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Rules and Regulations

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

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

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2470, 2471, 2472, and 2473

Federal Service Impasses Panel—General; Procedures of the Panel; Impasses Arising Pursuant to Agency Determinations Not To Establish or To Terminate Flexible or Compressed Work Schedules; Miscellaneous Requirements

AGENCY: Federal Service Impasses Panel, FLRA.

ACTION: Final rules.

SUMMARY: The Federal Service Impasses Panel is amending its regulations, primarily to take advantage of existing technology and to make them more easily understood by agencies, labor organizations, and individuals. The final revisions will allow parties to file requests for Panel assistance, and other documents, by facsimile transmission and will generally reorganize and modify those portions of the rules pertaining to filing and service. A final new section will establish procedures by which a party to a Panel proceeding may seek to obtain a subpena. These final revisions will make the regulations clearer and more user-friendly and will provide quicker access to the Panel's procedures.

EFFECTIVE DATE: August 18, 1996.

FOR FURTHER INFORMATION CONTACT: Linda A. Lafferty, Executive Director, Federal Service Impasses Panel, 607 14th Street, NW., Suite 220, Washington, DC. 20424–0001. Telephone (202) 482–6670.

SUPPLEMENTARY INFORMATION:

Notice and Opportunity to Comment

The Federal Service Impasses Panel proposed revisions to its regulations to take advantage of existing technology and to make them more easily understood by agencies, labor organizations, and individuals. The proposed revisions primarily were for the purpose of permitting parties to file requests for Panel assistance, and other documents, by facsimile transmission (Parts 2471 and 2472), and to establish procedures by which a party to a Panel proceeding may seek to obtain a subpena (Part 2473). The proposed rules were published in the Federal Register for notice and comment on June 6, 1996. Formal written comments were submitted by one agency. The comments have been considered, and two have prompted revisions to the proposed rules, one pertaining to Part 2471, the other to Part 2472. These revisions are noted in the sectional analysis.

Sectional Analysis

The following sectional analysis reflects three revisions to the proposed changes. The changes involve Part 2471—Procedures of the Panel (§ 2471.6(a)(2)(ii)), Part 2472—Impasses Arising Pursuant to Agency Determinations Not to Establish or to Terminate Flexible or Compressed Work Schedules (§ 2472.3), and Part 2473—Miscellaneous Requirements (§ 2473.1(f)). For Part 2470—General, and all other sections of Parts 2471, 2472, and 2473, no sectional analysis is provided because the final rules are the same as the proposed rules.

Part 2471

Section 2471.6(a)(2)(ii)

Paragraph (a)(2)(ii) lists the most common procedures used by the Panel, and ends with the sentence: ''Following procedures used by the Panel, it may issue a report to the parties containing recommendations for settlement.'' The commenter noted that the sentence was unclear because it implied that there may be times when the Panel only recommends methods for settlements instead of issuing a final and binding decision. If this were the case, because most parties come to the Panel for a binding decision, the commenter suggested that the factors considered by the Panel in deciding whether to issue a final and binding decision or recommendations for settlement should be spelled out in the regulation. Agreeing that the proposed regulation may be interpreted to imply that there are times when the Panel's final action is the issuance of a recommendation for settlement, the final regulation has been revised to clarify that such recommendations for settlement, when they occur, are only issued by the Panel prior to taking final action to resolve the impasse.

Part 2472

Section 2472.3

This section, among other things, updates the Panel's address and phone number to reflect its current office location. The commenter recommended that the Panel's facsimile number also be provided. The final regulation has been revised to include the Panel's facsimile number.

Part 2473

Section 2473.1(f)

Section 2473.1(f) generally establishes a procedure for the enforcement of subpenas issued under this part. It has been revised to be clearer and more consistent with the regulations of the FLRA pertaining to the same topic (5 CFR 2429.7). It now specifies that, upon the failure of any person to comply with an issued subpena, the party on whose behalf the subpena was issued may request the Solicitor of the FLRA to institute enforcement proceedings in the appropriate district court, unless to do so would be inconsistent with the law and policies of the Federal Service Labor-Management Relations Statute.

List of Subjects

5 CFR Part 2470

Government employees, Labor-management relations.

5 CFR Parts 2471, 2472, and 2473

Administrative practice and procedure, Government employees, Labor-management relations.

For the reasons set forth in the preamble, the Federal Service Impasses Panel amends 5 CFR Ch. XIV, Parts 2470, 2471, and 2472, and add 5 CFR Ch. XIV, Part 2473, as follows:

PART 2470—GENERAL

1. The authority citation for Part 2470 continues to read as follows:

Authority: 5 U.S.C. 7119, 7134.

2. In § 2470.1, a new last sentence is added to read as follows:

§ 2470.1 Purpose.

* * * It is the policy of the Panel to encourage labor and management to resolve disputes on terms that are mutually agreeable at any stage of the Panel's procedures.

PART 2471—PROCEDURES OF THE PANEL

3. The authority citation for part 2471 continues to read as follows:

Authority: 5 U.S.C. 7119, 7134.

4. Section 2471.2 is revised to read as follows:

§ 2471.2 Request form.

A form is available for use by the parties in filing a request for consideration of an impasse or approval of a binding arbitration procedure. Copies are available from the Office of the Executive Director, Federal Service Impasses Panel, 607 14th Street, NW., Suite 220, Washington, DC. 20424–0001. Telephone (202) 482–6670. Use of the form is not required provided that the request includes all of the information set forth in § 2471.3.

5. Section 2471.3 is amended by revising paragraphs (a)(1), (b)(1), and (b)(4) to read as follows:

§ 2471.3 Content of request.

(a) * * *

(1) Identification of the parties and individuals authorized to act on their behalf, including their addresses, telephone numbers, and facsimile numbers;

* * * * *

(b) * * *

(1) Identification of the parties and individuals authorized to act on their behalf, including their addresses, telephone numbers, and facsimile numbers;

* * * * *

(4) Statement as to whether any of the proposals to be submitted to the arbitrator contain questions concerning the duty to bargain and a statement of each party's position concerning such questions; and

* * * * *

6. Section 2471.4 is revised to read as follows:

§ 2471.4 Where to file.

Requests to the Panel provided for in this part, and inquiries or correspondence on the status of impasses or other related matters, should be addressed to the Executive Director, Federal Service Impasses Panel, 607 14th Street, NW., Suite 220, Washington, D.C. 20424–0001. Telephone (202) 482–6670. Facsimile (202) 482–6674.

7. Section 2471.5 is amended by revising the section heading and paragraphs (a), (b), (d), and (e) to read as follows:

§ 2471.5 Filing and service.

(a) *Filing and service of request.* (1) Any party submitting a request for Panel consideration of an impasse or a request for approval of a binding arbitration procedure shall file an original and one copy with the Panel. A clean copy may be submitted for the original. Requests may be submitted in person or by registered mail, certified mail, regular mail, or private delivery service. Requests may also be accepted by the Panel if transmitted to the facsimile machine of its office. A party submitting a request by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper.

(2) The party submitting the request shall serve a copy of such request upon all counsel of record or other designated representative(s) of parties, upon parties not so represented, and upon any mediation service which may have been utilized. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party. Service of a request may be made in person or by registered mail, certified mail, regular mail, or private delivery service. With the permission of the person receiving the request, service may be made by facsimile transmission or by any other agreed-upon method. When the Panel acts on a request from the Federal Mediation and Conciliation Service or acts on a request from the Executive Director under § 2471.1(a), it will notify the parties to the dispute, their counsel of record, if any, and any mediation service which may have been utilized.

(b) *Filing and service of other documents.* (1) Any party submitting a response to, or other document in connection with, a request for Panel consideration of an impasse or a request for approval of a binding arbitration procedure shall file an original and one copy with the Panel. A clean copy may be submitted for the original. Documents may be submitted to the Panel in person or by registered mail, certified mail, regular mail, or private delivery service. Documents may also be accepted by the Panel if transmitted to the facsimile machine of its office, but only with advance permission, which may be obtained by telephone. A party submitting a document by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the submission, if otherwise proper.

(2) The party submitting the document shall serve a copy of such request upon all counsel of record or other designated representative(s) of parties, or upon parties not so represented. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party. Service of a document may be made in person or by registered mail, certified mail, regular mail, or private delivery service. With the permission of the person receiving the document, service may be made by facsimile transmission or by any other agreed-upon method.

* * * * *

(d) The date of service or date served shall be the day when the matter served, if properly addressed, is deposited in the U.S. mail or is delivered in person or is deposited with a private delivery service that will provide a record showing the date the document was tendered to the delivery service. Where service is made by facsimile transmission, the date of service shall be the date on which transmission is received.

(e) Unless otherwise provided by the Panel or its designated representatives, any document or paper filed with the Panel under this section, together with any enclosure filed therewith, shall be typewritten on 8½×11 inch plain white paper, shall have margins no less than 1 inch on each side, shall be in typeface no smaller than 10 characters per inch, and shall be numbered consecutively. Nonconforming papers may, at the Panel's discretion, be rejected.

8. Section 2471.6 is amended by revising the section heading and paragraphs (a)(2) and (b) to read as follows:

§ 2471.6 Investigation of request; Panel procedures; approval of binding arbitration.

(a) * * *

(1) * * *

(2) Assert jurisdiction and

(i) Recommend to the parties procedures for the resolution of the impasse; and/or

(ii) Assist the parties in resolving the impasse through whatever methods and procedures the Panel considers appropriate. The procedures utilized by the Panel may include, but are not limited to: informal conferences with a Panel designee; factfinding (by a Panel designee or a private factfinder); written submissions; show cause orders; oral presentations to the Panel; and arbitration or mediation-arbitration (by a Panel designee or a private arbitrator). Following procedures used by the

Panel, it may issue a report to the parties containing recommendations for settlement prior to taking final action to resolve the impasse.

(b) Upon receipt of a request for approval of a binding arbitration procedure, the Panel or its designee will promptly conduct an investigation, consulting when necessary with the parties and with any mediation service utilized. After due consideration, the Panel shall promptly approve or disapprove the request, normally within five (5) workdays.

9. § 2471.7, the section heading and the introductory text are revised; (paragraphs (a) and (b), introductory text, are removed, and paragraphs (b) (1) through (6) are redesignated as (a) through (f) respectively. The revisions read as follows:

§ 2471.7 Preliminary factfinding procedures.

When the Panel determines that a factfinding hearing is necessary under § 2471.6, and it appoints one or more of its designees to conduct such hearing, it will issue and serve upon each of the parties a notice of hearing and a notice of prehearing conference, if any.

* * * * *

10. The section heading of § 2471.8 is revised to read as follows:

§ 2471.8 Conduct of factfinding and other hearings; prehearing conferences.

* * * * *

11. Section 2471.9 is amended by revising paragraph (a) to read as follows:

§ 2471.9 Report and recommendations.

(a) When a report is issued after a factfinding hearing is conducted pursuant to § 2471.7 and 2471.8, it normally shall be in writing and, when authorized by the Panel, shall contain recommendations.

* * * * *

PART 2472—IMPASSES ARISING PURSUANT TO AGENCY DETERMINATIONS NOT TO ESTABLISH OR TO TERMINATE FLEXIBLE OR COMPRESSED WORK SCHEDULES

12. The authority citation for part 2472 is revised to read as follows:

Authority: 5 U.S.C. 6131.

13. In § 2472.2, paragraphs (d) through (n) are redesignated as paragraphs (e) through (o), new paragraph (d) is added, and newly redesignated paragraph (j) is revised to read as follows:

§ 2472.2 Definitions.

* * * * *

(d) The term *duly authorized delegatee* means an official who has been delegated the authority to act for the head of the agency in the matter concerned.

* * * * *

(j) The term *hearing* means a factfinding hearing or any other hearing procedures deemed necessary to accomplish the purpose of 5 U.S.C. 6131.

* * * * *

14. Section 2472.3 is revised to read as follows:

§ 2472.3 Request for Panel consideration.

Either party, or the parties jointly, may request the Panel to resolve an impasse resulting from an agency determination not to establish or to terminate a flexible or compressed work schedule by filing a request as hereinafter provided. A form is available for use by the parties in filing a request with the Panel. Copies are available from the Office of the Executive Director, Federal Service Impasses Panel, 607 14th Street, NW., Suite 220, Washington, DC 20424–0001. Telephone (202) 482–6670. Facsimile (202) 482–6674. Use of the form is not required provided that the request includes all of the information set forth in § 2472.4.

15. Section 2472.4 is amended by revising paragraphs (a)(1) and (a)(6) to read as follows:

§ 2472.4 Content of request.

(a) * * *

(1) Identification of the parties and individuals authorized to act on their behalf, including their addresses, telephone numbers, and facsimile numbers;

* * * * *

(6) A copy of the agency's written determination and the finding on which the determination is based, including, in a case where the finding is made by a duly authorized delegatee, evidence of a specific delegation of authority to make such a finding; and

* * * * *

16. Section 2472.5 is revised to read as follows:

§ 2472.5 Where to file.

Requests to the Panel provided for in these rules, and inquiries or correspondence on the status of impasses or other related matters, should be directed to the Executive Director, Federal Service Impasses Panel, 607 14th Street, NW., Suite 220, Washington, DC 20424–0001. Telephone (202) 482–6670. Facsimile (202) 482–6674.

§§ 2472.7 through 2472.12 [Redesignated as §§ 2472.6 through 2472.11]

17. Section 2472.6 is removed and § 2472.7 through 2472.12 are redesignated as § 2472.6 through 2472.11, respectively.

18. Newly designated § 2472.6 is amended by revising the section heading and paragraphs (a), (b), (d), (e), and (f) to read as follows:

§ 2472.6 Filing and service.

(a) *Filing and service of request.* (1) Any party submitting a request for Panel consideration of an impasse filed pursuant to § 2472.3 of these rules shall file an original and one copy with the Panel. A clean copy may be submitted for the original. Requests may be submitted in person or by registered mail, certified mail, regular mail, or private delivery service. Requests will also be accepted by the Panel if transmitted to the facsimile machine of its office. A party submitting a request by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper.

(2) The party submitting the request shall serve a copy of such request upon all counsel of record or other designated representative(s) of parties, and upon parties not so represented. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party. Service of a request may be made in person or by registered mail, certified mail, regular mail, or private delivery service. With the permission of the person receiving the request, service may be made by facsimile transmission or by any other agreed-upon method.

(b) *Filing and service of other documents.* (1) Any party submitting a response to, or other document in connection with, a request for Panel consideration of an impasse filed pursuant to § 2472.3 shall file an original and one copy with the Panel. A clean copy may be submitted for the original. Documents may be submitted to the Panel in person or by registered mail, certified mail, regular mail, or private delivery service. Documents may also be accepted by the Panel if transmitted to the facsimile machine of its office, but only with advance permission, which may be obtained by telephone. A party submitting a document by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the submission, if otherwise proper.

(2) The party submitting the document shall serve a copy of such request upon all counsel of record or

other designated representative(s) of parties, or upon parties not so represented. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party. Service of a document may be made in person or by registered mail, certified mail, regular mail, or private delivery service. With the permission of the person receiving the document, service may be made by facsimile transmission or by any other agreed-upon method.

* * * * *

(d) The date of service or date served shall be the day when the matter served, if properly addressed, is deposited in the U.S. mail, is delivered in person, or is deposited with a private delivery service that will provide a record showing the date the document was tendered to the delivery service. Where service is made by facsimile transmission, the date of service shall be the date on which transmission is received.

(e) Unless otherwise provided by the Panel or its designated representatives, any document or paper filed with the Panel under this part, together with any enclosure filed therewith, shall be typewritten on 8½×11 inch plain white paper, shall have margins no less than 1 inch on each side, shall be in typeface no smaller than 10 characters per inch, and shall be numbered consecutively. Nonconforming papers may, at the Panel's discretion, be rejected.

(f) An impasse arising pursuant to section 6131(c) (2) or (3) of the Act will not be considered to be filed, and no Panel action will be taken, until the party initiating the request has complied with § 2472.4, 2472.5, and 2472.6 of these regulations.

19. Newly designated § 2472.7 is amended by revising paragraph (b) to read as follows:

§ 2472.7 Investigation of request; Panel assistance.

* * * * *

(b) The procedures utilized by the Panel shall afford the parties an opportunity to present their positions, including supporting evidence and arguments orally and/or in writing. They include, but are not limited to: informal conferences with a Panel designee; factfinding (by a Panel designee or a private factfinder); written submissions; show cause orders; and oral presentations to the Panel.

20. Newly designated § 2472.8 is revised to read as follows:

§ 2472.8 Preliminary hearing procedures.

When the Panel determines that a hearing shall be held, and it appoints one or more of its designees to conduct such a hearing, it will issue and serve upon each of the parties a notice of hearing and a notice of prehearing conference, if any. The notice will state:

(a) The names of the parties to the dispute;

(b) The date, time, place, type, and purpose of the hearing;

(c) The date, time, place, and purpose of the prehearing conference, if any;

(d) The name of the designated representative(s) appointed by the Panel;

(e) The issue(s) to be resolved; and

(f) The method, if any, by which the hearing shall be transcribed.

21. Newly designated § 2472.10 is revised to read as follows:

§ 2472.10 Reports.

When a report is issued after a hearing conducted pursuant to § 2472.8 and 2472.9, it normally shall be in writing and shall be submitted to the Panel, with a copy to each party, within a period normally not to exceed 30 calendar days after the close of the hearing and receipt of briefs, if any.

22. In § 2472.11, the introductory text of paragraph (a) and paragraph (b) are amended to read as follows:

§ 2472.11 Final action by the Panel.

(a) After due consideration of the parties' positions, evidence, and arguments, including any report submitted in accordance with § 2472.10, the Panel shall take final action in favor of the agency's determination if:

* * * * *

(b) If the finding on which an agency determination under 5 U.S.C. 6131(c)(2) or (c)(3) is based is not supported by evidence that the schedule is likely to cause or has caused an adverse agency impact, the Panel shall take whatever final action is appropriate.

* * * * *

23. Part 2473 is added to read as follows:

§ 2473.1 Subpenas.

(a) Any member of the Panel, the Executive Director, or other person designated by the Panel, may issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence. However, no subpena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

(b) Where the parties are in agreement that the appearance of witnesses or the production of documents is necessary, and such witnesses agree to appear, no such subpena need be sought.

(c) A request for a subpena by any person, as defined in 5 U.S.C. 7103(a)(1), shall be in writing and filed with the Executive Director, not less than fifteen (15) days prior to the opening of a hearing, or with the appropriate presiding official(s) during the hearing.

(d) All requests shall name and identify the witnesses or documents sought, and state the reasons therefor. The Panel, Executive Director, or any other person designated by the Panel, as appropriate, shall grant the request upon the determination that the testimony or documents appear to be necessary to the matters under consideration and the request describes with sufficient particularity the documents sought. Service of an approved subpena is the responsibility of the party on whose behalf the subpena was issued. The subpena shall show on its face the name and address of the party on whose behalf the subpena was issued.

(e) Any person served with a subpena who does not intend to comply shall within five (5) days after the date of service of the subpena upon such person, petition in writing to revoke the subpena. A copy of any petition to revoke a subpena shall be served on the party on whose behalf the subpena was issued. Such petition to revoke, if made prior to the hearing, and a written statement of service, shall be filed with the Executive Director. A petition to revoke a subpena filed during the hearing, and a written statement of service shall be filed with the appropriate presiding official(s). The Executive Director, or the appropriate presiding official(s) will, as a matter of course, cause a copy of the petition to revoke to be served on the party on whose behalf the subpena was issued, but shall not be deemed to assume responsibility for such service. The Panel, Executive Director, or any other person designated by the Panel, as appropriate, shall revoke the subpena if the evidence the production of which is required does not relate to any matter under consideration in the proceedings, or the subpena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpena is invalid. The Panel, Executive Director, or any other person designated by the Panel, as appropriate, shall make a simple statement of procedural or other ground for the ruling on the

petition to revoke. The petition to revoke, any answer thereto, and any ruling thereon shall not become part of the official record except upon the request of the party aggrieved by the ruling.

(f) Upon the failure of any person to comply with a subpena issued, and upon the request of the party on whose behalf the subpena was issued, the Solicitor of the FLRA shall, on behalf of such party, institute proceedings in the appropriate district court for the enforcement thereof, unless to do so would be inconsistent with law and the policies of the Federal Service Labor-Management Relations Statute. The Solicitor of the FLRA shall not be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court thereafter.

(g) All papers submitted to the Executive Director under this section shall be filed in duplicate, along with a statement of service showing that a copy has been served on the other party to the dispute.

(h)(1) Witnesses (whether appearing voluntarily or under a subpena) shall be paid the fee and mileage allowances which are paid subpenaed witnesses in the courts of the United States: Provided, that any witness who is employed by the Federal Government shall not be entitled to receive witness fees in addition to compensation received in conjunction with official time granted for such participation, including necessary travel time, as occurs during the employee's regular work hours and when the employee would otherwise be in a work or paid leave status.

(2) Witness fees and mileage allowances shall be paid by the party at whose instance the witnesses appear except when the witness receives compensation in conjunction with official time as described in paragraph (h)(1) of this section.

(5 U.S.C. 7119, 7134).

Dated: August 2, 1996.

Linda A. Lafferty,

Executive Director, Federal Service Impasses Panel.

[FR Doc. 96–20138 Filed 8–7–96; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB56

Common Crop Insurance Regulations; Texas Citrus Fruit Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of Texas citrus fruit. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured and combine the current Texas Citrus Endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms.

EFFECTIVE DATE: August 8, 1996.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No.12866 and Departmental Regulation 1512–1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 30, 2001.

This rule has been determined to be not significant for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit comments, data, and opinions on information collection requirements previously approved by OMB under OMB control number 0563–0003 through September 30, 1998. No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures of State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) of State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. An insured must also annually certify to the previous years production or receive a transitional yield. The producer must maintain the production records to support the certified information for at least 3 years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing

these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Wednesday, June 5, 1996, FCIC published a proposed rule in the Federal Register at 61 FR 28512–28517 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.119, Texas Citrus Fruit Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace the current provisions for insuring Texas citrus fruit found at 7 CFR 401.115 (Texas Citrus Endorsement), thereby limiting the effect of the current provisions to the 1997 and prior crop years. After this final rule becomes effective, the current provisions for insuring Texas citrus fruit will be removed from § 401.115 and that section will be reserved.

Following publication of that proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. A total of 25 comments were received from producers, trade associations, the crop insurance industry and FSA. The comments received, and FCIC's responses are as follows:

Comment: A representative of FSA suggested that the word ''type'' be changed to ''crop'' throughout the provisions where appropriate since the citrus type designations used in the past will be replaced with individual crop codes beginning with the 1998 crop year.

Response: FCIC agrees and has made this change as well as deleting the definition of type.

Comment: The crop insurance industry commented that the proposed rule did not contain any reference to acreage reporting and suggested that such reference be added.

Response: Section 6 (Report of Acreage) of the Basic Provisions provides information on the reporting of acreage and specifies that the acreage reporting date will be included in the Special Provisions. No changes have been made to these provisions.

Comment: The crop insurance industry stated that the definition for ''excess rain'' is not very precise when compared to the definition for ''excess wind''.

Response: FCIC agrees, however it is impossible to specify an amount of precipitation that would damage the crop. Different soil types, temperatures, weather patterns, etc., may result in significant variation in the amount of precipitation that can be tolerated before the crop is damaged. No changes have been made to the definition.

Comment: A trade association was concerned about the deletion of ''frost'' as a cause of loss. They believed that the proposed definition for freeze appeared adequate for fruit and tree damage, but was concerned about frost damage during the bloom period.

Response: The definition of freeze is changed to also include the formation of ice in the cells of the blossoms.

Comment: The crop insurance industry stated that the provisions refer to a pro rata refund when optional units are combined into basic units whenever the insured reported optional units but does not qualify. They questioned on what basis a pro rata refund would be determined.

Response: The reference to a pro rata refund has been deleted and the sentence changed to read ''If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.''

Comment: The crop insurance industry stated that they did not understand why all optional units must be identified on the acreage report for each crop year. They said that listing every possible combination for every crop on a policy could test the limits on the number of policy lines allowed.

Response: Although more than one method is available to determine optional units, only one method may be used in any given crop year. Only those optional units determined under the selected method for the crop year for which the acreage report is completed must be listed. Optional unit designation from past years or that could have been established for the current year, should not be listed on the current crop years' acreage report. The phrase ''established for a crop year'' has been added to the provisions for clarification.

Comment: The crop insurance industry suggested that the provision, ''You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee,'' would cause confusion between the APH and policy year.

Response: The APH is based on the actual production of the producer for each crop year in which a crop is produced to a maximum of 10 crop years. There is no requirement that the producers have insured the crop before its production be included in the APH data base. FCIC believes the provision is clearly stated and has not made changes.

Comment: The crop insurance industry suggested that section 3(a) begin with the phrase ''You may select only one price percentage * * *.'' It would not then be necessary to include complex provisions regarding different varieties with different maximum prices.

Response: Methods used to select price elections vary between insurance providers. While some require selection of a percentage, others require selection of a specific dollar amount. The suggested change will not work in all

circumstances. No change has been made to the provisions.

Comment: The crop insurance industry suggested that the order of the provisions in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) be rearranged for clarity.

Response: FCIC agrees and has rearranged the provisions in this section.

Comment: The crop insurance industry questioned if the phrase ''Any acreage of citrus damaged to the extent that the majority of producers in the area would not further maintain it will be deemed to have been destroyed even though you may continue to maintain it'' is necessary to the policy and what it means.

Response: This provision is intended to limit acreage to the first stage production guarantee when the crop is damaged to the extent that a majority of producers in the area would not continue to maintain it. This intent has been clarified.

Comment: A producer and a trade association stated that establishing yields based on APH regulations will not work following a general and severe loss. They contend that the citrus trees are still recovering from the 1989 freeze and have only begun producing in the last three to four years and still have not reached peak production. Therefore, APH yields may not accurately reflect production potential. Also, some citrus tends to be alternate bearing which will make it difficult to develop acceptable T-yields and to apply APH rules. The yields of tree crops are affected by tree age, size of canopy, and other constraints, which do not affect annual crops. The planting of new trees impacts the APH yield even if the trees are not damaged. Full production for new trees generally occurs the sixth year after planting and at least 25–30% of the citrus acreage has not reached full production.

Response: FCIC believes that section 3(d) in the proposed rule (now 3(e)) provides the flexibility needed to allow yield determination by appraisal when past production history is inadequate.

Comment: The crop insurance industry questioned if the lag year should apply to the provision that requires that the acreage produce an average yield of at least 3 tons per acre the previous year to be insurable.

Response: The provision for the grove to have produced at least 3 tons per acre the previous year to be insurable will only be required if the yield is determined by APH yields. For other methods, there must be at least a 3-ton per acre appraised yield potential to be insured.

Comment: The crop insurance industry questioned why 30 days were changed to 10 days in section 9(a)(1) of the policy that states ''* * * if the application is accepted by us after November 20, insurance will attach on the 10th day after the application is received in your insurance provider's local office * * *.'' and if the 10-day period would allow enough time to complete inspections.

Response: The language in section 9(a)(1) has been changed as follows ''Coverage begins on November 21 of each crop year, except that for the year of application, if your application is received after November 11 but prior to November 21, insurance will attach on the 10th day after your properly completed application is received in our local office unless we inspect the acreage during the 10-day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the grove.'' These provisions were modified so that they will not be interpreted as allowing late-filed applications. Further, a thirty-day period was not reasonable. Ten days is sufficient to prevent adverse selection and avoid unnecessary exposure to uninsured losses during the waiting period. The insurance provider must expedite its review of the application and any supporting documentation filed by the producer, determine if a visual inspection is necessary, and perform any necessary inspections within the 10-day period. The period of 10 days is believed appropriate to meet the needs of both the producer and the insurance provider.

Comment: The crop insurance industry stated that some flexibility may be needed for obtaining signatures and for mail time if a transfer takes place shortly before the acreage reporting date but the transfer form does not reach the company office until after the acreage reporting date.

Response: Section 9(b)(2)(ii) (Insurance Period) states ''We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date * * *.'' If the transferor or the transferee signs the properly completed transfer form and gives the form to the crop insurance agent on or before the acreage reporting date, this requirement will be met. No change has been made to the provisions.

Comment: The crop insurance industry and a trade association questioned whether changing an insured cause of loss from ''failure of the irrigation water supply'' to ''failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period'' would be an insurable cause of loss if the drought started in one crop year and reduced the available water to ''barely enough'' and continued into another crop year. They also stated that drought needs to be a covered cause of loss as well as failure of the irrigation supply because producers count on rainfall, as well as irrigation to produce normal tonnage and quality of fruit. If the trees were under stress from drought in the summer or fall before bloom, which would be prior to the beginning of the insurance period, the bloom and consequently fruit set would be affected.

Response: Drought is a covered cause of loss for crops requiring irrigation to be insurable. However, the commenters are suggesting that drought be covered even though the damage from the drought occurred before insurance attached for the crop year. It is contrary to insurance principles to cover a loss that occurred prior to insurance attaching. If there is insufficient water available at the time insurance attached, the crop is not insurable. If there is sufficient water available at the time insurance attaches, but a continuing drought results in insufficient water and damage to the crop, any resulting loss would be insured. No change has been made.

Comment: The crop insurance industry suggested that the last line of section 9(b)(2)(ii) of the proposed rule should be a separate line.

Response: FCIC has reformatted and changed the wording of this provision to improve the readability.

Comment: A trade association believes that the requirement for a producer to give 15 days notice for an appraisal before any fruit is marketed directly to consumers is totally unworkable. Their biggest concern is that the appraisal may not be completed in a timely manner.

Response: The producer is required to give notice at least 15 days prior to any production being marketed directly to consumers and the insurance provider is required to complete the appraisal within that 15 day period. The production may be marketed directly to consumers any time after the end of the 15-day waiting period regardless of whether or not the insurance provider has fulfilled their responsibility of appraising the crop. FCIC believes that 15 days is appropriate to meet the needs of both the producer and the insurance provider.

Comment: The crop insurance industry believes that the policy should

not allow the producer to defer settlement and wait for a later, generally lower, appraisal on insured acreage the producer intends to abandon or no longer care for.

Response: The later appraisal will only be necessary if the insurance provider agrees that such appraisal would result in a more accurate determination, and if the producer continues to care for the crop. If the producer does not care for the crop, the original appraisal is used. If the insurance provider believes the original appraisal is accurate, resolution of the dispute may be sought through arbitration or appeal procedures, whichever is applicable. No change will be made to these provisions.

Comment: The crop insurance industry suggested combining the provisions contained in section 13(e) with the provisions in section 13(a).

Response: The provisions are clearly stated and have not been combined.

Comment: The crop insurance industry stated that they believe the written agreement should be continuous if no substantive changes occur from one year to the next.

Response: The written agreement can only be valid for one year because it must contain all the variable terms of the contract including, but not limited to, crop type or variety, the guarantee, premium rate, and price election. One or more of these variables often changes from year to year. No change has been made to these provisions. In addition, written agreements are, by design, temporary and should be replaced by applicable policy provisions.

In addition to the changes described above, FCIC has made the following changes to the Texas Citrus Fruit Provisions:

1. Section 1—Added definitions for ''crop'' and ''varieties'' for clarification.

2. Section 1—Changed the definition of ''non-contiguous land'' so that a producer who share rents acreage is not prohibited from having optional units on non-contiguous land to conform to other perennial policies.

3. Section 1—Changed the definition of '' Excess wind'' and ''production guarantee (per acre)'' for clarification.

4. Section 3(d)—Add a provision requiring the producer to report any circumstance that may reduce the yield to include other causes that may not be encompassed by the other listed events.

5. Section 7—Added a provision to state that production that is direct marketed to consumers is not insurable unless allowed by the Special Provisions or by written agreement.

6. Section 8—Changed provisions regarding interplanted acreage so that all insurability requirements contained in the policy are applicable, not just these crop provisions.

7. Section 9—Clarified that the transferee must be an eligible person.

8. Section 11—Changed the wording for clarification and added a provision requiring the producer to give notice before beginning to harvest any damaged production so the insurer may have an opportunity to inspect it if the insured intends to claim an indemnity on any unit.

9. Section 12—Changed the wording for simplification and clarity.

10. Section 13—Changed the format and wording for clarity.

Good cause is shown to make this rule effective upon publication in the Federal Register. This rule improves the Texas citrus fruit insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The contract change date required for new policies is August 31, 1996. It is therefore imperative that these provisions be made final before that date so that the reinsured companies and insureds may have sufficient time to implement the new provisions. Therefore public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

List of Subjects in 7 CFR Part 457

Crop insurance, Texas citrus fruit.

Final Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1998 and succeeding crop years, to read as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), and 1506(p).

2. 7 CFR part 457 is amended by adding a new § 457.119 to read as follows:

§ 457.119 Texas Citrus Fruit Crop Insurance Provisions.

The Texas Citrus Fruit Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

United States Department of Agriculture; Federal Crop Insurance Corporation; Texas Citrus Fruit Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

Crop—Specific groups of citrus fruit as listed in the Special Provisions.

Crop year—The period beginning with the date insurance attaches to the citrus crop and extending through the normal harvest time. It is designated by the calendar year following the year in which the bloom is normally set.

Days—Calendar days.

Direct marketing—Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper, or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

Excess rain—An amount of precipitation that damages the crop.

Excess wind—A natural movement of air that has sustained speeds exceeding 58 miles per hour recorded at the U. S. Weather Service reporting station operating nearest to the grove at the time of damage.

Freeze—The formation of ice in the cells of the tree, its blossoms, or its fruit caused by low air temperatures.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture, or any successor agency.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and generally recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—The severance of mature citrus fruit from the tree by pulling, picking, or any other means, or by collecting marketable fruit from the ground.

Hedged—A process of trimming the sides of the citrus trees for better or more fruitful growth of the citrus fruit.

Interplanted—Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Local market price—The applicable citrus price per ton offered by buyers in the area in which you normally market the insured crop.

Non-contiguous land—Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of way, waterway, or an irrigation canal will be considered as contiguous.

Production guarantee (per acre):

(a) First stage production guarantee—The second stage production guarantee multiplied by forty percent (40%).

(b) Second stage production guarantee—The quantity of citrus (in tons) determined by multiplying the yield determined in accordance with section 3 by the coverage level percentage you elect.

Ton—Two thousand (2,000) pounds avoirdupois.

Topped—A process of trimming the uppermost portion of the citrus trees for better and more fruitful growth of the citrus fruit.

Varieties—Subclasses of crops as listed in the Special Provisions.

Written agreement—A written document that alters designated terms of a policy in accordance with section 13.

2. Unit Division

(a) A unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), will be divided into basic units by each citrus crop designated in the Special Provisions.

(b) Unless limited by the Special Provisions, these basic units may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(c) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(e) All optional units established for a crop year must be identified on the acreage report for that crop year.

(f) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee; and

(2) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us.

(3) Each optional unit must meet one of the following criteria, as applicable:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernible, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number; or

(ii) *Optional Units on Acreage Located on Non-Contiguous Land:* In lieu of establishing optional units by section, section equivalent or FSA Farm Serial Number, optional units may be established if each optional unit is located on non-contiguous land.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election and coverage level for each citrus fruit crop designated in the Special Provisions that you elect to insure. The price election you choose for each crop need not bear the same percentage relationship to the maximum price offered by us for each crop. For example, if you choose one hundred percent (100%) of the maximum price election for early oranges, you may choose seventy-five percent (75%) of the maximum price election for late oranges. However, if separate price elections are available by variety within each crop, the price elections you choose within the crop must have the same percentage relationship to the maximum price offered by us for each variety within the crop.

(b) The production guarantee per acre is progressive by stage and increases at specific intervals to the final stage production guarantee. The stages and production guarantees per acre are:

(1) The first stage extends from the date insurance attaches through April 30 of the calendar year of normal bloom. The production guarantee will be forty percent (40%) of the yield calculated in section 3(e) multiplied by your coverage level.

(2) The second or final stage extends from May 1 of the calendar year of normal bloom until the end of the insurance period. The production guarantee will be the yield calculated in section 3(e) multiplied by your coverage level.

(c) Any acreage of citrus damaged in the first stage to the extent that the majority of producers in the area would not further maintain it will be limited to the first stage production guarantee even though you may continue to maintain it.

(d) In addition to the reported production, each crop year you must report by type:

(1) The number of trees damaged, topped, hedged, pruned or removed; any change in practices or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based; and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and type if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: interplanted perennial crop; removal, topping, hedging, or pruning of trees; damage; change in practices and any other circumstance on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

(e) The yield used to compute your production guarantee will be determined in accordance with Actual Production History (APH) regulations, 7 CFR part 400, subpart G, and applicable policy provisions unless damage or changes to the grove or trees, require establishment of the yield by another method. In the event of such damage or changes, the yield will be based on our appraisal of the potential of the insured acreage for the crop year.

(f) Instead of reporting your citrus production for the previous crop year, as required by section 3 of the Basic Provisions (§ 457.8), there is a one year lag period. Each crop year you must report your production from two crop years ago, *e.g.*, on the 1998 crop year production report, you will provide your 1996 crop year production.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are November 20.

6. Annual Premium

In lieu of the premium computation method in section 7 (Annual Premium) of the Basic Provisions (§ 457.8), the annual premium amount is computed by multiplying the second stage production guarantee per acre by the price election, the premium rate, the insured acreage, your share at the time coverage begins, and by any applicable premium adjustment percentages contained in the Special Provisions.

7. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the acreage in the county of each citrus crop designated in the Special Provisions that you elect to insure and for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are adapted to the area;

(c) That are irrigated;

(d) That has produced an average yield of at least three tons per acre the previous year, or we have appraised the yield potential of at least three tons per acre;

(e) That is grown in a grove that, if inspected, is considered acceptable by us; and

(f) That is not sold by direct marketing, unless allowed by the Special Provisions or by written agreement.

8. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, citrus interplanted with another perennial crop is insurable unless we inspect the acreage and determine it does not meet the requirements contained in your policy.

9. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on November 21 of each crop year, except that for the year of application, if your application is received after November 11 but prior to November 21, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the grove.

(2) The calendar date for the end of the insurance period for each crop year is the second May 31st of the crop year.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins, but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of citrus on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium will be due, and no indemnity paid for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

10. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur within the insurance period:

(1) Excess rain;

(2) Excess wind;

(3) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the grove;

(4) Freeze;

(5) Hail;

(6) Tornado;

(7) Wildlife; or

(8) Failure of the irrigation water supply if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless a cause of loss specified in section 10(a):

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available;

(2) Inability to market the citrus for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

11. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the following will apply:

(a) If the Special Provisions permit or a written agreement authorizing direct marketing exists, you must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(b) If you intend to claim an indemnity on any unit, you must notify us before beginning to harvest any damaged production so we may have an opportunity to inspect it. You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section all such production will be considered undamaged and included as production to count.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on a unit basis by:

(1) Multiplying the insured acreage for each crop, or variety if applicable, by its respective production guarantee (see sections 1 and 3);

(2) Multiplying the results of section 12(b)(1) by the respective price election for each crop or variety, if applicable;

(3) Totaling the results of section 12(b)(2);

(4) Multiplying the total production to count of each variety, if applicable (see section 12(c)) by the respective price election;

(5) Totaling the results of section 12(b)(4);

(6) Subtracting this result of section 12(b)(5) from the result of section 12(b)(3); and

(7) Multiplying the result of section 12(b)(6) by your share.

(c) The total production to count (in tons) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) For which you fail to provide acceptable production records;

(C) That is damaged solely by uninsured causes; or

(D) From which production is sold by direct marketing, if direct marketing is specifically permitted by the Special Provisions or a written agreement, and you fail to meet the requirements contained in section 11;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage.

(d) Any citrus fruit that is not marketed as fresh fruit and, due to insurable causes, does not contain 120 or more gallons of juice per ton, will be adjusted by:

(1) Dividing the gallons of juice per ton obtained from the damaged citrus by 120; and

(2) Multiplying the result by the number of tons of such citrus.

If individual records of juice content are not available, an average juice content from the nearest juice plant will be used, if available. If not available, a field appraisal will be made to determine the average juice content.

(e) Where the actuarial table provides, and you elect, the fresh fruit option, citrus fruit that is not marketable as fresh fruit due to insurable causes will be adjusted by:

(1) Dividing the value per ton of the damaged citrus by the price of undamaged citrus fruit; and

(2) Multiplying the result by the number of tons of such citrus fruit. The applicable price for undamaged citrus fruit will be the local market price the week before damage occurred.

(f) Any production will be considered marketed or marketable as fresh fruit unless, due solely to insured causes, such production was not marketed as fresh fruit.

(g) In the absence of acceptable records of disposition of harvested citrus fruit, the disposition and amount of production to count for the unit will be the guarantee on the unit.

(h) Any citrus fruit on the ground that is not harvested will be considered totally lost if damaged by an insured cause.

13. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section (13)(e);

(b) The application for written agreement must contain all terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, DC, on August 2, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–20195 Filed 8–7–96; 8:45 am]

BILLING CODE 3410–FA–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AC93

Codes and Standards for Nuclear Power Plants; Subsection IWE and Subsection IWL

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to incorporate by reference the 1992 Edition with the 1992 Addenda of Subsection IWE, ''Requirements for Class MC and Metallic Liners of Class CC Components of Light-Water Cooled Power Plants,'' and Subsection IWL, ''Requirements for Class CC Concrete Components of Light-Water Cooled Power Plants,'' of Section XI, Division 1, of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) with specified modifications and a limitation. Subsection IWE of the ASME Code provides rules for inservice inspection, repair, and replacement of Class MC pressure retaining components and their integral attachments and of metallic shell and penetration liners of Class CC pressure retaining components and their integral attachments in light-water cooled power plants. Subsection IWL of the ASME Code provides rules for inservice inspection and repair of the reinforced concrete and the post-tensioning systems of Class CC components. Licensees will be required to incorporate Subsection IWE and Subsection IWL into their inservice inspection (ISI) program. Licensees will also be required to expedite implementation of the containment examinations and to complete the expedited examination in accordance with Subsection IWE and Subsection IWL within 5 years of the effective date of this rule. Provisions have been included that will prevent unnecessary duplication of examinations between the expedited examination and the routine 120-month ISI examinations. Subsection IWE and Subsection IWL have not been previously incorporated by reference into the NRC regulations. The final rule specifies requirements to assure that the critical areas of containments are routinely inspected to detect and take corrective action for defects that could compromise a containment's structural integrity.

EFFECTIVE DATE: September 9, 1996. The incorporation by reference of certain publications listed in the regulations is approved by the Office of the Director of the Office of the Federal Register as of September 9, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. W. E. Norris, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6796.

SUPPLEMENTARY INFORMATION: The NRC is amending its regulations to incorporate by reference the 1992 Edition with the 1992 Addenda of Subsection IWE and Subsection IWL to assure that the critical areas of containments are routinely inspected to detect and take corrective action for defects that could compromise a containment's structural integrity. The rate of occurrence of degradation in containments is increasing. Appendix J to 10 CFR part 50 requires a general visual inspection of the containment but does not provide specific guidance on how to perform the necessary containment examinations. This has resulted in a large variation with regard to the performance and the effectiveness of containment examinations. The rate of occurrence of corrosion and degradation of containment structures has been increasing at operating nuclear power plants. There have been 32 reported occurrences of corrosion in metal containments and the liners of concrete containments. This is one-fourth of all operating nuclear power plants. Only four of the 32 occurrences were detected by current containment inspection programs. Nine of these occurrences were first identified by the NRC through its inspections or structural audits. Eleven occurrences were detected by licensees after they were alerted to a degraded condition at another site or through activity other than containment inspection. There have been 34 reported occurrences of degradation of the concrete or of the post-tensioning systems of concrete containments. This is nearly one-half of these types of containments. It is clear that current licensee containment inspection programs have not proved to be adequate to detect the types of degradation which have been reported. Examples of degradation not found by licensees, but initially detected at plants through NRC inspections include: (1) Corrosion of steel containment shells in the drywell sand cushion region, resulting in wall thickness reduction to below the minimum design thickness; (2) corrosion of the torus of the steel containment shell (wall thickness below minimum design thickness); (3) corrosion of the liner of a concrete containment to approximately half-depth; (4) grease leakage from the tendons of prestressed concrete containments; and (5) leaching as well as excessive cracking in concrete containments.

