreement

The International Joint Commission will hold public hearings on the Canada-United States Air Quality Agreement and its implementation.

Ottawa, Ontario

Tuesday, November 28th, 1995

Sessions begin at 9:00 a.m. and 2:00 p.m., Ottawa Congress Centre, Congress Hall G, 55 Colonel By Drive

Washington, DC

Tuesday, December 5, 1995

Sessions begin at 09:00 a.m. and 2:00 p.m., International Joint Commission, 1250 23rd Street, NW., Suite 100.

The Agreement on Air Quality was signed by both countries on March 13, 1991 to establish an effective way to address shared concerns about transboundary air pollution. With these hearings, the International Joint Commission invites public comment on progress made by Canada and the United States in reducing transboundary air pollution under the 1991 Agreement on Air Quality.

Interested persons may express their views orally or in writing. Hearing participants are requested to inform the Commission Secretaries of their intention to appear and provide a text of their remarks if possible. Alternatively, written submissions will be accepted until December 5th, 1995.

Please address enquiries and correspondence to one of the addresses below:

Secretary, United States Section,
International Joint Commission, 1250
23rd Street NW., Washington, DC
20440, Telephone: (202) 736-9000,
Fax: (202) 736-9015, Email:
bevacquaf@ijc.achilles.net

Secretary, Canadian Section,
International Joint Commission, 100
Metcalfe Street, Ottawa, ON K1P5M1,
Telephone: (613) 995-2984, Fax: (613)
993-5583, Email:
terrienm@ijc.achilles.net.

Dated: October 23, 1995.

David A. LaRoche,

Secretary, United States Section.

[FR Doc. 95-26931 Filed 10-30-95; 8:45 am]

BILLING CODE 4710-14-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending October 20, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST-95-747

Date filed: October 19, 1995

Parties: Members of the International Air Transport Association

Subject: TC2 Reso/P 1804 dated September 19, 1995; Europe-Middle East Resolutions r-1 to r-29; Intended effective date: April 1, 1996

Docket Number: OST-95-748

Date filed: October 19, 1995

Parties: Members of the International Air Transport Association

Subject: TC3 Reso/P 0645 dated October 17, 1995; TC3 Expedited Resos (exc. US Territories) r-1 to r-39; Intended effective date: Expedited November 30/December 1, 1995

Docket Number: OST-95-749

Date filed: October 19, 1995

Parties: Members of the International Air Transport Association

Subject: TC23 Reso/P 0709 dated September 19, 1995; Europe-South Asian Subcontinent Resos r-1 to r-16; Intended effective date: January 1, 1996

Docket Number: OST-95-750

Date filed: October 19, 1995

Parties: Members of the International Air Transport Association

Subject: TC3 Reso/P 0646 dated October 17, 1995; Expedited TC3 Resos involving U.S. Territories 002bb (r-1) & 002cc (r-2); Intended effective date: expedited November 30, 1995

Paulette V. Twine,

Chief Documentary Services Division.

[FR Doc. 95-26934 Filed 10-30-95; 8:45 am]

BILLING CODE 4910-62-P

Office of the Secretary

Applications of LorAir, Ltd., for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 95-10-35) Dockets OST-95-290 and OST-95-702.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding LorAir, Ltd., fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than November 15, 1995.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST-95-290 and OST-95-702 and addressed to the Documentary Services Division (C-55, Room PL-401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366-2340.

Dated: October 24, 1995.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95-26933 Filed 10-30-95; 8:45 am]

BILLING CODE 4910-62-P

Clarification Concerning Examination of Foreign Air Carriers' Request for Expanded Economic Authority

AGENCY: Office of the Secretary, Department of Transportation.

SUMMARY: This notice clarifies the Department's licensing policy regarding requests for expanded economic authority from foreign air carriers whose government Civil Aviation Authority (CAA) safety oversight capability has been assessed by the Federal Aviation Administration as conditional (Category II) or unacceptable (Category III). This notice supplements information previously published by the FAA concerning FAA procedures for examining and monitoring foreign air carriers (57 Fed. Reg. 38342-43, August 24, 1992).

FOR FURTHER INFORMATION CONTACT: Donald H. Horn, Assistant General Counsel for International Law, Office of International Law, Office of the General Counsel, U.S. Department of Transportation, 400 7th Street S.W., Room 10105, Washington, DC 20591, (202) 366-2972.

SUPPLEMENTARY INFORMATION: In order to operate to the United States, foreign air carriers must receive authority from the Office of the Secretary (OST) and, if operating their own aircraft, (as opposed to wet leasing), operations specifications from the Federal Aviation Administration (FAA). Both OST and FAA are components of the Department of Transportation. OST looks to the FAA for determinations on matters involving aviation safety.

In order for a foreign air carrier to fly to the United States, its home country civil aviation authority must adhere to the aviation safety standards of the International Civil Aviation Organization (ICAO), the United Nation's technical agency for aviation. ICAO has established international standards for operational safety and continuing airworthiness. As fully described in an earlier Federal Register notice, 57 Fed. Reg. 38342, August 24, 1992, the Federal Aviation Administration (FAA) has developed a program for sending evaluation teams to the various countries to work cooperatively to assess their civil aviation safety oversight capabilities.

The FAA, with the cooperation of the host government, assesses countries

whose airlines have operating rights to or from the United States, or have requested such rights. The focus of the assessment is on a *government's* compliance with ICAO standards, rather than the individual air carriers licensed by that country. Accordingly, the FAA assessment does not necessarily reflect individual carriers' compliance with all relevant safety requirements. The FAA has assisted countries with less than acceptable ratings by providing technical expertise, assistance with inspections and training courses. The FAA has established three ratings for the status of these governments' civil aviation authorities at the time of the assessment: acceptable, conditional and unacceptable:

Category I, acceptable: The FAA's assessment found that the country's civil aviation authority licenses and oversees air carriers in accordance with ICAO aviation safety standards.

Category II, conditional: The FAA's assessment found that the country's civil aviation authority has areas of noncompliance with ICAO aviation safety standards. The FAA is negotiating actively with the authority to implement corrective measures. During these negotiations, the Department permits flights under existing authority to operate into the United States, and the FAA conducts heightened surveillance.

Category III, unacceptable: The FAA's assessment found that the country's civil aviation authority is not in compliance with ICAO standards for aviation safety oversight. Unacceptable ratings apply if the civil aviation authority has not developed and/or implemented laws or regulations in accordance with ICAO standards; if it lacks the flight operations capability to certify, oversee and enforce air carrier operations requirements; if it lacks the capability to certify, oversee and enforce air carrier aircraft maintenance requirements; and/or if it lacks appropriately trained inspector personnel required by ICAO standards. Carriers licensed by this government may not operate flights to the United States with their own aircraft. They may arrange to continue operating with aircraft wet leased from a duly authorized and properly supervised U.S. or foreign air carrier that is authorized to serve the United States with its own aircraft.

See e.g., 59 FR 46332-33, September 8, 1994.

A number of requests for new or expanded authority have been received by OST from foreign air carriers where their home civil aviation authority has been classified by FAA as Category II (conditional). In order to make clear our

licensing policy as concerns carriers of Category II countries, we are placing this notice in the Federal Register. All foreign air carriers are thus on notice that: Foreign air carriers from Category II countries are permitted to exercise authority in their OST licenses now being operated, and the Category II status will not preclude the renewal of authority to conduct existing services. However, no authority to conduct new services, or expanded operations, will be issued to such carriers by OST (unless operated using aircraft wet-leased from a duly authorized and properly supervised U.S. or foreign air carrier), until the home country's civil aviation authority has been reclassified by the FAA as Category I (acceptable).

Issued in Washington, D.C. on October 23, 1995.

Mark L. Gerchick,

Acting Assistant Secretary for Aviation and International Affairs, Department of Transportation.

[FR Doc. 95-26920 Filed 10-30-95; 8:45 am]

BILLING CODE 4910-62-P

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (Public Law 72-363; 5 U.S.C. App. 2), notice is hereby given of the initial meeting of the Bureau of Transportation Statistics (BTS) Advisory Council on Transportation Statistics (ACTS) to be held Thursday, November 16, 1995, 9:00 to 3:00 pm. The meeting will take place at the U.S. Department of Transportation, 400 7th Street, SW, Washington, DC, in the Lloyd E. Fletcher Conference Room 10214, Nassif Building.

The Advisory Council, called for under Section 6007 of Public Law 102-240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the Bureau are of high quality and are based upon the best available objective information.

The agenda for this meeting will include an overview of BTS, its mission, and progress to date; identification of next steps and direction to pursue; other items of interest; discussion and

agreement of date(s) for subsequent meetings; and comments from the floor.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Carolee Bush, Council Liaison, on (202) 366-6946 prior to November 14. Attendance is open to the interested public but limited to space available. With the approval of the Chair, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Bush.

Members of the public may present a written statement to the Council at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Bush (202) 366-6949 at least seven days prior to the meeting.

Issued in Washington, DC, on October 23, 1995.

Robert A. Knisely,

Executive Director, Advisory Council on Transportation Statistics.

[FR Doc. 95-26919 Filed 10-30-95; 8:45 am]

BILLING CODE 4910-FE-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Commissioner's Advisory Group; Public Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public meeting of Commissioner's Advisory Group.

SUMMARY: Public meeting of the Commissioner's Advisory Group will be held in Washington, DC.

DATES: The meeting will be held November 16, 1995.

FOR FURTHER INFORMATION CONTACT:

Patricia Washburn, C:I, 1111 Constitution Avenue, NW., room 7046, Washington, DC 20224. Telephone No. (202) 622-5026 (not a toll-free number).

Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the Commissioner's Advisory Group will be held on November 16, 1995, beginning at 10 am in room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

The agenda will include the following topics:

Filing Season Readiness
Improving Services to Customers
Small Business Issues and Initiatives
Compliance Issues
Corporate Education Issues

Note: Last minute changes to the agenda or order of topic discussion are possible and could prevent effective advance notice.

The meeting will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Lorenza Wilds, no later than November 9, 1995. Ms. Wilds can be reached on (202) 622-5026 (not toll-free).

If you would like to have the Committee consider a written statement, please call or write: Patricia Washburn, Office of Public Liaison, C:I, Internal Revenue Service, 1111 Constitution Avenue, NW., room 7046, Washington, DC 20224.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

[FR Doc. 95-26982 Filed 10-30-95; 8:45 am]

BILLING CODE 4830-01-U

Sunshine Act Meetings

Federal Register

Vol. 60, No. 210

Tuesday, October 31, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Board's meeting described below.

TIME AND DATE: 9:00 a.m., November 7, 1995.

PLACE: Hanford Museum of Science and History, 825 Jadwin Avenue, Richland, Washington 99352.

STATUS: Open.

MATTERS TO BE CONSIDERED: Board members will review with Department of Energy and its contractors the status of public health and safety issues pertaining to K-East Basin activities at the Hanford Site, Richland, Washington.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788-4016. This is a toll free number.

SUPPLEMENTARY INFORMATION: The Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: October 27, 1995.

John T. Conway,
Chairman.

[FR Doc. 95-27055 Filed 10-27-95; 11:59 am]

BILLING CODE 3670-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board;
Amendment to Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on October 20, 1995 (60 FR 54285) of the special meeting of the Farm Credit Administration Board (Board) scheduled for October 24, 1995. This notice is to amend the agenda by removing an item from the open session of that meeting.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883-4025, TDD (703) 883-4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board was open to the public (limited space available). The agenda for October 24, 1995, is amended by removing the following item:

Open Session

B. New Business

2. Regulations

a. Regulatory Burden Issues/Phase II [12 CFR Chapter VI] (Notice).

Dated: October 25, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.
[FR Doc. 95-27025 Filed 10-26-95; 4:45 pm]

BILLING CODE 6705-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Matters To Be Moved From the Discussion Agenda to the Summary Agenda for Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matters will be moved from the "discussion agenda" to the "summary agenda" for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 10:00 a.m. on Monday, October 30, 1995, in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.:

Memorandum re: Corporation's September 30, 1995 Financial Statements

Memorandum re: Quarterly Budget Variance Summary Report

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: October 26, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95-27058 Filed 10-27-95; 11:59 am]

BILLING CODE 6714-0-M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 53958, October 18, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., Wednesday, October 25, 1995.

CHANGES IN THE MEETING: The following topic was withdrawn from the closed portion of the meeting:

- Review of the FHLBank of San Francisco's Calculation of Affordable Housing Program (AHP) Subsidies on Guaranteed Rate Advances

The following topics were added to the open portion of the meeting:

- Membership Application: Constitution State Corporate Credit Union, Inc.
- Amendment of the FHLBank System Directors' Fees and Allowances Policy

The Board determined that agency business requires its consideration of this matter on less than seven days notice to the public and that no earlier notice of this change in the subject matter of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408-2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95-27022 Filed 10-26-95; 4:39 pm]

BILLING CODE 6725-01-P

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATES: 10:00 a.m., Tuesday, November 7, 1995.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, N.W., Washington, D.C. 20423.

STATUS: The Commission will meet to discuss among themselves the agenda items listed below. Although the conference is open for public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 28905 (Sub-No. 27), *CSX Transportation, Inc.—Control—Chessie System, Inc. and Seaboard Coast Line Industries, Inc., et al., (Arbitration Review)*.

Finance Docket No. 32240, *Bradford Industrial Rail, Inc.—Acquisition and Operation Exemption—Consolidated Rail Corporation, et al.*¹

Docket No. 40294, *Amtrol, Inc. v. American Freight System, Inc.*

Ex Parte No. 347 (Sub-No. 2), *Rate Guidelines—Non-Coal Proceedings*.

¹ Because they are related by subject matter, the Commission also will handle Finance Docket No. 32241, *Genesee & Wyoming Industries, Inc.—Continuance in Control Exemption—Bradford Industrial Rail, Inc.* and Finance Docket No. 32256, *Consolidated Rail Corporation—Control and Operation Exemption—Clearfield and Mahoning Railway Company*.

CONTACT PERSONS FOR MORE

INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Press Services, Telephone: (202) 927-5350, TDD: (202) 927-5721.

Vernon A. Williams,

Secretary.

[FR Doc. 95-27138 Filed 10-27-95; 3:05 pm]

BILLING CODE 7035-01-P

MERIT SYSTEMS PROTECTION BOARD

TIME AND PLACE: 10:30 a.m., Friday, November 3, 1995.

PLACE: Francis Perkins Hearing Room, Eighth Floor, 1120 Vermont Avenue, N.W., Washington, D.C., 20419.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Procedures to be applied in processing of *International Trade Commission v. Sidney Harris, et al.*, Docket Number CB-7521-96-0003-T-1, and any similar new cases that are filed concerning the furlough of Administrative Law Judges.

CONTACT PERSON FOR ADDITIONAL

INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

Dated: October 27, 1995.

Shannon McCarthy,

Deputy Clerk of the Board.

[FR Doc. 95-27153 Filed 10-27-95; 3:39 pm]

BILLING CODE 7400-01-M

Corrections

Federal Register

Vol. 60, No. 210

Tuesday, October 31, 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.

Monday, October 23, 1995, make the following correction:

On page 54398, in the second column, the signature before the FR Doc. line was omitted and should read as follows:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

Friday, October 6, 1995, the date was omitted and should read as set forth above.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-21414; 811-7752]

PaineWebber Premier Intermediate Tax-Free Income Fund, Inc.; Notice of Application

Correction

In notice document 95-25818 beginning on page 53949 in the issue of Wednesday, October 18, 1995, make the following corrections:

On page 53949, in the the third column, in the subject heading and under APPLICANT, "PaineWebber" was misspelled.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36381; File No. SR-CBOE-95-38]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Listing and Trading of Warrants on the CBOE Technology 50 Index

Correction

In notice document 95-26182 beginning on page 54395 in the issue of

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36311; File No. SR-NASD-95-34]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Temporary Approval of Proposed Rule Change to Extend Certain SOES Rules Through January 31, 1996

September 29, 1995.

Correction

In notice document 95-24909 beginning on page 52438 in the issue of

Federal Trade Commission

Tuesday
October 31, 1995

Part II

**Federal Trade
Commission**

16 CFR Part 311
**Test Procedures and Labeling Standards
for Recycled Oil; Final Rule**

FEDERAL TRADE COMMISSION**16 CFR Part 311****Test Procedures and Labeling Standards for Recycled Oil****AGENCY:** Federal Trade Commission.**ACTION:** Final rule.

SUMMARY: Section 383 of the Energy Policy and Conservation Act of 1975 ("EPCA") directs the Federal Trade Commission ("FTC" or "Commission") to promulgate a rule prescribing test procedures and labeling standards for recycled oil. The Commission is required to prescribe the rule within 90 days after the National Institute of Standards and Technology ("NIST") reports to the Commission test procedures to determine the substantial equivalency of processed used oil with new oil distributed for a particular end use. On July 27, 1995, NIST reported the relevant test procedures for engine oil, and on August 28, 1995, the Commission published a notice of proposed rulemaking seeking written comment on its proposed labeling standards. In this notice, the Commission announces its final rule.

EFFECTIVE DATE: This rule is effective November 30, 1995. The incorporation by reference of the publication listed in 16 CFR part 311 is approved by the Director of the Federal Register as of November 30, 1995.