There are several General Design Criteria (GDC) and ASME Code sections which establish minimum requirements for the design, fabrication, construction, testing, and performance of structures, systems, and components important to safety in water-cooled nuclear power plants. The GDC serve as fundamental underpinnings for many of the most safety important commitments in

licensee design and licensing bases. GDC 16, ''Containment design,'' requires the provision of reactor containment and associated systems to establish an essentially leak-tight barrier against the uncontrolled release of radioactivity into the environment and to ensure that the containment design conditions important to safety are not exceeded for as long as required for postulated accident conditions.

Criterion 53, ''Provisions for containment testing and inspection,'' requires that the reactor containment design permit: (1) Appropriate periodic inspection of all important areas, such as penetrations; (2) an appropriate surveillance program; and (3) periodic testing at containment design pressure of the leak-tightness of penetrations which have resilient seals and expansion bellows. Appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors,'' of 10 CFR part 50 contains specific rules for leakage testing of containments. Paragraph III. A. of Appendix J requires that a general inspection of the accessible interior and exterior surfaces of the containment structures and components be performed prior to any Type A test to uncover any evidence of structural deterioration that may affect either the containment structural integrity or leak-tightness (Type A test means tests intended to measure the primary reactor containment overall integrated leakage rate: (1) after the containment has been completed and is ready for operation, and (2) at periodic intervals thereafter).

The metal containment structure of operating nuclear power plants were designed in accordance with either Section III, Subsection NE, ''Class MC Components,'' or Section VIII, of the ASME Code. These subsections contain provisions for the design and construction of metal containment structures, including methods for determining the minimum required wall thicknesses. The minimum wall thickness is that thickness that would ensure that the metal containment structure would continue to maintain its structural integrity under the various stressors and degradation mechanisms which could act on it.

The prestressed concrete containments of most operating nuclear reactors were designed in accordance with ACI–318 provisions taking into consideration their unique features in the design of the post-tensioning system and in determining the prestressing forces. The post-tensioning system is designed so that the concrete containment structure will continue to maintain its structural integrity under the various stressors and degradation mechanisms which act on it. The liners of concrete containments provide a leak-tight barrier.

These requirements for minimum design wall thicknesses and prestressing forces as provided in these industry standards used to design containment structures are reflected in license conditions, technical specifications, and licensee commitments (e.g., the Final Safety Analysis Report).

None of the existing requirements, however, provide specific guidance on how to perform the necessary containment examinations. This lack of guidance has resulted in a large variation with regard to the performance and the effectiveness of licensee containment examination programs. Based on the results of inspections and audits, as well as plant operational experiences, it is clear that many licensee containment examination programs have not detected degradation that could ultimately result in a compromise to the pressure-retaining capability. Some containment structures have been found to have undergone a significant level of degradation that was not detected by these programs.

The Nuclear Management and Resources Council (NUMARC) (which has since become the Nuclear Energy Institute (NEI)) developed a number of industry reports to address license renewal issues. Two of those, one for Pressurized Water Reactor (PWR) containments and the other for Boiling Water Reactor (BWR) containments, were developed for the purpose of managing age-related degradation of containments on a generic basis. The NUMARC plan for containments relies on the examinations contained in Subsection IWE and Subsection IWL to manage age-related degradation, and this plan assumes that these examinations are ''in current and effective use.'' In the BWR Containment Industry Report, NUMARC concluded that ''On account of these available and established methods and techniques to adequately manage potential degradation due to general corrosion of freestanding metal containments, no additional measures need to be developed and, as such, general corrosion is not a license renewal concern if the containment minimum wall thickness is maintained and verified.'' Similarly, in the PWR Containment Industry Report, NUMARC concluded that potentially significant degradation of concrete surfaces, the post-tensioning system, and the liners of concrete containments could be managed effectively if periodically examined in accordance with the requirements contained in Subsection IWE and Subsection IWL. The NRC agrees with NEI that these ASME standards, which the industry has participated in developing, would be an effective means for managing age-related containment degradation. Thus, the NRC believes that adoption of these standards is the best approach.

Background

On January 7, 1994 (59 FR 979), the NRC published in the Federal Register a proposed amendment to its regulation, 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' to incorporate by reference the 1992 Edition with the 1992 Addenda of Subsection IWE, and Subsection IWL, of Section XI, Division 1, of the ASME Code with specified modifications and a limitation.

Five modifications were specified in the proposed rule to address two concerns of the NRC. The first concern is that four recommendations for tendon examinations that are included in Regulatory Guide 1.35, ''Inservice Inspection of Ungrouted Tendons in Prestressed Concrete Containments,'' Rev. 3, are not addressed in Subsection IWL (this involves four of the modifications, (§ 50.55a(b)(2)(ix)(A)-(D)). Regulatory Guide 1.35, Rev. 3, describes a basis acceptable to the NRC staff for developing an appropriate inservice inspection and surveillance program for ungrouted tendons in prestressed concrete containment structures. The four recommendations contained in Regulatory Guide 1.35, Rev. 3, which are not addressed by Subsection IWL, provide positions on issues such as failed wires and tendon sheathing filler grease conditions. (The ASME Code has considered the four issues involved and is in the process of adopting them into addenda of Subsection IWL). The second NRC concern is that if there is visible evidence of degradation of the concrete (e.g., leaching, surface cracking) there may also be degradation of inaccessible areas. The fifth modification (§ 50.55a(b)(2)(ix)(E)) requires that inaccessible areas be evaluated when visible conditions exist that suggest the possibility of degradation of these areas.

The limitation which was included in the proposed rule specified the 1992 Edition with the 1992 Addenda of Subsection IWE and Subsection IWL as the earliest version of the ASME Code the NRC finds acceptable. This is because this is the first edition including addenda combination acceptable to the NRC staff that incorporates the concept of base metal examinations and also provides a

comprehensive set of rules for the examination of post-tensioning systems. As originally published in 1981, Subsection IWE preservice examination and inservice examination rules focused on the examination of welds. This weld-based examination philosophy was established in the 1970s as plants were being constructed. It was based on the premise that the welds in pressure vessels and piping were the areas of greatest concern. As containments have aged, degradation of base metal, rather than welds, has been found to be the issue of concern. The 1991 Addenda to the 1989 Edition, the 1992 Edition and the 1992 Addenda to Section XI, Subsection IWE, have promoted the incorporation of base metal examinations.

The proposed rulemaking incorporated a provision for an expedited examination schedule. This expedited examination schedule is necessary to prevent the delay in implementation of Subsection IWE and Subsection IWL (the Summary of Documented Evaluation lists each plant and the delay in implementation which would be encountered if the subsections were implemented through routine updates of the ISI programs). Provisions were incorporated in the proposed rule to ensure that the expedited examination which would be completed within 5 years from the effective date of the rule and the routine 120-month examinations did not duplicate examinations.

On March 4, 1994, the NRC received a request from the Nuclear Management and Resources Council (which has since become part of the Nuclear Energy Institute (NEI)) to extend the public comment period from March 23, 1994 until April 25, 1994, to enable NEI to ''provide necessary and constructive comments on the proposed rule change.'' This was granted, and on March 28, 1994 (59 FR 14373), the NRC published in the Federal Register a notice of extension of the public comment period.

Summary of Comments

Comments were received from 25 separate sources. These sources consisted of 15 utilities, one service organization (Entergy Operations, Inc.) representing five nuclear plants, the Nuclear Energy Institute (NEI), the Nuclear Utility Backfitting and Reform Group (NUBARG) represented by the firm of Winston & Strawn, one owner's group (BWR Owner's Group (BWROG)), one architect and engineering firm (Stone & Webster Engineering Corporation), one public citizens group (Ohio Citizens for Responsible Energy (OCRE)), three individuals, and one consulting firm (VSL Corporation).

Comments received could be divided into three groups. The first group contains those comments which address the administrative aspects of the rule (e.g., backfit considerations, effectiveness of current containment examinations), and the modifications specified by the NRC in the proposed rule. The second and third groups contain those comments which address the technical provisions of Subsection IWE, and Subsection IWL, respectively. The summary and resolution of public comments and all of the verbatim comments which were received (grouped by subject area) are contained in the Summary of Documented Evaluation.

The majority of comments generally addressed one of the following subject areas: (1) The incorporation by reference of Subsection IWE and Subsection IWL into § 50.55a; (2) the development of guidance documents instead of regulatory requirements; (3) the rationale for the proposed backfit; (4) endorsement of the BWROG comments; and (5) the 5-year expedited implementation. These subject areas encompass the comments submitted by NEI and NUBARG, and their comments, if any, are discussed separately in each subject area.

The comments on subject area number one from those that approve of the incorporation by reference of Subsection IWE and Subsection IWL into § 50.55a, can be summarized as follows: (1) There is a need for the periodic examination of containment structures to assure the containment's pressure-retaining and leak-tight capability; (2) Section XI requirements define concise, technically sound programs to assure continuing containment integrity; and (3) input in the development of these rules was provided by all interested parties involved in containment inservice inspection—users, regulators, manufacturers, engineering organizations, and enforcement organizations.

The comments on the other four subject areas are summarized below. The resolution of public comments contains all of the comments which were received. Some of the comments resulted in modifications to the rule, and some of the comments have been transmitted to the ASME for their consideration. A discussion of the comments which led to modifications follows the summary of comments on subject area number five. The resolution of public comments package contains those comments transmitted to the ASME. Those comments asked for interpretations of the ASME Code rules.

Regarding subject area number two, eleven commenters believe that additional specific guidance in the form of a guidance document would be more appropriate than a regulation. They concur with NEI that current regulatory requirements for containment integrity and examinations are already provided by existing regulations (GDC 16 and 53 and Appendix J) and licensee commitments. If more detail on how to perform containment examinations is needed, the commenters (including NEI) state that the details could be provided in a regulatory guide, Information Notice, Generic Letter, or in an industry developed guidance document. The NRC does not believe that existing regulations and licensee commitments are adequate. Existing regulations and licensee commitments have not proved to be adequate to detect the types of problems which have been experienced in operating reactors. This is evidenced by the large number of instances of degradation that were found by the NRC through its inspections or audits of plant structures, or by licensees because they were alerted to a degraded condition at another site. Licensee containment inspection programs have generally not detected the types of degradation being reported (only four of the 32 reported instances of corrosion in Class MC containments were discovered as a result of the Appendix J general inspection). Further, the NRC does not believe that providing guidance through a regulatory guide or industry report would generally improve containment examination practices. Licensees were made aware of containment degradation through several industry notices, and yet the staff is still detecting many of occurrences of degradation. The increasing rate of occurrence of containment degradation, the number of occurrences, the extent to which some containments were degraded, the high number of instances discovered through NRC inspections or by licensees because they were alerted to a degradation condition at another site, the time-dependent mechanisms, and the results of the survey performed by the NRC Regional Offices regarding current containment inspections all point to the necessity of imposing additional requirements to ensure that containments comply with design wall thicknesses and prestressing forces. This is a compliance backfit.

With regard to subject area number three, six general comments were received from the Nuclear Utility Backfitting and Reform Group (NUBARG) and from the Nuclear Energy

Institute (NEI) (which were endorsed by other commenters) regarding the incorporation by reference of Subsection IWE and Subsection IWL which are similar in nature. The first comment is that the application of the compliance exception to this rulemaking is inappropriate, and that the proposed rule constitutes a backfit for which a cost-benefit analysis should be performed. The NRC agrees that the rulemaking is a backfit. However, as discussed under the Backfit Statement, the NRC believes that the compliance exception to the backfit rule is appropriate.

The second comment was a citation of a paragraph from the Statement of Considerations to the 1985 final backfit rule which addressed the compliance exception. That paragraph addressed ''Section 50.109(a)(4) which creates exceptions for modifications necessary to bring a facility into compliance or to ensure through immediately effective regulatory action that a licensee meets a standard of no undue risk to public health and safety.'' Both NEI and NUBARG assert that the proposed rule is a new interpretation of how to demonstrate compliance with existing standards and therefore constitutes a backfit under 10 CFR 50.109(a)(1). The NRC does not believe that the use of the compliance exception must be confined only to the situation addressed in the Statement of Consideration to the 1985 final backfit rule—''omission or mistake of fact.'' In any event, the current unsatisfactory status of containment inservice inspections can be characterized fairly as, in retrospect, a mistake about and omission from the necessary elements of a satisfactory inspection program.

The third comment is that containments must experience corrosion or degradation that is so unanticipated and excessive so as to constitute a genuine compliance concern. Another commenter expressed the idea somewhat differently believing that a broad-based concern with the operability of containment structures through the industry must be demonstrated to be a compliance issue. The NRC agrees with those criteria and concludes, in fact, that there is a broad-based concern regarding the structural integrity of containment structures. The NRC's approach focuses on two questions: (1) Is the corrosion such that there is a basis for reasonably concluding that additional instances of noncompliance with the relevant GDCs, Appendix J, and/or licensee commitments at numerous plants; and (2) whether there is a basis for reasonably believing that the corrosion would have been identified and properly addressed by the licensees in the absence of additional regulatory requirements. Based on the: (1) Number of occurrences of containment degradation; (2) increasing rate of containment degradation; (3) locations of the degradation; (4) two instances where containment wall thicknesses were below minimum design wall thickness; (5) number of corrosion paths which have been reported; and (6) higher than anticipated corrosion rates in many of the occurrences, the NRC believes that containments are experiencing corrosion or degradation that is unanticipated and excessive. Further, based upon factors (1) to (6) above, the NRC concludes that additional criteria are necessary to ensure that compliance with existing requirements for minimum accepted design wall thicknesses and prestressing forces are maintained (and thereby the ability of the containment to continue to perform its intended safety function).

The fourth comment by NUBARG and NEI suggested that it is part of the anticipated process for the industry to rely upon NRC inspections and audits to identify problems and then alert the industry through NRC documents such as information notices and generic letters. During the presentation to the ACRS on February 10, 1995, NEI asserted that ''[i]t really doesn't matter how the utilities identify these instances of degradation.'' The NRC believes that inspections conducted by licensees should be adequate to ensure that containment degradation is identified without reliance upon NRC inspections.

The fifth NEI and NUBARG comment is that to ensure compliance the NRC could take individual enforcement action rather than endorse ASME standards. The NRC believes that the best approach is to adopt the industry consensus standards (i.e., endorse ASME Section XI Subsection IWE and Subsection IWL). Containment corrosion and degradation have been reported since 1986. The patterns of degradation and the corrective actions were not immediately obvious. Given the number and the extent of the occurrences, and the variability among plants with regard to the performance and the effectiveness of containment inspections, the NRC believes that the best course of action is to endorse ISI requirements to ensure that containments comply with design wall thicknesses and prestressing forces.

The sixth comment is that GDC 16 required containments to be designed and constructed with an allowance for corrosion or degradation of the containment wall over the projected design life of the plant. NEI and NUBARG assert that ''[i]t is therefore hardly surprising that, as noted in the Statement of Considerations, '[o]ver one-third of the containments have experienced corrosion or other degradation.' '' Therefore, they believe there is not a broad-based concern with operability of containment structures. The NRC rejects the argument that because containments have corrosion allowances and corrosion was expected to occur that, *ipso facto*, further inspections are not necessary and the compliance exception is inappropriate. As previously pointed out, in many cases, the corrosion rate has been found to be greater than that for which the containment was designed (in some cases the rate was twice that predicted). Some of the more extreme cases of wall thinning occurred in plants with corrosion allowances. The existence of a corrosion allowance at any given plant is, of course relevant, but only in the context of determining whether a relevant requirement or commitment is likely to be violated during the OL term. A corrosion allowance simply increases the tolerance (time period) for corrosion. However, once the allowance is eroded, then concern with compliance becomes relevant. Based upon the staff's finding of the number and extent of corrosion to date, and the lack of activities to manage the degradation by many licensees, the NRC concludes that it is likely that those licensees will be in violation of applicable requirements for containment structural integrity and leak-tightness during the OL term, absent the imposition of Subsections IWE and IWL. Because licensees have been unable to ensure compliance with current regulatory requirements, the NRC believes that more specific ISI requirements, which expand upon existing requirements for the examination of containment structures in accordance with GDC 16, 53, Appendix A to 10 CFR part 50, and Appendix J to 10 CFR part 50, are needed and are justified for the purpose of ensuring that containments continue to maintain or exceed minimum accepted design wall thicknesses and prestressing forces as provided for in industry standards used to design containments (e.g., Section III and Section VIII of the ASME Code, and the American Concrete Institute Standard ACI–318), as reflected in license conditions, technical specifications, and written licensee commitments (e.g., the Final Safety Analysis Report). The NRC believes that the occurrences of corrosion and other degradation would have been detected by licensees when

conducting the periodic examinations set forth in Subsection IWE and Subsection IWL.

With regard to subject area number four, six commenters believe that the Boiling Water Reactors Owner's Group (BWROG) containment inspection plan (CIP) will adequately address examinations for the primary containment when used in conjunction with other existing examination requirements such as Appendix J. The staff does not believe that the CIP is a comprehensive containment examination program. In the CIP, there is a comparison between the CIP and Subsection IWE. The CIP dismisses seven of the eighteen identified Subsection IWE examinations as not being justifiable even though some of these areas are likely to experience accelerated corrosion. The CIP enumerates the conservatisms and margins against failure in the design of Mark I and II containments and concludes that in a typical plant probabilistic risk assessment of failure, the contribution to failure of the containment steel structure is negligible. The NRC believes that the conservatisms and margins referred to are not additional tolerances which allow areas of containments to go unexamined. These conservatisms and margins were required allowances in the design because of the uncertainties in loadings, in material properties, in analysis, and in the variation of steel thicknesses. Examination of large areas of the containment cannot be dismissed as being non-critical based on conservatisms and margins when corrosion has clearly eroded the margin of safety in some cases. In addition, given that only four of the 32 occurrences of corrosion in metal containments and the liners of concrete containments were detected during the pre-integrated leakage rate test examination, the NRC does not believe that the CIP used in conjunction with other existing examination requirements such as Appendix J will adequately address examinations for the primary containment as asserted. The industry initiative that allows a decrease in the frequency of Appendix J leakage rate testing further erodes confidence in the acceptability of the BWROG approach.

Comments were received from ten sources on proposed § 50.55a(g)(6)(ii)(B) which would require a 5-year expedited examination schedule (subject area number five). Most of these comments asked for clarifications of the NRC staff intent of this provision. Some commenters interpreted this provision as a requirement to perform all of the examinations specified for a 10-year interval in 5 years, which was not the intent. § 50.55a(g)(6)(ii)(B) has been changed to clarify that for Subsection IWE, the baseline inspection will be the inservice examinations which are to be performed during the first period of the first interval. For Subsection IWL, the baseline inspection will be the required inservice examinations which correspond to the year of operation for each unit. The result of the clarification is that § 50.55a(g)(6)(ii)(B)(*1*) addresses Subsection IWE and § 50.55a(g)(6)(ii)(B)(*2*) addresses Subsection IWL. § 50.55a(g)(6)(ii)(B)(*2*) in the proposed rule has become § 50.55a(g)(6)(ii)(B)(*3*) and § 50.55a(g)(6)(ii)(B)(*3*) has become § 50.55a(g)(6)(ii)(B)(*4*) in the final rule.

There was one additional comment submitted by NEI. The proposed rule discussed NEI's (then NUMARC) position on the role of Subsection IWE and Subsection IWL in license renewal. Subsections IWE and IWL were referenced many times as one acceptable approach for managing age-related degradation. The plan for managing age-related degradation assumes that these examinations are ''in current and effective use.'' NEI commented on the above statements in the proposed rule; ''Although the BWR and PWR containment IRs [Industry Reports] do reference Subsections IWE and IWL, their identification in the IRs should not be misrepresented to imply that Subsections IWE and IWL are being implemented or that they are required for operating plants during their initial licensing term.'' The NRC agrees that the IRs were not to be represented as a requirement for operating licensees to implement Subsection IWE and Subsection IWL or their equivalent, and that these subsections were referenced as one acceptable approach of managing age-related degradation for the license renewal period. However, present licensee containment examination programs have not proved to be effective in detecting the types of degradation which have been reported. The number of occurrences and the extent of degradation (which includes cases of noncompliance) leads to the conclusion that additional requirements are needed for managing containment degradation during the operating term. Because Subsections IWE and IWL were developed by the ASME with industry input and found to be acceptable by NEI for managing age-related degradation for the license renewal period, the NRC believes that adoption of those programs at this time is the best approach. The NRC also believes that with implementation of Subsections IWE and IWL, the detrimental effects of containment aging will be managed during the current operating term, as well as during the license renewal term.

As a result of the comments received, there is one editorial change, two clarifications, and four modifications in the final rule. With respect to the editorial change, a commenter suggested that the wording of § 50.55a(b)(2)(ix)(D)(*2*) in the proposed rule be revised to be consistent with § 50.55a(b)(2)(ix)(D)(*1*) and § 50.55a(b)(2)(ix)(D)(*3*) of the same paragraph. § 50.55a(b)(2)(ix)(D) addresses the sampling of the grease contained in post-tensioning systems, and conditions, which if found, are reportable. The suggested wording has been adopted in the final rule.

One of the clarifications was to proposed § 50.55(g)(6)(ii)(B). This change was discussed previously in subject area number five. § 50.55a(g)(6)(ii)(B)(*1*) and § 50.55a(g)(6)(ii)(B)(*2*) require that licensees conduct the first containment examinations in accordance with Subsection IWE and Subsection IWL (1992 Edition with the 1992 Addenda), modified by § 50.55a(b)(2)(ix) and § 50.55a(b)(2)(x) within 5 years of the effective date of the final rule. This expedited examination schedule is necessary to prevent possible delays in the implementation of Subsection IWE by as much as 20 years and Subsection IWL by as much as 15 years. Subsection IWE, Table IWE–2500–1, permits the deferral of many of the required examinations until the end of the 10-year inspection interval. Adding the 10 years that could pass before some utilities are required to update their ISI plans, a period of 20 years could pass before the first examinations would take place. Subsection IWL is based on a 5-year inspection interval. Adding the possible 10 years before update of existing ISI plans, a period of 15 years could pass before the examinations were performed by plants that have not voluntarily adopted the provisions of Regulatory Guide 1.35, Rev. 3. Expediting implementation of the containment examinations is considered necessary because of the problems that have been identified at various plants, the need to establish expeditiously a baseline for each facility, and the need to identify any existing degradation.

Paragraphs (g)(6)(ii)(B)(*3*) and (g)(6)(ii)(B)(*4*) each provide a mechanism for licensees to satisfy the requirements of the routine containment examinations and the expedited examination without duplication. Paragraph (g)(6)(ii)(B)(*3*) permits licensees to avoid duplicating

examinations required by both the periodic routine and expedited examination programs. This provision is intended to be useful to those licensees that would be required to implement the expedited examination during the first periodic interval that routine containment examinations are required. Paragraph (g)(6)(ii)(B)(*4*) allows licensees to use a recently performed examination of the post-tensioning system to satisfy the requirements for the expedited examination of the containment post-tensioning system. This situation would occur for licensees who perform an examination of the post-tensioning system using Regulatory Guide 1.35 between the effective date of this rule and the beginning of the expedited examination.

The four modifications are: (1) § 50.55a(b)(2)(x)(A) expands the evaluation of inaccessible areas of concrete containments (Class CC) to metal containments and the liners of concrete containments (Class MC); (2) § 50.55a(b)(2)(x)(B) permits alternative lighting and resolution requirements for remote visual examination of the containment; (3) § 50.55a(b)(2)(x)(C) makes the examination of pressure retaining welds and pressure retaining dissimilar metal welds optional; and (4) § 50.55a(b)(2)(x)(D) has been added to provide an alternative sampling plan. Section 50.55a(b)(2)(x)(E), a clarification, more clearly defines the frequency of the Subsection IWE general visual examination.

The first modification, § 50.55a(b)(2)(x)(A), which expands the evaluation of inaccessible areas of concrete containments (Class CC) to metal containments and the liners of concrete containments (Class MC), was the result of a comment received on § 50.55a(b)(2)(ix)(E) of the proposed rule. The commenter believed that given the number of occurrences of corrosion in Class MC containments, the proposed provision (which only addressed concrete containments) should be expanded in the final rule to include metal containments and the liners of concrete containments.

The second modification, § 50.55a(b)(2)(x)(B), was added to the final rule to permit alternative lighting and resolution requirements for remote visual examination of the containment. Subsection IWE references the lighting and resolution requirements contained in IWA–2200. The lighting and resolution requirements contained in IWA–2200 would on a practical basis preclude remote containment examination.

The third modification, § 50.55a(b)(2)(x)(C), makes the examinations of Subsection IWE, Examination Category E–B (pressure retaining welds) and Subsection IWE, Examination Category E–F (pressure retaining dissimilar metal welds) optional. The NRC staff concludes that requiring these examinations is not appropriate. There is no evidence of problems associated with welds of this type under the given operating conditions. In addition, the occupational radiation exposure that would be incurred while performing these examinations cannot be justified. It is estimated that the total occupational exposure that would be incurred yearly in the performance of the containment weld examinations in accordance with Examination Categories E–B and E–F would be 440 person-rems.

The fourth modification, § 50.55a(b)(2)(x)(D), provides an alternative to the ASME Section XI requirements for ''additional examinations'' (note: additional examinations'' are required during the same outage when acceptance criteria are exceeded). The alternative would allow licensees to determine the number of additional components to be examined based on an evaluation to determine the extent and nature of the degradation. Five commenters believe that the requirements for additional examinations used in other subsections of Section XI is inappropriate for containment components. Additional examinations are incorporated into Section XI to determine the extent to which degradation found in one component exists in other similar components. In some instances, a large number of additional examinations could be required. The commenters believe that a review of the operational history of containment components shows that the degradation is limited to the area in question and is not widespread. This makes the Section XI requirements for additional examinations burdensome and inappropriate for application to containments. The NRC agrees and revised the rule to permit the alternative to the Section XI requirements for additional examinations.

The NRC believes that these modifications improve the final rule and will improve the containment inspection program as set forth by Subsection IWE and Subsection IWL. Some of the public comments cited failure data which have been accumulated in recent years in support of various NRC staff activities and industry initiatives. Most of this data has been accumulated since the ASME committees developed these subsections. Without the benefit of this recently accumulated operational data, the ASME committees responsible for developing Subsection IWE and Subsection IWL modelled those subsections on other subsections of Section XI and the experience gained from application of those other subsections. With the additional insights drawn from analysis of this new data, it is apparent that many aspects of containments are unique compared to components of other systems. Some of the containment components which were expected to experience degradation, based on experience with other systems, have proved not to be susceptible to the same type of degradation. The ASME working groups are considering these issues. However, based on initial committee discussion, it is anticipated that similar changes will be made to Subsection IWE and Subsection IWL, but the length of the ASME consensus process precludes the possibility of the changes being adopted into the ASME Code in the near term. Hence, the NRC has determined to adopt the 1992 Edition with the 1992 Addenda of Subsection IWE and Subsection IWL with the modifications which were previously discussed.

Other Provisions Contained in the Final Rule

The following paragraph was contained in the proposed rule and has not been discussed previously. This paragraph received comments which resulted in the provision being dropped in the final rule. Section 50.55a(b)(2)(x) was a provision in the proposed rule intended to provide licensees with a mechanism to merge the Subsection IWE and Subsection IWL ISI program with their routine 120-month ISI program. Those licensees who were near the end of their present 10-year ISI interval when the final rule becomes effective would have been given an additional 2 years to submit their containment ISI program. Several commenters responded that due to the time constraints of having to develop the containment ISI program and then perform the required examinations within 5 years, the additional 2 years could not be utilized. Therefore, § 50.55a(b)(2)(x) as it appeared in the proposed rule has been deleted, and § 50.55a(b)(2)(x) in the final rule contains the modifications which were added as a result of public comment on the proposed rule.

The provisions in this paragraph and the following four paragraphs were contained in the proposed rule and have not changed due to comments. Section 50.55a(b)(2)(vi) incorporates a limitation specifying the 1992 Edition with 1992

Addenda of Subsection IWE and Subsection IWL as the earliest ASME Code version the NRC finds acceptable. This edition and addenda incorporate the concept of base metal examinations and also provide a comprehensive set of rules for the examination of post-tensioning systems. It should be noted that the wording of this provision has been changed in the final rule in order to make it consistent with other provisions in § 50.55a(b).

Section 50.55a(b)(2)(ix) specifies five modifications that must be implemented when using Subsection IWL. Four of these issues are identified in Regulatory Guide 1.35, Revision 3, but are not currently addressed in Subsection IWL. Section 50.55a(b)(2)(ix)(A) requires that grease caps which are accessible must be visually examined to detect grease leakage or grease cap deformation. Section 50.55a(b)(2)(ix)(B) requires the preparation of an Engineering Evaluation Report when consecutive surveillances indicate a trend of prestress loss to below the minimum prestress requirements. Section 50.55a(b)(2)(ix)(C) requires an evaluation to be performed for instances of wire failure and slip of wires in anchorages. Section 50.55a(b)(2)(ix)(D) addresses sampled sheathing filler grease and reportable conditions. A comment was received on this provision which resulted in an editorial change (this was discussed on page 12). Section 50.55a(b)(2)(ix)(E) requires that licensees evaluate the acceptability of inaccessible areas of concrete containments when conditions exist in accessible areas that suggest the possibility of degradation in inaccessible areas.

Existing § 50.55a(g), ''Inservice inspection requirements,'' specifies the requirements for preservice and inservice examinations for Class 1 (Class 1 refers to components of the reactor coolant pressure boundary), Class 2 (Class 2 quality standards are applied to water- and steam-containing pressure vessels, heat exchangers (other than turbines and condensers), storage tanks, piping, pumps, and valves that are part of the reactor coolant pressure boundary (e.g., systems designed for residual heat removal and emergency core cooling)), and Class 3 (Class 3 quality standards are applied to radioactive-waste-containing pressure vessels, heat exchangers (other than turbines and condensers), storage tanks, piping, pumps, and valves (not part of the reactor coolant pressure boundary)) components and their supports. Subsection IWE (Class MC—metal containments) and Subsection IWL (Class CC—concrete containments) are incorporated by reference into the NRC regulations for the first time.

Section 50.55a(g)(4) specifies the containment components to which the ASME Code Class MC and Class CC inservice inspection classifications incorporated by reference in this rule will apply.

Section 50.55a (g)(4)(v)(A), (v)(B), and (v)(C) specify the Subsection IWE and Subsection IWL rules for inservice inspection, repair, and replacement of metal and concrete containments. This is consistent with the long-standing intent and ongoing application by NRC and licensees to utilize the rules of Section XI when performing inservice inspection, repairs, and replacements of applicable components and their supports.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action that significantly affects the quality of the human environment and therefore an environmental impact statement is not required.

This final rule is one part of a regulatory framework directed to ensuring containment integrity. Therefore, in the general sense, this rule will have a positive impact on the environment. This rule incorporates by reference into the NRC regulations requirements contained in the ASME Code for the inservice inspection of the containments of nuclear power plants. The performance of containment examinations, as set forth by the provisions of this final rule, for PWRs, Ice Condensers, and BWR Mark IIs and IIIs is not expected to result in significant occupational radiation exposure (1.0 person-rems per year or 0.04 person-rems per unit averaged over 27 examinations each year). The above categories of plants, for which the occupational radiation exposure is insignificant, represent the vast majority of units (89). For BWR Mark I containments, the estimated occupational radiation exposure which would be incurred per year while performing BWR Mark I containment examination is 29.4 person-rems per year or 4.2 person-rems per unit averaged over 7 examinations per year. However, the estimated occupational radiation exposure per unit does not provide an accurate representation of the actual radiological exposure that would be incurred by any one individual. 10 CFR 20.101, ''Radiation dose standards for individuals in restricted areas'' only permits a whole body dose of 1.25 rem per calendar quarter. As a practical matter, licensees carefully manage the exposure incurred by any one individual by practicing and applying ''as low as reasonably achievable'' (ALARA) principles to protect the health and safety of personnel. In the performance of the examination of BWR Mark I containments, this is accomplished by having several individuals perform the examinations to ''spread out'' the exposure. In this manner, no one individual will suffer any significant health effects. It also must be kept in mind that these containment examinations are scheduled to occur at the interval of once every 3⅓ years. This provides licensees ample time for planning the examinations, and scheduling personnel in accord with ALARA considerations. Therefore, the occupational radiation exposure is insignificant given the relatively low exposure on a unit basis and the licensees' programs for controlling the impact of exposure for any one individual.

Actions required of applicants and licensees to implement containment examinations are of the same nature that applicants and licensees have been performing for many years in other Section XI ISI programs. Extension of these actions to additional components, therefore, should not increase the potential for a negative environmental impact.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Mr. W. E. Norris, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6796.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject

to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150–0011.

The public reporting burden for this collection of information is estimated to average 4,000 hours per response for development of an initial inservice inspection plan, and 8,000 hours per response for the update of the plan and periodic examinations, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The estimate of 8,000 hours for plan update and performing periodic examinations is a 2,000 hour reduction from the estimate given in the proposed rulemaking. This reduction results from changes made in response to public comment. A number of examinations have been modified or made optional greatly reducing the effort required to comply with the requirements contained in the final rule. Send comments on any aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects only the operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121. Since these companies are dominant in their service areas, this rule does not fall within the purview of the Act.

Backfit Statement

The NRC is amending its regulations to incorporate by reference the 1992 Edition with the 1992 Addenda of Subsection IWE and Subsection IWL to assure that the critical areas of containments are routinely inspected to detect defects that could compromise a containment's structural integrity. Based on a preponderance of reliable information, the NRC concludes that this rule is a compliance backfit, and therefore a backfit analysis is not required pursuant to 10 CFR 50.109(a)(4)(i). A summary of noncompliance is set forth below. The documented evaluation required by § 50.109(a)(4) to support this conclusion is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Mr. W.E. Norris, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6796.

The rate of occurrence of corrosion and degradation of containment structures has been increasing at operating nuclear power plants. There have been 32 reported occurrences of corrosion in metal containments and the liners of concrete containments. This is approximately one-fourth of all operating nuclear power plants. Only four of the 32 occurrences were detected by current licensee containment inspection programs. Nine of these occurrences were first identified by the NRC through its inspections or structural audits. Eleven occurrences were detected by licensees after they were alerted to a degraded condition at another site or through activity other than containment inspection. There have been 34 reported occurrences of degradation of the concrete or of the post-tensioning systems of concrete containments. This is nearly one-half of these types of containments. It is clear that current licensee containment inspection programs have not proved to be adequate to detect the types of degradation which have been reported. Examples of degradation not found by licensees, but initially detected at plants through NRC inspections include: (1) Corrosion of steel containment shells in the drywell sand cushion region, resulting in wall thickness reduction to below the minimum design thickness; (2) corrosion of the torus of the steel containment shell (wall thickness below minimum design thickness); (3) extensive corrosion of the liner of a concrete containment with local degradation at many locations to approximately half-depth; (4) grease leakage from the tendons of prestressed concrete containments; and (5) leaching as well as excessive cracking in concrete containments.

None of the existing requirements for containment inspection provide specific guidance on how to perform the necessary containment examinations. This lack of guidance has resulted in a large variation with regard to the performance and the effectiveness of licensee containment examination programs. Based on the results of inspections and audits, and plant operational experiences, it is clear that many licensee containment examination programs have not detected degradation that could result in a compromise of pressure-retaining capability.

Most of those occurrences were first identified by the NRC through its inspections or audits of plant structures, or by licensees while performing an unrelated activity or, after they were alerted to a degraded condition at another site. In analyzing the reported containment degradation, it is apparent that all containments are subject to certain type(s) of degradation depending on the design. Information gathered by the staff indicates that many licensees still have not reacted to this serious safety concern and have not initiated comprehensive containment inservice inspection. As a result of the rate of occurrence of containment degradation, and the extent of containment degradation, the NRC believes that there is a basis for reasonably concluding that such degradation is widespread and affects virtually all plants. Because of the serious degradation which has occurred, the belief that additional occurrences of noncompliance with required minimum wall thicknesses and prestressing forces will be reported, and the high likelihood that some of those occurrences could result in loss of structural integrity and leak-tightness, the NRC has determined that imposition of these containment inservice inspection requirements under the compliance exception to 10 CFR 50.109(a)(4)(i) is appropriate.

The NRC believes that the final action would also result in a substantial safety increase and that the direct and indirect costs of implementation are justified in view of the significant safety benefit to be gained. The NRC believes that the inspections contained in Subsections IWE and IWL will improve significantly the ability to detect degradation and take timely action to correct degradation of containment structures. A review of early implementation of the maintenance rule (10 CFR 50.65) at nine

nuclear power plants, which is documented in NUREG–1526, indicates that most licensees assigned a low priority to the monitoring of structures. Several licensees incorrectly assumed that many of their structures are inherently reliable. This is true so long as there is no degradation. However, the degradation of structures can reduce high margins of safety to a low or negligible margin of safety. As discussed earlier, such substantial containment degradations have been detected at a large number of nuclear power plants, and their detection to date can best be characterized as happenstance. The final rule will provide for improved periodic examination of containment structures assuring that the critical areas of containment are periodically inspected to detect and take corrective action for defects that could compromise the containment's pressure-retaining and leak-tight capability. The NRC believes, therefore, that the final action can be justified as a cost-justified safety enhancement backfit, as well as a compliance backfit.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal Penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 533, the NRC is adopting the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd) and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.55a is amended by adding paragraphs (b)(2)(vi), (b)(2)(ix), (b)(2)(x), (g)(4)(v), and (g)(6)(ii)(B), and revising the introductory text of paragraphs (b)(2) and (g)(4) to read as follows:

§ 50.55a Codes and standards.

* * * * *

(b) * * *

(2) As used in this section, references to Section XI of the ASME Boiler and Pressure Vessel Code refer to Class 1, Class 2, and Class 3 components of Section XI, Division 1, and include addenda through the 1988 Addenda and editions through the 1989 Edition, and Class MC and Class CC components of Section XI, Division 1, 1992 Edition with the 1992 Addenda, subject to the following limitations and modifications:

* * * * *

(vi) *Effective edition and addenda of Subsection IWE and Subsection IWL, Section XI.* The 1992 Edition with the 1992 Addenda of Subsection IWE and Subsection IWL shall be used by licensees when performing containment examinations as modified and supplemented by the requirements in § 50.55a(b)(2)(ix) and § 50.55a(b)(2)(x).

* * * * *

(ix) *Examination of concrete containments.* (A) Grease caps that are accessible must be visually examined to detect grease leakage or grease cap deformations. Grease caps must be removed for this examination when there is evidence of grease cap deformation that indicates deterioration of anchorage hardware.

(B) When evaluation of consecutive surveillances of prestressing forces for the same tendon or tendons in a group indicates a trend of prestress loss such that the tendon force(s) would be less than the minimum design prestress requirements before the next inspection interval, an evaluation shall be performed and reported in the Engineering Evaluation Report as prescribed in IWL–3300.

(C) When the elongation corresponding to a specific load (adjusted for effective wires or strands) during retensioning of tendons differs by more than 10 percent from that recorded during the last measurement, an evaluation must be performed to determine whether the difference is related to wire failures or slip of wires in anchorages. A difference of more than 10 percent must be identified in the ISI Summary Report required by IWA–6000.

(D) The licensee shall report the following conditions, if they occur, in the ISI Summary Report required by IWA–6000:

(*1*) The sampled sheathing filler grease contains chemically combined water exceeding 10 percent by weight or the presence of free water;

(*2*) The absolute difference between the amount removed and the amount replaced exceeds 10 percent of the tendon net duct volume.

(*3*) Grease leakage is detected during general visual examination of the containment surface.

(E) For Class CC applications, the licensee shall evaluate the acceptability of inaccessible areas when conditions exist in accessible areas that could indicate the presence of or result in degradation to such inaccessible areas. For each inaccessible area identified, the licensee shall provide the following in the ISI Summary Report required by IWA–6000:

(*1*) A description of the type and estimated extent of degradation, and the conditions that led to the degradation;

(*2*) An evaluation of each area, and the result of the evaluation, and;

(*3*) A description of necessary corrective actions.

(x) *Examination of metal containments and the liners of concrete containments.* (A) For Class MC applications, the licensee shall evaluate the acceptability of inaccessible areas when conditions exist in accessible areas that could indicate the presence of or result in degradation to such inaccessible areas. For each inaccessible area identified, the licensee shall provide the following in the ISI Summary Report required by IWA–6000:

(*1*) A description of the type and estimated extent of degradation, and the conditions that led to the degradation;

(*2*) An evaluation of each area, and the result of the evaluation, and;

(*3*) A description of necessary corrective actions.

(B) When performing remotely the visual examinations required by Subsection IWE, the maximum direct examination distance specified in Table IWA–2210–1 may be extended and the minimum illumination requirements specified in Table IWA–2210–1 may be decreased provided that the conditions or indications for which the visual

examination is performed can be detected at the chosen distance and illumination.

(C) The examinations specified in Examination Category E–B, Pressure Retaining Welds, and Examination Category E–F, Pressure Retaining Dissimilar Metal Welds, are optional.

(D) Section 50.55a(b)(2)(x)(D) may be used as an alternative to the requirements of IWE–2430.

(*1*) If the examinations reveal flaws or areas of degradation exceeding the acceptance standards of Table IWE–3410–1, an evaluation shall be performed to determine whether additional component examinations are required. For each flaw or area of degradation identified which exceeds acceptance standards, the licensee shall provide the following in the ISI Summary Report required by IWA–6000:

(*i*) A description of each flaw or area, including the extent of degradation, and the conditions that led to the degradation;

(*ii*) The acceptability of each flaw or area, and the need for additional examinations to verify that similar degradation does not exist in similar components, and;

(*iii*) A description of necessary corrective actions.

(*2*) The number and type of additional examinations to ensure detection of similar degradation in similar components.

(E) A general visual examination as required by Subsection IWE shall be performed once each period.

* * * * *

(g) * * *

(4) Throughout the service life of a boiling or pressurized water-cooled nuclear power facility, components (including supports) which are classified as ASME Code Class 1, Class 2, and Class 3 must meet the requirements, except design and access provisions and preservice examination requirements, set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda that become effective subsequent to editions specified in paragraphs (g)(2) and (g)(3) of this section and that are incorporated by reference in paragraph (b) of this section, to the extent practical within the limitations of design, geometry and materials of construction of the components. Components which are classified as Class MC pressure retaining components and their integral attachments, and components which are classified as Class CC pressure retaining components and their integral attachments must meet the requirements, except design and access provisions and preservice examination requirements, set forth in Section XI of the ASME Boiler and Pressure Vessel Code and Addenda that are incorporated by reference in paragraph (b) of this section, subject to the limitation listed in paragraph (b)(2)(vi) and the modifications listed in paragraphs (b)(2)(ix) and (b)(2)(x) of this section, to the extent practical within the limitations of design, geometry and materials of construction of the components.

* * * * *

(v) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued after January 1, 1956:

(A) Metal containment pressure retaining components and their integral attachments must meet the inservice inspection, repair, and replacement requirements applicable to components which are classified as ASME Code Class MC;

(B) Metallic shell and penetration liners which are pressure retaining components and their integral attachments in concrete containments must meet the inservice inspection, repair, and replacement requirements applicable to components which are classified as ASME Code Class MC; and

(C) Concrete containment pressure retaining components and their integral attachments, and the post-tensioning systems of concrete containments must meet the inservice inspection and repair requirements applicable to components which are classified as ASME Code Class CC.

* * * * *

(6) * * *

(ii) * * *

(B) *Expedited examination of containment.* (*1*) Licensees of all operating nuclear power plants shall implement the inservice examinations specified for the first period of the first inspection interval in Subsection IWE of the 1992 Edition with the 1992 Addenda in conjunction with the modifications specified in § 50.55a (b)(2)(ix) by September 9, 2001. The examination performed during the first period of the first inspection interval shall serve the same purpose for operating plants as the preservice examination specified for plants not yet in operation.

(*2*) Licensees of all operating nuclear power plants shall implement the inservice examinations which correspond to the number of years of operation which are specified in Subsection IWL of the 1992 Edition with the 1992 Addenda in conjunction with the modifications specified in § 50.55a (b)(2)(ix) by September 9, 2001. The first examination performed shall serve the same purpose for operating plants as the preservice examination specified for plants not yet in operation.

(*3*) The expedited examination for Class MC components may be used to satisfy the requirements of routinely scheduled examinations of Subsection IWE subject to IWA–2430(d) when the expedited examination occurs during the first containment inspection interval.

(*4*) The requirement for the expedited examination of the containment post-tensioning system may be satisfied by the post-tensioning system examinations performed after September 9, 1996 as a result of licensee post-tensioning system programs accepted by the NRC prior to September 9, 1996.

(*5*) Licensees do not have to submit to the NRC staff for approval of their containment inservice inspection program which was developed to satisfy the requirements of Subsection IWE and Subsection IWL with specified modifications and a limitation. The program elements and the required documentation shall be maintained on site for audit.

* * * * *

Dated at Rockville, Maryland, this 12th day of June 1996.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 96–20215 Filed 8–7–96; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Supervisory Committee Audits and Verifications

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) is amending its regulations governing credit union supervisory committee audits and verifications. The final amendments clarify existing audit scope; expand audit scope and reporting requirements for compensated auditors only; require a comprehensive engagement letter setting forth minimum contracting terms and conditions; clarify existing working paper access requirements; expressly state available administrative sanctions for failure to comply with supervisory

committee audit requirements and working paper access requirements; and add relevant definitions of accounting/auditing terms use throughout the regulation.

EFFECTIVE DATE: December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Karen Kelbly, Accounting Officer, Office of Examination and Insurance (703) 518–6360, or Michael McKenna, Attorney, Office of General Counsel (703) 518–6540, at 1775 Duke Street, Alexandria, Virginia 22314–3428.

SUPPLEMENTARY INFORMATION:

A. Background

Section 701.12 of NCUA's Regulations sets forth the supervisory committee's responsibility in meeting the audit and verification requirements of section 115 of the Federal Credit Union Act, 12 U.S.C. § 1761d. A supervisory committee audit is required at least once every calendar year covering the period since the last audit. The scope of the audit must be sufficient, at a minimum, to test the federal credit union's assets, liabilities, equity, income, and expenses for existence, proper cut off, valuations, ownership, disclosures and classification, and internal controls. Section 741.202 of NCUA's Rules and Regulations, 12 CFR 741.12, make these requirements applicable to federally insured state-chartered credit unions.

NCUA continues to have concerns with the scope of the supervisory committee audit and with access to working papers supporting such audits. The Board felt there was a need to amend the regulation because:

- Many supervisory committee audits have been inadequate;
- Examiners have been placed in the position of brokering disputes between external auditors and supervisory committees relative to audit inadequacy;
- The standards supervisory committee have been held to are not definitive;
- Examiner access to ''proprietary working papers'' has been limited;
- Greater uniformity in audit scope is needed; and
- The addition of definitions is needed to enhance clarity.

Consequently, on October 19, 1995, the Board issued proposed amendments to the regulation governing credit union supervisory committee audits and verifications (Section 701.12 of NCUA's Regulations) 60 F.R. 55663 (November 2, 1995). On December 19, 1995, the Board extended the comment period to January 18, 1996. 60 F.R. 66952 (December 27, 1995). The proposed amendments: (1) clarified existing audit scope; (2) expanded audit scope and reporting requirements for compensated auditors only; (3) required a comprehensive engagement letter setting forth minimum contracting terms and conditions; (4) clarified existing working paper access requirements; (5) expressly stated available administrative sanctions for failure to comply with supervisory committee audit requirements and working paper access requirements; and (6) added relevant definitions of accounting/auditing terms used throughout the regulation.

B. Comments

One hundred and eighteen comments were received. Comments were received from sixty-nine federal credit unions, nine state chartered credit unions, twenty-one state leagues, four national credit union trade associations, eleven certified public accounting firms, one internal auditor, one certified public accountant trade organization, and one government agency. NCUA also received one anonymous electronic mail.

Eight commenters express complete support for the proposal. Fifteen commenters oppose the entire proposal. Twelve of these commenters believe that the current system is working well and that the proposed amendments will simply result in increased costs without any increased service. Ninety-seven commenters express varied levels of support for the proposal; however, most of these commenters had one or more objections to the proposal. A recurring theme among these commenters was that the proposal would hurt small credit unions. Another recurring theme was that the proposed amendments, in effect, require an opinion audit. Finally, a number of commenters believe the proposed amendments would increase costs to credit unions.

The Board believes the final regulation reasonably balances the concerns of those opposing additional burden for small credit unions with the need for complete and reliable credit union audits. The Board appreciates the obstacles small credit unions face when operating in today's environment and does not wish to add to that burden unnecessarily. The amendments to this regulation will not have a significant impact on a credit union which meets its supervisory committee audit obligations in any of the following ways:

- The credit union's supervisory committee performs the audit itself.
- The credit union's internal auditor performs the audit.
- The supervisory committee recruits a member or volunteer who performs the audit (i.e., the member or volunteer is not in the business of performing compensated audits for credit unions).
- The supervisory committee obtains an opinion audit.

If the supervisory committee itself or its uncompensated designated representative performs the supervisory committee audit as prescribed in § 701.12(c)(5)(i)(D), the following portions of the proposed regulation *will not apply* to the supervisory committee audit:

- § 701.12(c)(4)—Increased scope requirements in designated areas;
- § 701.12(c)(5)(i)(A–C)—Opinion audits and agreed-upon procedures in relation to compensated auditors; and
- § 701.12(d)—Engagement letter requirements.

Additionally, NCUA will revise its *Supervisory Committee Guide for Federal Credit Unions* for targeted release prior to December 31, 1996. The revised Guide will provide guidance to assist a supervisory committee itself or its uncompensated designated representative in meeting the applicable requirements of this regulation.

If the supervisory committee employs an auditor who is defined as a ''compensated auditor'' to perform (or assist in performing) the audit, the following additional requirements will be necessary:

- An engagement letter between the credit union and the compensated auditor;
- Expanded audit scope in certain areas if the compensated auditor is engaged to address, and agrees to take on, these areas; and
- Notification in writing of reportable conditions or errors and irregularities, if any, discovered in the normal course of the audit.

Requirement addressed	SC Audit performed by	
	Supervisory committee or designated non-compensated auditor	Compensated auditor
Engagement Letter	No engagement letter requirement	Engagement letter required.

Requirement addressed	SC Audit performed by	
	Supervisory committee or designated non-compensated auditor	Compensated auditor
Scope	As exists under current regulation	As exists under current regulation, *plus* expanded scope in *identified* areas.[1]
Testing/Procedures Performed in Accordance With.	Regulation identifies specific standards which apply.	Regulation identifies specific standards which apply.
Reporting Standards	As exists under current regulation	As exists under current regulation, *plus* ''reportable conditions,'' if any, and ''errors and irregularities,'' if any, simply ''reduced to writing''.[1]

[1] Distinguishable from an opinion audit because the following are *not* required: full scope of opinion audit, financial statements, related disclosures, auditor's opinion, or negative assurance.

Comments Relating to Current § 701.12. Throughout the comment letters of accounting/auditing professionals were a series of comments addressing conditions which apply equally to the current and to the revised § 701.12. These include:

1. Auditing work should not be performed by lay individuals; CPAs alone have the professional proficiency to perform audits.

2. The proposed regulations put CPAs at an economic disadvantage to compete in the credit union marketplace. A CPA performing a supervisory committee audit would be bound by the professional auditing standards promulgated by AICPA and the State Board of Accountancy, while a non-CPA is not so burdened. CPA would not be able to charge fees competitive with (i.e., as low as) that of non-CPA.

3. CPAs are concerned about the ability of non-CPA examiners to review CPA's work.

4. CPAs may limit themselves to performing only opinion audits for credit unions. A new auditing standard, Statement of Auditing Standard (SAS) No. 75, governing agreed-upon procedures engagements requires users of agreed-upon procedures reports to acknowledge the sufficiency of such procedures in satisfying the requirements of the specified user. If the CPA cannot get the specified user to do this (in advance of the engagement), then the only work a CPA could perform for a specified user would be an opinion audit. The thrust of this comment is that NCUA would qualify as a ''specified user'' and would, therefore, have to acknowledge the sufficiency of the procedures prior to each credit union's engagement of a CPA.

Each of these comments applies equally to the current regulation and the amended version being issued as a final rule; they are not exacerbated by the amendments. The source of some of the conditions addressed in the comments is not, if fact, any action by NCUA, but rather, exists due to the actions of others. The first three conditions, which we will address first, are relatively straight-forward; the SAS No. 75 issue is more complex and is addressed in section K.

The first condition will exist as long as NCUA allows auditors other than licensed, independent certified public accountants to perform supervisory committee audits. Since the NCUA Board is committed to allowing credit union supervisory committees the option to engage non-CPA accounting/auditing professionals, there can be no ready resolution of this concern either under the current or the amended final regulation.

As to the second area of concern, that CPAs are bound by professional standards imposed by state licensing authorities and by the AICPA (e.g., education, proficiency, peer review, AICPA professional ethics, GAAS, etc.), while non-CPAs are not, this is not the result of any additional requirements imposed by NCUA. The NCUA Board has no jurisdiction over the imposition of auditing standards governing the work of CPAs. The only way to ''regulate away'' the purported ''economic disadvantage'' the CPAs would be to limit the performance of supervisory committee audits to licensed, independent certified public accountants. This would create an ''economic disadvantage'' as to all other types of auditors, particularly those who audit small credit unions. The NCUA Board does not believe this is a viable solution.

Third, examiners review the work of compensated auditors for compliance with this section. Wherein such examination requires the non-CPA examiner to review compensated auditor's work for compliance with GAAS and a deficiency is suspected, NCUA recognizes it is not an authority on GAAP or GAAS. Referral to state accountancy licensing authorities or the AICPA Ethics Division, where applicable, will be NCUA's means of seeking assistance to make such determinations. NCUA is sympathetic to the argument that non-CPAs do not have the knowledge and proficiency necessary to determine the extent of substantive testing required under GAAS, but it believes they can do so under this section which is a lesser, and regulatory defined, standard.

As to the fourth area of comment, this area is somewhat more perplexing. We have discussed SAS No. 75 and related issues in section K. Suffice it to say here that this condition exists as a result of the new auditing standard promulgated by auditing standards-setters which became effective May 1, 1996. The condition exists under the current regulation and was not created or aggravated by any NCUA effort to amend this regulation. The timing of the SAS No. 75 effective date and NCUA's efforts to revise this part are coincidental.

Areas Seemingly Misunderstood. The comment relative to ''burden on small credit unions'' are believed to have resulted primarily from a misunderstanding of the proposed amendments. Such comments made include:

- The regulations essentially require an opinion audit.
- Audit scope will have to be expanded substantially to generate the two additional reports required.
- Working paper access requirements will generate increased travel and credit union staff costs.

Each of these areas are discussed at length below.

C. Definitions

The proposal added a set of definitions for terms used in the regulation. Many of these terms, while familiar to accounting/auditing professionals, may be less well know to supervisory committee volunteers. The proposed definitions included: (1) Agreed-upon procedures; (2) Applicable generally accepted auditing standards (GAAS); (3) Audit or Opinion audit; (4) Compensated auditor; (5) Financial statements; (6) Generally accepted

accounting principles (GAAP); (7) Generally accepted auditing standards (GAAS); (8) Independence or Independent; (9) Independent, licensed, certified public accountant; (10) Internal controls; (11) Other comprehensive basis of accounting; (12) Related party transactions; (13) Reportable conditions; (14) Substantive testing; (15) Supervisory committee; (16) Supervisory committee audit; and (17) Working papers. The NCUA Board also requested comment on whether any additional terms should be defined in the regulation.

Eight commenters believe no further terms should be defined while three commenters believe the final amendments should define additional terms. One commenter requests a definition of ''verifications.'' One commenter requests NCUA define ''summary of operations'' One commenter believes NCUA should define ''internal auditor'' and ''Standards for the Professional Practice of Internal Auditing.'' Thirteen commenters believe that the proposal adequately defined the terms listed. Three of these commenters state that the definitions are valuable to credit unions. Four commenters believed that the proposal does not adequately define the listed terms.

Generally, if several commenters suggested redefinitions along the same lines and the suggested language was technically correct, the final regulation reflects the revised language. Definitions for ''internal auditor'' and ''Standards for the Professional Practice of Internal Auditing'' were not added as neither of these terms are used anywhere in the regulation. A definition for ''verifications'' was not added since it is defined and discussed fully in the existing regulation, § 701.12(e). ''Summary of operations'' is simply a phrase which was used within the ''financial statements'' definition which is not critical to an understanding of the definition or the regulation; this phrase was dropped. One definition was added and that was the SAS No. 75 definition of ''specified elements, accounts or items of a financial statement.''

The definition of ''applicable GAAS'' and the use of that term was dropped throughout the regulation. In the proposed regulation, we had defined ''applicable GAAS'' as GAAS excluding the second general standard and the standards of reporting. In the final regulation, we dropped the term ''applicable GAAS'' and instead spelled out five specific standards, contained in paragraph (c)(2). The five standards were adopted with modifications from the AICPA's ten generally accepted auditing standards, again excluding the second general standard and the standards of reporting. The Board believes that the use of the term ''applicable GAAS'' may intimidate laymen; spelling out the specific standards intended should help eliminate any apprehension. The Board believes these standards are reasonable and attainable.

The proposal defined ''audit or opinion audit'' in part, as an examination of the financial statements performed by an independent, licensed, certified public accountant in accordance with generally accepted auditing standards. One commenter believes that this definition must be modified. This commenter states that an ''audit'' and an ''opinion audit'' are not the same thing, and not all credit unions need an opinion audit which is performed by an ''independent, licensed, certified public accountant.'' One commenter states that since the definition applies to the word ''audit'' alone it is unclear if this requirement applies everywhere in the regulation where the term is used. For example, this commenter states that ''Supervisory Committee Audit'' could mean an ''audit'' by a CPA, which the commenter believes is beyond the scope of what NCUA is requiring with this proposal. This commenter suggests restricting the definition to only ''opinion audits.'' One commenter states that there is an inconsistency between the definition of ''audit'' or ''opinion audit'' and the proposed supervisory committee audit in Section 701.12(c). This commenter states that the definition states an audit is to be performed by an independent, licensed, certified public accountant; whereas Section 701.12(c) provides other alternatives in the completion of an audit and specifically provides that someone other than a certified public accountant such as the supervisory committee may conduct audits.

Within the accounting profession and as represented in GAAS, ''audit'' is the term used for an ''opinion audit''. In fact, ''opinion audit'' is jargon for ''audit''; the terms are synonymous. However, since the use of the term ''audit'' in the regulation without an accompanying adjective such as ''opinion'' or ''supervisory committee'' was confusing to some of the commenters, we have eliminated the definition of ''audit,'' narrowed the definition to ''opinion audit'' and use only the term ''audit'' (when used as a noun) throughout the regulation preceded by descriptive terms, e.g., *opinion* audit, or *supervisory committee* audit. As to the alternatives set forth in § 701.12(c), these relate to the performance of a supervisory committee audit. The scope of an opinion audit exceeds that a supervisory committee audit. Thus, an opinion audit which complies with GAAS, would exceed the requirements of the regulation.

The proposal defined a ''compensated auditor'' as any accounting/auditing professional who is compensated for performing the supervisory committee audit and/or verification services. Thirteen commenters believe that the term ''compensated auditor'' should be revised so as to distinguish between the credit union's internal auditor and the credit union's contracted external auditor. These commenters believe the proposal could be interpreted so that a compensated auditor is defined as an accounting or auditing professional who is employed directly by the credit union. Two commenters believe that the term ''compensated auditor'' should not include someone who simply lends a hand to the supervisory committee in completing the audit. Two commenters believe that external auditors should be licensed professionals (such as CPAs) to ensure that audits are detailed and reflect the actual financial condition of the institution.

The Board found the comments in this area helpful and has amended the definitions in response to some of the suggestions. It is not the Board's intent to include credit union employees acting in the course of their employment (internal auditors) or someone who simply lends a hand (volunteer). Nor is the Board comfortable with restricting the performance of supervisory committee audits to licensed professionals. The definition has been changed to exclude employees and to exclude individuals who perform no more than one compensated supervisory committee audit per calendar year. The later provision was added to ease the burden for small credit unions who may benefit through the assistance of a volunteer, someone who simply lends a hand, e.g., the local bookkeeper who, while compensated, performs the supervisory committee audit (one per calendar year) for a minimal and reasonable remuneration.

The proposal defined generally accepted auditing standards (GAAS) in part as the standards approved and adopted by the American Institute of Certified Public Accountants which apply when ''independent, licensed certified public accountants'' audit financial statements. One commenter believes this definition will substantially increase the costs of audits for smaller credit unions that do not use a CPA. One commenter believes that the definition implies that a CPA is bound

by GAAS but non-CPAs are exempted from certain provisions and that this is unfair to the CPA. One commenter states that the definition does not identify which items of GAAS do not apply to the supervisory committee or its uncompensated auditor.

In the final regulation, the Board has eliminated the use of the term ''applicable GAAS'' and refers to GAAS only once in the final regulation—in paragraph (c)(4), in conjunction with expanded scope for compensated auditors. The term ''applicable GAAS'' appeared to intimidate many commenters. The Board has replaced this approach by listing five relevant standards in the body of the regulation. The standards were adopted with modifications from the AICPA's ten generally accepted auditing standards, again excluding the second general standard and the standards of reporting. Procedures and testing performed consistent with the five identified standards are required for credit union supervisory committees, whether they hire a compensated auditor or not. Scope of work within the guidelines of the regulation, and degree of substantive testing (nature, extent and timing), are set by the supervisory committee or its designated representative based on its assessment of inherent risk, after gaining an understanding of the internal control environment. This approach does not bind a supervisory committee or its designated representatives to those requirements of GAAS which are definitionally unattainable, e.g., certain GAAS provisions a non-CPA cannot meet by virtue of the fact that he is not a CPA.

There is no additional burden imposed in redefining the standard supervisory committees must meet in the performance of procedures and testing. By eliminating the term ''professional auditing procedures and standards'' which is non-specific, and replacing it with a listing of the five specific, relevant standards, the Board is issuing clearer standards. The amendment will not substantially increase burden on small credit unions because the regulation clearly does not require a CPA opinion audit, neither in *scope of work* nor *reporting burden*. There is no requirement for financial statements to accompany the report; no opinion is necessary; and negative assurance is not required. Since many of the commenters misunderstood certain provisions of the proposed regulation, their estimates of burden were based on a scope of work and reporting requirements substantially greater than what was actually proposed and/or intended. An additional burden exists only in the area of audit scope (not reporting) *when the work is performed by a compensated auditor*. While there is increased burden to some credit unions resulting from this requirement, the Board believes it is necessary and minimal.

The proposal defines ''independence and independent'' as ''without bias with respect to the credit union so as to maintain the impartiality necessary for the reliability of the compensated auditor's findings. Independence requires the exercise of fairness toward credit union management, members, creditors and others who may rely upon the independent, compensated auditor's report. Auditors must be independent in fact and in appearance.''

Eighteen commenters believe that this definition may pose problems for state leagues because some leagues are owned by credit unions for which the league provides audit services. These commenters request that the definition be clarified because they believe if the proposed definition of ''independence'' is strictly applied it could put league audit services out of business. They request that the preamble to the final amendments specifically state that league auditing programs are considered independent under the regulation. Seven commenters believe that a league audit is considerably cheaper than an audit by an accounting firm and if the state league was prohibited from doing the audit it would result in increased costs to credit unions. Some commenters also believe this definition should not be construed to mean that only CPAs could perform audits for credit unions. Several commenters recommend deleting the following sentence from the definition: ''Auditors must be independent in fact and in appearance.''

NCUA has revised the definition for ''independence'' to exclude the following: ''without bias with respect to the credit union'' and ''Auditors must be independent in fact and in appearance.'' Further, it is not the Board's intent to exclude league auditing services from performing supervisory committee audits or to require such services to use report terminology reserved by state laws specifically for CPAs. The Board is persuaded, however, that to be considered independent, league auditors must be *independently managed*. League auditors will not be considered independent in providing supervisory committee audits for a credit union if the credit union to be audited has an executive/employee on the affiliated league board who influences board decisions relative to the league auditing service. League auditors would be considered independent if the executive/employee on the affiliated league board recuses himself from all discussions, decisions, or actions directly or indirectly related to the league auditing service/department/function and/or meeting any requirements of this section. Additionally, the recusal must be documented in the written board minutes. Another alternative would be for reciprocity of league auditing services between leagues and credit unions subject to this restrictive interpretation. A third alternative would be for the league auditing service to periodically obtain a peer review from another league auditing service, similar to current practice for AICPA-affiliated, CPA firms in public practice. Such a peer review would provide a reasonably independent quality review of the league auditing service's compliance with required auditing standards in the performance, documentation, and reporting of auditing services provided to federally-insured credit unions. The written peer review report would be available to NCUA, upon request, in conjunction with the examination of a particular credit union's supervisory committee audit and verification.

The proposal defined ''internal controls'' in part as the process, established by the credit union's board of directors, officers and employees designed to provide reasonable assurance of reliable financial reporting and safeguarding of assets against unauthorized acquisition, use or disposition. Furthermore, this definition stated that a credit union's internal control structure consists of five components: control environment; risk assessment; control activities; information and communication; and monitoring. One commenter states that this definition could result in a decrease in testing of internal control structures.

The supervisory committee's responsibilities with regard to internal controls is clearly set forth in § 701.12(b)(2)(i) and (c)(2). The compensated auditor's further responsibility with regard to internal controls is set forth in § 701.12(c). The proposed and final regulation does not decrease the amount of testing of internal control structures than is required in the existing regulation, nor does it drastically expand required testing. The Board intends that the supervisory committee attain an understanding of the internal control structure; assess the level of control risk; and based thereon, determine the nature, timing, and extent of substantive testing necessary to comply with the

minimum supervisory audit scope. The materiality level the supervisory committee chooses to govern scope and testing must encompass reasonable tests of the internal control structure commensurate with the size and complexity of the credit union under audit. Choosing a materiality level which results in no reasonable testing of internal controls would not be acceptable. Expanding audit scope to achieve a complete audit of the credit union's system of internal controls (commenter terms this ''full compliance audit'') *is not intended*. The Board is simply seeking the extent of internal control testing which is normal in the audit of financial statements. The distinction would be clear to accounting/auditing professionals; it may be less so to supervisory committee member volunteers.

The proposal defined ''related party transactions'' as transactions among or between parties where one party controls or can significantly influence the management or operating policies of the other so as to prevent the other party from pursuing exclusively its own interests. The proposals provided the following examples of related parties: credit union members and their families, and credit union officials and their families. The proposal also stated that examples of ''related party transactions'' include: interest-free loans or loans at below market rates; sale of real estate significantly below appraised value; nonmonetary exchange of property; and making of loans lacking scheduled terms for repayment. Three commenters believe the definition of ''related party transactions'' should include examples of related parties similar to those used in the preamble rather than those provided in the proposed definition. Two commenters believe that the examples of related parties in the definition is vague and obscures the meaning of the term.

The definition of related parties has been changed to eliminate credit union members and their families and to add examples of related parties to include: executive management, board members, supervisory committee members, credit committee members, employees and their families.

The proposal defined ''supervisory committee audit'' in part as an examination of the credit union's financial statement in accordance with applicable GAAS, which is performed by the supervisory committee or its designated representative as required by the regulation. Furthermore, the last sentence of the definition stated that an opinion audit as defined by this regulation satisfies the definition of ''supervisory committee audit.'' One commenter states that the supervisory committee responsibilities need to be specifically defined, as well as any sanctions or penalties, if any, that may be assessed and how they will be determined. One commenter states that the last sentence of this proposed definition should be eliminated. One commenter states that this definition implies that a supervisory committee audit must be undertaken by a certified public accountant. This commenter suggests NCUA use ''supervisory committee review'' instead of ''supervisory committee audit'' to clarify this issue.

The Board changed the definition of ''supervisory committee audit'' to drop the ''applicable GAAS'' reference, consistent with the addition of paragraph (c)(2) detailing five specific standards which must be met in the conduct of the supervisory committee audit. We continue to include the last sentence in the definition but have revised it to indicate that an opinion audit is one of several ways to satisfy the requirements of the regulation. It is a misinterpretation of the proposed regulation to conclude that a supervisory committee audit must be undertaken by a certified public accountant. The Board continues to use the term ''supervisory committee audit'' because this is how the function is identified in the Federal Credit Union Act. The Board is satisfied that the final regulation clearly defines the supervisory committee responsibilities, short of providing a written audit program. Available sanctions and penalties are those that are normally available to NCUA in dealing with regulatory non-compliance as granted throughout the Federal Credit Union Act and administered through the NCUA's Regulations.

The proposal defined ''working papers'' in part as the principal record, in any form, of the work performed by the auditor and/or supervisory committee to support its findings and/or conclusions concerning significant matters. The definition provided the following examples of documents that meet this definition: the written record of procedures applied, tests performed, information obtained, and pertinent conclusions reached in the engagement, audit programs, analyses, memoranda, letters of confirmation and representation, abstracts of credit union documents, reviewer's notes, if retained, and schedules or commentaries prepared or obtained by the independent, compensated auditor. One commenter specifically supports this definition. Several commenters believe that although they agree with the ''working papers'' definition, they do not agree that all of the examples of working papers cited therein meet the definition. They believe that all of the auditors' memoranda, personal notes, and commentaries do not make up the principal record of the work performed. They suggest references to these items be eliminated from the list of examples provided in the definition of working papers. One commenter believes the definition is so extensive that it may discourage the compilation of notes and other internal memoranda, to the detriment of the credit union having a thorough audit.

The Board believes that, in the past, accounting/auditing professionals have afforded themselves broad license in determining what they will provide to NCUA staff in the way of working papers. This situation has resulted through a wide interpretation, by some compensated auditors, of what constitutes ''proprietary information.'' The Board is persuaded that such discretion needs to be limited. NCUA staff needs access to a complete set of working papers. The Board believes much of what compensated auditors have held back as ''proprietary'' is integral to NCUA staff in assessing if the audit meets regulatory requirements. Requiring full access to existing working papers should in no way discourage the compilation of notes and other internal memoranda, to the detriment of the credit union having a thorough audit. The standards requiring working paper documentation is not changed, lessened or strengthened by this final regulation which is simply seeking full disclosure to NCUA staff of existing working paper information. Photocopies are not required.

D. Expanded Audit Scope

The proposed amendments expanded the required audit scope when a supervisory committee employs the services of a compensated auditor. The Board proposed the changes to address practical enforcement problems in the existing regulation, some of which have arisen through the examination process as a matter of course and others of which have arisen in litigation and in negotiating settlements. Additionally the changes were intended to eliminate vagueness regarding the required audit scope as well as improving supervisory committee audits. The vagueness of audit scope has been the subject of complaints from both credit unions and examiners.

The Board proposed that the supervisory committee audit shall be made by the supervisory committee or

its designated representative using applicable GAAS. Furthermore, the Board proposed that for the compensated auditor, audit testing of the following areas must satisfy applicable GAAS for expressing an opinion on the financial statements taken as a whole: internal controls, cash, loans and interest thereon, shares and dividends and/or interest thereon, related party transactions, and the detection and reporting of errors and irregularities with regard to each of these areas.

Three commenters specifically support the new audit scope. Two commenters believe the clarification eliminates any possible confusion regarding the overall requirements of the audit. One commenter recommends that this section be revised to state that the supervisory committee shall determine whether the established internal controls are sufficient to identify/detect material errors and fraud. The Board does not believe it is necessary to revise this section to include the suggested language because the responsibilities of the supervisory committee with regard to ''internal controls'' and ''error, carelessness, conflict of interest, self-dealing and fraud errors and irregularities'' are already set forth.

Seventeen commenters believe a compensated auditor should follow GAAS. Two of these commenters believe credit union auditors should be held to the same high standards as auditors in other industries. One of these commenters stated that GAAS is the acceptable standard for all audits. One of these commenters believes that a compensated auditor should be required to follow GAAS but it should not be required by regulation. One supporting commenter believes that this amendment will have numerous unintended consequences, one of which will result in requiring any audit performed by a CPA to be an opinion audit. This commenter also believes the proposal could harm small credit unions by having them seek less qualified individuals.

As addressed above, the Board does not wish to require an opinion audit for credit unions. To require compensated auditors to meet GAAS in scope of work, audit testing and reporting would be to require an opinion audit by a licensed, independent certified public accountant. The Board believes adopting the five specific standards set forth in the final regulation is preferable to the existing rule's reference to ''professional auditing procedures and standards''; the former is specific while still allowing for reasonable judgment, the later is too vague. And while the expanded audit scope may slightly increase costs to some credit unions, the Board believes this burden is reasonable and necessary in light of the substandard audits NCUA found in some credit unions.

Twenty commenters believe compensated auditors should not be required to follow GAAS. One of these commenters believes that it appears to have the practical effect of requiring the performance of an opinion audit, except the actual issuance of an opinion, whenever an outside auditor is used. Six of the commenters believe such a requirement will increase credit union costs. Three commenters believe this requirement will hurt small credit unions. One commenter believes that the proposed GAAS requirements could result in small credit unions employing CPAs to perform the audit and could discourage members from volunteering to serve on the supervisory committee. In the final regulation, a standard far short of GAAS is being required. Five specific standards governing performance of the work are set forth in the final regulation. Financial statements are not necessary, an opinion or attestation is not required, negative assurance is not sought, and GAAS reporting standards do not have to be met, paragraph (c)(4). Only compensated auditors are being held to GAAS-level *scope* and *testing* (not reporting), and then, only in selected risk areas. We continue to believe that the increased burden estimates were based on a misunderstanding of proposed regulatory requirements.

One commenter states requiring non-CPA auditors to meet CPA standards is tantamount to requiring CPA audits. Another commenter states that league auditors are not allowed by AICPA rules to use the terms GAAS and GAAP in their audit reports. Furthermore, the commenter states that if these terms are required it will mean that only CPAs could audit credit unions which would prohibit league audits as well as increase credit union costs. The proposed and final regulations do not require non-CPAs to use GAAS and GAAP references or language in supervisory committee audit reports. In the proposed regulation the definition of ''applicable GAAS'' excluded the ''standards of reporting.'' The final regulation continues to exclude these reporting standards. The relevant standards governing performance of work have been more specifically identified in the final regulation in paragraph (c)(2).

One commenter believes that NCUA should determine what additional procedures should be performed, if any, on a credit union by credit union basis, rather than requiring all compensated auditors to complete an expanded scope. Another commenter also states that NCUA should not require expanded scope for all credit unions. It is not practical for NCUA to determine what additional procedures should be performed, if any, on a credit union by credit union basis, thus this alternative of requiring the supervisory committee or its designated representative to attain an understanding of the internal control environment, assess control risk, and based thereon, determine the extent of substantive testing necessary to meet the requirements of this section. The guidelines NCUA primarily will use in assessing the adequacy of the expanded scope under paragraph (c)(4) will be the AICPA's guide, ''Audits of Credit Unions'', relevant chapters, subheading ''Audit Objectives and Procedures'' where discussions are provided on audit objectives, planning considerations, internal control structure, tests of controls, and substantive tests. The expanded scope in selected, identified areas for all credit unions that employ a compensated auditor should contribute to improved consistency and uniformity.

One commenter believes the proposed amendments impose different and higher standards for supervisory committee audits conducted by compensated auditors than those performed by supervisory committees or uncompensated auditors. Two commenters believe the proposed amendment is an attempt to permit non-CPAs to perform the work of CPAs when auditing credit unions. Both commenters believe that this poses an increased risk of substandard audits which will fail in detecting serious accounting deficiencies and internal control weaknesses. Another commenter believes a non-licensed accountant attempting to comply with the regulation may be violating state accountancy law by performing duties which can only be performed by a licensed CPA. Another commenter does not believe it is realistic or feasible to require volunteer supervisory committee members to comply with a complex body of standards that require significant education and training to understand.

While the Board appreciates the seemingly unfairness of imposing a different and higher standard for supervisory committee audits conducted by compensated auditors than for those performed by supervisory committees or uncompensated auditors, the Board must be realistic in

recognizing that imposing an expanded scope requirement for supervisory committee audits performed by layman would be to invite certain disappointment. NCUA will need to review supervisory committee audits for thoroughness and sufficiency, and recommend needed supplemental procedures and testing to enhance the effectiveness of the audit process. Furthermore, for those supervisory committees that continue to perform the audit and/or verification themselves, where the credit union's sophistication and complexity have grown beyond the capabilities of the resident supervisory committee and its staff, it will be incumbent upon NCUA to recognize the deficiencies in the audit which diminish the committee's usefulness in the oversight process assigned it under § 701.12. NCUA has significant flexibility under § 701.13 of NCUA's Regulations, through FIRREA, to call for the conduct of a second audit, one which will fulfill the intended objectives of this regulation. The requirement for a second audit would add burden since it must be performed by an independent public accountant.

E. Engagement Letter Requirement

The Board proposed to require credit unions which employ compensated auditors to memorialize the terms and conditions of the engagement in a comprehensive engagement letter, which constitutes an enforceable contract between the compensated auditor and the supervisory committee. The proposal also set forth the minimum requirements of an audit engagement to be addressed in such a letter. The Board made this proposal to further reduce the confusion for required scope components that are excluded from the audit engagement. Thirty-eight commenters support this proposal. Fourteen of these commenters believe the requirements for an engagement letter should adequately protect the interests of the supervisory committee. Five commenters believe the engagement letter will formalize the expectations of the supervisory committee. Four commenters believe that this proposal would eliminate any misunderstandings between the supervisory committee and the auditing firm. One commenter supports the requirement to provide an appendix to the engagement letter specifying the procedures to be performed.

Seven commenters believe it should be left to the discretion of the credit union to determine what specific details should be included in the engagement letter. Conversely, two commenters believe that NCUA should produce a form engagement letter in the final rule. In current practice, the engagement letter has been written primarily by the compensated auditor, for the compensated auditor. Many credit unions have signed the engagement letters thus drafted without a real knowledge or understanding of what specific details should be included. Through the engagement letter requirement, the Board hopes to help credit unions in its business dealings with the professional auditor. The regulation sets forth minimums; the credit union has full discretion to include other provisions.

The compensated auditor has the option to exclude from his scope of work any areas for which he is uncomfortable/unwilling to perform the expanded audit scope, if such exclusion is agreeable to his credit union client. He is obligated then only to caution the supervisory committee in the engagement letter that the supervisory committee will remain obligated to perform or have performed this required but excluded work. As concerns areas excluded from the audit engagement, simple, general statements, such as is demonstrated in the current AICPA Guide, Audits of Credit Unions, illustrative engagement letter, with the added caution required in the rule, § 701.12(d)(3)(i)(C), is the minimum NCUA is seeking. For example, ''The scope of this audit * * * does not include an evaluation of all areas that generally are of higher risk in the credit union industry, such as securities held or the collectibility of loans, the adequacy of collateral thereon, or the reasonableness of the allowance for loan losses,'' plus cautionary language required consistent with this section.

Five commenters stated that the requirement in the proposal that the engagement letter specify a date of delivery of the written audit report is unrealistic. They believe that the auditor can not complete the audit if the required information is not available. One commenter believes this requirement puts undue pressure on the auditor. One of these commenters stated that we should not require an exact delivery date but rather a ''target'' delivery date. The Board agrees with this commenter. Delivery date has been changed to ''target date of delivery.'' The intent is to provide the auditor with flexibility in dealing with unforeseen events while providing NCUA with a target date for receiving the report.

Nine commenters do not believe NCUA should require a formal engagement letter. One commenter believes that the requirement for an engagement letter will not adequately protect the interests of the supervisory committee. One commenter states this should not be a regulatory requirement since most credit unions already use an engagement letter. One commenter states that the use of an engagement letter is a management decision. One commenter believes the additional cost for this separate letter far outweighs the perceived benefit. Two commenters believe regulating the content of an engagement letter is unnecessary. One commenter states that the criteria and the matter to be included in the engagement letter as outlined by SAS 75 address questions concerning the conditions for engagement preference, the sufficiency of procedures, the nature, timing and extent of procedures and will address issues that may arise between the auditor and the supervisory committee.

The NCUA Board believes the engagement letter requirement will protect the credit union, will compel communication concerning the audit engagement, and will provide all parties with an enforceable contract and a documented record of accountability which hopefully will preclude NCUA from brokering disputes between the credit union and the compensated auditor. Credit unions are free to include any additional criteria, conditions, terms in the engagement letter beyond those required (such as those additionally outlined in SAS No. 75); again, the regulation is suggesting the minimum requirements. The final amendment reflects engagement letter requirements, generally as proposed, with the addition of target date of delivery, and working paper retention requirements for 3 years from the date of the audit report.

F. Requirement for a Written Report of Internal Control Exceptions or Reportable Conditions and a Written Report of Irregularities or Illegal Acts

The proposed amendments required written reports of any internal control exceptions or reportable conditions noted and of any irregularities or illegal acts noted. Eighteen commenters support the requirement to report on internal controls and possible illegalities. Ten commenters state that requiring these reports will not increase the cost of a supervisory audit. Two commenters, although supporting the requirement, believe it will increase credit union costs. Three commenters state that the information in the reports is already available in some form of report. We agree the information is already available as a result of performing the supervisory committee

audit, but current requirements do not mandate written communication.

Thirty-seven commenters oppose this requirement. Twenty-six commenters state that requiring these reports will increase the cost of supervisory committee audits. Five commenters wondered why the auditor cannot simply report any such findings in their normal report to the supervisory committee instead of creating two new reports. This option is agreeable to NCUA; we are simply seeking such information be ''reduced to writing.'' Three commenters believe that no report should be required if no internal control exceptions, reportable conditions or irregularities or illegal acts were noted. This is also agreeable to NCUA; we are not seeking negative assurance. One commenter states that auditors that find problems during the scope of their normal audit already comment on internal controls and fraud when appropriate in the audit report to the credit union. Not necessarily; CPAs are not required to communicate such matters in writing. One commenter states that one report should be able to handle both issues. The Board agrees and the final regulation reflects this.

Two commenters believe this requirement will hurt smaller credit unions since they usually have weaker controls due to small staffs. This requirement was not added to ''hurt smaller credit unions,'' but often these are the very credit unions where efforts are needed to bolster internal controls. One commenter states that the requirement to have the compensated auditor report on internal control and fraud may not be valid for all credit unions. This commenter believes that credit unions having an internal audit function should be exempted from this requirement to avoid duplication of efforts and costs. The internal audit function could be the means by which the supervisory committee chooses to comply with this section.

This was one of the most misunderstood proposed amendments to the regulation. NCUA is simply asserting that any instances of reportable conditions or errors and irregularities which are identified *in the normal course of a supervisory committee audit*, be *reduced to writing.* Currently, while such information must be reported, GAAS does not require this information to be in writing. Without written communication of these items, NCUA has limited assurance of gaining knowledge of the auditor's observations in these areas, unless the credit union provides notification voluntarily.

NCUA does not expect or require any negative assurance; no report is required if internal control exceptions, reportable conditions or irregularities or illegal acts were not noted. In many supervisory committee audit reports prepared by compensated auditors other than CPAs under existing guidelines, such internal control and fraud problems/weaknesses uncovered during the scope of their normal audit are already commented upon, when appropriate, in the audit report to the credit union. This practice continues to meet regulatory requirements under the final regulation.

NCUA has no preference whether the auditor prepares one report including this information, two reports or three; what matters is that the information is *reduced to writing.* NCUA does not expect supervisory committees to direct audit scope at discovering such problems. Nor is NCUA seeking a specific report on the control structure and any breaches of that structure or to specifically note the absence or presence of any irregular or illegal act; NCUA recognizes this would require a substantially different level of audit than heretofore has been required. The NCUA Board believes it is possible that those who argued ''burden to small credit unions'' in this reporting aspect misunderstood the intended reporting requirements in this instance, and mistakenly magnified cost estimates accordingly.

G. Clarification on Access to Original Working Papers

The proposal clarified that NCUA has unconditional access to a complete set of original working papers including all the existing documentation relative to the audit. Such access would be either at the offices of the credit union or at a mutually acceptable location. Thirty-four commenters provide varying support for the clarification. Sixteen commenters believe that unconditional NCUA access to original working papers is not overly burdensome and intrusive. Six commenters do not believe unconditional access to working papers will cause an increase in administrative and other expenses. One commenter believes that such access to original working papers will assist NCUA in its exams and that the clarification makes good business sense. Five commenters state that it is important to maintain the confidentiality of the working papers. NCUA appreciates the auditor's concerns about maintaining the confidentiality of working papers and will cooperate reasonably with auditors to achieve this end.

Two commenters believe this section should be clarified to provide that copies, certified copies or electronic formatted data are ''originals'' for the purpose of this section. Relevant to the most recent audit completed and awaiting NCUA review, the Board rejects the notion that ''copies, certified copies or electronic formatted data are ''originals'' for the purpose of this section.'' Subsequently, and for purposes of meeting the three year working papers retention expectation, accessible alternative electronic storage is acceptable. One commenter, although supporting the proposal, believes this proposal may increase credit union costs. NCUA does not believe this clarification to the existing regulation will increase the costs to credit unions. This requirement would simply be included in the engagement letter as a clarified condition of engagement.

Three commenters state that the location for viewing the working papers must be flexible because the credit union may be located some distance from the office of the auditor. Two commenters believe that the location for NCUA access should include the external auditor's place of business. The ''mutually agreeable location'' alternative does provide for the external auditor's place of business. One commenter recommends that working papers should be made available only at the auditor's place of business for the NCUA to copy or review. This the Board finds too restrictive and continues to prefer ''or at a mutually agreeable location.'' One commenter requests that the final regulation clarify that the working papers be available, either at the auditor's or credit union's office with adequate notice and under the auditor's supervision. The proposal stated that working paper access could be at the offices of the credit union or at a mutually agreeable location. A ''mutually agreeable location'' could be at the credit union, at the auditor's place of business, or other location agreeable to the auditor. NCUA staff will be instructed to be reasonable in their negotiation of ''mutually agreeable location.'' One commenter would also put in the regulation that such access would be at an agreed upon time and an agreed upon location. The Board believes this to be the normal business practice. This commenter also believes that notes could be made but not copies. Several other commenters state that copies of the working papers should not be permitted. The Board did not propose and will not incorporate in the final regulation any requirement for NCUA to photocopy the working papers.

Twenty-seven commenters oppose the clarification on working papers. Twelve commenters stated that complete access to the original working papers is overly

burdensome and intrusive. Such access exists under the current regulation. Eight commenters believe unconditional access to working papers will cause an increase in administrative and other expenses. This should not be the case since: such access exists under the current regulation and such access will be a condition of engagement. Several commenters believe that the working papers are the property of the compensated auditor and not the credit union unless the papers are prepared by the supervisory committee. NCUA recognizes that the working papers prepared by a compensated auditor are the property of the compensated auditor. Several commenters were concerned with an examiner copying the working papers and then having the examiner retire and compete with the auditor using the auditor's program. Examiners are prohibited from copying audit programs for their personal use.

One commenter believes that the supervisory committee should not be held accountable for making sure that an independent auditor makes his or her original working papers available to NCUA since that provision is already included in the engagement letter and, as a practical matter, there is not much the supervisory committee can do to enforce that provision beyond the confines of the engagement letter. NCUA disagrees; the supervisory committee can enforce its audit contract. Several commenters believe that original working papers are the property of the auditor. NCUA acknowledges this. One of these commenters states that while the auditor can and must agree to make those papers available, NCUA has no role in enforcing that requirement against an independent auditor over whom it has no regulatory powers. NCUA acknowledges that enforcement lies with the supervisory committee. One commenter states that the proposal puts the credit union in a ''no-win'' situation. If the auditor fails to cooperate with the supervisory committee by not making the papers available, rejection of the audit is a possibility, which may result in additional expenses for a new audit or the NCUA may seek formal administration sanctions against the supervisory committee. This is true, but presently, without this provision, NCUA is ''brokering disputes'' between compensated auditors and supervisory committees. An enforceable contract should remove both NCUA and supervisory committees from the middle. With an enforceable contract, there will be a clearly defined line of responsibility and thus, a business pressure, if not the possibility of litigative pressure, for the honoring of contract terms. If a compensated auditor does not wish for NCUA to review his working papers, he should not agree to be engaged by a credit union.