FOR FURTHER INFORMATION CONTACT: Neil J. Blickman, Attorney, or Laura Koss, Attorney, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Sixth Street and Pennsylvania Ave. NW., Washington, DC 20580, telephone numbers 202/326-3038, or 202/326-2890.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Background**A. EPCA's Requirements**

The purposes of the recycled oil section of EPCA are to encourage the recycling of used oil, to promote the use of recycled oil, to reduce consumption of new oil by promoting increased utilization of recycled oil, and to reduce environmental hazards and wasteful practices associated with the disposal of used oil.¹ To achieve these goals, section 383 of EPCA directs NIST to develop test procedures for the determination of the substantial equivalency of re-refined or otherwise processed used oil, or any blend of re-

refined or otherwise processed used oil and new oil or additives, with new oil distributed for a particular end use and to report such test procedures to the Commission.² Within 90 days after receiving a report from NIST, the Commission is required to prescribe, by rule, the substantial equivalency test procedures, as well as labeling standards for such recycled oil.³ EPCA further requires that the Commission's rule permit any container of processed used oil to bear a label indicating a particular end use, such as engine lubricating oil, so long as a determination of "substantial equivalency" with new oil has been made in accordance with the test procedures prescribed by the Commission.⁴

The final rule preempts any other Commission rule or order, and any law, regulation, or order of any State (or political subdivision thereof), if it has labeling requirements with respect to the comparative characteristics of recycled oil with new oil that are not identical to the labels permitted by this rule.⁵ Also, no rule or order of the Commission may require that any container of recycled oil also bear a label containing any term, phrase, or description connoting less than substantial equivalency of such recycled oil with new oil.⁶

B. The Rulemaking Proceeding

On July 27, 1995, NIST reported to the Commission test procedures for the determination of substantial equivalency of processed used engine oils with new engine oils. The NIST test procedures and performance standards are the same as those adopted by the American Petroleum Institute ("API") for engine lubricating oils generally, regardless of origin.

On August 28, 1995, the Commission announced for comment its proposed Rule on Test Procedures and Labeling Standards for Recycled Oil.⁷ The 30-day

² 42 U.S.C. 6363(c). Although EPCA does not explicitly define the term "processed used oil," it is defined herein to mean re-refined or otherwise processed used oil or any blend of such oil, consistent with the definition of "recycled oil" at 42 U.S.C. 6363(b)(2) (A) and (B).

³ 42 U.S.C. 6363(d). Recycled oil, as defined in section 6363(b)(2) of EPCA is either (a) used oil from which physical and chemical contaminants acquired through prior use of the oil have been removed by refining or other processing, or (b) any blend of re-refined or otherwise processed used oil and new oil or additives, that, for either (a) or (b), the manufacturer has determined, pursuant to the Commission's rule, is substantially equivalent to new oil for a particular end use.

⁴ 42 U.S.C. 6363(d)(1)(B).

⁵ 42 U.S.C. 6363(e)(1).

⁶ 42 U.S.C. 6363(e)(2).

⁷ 60 FR 44712 (Aug. 28, 1995).

comment period closed on September 27. The Commission received 20 written comments in response to its Notice of Proposed Rulemaking ("NPR"). Comments were filed by nine oil producers,⁸ five trade associations,⁹ the National Association of Consumer Agency Administrators,¹⁰ Ford Motor Company,¹¹ the County of San Diego,¹² the State of Wisconsin,¹³ and two individuals.¹⁴ These comments, and other relevant documents, were placed on the public record of this proceeding,¹⁵ and have been considered by the Commission in adopting a final rule.

II. The Rule**A. Scope of the Rule**

Section 383 of EPCA directs the FTC to promulgate a rule prescribing: (1) Test procedures for determining the substantial equivalency of processed used oil with new oil for a particular end use; and (2) labeling standards applicable to containers of such recycled oil. EPCA requires the Commission to prescribe the test procedures transmitted to it by NIST. The Commission's proposed rule was limited to automotive engine oil, because thus far NIST has reported test procedures only for determining the substantial equivalency of processed used engine oils with new engine oils.¹⁶

⁸ Coastal Unilube, Inc. (Coastal), D-2; Enviropur West Corporation (Enviropur), D-4; Exxon Company, U.S.A. (Exxon), D-5; South Coast Terminals, Inc. (South Coast), D-6; Evergreen Holdings Inc. (Evergreen), D-7; Quaker State Corporation (Quaker State), D-8; Pennzoil Company (Pennzoil), D-14; Safety-Kleen Corp. (Safety-Kleen), D-16; Chevron Corporation (Chevron), D-18.

⁹ Automotive Oil Change Association (AOCA), D-10; National Oil Recyclers Association (NORA), D-12; American Petroleum Institute (API), D-13; Independent Lubricant Manufacturers Association (ILMA), D-15; Automotive Parts & Accessories Association (APAA), D-17.

¹⁰ NACAA, D-9.

¹¹ Ford, D-11.

¹² County of San Diego, Department of Agriculture, Weights and Measures (San Diego), E-1.

¹³ Procurement Recycling Coordinator of the State of Wisconsin (Wisconsin), E-2.

¹⁴ Robert C. Deitz, Environmentalist ("Deitz"), D-1; David R. Zelnick, President, Zed Industries ("Zed"), D-3.

¹⁵ Commission Rulemaking Record No. R511036. Comments submitted in response to the NPR are coded either "D" (indicating that they were filed by nongovernmental parties) or "E" (indicating that they were filed by governmental agencies). Information placed on the public record by Commission staff is coded "B." In this notice, comments are cited by identifying the commenter (by abbreviation), the comment number, and the relevant page number(s), e.g., "Deitz, D-1, 1."

¹⁶ The letter to the Commission from NIST stated that "[t]he API publication 1509 tests including the Engine Oil Licensing and Certification System are the test procedures we are recommending to you for the determination of substantial equivalency of re-

¹ 42 U.S.C. 6363(a).

In addition, EPCA prohibits the Commission from requiring that any container of recycled oil bear a label containing any term that connotes less than substantial equivalency of recycled oil meeting the NIST standards with new oil.¹⁷

Nineteen of the 20 comments received in response to the NPR generally supported the Commission's proposed rule as consistent with the policies and purposes of EPCA. One commenter opposed the proposed rule, stating that a consumer has a right to know when oil has been recycled, re-refined or used.¹⁸ However, the commenter suggests a regulatory option that is contrary to the mandate of EPCA.

Seven commenters suggested that the Commission extend the scope of the final rule to include additional end uses.¹⁹ According to these commenters, the industry assumes that re-refined base oils demonstrated to be substantially equivalent to virgin base oils for use in an engine oil are substantially equivalent to virgin base oils for use in any product.²⁰ Three of these commenters stated that state labeling laws encompass a broader category of automotive fluids (such as automatic transmission fluid and automotive gear oils).²¹ As a result, state labeling provisions with respect to these non-engine oils would not be preempted by the Commission's rule, and there would be a discriminatory impact on these other types of oils because they would remain subject to a different regulatory scheme.²² This, according to these commenters, could result in confusion in the marketplace.²³ It also might create disincentives for lubricant manufacturers to purchase re-refined

refined oils for the end use of engine lubricating oil." NIST letter, B-1, 1 (emphasis added). In September 1979, NIST forwarded to the Commission test procedures for "recycled oil used as burner fuel." The Commission, however, determined that it was not required to promulgate a labeling rule with respect to burner fuel, because such oil is sold in bulk, not in container form for consumer use as EPCA contemplates.

¹⁷ 42 U.S.C. 6363(e)(2).

¹⁸ Zed, D-3, 1.

¹⁹ Evergreen, D-7, 2; Enviropur, D-4, 2; Quaker State, D-8, 2; NORA, D-12, 3; ILMA, D-15, 3; Pennzoil, D-14, 2; APAA, D-17, 2.

²⁰ NORA, D-12, 3-4; Evergreen, D-7, 2; APAA, D-17, 1-2 ("when a company purchases re-refined base oil from a supplier, it could very well be used in engine performance, gear lubricants, power transmission fluids, hydraulic oils, or any combination of these products").

²¹ Enviropur, D-4, 2; see also Evergreen, D-7, 2; NORA, D-12, 3-4.

²² *Id.*

²³ Enviropur, D-4, 2; Quaker State, D-8, 2 (limiting the scope of the final rule to engine oils "may create some confusion for non-engine lubricant compounders and blenders desiring to use re-refined base oils").

base oils for use in the blending of automotive fluid products in states with labeling laws that include all automotive fluid products.²⁴

Two commenters suggested that the Rule should apply to lubricants for railroad engines, marine outboard engines, stationary diesels, and natural gas engines and compressors.²⁵ Another commenter suggested that the Rule should also cover used oil sold as fuel, stating that the market for such fuel is approximately 10 times greater than for re-refined lubricants.²⁶

The Commission has concluded that until NIST develops test procedures for other end uses, it must limit the scope of the rule to the categories of engine oil that are covered by the API Engine Oil Licensing and Certification System as prescribed in API Publication 1509 (passenger car motor oils and car and truck diesel engine oils). Other end uses for re-refined oil, such as railroad diesel engine oil, are not covered by the Rule because API Publication 1509 does not contain test procedures applicable to them.²⁷

Seventeen of the 19 comments that generally supported the Commission's proposed rule also addressed some specific aspects of the proposal. Those comments, and the Commission's minor modifications to the proposed rule in response to those comments, are discussed below.