One commenter believes NCUA should specify a working paper retention policy to clarify how long the working papers must be available for review. The Board agrees that an auditor should not have to retain his/her working papers indefinitely. Therefore, the Board has amended the regulation to require retention of working papers by compensated auditors for a minimum of three years from the date of the written audit report. The audit working papers for the most recent audit would need to be retained in paper form; subsequently, alternative, accessible storage would be acceptable.

H. Enforcement Mechanism

The Board proposed an enforcement mechanism to ensure compliance with this regulation by authorizing the regional director, as a first step toward enforcement, to reject as deficient the supervisory committee audit and the reports thereof. Two commenters support this proposal. One commenter encourages the NCUA Board to ensure that all regional offices use the same criteria for determining whether or not to accept a supervisory committee audit (whether or not performed by a compensated auditor). Two commenters oppose the proposal. One of these commenters believes that only state credit union supervisory agencies should initiate administrative sanctions against the supervisory committee of a state chartered credit union. Furthermore, this commenter notes that the proposed amendments bestow a great deal of discretionary authority upon regional directors and suggests the Board instruct regional directors not to reject audits which are flawed by minor technicalities.

In the case of a federally-insured state chartered credit union, the Board believes it is appropriate for the state regulator to first attempt to resolve any problems concerning the supervisory committee audit. The Regional Director will take action after the state regulator has had a reasonable opportunity to reach a satisfactory result. The Board will instruct its regional offices on the proper criteria in determining whether to accept or reject a supervisory committee audit to minimize differences among the regions and provide more consistency. NCUA will not be rejecting supervisory committee audits for minor technicalities.

I. Effective Date

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 requires the federal regulators of banks and savings associations to make all regulations that impose new requirements take effect on the first date of the calendar quarter following publication of the rule unless good reason exists for some other effective date. Although NCUA is not formally subject to this requirement, Letter to Credit Unions #158 stated that the requirements would be beneficial to credit unions and that NCUA planned to implement it whenever practicable. NCUA believes that delaying the effective date to December 31, 1996 is necessary so that credit unions and individuals conducting supervisory committee audits have sufficient time to understand the regulation and determine what type of audit will best serve their needs. Therefore, the regulation will be effective for audits conducted for, and covering, the audit period ending on December 31, 1996, and thereafter.

J. Request for Comment on Whether Credit Unions Should Have an Ongoing Internal Audit Function

The Board requested comment on whether it should mandate an internal audit function and, if so, whether such a requirement should be imposed on all or only some credit unions, and on what basis. Seventeen commenters support mandating an internal audit function. Ten commenters believe an audit function should be required based on some combination of asset size and complexity of operations. Two commenters believe it should be required for credit unions with assets in excess of $100 million. Another commenter believes it should be required for credit unions with assets over $150 million. Another commenter believes asset size should be the basis for requiring an internal audit function. One commenter believes the audit function should be based on complexity of operations and not asset size.

Fifty-three commenters oppose requiring a credit union to have an ongoing internal audit function. Thirty-three commenters believe the decision to have an internal audit function should be made by credit union management. Four commenters believe that many credit unions can not afford an internal audit function. Two commenters believe the internal audit function is costly and that the internal auditor may not adequately scrutinize operations. Several commenters believe NCUA should not require but instead

encourage large and complex credit unions to have an internal audit function.

Three commenters believe that both compensated auditors and internal auditors should be hired, report to and receive instructions from the supervisory committee. They believe any other line of reporting compromises the integrity of the communication. Sixteen commenters believe it is not always feasible or desirable for the auditor to report directly to the supervisory committee, especially if the credit union is relatively large. Most of these commenters believe that each credit union should decide to whom the auditor reports.

The Board is not requiring an internal audit function at this time because it believes that the costs of mandating such a function for all credit unions outweighs the perceived benefit. The Board, however, continues to encourage credit unions to have an ongoing internal audit function if management believes it would be helpful as well as economically prudent. The Board also believes it is important to minimize possible conflicts of interest when determining to whom the internal auditor reports. Management should carefully consider whether it is feasible for their credit union to have the compensated or internal auditor report to the supervisory committee.

K. Relevance of SAS No. 75 to CPAs and Its Impact on Supervisory Committee Audits

Effective May 1, 1996, the AICPA adopted SAS No. 75 which provides in pertinent part:

b. The accountant and the specified users agree upon the procedures performed or to be performed by the accountant.

c. The *specified users take responsibility for the sufficiency of the agreed-upon procedures* for their purposes. (emphasis added)

In essence, SAS No. 75 requires the CPA to identify the ''specified users'' of a ''report on agreed-upon procedures'' and, in advance of such an engagement, to obtain an acknowledgment from all identified specified users that the procedures the auditor will perform are sufficient to satisfy the ''specified user's'' needs. There is no doubt that a credit union's supervisory committee and its board of directors are ''specified users'' because they will rely on the auditor's report. However, some may contend that, in addition, NCUA itself is a ''specified user'' of each credit union's supervisory committee audit report. This would put NCUA in the position of having to agree with the CPA and each credit union as to the agreed-upon procedures the CPA will use to ensure that each credit union's audit satisfies the requirements of § 701.12.

To expect NCUA to acknowledge the sufficiency of a set of procedures in meeting this part prior to the credit union's engagement of a CPA is both infeasible and would shift the responsibility for the supervisory audit from the credit union's supervisory committee to NCUA. The supervisory committee or its designated representative, not NCUA, is uniquely able to ''attain an understanding of the internal control environment, assess control risk, and based on the control risk, determine the substantive testing (nature, extent, and timing) necessary'' to comply with this section.

Many credit union supervisory committees hire a compensated auditor because they do not have the expertise necessary to perform the supervisory committee audit. Supervisory committees consisting primarily of volunteers cannot be expected to acknowledge the sufficiency of a set of agreed-upon procedures developed by accounting professionals. In such cases, the supervisory committee would naturally rely upon the assistance of a CPA to attain an understanding of the internal control environment, assess control risk, and based on the control risk, determine the substantive testing that is necessary.

Since 1985, NCUA's objective has been to place with the credit union and its supervisory committee the responsibility for sufficiency of audit procedures and testing. This approach was enunciated in the preamble to the 1985 rule, as follows:

The supervisory committee must carry out its duties in a manner responsive to each credit union's circumstances, i.e., the supervisory committee must use good judgment in determining the scope, the frequency, and the detail of the committee's activities. (Deregulation efforts recognized that) * * * a credit union's audits and reviews must reflect each credit union's business activities and financial and operating condition. The committee's work requires judgment of each credit union's needs based on an analysis of each institution's strengths and weaknesses * * * *Since the committee is responsible for the audit, it should determine the scope of the work to be performed. The scope of the work should be varied based on the nature of risk and exposure for each transaction or account being audited within each federal credit union.* [50 CFR 8710, March 5, 1985] (emphasis added).

NCUA's approach is consistent with the approach of the auditing profession today. In fact, SAS No. 75 is premised upon this same line of reasoning, shifting this burden away from the independent accountant to the specified user.

The issue created by AICPA's adoption of SAS No. 75 exists under both the current, and this revised supervisory committee audit regulation. Some compensated auditors suggest that SAS No. 75 limits them to performing only opinion audits for credit unions. To the extent that this claim is true, both the cause and the remedy for this limitation resides with the accounting profession.

The NCUA Board continues to welcome the CPA practitioner in the performance of supervisory committee audits as one of several favorable options for credit union supervisory committees. It is the NCUA Board's intent to allow credit unions a full range of options in whom they may contract with to have their audit work performed. NCUA will continue to work with the AICPA toward a practicable solution to this question to enable CPA practitioners to perform non-opinion, supervisory committee audits.

L. Comments Received on Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has certified that small credit unions (less than $1 million in assets) will not see a significant impact because of this proposal. Fourteen commenters believe that NCUA's assessment of the monetary costs of these changes is wrong. Two of these commenters believe it will effect credit unions under $50 million in assets by doubling the cost of the supervisory committee audit. Another commenter states it will substantially increase the cost for small credit unions. NCUA believes these burden estimates are based on a misunderstanding of the proposed requirements as discussed above, especially in the areas of scope of work and reporting.

In the final analysis, a cost of doing business as a credit union or any other financial institution is the conduct of an audit to ensure member confidence. The audit must be performed by persons with audit skills commensurate with the complexities of the credit union. For credit unions under $1 million who are already hiring a compensated auditor to perform the supervisory committee audit, NCUA believes the engagement letter requirement, the expanded scope requirement, and ''reducing to writing'' identified reportable conditions/errors

or irregularities may minimally increase costs. It is a normal business practice for compensated auditors to obligate audit clients to sign engagement letters and many of the affected credit unions are already doing so. Merely ''reducing to writing'' identified and known reportable conditions and/or errors and irregularities cannot be significantly burdensome. The expanded scope requirements then require examination.

Cost can be controlled or reduced by the credit union establishing or strengthening its system of sound internal controls which serve to contain control risk. Favorable control risk can mean the reduced necessity for extensive substantive testing, thus, lower audit costs. We estimate that approximately 64% of the credit unions under $1 million have supervisory committee audits which are performed by the supervisory committee itself (not affected); receive opinion audits (already meet expanded scope); or engage outside auditors who do not meet the definition of ''compensated auditor'' (not affected). Thus, few, if any, of these estimated credit unions will be significantly affected by the expanded scope requirements of this section.

Paperwork Reduction Act

In the proposal the NCUA Board estimated that for most credit unions the additional paperwork will require only one to three hours a year of additional time. One commenter asks if NCUA has determined the extra time needed for auditors to complete the additional reports required by the proposed regulation. Another commenter believes the paperwork requirements are much higher than stated in the proposal.

The additional paperwork burden to the credit union is *only relevant to credit unions hiring compensated auditors* and lies primarily in the engagement letter requirement and in ''reducing to writing'' reportable conditions and/or errors and irregularities, if any, NCUA did not include paperwork burden as to the compensated auditor, simply additional paperwork burden as to the credit union. NCUA continues to believe the paperwork burden to credit unions is in line with original estimates.

M. Miscellaneous

One commenter requested that the final rule or its preamble explicitly state that this rule does not apply to corporate credit unions. Section 701.12 does not apply to corporate credit unions. One commenter believes that the proposal unfairly singles out those credit unions that are attempting to upgrade their operation by hiring an independent auditor to do the annual supervisory committee audit. NCUA encourages supervisory committes to avail themselves of the services of compensated auditors when it is advisable and feasible to do so; this regulation is in no way designed to discourage credit unions from doing so. The Board is persuaded in all but the exceptional case, supervisory committees will choose the auditor alternative which is best for its credit union under the circumstances. Failing this, the Board is confident that the annual examination process will identify those credit unions in which evoking the FIRREA provisions of § 701.13 will become necessary.

The Board is not issuing any changes to the current regulation regarding the independence and verification of members' accounts but they will be redesignated as § 701.12(g) and (h), respectively. The Board is adopting in final the one proposed change to § 701.13 to redesignate the current § 701.12(e) as § 701.12(h).

N. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). As noted above, NCUA determined in the proposed rule that there was no significant economic impact on small credit unions. Comments received are discussed above. Accordingly, the NCUA Board determines and certifies that this final amendment does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

Comments received on paperwork collection requirements are discussed above. The information collection requirements in the final rule have been submitted to the Office of Management and Budget. The control number assigned for this rule is 3133–0059, approved for use through April 30, 1997.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final amendments will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of rights and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 701

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 24, 1996.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for Part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, 1798 and Public Law 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.*, 42 U.S.C. 1981 and 42 U.S.C. 3601–3610.

2. § 701.12 is amended by redesignating paragraphs (d) and (e) as paragraphs (g) and (h), by revising paragraphs (a) through (c), and by adding new paragraphs (d) through (f) to read as follows:

§ 701.12 Supervisory committee audits and verifications.

(a) *Definitions.* As used in this chapter:

(1) *Agreed-upon procedures engagement* refers to the performance by an independent, licensed certified public accountant of an engagement in which the scope is limited to applying specified agreed-upon procedures to one or more specified elements, accounts or items of a financial statement. Such procedures are insufficient to express an opinion regarding either the financial statements taken as a whole, or the specified elements, accounts or items under examination.

(2) *Compensated auditor* refers to any accounting/auditing professional, excluding credit union employees, who is compensated for performing more than one compensated supervisory committee audit and/or verification of members' accounts, or opinion audit, per calendar year.

(3) *Financial statements* refers to a presentation of financial data, including accompanying notes, derived from accounting records of the credit union, and intended to disclose a credit union's economic resources or obligations at a appoint in time, or the changes therein for a period of time, in conformity with GAAP or RAP, as

defined herein. Each of the following is considered to be a financial statement: a balance sheet or statement of financial condition; statement of income or statement of operations; statement of undivided earnings; statement of cash flows; statement of changes in members' equity; statement of assets and liabilities that does not include members' equity accounts; statement of revenue and expenses; and statement of cash receipts and disbursements.

(4) *GAAP* is an acronym for ''generally accepted accounting principles'' which refers to the conventions, rules, and procedures which define accepted accounting practice. GAAP includes both broad general guidelines and detailed practices and procedures, provides a standard by which to measure financial statement presentations, and encompasses not only accounting principles and practices but also the methods of applying them.

(5) *GAAS* is an acronym for ''generally accepted auditing standards'' which refers to the standards approved and adopted by the American Institute of Certified Public Accountants which apply when an ''independent, licensed certified public accountant'' audits financial statements. Auditing standards differ from auditing procedures in that ''procedures'' address acts to be performed, whereas ''standards'' measure the quality of the performance of those acts and the objectives to be achieved by use of the procedures undertaken. In addition, auditing standards address the auditor's professional qualifications as well as the judgment exercised in performing the audit and in preparing the report of the audit. Copies of GAAS may be obtained from the AICPA, Order Department, Harborside Financial Center, 201 Plaza Three, Jersey City, NJ 07311–3881, telephone (800) TO–AICPA or (800) 862–4272.

(6) *Independence* and *Independent* means the impartiality necessary for the reliability of the compensated auditor's findings. Independence requires the exercise of fairness toward credit union officials, members, creditors and others who may rely upon the supervisory committee audit report.

(7) *Internal controls* refers to the process, established by the credit union's board of directors, officers and employees, designed to provide reasonable assurance of reliable financial reporting and safeguarding of assets against unauthorized acquisition, use, or disposition. A credit union's internal control structure consists of five components: control environment; risk assessment; control activities; information and communication; and monitoring. Reliable financial reporting refers to preparation of financial statements that ''present fairly'' the financial position of the credit union and results of its operations and its cash flows, in conformity with GAAP or RAP, as defined herein. Internal control over safeguarding of assets against unauthorized acquisition, use, or disposition refers to prevention or timely detection of transactions involving such unauthorized access, use, or disposition of assets which could result in a loss that is material to the financial statements.

(8) *Licensed, certified public accountant* refers to an accounting/auditing professional who has received a certificate and license from a duly-appointed state licensing authority to practice accounting/auditing, and is independent as defined herein.

(9) *Opinion audit* refers to an examination of the financial statements performed by an independent, licensed, certified public accountant in accordance with GAAS. The objective of an ''opinion audit'' is to express an opinion as to whether those financial statements of the credit union present fairly, in all material respects, the financial position and the results of its operations and its cash flows in conformity with GAAP or RAP, as defined herein.

(10) *RAP* is an acronym for ''regulatory accounting practices'' which refer to the conventions, rules, and procedures governing accepted accounting practices, other than GAAP, for credit unions and having the substantial support of either the NCUA or the applicable state credit union supervisor.

(11) *Related party transactions* refers to transactions among or between parties where one party controls or can significantly influence the management or operating policies of the other so as to prevent the other party from pursuing exclusively its own interests. Examples of related parties include: executive management, board members, supervisory committee members, credit committee members, and employees, and their families. Examples of ''related party transactions'' include: interest-free loans or loans at below market rates; sale of real estate significantly below appraised value; nonmonetary exchange of property; below market fees, and making of loans lacking scheduled terms for repayment.

(12) *Reportable conditions* refers to a matter coming to the attention of the independent, compensated auditor which, in his or her judgment, represents a significant deficiency in the design or operation of the internal control structure of the credit union, which could adversely affect its ability to record, process, summarize, and report financial data consistent with the representations of management in the financial statements.

(13) *Specified elements, accounts or items of a financial statement* refers to accounting information that is a part of, but significantly less than, a financial statement. These may be directly identified in a financial statement or notes thereto; or they may be derived from a financial statement by analysis, aggregation, summarization, or mathematical computation.

(14) *Substantive testing* refers to testing of details and analytical procedures to detect material misstatements in the account balance, transaction class, and disclosure components of financial statements.

(15) *Supervisory committee* refers to a supervisory committee as defined in Section 111(b) of the Federal Credit Union Act, 12 U.S.C. 1786(r). For some federally-insured state chartered credit unions, the ''audit committee'' designated by state statute or regulation is the equivalent of a supervisory committee.

(16) *Supervisory committee audit* refers to an examination of specified elements, accounts or items of the credit union's financial statement to the full extent required in this part. An opinion audit as defined herein exceeds the requirements of a ''supervisory committee audit.''

(17) *Working papers* refers to the principal record, in any form, of the work performed by the auditor and/or supervisory committee to support its findings and/or conclusions concerning significant matters. Examples include the written record of procedures applied, tests performed, information obtained, and pertinent conclusions reached in the engagement, proprietary audit programs, analyses, memoranda, letters of confirmation and representation, abstracts of credit union documents, reviewer's notes, if retained, and schedules or commentaries prepared or obtained by the independent, compensated auditor.

(b) *Supervisory committee responsibilities.* (1) The supervisory committee is responsible for ensuring that:

(i) The financial condition of the credit union is accurately and fairly presented in the credit union's financial statements; and

(ii) The credit union's management practices and procedures are sufficient to safeguard members' assets.

(2) To meet its responsibilities, the supervisory committee shall determine whether:

(i) Internal controls are established and effectively maintained to achieve the credit union's financial reporting objectives which must be sufficient to satisfy the requirements of the supervisory committee audit, verification of members' accounts and its additional responsibilities;

(ii) The credit union's accounting records and financial reports are promptly prepared and accurately reflect operations and results;

(iii) The relevant plans, policies, and control procedures established by the board of directors are properly administered; and

(iv) Policies and control procedures are sufficient to safeguard against error, carelessness, conflict of interest, self-dealing and fraud.

(c) *Supervisory committee audit.* (1) A supervisory committee audit of each Federal credit union shall occur at least once every calendar year and shall cover the period elapsed since the last audit period. The supervisory committee audit shall be performed by the supervisory committee or its designated representative, as prescribed in paragraph (c)(5) of this section.

(2) Standards for Performing Supervisory Committee Audit. The supervisory committee audit procedures/testing must be performed in accordance with the following standards:

(i) The audit is to be performed by a person or persons having adequate technical training and proficiency as an auditor commensurate with the level of sophistication and complexity of the credit union under audit.

(ii) Reasonable care is to be exercised in the performance of the audit and the preparation of the report.

(iii) The work is to be adequately planned and assistants, if any, are to be properly supervised.

(iv) The person or persons performing the audit must attain a sufficient understanding of the internal control structure to plan the audit and to determine the nature, timing, and extent of tests to be performed.

(v) The person or persons performing the audit must, through inspection, observation, inquiry, and confirmation obtain sufficient evidence to afford a reasonable basis for the financial statement elements, accounts or items under audit.

(3) Scope of Supervisory Committee Audit. The scope of the supervisory committee audit shall consist of:

(i) Attaining an understanding of the internal control structure;

(ii) Assessing the level of control risk; and

(iii) Based on the level of control risk, determining the nature, timing, and extent of substantive testing necessary to confirm the assertions made by management regarding each of assets, liabilities, equity, income, and expenses for the following attributes:

(A) Existence or occurrence;

(B) Completeness;

(C) Valuation or allocation;

(D) Rights and obligations; and

(E) Presentation and disclosures.

(4) In addition to scope requirements set forth in paragraph (c)(3) of this section, an audit performed by an independent, compensated auditor which includes any of the following areas must, with respect to audit scope but not with respect to reporting, satisfy GAAS for expressing an opinion on the financial statements taken as a whole:

(i) Internal controls;

(ii) Cash;

(iii) Loans and interest thereon;

(iv) Investments and interest thereon;

(v) Shares and dividends and/or interest thereon;

(vi) Related party transactions; and

(vii) The reporting of identified errors and irregularities with regard to each of the items in paragraphs (c)(4) (i) through (vi) of this section.

(5)(i) The requirements of the annual supervisory committee audit may be satisfied by one of the following:

(A) An opinion audit of the credit union's financial statements performed by an independent, licensed, certified public accountant;

(B) An ''agreed-upon procedures engagement'' performed by an independent, licensed, certified public accountant, which by itself or in combination with procedures performed by the supervisory committee, fulfills the required scope of the supervisory committee audit;

(C) A supervisory committee audit performed by an independent, compensated auditor other than an independent, licensed, certified public accountant which by itself or in combination with procedures performed by the supervisory committee, fulfills the scope of a supervisory committee audit; or

(D) A supervisory committee audit by the supervisory committee or its designated, uncompensated representative.

(ii) In all cases, an independent, compensated auditor is required to contract directly with the supervisory committee for the audit engagement and to deliver its written reports directly to the supervisory committee.

(iii) For a supervisory committee audit performed by the supervisory committee or its designated, uncompensated representative, the supervisory committee shall prepare a written report of the supervisory committee audit.

(d) *Engagement letter.* (1) The engagement of an independent, compensated auditor to perform all or a portion of the scope of a supervisory committee audit shall be evidenced by an engagement letter. The engagement letter shall be signed by the compensated auditor and acknowledged therein by the supervisory committee prior to commencement of a supervisory committee audit. The engagement letter shall:

(i) Specify the terms, conditions, and objectives of engagement;

(ii) Identify the basis of accounting to be used, e.g., GAAP or RAP;

(iii) Include an appendix setting forth the procedures to be performed (if not an opinion audit);

(iv) Specify the rate of, or total, compensation to be paid for the audit;

(v) Provided that the audit shall, upon completion of the engagement, deliver to the supervisory committee:

(A) A written report of the supervisory committee audit; and

(B) Notice in writing, either within the report or communicated separately, of any internal control reportable conditions and/or irregularities or illegal acts which come to the auditor's attention during the normal course of the audit (i.e., no additional duty is imposed nor additional written communications beyond (A) is required if none of these is noted);

(vi) Specify a target date of delivery of the written reports;

(vii) Certify that NCUA staff or its designated representative will be provided unconditional access to the complete set of original working papers either at the credit union or at a mutually agreeable location, for purposes of inspection; and

(viii) Acknowledge that working papers shall be retained for a minimum of three years from the date of the written audit report.

(2) In the case of a supervisory committee audit engagement which addresses all of the financial statement elements, accounts or items and attributes prescribed in paragraphs (c)(3) and (c)(4) of this section, the engagement letter shall certify that the contracted scope of the audit satisfies the requirements of a complete supervisory committee audit.

(3) In the case of a supervisory committee audit engagement which excludes any financial statement elements, accounts or items and attributes prescribed in paragraphs (c)(3)

and (c)(4) of this section, the engagement letter shall:

(i) Identify the elements, accounts or items and attributes excluded from the audit;

(ii) State that, because of the exclusion(s), the resulting audit will not, by itself, fulfill the scope of a supervisory committee audit; and

(iii) Caution that the supervisory committee will remain responsible for fulfilling the scope of a supervisory committee audit with respect to the excluded elements, accounts or items and attributes.

(e) *Audit reports and working paper access.* (1) Upon completion or receipt of the written supervisory committee audit reports, the supervisory committee shall provide the reports to the board of directors. The supervisory committee shall ensure that the independent, compensated audit and its reports comply with the terms of the engagement letter prescribed in this section. The supervisory committee shall, upon request, provide to the National Credit Union Administration a copy of the written reports received from the auditor.

(2) The supervisory committee shall be responsible for preparing and maintaining, or making available, a complete set of original working papers supporting each supervisory committee audit. The supervisory committee shall, upon request, provide NCUA staff unconditional access to such working papers either at the offices of the credit union or at a mutually agreeable location, for purposes of inspecting such working papers.

(f) *Sanctions.* (1) Failure of a supervisory committee and/or its independent compensated auditor to comply with the requirements of this section, or the terms of an engagement letter required by this section, is grounds for:

(i) The regional director to reject the supervisory committee audit;

(ii) The regional director to impose the remedies available in § 701.13, provided any of the conditions specified in § 701.13 is present; and

(iii) The NCUA to seek formal administrative sanctions against the supervisory committee and/or its independent, compensated auditor pursuant to section 206(r) of the Federal Credit Union Act, 12 U.S.C. 1786(r).

(2) In the case of a federally-insured state chartered credit union, NCUA shall provide the state regulator an opportunity to timely impose a remedy satisfactory to NCUA before seeking to impose a sanction permitted under (f)(1) of this section.

* * * * *

§ 701.13 [Amended]

3. Section 701.13 is amended in paragraph (a)(2) by revising ''§ 701.12(e)'' to read ''§ 701.12(h)''.

[FR Doc. 96–19511 Filed 8–7–96; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 774 and 799A

[Docket No. 960723206–6206–0]

RIN 0694–AB37

Biological Warfare Experts Group Meeting: Implementation of Changes to Export Administration Regulations; ECCNs 1C991, 1C61B, 1B71E, and 1C91F

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL) as part of the Export Administration Regulations (EAR). This rule amends the CCL by revising Export Control Classification Numbers (ECCNs) 1C991, 1C61B, 1B71E, and 1C91F. The changes made by this rule are based on discussions in the Biological Warfare Experts Group (a subgroup of the Australia Group (AG)).

This rule will minimally increase the number of validated export licenses required for items classified under ECCN 1C61B and 1B71E.

The EAR have been completely amended by an interim rule published on March 25, 1996 (61 FR 12714) that provides for a transition period within which exporters can take advantage of both the old rules and the new rules until November 1, 1996. Therefore, this rule and all other amendments to the EAR during the transition period will amend both the new EAR and the old EAR, which are now designated with the letter ''A'' following the part number. This rule consists primarily of changes to the old EAR to conform to the new EAR, except changes to ECCNs 1C991 and 1C91F.

DATES: This rule is effective August 8, 1996.

FOR FURTHER INFORMATION CONTACT: For questions on foreign policy controls, call Patricia Sefcik, Bureau of Export Administration, Telephone: (202) 482–0707.

For questions of a technical nature on chemical weapon precursors, biological agents, and equipment that can be used to produce chemical and biological weapons agents, call James Seevaratnam, Bureau of Export Administration, Telephone: (202) 482–3343.

For questions of a general nature, call Hillary Hess, Bureau Export Administration, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

Consultations of the Biological Warfare Experts Group were held October 16–19, 1995 in conjunction with the Australia Group plenary meeting. The consultations resulted in changes to the list of controlled items, including the following revisions to the names of certain microorganisms: Changing Rickettsia quintana to Bartonella quintana (Rochalimea quintana, Rickettsia quintana), Pseudomonas mallei to Burkholderia mallei (Pseudomonas mallei), and Pseudomonas pseudomallei to Burkholderia pseudomallei (Pseudomonas pseudomallei). It was also agreed to place the former name in parentheses following the new name on the list in order to assist in appropriate identification for export control purposes.

This rule revises the note in the requirement section of ECCN 1C61B to exclude immunotoxins. A technical note added to ECCN 1C61B provides the definitions of ''immunotoxin'' and ''subunit''. Immunotoxins are therapeutics with no biological warfare application. Immunotoxins have been added to ECCN 1C91F and are eligible for export under the provisions of General License G–DEST to all destinations but those listed in Country Groups S, Z, and Iran. In addition, a technical note that adds the definition of ''immunotoxin'' has been added to ECCN 1C91F. This rule makes parallel changes to ECCN 1C991.

This rule also implements changes in the area of dual-use biological equipment. In ECCN 1B71E, ''Equipment that can be used in the production of biological weapons'', the capacity parameter for fermenters, within paragraph (b), is decreased from ''equal to or greater than 300 liters'' to ''equal to or greater than 100 liters''. This is done to expand export controls to capture smaller fermenters that can be used for biological warfare purposes.

Prior to this final rule, fermenters of the designated size were controlled only if they either contained ''double or multiple sealing joints within the steam containment area'' or were ''capable of in-situ sterilization in a closed state.'' These two modifiers or limiting

descriptors have been removed by this final rule.

This rule also makes a clarification to cross-flow filtration equipment (ECCN 1B71E paragraph (d)). Where the control language formerly stated ''cross-flow filtration equipment *designed for* continuous separation * * *'', this final rule controls ''Cross-flow filtration equipment *capable of* continuous separation * * *''.

Lastly, this rule expands controls on aerosol chambers within ECCN 1B71E paragraph (g). Where the control language used to state ''Chambers designed for aerosol challenge testing with *pathogenic* microorganisms * * *'', it will now state ''Chambers designed for aerosol challenge testing with microorganisms * * *''. The word ''pathogenic'' is removed to expand export controls to aerosol chambers not specifically designed for pathogenic microorganisms.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, as extended by the President's notice of August 15, 1995 (60 FR 42767).

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before August 8, 1996 may be exported under the previous general license provisions up to and including September 9, 1996. Any such items not actually exported before midnight September 9, 1996, require a validated export license in accordance with this regulation.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0010, 0694–0067, and 0694–0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 603(b)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Hillary Hess, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, PO Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 774

Exports, Foreign trade.

15 CFR Part 799A

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 774 and 799A of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 774—[AMENDED]

1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995).

Supplement No. 1 to Part 774

2. In Category 1, Materials, ECCN 1C991 is revised to read as follows:

1C991 Vaccines containing items controlled by ECCNs 1C351, 1C352, 1C353 and 1C354, and immunotoxins.

Licenses Requirements

Reason for Control: AT

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value
Related Controls: N/A
Related Definitions: For the purposes of this entry ''immunotoxin'' is defined as an antibody-toxin conjugate intended to destroy specific target cells (e.g., tumor cells) that bear antigens homologous to the antibody.
Items:
The list of items controlled is contained in the ECCN heading.

PART 799A—[AMENDED]

3. The authority citation for 15 CFR part 799A continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended [(extended by Pub. L. 103–10, 107 Stat. 40 and by Pub. L. 103–277, 108 Stat. 1407)]; Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6004); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12851 of June 11, 1993 (58 FR 33181, June 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O. 12930 of September 29, 1994 (59 FR 50475, October 3, 1994); E.O. 12924 of August 19, 1994 (59 FR 43437 of August 23, 1994); E.O. 12930 (59 FR 50475 of October 3, 1994); and Notice of August 15, 1995 (60 FR 42767).

Supplement No. 1 to § 799A.1

4. In Category 1, Materials, ECCNs 1B71E, 1C61B, and 1C91F are revised to read as follows:

1B71E Equipment that can be used in the production of biological weapons.

Requirements

Validated License Required: SZ, Supplement 5 to Part 778 (see Note)
Unit: Number
Reason for Control: CB
GLV: $0
GCT: No
GFW: No

Note: Special chemical License Available: see § 773.9 of this subchapter.

List of Items Controlled

a. Biohazard containment equipment as follows:
a.1. Complete containment facilities at P3 or P4 containment level; and
a.2. Equipment that incorporates or is contained in a P3 or P4 containment housing.
b. Fermenters capable of cultivation of pathogenic microorganisms, viruses or for toxin production, without the propagation of aerosols, having a capacity equal to or greater than 100 liters.

Note: Sub-groups of fermenters include bioreactors, chemostats, and continuous-flow systems.

c. Centrifugal separators capable of the continuous separation of pathogenic microorganisms, without the propagation of aerosols, and having all of the following characteristics:
c.1. A flow rate greater than 100 liters per hour;
c.2. Components of polished stainless steel or titanium;
c.3. Double or multiple sealing joints within the stream containment area;
c.4. Capable of in-situ stream sterilization in a closed state.

Note: Centrifugal separators include decanters.

d. Cross-flow filtration equipment capable of continuous separation of pathogenic microorganisms, viruses, toxins, and cell cultures without the propagation of aerosols, having all of the following characteristics:
d.1. Equal to or greater than 5 square meters;
d.2. Capable of in-situ sterilization.
e. Steam sterilizable freeze-drying equipment with condenser capacity greater than 50 kgs. but less than 1,000 kgs. of ice in 24 hours.
f. Equipment that incorporates or is contained in P3 or P4 containment housing, as follows:
f.1. Independently ventilated protective full or half suits; and
f.2. Class III biological safety cabinets or isolators with similar performance standards.
g. Chambers designed for aerosol challenge testing with microorganisms, viruses, or toxins and having a capacity of 1 cubic meter or greater.

1C61B Microorganisms, toxins, and aflatoxins.

Requirements

Validated License Required: QSTVWYZ
Unit: $ value
Reason For Control: CB
GLV: $0
GCT: No
GFW: No

Note: Notwithstanding the provisions of this entry, all vaccines and immunotoxins are excluded from the scope of this entry. See ECCN 1C91F.

Technical Note: For the purposes of ECCN 1C61B, the following definitions apply:
a. ''Immunotoxin'' is an antibody-toxin conjugate intended to destroy specific target cells, e.g., tumor cells, that bear antigens homologous to the antibody; and
b. ''Subunit'' is a portion of the toxin.

List of Items Controlled

a. Viruses, as follows:
a.1. African swine fever virus;
a.2. Avian influenza virus;
a.3. Bluetongue virus;
a.4. Chikungunya virus
a.5. Congo-Crimean haemorrhagic fever virus;
a.6. Dengue fever virus;
a.7. Eastern equine encephalitis virus;
a.8. Ebola virus;
a.9. Foot and mouth disease virus;
a.10. Goat pox virus;
a.11. Hantaan virus;
a.12. Herpes virus (Aujeszky's disease);
a.13. Hog cholera virus;
a.14. Japanese encephalitis virus;
a.15. Junin virus;
a.16. Lassa fever virus;
a.17. Lymphocytic choriomeningitis virus;
a.18. Machupo virus;
a.19. Marburg virus;
a.20. Monkey pox virus;
a.21. Newcastle disease virus;
a.22. Peste des petits ruminants virus;
a.23. Porcine enterovirus type 9;
a.24. Rift Valley fever virus;
a.25. Rinderpest virus;
a.26. Sheep pox virus;
a.27. Teschen disease virus;
a.28. Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus);
a.29. Variola virus;
a.30. Venezuelan equine encephalitis virus;
a.31. Vesicular stomatitis virus;
a.32. Western equine encephalitis virus;
a.33. White pox; or
a.34. Yellow fever virus.
b. Rickettsiae, as follows:
b.1. Bartonella quintana (Rochalimea quintana, Rickettsia quintana);
b.2. Coxiella burnetii;
b.3. Rickettsia prowasecki; or
b.4. Rickettsia rickettsii.
c. Bacteria, as follows:
c.1. Bacillus anthracis;
c.2. Brucella abortus;
c.3. Brucella melitensis;
c.4. Brucella suis;
c.5. Burkholderia mallei (Pseudomonas mallei);
c.6. Burkholderia pseudomallei (Pseudomonas pseudomallei);
c.7. Chlamydia psittaci;
c.8. Clostridium botulinum;
c.9. Francisella tularensis;
c.10. Mycoplasma mycoides;
c.11. Pseudomonas solanacerum;
c.12. Salmonella typhi;
c.13. Shigella dysenteriae;
c.14. Vibrio cholerae;
c.15. Xanthonomas albilineas;
c.16. Xanthonomas campestris pv citri;
c.17. Xanthomonas campestris pv oryzae; or
c.18. Yersinia pestis.
d. Fungi, as follows:
d.1. Cochliobolus miyabeanus (Helminthosporium oryzae);
d.2. Colletotrichum coffeanum var. virulans (Colletotrichum kahawae);
d.3. Heliminthosporium maydis;
d.4. Heliminthosprium oryzae;
d.5. Microcyclus ulei (syn. Dothidella ulei);
d.6. Puccinia glumarum;
d.7. Puccinia graminis (syn. Puccinia graminis f. sp. tritici);
d.8. Puccinia striiformis (syn. Puccinia glumarum);
d.9. Pyricularia grisea/Pyricularia oryzae; or
d.10. Ustilago maydis.
e. Genetically modified microorganisms, as follows:
e.1. Genetically modified micro-organisms or genetic elements that contain nucleic acid sequences associated with pathogenicity and are derived from organisms identified in this ECCN;
e.2. Genetically modified micro-organisms or genetic elements that contain nucleic acid sequences associated with pathogenicity derived from plant pathogens identified in this ECCN; or
e.3. Genetically modified microorganisms or genetic elements that contain nucleic acid sequences coding for any of the toxins, or their subunits listed in paragraph f of this ECCN.
f. Toxins, as follows and subunits thereof:

f.1. Botulinum toxins;
f.2. Clostridium perfringens toxins;
f.3. Conotoxin;
f.4. Microcystin (cyanogenosin);
f.5. Ricin;
f.6. Saxitoxin;
f.7. Shiga toxin;
f.8. Staphylococcus aureus toxins;
f.9. Tetrodotoxin; or
f.10. Verotoxin.

1C91F Vaccines containing microorganisms and/or toxins controlled by ECCN 1C61B, and immunotoxins.

Requirements

Validated License Required: SZ, Iran
Unit: $ value
Reason for Control: FP
GLV: No
GCT: No
GFW: No

Note: Vaccines that do not contain items controlled by ECCN 1C61B are controlled by ECCN 1C96G.

Technical Note: For the purposes of ECCN 1C91F, the definition of ''Immunotoxin'' is an antibody-toxin conjugate intended to destroy specific target cells, e.g., tumor cells, that bear antigens homologous to the antibody.

Dated: July 30, 1996.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 96–20166 Filed 8–7–96; 8:45 am]

BILLING CODE 3510–DT–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AE20

Living in the Same Household and the Lump-Sum Death Payment

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising our rules on ''living in the same household'' (LISH) and the lump-sum death payment (LSDP) to bring them into accord with legislation that restricted the payment of the LSDP. This revision includes the removal from our regulations of several outdated sections and paragraphs. We also are incorporating into our rules the policy established previously in a Social Security Ruling (SSR) that interpreted the definition of LISH to allow for extended separations that are based solely on medical reasons.

EFFECTIVE DATE: These rules are effective September 9, 1996.

FOR FURTHER INFORMATION CONTACT: Daniel T. Bridgewater, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3298 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION:

Background

Prior to passage of the Omnibus Budget Reconciliation Act of 1981, Public Law 97–35, the widow(er) of a deceased worker could qualify for the LSDP if he/she had been LISH with the deceased at the time of death *or,* under certain conditions, if he/she paid the burial expenses of the deceased. Thus, a widow(er) who was not LISH with the deceased could still receive the LSDP if he/she paid the deceased's burial expenses.

Public Law 97–35 redefined who could qualify for the LSDP. Effective September 1, 1981, the LSDP no longer was payable to any individuals, other than those described in Public Law 97–35, or to funeral homes.

Under Public Law 97–35, the LSDP is payable to 3 categories of individuals: (1) the surviving spouse of the deceased who was LISH with the deceased at the time of death; (2) a person who is entitled to (or was eligible for) benefits on the deceased's earnings record for the month of death as a widow(er) or as the mother or father of a child of the deceased; or (3) a child of the deceased who is entitled to (or was eligible for) benefits on the deceased's earnings record for the month of death.

For those widow(ers) who were not LISH, a possible anomaly was created by the LSDP limitations in Public Law 97–35 and existing regulations. An example of such an anomaly is the following situation.

A worker had been living in a nursing home for 3 years prior to his death because his wife was unable to provide the daily medical care he needed. Until his death, the worker was visited frequently by his wife, who lived in the house to which the worker would have returned if he were able. The widow was receiving a Retirement Insurance Benefit (RIB) which exceeded her late husband's Primary Insurance Amount (PIA). Based on Public Law 97–35 and a strict interpretation of the regulatory definition of LISH, this widow would not qualify for the LSDP because she was neither LISH nor entitled to benefits based on her late husband's earnings record. (However, if the widow's RIB did not exceed her late husband's PIA, she would qualify for the LSDP.)

Present Policy

Operating instructions, as well as most of the pertinent regulatory sections, have been changed to reflect the changes in the law established by Public Law 97–35. To qualify as a LISH spouse, the widow(er) and the deceased must have ''customarily lived together as husband and wife in the same residence'' (§ 404.347). While temporary separations do not necessarily preclude the Social Security Administration (SSA) from considering a couple to be LISH, extended separations (including most that last 6 months or more) generally indicate the couple was not LISH.

However, in order to avoid the possible anomaly discussed above, SSR 82–50 was issued to provide for an exception when an extended separation is based solely on medical reasons. SSR 82–50 states:

> If a husband and wife are (or were) separated and continue(d) to be separated, *solely* for medical reasons, SSA may consider them to be living in the same household even if the separation is (or was) likely to be permanent and there is (or was) little or no expectation of the parties again physically residing together. As long as the spouse who is now applying for the LSDP or spouse's benefits based on a deemed marriage has continued to demonstrate strong personal and/or financial concern for the worker, SSA will assume they would have lived together (absent evidence to the contrary) had the medical reasons not necessitated their separation, and will pay the LSDP or spouse's benefits to the spouse.

New Policy

Since there are still some sections of our regulations that refer to the law on entitlement to the LSDP which predated Public Law 97–35 and since these sections no longer are applicable, we are updating or removing them. We are eliminating obsolete §§ 404.393, 404.394, 404.395, and 404.765 and paragraphs 404.2(a)(2) through (a)(6), 404.3(a), 404.612(e), and 404.615(b).

Also, we are incorporating the LISH policy interpretation found in SSR 82–50 into our regulations. The new regulatory definition will clearly allow for extended separations due to the confinement of either spouse in a nursing home, hospital, or other medical institution. As long as evidence indicates the husband and wife were initially separated, and continue to be separated, solely for medical reasons and would otherwise have resided together, they will be considered to be LISH. Because of this action, we are rescinding SSR 82–50 upon the effective

date of these rules. This rescission appears in the ''Notices'' section of today's Federal Register.

On December 6, 1995, we published these final rules as proposed rules in the Federal Register at 60 FR 62354 with a 60-day comment period. We received comments from only one source, which represents the largest professional organization of funeral directors in the United States. The commenter fully supported the proposed rules. Therefore, we are publishing the final rules essentially unchanged from the proposed rules.

Regulatory Procedures

Regulatory Flexibility Act

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

Paperwork Reduction Act

These final rules impose no additional reporting or recordkeeping requirements subject to the Office of Management and Budget clearance.

(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)

List of Subjects in 20 CFR Part 404

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

Dated: July 25, 1996.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, subparts A, D, G, and H of part 404 of chapter III of title 20 of the Code of Federal Regulations are amended as follows:

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

Subpart A—[Amended]

1. The authority citation for subpart A of part 404 continues to read as follows:

Authority: Secs. 203, 205(a), 216(j), and 702(a)(5) of the Social Security Act (42 U.S.C. 403, 405(a), 416(j), and 902(a)(5)).

§ 404.2 [Amended]

2. Section 404.2 is amended by removing paragraphs (a)(2) through (a)(6) and redesignating paragraph (a)(7) as paragraph (a)(2).

§ 404.3 [Amended]

3. Section 404.3 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

Subpart D—[Amended]

4. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

5. Section 404.347 is revised to read as follows:

§ 404.347 ''Living in the same household'' defined.

Living in the same household means that you and the insured customarily lived together as husband and wife in the same residence. You may be considered to be living in the same household although one of you is temporarily absent from the residence. An absence will be considered temporary if:

(a) It was due to service in the U.S. Armed Forces;

(b) It was 6 months or less and neither you nor the insured were outside of the United States during this time and the absence was due to business, employment, or confinement in a hospital, nursing home, other medical institution, or a penal institution;

(c) It was for an extended separation, regardless of the duration, due to the confinement of either you or the insured in a hospital, nursing home, or other medical institution, if the evidence indicates that you were separated solely for medical reasons and you otherwise would have resided together; or

(d) It was based on other circumstances, and it is shown that you and the insured reasonably could have expected to live together in the near future.