B. Section 311.1 Definitions

In the proposed rule, the Commission defined the terms "manufacturer," "new oil," "recycled oil," and "used oil"—the principal terms defined in section 383(b) of EPCA.²⁸ The proposed rule, however, also included definitions for "re-refined oil" and "processed used oil."²⁹

Five comments addressed the Commission's proposed definitions.³⁰ Three commenters suggested changing

²⁴ See, e.g., Evergreen, D-7, 2 (citing Colorado as an example).

²⁵ South Coast, D-6, 1 (the proposed rule "would not cover many other industrial applications for which there are established industry or original manufacturer standards"); ILMA, D-15, 3 (the final rule should extend to such lubricants "by allowing manufacturers to provide test results that the recycled lubricants meet the applicable specifications").

²⁶ NORA, D-12, 4. (See note 16, *supra*, regarding prior NIST report regarding burner fuel.)

²⁷ According to one commenter, individual consumers are not harmed by the exclusion of railroad diesel engine oil "because these oils are sold to railroads and other equally sophisticated entities that are in a position to ensure that the re-refined oils they purchase are suitable for their intended use." Safety-Kleen, D-16, 12.

²⁸ 42 U.S.C. 6363(b).

²⁹ 60 FR 44712, 44717.

³⁰ Enviropur, D-4; South Coast, D-6; Evergreen, D-7; ILMA, D-15; Safety-Kleen, D-16.

the definition of "new oil" to include synthetic oils.³¹ The proposed rule referred only to "oil which has been refined from crude oil."³² Two of these commenters noted that synthetic oils are referenced in API 1509 as sources of raw materials for engine oil.³³

The third commenter noted that "existing re-refining technology is capable of removing impurities from certain used synthetic oils as well as from used refined crude oil, and used synthetic oils are presently included as part of the input streams to re-refining processes."³⁴ According to this commenter, some used synthetic oils, once properly refined, "serve to improve the fitness of recycled engine oils for particular end uses."³⁵ This commenter suggested that the definitions of "new oil" and "used oil" should refer to synthetic oils.

The Commission has concluded that including synthetic oils in the definitions of "new oil" and "used oil" furthers the purposes of EPCA in promoting the use of recycled oil, reducing consumption of new oil, and reducing environmental hazards and wasteful practices associated with the disposal of used oil.³⁶ Accordingly, the definitions of "new oil" and "used oil" in the final rule now specifically refer to synthetic oils.

Another commenter suggested that the definition of "re-refined oil," which in the proposed rule was defined as "used oil from which physical and chemical contaminants acquired through use have been removed,"³⁷ should be changed to specify that "re-refined oil" is used oil that has been refined using hydrotreating technology.³⁸ According to this commenter, one of only two companies in the United States that employ a hydrotreating process when treating used oil, such a clarification would ensure that "investments in the hydrotreating process are adequately recognized and protected" and that the "high quality of re-refined (hydrotreated) products are adequately

³¹ South Coast, D-6, 2; ILMA, D-15, 3; Safety-Kleen, D-16, 12-13.

³² 60 FR 44712, 44717.

³³ South Coast, D-6, 2; ILMA, D-15, 3.

³⁴ Safety-Kleen, D-16, 12.

³⁵ *Id.*

³⁶ 42 U.S.C. 6363(a). Including synthetic oils in these definitions is consistent with some state laws, which specifically refer to synthetic oils in their definitions. See, e.g., Nev. Rev. Stat. Ann. § 590.020(7) (Michie 1995); La. Rev. Stat. § 51:821(B)(6) (1995); Colo. Rev. Stat. § 8-20-213(2)(g) (1995).

³⁷ 60 FR 44712, 44717.

³⁸ Evergreen, D-7, 3.

recognized for purposes of consumer protection and awareness.”³⁹

In contrast, two commenters requested that the Commission not specifically refer to any one processing treatment.⁴⁰ Enviropur, for example, stated that the FTC should not define “recycled oil” by specifying any one treatment method because hydrotreating is not the only method available.⁴¹

The Commission has determined that the final rule should not specifically refer to hydrotreating or any other processing treatment. The purpose of this rule is to promote the use of “recycled” oils that are substantially equivalent to new oils according to the prescribed standards. The Commission has no legal basis for requiring manufacturers to use any one processing technique if there are several techniques that can be used to make substantially equivalent oils. Accordingly, the definition of “re-refined oil” has not been changed.

Another commenter suggested that the Commission change the definition of “recycled oil” to state that “[r]ecycled oil does not include used oil which is blended or otherwise treated for energy recovery or incineration.”⁴² The Commission believes such a clarification is unnecessary because such oil is already excluded from the rule. In the proposed rule, the Commission defined “recycled oil” as “processed used oil with respect to which the manufacturer has determined, pursuant to section 311.4 of this part, is substantially equivalent to new oil for use as engine oil.”⁴³ Section 311.4 of this part prescribes test procedures only for engine oils.

Accordingly, after considering the comments, the NIST report, and its statutory mandate, the Commission has determined that the final rule shall include all the definitions as proposed in the NPR, with the terms “new oil” and “used oil” modified to include synthetic oil.

C. Section 311.3 Preemption

The preemption provision proposed in the NPR was based on the language in Section 383(e)(1) of EPCA. The statute provides:

[N]o rule or order of the Commission, other than the rules required to be prescribed pursuant to subsection (d)(1)(A) of this section, and no law, regulation, or order of any State or political subdivision thereof may apply

or remain applicable, to any container of recycled oil, if such law, regulation, rule, or order requires any container of recycled oil, which container bears a label in accordance with the terms of the rules prescribed under subsection (d)(1)(A) of this section, to bear any label with respect to the comparative characteristics of such recycled oil with new oil which is not identical to that permitted by the rule respecting labeling standards prescribed under subsection (d)(1)(A)(ii) of this section.⁴⁴

The Commission solicited comment on whether recycled oil labeling requirements specified by law (federal, state, or local) would be affected by the Commission’s proposal.⁴⁵ Ten commenters directly addressed this aspect of the Commission’s proposal, with nine expressing their support for the proposed preemption provision⁴⁶ and one opposing it.⁴⁷ Two commenters, Safety-Kleen and Sun Coast, listed 17 states they believed would be affected.⁴⁸

1. State Law

The commenters supporting the provision asserted that state labeling requirements applicable to recycled oil impose burdensome and sometimes

inconsistent requirements on recycled oil manufacturers.⁴⁹ According to these commenters, consistent nationwide labeling standards would reduce compliance costs for manufacturers and distributors of recycled engine oil, eliminate existing barriers to the distribution of such oil in certain geographic areas and distribution channels, and minimize the stigma associated with re-refined lubricants, thus leading to an increase in the use of recycled oil products.⁵⁰ Two commenters also suggested that the final rule should preempt state laws that impose additional regulatory requirements on recycled oil manufacturers, such as laws that require such manufacturers to register or certify their products.⁵¹

Only one commenter, NACAA, stated its opposition to the proposed preemption provision, arguing that states must be able to respond to their own constituencies, and that this provision would weaken many state laws.⁵²

EPCA’s language shows Congress intended to promote the use of recycled oil by preventing multiple labeling requirements. Further, the legislative history of the Used Oil Recycling Act⁵³ indicates that Congress did not believe that consumers would be deprived of meaningful information if sellers of recycled oil did not disclose the origin of the oil on the containers. Congress stated that “the requirement that recycled oil be labeled in a manner indicating its prior use provides no useful information to the consumer concerning the performance of the oil * * * oil should be labeled on the basis of performance characteristics and fitness for intended use, and not on the basis of the origin of the oil.”⁵⁴

State laws that require specific disclosures (e.g., that the product is recycled) or have specific format requirements (e.g., specific print size requirements for their disclosures) are preempted because they require a label that is not “identical to that permitted by the [FTC’s] rule * * *.” States also may not dictate how manufacturers

⁴⁴ 42 U.S.C. 6363(e)(1).

⁴⁵ 60 FR 44712, 44716.

⁴⁶ South Coast, D-6; Evergreen, D-7; AOCA, D-10; NORA, D-12; API, D-13; Pennzoil, D-13; Safety-Kleen, D-16; AAPA, D-17; Chevron, D-18, 1.

⁴⁷ NACAA, D-9.

⁴⁸ Ala. Code § 8-17-111 (1994); Colo. Rev. Stat. § 8-20-213 (1995) (requires manufacturers to label recycled oils as such, but allows manufacturers to represent a product made “wholly or partly from re-refined oil to be equal to or better than a similar product made from virgin oil if the product for sale conforms with applicable API service classifications, API certification mark, and SAE viscosity grades”); Conn. Gen. Stat. § 14-342 (1994); Fla. Stat. ch. 526.01 (1994) (previously used lubricating oil must be labeled as such, but “[p]reviously used lubricating oils which have been re-refined by a refining process that has removed all the physical and chemical contaminants acquired in previous use and which meets the ASTM-SAE-API standards for fitness for its intended use is not subject to the labeling requirements of this subsection”); Ga. Code Ann. § 10-1-162 (1995); Haw. Rev. Stat. §§ 342N-30, 31 (1994); Idaho Code §§ 37-2514 to 37-2520 (1994); 815 Ill. Comp. Stat. 435/1, 435/2 (1995); Ind. Code Ann. § 16-44-1-1 (Burns 1994); La. Rev. Stat. § 51:821 (1995) (requires manufacturers to label oils “re-refined” but also provides that “a person may represent a product made in whole or in part from re-refined oil to be substantially equivalent to a product made from virgin oil for a particular end use if the product conforms with the applicable API and SAE service classifications”); Md. Code Ann., Bus. Reg. § 10-501 (1995); Mass. Ann. Laws ch. 94 § 295F (Law. Co-op. 1995); Miss. Code Ann. § 75-55-13 (1995); Mo. Rev. Stat. § 414.112 (1994); Nev. Rev. Stat. Ann. § 590.060(4) (Michie 1995) (only recycled or used oil which has not been re-refined must be labeled “recycled” or “used”); N.H. Rev. Stat. Ann. § 339-B:2 (1994); Tex. Occ. Code Ann. § 8606 (West 1995); Wis. Stat. §§ 159.15, 168.14 (1994). The Commission makes no determination at this time as to which, if any, of these state requirements are preempted.

⁴⁹ South Coast, D-6, 3; Evergreen, D-7, 1; AOCA, D-10, 2; NORA, D-12, 3; API, D-13, 1; Pennzoil, D-14, 2; Safety-Kleen, D-16, 2-3; APAA, D-17, 1.

⁵⁰ See, e.g., South Coast, D-6, 3; AOCA, D-10, 2; NORA, D-12, 3; Pennzoil, D-14, 2; Safety-Kleen, D-16, 3; APAA, D-17, 1.

⁵¹ South Coast, D-6, 3; Safety-Kleen, D-16, 11 (citing Florida and Hawaii statutes).

⁵² Comment D-9, 1.

⁵³ Used Oil Recycling Act of 1980, Pub. L. No. 96-463, 94 Stat. 2055 (codified as amended in scattered sections of 42 U.S.C.).

⁵⁴ H.R. Rep. No. 96-1415, 96th Cong., 2d Sess. 6 (1980), reproduced at 1980 U.S. Code Cong. & Ad. News 4354, 4356.

³⁹ *Id.*

⁴⁰ Enviropur, D-4, 2-3; Quaker State, D-8, 1-2.

⁴¹ Comment D-4, 2.

⁴² Evergreen, D-7, 4.

⁴³ 60 FR 44712, 44717 (emphasis added).

convey substantial equivalency (if they meet the specified test procedures for substantial equivalency).

States may adopt labeling requirements identical to those required by the FTC, if they wish, and prosecute violations under state law.⁵⁵

Because preemption is mandated by EPCA, the Commission has no discretion on this issue. The Commission believes that section 383(e)(1) intends that there be one, uniform labeling requirement regarding the comparative characteristics of recycled oil (for a particular end use). If a container of recycled oil is labeled in accordance with the FTC's rule, neither the FTC nor any state or political subdivision may require any additional or different disclosure.

EPCA's preemptive effect is limited to labeling requirements for recycled oil that meets the definition of recycled oil in EPCA (*i.e.*, oil that is substantially equivalent to new oil pursuant to FTC-specified test procedures). Accordingly, the rule preempts only state labeling requirements for engine oils covered by the API Engine Oil Licensing and Certification System as prescribed in API Publication 1509. The rule does not preempt state requirements that are not labeling requirements, such as registration and certification requirements.⁵⁶

2. The FTC's Used Oil Rule

Section 383(e)(2) of EPCA also restricts Commission rules and orders, stating "the Commission may [not] require any container of recycled oil to also bear a label containing any term, phrase, or description which connotes less than substantial equivalency * * *." To some extent this section overlaps with section 383(e)(1) of EPCA. But, whereas section (e)(1) expresses congressional intent that there be a national uniform labeling standard, preempting non-identical state laws, section (e)(2) is specifically aimed at prohibiting Commission label

⁵⁵ See, *e.g.*, Ill. Stat. ch. 815 §§ 435/1, 435/2 (1995) (upon promulgation of the FTC's labeling standards applicable to recycled oil, "the labeling requirements provided in [the statute] shall no longer be in effect and the State labeling standards shall be those promulgated by the Federal Trade Commission").

⁵⁶ For example, Florida requires manufacturers of re-refined oil to register their products with the Department of Environmental Protection and to provide an affidavit of proof that the product meets the required standards. Fla. Stat. ch. 526.01 (1994). Hawaii prohibits persons from marking recycled oil as "specification fuel without an analysis or other written information documenting that the used oil or recycled oil meets the standards for specification fuel as set forth by the director." Haw. Rev. Stat. § 342N-30 (1994). Hawaii also requires transporters, marketers, and recyclers of used oil to obtain a permit. Haw. Rev. Stat. § 342N-31 (1994).

requirements in addition to what the Commission prescribes under section 383(d)(1) of EPCA, if the additional requirements would create the impression that the recycled oil is not substantially equivalent to new oil.

In 1964, prior to the enactment of EPCA, the Commission had promulgated a trade regulation rule on the advertising and labeling of previously used lubricating oil.⁵⁷ Based on the Commission's finding that the new or used status of a lubricant was material to consumers, the Used Oil Rule was promulgated to prevent deception of those who prefer new and unused lubricating oil. The Rule required that advertising, promotional material, and labels for lubricant made from used oil disclose such previous use. The Rule prohibited any representation that used lubricating oil is new or unused. In addition, it prohibited use of the term "re-refined," or any similar term, to describe previously used lubricating oil unless the physical and chemical contaminants had been removed by a refining process.⁵⁸

On October 15, 1980, the Used Oil Recycling Act suspended the provision of the Used Oil Rule, as well as any similar provision in a Commission order, requiring labels to disclose the origin of lubricants made from used oil.⁵⁹ The legislative history indicates congressional concern that the FTC Rule's labeling requirement had an adverse impact on consumer acceptance of recycled oil, provided no useful information to consumers concerning the performance of the oil, and inhibited recycling. Moreover, the origin labeling requirements in the Used Oil Rule may be inconsistent with the intent of section 383 of EPCA, which is that "oil should be labeled on the basis of performance characteristics and fitness for intended use, and not on the basis of the origin of the oil."⁶⁰

Accordingly, on April 8, 1981, the Commission published a notice announcing the statutory suspension of the origin labeling requirements of the Used Oil Rule and relevant orders. In the same notice, the Commission suspended enforcement of those portions of the Used Oil Rule and Commission orders requiring that advertising and promotional material disclose the origin of lubricants made from used oil.⁶¹ The stay of the Used Oil

⁵⁷ 16 CFR 406.

⁵⁸ 16 CFR 406.5.

⁵⁹ 42 U.S.C. 6363 note.

⁶⁰ See Legislative History, Public Law 96-463, U.S. Code Cong. and Adm. News, pp. 4354-4356 (1980).

⁶¹ 46 FR 20979.

Rule continues in effect. As part of its regulatory review process, the Commission will consider, at some time in the future, whether the Used Oil Rule should be rescinded in its entirety or otherwise amended.

D. Section 311.4 Testing

The Commission proposed in the NPR that, to determine the substantial equivalency of processed used oil with new oil for use as engine oil, manufacturers use the test procedures that were reported to the Commission by NIST on July 27, 1995, entitled "Engine Oil Licensing and Certification System," API Publication 1509, 13th Edition, January, 1995.⁶² API operates a voluntary licensing and certification system that is designed to provide consumers with the technical information needed to understand the performance, viscosity, and accepted use of engine oils. Under this system, API licenses two types of "Marks" which may appear on the labeling of qualified engine oils: the API Service Symbol⁶³ and the API Certification Mark.⁶⁴

Six commenters addressed the proposed testing standard. The commenters agreed that substantial equivalency should be based on the test procedures contained in API Publication 1509 as NIST recommended to the Commission. However, since this publication is periodically revised by API to reflect changes in test procedures and standards, the commenters recommended that the final rule require use of test procedures found in the

⁶² 60 FR 44712, 44714.

⁶³ The Service Symbol identifies the type of engine in which the oil should be used, explains the oil's characteristics, and describes the oil's ability to protect against wear, sludge, and corrosion. The symbol also contains a rating of the oil's viscosity that is based on specifications established by the Society of Automotive Engineers. Finally, the symbol indicates whether the oil has any energy conserving properties when compared to a standard reference oil.