6. Section 404.390 is amended by revising the second sentence to read as follows:

§ 404.390 General.

* * * If the insured is not survived by a widow(er) who meets this requirement, all or part of the $255 payment may be made to someone else as described in § 404.392.

7. Section 404.392 is amended by revising the section heading and the introductory text of paragraph (a) to read as follows:

§ 404.392 Who is entitled to the lump-sum death payment when there is no widow(er) who was living in the same household.

(a) *General.* If the insured individual is not survived by a widow(er) who meets the requirements of § 404.391, the lump-sum death payment shall be paid as follows:

* * * * *

§ 404.393 [Removed]

8. Section 404.393 is removed.

§ 404.394 [Removed]

9. Section 404.394 is removed.

§ 404.395 [Removed]

10. Section 404.395 is removed.

Subpart G—[Amended]

11. The authority citation for subpart G of part 404 continues to read as follows:

Authority: Secs. 202(i), (j), (o), (p), and (r), 205(a), 216(i)(2), 223(b), 228(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 402(i), (j), (o), (p), and (r), 405(a), 416(i)(2), 423(b), 428(a), and 902(a)(5)).

§ 404.612 [Amended]

12. Section 404.612 is amended by removing paragraph (e) and redesignating paragraphs (f), (g), and (h) as paragraphs (e), (f), and (g), respectively.

§ 404.615 [Amended]

13. Section 404.615 is amended by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

Subpart H—[Amended]

14. The authority citation for subpart H of part 404 continues to read as follows:

Authority: Secs. 205(a) and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a) and 902(a)(5)).

§ 404.765 [Removed]

15. Section 404.765 is removed.

[FR Doc. 96–20121 Filed 8–7–96; 8:45 am]

BILLING CODE 4190–22–P

ENVIRONMENT PROTECTION AGENCY

40 CFR Part 5

[FRL–5548–8]

Clean Air, Clean Water, Solid Waste, Pesticides Programs; Removal of Legally Obsolete Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today removing from

the Code of Federal Regulations (CFR) 40 CFR Part 5. This outdated rule created a schedule of tuition fees for technical and managerial training conducted directly by EPA under its programs in air, water, solid waste, radiation and pesticides. This rule is no longer legally in effect because it is inconsistent with how Government fees and charges are currently assessed under 31 U.S.C. 9701. Deleting this rule from the CFR will clarify the legal status of this rule for personnel of State and local governmental agencies, other Federal agencies, private industries, universities, and other non-EPA agencies and organizations. This action is in furtherance of government streamlining and will not adversely impact public health or the environment.

EFFECTIVE DATE: This final rule takes effect on August 8, 1996.

FOR FURTHER INFORMATION CONTACT: James H. Carr, EPA Institute (Mail Code 3632), EPA, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260–8047; or E-mail to: carr.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 4, 1995, the President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer and, by June 1, 1995, to identify those rules that are obsolete or unduly burdensome. EPA has conducted a review of its rules, including 40 CFR Part 5 issued under the authority of 31 USC § 483a. That law was enacted to allow federal agencies to recoup costs from identifiable special beneficiaries where the services rendered inured to the benefit of special recipients not the general public.

The removal of this rule from the CFR is in keeping with the policy view that charges should be set at rates rather than fixed dollar amounts in order to reflect changes in costs to the Government or changes in market prices of the property, resource or service provided. See OMB Circular A–25.

Inasmuch as this rule relates to Agency practice and in view of the subject matter, notice of proposed rule making and public comment were considered unnecessary.

II. Obsolete Rule

Part 5—Tuition Fees for Direct Training. 40 CFR Part 5 requires EPA to charge a schedule of tuition fees for all persons attending EPA technical and managerial training conducted directly by EPA (direct training) under its programs in air, water, solid waste, radiation and pesticides which commence on or after January 1, 1974. On January 1, 1974, EPA issued a regulation which set a schedule of fixed dollar amounts for direct training.

On September 13, 1982, 31 USC § 483a was replaced by 31 USC § 9701, which established more objective criteria to recoup charges for governmental services or things of value. Accordingly, EPA is removing the current schedule of fixed dollar amounts in 40 CFR Part 5 from the CFR.

III. Rulemaking Analysis

Regulatory Flexibility Act

The EPA certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

Under Executive Order 12866, [58 FR 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Unfunded Mandates Reform Act

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 5

Environmental protection, Education, Intergovernmental relations.

Dated: July 29, 1996.

Alvin M. Pesachowitz,

Acting Assistant Administrator, Office of Administration and Resources Management.

For the reasons set out in the preamble, 40 CFR chapter I under the authority of 31 U.S.C. 9701 is amended as follows.

PART 5—[REMOVED]

1. Part 5 is removed.

[FR Doc. 96–20229 Filed 8–7–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[WA47–7120a; FRL–5543–9]

Clean Air Act Approval and Promulgation of Carbon Monoxide Implementation Plan for the State of Washington: Puget Sound Emission Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the 1990 base year and 1995 projected year carbon monoxide emission inventory portion of the Puget Sound carbon monoxide (CO) State Implementation Plan (SIP) submitted on September 30, 1994, by the State of Washington Department of Ecology (Ecology) for the purpose of bringing about the attainment of the national ambient air quality standard (NAAQS) for CO.

DATES: This action is effective on September 23, 1996 unless adverse or critical comments are received by September 9, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation

Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and Washington State Department of Ecology, 300 Desmond Drive, Olympia, WA 98504.

FOR FURTHER INFORMATION CONTACT: Stephanie Cooper, EPA Region 10, Office of Air Quality (OAQ–107), Seattle WA 98101, (206) 553–6917.

SUPPLEMENTARY INFORMATION:

I. Background

In a March 15, 1991, letter to the EPA Region 10 Administrator, the Governor of Washington recommended the Seattle-Tacoma-Everett area, including the western portions of King, Pierce, and Snohomish Counties, be designated as nonattainment for CO as required by section 107(d)(1)(A) of the 1990 Clean Air Act Amendments (CAAA or the Act) (Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). The area, which includes lands within the Puyallup Reservation, Tulalip Reservation and Muckleshoot Reservation, was designated nonattainment and classified as ''moderate'' under the provisions outlined in sections 186 and 187 of the CAA. (See 56 FR 56694 (Nov. 6, 1991), codified at 40 CFR part 81, § 81.348.) Because the Seattle-Tacoma-Everett area had a design value of 14.8 ppm (based on 1987 data), it was classified as ''moderate > 12.7 ppm'' (moderate plus).

Under the Clean Air Act as amended, States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. Under section 187(a)(1), the CAAA requires moderate CO nonattainment areas to submit a base year CO inventory that represents actual emissions in the CO season by November 15, 1992. Stationary point, stationary area, on-road mobile, and non-road mobile sources of CO are to be included in the inventory. This inventory is for calendar year 1990 and is denoted as the base year inventory. The inventory is to address actual CO emissions for the area during the peak CO season. The peak CO season should reflect the months when peak CO air quality concentrations occur. Moderate CO nonattainment areas are required to submit a periodic inventory that represents actual emissions no later than September 30, 1995, and every three years thereafter until the area is redesignated to attainment (section 187(a)(5)). Moderate CO nonattainment areas with a design value of 12.7 parts per million (ppm) or more are required to submit an attainment demonstration plan by November 15, 1992 that demonstrates attainment by December 31, 1995 (187(a)(7)). To make the Attainment Demonstration, base year and projected modeling inventories are needed. The base year inventory is the primary inventory from which the periodic and modeling inventories are derived. Further information on these inventories and their purpose can be found in the document ''Emission Inventory Requirements for Carbon Monoxide State Implementation Plans,'' EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991.

II. Today's Action

The EPA is approving the carbon monoxide (CO) base year 1990 and projected year 1995 emission inventory submitted to EPA on September 30, 1994, based on the Level I, II, and III review findings.

III. Review of State Submittal

The Level I and II review process is used to determine that all components of the base year inventory are present. The review also evaluates the level of supporting documentation provided by the State and assesses whether the emissions were developed according to current EPA guidance. Washington's inventory satisfies both Level I and Level II requirements. The Level III review process is outlined here and consists of 9 points that the inventory must include. For a base year emission inventory to be acceptable it must pass all of the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) must be provided and the Quality Assurance (QA) program contained in the IPP must be performed and its implementation documented.
2. Adequate documentation must be provided that enables the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory.
3. The point source inventory must be complete.
4. Point source emissions must have been prepared or calculated according to the current EPA guidance.
5. The area source inventory must be complete.
6. The area source emissions must have been prepared or calculated according to the current EPA guidance.
7. The method (e.g., Highway Performance Modelling System (HPMS) or a network transportation planning model) used to develop vehicle miles travelled (VMT) estimates must follow EPA guidance, which is detailed in the document, ''Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources'', December 1992. The VMT development methods must be adequately described and documented in the inventory report.
8. The MOBILE model must be correctly used to produce emission factors for each of the vehicle classes.
9. Non-road mobile emissions must be prepared according to current EPA guidance for all of the source categories.

The EPA is approving this emission inventory as meeting the requirements of section 187(a)(1) of the Act. The reasons why this submittal meets the Level III criteria are discussed below.

Initially, EPA subjected the Washington State CO emission inventories to a rigorous review. This review pointed out various deficiencies in the inventory. In their updates to the original emissions inventory submitted January 24, 1993, the Puget Sound Air Pollution Control Agency (PSAPCA) corrected these deficiencies. Further corrections were made and submitted September 30, 1994.

Inventory Preparation Plan

Washington submitted its final Inventory Preparation Plan (IPP) and accompanying final Quality Assurance Plan on October 2, 1991. These plans satisfied the EPA's requirements.

Quality Assurance

Throughout the emissions inventory, PSAPCA provides documentation of quality assurance. For each source category, PSAPCA identifies the methodology employed. Where PSAPCA methods deviate from EPA suggested procedures, the rationale for the alternate method is noted. For each CO source category, PSAPCA provides the reference from which it excerpted information. When needed, projection equations are provided to show emission amounts beyond the base year. In many cases, the 1995 inventory ''grows'' the 1990 numbers by a particular factor (e.g. population growth). If 1995 values are the same as 1990 values, reasons for the lack of growth in emissions are noted.

Point source inventory: PSAPCA's point source inventory identifies sources whose emissions equal or exceed twenty-five tons per year of carbon monoxide. There are 18 CO point sources in the Puget Sound nonattainment area. The dominant industry with CO point sources is pulp and paper processing.

To compile the point source inventory, PSAPCA inventories all

subject point sources on an annual basis. Each source sends PSAPCA an annual questionnaire (''Form B'') that chronicles its emissions. The form includes SIC classification, normal operating schedule, criteria air contaminants (in tons/year), an emission point/segment summary, including CAS (chemical abstract services) numbers of the chemicals involved. PSAPCA engineers then review the data, which may also be verified by field inspectors.

PSAPCA reports that point source emissions for 1990 and 1995 are identical, at 136,600 pounds per day.

Area source inventory: PSAPCA's inventory for CO area sources is divided into the following categories: industrial fossil fuel use, commercial fossil fuel use, residential fuel use, residential wood burning, engine testing, residential garbage, land clearing burning, yard waste burning, structure burning, and waste management. The largest contributor to CO emissions was wood burning. Emissions for each source category are calculated for the three counties that comprise the nonattainment area (King, Pierce, and Snohomish). The inventory provides a discussion per category, and displays equations that were used to develop emissions estimates. Sources of information are provided as needed (e.g. population from the 1990 Census). In some cases, PSAPCA's methodology differs from EPA's recommended procedures. When this occurs, PSAPCA notes the reason for the difference. Usually, PSAPCA uses data tailored to the local or state area rather than using the national equations or factors. For the 1995 emission inventory, numbers are frequently ''grown'' from the 1990 inventory. Where necessary, projection equations are provided. Area source totals for 1990 were 620,762 pounds per winter day (lb/wd) within the CO nonattainment area, and 637,720 lb/wd for 1995. Additionally, for the 1995 stationary area source inventory, PSAPCA provides a trend analysis and states an explanation for why increase or decrease in emissions may have occurred.

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

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

The VMT development methods were adequately described and documented in the SIP and satisfy EPA's requirements.

Use of the Mobile model: The mobile5a model was correctly used to produce emission factors for each of the vehicle classes. The model employs the 2500 idle test even though Washington's program uses both the loaded idle and the 2500 idle. This is because Mobile5a allots higher emission factors for the loaded idle test than for the 2500 idle. Inputs to the mobile5a model reflect Washington's program: 2.7% oxygenate, 15% waiver rate for cars 1968–1980, 14% waiver rate for cars 1981 and younger, 90% compliance rate, biennial inspection, centralized program, etc. The Washington State Department of Ecology was responsible for the on-road section of the emissions inventory. Quality Assurance is provided within the on-road discussion. Additionally, the EPA QA checklist was used to check data. On-road mobile sources are 4,347,800 lb/day for 1990 and 2,717,600 lb/day for 1995.

Please note that the emission inventory mobile source estimates are not the same as those in the IM SIP. The IM SIP uses mobile5ah and gives credit to technician training. Washington has elected to use the mobile5a outputs for its attainment demonstration, and to use mobile5ah to show that it meets EPA's low enhanced performance standard. This discrepancy is further discussed in the Technical Support Document.

Non-road inventory: PSAPCA describes each category and the methodology employed. Methodology is taken from *Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone*, unless otherwise noted. When PSAPCA's methodology deviates from EPA guidance, it is usually because PSPACA uses numbers reflective of local scenarios as opposed to national averages. Assumptions, equations, and sources are noted per source category. Major non-road contributors are lawn and garden equipment, industrial and wholesale equipment, and aircraft and marine sources. Nonroad totals are 396,336 lb/day for 1990 and 434,863 lb/day for 1995. For the 1995 inventory, PSAPCA comments on the trends since 1990 and provides explanations for why the increase or decrease in emission was projected to occur.

IV. Procedural Background

The Act requires States to observe certain procedural requirements in developing emission inventory submissions to EPA. Section 110(a)(2) of the Act requires that each emission inventory submitted by a State has to be adopted after reasonable notice and public hearing.[1] Final approval of the inventory will not occur until the State revises the inventory to address public comments. CO nonattainment areas with design values greater than 12.7 ppm must submit the entire SIP (emissions inventories, attainment demonstrations, and control strategies) by November 15, 1992, and EPA expects the emissions inventories to have gone through the public hearing process as part of the full CO SIP.[2]

The State of Washington held a public hearing on September 8, 1994 to entertain public comment on the 1990 base year emission inventory for the Puget Sound Carbon Monoxide Nonattainment Area. Following the public hearing the inventory was adopted by the State and signed by the Governor on September 30, 1994, and submitted to EPA on September 30, 1994 as a proposed revision to the SIP.

The emission inventory was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete on March 30, 1995.

V. Implications of Today's Action

The EPA is approving the Puget Sound carbon monoxide emission inventory submitted as ''replacement pages'' to the Washington SIP on September 30, 1994. The State has submitted a complete inventory

[1] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[2] Memorandum from John Calcagni, Director, Air Quality Management Division, and William G. Laxton, Director, Technical Support Division, to Regional Air Division Directors, Region I–X, ''Public Hearing Requirements for 1990 Base-Year Emission Inventories for Ozone and Carbon Monoxide Nonattainment Areas,'' September 29, 1992.

containing point, area, on-road, and non-road mobile source data, and documentation. Emissions for these groupings are presented in the following table:

Emission Category	Daily Emissions (lbs/day) (rounded to the nearest 100)	
	Base year 1990	Projected year 1995
Point sources	136,000	136,000
Area sources	620,700	637,700
Non-road mobile sources	396,300	435,000
On-road mobile sources	4,347,800	2,717,600
Total	5,492,200	3,928,000

This inventory is complete and approvable according to the criteria set out in the November 12, 1992 memorandum from J. David Mobley, Chief Emission Inventory Branch, Technical Support Document (TSD) to G.T. Helms, Chief Ozone/Carbon Monoxide Programs Branch, AQMD.

As noted, additional submittals of SIP emission inventories for the nonattainment areas are due at later dates. The EPA will determine the adequacy of any such submittal as appropriate.

VI. Administrative Review

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

SIP approvals under section 110 and subchapter I, Part D of the 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. *E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

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

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

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

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 September 23, 1996 unless, by September 9, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 23, 1996.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 7, 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 action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

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

List of Subjects in 40 CFR Part 52

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

Dated: July 22, 1996.

Randall F. Smith,

Acting Regional Administrator.

PART 52—[AMENDED]

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

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

Authority: 42 U.S.C. 7401–7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(63) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(63) On September 30, 1994, the Director of WDOE submitted to the Regional Administrator of EPA a revision to the carbon monoxide State Implementation Plan for, among other things, the 1990 and 1995 Emission Inventories for Area, Nonhighway Mobile, and On-Road Mobile Sources.

(i) Incorporation by reference.

(A) September 30, 1994, letter from WDOE to EPA submitting emission inventories for the Puget Sound CO nonattainment area (adopted on September 30, 1994); NonHighway Mobile Sources Emission Inventory for Carbon Monoxide and Precursors of Ozone for King, Pierce and Snohomish Counties Base Year 1990, dated December 1993; Stationary Area Sources Emission Inventory for Carbon Monoxide and Precursors of Ozone for King, Pierce and Snohomish Counties Base Year 1990, dated December 1993; Stationary Area Sources Emission Inventory for Carbon Monoxide and Precursors of Ozone for King, Pierce and Snohomish Counties Projection Year 1995, dated September 1994; Supplement to the SIP, ''Puget Sound Carbon Monoxide Nonattainment Area,'' Replacement Pages, dated September 1994; Non-Road Mobile Sources Emission Inventory for Carbon Monoxide and Precursors of Ozone for King, Pierce and Snohomish Counties, Base Year 1990, dated September 1994; Non-Highway Mobile Sources Projections for 1995 Emission Inventory for Carbon Monoxide and Precursors of Ozone for King, Pierce and Snohomish Counties, dated September 1994; Seattle-Tacoma Urban Carbon Monoxide Nonattainment Area 1990 Base Year On Road Mobile Source Emissions Inventory, dated August 1994; and Seattle-Tacoma Urban Carbon Monoxide Nonattainment Area 1995 Projected Year On Road Mobile Source Emissions Inventory, dated August 1994.

[FR Doc. 96–20139 Filed 8–7–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[FRL–5533–2]

Approval and Promulgation of Implementation Plans; Massachusetts; Emissions Banking, Trading, and Averaging Program Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving, in final, a State Implementation Plan (SIP) revision submitted by Massachusetts. This revision establishes a voluntary emissions banking, trading, and averaging program for eligible sources of volatile organic compounds (VOC), nitrogen oxides (NO_X), or carbon monoxide (CO). The goal of these regulations is to encourage the creation, trading, and averaging of emission reduction credits in order for facilities to comply with new source review offsetting, netting, and reasonably available control technology (RACT) requirements in the most cost-effective manner. The program was adopted as a discretionary Economic Incentive Program, developed pursuant to EPA's guidance. This revision includes provisions which EPA proposed to approve in a document published on February 22, 1995.

DATES: This action is effective October 7, 1996, unless notice is received by September 9, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, and the Division of Air Quality Control, Massachusetts Department of Environmental Protection, One Winter Street, 8th floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, Environmental Engineer, Air Quality Planning Unit (CAQ), United States Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203. (617) 565–2773.

SUPPLEMENTARY INFORMATION:

I. Background

On April 7, 1994, EPA published final rules for Economic Incentive Programs (59 FR 16690). The notice set forth Economic Incentive Program (EIP) rules which could be adopted by certain ozone and carbon monoxide nonattainment areas which were mandated by sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the Clean Air Act (Act) to use or consider EIPs. The notice also served as interim guidance for States to develop discretionary EIPs for any criteria pollutant in all areas. Massachusetts has developed emissions banking and trading, and emissions averaging regulations as a discretionary EIP. The program was developed pursuant to EPA's EIP guidance. These regulations establish a voluntary emissions banking, trading, and averaging program for eligible sources of volatile organic compounds (VOC), nitrogen oxides (NO_X), or carbon monoxide (CO). The goal of these regulations is to encourage the creation, trading, and averaging of emission reduction credits in order for facilities to comply with new source review offsetting, netting, and reasonably available control technology (RACT) requirements in the most cost-effective manner.

II. State Submittal

Massachusetts submitted an emissions banking and trading, and emissions averaging regulations in two separate SIP submittals. First, on February 9, 1994, the Massachusetts Department of Environmental Protection (MA DEP) submitted Sections 310 CMR 7.00 Appendix B(1), (2), (3), and (5) as a revision to its SIP. These sections of the regulations establish requirements for the certification of emission reduction credits (ERCs), or ''banking,'' as well as for the trading of the ERCs between facilities. On February 22, 1995, EPA proposed approval of this submittal. Subsequently, on April 14, 1995, the EPA received a request from the Massachusetts DEP to revise the SIP for ozone, including amendments to 310 CMR 7.18 and 7.19, regarding emissions averaging at VOC and NO_X RACT sources, concurrent with the addition of sections 310 CMR 7.00 Appendix B(4) and (6), which deal with emissions averaging and public participation procedures, respectively, in the EIP.

Additionally, on February 8, 1996, MA DEP submitted supplemental information to EPA which provides a quantitative demonstration that the use of ERCs certified under 310 CMR 7.00 Appendix B, including the use of credits created by one-time actions, or unused credits carried over from year to year, i.e., the inter-temporal use of credits, will be consistent with the requirements of the Massachusetts SIP, Reasonable Further Progress (RFP) and Rate of Progress (ROP) plans, and area wide RACT requirements.

The following is a description of the changes being approved in this action:

A. 310 CMR 7.00 Appendix B(1), (2), (3), and (5)

Sections (1), (2), (3), and (5) of Appendix B establish a discretionary economic incentive program (EIP) under Section 182 of the Clean Air Act of emission banking and trading. The EIP rule classifies EIPs into three broad categories: emission limiting, market response, and directionally sound. Since this EIP will limit total mass emission, related parameters, or specify levels of emission reductions from eligible sources, it is classified as emission-limiting. Under this EIP, individuals and companies can voluntarily reduce emissions at eligible stationary sources (e.g., factories), mobile sources (e.g., automobiles), or area sources (e.g., residential heating systems) below the level required by State and federal regulations and then ''bank'' the surplus reductions as credit. This program also establishes the requirements for the transfer credits between eligible entities. Under this program, stationary sources can use credits to comply with new source review offsetting, netting, and reasonably available control technology (RACT) requirements. These sections of the regulations became effective in Massachusetts on September 10, 1993.

B. 310 CMR 7.00 Appendix B(4)

The goal of this part of the regulations is to allow sources of NO_X and VOC to utilize emissions averaging, or ''bubbling'', in order to comply with RACT requirements. The addition of 310 CMR 7.00 Appendix B(4), in combination to the changes made to 310 CMR 7.18 and 7.19, establishes a system by which facilities owned by the same person(s) can average, or ''bubble'' emissions. These rule changes became effective in Massachusetts on January 27, 1995. This means that facilities which reduce emissions below the level required by State and federal regulation at some emission sources, can control less at other emission sources, provided that the net effect to the environment is as if all the emission sources applied the otherwise required controls. This regulation replaces the former 310 CMR 7.00 Appendix B.

C. 310 CMR 7.00 Appendix B(6)

Section 310 CMR 7.00 Appendix B(6) was added to establish public participation procedures which apply to applications processed under 310 CMR 7.00 Appendix B. These rule changes became effective in Massachusetts on January 27, 1995. These provisions require that the MA DEP propose publicly whether an application should be approved, approved with conditions, or disapproved. Additionally, these provisions require the MA DEP to make all non-confidential information available to the public, to publish a public notice, to provide a 30 day public comment period, and conduct a public hearing. The inclusion of these requirements, in combination with the other requirements of 310 CMR 7.00 Appendix B, will allow EPA to consider permits issued consistent with Appendix B, for the certification, withdrawal, transfer, or use of ERCs, to be considered federally enforceable without the need for further EPA approval.

D. 310 CMR 7.18(2)(b)

The changes adopted to 310 CMR 7.18 consist of providing facility owners with the option to utilize emissions averaging to comply with VOC RACT emission limitations contained in 310 CMR 7.18 (3) through (7), (10) through (12), and (14) through (16). Also, these provisions require any facility utilizing emissions averaging to comply with the requirements of 310 CMR 7.18 to be subject to the emissions averaging requirements of 310 CMR 7.00 Appendix B(4).

E. 310 CMR 7.19(2)(d), (2)(g), and (14)

The changes adopted to 310 CMR 7.19 allow any source subject to the NO_X RACT requirements of 310 CMR 7.19 either to comply with a more stringent limitation, in order to create emission reduction (ERCs) credits or offsets, or to comply with the emission limitations of 310 CMR 7.19 by averaging emissions or by using ERCs. Section 310 CMR 7.19(14) allows emission units subject to the emission standards in 310 CMR 7.19(4), (5), (7), (8), or (12) to comply by emissions averaging. Further, this section provides the conversion factors necessary for averaging emissions between stationary reciprocating internal combustion engines or stationary combustion turbines with boilers. Additionally, this section requires such averaging emission units to meet the testing, monitoring, record keeping, and reporting requirements of 310 CMR 7.19(13)(b), (c), and (d), which includes the requirements to use NO_X CEMS on averaging units.

III. Analysis of State Submittal and Supporting Material

EPA has evaluated the Massachusetts emissions banking, trading, and averaging regulations and supporting documentation against applicable EPA guidance, including, the Economic Incentive Program rules (40 CFR § 51.490–494) and the EPA's June 28, 1989 guidance on requirements of State implementation plans (54 FR 27274). EPA has determined that all applicable requirements of these guidance documents have been met. EPA has developed a technical support document (TSD) that contains a detailed description of this analysis. The TSD is part of the docket supporting this action and is available upon request.

IV. Issues

On February 22, 1995, EPA published a notice of proposed rulemaking (NPR) proposing to approve portions of 310 CMR 7.00 Appendix B as a non-generic economic incentive program (60 FR 9810). In response to that notice, EPA received four comments. The commenters raised two major areas of concern. First, three of the commenters argued that EPA should grant ''generic'' authority to Massachusetts to allow the State to approve emissions trades without further EPA approval. Second, one commenter asserted that this EIP could result in pollution ''spikes'' if facilities traded emission reduction credits such that they would emit more during the summer ozone season than the underlying control requirements would have allowed absent the EIP.

However, since the publication of that notice, Massachusetts adopted a number of regulatory changes which address the deficiencies outlined in the NPR, including providing for public notice and comment on each trade or credit certification. Also, Massachusetts has submitted a quantitative analysis showing that the use of credits under 310 CMR 7.00 Appendix B(3), including the use of one-time or carry over credits during time periods other than when they were generated (i.e., the inter-temporal use of credits), will be consistent with the requirements of the Massachusetts SIP, RFP and ROP plans, and area wide RACT requirements. EPA also performed an analysis of the potential buffering effect inherent in implementation of the State's current regulations. Based upon the regulatory

changes and additional analyses, EPA believes that the Massachusetts emissions banking, trading program now fully meets the applicable EPA guidance documents. Additionally, EPA has determined that the emissions averaging portion of the program also meets the applicable EPA guidance. Therefore, in lieu of finalizing the proposed final approval of 310 CMR 7.00: Appendix B(1), (2), (3), and (5), and proposing approval of the other provisions as a separate action, EPA is approving all of 310 CMR 7.00 Appendix B, as well as 310 CMR 7.18(2)(b), 310 CMR 7.19(2)(d), 7.19(2)(g), and 7.19(14), as a fully generic EIP. The TSD provides a detailed explanation of how EPA is addressing the comments received on its earlier proposal, and how this current submittal responds to the concerns raised in those comments.

V. Final Action

EPA is approving all of 310 CMR 7.00 Appendix B, as submitted to date, as well as 310 CMR 7.18(2)(b), 310 CMR 7.19(2)(d), 7.19(2)(g), and 7.19(14), as a fully generic EIP. Additionally, upon approval of these regulations as part of the SIP, EPA will consider any emission control plans or credit certifications issued according to the requirements of 310 CMR 7.00 Appendix B since January 27, 1995, i.e., the effective date of the modified regulations, as federally enforceable without the need for further EPA approval. 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, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 7, 1996 unless adverse or critical comments are received by September 9, 1996.

If the EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on October 7, 1996.

VI. Procedural Background

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

VII. Regulatory Process

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. 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 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.

EPA's action does not create any new requirements, but simply approves 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. *USEPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations 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.

EPA has determined, as discussed earlier, that the finding that is the subject of this final action does not impose any federal intergovernment mandate, as defined in § 101 of the Unfunded Mandates Act. This action consists of factual determinations based upon the State's adoption of a voluntary program. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector result from this action. This action also will not impose a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

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

List of Subjects in 40 CFR Part 52

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

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

Dated: June 18, 1996.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of 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 W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(112) to read as follows:

§ 52.1120 Identification of plan.

* * * * * *

(c) * * *

(112) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on February 9, 1994, and April 14, 1995, concerning emissions banking, trading, and averaging.

(i) Incorporation by reference.

(A) Letters from the Massachusetts Department of Environmental Protection dated February 9, 1994, and March 29, 1995, submitting revisions to the Massachusetts State Implementation Plan.

(B) Regulations 310 CMR 7.00 Appendix B(1); 310 CMR 7.00 Appendix B(2); 310 CMR 7.00 Appendix B(3), except 310 CMR 7.00 Appendix B(3)(e)5.h; and, 310 CMR 7.00 Appendix B(5); effective on January 1, 1994. Also, regulations 310 CMR 7.00 Appendix B(4); 310 CMR 7.00 Appendix B(6); 310 CMR 7.18(2)(b); 310 CMR 7.19(2)(d); 310 CMR 7.19(2)(g); and, 310 CMR 7.19(14); effective on January 27, 1995.

(ii) Additional materials.

(A) Letter and attachments from the Massachusetts Department of Environmental Protection dated February 8, 1996, submitting supplemental information concerning the demonstration of balance between credit creation and credit use.

3. In § 52.1167, table 52.1167 is amended by removing the existing entry for ''310 CMR 7.00 Appendix B'' and replacing it with the new entry ''310 CMR 7.00 Appendix B, except for 310 CMR 7.00 Appendix B(3)(e)5.h''; and by adding new entries in numerical order to existing state citations ''310 CMR 7.18'' and ''310 CMR 7.19'' to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167.—EPA-APPROVED MASSACHUSETTS REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.00 Appendix B (except 310 CMR 7.00 Appendix B(3)(e)5.h).	Emissions Banking, Trading, and Averaging.	2/9/94 and 3/29/95	Aug. 8, 1996	[*FR* citation from published date].	112	Replaces earlier emissions averaging rules with emissions banking, trading, and averaging.
*	*	*	*	*	*	*
310 CMR 7.18 (2)(b)	Generic VOC bubble for surface coaters.	3/29/95	Aug. 8, 1996	[*FR* citation from published date].	112	Replaces earlier emissions averaging rules for surface coaters.
*	*	*	*	*	*	*
310 CMR 7.19 (2)(d)	Generic NO_X bubbling and trading for RACT sources.	3/29/95	Aug. 8, 1996	[*FR* citation from published date].	112	Adds credit creation option for NO_X RACT sources.
310 CMR 7.19 (2)(g)	Generic NO_X bubbling and trading for RACT sources.	3/29/95	Aug. 8, 1996	[*FR* citation from published date].	112	Adds credit use option for NO_X RACT sources.
310 CMR 7.19 (14)	Generic NO_X bubbling for RACT sources.	3/29/95	Aug. 8, 1996	[*FR* citation from published date].	112	Adds quantification, testing, monitoring, record keeping, reporting, and emission control plan requirements for averaging NO_X RACT sources.
*	*	*	*	*	*	*

[FR Doc. 96–20241 Filed 8–07–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IL122–1a; FRL–5530–5]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: On November 30, 1994, the Illinois Environmental Protection Agency (IEPA) submitted an adopted rule and supporting information for the control of volatile organic liquid (VOL) storage operations for the Chicago and East St. Louis ozone nonattainment areas as a requested State Implementation Plan (SIP) revision. This rule is part of the State's control measures for volatile organic compound (VOC) emissions, for the Chicago and East St. Louis ozone nonattainment areas, and is intended to satisfy part of the requirements of section 182(b)(2) of the Clean Air Act (Act), as amended in 1990. VOCs are air pollutants which combine on hot summer days to form ground-level ozone, commonly known as smog. Ozone pollution is of particular concern because of its harmful effects upon lung tissue and breathing

passages. This regulation requires a reasonably available control technology (RACT) level of control for VOL storage operations, as required by the amended Act. In this document, USEPA is approving Illinois' rule. The rationale for the approval is set forth in this final rule; additional information is available at the address indicated below. Elsewhere in this Federal Register USEPA is proposing approval and soliciting public comment on this requested revision to the SIP. If adverse comments are received on this direct final rule by September 9, 1996, USEPA will withdraw the final rule and address the comments received in a new final rule. Unless this final rule is withdrawn, no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective October 7, 1996 unless adverse comments are received by September 9, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Steven Rosenthal at (312) 886–6052, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Air Programs Branch (AR–18J) (312) 886–6052.

SUPPLEMENTARY INFORMATION:

Background

Under the Act, as amended in 1977, ozone nonattainment areas were required to adopt RACT for sources of VOC emissions. USEPA issued three sets of control technique guidelines (CTGs) documents, establishing a ''presumptive norm'' for RACT for various categories of VOC sources. The three sets of CTGs were (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. USEPA determined that an area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. In those areas where the State sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987, RACT was required for all CTG sources and for all major (100 tons per year or more of VOC emissions under the pre-amended Act) non-CTG sources. Illinois sought and received such an extension for the Chicago area.

Section 182(b)(2) of the Act, as amended in 1990, requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the amended Act of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG. These section 182(b)(2) RACT requirements are referred to as the RACT ''catch-up'' requirements.

Section 183 of the amended Act requires USEPA to issue CTGs for 13 source categories by November 15, 1993. A CTG was published by this date for two source categories—Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactors and Distillation; however, the CTGs for the remaining source categories have not been completed. The amended Act requires States to submit rules for sources covered by a post-enactment CTG in accordance with a schedule specified in a CTG document. Accordingly, States must submit a RACT rule for SOCMI reactor processes and distillation operations before March 23, 1994.

The USEPA created a CTG document as Appendix E to the *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.* (57 FR 18070, 18077, April 28, 1992). In Appendix E, USEPA interpreted the Act to allow a State to submit a non-CTG rule by November 15, 1992, or to defer submittal of a RACT rule for sources that the State anticipated would be covered by a post-enactment CTG, based on the list of CTGs USEPA expected to issue to meet the requirement in section 183. Appendix E states that if USEPA fails to issue a CTG by November 15, 1993 (which it did for 11 source categories), the responsibility shifts to the State to submit a non-CTG RACT rule for those sources by November 15, 1994. In accordance with section 182(b)(2), implementation of that RACT rule should occur by May 31, 1995.

On November 30, 1994, IEPA submitted adopted VOC rules and supporting information for the control of VOL storage operations in the Chicago ozone severe nonattainment area and the Metro-East (East St. Louis) ozone moderate nonattainment area. These rules were intended to satisfy, in part, the major non-CTG control requirements of section 182(b)(2). USEPA has not issued a CTG for this source category. However, USEPA did prepare a January 1994 ''Alternative Control Techniques Document (ACT): Volatile Organic Liquid Storage in Floating and Fixed Roof Tanks.'' The purpose of an ACT document is to provide information on alternative control techniques for the specified source category. As such, this ACT document is the chief basis for RACT for the control of VOL storage operations.

Evaluation of Rules

Subpart B: Definitions

Illinois has added the following two definitions to Subpart B: ''Fill,'' and ''Maximum True Vapor Pressure.'' These definitions accurately describe the specified terms and are necessary for implementation of the VOL storage rules. These definitions are, therefore, approvable.

Subpart B: Organic Emissions From Storage and Loading Operations

Subpart B of Part 218 (for the Chicago area) and Part 219 (for the East St. Louis area) has been amended with rules covering VOL storage operations. For the reasons discussed below, USEPA has reviewed these rules and determined that they are consistent with the ACT, and, therefore, approvable.

Section 218/219.119 Applicability for VOL—This section establishes which VOL storage operations are subject to the control requirements in Section 218/219.120. VOL storage operations with a maximum true vapor pressure of 0.5 pounds per square inch absolute (psia) or greater in any storage tank of 40,000 gallons capacity or greater are subject to these control requirements. These control requirements (in 218/219.120) do not apply to vessels storing petroleum liquids, which are regulated in other sections.

In a July 28, 1995, letter from Bharat Mathur, Chief, Bureau of Air for IEPA, to Stephen Rothblatt, Chief, Air Programs Branch for Region 5, USEPA clarifies that ''* * * for purposes of the rule for Batch Operations, otherwise applicable unit operations within a batch process remain subject to Subpart V (and not B), even if the unit operation performs what could be considered storage as some part of its operation. More specifically, those unit operations which form the batch process train are covered by Subpart V.'' Section 218/219.120 Control Requirements for Storage Containers—(a) Every owner or

operator storing VOL in a vessel of 40,000 gallons or greater with a maximum true pressure equal to 0.75 psia, or greater, but less than 11.1 psia, is required to reduce its storage tank emissions in accordance with one of the following.

218/219.120(a)(1) Each fixed roof tank must be equipped with an internal floating roof, or be equipped with a vapor control system that meets the specifications in subsection (a)(4), that rests or floats on the liquid surface. Each internal floating roof must be equipped with a foam or liquid-filled seal mounted in contact with the liquid (liquid-mounted seal); two seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the internal floating roof; or a mechanical shoe seal. Compliance with the control requirements in 218/219.120(a)(1) (for fixed roof tanks lacking floating roofs as of the date of rule adoption-October 20, 1994) is required by March 15, 1996. Compliance with the control requirements in 218/219.120(a)(2) for internal floating roof tanks is required by the next scheduled tank cleaning or before March 15, 2004, whichever comes first.

Section 218/219.120(a)(3) requires that external floating roof tanks be equipped with a closure device between the wall of the storage vessel and the roof edge. The closure device is to consist of a primary seal and a secondary seal. The primary seal is required to completely cover the annular space between the edge of the floating roof and tank wall. The secondary seal is required to completely cover the annular space between the external floating roof and the wall of the storage vessel in a generally continuous fashion. Compliance with the control requirements in 218/219.120(a)(3) is required after the next scheduled tank cleaning but no later than March 15, 2004.

218/219.120(a)(4) provides the closed vent system and control device specifications. The closed vent system must be designed to collect all VOC vapors and gases discharged from the storage vessel and operated with no detectable emissions as indicated by an instrument reading of less than 500 parts per million above background and visual inspections. A control device must be designed and operated to reduce inlet VOC emissions by 95 percent or greater.

Sections 218/219.120(a)(5) allows an alternative emission control plan equivalent to the requirements of (a)(1), (a)(2), (a)(3), or (a)(4) that has been approved by IEPA and USEPA in a federally enforceable permit or as a SIP revision.

On December 17, 1992, (57 FR 59928) USEPA approved Illinois' existing Operating Permit program as satisfying USEPA's June 28, 1989, (54 FR 27274) five criteria for establishing Federally Enforceable State Operating Permit programs. One of the criteria is that permits may not be issued that make less stringent any SIP limitation or requirement. USEPA's December 17, 1992, notice states that operating permits issued by Illinois in conformance with the five criteria (including the prohibition against States issuing operating permit limits less stringent than the regulations in the SIP) discussed in this document will be considered federally enforceable. This document also states Illinois' operating permit program allows USEPA to deem an operating permit not ''federally enforceable.''

On July 21, 1992, USEPA promulgated a new part 70 of chapter 1 of title 40 of the Code of Federal Regulations. See 57 FR 32250. This new part 70 contains regulations, required by Title V of the Act, that require and specify the minimum elements of State operating permit programs. Part 70 is therefore an appropriate basis for evaluating the acceptability of Illinois' use of federally enforceable State operating permits (FESOP) and Title V permits in its VOC rules.

Section 70.6(a)(1)(iii) states:

> If an applicable implementation plan allows a determination of an alternative emission limit at a part 70 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the State elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

USEPA has therefore determined that this alternative control requirement, in subsections 218/219.120(a)(5), is approvable because it requires that any alternative must be equivalent to the underlying SIP requirements (consistent with part 70) and USEPA can deem a permit containing an alternative control plan to be not ''federally enforceable'' if it determines that a permit is not quantifiable or practically enforceable or a permit relaxes the SIP. The underlying SIP, to which any equivalent alternative control plan must be compared, has federally enforceable control requirements, test methods, and recordkeeping and reporting requirements. In addition, IEPA's September 13, 1995, letter contains the specific procedures for USEPA review and approval.

Section 218/219.120(b) requires 40,000 gallon or greater storage vessels which contain VOL that has a maximum true vapor pressure greater than or equal to 11.1 psia to be equipped with a closed vent system and control device as specified in (a)(4).

Section 218/219.125 Compliance Dates—Fixed roof tanks and closed vent system and control device equipped tanks are required to comply with control device requirements by March 15, 1996. Internal and external floating roof tanks are required to comply with the control requirements during the next scheduled tank cleaning or by March 15, 2004, whichever comes first.

Section 218/219.127 Testing VOL Operations—Subsection (a) requires visual inspections for the internal floating roof, the primary seal and the secondary seal. Subsection (b) requires that for external floating roof tanks the gap areas and maximum gap widths between the primary seal and the wall of the storage vessel and between the secondary seal and the wall of the storage vessel be determined. Testing requirements for closed vent systems and control devices are contained in 40 CFR 60.485(c) and the general test methods in 218/219.105(d) and (f), respectively.

218/219.128 Monitoring VOL Operations—This section deals primarily with determining the maximum true vapor pressure of the VOL.

Section 218/219.129 Recordkeeping and Reporting for VOL Operations—Subsection 129(a) specifies recordkeeping and reporting requirements for fixed roof and internal floating roof tanks. This subsection requires records of each inspection that is performed. Reporting is required of any defects found and subsequent repairs made. Subsection 120(b) specifies recordkeeping and reporting requirements for external floating roof tanks. Records of seal gap measurements are required as are reports of these measurements. Reports are also required which identify any seal gap measurements that exceed gap limitations and the subsequent date of repair. Subsection (e) requires that records be maintained of the storage vessel dimensions and an analysis of the storage vessel capacity. Subsection (f) requires that a record of the VOL storage, the period of storage, and the maximum true vapor pressure of the VOL during the respective storage period be maintained.

Final Rulemaking Action

Illinois' rules for VOL storage operations are consistent with USEPA's guidance in the ACT for this category and are, therefore, considered to constitute RACT. USEPA, therefore, approves these rules in Part 218 (for the Chicago ozone nonattainment area), in Part 219 (for the East St. Louis ozone nonattainment area) and the related definitions in Part 211, as submitted on November 30, 1994.

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on October 7, 1996. However, if we receive adverse comments by September 9, 1996, then USEPA will publish a document that withdraws this final action. If no request for a public hearing has been received, USEPA will address the public comments received in a new final rule on the requested SIP revision based on the proposed rule located in the proposed rules section of this Federal Register. If a public hearing is requested, USEPA will publish a document announcing a public hearing and reopening the public comment period until 30 days after the public hearing. At the conclusion of this additional public comment period, USEPA will publish a final rule responding to the public comments received and announcing final action.

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 D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

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

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

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

This final rule only approves the incorporation of existing State rules into the SIP and imposes no additional requirements. This rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year. USEPA, therefore, has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Furthermore, because small governments will not be significantly or uniquely affected by this rule, the USEPA is not required to develop a plan with regard to small governments. This rule only approves the incorporation of existing state rules into the SIP. It imposes no additional requirements.

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, 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 the State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 7, 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 action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: June 11, 1996.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, 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 O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(128) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(128) On November 30, 1994, the State submitted volatile organic compound control regulations for incorporation in the Illinois State Implementation Plan for ozone.

(i) Incorporation by reference. (A) Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, Part 211: Definitions and General Provisions, Subpart B: Definitions, Sections 211.2300, 211.3695. These sections were adopted on October 20, 1994, Amended at 18 Ill. Reg. 16929, and effective November 15, 1994.

(B) Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart B: 218.119, 218.120, 218.125, 218.127, 218.128, 218.129. These sections were adopted on October 20, 1994, Amended at 18 Ill. Reg. 16950, and effective November 15, 1994.

(C) Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, Part 219: Organic Material Emission Standards and Limitations for the Metro East Area, Subpart B: 219.119, 219.120, 219.125, 219.127, 219.128, 219.129. These sections were adopted on October 20, 1994, Amended at 18 Ill. Reg. 16980, and effective November 15, 1994.

* * * * *

[FR Doc. 96–20251 Filed 8–7–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[IL146–1a; FRL–5540–6]

Designation of Areas for Air Quality Planning Purposes; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action EPA is approving the State Implementation Plan (SIP) submitted by the State of Illinois through the Illinois Environmental Protection Agency (IEPA) on June 2, 1995, and January 9, 1996, for the purpose of redesignating the portion of LaSalle County currently designated as nonattainment to attainment status for the particulate matter National Ambient Air Quality Standard (NAAQS). The EPA is also approving the maintenance plan for the LaSalle County PM nonattainment area, which was submitted with the redesignation request to ensure that attainment will be maintained.

DATES: The ''direct final'' is effective on October 7, 1996, unless EPA receives adverse or critical comments by September 9, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone David Pohlman at (312) 886–3299 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman at (312) 886–3299.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987 (52 FR 24634), EPA revised the NAAQS for particulate matter (PM) with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. (See 40 CFR § 50.6). The 24-hour primary PM standard is 150 micrograms per cubic meter ($\mu g/m^3$), with no more than one expected exceedance per year. The annual primary PM standard is 50 $\mu g/m^3$ expected annual arithmetic mean. The secondary PM standards are identical to the primary standards.

Portions of LaSalle County were designated as a moderate PM nonattainment area upon enactment of the Clean Air Act (Act) Amendments of 1990 (November 15, 1990). 56 FR 56694 at 56705–706, 56714 (November 6, 1991). The nonattainment area includes the following townships, ranges, and sections: T32N, R1E, S1; T32N, R2E, S6; T33N, R1E, S24; T33N, R1E, S25; T33N, R2E, S30; T33N, R2E, S31; AND T33N, R1E, S36. The area is known as the Oglesby PM nonattainment area, after the nearby town of Oglesby, Illinois.

II. Evaluation Criteria

Title I, section 107(d)(3)(D) of the amended Act and the general preamble to Title I [57 FR 13498 (April 16, 1992)], allow the Governor of a State to request the redesignation of an area from nonattainment to attainment. The criteria used to review redesignation requests are derived from the Act, general preamble, and the following policy and guidance memorandum from the Director of the Air Quality Management Division to the Regional Air Directors, September 4, 1992, *Procedures for Processing Requests to Redesignate Areas to Attainment.* An area can be redesignated to attainment if the following conditions are met:

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

III. Review of State Submittal

Under cover letters dated June 2, 1995, and January 9, 1996, the State submitted a redesignation request for the LaSalle County PM nonattainment area. A public hearing was held on September 22, 1995. The request was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete and a letter dated February 29, 1996, was forwarded to the Chief, Bureau of Air, Illinois Environmental Protection Agency, indicating the completeness of the submittal and the next steps to be taken in the review process. The following is a description of how the State's redesignation request meets the requirements of Section 107(d)(3)(E).

1. Attainment of the PM NAAQS

According to EPA guidance, the demonstration that the area has attained the PM NAAQS involves submittal of ambient air quality data from an ambient air monitoring network representing peak PM concentrations, which should be recorded in the Aerometric Information Retrieval System (AIRS). The area must show that the average annual number of expected exceedances of the 24-hour PM standard is less than or equal to 1.0 pursuant to 40 CFR Part 50, section 50.6. The data must represent the most recent three consecutive years of complete ambient air quality monitoring data collected in accordance with EPA methodologies.

The IEPA operates one PM monitoring site in the nonattainment area. Illinois submitted ambient air quality data from the monitoring site which demonstrates that the area has attained the PM NAAQS. This air quality data was

verified in AIRS. Quality assurance procedures are a component of the AIRS data entry process. No exceedance of the 24-hour NAAQS has been measured since 1991, and no exceedance of the annual NAAQS has been measured since 1990. Therefore, the State has adequately demonstrated, through ambient air quality data, that the PM NAAQS has been attained in LaSalle County, with 1993 as the attainment year.

2. State Implementation Plan Approval

Those States containing initial moderate PM nonattainment areas were required to submit a SIP by November 15, 1991 which implemented reasonably available control measures (RACM) by December 10, 1993 and demonstrated attainment of the PM NAAQS by December 31, 1994. The SIP for the area must be fully approved under section 110(k) of the Act, and must satisfy all requirements that apply to the area. On October 21, 1993, (58 FR 54291), EPA approved the LaSalle County PM nonattainment area SIP originally submitted by the State on October 16, 1991.

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

The State must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. In making this showing, the State must demonstrate that air quality improvements are the result of actual enforceable emission reductions.

The PM dispersion modeling conducted as part of the LaSalle County PM SIP predicted that the control measures included in the SIP were sufficient to provide for attainment and maintenance of the PM NAAQS. The State has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emission reductions of PM as a result of implementing the federally enforceable control measures in the SIP.

4. Meeting Applicable Requirements of Section 110 and Part D of the Act

To be redesignated to attainment, section 107(d)(3)(E) requires that an area must have met all applicable requirements of section 110 of part D of title I of the Act. The EPA interprets this to mean that for a redesignation request to be approved, the State must have met all requirements that applied to the subject area prior to or at the time of a complete redesignation request.

A. Section 110 Requirements. Section 110(a)(2) contains general requirements for nonattainment plans. For purposes of redesignation, the Illinois SIP was reviewed to ensure that all applicable requirements under the amended Act were satisfied. These requirements were met with Illinois' October 16, 1991, and November 13, 1991, submittal for the LaSalle County nonattainment area. This submittal was approved by the EPA on October 21, 1993. See 58 FR 12006 (March 2, 1993), and 58 FR 54291 (October 21, 1993).

B. Part D Requirements. Before a PM nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Subpart 1 of part D establishes the general requirements applicable to all nonattainment areas and subpart 4 of part D establishes specific requirements applicable to PM nonattainment areas.

The requirements of sections 172(c) and 189(a) for providing for attainment of the PM NAAQS, and the requirements of section 172(c) for requiring reasonable further progress, imposition of RACM, the adoption of contingency measures, and the submission of an emission inventory have been satisfied through the October 21, 1993, approval of the LaSalle County PM SIP (58 FR 54291), the July 13, 1995, approval of the Illinois PM contingency measures SIP (60 FR 36060), and the demonstration that the area is now attaining the standard. The requirements of the Part D—New Source Review (NSR) permit program will be replaced by the Part C—Prevention of Significant Deterioration (PSD) program once the area has been redesignated. However, in order to ensure that the PSD program will become fully effective immediately upon redesignation, either the State must be delegated the Federal PSD program or the State must make any needed modifications to its rules to have the approved PSD program apply to the affected area upon redesignation. The PSD program was delegated to the State of Illinois on January 29, 1981 (46 FR 9584).

5. Fully Approved Maintenance Plan Under Section 175(A) of the Act

Section 175(A) of the Act requires states that submit a redesignation request for a nonattainment area under section 107(d) to include a maintenance plan to ensure that the attainment of NAAQS for any pollutant is maintained. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the approval of a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating attainment for the ten years following the initial ten year period.

The State of Illinois adequately demonstrated attainment and maintenance of the PM NAAQS through the dispersion modeling submitted as part of the LaSalle County PM attainment demonstration SIP. Since emissions in the area are not expected to increase substantially in the next 10 years, that initial attainment demonstration is still appropriate. Further, emissions from the area's only significant PM source, the Lone Star portland cement plant (and its associated quarry, are currently only about 75% of the levels modeled for the 1991 submittal. Thus, even if production should increase, emissions would likely not exceed the modeled amounts. Also, emissions from any new sources would be restricted by PSD requirements.

Once an area has been redesignated, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. Illinois operates one PM air monitoring site in the nonattainment area. This site is approved annually by the EPA, and any future change would require discussion with EPA. In its submittal, the State commits to continue to operate the PM monitoring station to demonstrate ongoing compliance with the PM NAAQS.

Section 175(A) of the Act also requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. These contingency measures are distinguished from those generally required for nonattainment areas under section 172(c)(9). However, if the contingency measures in a nonattainment SIP have not been implemented to attain the standards and they include a requirement that the State will implement all of the PM control measures which were contained in the SIP before redesignation to attainment, then they can be carried over into the area's maintenance plan.

Under a cover letter dated July 29, 1994, IEPA submitted a State Rule to satisfy the contingency measures requirements specified in section 172(c)(9) for the LaSalle County PM nonattainment area, among others. This rule is eligible to also be used as the section 175(A) contingency measures, because the State was able to attain the PM NAAQS with the limitations and control measures already contained in

the SIP. On July 13, 1995, the EPA approved the rule into the Illinois SIP in a direct final rulemaking (60 FR 36060), which became effective on September 11, 1995. Also, Illinois' June 2, 1995, and January 9, 1996, submittal included a commitment by the State to take action to reduce PM emissions when monitored 24-hour PM concentrations exceed 90% of the NAAQS.

IV. Final Rulemaking Action

In this action, EPA is approving the State of Illinois' request to redesignate the LaSalle County PM nonattainment area to attainment. The EPA is also approving the maintenance plan for the LaSalle County PM nonattainment area, which was submitted with the redesignation request to ensure that attainment will be maintained. The EPA has completed an analysis of this SIP revision request based on a review of the materials presented and has determined that it is approvable because all requirements for redesignation have been met as discussed above.

The EPA is publishing this action without prior proposal because EPA views this action as a noncontroversial revision and anticipates no adverse comments. However, EPA is publishing a separate document in this Federal Register publication, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The ''direct final'' approval shall be effective on October 7, 1996, unless EPA receives adverse or critical comments by September 9, 1996. If EPA receives comments adverse to or critical of the approval discussed above, EPA will withdraw this approval before its effective date by publishing a subsequent Federal Register document which withdraws this final action. All public comments received will then be addressed in subsequent rulemaking. Please be aware that EPA will institute another comment period on this action only if warranted by significant revisions to the rulemaking based on any comments received in response to today's action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, EPA hereby advises the public that this action will be effective on October 7, 1996.

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 9, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

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

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

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

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

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less then $100 million in any one year, the EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the EPA is not required to develop a plan with regard to small governments. This rule only approves the incorporation of existing state rules into the SIP. It imposes no additional requirements.

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, 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 the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 7, 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 action 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, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: July 3, 1996.

Valdas V. Adamkus,

Regional Administrator.

For reasons stated in the preamble, parts 52 and 81 of chapter I, title 40 of the Code of Federal Regulations are 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 O—Illinois

2. Section 52.725 is amended by adding paragraph (d) to read as follows:

§ 52.725 Control strategy: Particulates.

* * * * *

(d) Approval—On June 2, 1995, and January 9, 1996, the State of Illinois submitted a maintenance plan for the particulate matter nonattainment portion of LaSalle County, and requested that it be redesignated to attainment of the National Ambient Air Quality Standard for particulate matter. The redesignation request and maintenance plan satisfy all applicable requirements of the Clean Air Act.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.314, the table for ''Illinois PM–10'' is amended by revising the table heading and the entry for ''LaSalle County'' to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	*	*	*
LaSalle County Oglesby including the following Townships, ranges, and sections: T32N, R1E, S1; T32N, R2E, S6; T33N, R1E, S24; T33N, R1E, S25; T33N, R2E, S30; T33N, R2E, S31; and T33N, R1E, S36	October 7, 1996	Attainment		
* * *	*	*	*	*

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[FR Doc. 96–19888 Filed 8–7–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 271 and 272

[FRL–5547–5]

Delaware; Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Delaware has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Delaware's application and has made a decision, subject to public review and comment, that Delaware's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Delaware's hazardous waste program revisions. Delaware's application for program revision is available for public review and comment.

DATES: Final authorization of Delaware's program revisions shall be effective October 7, 1996, unless EPA publishes a prior Federal Register notice withdrawing this immediate final rule. All comments on Delaware's program revision application must be received by the close of business September 9, 1996.

ADDRESSES: Copies of Delaware's program revision application are available from 8 a.m. to 4:30 p.m., Monday through Friday, at the following addresses for inspection and copying: Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, DE 19903, and USEPA, Region 3, Library, 3rd Floor, 841 Chestnut Street, Philadelphia, PA 19107, phone (215) 566–5000. Written comments should be sent to Marie Owens, Mail Code: 3HW60, State Programs Branch, Office of RCRA Programs, USEPA Region 3, 841 Chestnut Street, Philadelphia, PA 19107, phone (215) 566–3384.

FOR FURTHER INFORMATION CONTACT: Marie Owens, Mail Code: 3HW60, State Programs Branch, Office of RCRA Programs, USEPA Region 3, 841 Chestnut Street, Philadelphia, PA 19107, phone (215) 566–3384.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act (''RCRA'' or ''the Act''), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. Certain program revisions were necessitated by the provisions of the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984), hereinafter ''HSWA''.

B. Delaware

Delaware received final authorization effective June 22, 1984 (see Federal Register 23837, June 8, 1984) to implement its hazardous waste management program in lieu of the Federal program. On January 31, 1986 (see 51 FR 3954), the authorized Delaware program was incorporated by reference into the Code of Federal Regulations (CFR). On April 9, 1996, Delaware submitted a program revision application for additional approval in accordance with the requirements of 40

CFR 271.21 (Procedures for Revision of State Programs).

EPA has reviewed Delaware's application, and has made an immediate final decision that Delaware's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications. The public may submit written comments on EPA's immediate final decision until September 9, 1996. Copies of Delaware's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Delaware's program revision shall become effective in 60 calendar days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Delaware's program revision application includes State regulatory changes that are at least equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR Parts 124, 260 through 266, and 270 that were published in the Federal Register through June 30, 1991. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Checklist	Federal requirement	FR reference	FR date	Delaware authority
Non-HSWA Requirements prior to Non-HSWA Cluster I				
1	Biennial Report	48 FR 3977	1/28/83	7 Delaware Code Annotated (*Del. C.*), 1991 Replacement, §§ 6305(a), 6304; Delaware Regulations Governing Hazardous Waste (DRGHW), 1992, §§ 262.40(b), 262.41, 264.75, 264.76, 264.77, and 265.75, 265.76, 265.77, 265.94(a)(2), (b)(2), 122.30(k)(9) as adopted 11/19/80 and amended 3/21/84.
2	Permit Rules; Settlement Agreement.	48 FR 39611	9/1/83	7 *Del. C.* §§ 6305(a), 6307; DRGHW §§ 122.11(a)(1), (a)(3), (d), 122.30(d) as adopted 3/21/84.
3	Interim Status Standards; Applicability.	48 FR 52718	11/22/83	7 *Del. C.* §§ 6305(a), 6307(g); DRGHW § 265.1(b) as adopted 11/21/85.
4	Chlorinated Aliphatic Hydrocarbon Listing (F024).	49 FR 5308	2/10/84	7 *Del. C.* § 6305(a)(1); DRGHW § 261.31, Part 261 Appendix VII, Part 261 Appendix VIII as adopted 2/5/85.
5	National Uniform Manifest	49 FR 10490	3/20/84	7 *Del. C.* §§ 6305(a), 6306; DRGHW §§ 260.10, 262.20(a), 262.21(a), (b), 262.50(b)(3), (b)(4), 262.50(d), (e), Part 262 Appendix II as adopted 9/20/84.
7	Part 261—Warfarin and Zinc Phosphide Listing.	49 FR 19922	5/10/84	7 *Del. C.* § 6305(a)(1); DRGHW § 261.33(e), (f) as adopted 8/29/88.
Non-HSWA Cluster I				
AI	State Availability of Information	HSWA § 3006(f)	11/8/84	7 *Del. C.* § 6304(c); 29 *Del. C.* § 10005(b); DRGHW Hazardous Waste Disclosure Regulations as adopted 8/29/88.
9	Household Waste	49 FR 44978	11/13/84	7 *Del. C.* § 6305(a); DRGHW § 261.4(b)(1) as adopted 5/8/86.
10	Interim Status Standards; Applicability.	49 FR 46094	11/21/84	7 *Del. C.* §§ 6305(a), 6307(g); DRGHW § 265.1(a), (b) as adopted 11/21/85.
11	Corrections to Test Methods Manual.	49 FR 47390	12/4/84	7 *Del. C.* § 6305(a), § 6306(d); DRGHW §§ 260.11(a), 122.6(a) as adopted 5/8/86.
12	Satellite Accumulation	49 FR 49568	12/20/84	7 *Del. C.* § 6305(a) and § 6306; DRGHW § 262.34(c) as adopted 8/29/88.
13	Definition of Solid Waste	50 FR 614, 50 FR 14216, 50 FR 33541	11/4/85, 4/11/85, 8/20/85.	7 *Del. C.* § 6305(a); DRGHW §§ 260.10, 260.30, 260.31, 260.32, 260.33, 260.40, 260.41, 261.1(b), 261.1(c), 261.2, 261.2(a), (b), (c), (c)(2)–(4), (d)–(f), 261.3(c)(2), 261.4(a)(6), 261.4(a)(7), 261.5(c), 261.6, 261.31, 261.33, 264.1(f)(2), 264.340(a), 265.1(c)(6), 265.340(a), 265.370, 266.20, 266.21, 266.22, 266.23, 266.30, 266.32, 266.33, 266.34, 266.35(c), 266.36, 266.70, 266.80 as adopted 11/21/85 and 8/29/88.
15	Interim Status Standards for Treatment, Storage, and Disposal Facilities.	50 FR 16044	4/23/85	7 *Del. C.* §§ 6305(a) and 6307; DRGHW §§ 265.222, 265.229, 265.272(a), 265.310(a)&(b), 265.315 as adopted 11/21/85.

Checklist	Federal requirement	FR reference	FR date	Delaware authority
		Non-HSWA Cluster II		
26	Listing of Spent Pickle Liquor (KO62).	51 FR 19320	5/28/86	7 *Del. C.* § 6305(a); DRGHW § 261.32.
		Non-HSWA Cluster III		
MW	Radioactive Mixed Waste	51 FR 24504	7/3/86	7 *Del. C.* §§ 6302, 6305(a); DRGHW § 261.3.
27	Liability Coverage; Corporate Guarantee.	51 FR 25350	7/11/86	7 *Del. C.* § 6305(a); DRGHW §§ 264.147(a)(2), (a)(3), (b)(2), (b)(3), (f), 264.151(g), (h)(2), 265.147(a)(2), (a)(3), (b)(2), (b)(3), 265.147(f) as adopted 8/29/88.
28N	Standards for Hazardous Waste Storage and Treatment Tank Systems.	51 FR 25422, 51 FR 29430	7/14/86, 8/15/86	7 *Del. C.* §§ 6304, 6305(a)(4), 6306, 6307; DRGHW §§ 260.10, 261.4(a)(8), 262.34(a)(1), (d)(2), (d)(3), 264.15(b)(4), 264.73(b)(6), 264.110(b)(3), 264.140(b)(3), 264.190, 264.191, 264.192, 264.193(a)–(f), 264.193(g), 264.193(g)(3), (g)(4), 264.193(h), 264.193(i), 264.194, 264.195, 264.196, 264.197, 264.198, 264.199, 265.13(b)(6), 265.15(b)(4), 265.73(b)(3), (b)(6), 265.110(b)(2), 265.140(b), 265.190, 265.191, 265.192, 265.193, 265.194, 265.195, 265.196, 265.197, 265.198, 265.199, 265.200, 265.201, 122.14(b)(5), (b)(13), 122.16, 122.72(e) as adopted 8/10/90.
29	Correction to Listing of Commercial Chemical Products and Appendix VIII Constituents.	51 FR 28296	8/6/86	See Delaware's authorities listed under 53 FR 13382, 4/22/88 (CL 46).
35	Revised Manual SW–846; Amended Incorporation by Reference.	52 FR 8072	3/16/87	7 *Del. C.* §§ 6305(a), 6306(d); DRGHW §§ 260.11, 122.6(a) as adopted 8/29/88.
36	Closure/Post-Closure Care for Interim Status Surface Impoundments.	52 FR 8704	3/19/87	7 *Del. C.* §§ 6305(a) and 6307; DRGHW §§ 265.228 as adopted 8/29/88.
37	Definition of Solid Waste; Technical Corrections.	52 FR 21306	6/5/87	7 *Del. C.* § 6305(a); DRGHW §§ 261.33, 266.20(a)(2), (a)(3) as adopted 8/29/88.
38	Amendments to Part B Information Requirements for Land Disposal Facilities.	52 FR 23447, 52 FR 33936	6/22/87, 9/9/87	7 *Dec. C.* § 6305(a), 6304; DRGHW § 122.14(c)(7), (c)(8)(v) as adopted 8/29/88.
		Non-HSWA Cluster IV		
40	List (Phase 1) of Hazardous Constituents for Groundwater Monitoring.	52 FR 25942	7/9/87	7 *Del. C.* § 6305(a); DRGHW §§ 264.98(h)(2), (h)(3), (h)(4)(i), 264.99(f), Part 264 Appendix IX, 122.14(c)(4)(ii) as adopted 8/29/88.
41	Identification and Listing of Hazardous Waste.	52 FR 26012	7/10/87	7 *Del. C.* § 6305(a)(1); DRGHW § 261.33(c) as adopted 8/10/90.
43	Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee.	52 FR 44314	11/18/87	7 *Del. C.* § 6305(a); DRGHW §§ 264.147(f)(2), 264.151(h)(2), 265.147(f)(2) as adopted 8/29/88.
45	Hazardous Waste Miscellaneous Units.	52 FR 46946	12/10/87	7 *Del. C.* §§ 6305(a), (a)(4), (a)(6), (a)(10), (a)(13), 6304; DRGHW §§ 260.10, 264.10(b), 264.15(b)(4), 264.18(b)(1)(ii), 264.73(b)(6), 264.90(d), 264.111(c), 264.112(a)(2), 264.114, 264.117(a)(1), 264.118(b)(1), 264.118(b)(2), 264.142(a), 264.144(a), 264.147(b), 264.600, 264.601, 264.602, 264.603, 122.14(b)(5), (b)(13), 122.23 as adopted 8/10/90.
46	Technical Correction; Identification and Listing of Hazardous Waste.	53 FR 13382	4/22/88	7 *Del. C.* §§ 6305(a)(1); DRGHW §§ 261.33(e), (f), Part 261 Appendix VIII as adopted 8/10/90.

Checklist	Federal requirement	FR reference	FR date	Delaware authority
		Non-HSWA Cluster V		
49	Identification and Listing of Hazardous Waste; Treatability Studies Sample Exemption.	53 FR 27290	7/19/88	7 *Del. C.* §§ 6305(a), (c); DRGHW §§ 260.10, 261.4(e), 261.4(f) as adopted 8/10/90.
52N	Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems.	53 FR 34079	9/2/88	7 *Del. C.* §§ 6304, 6305(a)(4), 6306, 6307; DRGHW §§ 260.10, 264.114, 264.190, 264.193(f)(3), 264.196, 265.110(b)(2), 265.114, 265.190, 265.193(f)(3), (g)(3)(iii), 265.196, 265.201(c)(3), 122.2 as adopted 8/10/90.
53	Identification and Listing of Hazardous Waste; and Designation, Reportable Quantities, and Notification.	53 FR 35412	9/13/88	7 *Del. C.* §§ 6305(a)(1); 261.32, Part 261 Appendix VII as adopted 8/10/90.
54	Permit Modifications for Hazardous Waste Management Facilities.	53 FR 37912, 53 FR 41649	9/28/88, 10/24/88	7 *Del. C.* §§ 6305(a), 6307; DRGHW §§ 124.5(c)(1), (c)(3), 264.54, 264.112(c), (c)(1), (c)(2), 264.118(d), (d)(1), (d)(2), 265.112(c)(3), (c)(4), 265.118(d)(3), (d)(4), 122.2, 122.4(a), 122.30(l)(2), 122.40, 122.41, 122.41(a)(3), (a)(5), 122.42, 122.42 Appendix I, 122.62(a), (b)(10), 122.63(d) as adopted 8/10/90.
55	Statistical Methods for Evaluating Ground-Water Monitoring Data from Hazardous Waste Facilities.	53 FR 39720	10/11/88	7 *Del. C.* §§ 6305(a), 6307; DRGHW §§ 264.91(a)(1), (a)(2), 264.92, 264.97(a)(1), (a)(3), (g)–(j), 264.98(c), (d), (f)–(h), 264.99(c), (d), (f)–(j) as adopted 8/10/90.
56	Identification and Listing of Hazardous Waste; Removal of Iron Dextran from the List of Hazardous Wastes.	53 FR 43878	10/31/88	7 *Del. C.* §§ 6305(a)(1); DRGHW §§ 261.33(f), Part 261 Appendix VIII as adopted 8/10/90.
57	Identification and Listing of Hazardous Waste; Removal of Strontium Sulfide from the List of Hazardous Wastes.	53 FR 43881	10/31/88	7 *Del. C.* §§ 6305(a)(1); DRGHW §§ 261.33(e), Part 261 Appendix VIII as adopted 8/10/90.
58	Standards for Generators of Hazardous Waste; Manifest Renewal.	53 FR 45089	11/8/88	7 *Del. C.* §§ 6305(a), 6306; DRGHW §§ 262.20(a), Part 262 Appendix II as adopted 8/10/90.
59	Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators.	54 FR 615	1/9/89	7 *Del. C.* §§ 6305(a); DRGHW §§ 122.14(b)(5), (b)(13) as adopted 8/10/90.
60	Amendment to Requirements for Hazardous Waste Incinerator Permits.	54 FR 4286	1/30/89	7 *Del. C.* §§ 6305(a); DRGHW § 122.62(d) as adopted 8/10/90 and amended 11/19/93.
61	Changes to Interim Status Facilities for Hazardous Waste Management Permits; Modifications of Hazardous Waste Management Permits; Procedures for Post-Closure Permitting.	54 FR 9596	3/7/89	7 *Del. C.* §§ 6305(a)(3), 6307; DRGHW §§ 124.1, 124.15(a), (b), 122.1(e), 122.10(c), 122.29, 122.42 Appendix I, 122.72(a), (b), (b)(1)–(6), 122.73(e)–(g) as adopted 6/19/92.

Checklist	Federal requirement	FR reference	FR date	Delaware authority
		Non-HSWA Cluster VI		
24 (Amended).	Financial Responsibility; Settlement Agreement; Correction.	55 FR 25976	6/26/90	7 *Del. C.* §§ 6305(a), 6307; DRGHW §§ 260.10, 264.110, 264.111, 264.112, 264.113, 264.114, 264.115, 264.116, 264.117, 264.118, 264.119, 264.120, 264.141(f), 264.142(a)–(c), 264.143(a)(10), (b)(4)(ii), (c)(5), (d)(8), (e)(5), (f)(1)(i)(B), (f)(1)(i)(D), (f)(1)(ii)(B), (f)(1)(ii)(D), (f)(2), (i), 264.144(a)–(c), 264.145 introductory paragraph, 264.145(a)(11), (b)(4)(ii), (c)(5), (d)(9), (e)(5), (f)(1)(i)(B), (f)(1)(i)(D), (f)(1)(ii)(B), (f)(1)(ii)(D), (f)(2), (i), 264.147(d), 264.151(b), (f)(5), (g)(5), 265.110, 265.111, 265.112, 265.113, 265.114, 265.115, 265.116, 265.117, 265.118, 265.119, 265.120, 265.140(a), 265.142(a)–(c), 265.143(a)(10), (b)(4)(ii), (c)(8), (d)(5), (e)(1)(i)(B), (e)(1)(i)(D), (e)(1)(ii)(B), (e)(1)(ii)(D), (e)(2), (h), 265.144(a)–(c), 265.145 introductory paragraph, 265.145(a)(11), (b)(4)(ii), (c)(9), (d)(5), (e)(1)(i)(B), (e)(1)(i)(D), (e)(1)(ii)(B), (e)(1)(ii)(D), (e)(2), (h), 265.147(d), 122.14(b)(14)–(16), 122.42(d), 122.72(d) as adopted 8/10/90.
		HSWA Cluster I		
BB	Exceptions to the Burning and Blending of Hazardous Waste.	HSWA § 3004(q)(2)(A), § 3004(r)(2)&(3)		7 *Del. C.* §§ 6305(a)(12).
CP	Hazardous and Used Oil Fuel Criminal Penalties.	HSWA § 3006(h), § 3008(d), § 3014		7 *Dec. C.* §§ 6309(f) through (n).
14	Dioxin Waste Listing and Management Standards.	50 FR 1978	1/14/85	7 *Del. C.* §§ 6305(a), 6307; DRGHW §§ 261.5(e), 261.7(b)(1), 261.7(b)(3), 261.30(d), 261.31, 261.33(f), Part 261 Appendices III, VII, VIII, X, 264.175(c)&(d), 264.194(c)(2), 264.200(a), 264.231, 264.259, 264.283, 264.317, 264.343(a), 265.1(d)(1), 265.352, 265.383, 122.14(b)(7), 122.16(g), 122.17(i), 122.18(j), 122.20(i), 122.21(j) as adopted 11/21/85.
16	Paint Filter Test	50 FR 18370	4/30/85	7 *Del. C.* § 6305(a), 6306(d); DRGHW §§ 264.13(b)(6), 264.73(b)(3), 264.314(c), 265.13(b)(6), 265.73(b)(3), 265.314(d) as adopted 5/8/86.
SI	Sharing Information With the Agency for Toxic Substances and Disease Registry.	HSWA § 3019(b)	7/15/85	7 *Del. C.* §§ 6304; DRGHW Hazardous Waste Disclosure Regulations as adopted 8/29/88.
17A	HSWA Codification Rule: Small Quantity Generators.	50 FR 28702	7/15/85	See Delaware's authorities listed under 51 FR 10146, 3/24/86 (CL 23).
17C	HSWA Codification Rule: Household Waste.	50 FR 28702	7/15/85	7 *Del. C.* § 6305(a); DRGHW § 261.4(b)(1) as adopted 5/8/86.
17D	HSWA Codification Rule: Waste Minimization.	50 FR 28702	7/15/85	7 *Del. C.* §§ 6305(a), 6305(a)(6), (a)(10), (a)(13), 6306; DRGHW §§ 262.41(a)(6)–(8), Part 262 Appendix II, 264.70, 264.73(b)(9), 122.30(j)(2), 122.70(a), 122.70(c) as adopted 11/21/85 and 5/8/86.
17E	HSWA Codification Rule: Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves.	50 FR 28702	7/15/85	7 *Del. C.* §§ 6305(a), 6307; DRGHW §§ 264.18(c), 265.18 as adopted 5/8/86.
17F	HSWA Codification Rule: Liquids in Landfills.	50 FR 28702	7/15/85	7 *Del. C.* §§ 6305(a), 6306(d); DRGHW §§ 264.314(a), (b), (e), 265.314(a), (b), (f), 122.21(h) adopted 5/8/86 and amended 8/29/88.
17G	HSWA Codification Rule: Dust Suppression.	50 FR 28702	7/15/85	7 *Del. C.* § 6305(a)(12); DRGHW §§ 266.23 as adopted 8/29/88.

Checklist	Federal requirement	FR reference	FR date	Delaware authority
17I	HSWA Codification Rule: Ground-Water Monitoring.	50 FR 28702	7/15/85	7 *Del. C.* § 6305(a); DRGHW §§ 264.90(b), 264.222, 264.226(b)(3), 264.228(b)(2), 264.228(d), 264.252, 264.253, 264.254, 264.302, 264.303(b)(2), 264.310(b)(2), 264.310(c) as adopted 8/29/88.
17J	HSWA Codification Rule: Cement Kilns.	50 FR 28702	7/15/85	7 *Del. C.* §§ 6305(a), (a)(12); DRGHW §§ 261.6(a)(2), 261.33, 266.31(c) as adopted 11/21/85.
17K	HSWA Codification Rule: Fuel Labeling.	50 FR 28702	7/15/85	See Delaware's authorities listed under 51 FR 49164, 11/29/85 (CL 19).
17M	HSWA Codification Rule: Preconstruction Ban.	50 FR 28702	7/15/85	7 *Del. C.* § 6305(a)(3); DRGHW §§ 122.10(f) as adopted 5/8/86.
17N	HSWA Codification Rule: Permit Life.	50 FR 28702	7/15/85	7 *Del. C.* §§ 6305(a)(3), 6307; DRGHW §§ 122.41(a)(6) and 122.50(d) as adopted 5/8/86.
17O	HSWA Codification Rule: Omnibus Provision.	50 FR 28702	7/15/85	7 *Del. C.* §§ 6305(a)(2)–(4), 6307; DRGHW §§ 122.32(b) as adopted 5/8/86.
17P	HSWA Codification Rule: Interim Status.	50 FR 28702	7/15/85	7 *Del. C.* §§ 6305(a), 6307; DRGHW §§ 122.10(a), (c), (e)(1), (e)(4), 122.30(j)(2), 122.70(a), (c), 122.73(c)–(f) as adopted 5/8/86.
17Q	HSWA Codification Rule: Research and Development Permits.	50 FR 28702	7/15/85	7 *Del. C.* §§ 6305(a) and 6307; DRGHW §§ 122.10(a), 122.65 as adopted 5/8/86.
17R	HSWA Codification Rule: Hazardous Waste Exports.	50 FR 28702	7/15/85	See Delaware's authorities listed under 51 FR 28664, 8/8/86 (CL 31).
17S	HSWA Codification Rule: Exposure Information.	50 FR 28702	7/15/85	7 *Del. C.* §§ 6304, 6305(a)(3), 6307; DRGHW §§ 122.10(c), (j) as amended 5/8/86.
18	Listing of TDI, TDA, DNT	50 FR 42936	10/23/85	7 *Del. C.* §§ 6305(a)(1); DRGHW §§ 261.32, 261.33(f), Part 261 Appendices III, VII, VIII as adopted 5/8/86.
19	Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces.	50 FR 49164, 52 FR 11819	11/29/85, 4/13/87	7 *Del. C.* §§ 6305(a), 6307; DRGHW §§ 261.3(c)(2)(ii)(B), 261.5(b), 261.5(k), 261.6(a)(2)(iii), 261.6(a)(3)(iii), 261.6(a)(3)(vii), 261.6(a)(3)(viii), 261.6(a)(3)(ix), 264.340(a)(2), 265.340(a)(2), 266.30, 266.31, 266.32, 266.33, 266.34, 266.35, 266.40, 266.41, 266.42, 266.43, 266.44 as adopted 8/29/88.
20	Listing of Spent Solvents	50 FR 53315, 51 FR 2702	12/31/85, 1/21/86	7 *Del. C.* § 6305(a)(1); DRGHW § 261.31 as adopted 8/29/88.
21	Listing of EDB Waste	51 FR 5327	2/13/86	7 *Del. C.* § 6305(a)(1); DRGHW § 261.32, Part 261 Appendices III, VII as adopted 8/29/88.
22	Listing of Four Spent Solvents	51 FR 6537	2/25/86	7 *Del. C.* § 6305(a)(1); DRGHW §§ 261.31, 261.33(f), Part 261 Appendices III, VII, VIII as adopted 8/29/88.
23	Generators of 100 to 1000 kg Hazardous Waste.	51 FR 10146	3/24/86	7 *Del. C.* §§ 6305(a), 6306; DRGHW §§ 260.10, 261.1(a)(1), 261.5, 261.33(f), 262.34(a), (d), (e), (f), 262.44, 122.1(a)(2)(i), 122.10(e)(1)(iii) as adopted 8/29/88.
25	Codification Rule; Technical Correction (Paint Filter Test).	51 FR 19176	5/28/86	7 *Del. C.* §§ 6305(a) and 6306(d); DRGHW §§ 265.314(d) as adopted 8/29/88.
28H	Standards for Hazardous Waste Storage and Treatment Tanks Systems (HSWA provisions).	51 FR 25422, 51 FR 29430	7/14/86, 8/15/86	See Delaware's authorities listed under 51 FR 25422 (7/14/86) and 51 FR 29430 (8/15/86) in Non-HSWA Cluster V.
30	Biennial Report; Correction	51 FR 28556	8/8/86	7 *Del. C.* §§ 6304, 6305(a), 6305(a)(6), 6305(a)(10), 6305(a)(13), 6306; DRGHW §§ 264.75(h)–(j), 265.75(h)–(j) as adopted 8/29/88.
31	Exports of Hazardous Waste	51 FR 28664	8/8/86	7 *Del. C.* §§ 6305(a)(2), (a)(4), (a)(8), (a)(13), 6306; DRGHW §§ 261.5(f)(3), (g)(3), 261.6(a)(3)(i), 262.41(a), (a)(3)–(5), (b), 262.50, 262.51. 262.52, 262.53, 262.54, 262.55, 262.56, 262.57, 262.58, 262.60, 262.70, Part 262 Appendix II, 263.20(a), (c), (e)(2), (f)(2), (g)(3), (g)(4) as adopted 8/29/88.
32	Standards for Generators; Waste Minimization Certifications.	51 FR 35190	10/1/86	7 *Del. C.* §§ 6305(a), (a)(6), (a)(10), (a)(13), and 6306; DRGHW Part 262 Appendix II as adopted 8/29/88.

Checklist	Federal requirement	FR reference	FR date	Delaware authority
33	Listing of EBDC	51 FR 37725	10/24/86	7 *Del. C.* §6305(a)(1); DRGHW §§261.32, Part 261 Appendices III, VII as adopted 8/29/88.
		HSWA Cluster II		
47	Identification and Listing of Hazardous Waste; Technical Correction.	53 FR 27162	7/19/88	7 *Del. C.* §§6305(a), 6306; DRGHW §§261.5(e), (f)(2) as adopted 8/10/90.
48	Farmer Exemptions; Technical Corrections.	53 FR 27164	7/19/88	7 *Del. C.* §§6305(a)(2), (a)(4), (a)(8), (a)(13), and 6306; DRGHW §§262.10(b), 262.10(d), 264.1(f)(4), 265.1(c)(7), 268.1(c)(5), 122.1(c)(2)(ii) as adopted 8/10/90.
52H	Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems (HSWA Provisions).	53 FR 34079	9/2/88	See Delaware's authorities listed under 53 FR 34079 (9/2/88) in Non-HSWA Cluster V).
74	Toxicity Characteristic Revisions.	55 FR 11798, 55 FR 26986	3/29/90, 6/29/90	7 *Del. C.* §§6305(a), 6306, 6307; DRGHW §§261.4(b)(6)(i), (b)(9), (b)(10), 261.8, 261.24, 261.30(b), Part 261 Appendix II, 264.301(e)(1), 265.221(d)(1), 265.273(a), Part 268 Appendix I as adopted 6/19/92.
		RCRA Cluster I		
81	Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038).	55 FR 46354, 55 FR 51707	11/2/90, 12/17/90	7 *Del. C.* §§6305(a); DRGHW §§261.31(a), (b), Part 261 Appendix VII as adopted 11/19/93.
84	Toxicity Characteristic; Chlorofluorocarbon Refrigerants.	56 FR 5910	2/13/91	7 *Del. C.* §§6305(a), DRGHW §§261.4(b)(12) as adopted 7/26/94.
89	Revision to F037 and F038 Listings.	56 FR 21955	5/13/91	7 *Del. C.* §§6305(a); DRGHW §§261.31(a) as adopted 7/26/94.

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Delaware is not seeking authority over Indian Lands since there are no Federally recognized Indian Lands in the State at this time.

C. Decision

I conclude that Delaware's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Delaware is granted final authorization to operate its hazardous waste program as revised.

Delaware now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Delaware also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

EPA uses Part 272 for codification of the decision to authorize Delaware's program and for incorporation by reference of those provisions of Delaware's statutes and regulations that EPA will enforce under Sections 3008, 3013 and 7003 of RCRA. EPA is reserving amendment of 40 CFR Part 272, Subpart I, until a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UNRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small

governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector. The Act excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program, except in certain cases where a ''federal intergovernmental mandate'' affects an annual federal entitlement program of $500 million or more that are not applicable here. Delaware's request for approval of revisions to its authorized hazardous waste program is voluntary and imposes no Federal mandate within the meaning of the Act. Rather, by having these revisions to its hazardous waste program approved, Delaware will gain the authority to implement these federally authorized revisions to its hazardous waste program within its jurisdiction, in lieu of EPA thereby eliminating duplicative State and Federal requirements. If a State chooses not to seek authorization for administration of a hazardous waste program under RCRA Subtitle C, RCRA regulation is left to EPA.

In any event, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or the private sector in any one year. EPA does not anticipate that the approval of Delaware's revisions to its hazardous waste program referenced in today's notice will result in annual costs of $100 million or more. EPA's approval of state programs, and revisions thereto, generally may reduce, not increase, compliance costs for the private sector since the State, by virtue of the approval, may now administer the program in lieu of EPA and exercise primary enforcement for those regulations for which they have been authorized. Hence, owners and operators of treatment, storage, or disposal facilities (TSDFs) will continue to generally no longer face dual Federal and State compliance requirements, thereby reducing overall compliance costs. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs or that will become subject to the requirements of an approved State hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265, and 270 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once EPA authorizes a State to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs under the approved State program, in lieu of the Federal program.

Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. EPA recognizes that small entities may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, since such small entities which own and/or operate TSDFs are already subject to the requirements in 40 CFR Parts 264, 265 and 270, this authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would result in an administrative change (i.e., whether EPA or the state administers the RCRA Subtitle C program in that state), rather than result in a change in the substantive requirements imposed on small entities. Once EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small entities will be able to own and operate their TSDFs under the approved state program, in lieu of the federal program. Moreover, this authorization, in approving a state program to operate in lieu of the federal program, eliminates duplicative requirements for owners and operators of TSDFs in that particular state.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively approves the Delaware program to operate in lieu of the federal program, thereby eliminating duplicative requirements for handlers of hazardous waste in the state. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 26, 1996.

W. Michael McCabe,

Regional Administrator.

[FR Doc. 96–20248 Filed 8–7–96; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–43 and 101–46

[FPMR Temp. Reg. H–28]

RIN 3090–AG01

Relocation of FIRMR Provisions Relating To GSA's Role in the Disposal of Excess and Exchange/Sale Information Technology (IT) Equipment

AGENCY: Office of Policy Planning and Evaluation, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation redesignates certain provisions of the Federal Information Resources Management Regulation (FIRMR) to the Federal Property Management Regulation

(FPMR). The regulation also makes a few changes to existing parts of the FPMR to update old references to the FIRMR. This change is necessary because the Information Technology Management Reform Act of 1996, effectively disestablishes the FIRMR. The referenced FIRMR provisions that apply to the transfer and disposal of excess IT equipment, will be maintained in the FPMR after August 7, 1996.

DATES: This rule is effective August 8, 1996. Comments are solicited and are due: October 7, 1996.

Expiration Date: December 31, 1997.

ADDRESSES: Comments may be mailed to General Services Administration, Office of Policy, Planning and Evaluation, Strategic IT Analysis Division (MKS), 18th and F Streets, NW., Room 3224, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall, GSA, Office of Policy, Planning and Evaluation, Strategic IT Analysis Division (MKS), 18th and F Streets, NW., Room 3224, Washington, DC 20405, telephone FTS/Commercial (202) 501–3194 (v) or (202) 501–0657 (tdd), or Internet (stewart.randall@gsa.gov).