⁶⁴ The API Certification Mark identifies engine oils recommended for a specified use. An engine oil is eligible to receive the API Certification Mark only if it satisfies the minimum performance standards established by the International Lubricant Standardization and Approval Committee ("ILSAC"). To receive ILSAC approval and, in turn, API certification, motor oils must pass a series of tests designed to evaluate the following factors: (1) The oil's performance and its effect on the engine at zero degrees Fahrenheit or lower; (2) the extent to which the oil prevents engine rust and corrosion; (3) the oil's fuel efficiency; (4) the capability of the oil to reduce friction and to protect moving parts within the engine from fusing together; (5) the oil's resistance to thickening under high temperatures up to three hundred degrees Fahrenheit; (6) the level of detergents and dispersants in the oil; and (7) the content of phosphorus in the oil.

"latest" or "current" version of API Publication 1509.⁶⁵

The "Document Drafting Handbook" of the Office of the Federal Register, National Archives and Records Administration, contains the rules federal agencies must follow to incorporate materials by reference into regulatory text.⁶⁶ Each statement of incorporation by reference in regulatory text must specifically identify the material to be incorporated, including the title, date, edition, author, publisher, and identification number of the publication. The Commission, therefore, does not have discretion to refer generally to the "latest" or "current" edition of API Publication 1509 in the final rule. If API Publication 1509 is revised and a subsequent edition is published, the Commission may update its incorporation by reference of this document by publishing an amendment to the Code of Federal Regulations in the Federal Register.

Three of these commenters also recommended that the Commission modify the proposed rule to permit third-party testing on behalf of the manufacturer. According to the commenters, additive manufacturers and suppliers or other third parties often perform API tests for lubricant manufacturers. The commenters stated that the Commission's proposal (*i.e.*, that manufacturers use the NIST test procedures to determine substantial equivalency), if left unchanged, would be extremely burdensome on the industry.⁶⁷ The Commission has determined that manufacturers may rely on third-party testing conducted in accordance with the procedures contained in API Publication 1509. This could be important to some manufacturers who do not have testing equipment of their own. Accordingly, the final rule states that to determine the substantial equivalency of processed used oil with new oil, manufacturers or their designees must use the test procedures found in API Publication 1509. The allowance for third-party testing, however, does not absolve manufacturers of their ultimate responsibility under EPCA for making substantial equivalency determinations.⁶⁸

⁶⁵ South Coast, D-6, 2; AOCA, D-10, 2; Ford, D-11, 1; API, D-13, 2; ILMA, D-15, 2; Safety-Kleen, D-16, 7.

⁶⁶ This Handbook is issued under the Federal Register Act (44 U.S.C. 1501-1511) and the regulations of the Administrative Committee of the Federal Register (1 CFR 15.10).

⁶⁷ South Coast, D-6, 3; ILMA, D-15, 2; Safety-Kleen, D-16, 6.

⁶⁸ See final rule sections 311.4 and 311.5. Section 383(b)(2) of EPCA (42 U.S.C. 6363(b)(2)) requires manufacturers to make determinations of

substantial equivalency. The final rule, therefore, is consistent with EPCA.
In accordance with section 383(d)(1)(A)(i) of EPCA,⁶⁹ therefore, section 311.4 of the final rule prescribes test procedures for determining the substantial equivalency of processed used oil with new oil distributed for use as engine oil. The test procedures, as reported to the Commission by NIST, are found in API Publication 1509, 13th Edition, January 1995, entitled "Engine Oil Licensing and Certification System."⁷⁰ In its letter transmitting the test procedures to the Commission, NIST stated that the engine test procedures described in API Publication 1509, combined with the API Engine Oil Licensing and Certification System, are accepted for use with automotive engine oils by the Society of Automotive Engineers, the American Society of Testing and Materials, and all major automotive engine manufacturers.

E. Section 311.5 Labeling

In accordance with section 383(d)(1)(A)(ii) of EPCA,⁷¹ in the NPR the Commission proposed labeling standards for containers of recycled oil. Section 311.5 of the proposed rule stated that a manufacturer may represent, on a label on a container of processed used oil, that such oil is substantially equivalent to new oil for engine use, but only *if* the manufacturer has determined, in accordance with the test procedures prescribed by the Commission, the substantial equivalency of the oil to new oil for that particular end use, and has based the representation on that determination.⁷² For example, a manufacturer could represent that its oil is substantially equivalent to new oil by displaying the API Mark on its container. A manufacturer would not be required to add any qualifiers to its label, such as "used" or "re-refined."

The Commission received seven comments on this aspect of its proposal. Exxon stated that the Commission's proposed labeling standards do not address the extent to which an engine oil may exceed the minimum requirements for such oils in API Publication 1509, and do not address a recycled oil's potential health effects on consumers.⁷³ With regard to Exxon's

substantial equivalency. The final rule, therefore, is consistent with EPCA.

⁶⁹ 42 U.S.C. 6363(d)(1)(A)(i).

⁷⁰ The Commission has obtained approval from the Director of the Federal Register to incorporate this document by reference into section 311.4 of the final rule, as required by section 552(a) of the APA, 5 U.S.C. 552(a), and by regulations issued by the Office of the Federal Register, 1 CFR 51.

⁷¹ 42 U.S.C. 6363(d)(1)(A)(ii).

⁷² 60 FR 44712, 44715.

⁷³ Comment D-5, 1-2 ("Stating that recycled oils are substantially equivalent to new oils without

first point, the Commission notes that its labeling standards are permissive in nature and do not mandate any specific disclosures. If a recycled oil exceeds the minimum requirements for substantial equivalency with new oil, a manufacturer is free to make such representations on labels, in advertising, or wherever appropriate.

With regard to Exxon's second point, the Commission believes that consideration of the potential health effects of recycled oil is beyond its statutory mandate in this proceeding. It is clear from the legislative history of EPCA that Congress was concerned only with the performance characteristics of recycled oil, not potential health consequences. Section 383(d)(1)(A) of EPCA requires the Commission to prescribe the substantial equivalency test procedures certified to the Commission by NIST. The test procedures reported to the Commission by NIST relate to the performance of oil distributed for use as engine oil. The rule's labeling standards, therefore, are based on substantial equivalency determinations made in accordance with those test procedures. Although Exxon's concerns may be important, they cannot be addressed in this proceeding. The Commission has no factual or legal basis to address the health effects, or any other non-performance qualities, of recycled oil in this rulemaking.

Three commenters suggested that the final rule include affirmative, mandatory labeling requirements.⁷⁴ As

specifically confining that equivalency to performance might imply equivalency in health effects on humans. In contrast to new petroleum base oils, we are not aware of an extensive database on the cancer potential and other health effects to humans posed by recycled base oils * * *. While [typical] contaminants have been rather extensively studied and documented for new oils, the variability of source and effects of re-refining have presented a major challenge for health equivalent documentation for recycled oils. Some equivalency standards for carcinogenic species, adverse health species (*i.e.*, PCB) [and] adverse environmental species (*i.e.*, metals) should be put in place to ensure health equivalence with new oils." In contrast, Safety-Kleen stated that tests have shown its re-refined base oils to be non-mutagenic and non-carcinogenic, and that "although the FTC's mandate to promulgate test procedures does not extend to health-related issues * * * implementation of the proposed rule is consistent with consumers' interest in encouraging the sale of safe and healthful products." Comment D-16, 9.

⁷⁴ NACAA, D-9, 1 (Recycled or re-refined oil must have an equivalency on the label. The consumer will need to know how these recycled or re-refined oils are equivalent to new oil, and they will need to know its longevity and uses); ILMA, D-15, 3 (ILMA prefers a mandatory labeling requirement because the Commission's proposed rule allows a considerable range in quality of processed used oil); San Diego, E-1, 1 (Used oil's definition and uses must be very clear and stated on the label).

discussed above, in suspending the labeling provision of the Commission's Used Oil Rule, Congress stressed that the intent of section 383 of EPCA was that "[o]il should be labeled on the basis of performance characteristics and fitness for the intended use, and not on the basis of the origin of the oil."⁷⁵ Congress intended to encourage the use of recycled oil that is substantially equivalent in performance to new oil. Congress ensured this in section 383 of EPCA by directing NIST to establish standards for determining substantial equivalency and by prohibiting the Commission from requiring manufacturers to label their products with any term, phrase, or description connoting less than substantial equivalency. Accordingly, the Commission does not believe it is necessary to establish affirmative labeling requirements beyond the statutory requirement that representations of substantial equivalency be based on the NIST standards. If the NIST standards are met, the recycled oil is like new oil sold for engine use in terms of minimum performance, and NACAA's concerns, therefore, are implicitly addressed. Thus, the final rule does not require manufacturers to display the API mark on containers or to explicitly state that their engine oil is substantially equivalent to new oil. The Commission believes that manufacturers and sellers will have every incentive to do so, however.