SUPPLEMENTARY INFORMATION: (1) The President signed the National Defense Authorization Act (NDAA) For Fiscal Year 1996, Pub. L. 104–106, on February 10, 1996. Included in the NDAA was Division E, the Information Technology Management Reform Act of 1996. Section 5101 of the Act repeals section 111 of the Federal Property and Administrative Services Act of 1949, as amended (the Brooks Act) (40 U.S.C. 759). The Brooks Act was the authority for many of the provisions in GSA's Federal Information Resources Management Regulation; its repeal effectively results in the disestablishment of the FIRMR. Any FIRMR provisions not affected by the repeal of the Brooks Act, such as Part 201–23—Disposition, concerned with the utilization of excess IT equipment, are being removed from the FIRMR and reestablished in the Federal Property Management Regulation or other documents, as appropriate.

(2) Most of the provisions now contained in part 101–43 of the FPMR were moved almost verbatim from part 201–23 of the FIRMR except for changes in terminology, e.g., Federal information processing to information technology. Such change was needed to make the regulation consistent with relevant legislation. A few provisions were added to include essential information from FIRMR Bulletin C–2, which will be discontinued when the FIRMR is disestablished in August 1996. Additionally, a few changes were made to existing provisions of part of 101–43 and to part 101–46 to correct or remove out of date references to FIRMR parts.

(3) GSA has determined that this rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993, because it is not likely to result in any of the impacts noted in Executive Order 12866, affect the rights of specified individuals, or raise issues arising from the policies of the Administration. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Parts 101–43 and 101–46

Archives and records, Computer technology, Information technology, Government procurement, Property management, Records management, and Telecommunications.

GENERAL SERVICES ADMINISTRATION
Washington, DC 20405

FEDERAL PROPERTY MANAGEMENT REGULATIONS TEMPORARY REGULATION H–28

TO: Heads of Federal agencies
SUBJECT: Relocation of FIRMR provisions relating to GSA's role in the disposal of excess and exchange/sale information technology (IT) equipment

1. *Purpose.* This regulation moves certain provisions in 41 CFR part 201–23 of the Federal Information Resources Management Regulation (FIRMR) to 41 CFR Part 101–43.6 of the Federal Property Management Regulations (FPMR).

2. *Effective date.* This regulation is effective on August 8, 1996.

3. *Expiration date.* This regulation expires on December 31, 1997, unless sooner superseded or canceled.

4. *Background.* The President signed the National Defense Authorization Act (NDAA) For Fiscal Year 1996, Pub. L. 104–106, on February 10, 1996. Included in the NDAA was Division E, the Information Technology Management Reform Act of 1996. Section 5101 of the Act repeals section 111 of the Federal Property and Administrative Services Act of 1949, as amended (the Brooks Act) (40 U.S.C. 759). The Brooks Act was the authority for many of the provisions in GSA's FIRMR; its repeal effectively results in the disestablishment of the FIRMR. Any FIRMR provisions not affected by the repeal of the Brooks Act, such as Part 201–23—Disposition, concerned with the disposal of excess IT equipment, are being removed from the FIRMR and reestablished in the FPMR or other documents, as appropriate. Most of the provisions now contained in part 101–43 of the FPMR were moved almost verbatim from part 201–23 of the FIRMR except for changes in terms, i.e., Federal information processing to information technology. That change was needed to make the regulation consistent with relevant legislation. A few sentences were added to include essential information from FIRMR Bulletin C–2, which will be discontinued when the FIRMR is disestablished in August 1996. Additionally, changes were made to existing provisions of part 101–43 and to part 101–46 to correct or remove out of date FPMR references to FIRMR parts.

5. *Agency Comments.* Comments concerning this regulation should be submitted to the General Services Administration, Office of Policy, Planning and Evaluation, Strategic IT Analysis Division (MKS), 18th and F Streets, NW., Room 3224, Washington, DC 20405, no later than October 7, 1996.

6. *Explanation of changes.*

For the reasons set forth in the preamble, 41 CFR Part 101 is amended as follows:

PART 101–43—UTILIZATION OF PERSONAL PROPERTY

1. The authority citation for part 101–43 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 1412.

2. Section 101–43.000 is revised to read as follows:

§ 101–43.000 Scope of part.

This part prescribes the policies and methods governing the economic and efficient utilization of personal property located within and outside the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands. Section 101–43.6 prescribes the specific policies and procedures governing the worldwide utilization of excess information technology resources. Additional guidelines regarding reutilization of hazardous materials are prescribed in part 101–2.

3. Subpart 101–43.6 is added to read as follows:

Subpart 101–43.6—Diposition of IT Excess Personal Property

101–43.600 Scope of subpart.
101–43.601 General.
101–43.602 Policies.
101–43.603 Procedures.

Subpart 101–43.6—Disposition of IT Excess Personal Property

§ 101–43.600 Scope of subpart.

This subpart prescribes policies and procedures to be followed by agencies for disposing of Government-owned information technology (IT) equipment

and software that is no longer needed for the purpose for which it was acquired. Information technology means any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by an executive agency. The term includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

§ 101–43.601 General.

(a) Government-owned IT equipment that is no longer needed for the purpose for which it was acquired is either—

(1) Reassigned within the agency;

(2) Declared excess to the agency's needs and made available for transfer to another agency;

(3) Exchanged or sold as part of a transaction to acquire replacement IT equipment; or

(4) Declared surplus and made available for donation.

(b) IT software that is no longer needed for the purpose for which it was acquired is either—

(1) Reassigned within the agency consistent with the limitations of any applicable license; or

(2) Otherwise disposed of consistent with the limitations of any applicable license.

§ 101–43.602 Policies.

Agencies shall—

(a) Use IT equipment or IT software that is available for reassignment within the agency or by transfer from another agency when such use is the most advantageous alternative to satisfy the agency's requirements.

(b) Make available for reassignment within the agency IT equipment that is not outdated and that is no longer needed for the purpose for which it was acquired.

(c) Make available for interagency screening and transfer to another agency, excess IT equipment that is not outdated and has an original acquisition cost (OAC) per component of $1 million or more. Outdated IT equipment means any IT equipment over six years old, based on the initial commercial installation date of that model of equipment, and that is no longer in current production. Interagency transfer of IT equipment that is not outdated with an OAC per component of less than $1 million, is permitted if the holding agency learns of a potential user outside of the screening process. Agencies may interagency screen and transfer excess IT equipment without GSA approval.

(d) Make available for surplus donation or subsequent sale, excess IT equipment not exchanged, sold, reassigned or transferred.

(e) Consistent with the limitations of any applicable license—

(1) Make available for reassignment within the agency IT software that is no longer needed for the purpose for which it was acquired;

(2) Make available for interagency transfer, excess IT software not exchanged or sold, if the holding agency learns of a potential user outside of the screening process (GSA does not require interagency screening of IT software);

(3) For excess IT software not reassigned, transferred, exchanged, or sold, either:

(i) Return it to the licensor, or

(ii) Destroy it after a duly authorized agency official determines in writing that destruction is the most cost-effective disposal approach.

§ 101–43.603 Procedures.

(a) Each agency head shall designate an agency point of contact for managing the disposition of IT equipment and software. Each agency shall submit the name, address, and phone number of this individual to the General Services Administration/MKS, 18th & F Streets, NW., Washington, DC 20405. GSA will maintain a list of these coordinators on the IT Policy Home Page. The URL is http: //www.itpolicy.gsa.gov.

(b) GSA will convene meetings with agency points of contacts periodically to discuss emerging issues relating to the disposition of excess IT resources.

(c) Agencies shall—

(1) Establish procedures for the reassignment of IT equipment and software within the agency; and

(2) Obtain approval from the agency Chief Information Officer before reassigning outdated IT equipment.

(d) Agencies shall offer excess IT equipment that is not outdated and has an OAC per component of $1 million or more to other Federal agencies by:

(1) Notifying other excess IT coordinators of the availability of the IT equipment;

(2) Fully and accurately describing the IT excess equipment by providing the following information:

(i) Condition code as defined in 41 CFR 101–43.4801;

(ii) Manufacturer's name;

(iii) Equipment type and model;

(iv) Description, including the supplier's nomenclature for the component;

(v) List of elements removed from each component, if applicable;

(vi) Description of available software, engineering drawings, manuals, etc; and

(vii) Contractor-held equipment, if applicable.

(3) Allowing agencies 15 days to assess their need for the excess IT equipment.

(e) Agencies may conduct exchange/sale transactions of IT equipment and software not transferred to another agency without GSA approval. (Exchange/sale transactions for IT equipment may be initiated in parallel with interagency screening, but screening of exchange/sale transactions with an OAC per component of $1 million or more shall be completed prior to concluding an exchange/sale transaction.) When an agency determines that IT equipment will be replaced by exchanging or selling it, the agency shall follow the contracting policies and procedures in the Federal Acquisition Regulation (FAR) and the policies and procedures on exchange/sale contained in 41 CFR part 101–46. IT software transactions must be consistent with the limitations of any applicable license.

(f) Agencies shall make available for surplus donation or subsequent sale, in accordance with 41 CFR parts 101–44 and 101–45, excess IT equipment not exchanged, sold, reassigned, or transferred.

(g) Agencies shall apply the policies and procedures of this subpart 101–43.6 to IT equipment used by grantees and contractors when IT equipment is—

(1) Acquired by the contractor or grantee under a contract or grant and the terms vest title in the Government or the Government is obligated or has the option to take over title;

(2) Furnished to the grantee or contractor by the Government (Transfer of excess IT equipment to agency project grantees shall be conducted in accordance with 41 CFR 101–43.314.); or

(3) Operated by the grantee or contractor as part of a Government-owned or Government-controlled facility.

(h) Agencies may request GSA to review another agency's decision to transfer excess IT equipment. Requests shall be sent to the General Services Administration/MKS, 18th & F Streets, NW., Washington, DC 20405.

§ 101–43.4801 [Amended]

4. Section 101–43.4801 is amended by removing paragraph (c) and redesignating existing paragraphs (d), (e) and (f) as paragraphs (c), (d) and (e), respectively.

PART 101–46—UTILIZATION AND DISPOSAL OF PERSONAL PROPERTY PURSUANT TO EXCHANGE/SALE AUTHORITY

5. The authority citation for part 101–46 continues to read as follows:

Authority: 40 U.S.C. 1412; Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)).

§ 101–46.201–2 [Amended]

6. Section 101–46.201–2 is amended in paragraph (a) by removing the last sentence.

Dated: July 31, 1996.

David J. Barram,

Acting Administator of General Services.

[FR Doc. 96–20292 Filed 8–7–96; 8:45 am]

BILLING CODE 6820–25–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 80–9; Notice 12]

RIN 2127–AF59

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document requires that the rear of truck tractors be equipped with retroreflective material similar to that required on the rear of the trailers they tow to increase nighttime conspicuity. Manufacturers may choose either retroreflective sheeting or reflex reflectors. In the case of truck tractors delivered with a temporary mudflap arrangement rather than permanent equipment, the requirement for retroreflective material near the top of the mudflap may be satisfied with material carried by the temporary mudflap brackets that is transferable to the permanent mudflap system. Retroreflective material is also required near the top of the cab in a pattern similar to that used on trailers. NHTSA estimates that the incidence of crashes involving truck tractors struck in the rear by other vehicles in darkness could be reduced by 15 to 25 percent by enhancing conspicuity as required by this rule.

DATES: The effective date for the final rule is July 1, 1997. Petitions for reconsideration of the rule must be received not later than September 23, 1996. Petitions filed after that time will be considered petitions for rulemaking pursuant to 49 CFR part 552.

ADDRESSES: Petitions for reconsideration should refer to the docket number and notice number, and be submitted to: Administrator, NHTSA, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For Technical Issues: Patrick Boyd, Office of Safety Performance Standards, NPS–31, telephone (202) 366–6346, FAX (202) 366–4329. For Legal Issues: Taylor Vinson, Office of Chief Counsel, NCC–20, telephone (202) 366–2992, FAX (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 1992, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* to add paragraph S5.7 *Conspicuity Systems.* (57 FR 58406) Effective December 1, 1993, the rule required large trailers, particularly the type hauled by truck tractors, to be equipped with reflective marking (either retroreflective tape or reflex reflectors) to enhance their detectability at night or under other conditions of reduced visibility. The preamble to the rule explained that the conspicuity requirements applied only to large trailers because most fatal accidents at night in which a truck is struck involve a truck tractor-trailer combination vehicle. But the notice also mentioned that the night accident involvement rate of truck tractors alone was much greater than that of other single-unit trucks. The agency announced that it was considering truck tractors for future conspicuity rulemaking.

As part of its petition for reconsideration of the final rule, the Insurance Institute for Highway Safety (IIHS) asked that the conspicuity requirement be extended to single unit trucks and to truck tractors, citing accident statistics in support of its request.

Aided by its fleet study of heavy trailers using a similar rear conspicuity treatment, NHTSA tentatively concluded that motor vehicle safety would be enhanced if a conspicuity marking scheme were extended to truck tractors. Under 49 CFR 571.3(b), a truck tractor ''means a truck designed primarily for drawing other motor vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and the load so drawn.'' Far fewer crashes involve vehicles colliding with the rear of truck tractors than with the rear of trailers, presumably because of a much lower exposure of tractors operating without trailers. However, NHTSA's data indicate that a higher proportion of rear end crashes involving truck tractors, including fatal crashes, occur at night than for either trailers or trucks.

Truck tractors are less conspicuous at night from the rear than other motor vehicles because they are subject to fewer rear lighting requirements of Standard No. 108. Unlike other vehicles over 2032 mm wide (80 inches), tractors are not required to have rear side marker lamps, rear clearance lamps, or rear identification lamps. If double sided turn signal lamps are used on the front fenders, truck tractors are not required to have rear turn signal lamps either. The only rear marking lamps required on all truck tractors are the taillamps, and the taillamps of truck tractors do not mark the full width of the vehicle as do the taillamps of other vehicles.

Since much of a truck tractor's operational life is spent in hauling trailers, it does not appear cost beneficial to require it to have the full panoply of rear lighting equipment required for other motor vehicles. Further, the configuration of truck tractors presents practicability problems for the mounting of the tail, stop, and turn signal lamps at the locations specified for other vehicles. However, the inexpensive and convenient use of retroreflective material would improve the detectability of the rear of truck tractors when they are being operated or parked without trailers. The familiarity of the public with the Federal conspicuity treatment applied to large trailers should improve the recognition of similarly treated truck tractors and make such a treatment more effective for accident prevention than it would have been in the past.

The Notice of Proposed Rulemaking

In view of the relatively short length of truck tractors and the fact that they are equipped with a full complement of lamps at the front, on June 12, 1995, NHTSA proposed (60 FR 30820) a conspicuity treatment for the rear only. The conspicuity treatment would use the same retroreflective sheeting or reflex reflectors certified for use on trailers under the existing regulation (the term ''retroreflective material'' is used in this document to include both sheeting and reflex reflectors).

As with large trailers, two strips of white material 300 mm in length were proposed for application horizontally and vertically to the right and left upper rear contours of the body (as shown in Figure 31), as close to the top of the body and as far apart as practicable. Relocation of the material would be

allowed to avoid obscuration by vehicle equipment when viewed from directly behind. If relocation is required for one side of the rear but not the other, the manufacturer would be permitted to relocate the other strips to achieve a symmetrical effect.

To indicate the overall width of the truck tractor, two strips of retroreflective material, 600 mm in length, of alternating colors of red and white, were proposed for the rear, to be mounted as horizontal as practicable and as far apart as practicable, not more than 1525 mm above the road surface. In the proposal, this material could be applied to the truck body, or, if the tractor is so equipped, to the mudflaps or mudflap support brackets. However, if the strips were located on the mudflaps, they would be placed not lower than 300 mm below the mudflap support bracket to avoid excessive movement. Since the tire diameter, and consequently the distance from the mudflap support to the road surface, is nominally 1 meter, the lowest practicable location of the strips would be about 700 mm above the road surface.

Twenty comments were received in response to the NPRM, representing the views of truck manufacturers, commercial and private fleet operators, insurance companies, public interest groups and private citizens. Details of the issues raised by the comments and NHTSA's responses are discussed below.

Effectiveness and Necessity of Truck Tractor Conspicuity

Comments from Parents Against Tired Truckers, the Transportation Safety Equipment Institute, McKenzie Tank Lines, Merrill Allen, and Marshall Reagle voiced agreement with the proposed regulation and the reasons for its provisions. Dr. Allen also suggested that all mudflaps used on tractors and trailers should be white to maximize visibility.

Trans Gulf, Daggett Truck Line, and the National Private Truck Council expressed reservations about the value of truck tractor conspicuity. Daggett stated that concern for the visibility of the rear of truck tractors is a misplaced priority in comparison with the lack of visibility of trains at road crossings. Trans Gulf stated that truck tractors have the same rear lighting as automobiles and reflective material is unnecessary. The National Private Truck Council believes that the expectation of accident reduction as a result of conspicuity is unproven.

The agency does not agree that the rear lighting of truck tractors is comparable to the rear lighting of cars. Truck tractors lack the center high mounted stop lamp and the mandatory rear mounted turn signals of cars, and they have far fewer rear lamps than other trucks. However, the greatest disadvantage of the rear lighting of truck tractors is the narrow spacing of the taillamps which creates a deceptive image for distance judgment not shared by cars. (For an explanation of this phenomenon, see the beginning of the next section, which is titled ''Location of Material Marking the Width of a Truck Tractor.'')

The basis of the safety benefits estimated for truck tractor conspicuity is the fleet study of trailers conducted by the agency in the 1980's (*Improved Commercial Vehicle Conspicuity and Signalling Systems—Task III*, HS 806 923). The rear crash experience is similar for both trailers and truck tractors operating without trailers in that the majority of fatal crashes in which they are struck occur at night. Also, the proportion of less serious crashes occurring at night is even greater for truck tractors without trailers than for trailers. The present configuration of tractor rear lighting persuades the agency that the information available on the effectiveness of retroreflective conspicuity on trailers provides a reasonable basis upon which to predict safety benefits for conspicuity material on truck tractors.

The Insurance Institute for Highway Safety, Advocates for Highway and Auto Safety, and the National Automobile Dealers Association expressed support of the truck tractor proposal and also urged the agency to expand the requirements for truck conspicuity in future rulemakings. Specifically, they suggested a requirement for all single-unit trucks, a treatment for the side of truck tractor bodies and cooperation between NHTSA and the Federal Highway Administration (FHWA) on a retrofit rule for truck tractors.

NHTSA has initiated a study of the effectiveness in service of the conspicuity treatments that have been required on new trailers manufactured since December 1, 1993. The results of this study may improve the agency's ability to estimate or project the safety benefits of conspicuity treatments on single-unit trucks which have a lower proportion of nighttime crashes.

The agency did not propose a body side treatment for truck tractors. There does not appear to be a practicable way to mark the whole length of the tractor, and a body-only treatment may mask the true length of the vehicle because of the long untreated frame and axles behind the body. The safety need is also less obvious for the side of tractors than for the rear because ordinary traffic situations place the rear at a much higher level of exposure.

Location of Material Marking the Width of a Truck Tractor

The primary elements of the proposed conspicuity treatment were the low-mounted red/white strips intended to reveal the vehicle's width as well as to increase its visibility. The proposal included the options of placing the material either on the back of the cab (a permitted location for the present rear reflex reflectors of truck tractors), on the mudflap brackets or on the top portion of the mudflaps themselves.

This proposal addressed a problem created by the location of the taillamps of truck tractors. The particularly narrow spacing of their taillamps make it difficult for following drivers approaching truck tractors to judge their size and distance correctly at night. The taillamps are usually mounted much closer together on truck tractors than on other motor vehicles. A study by the University of Michigan Transportation Research Institute, titled *Effects of the Lateral Position of Low-beam Headlamps on the Perceived Distance of Vehicles (UMTRI–95–21)*, demonstrated that a driver's ability to perceive the distance of an oncoming vehicle is affected by the transposition on that vehicle of the lower-beam headlamps from the required outer position to the inner position used for upper beams. Since the spacing ratio of ordinary truck taillamps to truck tractor taillamps is at least twice the spacing ratio of lower beam to upper beam headlamps, a far greater effect on the ability of following drivers to judge distance would be expected. In other words, truck tractor taillamps are spaced even more narrowly (relative to other taillamps) than the narrowest headlamp spacing in the study (relative to normal headlamp spacing). Therefore, truck tractor taillamps would be expected to have a greater affect on distance perception than that demonstrated for headlamp placement.

MediQuik Express incorrectly concluded that the proposal would require retroreflective material integral with the mudflaps and expressed concern that it would ''give mudflap manufacturers an excuse to double if not triple the cost of mudflaps.'' The NPRM did not assume the existence of mudflaps with integral retroreflective material in its cost estimate. The cost estimate of applying the material at the mudflap included the cost of two mounting plates to which the retroreflective material would be

attached. In this example, each mounting plate had the same bolt hole pattern as the top of the mudflap. The mounting plate carrying the retroreflective material was secured to the mudflap bracket, sandwiching the mudflap between the bracket and the mounting plate. This arrangement would affect neither the design nor the cost of present mudflaps and mudflap brackets.

However, 3M commented that market pressures, presumably to provide truck-tractor conspicuity at less than the cost estimated in the NPRM, would drive the development of adhesives and mechanical mounting systems to attach material directly to mudflaps. Specialty Adhesive Film Co. commented that it had already developed an adhesive and a bonding process to make direct attachment possible. The agency welcomes the availability of complying alternatives in conspicuity equipment, but the solution costed in the proposal was developed independently of them.

McKenzie Tank Lines, which operates a large fleet of tractors, reported that it had equipped tractors with reflective material on the mudflap brackets out of concern that the narrowly spaced taillamps would not create an accurate size image of tractors without trailers (''bobtail'') to approaching motorists at night. However, it cautioned that many types of mudflap brackets do not have enough room for reflective material and that it would be a huge expense for a fleet to retrofit suitable mudflap brackets. The agency agrees with McKenzie that the mudflap bracket is the optimum location for conspicuity material, but it wishes to clarify that the rule is not retroactive. The agency also points out that the use of retroreflective material attached to the mudflap bracket by means of the mounting plate described above achieves the effect desired by McKenzie without relying on a particular mudflap bracket design.

Mudflap brackets with integral conspicuity material, like mudflaps themselves with integral conspicuity material, are product ideas with potential economic and aesthetic benefits, but the practicability of the final rule does not depend on their availability. It should be noted that the recent commercial offering by at least two companies of arrays of conspicuity grade (DOT–C) reflex reflectors in a bar form, narrower than conspicuity tape, may make the mounting of material directly to mudflap brackets more practical. The reflex reflector arrays look like strips of sheeting about 8 or 12 inches long but need only a width of about 1 inch to attain the required photometric performance.

Many commenters criticized the proposed alternative of attaching the red/white material to the rear of the cab. McKenzie believed that having the material on the cab rather than on the mudflap brackets could give following traffic a misconception of the location of the rear of the truck. The American Trucking Associations (ATA) cited an unsatisfactory experience of the U.S. Military in Germany with reflectorized placards on truck tractors. In a docketed telephone conversation, ATA explained to NHTSA that placards were placed on the back of the cab of a test vehicle, and a panel of observers suggested that the placards could cause a misconception of the location of the rear of the tractor in adverse weather at night. As a result, the military tractors were equipped with placards on the mudflaps. Another commenter, Mr. Wes Trindal, described a contrary experience of the U.S. Military in Vietnam. Truck tractors were equipped with lamp packages on the back of the body at the full width of the vehicle. He cited satisfaction of the troops using these vehicles and recommended similar auxiliary lights for truck tractors to use while being operated without trailers.

The Truck Manufacturers Association (TMA), Navistar, Mack, Ford and ATA commented that the option of placing the red/white width-marking part of the treatment on the cab was impractical. They cited a lack of space around the engine opening at the rear of many cabs and the amount of equipment obscuring the area necessary for a full width conspicuity treatment.

The agency has heeded the comments opposing the proposed alternative, and the final rule requires that the red/white element of the truck tractor conspicuity treatment be placed on either the mudflap bracket or the mudflap, or on a fender if the tractor is so equipped.

The same commenters observed that a significant proportion of new truck tractors are not delivered with permanent mudflaps and mudflap brackets as original equipment. The manufacturer equips such vehicles with temporary mudflaps and brackets to satisfy state laws, but dealers, aftermarket suppliers, or fleet service facilities install the permanent mudflap or fender equipment. The truck manufacturers, either individually or as part of TMA, recommended that the installers of permanent mudflaps be considered as second stage vehicle manufacturers with responsibility of certifying the compliance of the ''completed'' truck if truck tractor conspicuity is to be a NHTSA requirement for new vehicles. Navistar also recommended that truck tractor conspicuity requirements be established as a Federal Motor Carrier Safety Regulation (administered by FHWA) rather than a requirement of Standard No. 108 for new motor vehicles regulated by NHTSA.

The agency does not agree that regulatory solutions of greater complexity are necessary. Manufacturers may certify compliance of vehicles with temporary mudflap brackets if backing plates with retroreflective material are installed with the mudflap attaching bolts as assumed in the cost estimate. The language of the final rule clarifies that retroreflective treatment of the temporary mudflap equipment is sufficient for certification if the retroreflective material is transferable to a permanent mudflap system. Locating retroreflective material on a heavy aluminum backing plate is the most obvious universal solution, and the one used in NHTSA's cost estimate, but the likely development of mudflaps with integral retroreflective material and reflex reflectors designed for attachment with the mudflap bolts may offer manufacturers lower cost alternatives for transferable conspicuity material. The permanent application of retroreflective material to a temporary mudflap bracket (usually a piece of lumber) is not an acceptable alternative because there is no assurance that the permanent bracket will have conspicuity material.

In response to the suggestion that installers of permanent mudflaps be considered as second stage vehicle manufacturers, NHTSA notes that those installers would not satisfy the definition of either an ''intermediate manufacturer'' or a ''final stage vehicle manufacturer'' in 49 CFR part 568 *Vehicles Manufactured in Two or More Stages.* Further, the truck tractors to which the installers add permanent mudflaps are not ''incomplete vehicles.'' Therefore, the agency could not, consistent with part 568, place overall certification responsibility on those installers.

The agency also believes that conspicuity treatment should be a new-vehicle requirement and not solely for tractors in use subject to the regulations of FHWA. FHWA's Motor Carrier Safety regulation for lighting already incorporates by reference the lighting and reflector requirements of Standard No. 108 (at 49 CFR 393.11), and applies them to vehicles under FHWA's jurisdiction. The FHWA will work with the States through its Motor Carrier Safety Assistance Program to ensure that inspection personnel are aware that a significant percentage of truck tractors

will be shipped with temporary mudflap systems and transferable material. The FHWA and the States will help to make certain that the motor carriers operating these vehicles maintain the conspicuity treatments on the truck tractors. The presence of new truck tractors with conspicuity material and the availability of convenient new products are likely to stimulate interest in voluntary retrofit of existing vehicles. The agency believes that large numbers of trailers built before December 1, 1993, the effective date of the trailer conspicuity regulation, have been retrofitted voluntarily with conspicuity treatments similar to new trailer equipment.

A particular style of mudflap used on many truck tractors is not rectangular. It has the upper outer corner removed for clearance with trailer equipment and is supported by a bracket with a 45-degree downward bend about 8 inches from the outboard end. Manufacturers may satisfy the final rule by applying conspicuity material to the bracket despite the bend because such a placement is ''as horizontal as practicable'' on the bracket. Alternatively, the rule may be met by securing conspicuity material across the mudflap horizontally below the corner notch because the rule allows it to be applied as low as 300 mm below the top of the mudflap. However, the use of transferable conspicuity material on a temporary rectangular mudflap presents a problem to an owner installing permanent mudflaps which are not rectangular. The horizontal top edge of this type of mudflap is only about 16 inches long, and thus the 600 mm long segments of transferable conspicuity material must be trimmed to 400 mm to fit. NHTSA will work with FHWA's Office of Motor Carrier Safety and Technology to develop inspection procedures to permit the practical use of original-equipment transferable conspicuity material on subsequently-installed permanent mudflap equipment.

Upper Cab Contour Markings

The second part of the proposed conspicuity treatment was illustrated in the NPRM as a pair of inverted ''L''s of white conspicuity material to mark the upper contour of the cab. This element is identical in shape and purpose to the upper conspicuity marking of trailers. The purpose of the upper material is to create a two-dimensional image to improve the judgement of distance and closing speed on the part of drivers approaching from a distance. On truck tractors, which are not required to have rear clearance and identification lamps, cab-mounted conspicuity material may also provide the only source of visibility when the taillamps and lower conspicuity material are temporarily obscured by hilly terrain.

The previously discussed comments of ATA, TMA and the vehicle manufacturers regarding the possibility of a false indication of the rear of the vehicle as a result of reflective material on the lower cab and the lack of space on the rear of the cab to mount material were also directed toward the upper material. Mack and ATA provided pictures of vehicles to illustrate application difficulties. Navistar and TMA commented that the addition of non-OEM headboards, sleeper compartments and tool boxes would obscure the material, and they noted that even if the material were visible viewed from directly behind, as specified in the NPRM, it could be obscured viewed from a small angle. TMA asked for clarification regarding the avoidance of discontinuous surfaces, whether the vertical and horizontal reflector strips must intersect, and whether aerodynamic roof fairings are included in the cab contour.

NHTSA does not agree that truck tractor cabs lack the space for the upper treatment. The exact location of the upper treatment is less crucial than that of the lower treatment. It is not necessary for it to mark the extreme width or the extreme height of the cab for it to add a height dimension to the night image of a truck tractor. Therefore, the upper marking may be located in spots dictated by practicability and still fulfill its intended function.

The most common obstructions at the upper cab corners are exhaust stacks. The NPRM illustrated the right upper marking moved inboard to clear an exhaust stack, and the proposed regulation permitted manufacturers to move the marking on the opposite side to achieve a symmetrical appearance, if desired. The commenters supplied photographs of various truck tractor configurations illustrating possible obstructions. The most problematic cases for upper treatment were those featuring large rear windows with limited space between the rear window frame and large dual exhaust stacks on each side of the window. However, even these designs appeared to have enough space between the window and the stack obstruction for a one-inch wide reflex reflector bar if not a 2-inch strip of sheeting material. Also, the material may be attached to the edge of the window itself if the window is so large as to occupy all the practicable space for an upper treatment. However, limited obstructions such as fairing support rods and hoses are not important enough to dictate the placement of the upper treatment. Accordingly, the final rule permits the upper material to be obscured up to 25 percent when viewed directly from behind (the rear orthogonal view).

TMA and Navistar commented that even material on the cab visible in a rear orthogonal view would not be useful because it could be obscured by exhaust stacks or other equipment when viewed at a small angle. However, the purpose of the upper material is to improve the distance perception of a driver of a faster vehicle approaching in the same lane. In this circumstance, the usual view of the truck tractor to the approaching driver is close to orthogonal. The only instance in which a truck tractor in the same lane would have a difference in heading angle great enough to cause total obscuration would be in a curve so sharp that the tractor would not be illuminated by the approaching headlamps. Likewise, there is little potential for the upper material to create a misleading impression of the location of rear of the vehicle because it is only visible at a distance. As the approaching vehicle nears the truck tractor, the upper treatment becomes very much dimmer than the lower material at the mudflaps. This occurs because the headlamps of vehicles close to the truck tractor do not project much light as high as the upper treatment. The light entrance angle also becomes unfavorable for retroreflection as the low headlamps approach the high-mounted material.

TMA was concerned that the existence of stiffening beads, drip rails and body seams may preclude the mounting of conspicuity material depending on the agency's definition of ''discontinuous surfaces''. The current regulatory language for trailers provides that conspicuity material ''need not be applied to discontinuous surfaces such as outside ribs, stake post pockets * * * or to items of equipment such as door hinges and lamp bodies.'' It does not prohibit the placement of material at difficult locations that may be labor intensive; it simply allows manufacturers greater discretion in designing a practicable treatment. The manufacturer may choose to make breaks in the strips to clear rivets, body seams and shallow stiffening corrugations for ease of application, but it is not required to do so. Likewise, the horizontal and vertical strips are not required to intersect, and Figure 30–1 in the current trailer conspicuity standard illustrates a trailer treatment in which the position of a hinge would make intersecting strips impractical. Also, the

agency does not consider aerodynamic body fairings as part of the cab contour. In general, fairings would not be an acceptable location for conspicuity material except as discussed below.

If the addition of OEM equipment obscures the material (equipment such as headboards, sleeper compartments, tool boxes and aerodynamic fairings), Standard No. 108, as well as the statute under which it was issued, requires that auxiliary conspicuity material be applied to those components prior to the truck tractor's initial sale in order to restore the truck tractor to conformity. Further, statutory law prohibits a manufacturer, distributor, dealer, or motor vehicle repair business from adding, after initial sale of a vehicle, equipment having an obscuring effect unless the modifier adds compensating auxiliary conspicuity material. Thus, the consequences of obscuring the conspicuity material will be the same as the consequences currently of obscuring auxiliary high mounted stop lamps by the installation of pickup truck caps. FHWA's Motor Carrier Safety Regulations would require auxiliary material on obscuring components on all regulated vehicles in interstate commerce built after the effective date of this final rule, regardless of who installed the components.

Continued Requirement for Present Truck Reflex Reflectors

Under the final rule, manufacturers of truck tractors have the option of using an array of reflex reflectors on the rear instead of retroreflective sheeting, the same option that is available to trailer manufacturers. However, reflex reflectors will continue to be required by Table I of Standard No. 108, in addition to the conspicuity material, whether sheeting or reflectors, as the agency has not amended paragraphs S5.1.1.1 and S5.1.1.2 of Standard No. 108 which excuse truck tractors from the full complement of rear lighting equipment required of trucks.

Presently, mounting of required reflectors or lamps on mudflaps is prohibited by paragraph S5.3.1. This requires lighting equipment to be ''securely mounted on a rigid part of the vehicle other than glazing that is not designed to be removed except for repair''. In the past, NHTSA has deemed mudflaps not to be a ''rigid part of the vehicle.'' However, the prohibition has been subject to the exceptions ''in succeeding paragraphs of S5.3.1 and S7'', and NHTSA has now included as exceptions retroreflective sheeting material or reflex reflectors on mudflaps added in compliance with the conspicuity requirements of S5.7.

Estimate of Benefits

The benefits estimated for the trailer conspicuity regulation offer a reasonable basis for estimating the benefits of a similar regulation for truck tractors. The agency concluded that the likely result of adding conspicuity treatment to trailers was the prevention of 25 percent of rear collisions, and a significant reduction in the severity of many of the remaining collisions. Although the required rear lighting for a truck tractor is less than is required for a trailer, NHTSA believes that the added degree of conspicuity of a tractor that would be provided by conspicuity treatment is not less than the relative improvement in conspicuity of a trailer provided by its treatment. Thus, it is reasonable to assume a similar rate of crash prevention.

To account for degradation in performance of the conspicuity material after years of in-use exposure, in estimating benefits, the agency assumed that the conspicuity material would be effective only for the first fifteen years of a given model year tractor fleet's life. This is consistent with the agency's prior conclusion that the material would remain effective during the nominal fourteen years of life of a trailer.

NHTSA estimated that the property damage savings of preventing a crash into the rear end of a trailer, in 1992 dollars, as $10,869, and, for damage mitigation, as $2,075 (in 1995 dollars, $11,847 and $2,262 respectively). The agency believes that, when the entire truck tractor population is equipped with conspicuity treatment, on an annual basis 260 collisions can be prevented, resulting in a savings of $3,080,000, and that the severity of a large number of the remaining 782 collisions can be mitigated, resulting in a savings of $1,769,000, or total property damage benefits of $4,849,000. The present value of these future benefits of a model year fleet would range from $4,399,000 to $3,176,000 under discount rate assumptions of 2 percent to 10 percent.

However, the primary purposes of a tractor conspicuity regulation is to save lives and reduce the severity of injuries. If fatalities involving rear collisions of truck tractors can be reduced by 15 to 25 percent annually, there will be 4 to 7 fewer deaths attributable to this type of accident. The agency also believes that there will be 94 to 157 fewer injuries annually when full coverage of the tractor population is achieved.

Estimate of Costs

In estimating costs, NHTSA has used a price for retroreflective material of $0.675 a linear foot, although market pressures may have reduced the cost to $0.60 for high volume users. Approximately 8 linear feet of material (7.8 feet actually) would be required to comply. NHTSA is also estimating a labor rate of $22.50 an hour, and an installation time of 10 minutes for the material.

On this basis, NHTSA estimates a manufacturer's cost of $9.15 when the lower conspicuity treatment is applied directly to the mudflap brackets, and a consumer cost of $13.82, applying a consumer cost factor of $1.51. If the manufacturer chooses to apply the treatment to temporary mudflap brackets, using two reusable mounting plates at an additional cost to the manufacturer of $1.11 each, the total additional cost to the consumer would be $3.35. Thus, the cost to the manufacturer would range between $9.15 and $11.37, and to the consumer, between $13.82 and $17.17. Using the latter figure, and estimating an annual production of 170,000 for truck tractors, the agency estimates that the total annual cost impact of this regulation will not exceed $2,919,500. The present value of future property damage reduction benefits from this regulation in property damage alone are expected to be at least $3,176,000 with a discount rate of 10 percent and more if a lower discount rate prevails. The prevention of deaths and injuries would be achieved with no additional cost.

Effective Date

The NPRM proposed a lead time of 120 days. TMA, Navistar and Ford commented that a one-year lead time, as was established for the trailer conspicuity requirement, was necessary. They suggested that manufacturers would change the design of OEM mudflap brackets to incorporate conspicuity material. Additional time would be required to design and procure the new types of mudflap brackets as well as the mounting plates needed for vehicles leaving the factory with temporary mudflap equipment.

NHTSA also expects that custom-molded reflex reflectors may be an effective solution to some of the practicability concerns expressed about the upper conspicuity material and that manufacturers may choose to change the location of some rear equipment to ease the installation of conspicuity material. A sufficient lead time to develop products and designs to simplify the installation of a conspicuity treatment for truck tractors is justified. Therefore, NHTSA is adopting the one-year lead time recommended by truck tractor

manufacturers. The effective date of the final rule is July 1, 1997.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This action has not been reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. Implementation of the rule would not have a yearly cost impact that exceeds $2,920,000 in the aggregate. Although the cost impacts are so minimal that preparation of a full regulatory evaluation may not be warranted, the agency has prepared a regulatory evaluation which has been placed in the docket.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. It is not anticipated that the final rule will have a significant effect upon the environment. Compliance would require the application of not more than 8 feet of retroreflective tape to the rear of a truck tractor (1,360,000 feet for an estimated year's production of 170,000 truck tractors). Retroreflective material is currently in use with no known negative environmental effects.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of truck tractors, those affected by the rulemaking action, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions will not be significantly affected because the price of new truck tractors will be only minimally increased. An increase in cost of less than $18 per vehicle is expected to be more than offset by savings in repair over the life of the model year fleet.

Executive Order 12612 (Federalism)

This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice

The final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 30163 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30162; delegation of authority at 49 CFR 1.50.

2. Section 571.108 is amended by:

(a) Revising paragraphs S5.3.1, S5.7, S5.7.1, S5.7.1.3(a), S5.7.1.4 (a) and (b), and the headings of S5.7.1.4.1 and S5.7.1.4.2,

(b) Adding new paragraph S5.7.1.4.3,

(c) Revising paragraphs S5.7.2 and S5.7.3, and

(d) Adding Figure 31, to read as follows:

§ 571.108 Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment.

* * * * *

S5.3.1 Except as provided in succeeding paragraphs of S5.3.1, and paragraphs S5.7 and S7, each lamp, reflective device, and item of associated equipment shall be securely mounted on a rigid part of the vehicle other than glazing that is not designed to be removed except for repair, in accordance with the requirements of Table I and Table III, as applicable, and in the location specified in Table II (multipurpose passenger vehicles, trucks, trailers, and buses 80 or more inches in overall width) or Table IV (all passenger cars, and motorcycles, and multi-purpose passenger vehicles, truck, trailers and buses less than 80 inches in overall width), as applicable.

* * * * *

S5.7 *Conspicuity Systems*. Each trailer of 80 or more inches overall width, and with a GVWR over 10,000 lbs., manufactured on or after December 1, 1993, except a trailer designed exclusively for living or office use, and each truck tractor manufactured on or after July 1, 1997, shall be equipped with either retroreflective sheeting that meets the requirements of S5.7.1, reflex reflectors that meet the requirements of S5.7.2, or a combination of retroreflective sheeting and reflex reflectors that meet the requirement of S5.7.3.

S5.7.1 *Retroreflective sheeting*. Each trailer or truck tractor to which S5.7 applies that does not conform to S5.7.2 or S5.7.3 shall be equipped with retroreflective sheeting that conforms to the requirements specified in S5.7.1.1 through S5.7.1.5.

* * * * *

S5.7.1.3 *Sheeting pattern, dimensions, and relative coefficients of retroreflection*.

(a) Retroreflective sheeting shall be applied in a pattern of alternating white and red color segments to the sides and rear of each trailer, and to the rear of each truck tractor, and in white to the upper rear corners of each trailer and truck tractor, in the locations specified in S5.7.1.4, and Figures 30–1 through 30–4, or Figure 31, as appropriate.

* * * * *

S5.7.1.4 *Location*. (a) Retroreflective sheeting shall be applied to each trailer and truck tractor as specified below, but need not be applied to discontinuous surfaces such as outside ribs, stake post pickets on platform trailers, and external protruding beams, or to items of equipment such as door hinges and lamp bodies.

(b) The edge of white sheeting shall not be located closer than 75 mm to the edge of the luminous lens area of any red or amber lamp that is required by this standard.

* * * * *

S5.7.1.4.1 *Rear of trailers*. * * *

S5.7.1.4.2 *Side of trailers*. * * *

S5.7.1.4.3 *Rear of truck tractors*. Retroreflective sheeting shall be applied to the rear of each truck tractor as follows:

(a) Element 1: Two strips of sheeting in alternating colors, each not less than 600 mm long, located as close as practicable to the edges of the rear fenders, mudflaps or the mudflap support brackets, to mark the width of the truck tractor. The strips shall be mounted as horizontal as practicable, in a vertical plane facing the rear, on the rear fenders, mudflap support brackets, on plates attached to the mudflap support brackets, or on the mudflaps. Strips on mudflaps shall be mounted not lower than 300 mm below the lower edge of the mudflap support bracket. If

the vehicle is certified with temporary mudflap support brackets, the strips shall be mounted on the mudflaps or on plates transferable to permanent mudflap support brackets.

(b) Element 2: Two pairs of white strips of sheeting, each pair consisting of strips 300 mm long, applied as horizontally and vertically as practicable, to the right and left upper contours of the body, as close to the top of the body and as far apart as practicable. No more than 25 percent of their cumulative area may be obscured by vehicle equipment as determined in a rear orthogonal view. If one pair must be relocated to avoid obscuration by vehicle equipment, the other pair may be relocated in order to be mounted symmetrically.

S5.7.2 *Reflex Reflectors*. Each trailer or truck tractor to which S5.7 applies that does not conform to S5.7.1 or S5.7.3 shall be equipped with reflex reflectors in accordance with this section.

* * * * *

S5.7.3 *Combination of sheeting and reflectors*. Each trailer or truck tractor to which S5.7 applies that does not conform to S5.7.1 or S5.7.2, shall be equipped with retroreflective materials that meet the requirements of S5.7.1 except that reflex reflectors that meet the requirements of S5.7.2.1, and that are installed in accordance with S5.7.2.2, may be used instead of any corresponding element of retroreflective sheeting located as required by S5.7.1.4.