Ford Motor Company advised the Commission of the existence in the marketplace of technically obsolete oils that may not meet modern engine warranty requirements. Ford suggested that such oils should not be permitted to be labeled as substantially equivalent to new engine oil if they cannot be tested in accordance with the test procedures prescribed by the Commission.⁷⁶ The Commission agrees, but believes that the rule as proposed already addresses this concern. A representation of substantial equivalency can be based only upon a determination made in accordance with the test procedures prescribed by the Commission.

Another commenter advised the Commission that in some instances, a manufacturer of a recycled engine oil product will sell that finished product in bulk to a distributor or retailer who in turn will label the product with its own label and brand. The commenter recommended that the proposed rule's

labeling standards be modified to accommodate these situations.⁷⁷ To clarify that other sellers, including, for example, distributors and retailers, may label containers of recycled engine oil in accordance with the rule, the Commission has modified section 311.5 of the rule to refer to such other sellers.

Finally, the Procurement Recycling Coordinator of the State of Wisconsin suggested that the proposed rule's labeling standards conflict with some federal and state procurement guidelines and Executive Order 12873, which require government procurement officials to purchase re-refined oil instead of virgin oil.⁷⁸ The commenter stated that it will be difficult to favor re-refined oil, if it is difficult to identify the product.⁷⁹ The rule, however, does not preclude manufacturers or other sellers from labeling re-refined oils as such. The labels also could include the percentage of re-refined oil in blended products. Marketers of re-refined engine oil have an incentive to voluntarily label their products as such to attract environmentally concerned or other specifically targeted consumers, including federal or state government agencies.

Accordingly, after considering the comments on its NPR proposal, the Commission has determined that a manufacturer or other seller may represent, on a label on a container of processed used oil, that such oil is substantially equivalent to new oil for use as engine oil only if the manufacturer has determined such substantial equivalency in accordance with the test procedures prescribed by the Commission, and has based the representation on that determination. Because the rule does not mandate the use of specific disclosures, recycled oil manufacturers or other sellers have flexibility to promote the performance of their products and their "substantial equivalency" with new oil and to develop strategies for various markets. Manufacturers can voluntarily label recycled oil with terms such as "recycled" to assist in the marketing of their products.⁸⁰

⁷⁷ Safety-Kleen, D-16, 7.

⁷⁸ A 1993 Executive Order requires federal agencies to implement procurement guidelines for re-refined lubricating oil and requires NIST to establish a program for testing the performance of products containing recovered materials. See Exec. Order No. 12873, 58 FR 54911 (1993).

⁷⁹ Wisconsin, E-2, 1-2.

⁸⁰ Manufacturers using such terms should, of course, consider the Commission's Guides for the Use of Environmental Marketing Claims. See, e.g., 16 CFR 260.7(e).

F. Section 311.6 Prohibited Acts

Section 311.6 of the proposed rule tracked the statutory language relating to prohibited acts and enforcement of the Commission's rule. Section 524 of EPCA⁸¹ prohibits violation of the Commission's final rule issued pursuant to section 383 of EPCA.⁸² The proposed rule declared that it is unlawful for any manufacturer to represent, on a label on a container of processed used oil, that such oil is substantially equivalent to new oil for engine use unless the manufacturer has based such representation on the manufacturer's determination of substantial equivalency in accordance with the test procedures prescribed under section 311.4 of the proposed rule.⁸³

The Commission has revised the proposed rule's prohibited acts section to make it consistent with the change made to the labeling section of the proposed rule. As discussed above, the labeling provision in the final rule (section 311.5) differs from the proposed rule in that it states that a "manufacturer or other seller may represent, on a label on a container of processed used oil, that such oil is substantially equivalent to new oil * * *" (emphasis added).

Accordingly, section 311.6 of the final rule makes it "unlawful for any manufacturer or other seller to represent, on a label on a container of processed used oil, that such oil is substantially equivalent to new oil for use as engine oil unless the manufacturer or other seller has based such representation on the manufacturer's determination that the processed used oil is substantially equivalent to new oil for use as engine oil in accordance with the NIST test procedures prescribed under section 311.4 of this Part." (emphasis added).

The final rule, like the proposed rule, also provides that violations will be subject to enforcement in accordance with section 525 of EPCA. Section 525 of EPCA provides that whoever violates the Commission's final rule is subject to a civil penalty of not more than \$5,000 for each violation.⁸⁴ Whoever willfully violates the Commission's rule shall be fined not more than \$10,000 for each violation.⁸⁵ Any person who knowingly and willfully violates the Commission's rule, after having been subjected to a civil penalty for a prior violation of the rule, shall be fined not more than \$50,000, or imprisoned not more than

⁸¹ 42 U.S.C. 6394(2) and 42 U.S.C. 6395.

⁸² 42 U.S.C. 6394(2).

⁸³ 60 FR 44712, 44717.

⁸⁴ 42 U.S.C. 6395(a).

⁸⁵ 42 U.S.C. 6395(b).

⁷⁵ Legislative History Public Law 96-463, U.S. Code Cong. and Adm. News, pp. 4354-4356 (1980).

⁷⁶ Comment D-11, 1.

six months, or both.⁸⁶ Further, pursuant to section 525 of EPCA, whenever it appears to any officer or agency of the United States (in whom is vested, or to whom is delegated, authority under EPCA) that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of the Commission's rule, such officer or agency may request the Attorney General to bring a district court action to enjoin such acts or practices, and upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. A district court also may issue mandatory injunctions commanding any person to comply with the Commission's rule.⁸⁷

Because section 525 of EPCA does not explicitly authorize the Commission to bring enforcement actions, this rule will be enforced by the Department of Justice under 28 U.S.C. 516, which authorizes the Department of Justice to enforce statutes that are not specifically assigned to other agencies for enforcement. The Commission, however, has the authority to investigate violations and make referrals to the Department of Justice pursuant to section 525(d) of EPCA.⁸⁸ In addition, the Commission has the authority to prosecute unfair or deceptive acts or practices under Section 5 of the FTC Act, 15 U.S.C. 45, administratively or through Section 13(b) actions, 15 U.S.C. 53(b), filed in federal district court. The Commission may obtain injunctive relief, as well as equitable remedies, such as redress or disgorgement. Therefore, if a manufacturer misrepresents that its oil is substantially equivalent to new oil, the Commission can pursue remedies under Section 5 of the FTC Act, if appropriate.

Four commenters addressed the issue of enforcement. Pennzoil emphasized the importance of "strict enforcement of the rule" and "imposing stiff penalties on manufacturers which misrepresent the equivalency of processed used oil to new oils * * *."⁸⁹

API commented that its licensing and certification standards "assure motorists that API-licensed engine oils meet rigorous requirements."⁹⁰ API also stated that, in addition to testing oils before they can be marked with the API Service Symbol and Certification Mark, it runs additional tests on engine parts, or simulates engine operation to show how the oil performs in a variety of

driving and weather conditions. It also conducts an "aftermarket audit to monitor use of the license and the symbol it conveys."⁹¹

The Procurement Recycling Coordinator of the State of Wisconsin expressed concern that the API's auditing process might not be adequate.⁹² According to this state official, API chooses the brands it audits based on market share volume. Therefore, re-refined brands are unlikely to be chosen because sales are relatively low.⁹³ This commenter further noted that API failed to provide him with information he requested regarding the performance testing of re-refined motor oil beyond "the individual manufacturers' assertions that they have met the API requirements."⁹⁴

Ford stated that although meeting the requirements of API Publication 1509 "goes a long way in establishing substantial equivalency, it does not ensure that a manufacturer's oil continuously meets these requirements."⁹⁵ Ford accordingly suggested that the FTC could adopt a random audit process to ensure continued compliance.⁹⁶

The Commission agrees with the commenters that enforcement of the rule is critical to the protection of consumers, as well as those manufacturers that are following the proper certification and labeling standards, and to the maintenance of public confidence in the performance of recycled oil. Accordingly, the Commission will take whatever steps are necessary to ensure compliance with the rule. Moreover, although the rule does not contain any recordkeeping or reporting requirements, any manufacturer or seller labeling recycled oil pursuant to this rule must be able to demonstrate that the necessary testing has been performed and the determination of substantial equivalency properly made.⁹⁷ The Commission's enforcement plan will vary depending on whether the Commission determines that there is a compliance problem. The Commission welcomes any information from persons

who believe that the rule is being violated.

III. Effective Date

EPCA directs the Commission to "prescribe" the relevant test procedures and pertinent labeling standards within 90 days after the date on which NIST reports such test procedures to the Commission. It does not, however, specify an effective date for the rule. In the NPR, the Commission proposed that the rule become effective 30 days after publication of a final rule in the Federal Register.⁹⁸ The two comments on this issue supported the proposed effective date.⁹⁹ Therefore, the Commission has determined that the final rule will become effective 30 days after it is published in the Federal Register. This will provide sufficient time for affected parties to comply with the rule's labeling standards or take notice of them.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")¹⁰⁰ requires agencies to prepare regulatory flexibility analyses when publishing proposed rules¹⁰¹ unless the proposed rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."¹⁰² In the NPR, the Commission preliminarily concluded that the economic impact of the proposed labeling standards appeared to be *de minimis*.¹⁰³ The rule proposed by the Commission, and now made final, permits, rather than requires any container of recycled oil to bear a label indicating that it is substantially equivalent to new engine oil, if such determination has been made in accordance with the prescribed test procedures. Any economic costs incurred by entities that choose to make a determination of substantial equivalency are not imposed by the rule. The rule contains no reporting or recordkeeping requirements, and it permits recycled oil to be labeled with information that is basic and easily ascertainable.

In the NPR, the Commission also tentatively concluded that the proposed rule would not affect a substantial number of small entities because relatively few companies currently manufacture and sell recycled oil as engine oil. Of those that do, the Commission stated that most are not

⁹¹ *Id.*

⁹² Wisconsin, E-2, 2.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Ford, D-11, 2.

⁹⁶ *Id.*

⁹⁷ In accordance with the Commission's advertising substantiation doctrine, sellers must have a reasonable basis to support material, objective claims. See Thompson Medical Co., 104 F.T.C. 648, 839 (1984) (Appendix), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987).

⁹⁸ 60 FR 44712, 44715.

⁹⁹ South Coast, D-6, 4; Safety-Kleen, D-16, 13.

¹⁰⁰ 5 U.S.C. 601-612.

¹⁰¹ 5 U.S.C. 603(a).

¹⁰² 5 U.S.C. 605(b).

¹⁰³ 60 FR 44712, 44716.

⁸⁶ 42 U.S.C. 6395(c).

⁸⁷ 42 U.S.C. 6395(d).

⁸⁸ 42 U.S.C. 6395(d).

⁸⁹ Pennzoil, D-14, 3.

⁹⁰ API, D-13, 4.

“small entit[ies]” as that term is defined either in section 601 of RFA¹⁰⁴ or applicable regulations of the Small Business Administration.¹⁰⁵

In light of these factors, the Commission certified under the RFA that the rule proposed would not, if promulgated, have a significant impact on a substantial number of small entities, and, therefore, a regulatory analysis was not necessary.¹⁰⁶ To ensure the accuracy of this certification, however, the Commission requested comments on whether the proposed rule would have a significant impact on a substantial number of small entities.

Two commenters specifically addressed this aspect of the Commission’s proposal. Both stated that the rule would not have a significant economic impact on a substantial number of small entities.¹⁰⁷ In adopting the final rule, the Commission recognizes that although there may be some “small entities” among private-label retail sellers or distributors of recycled engine oil, the rule’s labeling standards will have only a minimal impact on these small entities. Any such impact will likely consist of retailers and distributors voluntarily labeling recycled engine oil containers in order to market their products. The impact on such small entities, therefore, is *de minimis* and not significant. In addition, the rule adopted by the Commission does not require recycled oil manufacturers to conduct substantial equivalency tests themselves. They may use third parties, thus obviating the need to have testing equipment of their own. Thus, the rule minimizes burdens on even small businesses.

On the basis of all the information now before it, the Commission determines that the rule will not have a significant impact on a substantial number of small entities. Consequently, the Commission concludes that a regulatory flexibility analysis is not required. In light of the above, the Commission certifies, under section 605 of the RFA,¹⁰⁸ that the rule it has adopted will not have a significant impact on a substantial number of small entities.

V. Paperwork Reduction Act

In the NPR, the Commission noted that its proposed rule contained no reporting, recordkeeping, labeling or

other third-party disclosure requirements, so there was no “information collection” necessitating clearance by the Office of Management and Budget (“OMB”).¹⁰⁹ However, to ensure the accuracy of its conclusion, the Commission solicited comments on any paperwork burden the proposed rule might impose. The one comment on this issue supported the Commission’s conclusion.¹¹⁰ Accordingly, the Commission has determined that the final rule does not involve the “collection of information,” as defined by the regulations of OMB¹¹¹ implementing the Paperwork Reduction Act,¹¹² and, therefore, OMB clearance is not required.

VI. Regulatory Review

The Commission has implemented a program to review all of its current and proposed rules and guides. One purpose of the review is to minimize the adverse economic impact of new regulatory actions. As part of that overall regulatory review, the Commission solicited comments in the NPR on questions concerning benefits and significant burdens and costs of the proposed rule and alternatives to the proposals that would increase benefits to consumers of recycled engine oil and minimize the costs and other burdens to firms subject to the rule’s requirements.¹¹³ Only two commenters specifically addressed these issues, and they stated that the rule will impose no adverse economic impact even on any small businesses that might be covered by the rule.¹¹⁴ Accordingly, the Commission concludes that the rule it has adopted will not impose any significant burdens and costs on firms subject to the rule’s requirements.

List of Subjects in 16 CFR Part 311

Energy conservation, Incorporation by reference, Labeling, Recycled oil, Trade practices.

VII. Text of Rule

Accordingly, the Commission amends 16 CFR Chapter I by adding a new part 311 to Subchapter C to read as follows:

PART 311—TEST PROCEDURES AND LABELING STANDARDS FOR RECYCLED OIL

Sec.

311.1 Definitions.

311.2 Stayed or invalid parts.

311.3 Preemption.

311.4 Testing.

311.5 Labeling.

311.6 Prohibited acts.

Authority: 42 U.S.C. 6363(d).

§ 311.1 Definitions.

As used in this Part:

(a) Manufacturer means any person who re-refines or otherwise processes used oil to remove physical or chemical impurities acquired through use or who blends such re-refined or otherwise processed used oil with new oil or additives.

(b) New oil means any synthetic oil or oil that has been refined from crude oil and which has not been used and may or may not contain additives. Such term does not include used oil or recycled oil.

(c) Processed used oil means re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives.

(d) Recycled oil means processed used oil that the manufacturer has determined, pursuant to section 311.4 of this part, is substantially equivalent to new oil for use as engine oil.

(e) Used oil means any synthetic oil or oil that has been refined from crude oil, which has been used and, as a result of such use, has been contaminated by physical or chemical impurities.

(f) Re-refined oil means used oil from which physical and chemical contaminants acquired through use have been removed.

§ 311.2 Stayed or invalid parts.

If any part of this rule is stayed or held invalid, the rest of it will remain in force.

§ 311.3 Preemption.

No law, regulation, or order of any State or political subdivision thereof may apply, or remain applicable, to any container of recycled oil, if such law, regulation, or order requires any container of recycled oil, which container bears a label in accordance with the terms of § 311.5 of this Part, to bear any label with respect to the comparative characteristics of such recycled oil with new oil that is not identical to that permitted by § 311.5 of this Part.

§ 311.4 Testing.

To determine the substantial equivalency of processed used oil with new oil for use as engine oil, manufacturers or their designees must use the test procedures that were reported to the Commission by the National Institute of Standards and Technology (“NIST”) on July 27, 1995,

¹⁰⁴ 5 U.S.C. 601(6).

¹⁰⁵ 13 CFR 121.

¹⁰⁶ 60 FR 44712, 44716.

¹⁰⁷ NORA, D–12, 5; Safety-Kleen, D–16, 13. Safety-Kleen stated that it is not aware that a substantial number of small entities manufacture processed used oil for sale as engine oil.

¹⁰⁸ 5 U.S.C. 605(b).

¹⁰⁹ 60 FR 44712, 44716.

¹¹⁰ Safety-Kleen, D–16, 13.

¹¹¹ 5 CFR 1320.7(c).

¹¹² 44 U.S.C. 3501–3520.

¹¹³ 60 FR 44712, 44716.

¹¹⁴ NORA, D–12, 5; Safety-Kleen, D–16, 13.

entitled "Engine Oil Licensing and Certification System," American Petroleum Institute ("API") Publication 1509, Thirteenth Edition, January, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of API Publication 1509, "Engine Oil Licensing and Certification System," may be obtained from the American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005, or may be inspected at the Federal Trade Commission, Public Reference Room, room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

§ 311.5 Labeling.

A manufacturer or other seller may represent, on a label on a container of processed used oil, that such oil is substantially equivalent to new oil for use as engine oil only if the manufacturer has determined that the oil is substantially equivalent to new oil for use as engine oil in accordance with the NIST test procedures prescribed under § 311.4 of this Part, and has based the representation on that determination.

§ 311.6 Prohibited acts.

It is unlawful for any manufacturer or other seller to represent, on a label on a container of processed used oil, that such oil is substantially equivalent to new oil for use as engine oil unless the

manufacturer or other seller has based such representation on the manufacturer's determination that the processed used oil is substantially equivalent to new oil for use as engine oil in accordance with the NIST test procedures prescribed under § 311.4 of this Part. Violations will be subject to enforcement through civil penalties, imprisonment, and/or injunctive relief in accordance with the enforcement provisions of Section 525 of the Energy Policy and Conservation Act (42 U.S.C. 6395).

By direction of the Commission.

Donald S. Clark,

Secretary.

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