* * * * *

3. Figure 31 is added as follows:

BILLING CODE: 4910–59–P

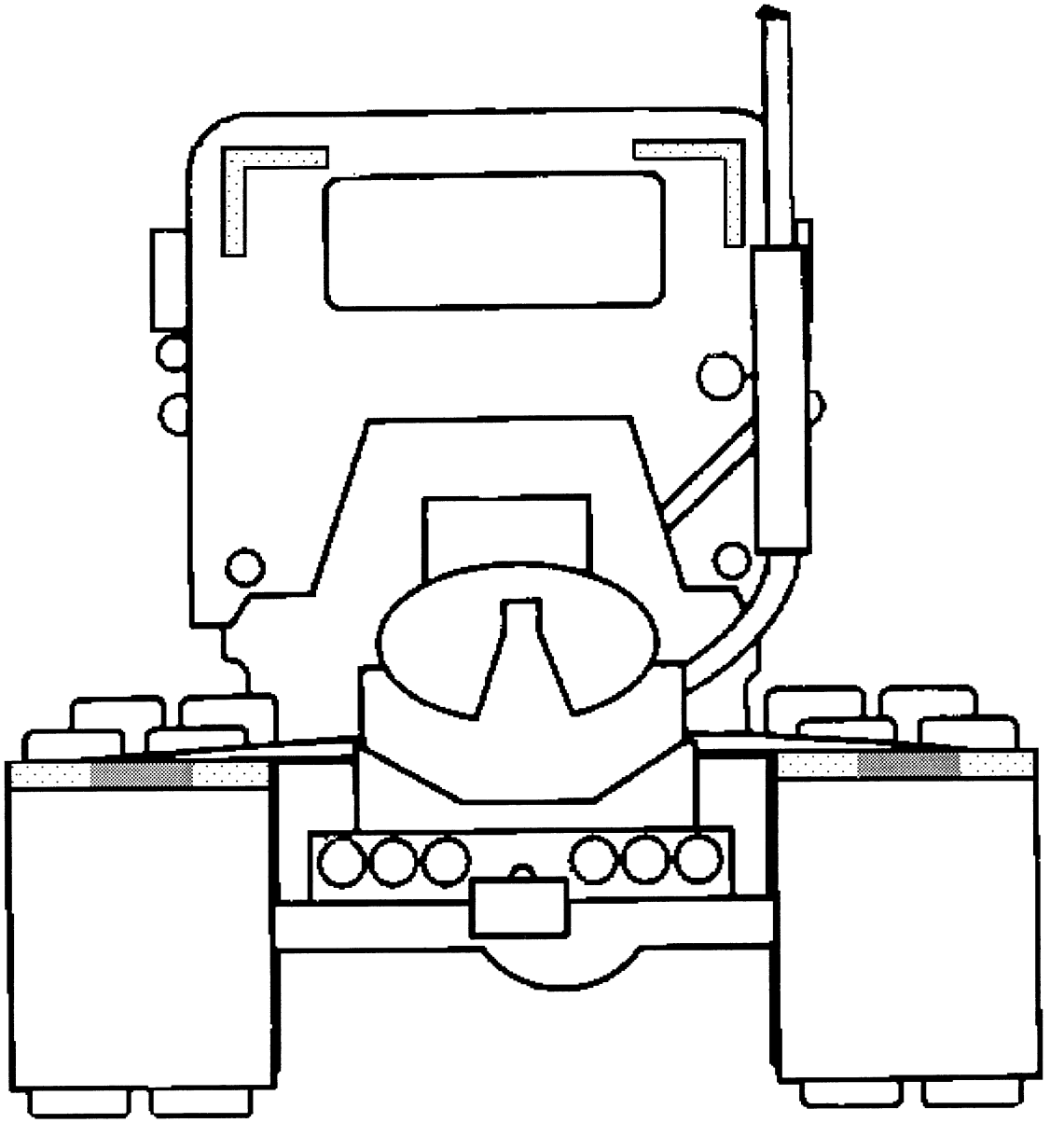

FIGURE 31 - TRACTOR CONSPICUITY TREATMENT EXAMPLE

BILLING CODE 4910–59–C

Issued on July 24, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–19353 Filed 8–7–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960129019–6019–01; I.D. 080296A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Eastern Aleutian District and Bering Sea Subarea

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Atka mackerel in the Eastern Aleutian District and Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the total allowable catch of Atka mackerel in this area.

EFFECTIVE DATE: 1200 hours, Alaska local time (A.l.t.), August 2, 1996, until 2400 hours, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(iii), the total allowable catch of Atka mackerel for the Eastern Aleutian District and Bering Sea subarea was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) for the BSAI and subsequent reserve apportionment (61 FR 16085, April 11, 1996) as 26,700 metric tons (mt). The directed fishery for Atka mackerel in the Eastern Aleutian District and Bering Sea subarea was closed under § 679.20(d)(iii) on February 14, 1996, (61 FR 6323, February 20, 1996) and reopened on July 1, 1996 (61 FR 33046, June 26, 1996). The fishery was again closed on July 8, 1996 (61 FR 36306, July 10, 1996) and reopened on July 31, 1996 (61 FR 33387, July 27, 1996).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 679.20(d)(iii), that the Atka mackerel total allowable catch in the Eastern Aleutian District and Bering Sea subarea soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 26,600 mt after determining that 100 mt will be taken as incidental catch in directed fishing for other species in the Eastern Aleutian District and Bering Sea subarea. Consequently NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and Bering Sea subarea.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e).

Classification

This action is taken under § 679.20 and is exempt from review under E.O. 12866.

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

Dated: August 2, 1996.

Richard W. Surdi,

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

[FR Doc. 96–20165 Filed 8–5–96; 12:53pm]

BILLING CODE 3510–22–F

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50 CFR Part 679

[Docket No. 960129019–6019–01; I.D. 080296B]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Atka mackerel in the Central Aleutian District and Bering Sea subarea of the Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the total allowable catch of Atka mackerel in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 4, 1996, until 12 midnight, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR part 679 and Subpart H of 50 CFR part 600.

The total allowable catch of Atka mackerel for the Central Aleutian District was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) for the BSAI and subsequent reserve apportionment (61 FR 16085, April 11, 1996) as 33,600 metric tons (mt). The directed fishery for Atka mackerel in the Central Aleutian District was closed under § 679.20(d)(iii) on April 14, 1996, (61 FR 16883, April 18, 1996) and reopened on July 1, 1996 (62 FR 33046, June 26, 1996). The fishery was again closed on July 13, 1996 (61 FR 36306, July 10, 1996) and reopened on July 31, 1996 (61 FR 40353).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 679.20(d)(i), that the Atka mackerel total allowable catch in the Central Aleutian District subarea soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 33,500 mt after determining that 100 mt will be taken as incidental catch in directed fishing for others species in the Central Aleutian District. Consequently NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.29(e).

Classification

This action is taken under § 679.20 and is exempt from review under E.O. 12866.

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

Dated: August 2, 1996.

Richard W. Surdi,

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

[FR Doc. 96–20257 Filed 8–5–96; 4:14 pm]

BILLING CODE 3510–22–M

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50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 080596A]

Fisheries of the Exclusive Economic Zone Off Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the

shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the third seasonal bycatch allowance of Pacific halibut apportioned to the shallow-water species fishery in the GOA has been caught.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), August 5, 1996, until 2400 hrs, A.l.t., October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The shallow-water species fishery was apportioned 200 metric tons of Pacific halibut prohibited species catch for the third season, the period July 1, 1996, through September 30, 1996 (61 FR 4304, February 5, 1996). (See § 679.21(d).)

The Director, Alaska Region, NMFS, has determined, in accordance with § 679.21(d)(7)(i), that vessels participating in the trawl shallow-water species fishery in the GOA have caught the third seasonal bycatch allowance of Pacific halibut apportioned to that fishery. Therefore, NMFS is prohibiting directed fishing for each species and species group that comprise the shallow-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: Pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species.''

Maximum retainable bycatch amounts for applicable gear types may be found at § 679.20(e).

Classification

This action is taken under 50 CFR 679.21 and is exempt from review under E.O. 12866.

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

Dated: August 5, 1996.

Richard W. Surdi,

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

[FR Doc. 96–20256 Filed 8–5–96; 4:14 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 154
Thursday, August 8, 1996

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

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 214

RIN 1076–AD34

Leasing of Osage Reservation Lands, Oklahoma, for Mining, Except Oil and Gas

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: We are revising the regulations for leasing land on the Osage Reservation for mining except oil and gas. The purpose of the revisions is to: make it easier to read and understand; to allow the use of arbitrators to settle damage claims; to make the information required from corporations consistent with parts 211 and 212; to give the Osage Tribe more control and flexibility in negotiating royalty rates for leases; to provide penalties for late reports and payments; and to allow us to order further development of leased land for the benefit of the landowner as is in part 226.

This rule was identified for reinvention under the National Performance Review. It is written in plain English to make the rule easier to read and understand.

DATES: Comments by interested parties must be in writing and we must receive them on or before October 7, 1996.

ADDRESSES: Mail comments to Gordon Jackson, Bureau of Indian Affairs, Department of the Interior, P.O. Box 1539, Pawhuska, OK 74056.

FOR FURTHER INFORMATION CONTACT: Gordon Jackson, Bureau of Indian Affairs at telephone (918) 287–1032.

SUPPLEMENTARY INFORMATION: In addition to rewriting this rule in plain English, several significant changes are included in this proposed rule. A brief description of these changes follows. The information in existing § 214.2 Sales of leases, is now found in new § 214.3 How do I negotiate a lease for mineral mining? This provision has been changed to allow the Superintendent the discretion to extend the due date for the submission of documents, but not the due date for making payment. This change is consistent with 25 CFR part 226. The information in existing § 214.3 Corporate Information, is now found in new § 214.4 What if I am a corporation? The new provision would reduce significantly the amount of information collected from corporations. This new section is also consistent with the recently published 25 CFR Parts 211 and 212 which govern the leasing of the majority of Indian lands for mineral development. Existing § 214.4 Bonds would become § 214.5 What bond must I file? This provision has been changed to allow the Superintendent the discretion to authorize bonds in different amounts than are set in paragraph (a) when circumstances warrant and the interests of the landowner are protected. Existing § 214.10 Royalty rates, which sets specific rates for specific minerals is deleted to allow the Osage Tribal Council maximum flexibility in negotiating leases for their mineral resources in the proposed § 214.9. Also late charges are provided for late payments and a penalty is allowed if reports are submitted late. Proposed § 214.10 gives the Superintendent the authority to require increased development of leased land. This change is made to make this part compatible with 25 CFR part 226. Proposed § 214.12 requires the use of arbitrators to settle claims when a claimant and lessee cannot reach a settlement agreement within a specified time period.

We are publishing this proposed rule by the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Our policy is to give the public an opportunity to participate in the rulemaking process by submitting written comments regarding the proposed rules. We will consider all comments received during the public comment period. We will determine necessary revisions and issue the final rule. Please refer to this preamble's **ADDRESSES** section for where you must submit your written comments on this proposed rule.

We certify to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

This is not a significant rule under Executive Order 12866 and does not require review by the Office of Management and Budget.

This rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

The information collection requirements in this part do not require approval by OMB under 44 U.S.C. 3501 et seq.

We determined this proposed rule:

(a) Will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

(b) Does not constitute a major Federal action significantly affecting the quality of the human environment and no detailed statement is needed under the National Environmental Policy Act of 1969.

(c) Does not have significant takings implications in accordance with Executive Order 12630.

(d) Does not have significant federalism effects.

This proposed rule was written by the Bureau of Indian Affairs' Regulatory Review Action Team.

List of Subjects in 25 CFR Part 214

Indians—lands, Mining, Mineral resources.

For the reasons given in the preamble, we propose to revise part 214 of Title 25 of the Code of Federal Regulations, as follows:

PART 214—LEASING OF OSAGE RESERVATION LANDS, OKLAHOMA, FOR MINING, EXCEPT OIL AND GAS

Sec.

214.1 What definitions should I know?
214.2 How can these regulations be changed?
214.3 How do I negotiate a lease for mineral mining?
214.4 What if I am a corporation?
214.5 What bond must I file?
214.6 Must I appoint a local representative?
214.7 What are the restrictions on mining operations?
214.8 Do I have to establish exact locations of mines and buildings?

214.9 How and when do I pay rents and royalties?
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214.11 How may I use surface lands?
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214.15 Must I maintain records and file reports?
214.16 Who can inspect my books and records?
214.17 What are the minimum requirements for notices under this part?
214.18 Under what conditions may I forfeit a lease?
214.19 Under what conditions may I have to pay a fine?

Authority: 92 Stat. 1660.

§ 214.1 What definitions should I know?

These terms will help you understand sections in this part.

Lease means any lease or permit authorizing production of any minerals other than oil and gas.

Lessee means any person, firm, or corporation to whom a mining lease is made for other than oil and gas mining.

Minerals means coal, limestone, dolomite, sandstone, shale, sand, gravel, clay, and any other minerals, except oil and gas.

Osage Tribal Council means the duly elected governing body of the Osage Tribe of Oklahoma vested with authority to lease or take other actions relative to such mining operations.

Secretary means the Secretary of the Interior or an authorized representative acting under delegated authority.

Superintendent means the Superintendent of the Osage Agency, Pawhuska, Oklahoma, or an authorized representative acting under delegated authority.

You means the lessee or lease applicant.

§ 214.2 How can these regulations be changed?

The Secretary may change these regulations at any time through the rulemaking process.

§ 214.3 How do I negotiate a lease for mineral mining?

(a) If the Secretary approves, you may negotiate a lease for minerals other than oil and gas with the Osage Tribal Council.

(b) Within 30 days from the date of agreement between you and the tribe, you must submit to the Superintendent:

(1) All money due to the Osage tribe;

(2) The negotiated lease; and

(3) Other required documents.

(c) The Superintendent may extend the 30-day due date for the submission of the lease and other documents, but not the due date for payment of money due the Osage Tribe.

(d) Leases and other documents must be on Departmental forms that the Superintendent furnishes you.

(e) If you don't meet the requirements in this section, the Superintendent will disapprove your lease, and you will forfeit any money you paid to the Osage tribe.

§ 214.4 What if I am a corporation?

(a) If you are a corporation, you must file:

(1) Evidence of your corporate officers' authority to sign papers; and

(2) With your first application, a certified copy of your Articles of Incorporation; or

(3) If you are incorporated outside the State of Oklahoma, evidence showing that you follow the state's corporation laws.

(b) The Superintendent may require more information to carry out the intent of this part. You must furnish this information within 90 days from the date of the request. If you ask, the Superintendent may extend this deadline.

§ 214.5 What bond must I file?

(a) With each lease you file, you must furnish a bond of:

(1) $1,000 for less than 80 acres;

(2) $1,500 for 80 acres up to less than 120 acres;

(3) $2,000 for 120–160 acres;

(4) $500 for each additional 40 acres above 160 acres.

(b) With the Osage Tribal Council's consent, the Superintendent may authorize a bond for a different amount.

(c) You may file a collective bond for $15,000 to cover all your leases. The Superintendent may change the amount of this bond, and the Secretary may require another bond, at any time.

§ 214.6 Must I appoint a local representative?

Yes. Before you can start developing or drilling on leased land, you must appoint a representative who lives in Oklahoma and give the Superintendent your representative's name and post office address. The Superintendent or other authorized person in the Department will communicate with your representative to make sure you are following the requirements of this part.

§ 214.7 What are the restrictions on mining operations?

(a) You may mine or prospect on your land only after the Superintendent approves the lease for that land and delivers it to you.

(b) You may mine or prospect within or on any homestead selection only with the Superintendent's written consent.

(c) You may abandon a well or mine only with the Superintendent's written approval.

(d) If you disagree with the surface owner or other lessees about operations likely to cause injury to anyone, you must follow the Superintendent's decision, unless you file an appeal under 25 CFR part 2.

§ 214.8 Do I have to establish exact locations of mines and buildings?

Yes, if the Superintendent asks, you must file a plat of your leases showing the exact locations of all mines, proposed locations, power houses, etc. If you disagree with the surface owner or another mineral lessee about the locations of wells, mines, buildings, plants, etc., the Superintendent will determine them after investigating and taking into account that the person holding a lease with an earlier approval date has the first right to a location.

§ 214.9 How and when do I pay rents and royalties?

(a) Before your lease is approved, the Osage Tribal Council must set royalties for all minerals other than oil and gas, and the Superintendent must approve them.

(b) If any money is due under a lease contract or this part, you or the purchaser must pay it in cash or by a check made payable to the Bureau of Indian Affairs and delivered to the Osage Agency, P.O. Box 1539 Pawhuska, Oklahoma 74056.

(c) Any money you owe to the Bureau becomes a lien on all equipment and unsold minerals on your leased land.

(d) You must prepare a sworn report from accurate records covering all exploration and mining operations and pay royalties for each month by the 25th day of the following month.

(e) If you are late, you must pay a late charge of 1.5 percent for each month or part of a month until your payment is received unless the Osage Tribal Council, with the Superintendent's approval, waives your late charge.

(f) If you don't pay or submit a report, the Superintendent may fine you $100 per day or cancel your lease.

§ 214.10 What happens if I don't develop my leased land as much as possible?

The Superintendent may order increased development of any leased acreage if he or she believes a prudent operator would develop it further. If you don't follow this order, the Superintendent may consider your refusal a violation of the lease terms and cancel your lease.

§ 214.11 How may I use surface lands?

(a) You may use as much of the surface of your leased land as you reasonably need for prospecting and mining operations, including buildings those operations require.

(b) You have the right-of-way over and across the leased land to any point of prospecting or mining operations.

(c) You may use timber from restricted land only if you have a written agreement with the owner and the Superintendent's approval.

(d) In using surface land, you must cause the least possible injury and inconvenience to its allottee or owner. And you must pay for all reasonable damages you cause to the surface land or to growing crops or improvements on it, according to § 214.12 of this part.

§ 214.12 How are damage claims handled?

(a) The owners of surface land you are leasing must notify other lessees and tenants of the regulations in this part and of the procedure they must follow in all cases of alleged damages. If the surface owners authorize it in writing, those lessees or tenants may represent the owners.

(b) Any person other than a lessee or an allottee or the heirs of a deceased allottee claiming an interest in any leased tract or in damages to it, must state that claim in writing to the Superintendent. Anyone who doesn't has waived notice and lost the right to claim any part of disbursed damages.

(c) The Superintendent will apportion damages among those interested in the surface as owner, oil and gas lessee, or otherwise, as they may agree or as the percentage of their interests establishes. If these people are unable to agree, arbitration must determine how to apportion damages.

(d) Anyone who suffers injury must, as soon as possible after discovering any damage, serve written notice to you or your authorized representative. This requirement doesn't limit the time for bringing an action to the courts to less than the 90-day period allowed by Section 2 of the Act of March 2, 1929 (45 Stat. 1478, 1479). The written notice must contain:

(1) The nature and location of the alleged damage;

(2) The date this damage occurred;

(3) The names of those who caused the damage; and

(4) The amount claimed.

(e) If you haven't already adjusted the alleged damages when you receive the notice, you or your representative must try to adjust the claim with the claimant within 20 working days from that date. If the claimant is the owner of restricted property and a settlement results, you must file a copy of the settlement agreement with the Superintendent for approval.

(f) If the Superintendent approves the settlement agreement, you must pay damages to the Superintendent for the claimant's benefit. In settlement of damages on restricted land, you must pay all sums to the Superintendent for credit to the account of the Indian who is entitled to them. The Superintendent will apportion the money between the Indian surface owner or owners and the surface Lessee of record.

(g) If you don't adjust the claim within 20 days of the written notice, you and the claimant each must appoint a disinterested arbitrator within 10 more days. All of a surface owner's other lessees may join in appointing the owner's arbitrator. The arbitrators must appoint a third disinterested arbitrator within 10 days. If they can't agree by this deadline, they must immediately notify the claimant and you. If you and the claimant can't agree on a third arbitrator within five days of their notice, the Superintendent will appoint the third arbitrator. You and the claimant each pay the fee and expenses of the arbitrator you appoint, but you both share equally the third arbitrator's fee and expenses.

(h) As soon as the third arbitrator is appointed, the arbitrators must meet, hear evidence and arguments, and examine lands, crops, improvements, or other property alleged to have been injured. Within 10 days they must decide how much damage money is due.

(i) Any two arbitrators may decide the amount of damages due and present their written decision to you and the claimant. Either of you may file an action in a court of competent jurisdiction within 90 days of the date the decision is served. If no one files an action within 90 days, and the award is against you or your representative, you must pay the award plus interest within 10 days after the filing deadline. Interest is at an annual rate established by the Internal Revenue Service.

(j) You or your representative must file with the Superintendent a report on each settlement agreement, including the nature and location of the damage, date and amount of the settlement, and other pertinent information.

§ 214.13 How do I transfer or assign a lease?

(a) You may transfer or assign a lease, or any interest in a lease, only with the Superintendent's approval. Otherwise, the transfer or assignment is void, and the Superintendent may cancel your lease.

(b) The person who receives the transferred or assigned interest must—

(1) Follow the terms and conditions of the original lease, the regulations under which that lease was approved, and any other requirements the Superintendent may prescribe; and

(2) Furnish with the transfer or assignment a bond that meets the requirements in section § 214.5.

§ 214.14 What happens when I apply to cancel a lease?

When you apply to cancel all or part of a lease:

(a) You must pay all royalties or rentals due;

(b) You must surrender any part of the lease that was delivered to you;

(c) If a new lease year has begun, you have to pay any required advance rentals for that year; and

(d) If you have already paid advance rentals, you won't get any refund.

§ 214.15 Must I maintain records and file reports?

Yes. If you hold a lease, transfer, or assignment for mineral mining, you must:

(a) Keep records and file reports required by section § 214.9; and

(b) If you are a corporation:

(1) Send a statement to the Superintendent on January 1 of each year or whenever else the Superintendent asks for one. The statement must contain the information required by § 214.4 and show any changes in officers, as well as changes in or additions to stockholders; and

(2) File any other information within a reasonable time, if the Superintendent considers it necessary to carry out the regulations in this part.

§ 214.16 Who can inspect my books and records?

The Superintendent may enter your leased premises to inspect any part of your mining operation, and your books and records must be open at all times for the Superintendent's examination.

§ 214.17 What are the minimum requirements for notices under this part?

A notice under this part meets requirements if it is mailed to the last known address of the person who must receive the notice. Deadline times begin running on the day after the mailing or from the date of delivery, unless the Superintendent increases the time allowed.

§ 214.18 Under what conditions may I forfeit a lease?

As a lessee or assignee, you may forfeit a lease if you don't follow any regulation or any obligation in your

lease or assignment. The Superintendent may cancel and annul your lease without court action or any other proceeding. But the Superintendent must give you at least 30 days' notice to show why your lease shouldn't be canceled and annulled or why you shouldn't receive any other penalty.

§ 214.19 Under what conditions may I have to pay a fine?

(a) If you violate any of your lease's terms and conditions or any regulations on leases, the Superintendent may:

(1) Cancel your lease;

(2) Fine you no more than $500 per day for every day you violate the terms of the lease or regulations or don't carry out the Superintendent's orders regarding your lease; or

(3) Fine you and cancel your lease.

(b) You are entitled to notice and a hearing on the terms of the lease or regulations that you have violated. The Superintendent will hold the hearing to reach a final decision. The Superintendent's findings are final, unless you appeal under 25 CFR part 2.

Dated: July 23, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–19339 Filed 8–7–96; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AI35

Diseases Associated With Exposure to Certain Herbicide Agents (Prostate Cancer and Acute and Subacute Peripheral Neuropathy)

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning presumptive service connection for certain diseases for which there is no record of the disease during service. This proposed amendment is necessary to implement a decision of the Secretary of Veterans Affairs under the authority granted by the Agent Orange Act of 1991 that there is a positive association between exposure to herbicides used in the Republic of Vietnam during the Vietnam era and the subsequent development of prostate cancer and acute and subacute peripheral neuropathy. The intended effect of this proposed amendment is to establish presumptive service connection for those conditions based on herbicide exposure.

DATES: Comments must be received on or before September 9, 1996.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington DC 20420. Comments should indicate that they are in response to ''RIN 2900–AI35.'' All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7230.

SUPPLEMENTARY INFORMATION: Section 3 of the Agent Orange Act of 1991, Pub. L. 102–4, 105 Stat. 11, directed the Secretary to seek to enter into an agreement with the National Academy of Sciences (NAS) to review and summarize the scientific evidence concerning the association between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam era and each disease suspected to be associated with such exposure. Congress mandated that NAS determine, to the extent possible: (1) Whether there is a statistical association between the suspect diseases and herbicide exposure, taking into account the strength of the scientific evidence and the appropriateness of the methods used to detect the association; (2) the increased risk of disease among individuals exposed to herbicides during service in the Republic of Vietnam during the Vietnam era; and (3) whether there is a plausible biological mechanism or other evidence of a causal relationship between herbicide exposure and the suspect disease. Section 3 of Pub. L. 102–4 also required that NAS submit reports on its activities every two years (as measured from the date of the first report) for a ten-year period.

Section 1116(b) of 38 U.S.C., which was added by Pub. L. 102–4, provides that whenever the Secretary determines, based on sound medical and scientific evidence, that a positive association exists between exposure of humans to a herbicide agent (i.e., a chemical in a herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the Vietnam era) and a disease, the Secretary will publish regulations establishing presumptive service connection for that disease. An association is considered ''positive'' if the credible evidence for the association is equal to or outweighs the credible evidence against the association. In making that determination, the Secretary is to consider the reports received from NAS as well as all other available sound medical and scientific information and analyses.

NAS issued its initial report, entitled ''Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam'' (VAO), on July 27, 1993. The Secretary subsequently determined that positive associations exist between exposure to herbicides used in the Republic of Vietnam and the subsequent development of Hodgkin's disease, porphyria cutanea tarda, multiple myeloma and certain respiratory cancers. Final regulations were published in the Federal Register on February 3, 1994 (See 59 FR 5106–07) and June 9, 1994 (See 59 FR 29723–24) creating presumptions of service connection for these conditions based on herbicide exposure. Presumptions already existed for chloracne, non-Hodgkin's lymphoma and soft tissue sarcomas.

After reviewing the latest scientific studies and conducting a public meeting, NAS issued a second report, entitled ''Veterans and Agent Orange: Update 1996,'' on March 14, 1996. On the same day, the Secretary announced that VA would review the findings in that second NAS report and pertinent studies to determine whether a positive association exists between herbicide exposure and any condition for which the Secretary has not specifically determined a presumption of service connection is warranted. That review has been completed and the Secretary has concluded that positive associations exist for prostate cancer and acute and subacute peripheral neuropathy.

Prostate cancer is a very common male genitourinary cancer which shows marked increased prevalence with age. The 1993 NAS report assigned prostate cancer to a category labeled limited/suggestive evidence of an association. This is defined as meaning there is evidence suggestive of an association between herbicide exposure and a particular health outcome, but that evidence is limited because chance, bias, and confounding could not be ruled out with confidence. There were statistically significant occupational studies which showed no association between prostate cancer and herbicide

exposure (Ronco G., Costa G., Lynge E., 1992. Cancer risk among Danish and Italian farmers. British Journal of Industrial Medicine 49:220–225; and Wiklund K., 1983. Swedish agricultural workers: A group with decreased risk of cancer. Cancer 51:566–568). Some occupational studies showed a slight, elevated risk for prostate cancer among farm and forestry workers; a cohort study of farmers found the risk of prostate cancer among farmers increased with the magnitude of potential herbicide exposure. (See 59 FR 342 for study citations.) Upon a review of the evidence then available, the Secretary determined that the credible evidence against an association between prostate cancer and herbicide exposure outweighed the credible evidence for such an association, and he determined that a positive association did not exist.

In its 1996 report NAS, after a thorough review of previously and newly available scientific literature, also assigned prostate cancer to the category labeled limited/suggestive evidence of an association with herbicide exposure, which it defined in the same manner as in the 1993 NAS report (See above). The 1996 NAS report noted several new occupational studies and veteran studies. One large study (Blair A., Mustafa D., Heineman E.F., 1993. Cancer and other causes of death among male and female farmers from twenty-three states. American Journal of Industrial Medicine 23:729–742) found a statistically significant, slightly increased proportionate cancer mortality ratio (PCMR) for prostate cancer among farmers in 22 of 23 states. Another cancer mortality study (Bueno de Mesquita H.B., Doornbos G., Van der Kuip D.A., Kogevinas M., Winkelmann R., 1993. Occupational exposure to phenoxy herbicides and chlorophenols and cancer mortality in the Netherlands. American Journal of Industrial Medicine 23:289–300) evaluated employees of two Dutch companies which produced chlorophenoxy herbicides. Mortality rates from prostate cancer were increased among the exposed men in this study (standardized mortality rate (SMR) = 2.6, confidence interval (CI) 0.5–7.7), although the results were not statistically significant. A mortality study of chemical workers exposed to an accidental release of TCDD in 1949 (Collins J.J., Strauss M.E., Levinskas G.J., Connor P.C., 1993. The mortality experience of workers exposed to 2,3,7,8-tetrachlorodibenzo-p-dioxin in a trichlorophenol process accident. Epidemiology 4:7–13) found an increased risk of prostate cancer death in the exposed workers when compared to the rates in the local population, although, again, the results were not statistically significant. One recent study of Finnish herbicide workers with a median total duration of exposure of six weeks showed no increased risk of death from prostate cancer (Asp S., Riihimaki V., Hernberg S., Pukkala E., 1994. Mortality and cancer morbidity of Finnish chlorophenoxy herbicide applicators: an 18-year prospective follow-up. American Journal of Industrial Medicine 26:243–253). Cancer incidence rates after TCDD exposure in the Seveso, Italy, cohort were re-evaluated (Bertazzi A., Pesatori A.C., Consonni D., Tironi A., Landi M.T., Zocchetti C., 1993. Cancer incidence in a population accidentally exposed to 2,3,7,8-tetrachlorodibenzo-para-dioxin. Epidemiology 4:398–406). The cancer risk in the more highly exposed zones was previously reported to be slightly increased (relative risk (RR) = 1.4, CI 0.5–3.9), although not to a statistically significant degree, (Pesatori A.C., Consonni D., Tironi A., Landi M.T., Zocchetti C., Bertazzi P.A., 1992. Cancer morbidity in Seveso area, 1976–1986. Chemosphere 25:209–212), but an updated study of the less exposed areas failed to show an increased risk (Bertazzi et al., 1993). A proportionate mortality study of Michigan Vietnam veterans (Visintainer P.F., Barone M., McGee H., Peterson E.L., 1995. Proportionate mortality study of Vietnam-era veterans of Michigan. Journal of Occupational and Environmental Medicine 37:423–428), showed a nonsignificant, slightly increased rate of death due to genital cancers. Prostate cancer rates were not reported separately in this study.

The large cohort study of Canadian farmers (Morrison et al., 1993) had been previously reviewed by the 1993 NAS report. Although this study found a decreased risk of prostate cancer for the entire cohort, when the cohort was divided into subsets based on suspected herbicide exposure, the study found an increased risk of prostate cancer among those considered most likely to have been exposed (based on amount of herbicides used on the subjects' farms and the lack of hired help or customary expenses for assisting in work). In addition, the study reported an increasing risk with increasing numbers of acres sprayed. Subsequent to the 1993 report, the authors published a letter to the editor containing a reanalysis of their data which supported the findings of an increased risk of prostate cancer and the previously reported dose-response relationship with herbicide exposure (Morrison et al., 1994. (Letter to the editor). American Journal of Epidemiology 140:1058–1059). Most of the other occupational and environmental studies indicate some elevation in risk of prostate cancer. Considering all of the evidence, the Secretary has determined that the credible evidence for an association is equal to or outweighs the credible evidence against an association and, therefore, there is a positive association between herbicide exposure and prostate cancer. Accordingly, we are proposing to amend 38 CFR 3.309(e) to establish a presumption of service connection based on herbicide exposure for prostate cancer that manifests itself to a degree of 10 percent at any time after exposure. This amendment is proposed to be effective the date of publication of the final rule, in accordance with 38 U.S.C. 1116(c)(2).

Peripheral neuropathy can be induced by many common medical and environmental disorders unrelated to herbicide exposure, such as alcoholism, diabetes, and exposure to other toxic chemicals. The 1993 NAS report assigned peripheral neuropathy to a category labeled inadequate/insufficient evidence to determine whether an association exists, which was defined as meaning that the available studies were of insufficient quality, consistency, or statistical strength to permit a conclusion regarding the presence or absence of an association with herbicide exposure. NAS stated that many case reports suggested that acute or subacute peripheral neuropathy can develop with exposure to dioxin, but that the most rigorously conducted studies argued against a relationship between dioxin or herbicides and chronic peripheral neuropathy. VAO stated that, as a group, the studies on peripheral neuropathy suffered from various methodologic defects, such as not applying consistent methods to define a comparison group, determine exposure, evaluate clinical deficits, use standard definitions of peripheral neuropathy, or eliminate confounding variables. Occupational studies that did not have those methodological problems showed no difference in the incidence of peripheral neuropathy for workers exposed to herbicides and workers not so exposed. Accordingly, the Secretary determined that the credible evidence against an association between peripheral neuropathy and herbicide exposure outweighed the credible evidence for such an association, and he determined that a positive association did not exist. (See 59 FR 343 for study citations.) The Secretary asked, however, that NAS reconsider in detail the relationship

between exposure to herbicides and the development of acute and subacute effects of peripheral neuropathy in the next report.

The 1996 NAS report assigned acute and subacute peripheral neuropathy to the category labeled limited/suggestive evidence of an association with herbicide exposure. However, the 1996 NAS report continued to assign chronic peripheral neuropathy to the category labeled inadequate/insufficient evidence to determine whether an association exists. In response to VA's request to conduct a detailed reconsideration of the relationship between herbicide exposure and the subsequent development of acute and subacute peripheral neuropathy, the 1996 NAS report noted that the methodology used to establish associations between suspected causal agents and persistent chronic peripheral neuropathy relies on epidemiological studies with adequate controls. Such studies can rarely be set in motion with sufficient speed to assess relationships between unexpected chemical exposure and the development of acute or subacute peripheral neuropathy. Because of the transient nature of the conditions, documenting signs and symptoms in association with documented exposures can be difficult to accomplish in a systematic manner. Consequently, greater reliance must be placed on case and less well controlled studies.

Two case studies (Todd R.L., 1962. A case of 2,4-D intoxication. Journal of the Iowa Medical Society 52:663–664; and Berkley M.C., Magee K.R., 1963. Neuropathy following exposure to a dimethylamine salt of 2,4-D. Archives of Internal Medicine 111:133–134) reported development of peripheral neuropathies within days of exposure to 2,4-D followed by gradual recovery over a period of months. Studies of the Seveso, Italy accident (Boeri R., Bordo B., Crenna P., Filippini G., Massetto M., Zecchini A., 1978. Preliminary results of a neurological investigation of the population exposed to TCDD in the Seveso region. Rivista di Patologia Nervosa e Mentale 9:111–128; Pocchiari F., Silano V., Zampieri A., 1979. Human health effects from accidental release of tetrachlorodibenzo-p-dioxin (TCDD) at Seveso, Italy. Annals of the New York Academy of Science 320:311–320; and Filippini G., Bordo B., Crenna P., 1981. Relationship between clinical and electrophysiological findings and indicators of heavy exposure to 2,3,7,8-tetrachlorodibenzo-p-dioxin. Scandinavian Journal of Work, Environment, and Health 7:257–262) suggested that peripheral nerve problems were more prevalent in the exposed group. Filippini et al. (1981) demonstrated that those individuals with clinical signs of significant exposure (chloracne or elevated liver enzymes) showed a risk ratio of 2.8. Two subsequent follow-up studies (Barbieri S., Pirovano C., Scarbato G., Tarchini P., Zappa A., Maranzana M., 1988. Long-term effects of 2,3,7,8-tetrachlorodibenzo-p-dioxin on the peripheral nervous system. Clinical and neurophysiological controlled study on subjects with chloracne from the Seveso area. Neuroepidemiology 7:29–37; and Assennato G., Cervino D., Emmett E.A., Longo G., Merlo F., 1989. Follow-up of subjects who developed chloracne following TCDD exposure at Seveso. American Journal of Industrial Medicine 16:119–125) showed no increased frequency of peripheral neuropathy several years after the accident among the highly exposed group. Environmental studies and case reports suggest that the development of peripheral neuropathy can follow high levels of exposure to herbicides, and that peripheral neuropathy associated with herbicide exposure will manifest very soon after exposure. The trend to recovery in the individual cases reported and the negative findings of many long-term follow up studies of peripheral neuropathy suggest that, if a neuropathy develops, it resolves with time. Considering all of the evidence, the Secretary has determined that the credible evidence for an association is equal to or outweighs the credible evidence against an association and, therefore, there is a positive association between herbicide exposure and acute and subacute peripheral neuropathy that manifests within one year of exposure.

Since the available evidence indicates that herbicide-related acute and subacute peripheral neuropathy develops shortly after exposure, in our judgment a manifestation period of one year following exposure will allow VA to identify all peripheral neuropathies that are associated with herbicide exposure. We are proposing to define the term ''acute and subacute peripheral neuropathy'' to mean transient peripheral neuropathy that appears within weeks or months of exposure to an herbicide agent and resolves within two years of the date of onset. Most of the toxic diseases of nerve develop subacutely over weeks or months (''Principles of Neurology'' Raymond D. Adams, M.D., and Maurice Victor, M.D., fifth ed., 1993). As the 1996 NAS report indicates, neuropathies associated with herbicide exposure are transient and resolve over several months. In our judgment, requiring that peripheral neuropathy resolve within two years of onset is, therefore, a reasonable method to differentiate transient peripheral neuropathies, for which the Secretary has found a positive association with herbicide exposure, from chronic peripheral neuropathies, for which he has found no such association. We are proposing to amend 38 CFR 3.307(a) and 3.309(e) to establish a presumption of service connection for acute and subacute peripheral neuropathy becoming manifest within one year following exposure to herbicide agents. This amendment is proposed to be effective the date of publication of the final rule, in accordance with 38 U.S.C. 1116(c)(2).

The six-year benefit cost for prostate cancer based on herbicide exposure is $65.3 million, with an administrative cost of $959,000. Additionally, the medical care cost over six years is $38 million. Prostate cancer is a male genitourinary cancer that shows marked increased prevalence with age. Accordingly, costs beyond the six-year period would likely be substantially higher.

For the purposes of this rulemaking, ''acute and subacute peripheral neuropathy'' means transient peripheral neuropathy that appears within weeks or months of exposure to an herbicide agent and resolves within two years of the date of onset. Consequently, there are no benefit costs associated with this condition.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only claimants for VA benefits could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Secretary has determined that it is not feasible to allow the 60-day comment period referred to in section 6(a)(1) of Executive Order 12866 because a comment period of that length would prevent VA from complying with the statutory requirement to publish a final rule within 90 days of publication of the proposed rule imposed by 38 U.S.C. 1116(c)(2).

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: July 8, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for Part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.307 [Amended]

2. In § 3.307, paragraph (a)(6)(ii) is amended by removing ''chloracne and'' and adding, in its place, ''chloracne,''; and by adding ''tarda, and acute and subacute peripheral neuropathy'' immediately following ''cutanea''.

§ 3.309 [Amended]

3. In § 3.309, paragraph (e), the listing of diseases is amended by adding ''Acute and subacute peripheral neuropathy'' between ''Non-Hodgkin's lymphoma'' and ''Porphyria cutanea tarda''; by adding ''Prostate cancer'' between ''Porphyria cutanea tarda'' and ''Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)''.

4. Section 3.309, paragraph (e) is further amended by redesignating the Note as ''Note 1:''; and by adding ''Note 2:'' to read as follows:

§ 3.309 Disease subject to presumptive service connection.

* * * * *

(e) * * *

Note 2: For purposes of this section, the term *acute and subacute peripheral neuropathy* means transient peripheral neuropathy that appears within weeks or months of exposure to an herbicide agent and resolves within two years of the date of onset.

[FR Doc. 96–20196 Filed 8–7–96; 8:45 am]

BILLING CODE 8320–01–P

40 CFR Part 52

[WA47–7120b; FRL–5544–1]

Clean Air Act Approval and Promulgation of Carbon Monoxide Implementation Plan for the State of Washington: Puget Sound Emission Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the 1990 base year and 1995 projected year carbon monoxide emission inventory portion of the Puget Sound carbon monoxide (CO) State Implementation Plan (SIP) submitted on September 30, 1994, by the State of Washington Department of Ecology (Ecology) for the purpose of bringing about the attainment of the national ambient air quality standard (NAAQS) for CO. In the Final Rules Section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by September 9, 1996.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101. Washington State Department of Ecology, 300 Desmond Drive, Olympia, WA 98504.

FOR FURTHER INFORMATION CONTACT: Stephanie Cooper, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–6917.

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

Dated: July 22, 1996.

Randall F. Smith,

Acting Regional Administrator.

[FR Doc. 96–20140 Filed 8–7–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[FRL–5533–3]

Approval and Promulgation of Implementation Plans; Massachusetts; Emissions Banking, Trading, and Averaging Program Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by Massachusetts. This revision establishes a voluntary emissions banking, trading, and averaging program for eligible sources of volatile organic compounds (VOC), nitrogen oxides (NOx), or carbon monoxide (CO). The goal of these regulations is to encourage the creation, trading, or averaging of surplus emission reductions for facilities to meet new source review offsetting, netting, and reasonably available control technology (RACT) requirements in the most cost-effective manner. The program was adopted as a voluntary Economic Incentive Program, developed pursuant to EPA's guidance.

In the Final Rules Section of this Federal Register, EPA is approving this rule without prior proposal. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the 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 action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this action must be received by September 9, 1996.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA

02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Division of Air Quality Control, Massachusetts Department of Environmental Protection, One Winter Street, 8th floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Steven Rapp, Environmental Engineer, Air Quality Planning Unit (CAQ), United States Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203–2211, (617) 565–2773.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 4201–7601q.

Dated: June 18, 1996.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 96–20242 Filed 8–7–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IL122–1b; FRL–5547–2]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 30, 1994, the Illinois Environmental Protection Agency (IEPA) submitted to the USEPA an adopted rule and supporting information for the control of volatile organic liquid (VOL) storage operations as a requested State Implementation Plan (SIP) revision. This rule is part of the State's control measures for volatile organic compound (VOC) emissions, for the Chicago and East St. Louis ozone nonattainment areas, and is intended to satisfy part of the requirements of section 182(b)(2) of the Clean Air Act (Act) amendments of 1990. VOC is one of the air pollutants which combine on hot summer days to form ground level ozone, commonly known as smog. Ozone pollution is of particular concern because of its harmful effects upon lung tissue and breathing passages. This regulation requires a reasonably available control technology (RACT) level of control as required by the amended Act. This action lists the SIP revision that USEPA is proposing to approve and provides an opportunity for public comment. A rationale for approving this request is presented in the final rules section of this Federal Register, where USEPA is approving the revision request as a direct final rule without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. 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 USEPA receives adverse comments the direct final rule will be withdrawn. Any parties interested in commenting on this notice should do so this time. The final rule on this proposed action will address all comments received.

DATES: Comments on this document must be received by September 9, 1996.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments should be strictly to the subject matter of this proposal.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Air Programs Branch, U.S. Environmental Protection Agency, Region 5, (312) 886–6052, at the Chicago address indicated above.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: June 11, 1996.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 96–20252 Filed 8–7–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[IL146–1b; FRL–5540–7]

Designation of Areas for Air Quality Planning Purposes; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan submitted by the State of Illinois through the Illinois Environmental Protection Agency (IEPA) on June 2, 1995, and January 9, 1996, for the purpose of redesignating the portion of LaSalle County currently designated as nonattainment to attainment status for the particulate matter National Ambient Air Quality Standards. The EPA is also proposing to approve the maintenance plan for the LaSalle County PM nonattainment area, which was submitted with the redesignation request to ensure that attainment will be maintained. In the final rules section of this Federal Register, the EPA is approving this action as a direct final rule without prior proposal because the EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before September 9, 1996.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and the EPA's analysis of it are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this Federal Register.

Dated: July 3, 1996.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 96–19889 Filed 8–7–96; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 61, No. 154
Thursday, August 8, 1996

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.

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Music Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chamber Music Section) to the National Council on the Arts will meet on August 9, 1996 from 1:00 p.m. to 2:00 p.m. This meeting will be held in Room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Kathy Plowitz-Worden,
Panel Coordinator, National Endowment for the Arts.

[FR Doc. 96–20173 Filed 8–7–96; 8:45 am]

BILLING CODE 7537–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 60–93]

Foreign-Trade Zone 194—Rio Rancho, New Mexico Withdrawal of Application for Processing Authority for Lukens Medical Corporation Plant

Notice is hereby given of the withdrawal of the application submitted by the City of Rio Rancho, New Mexico, grantee of FTZ 194, requesting authority on behalf of Lukens Medical Corporation (Lukens) to process surgical sutures under zone procedures at the Lukens plant located within FTZ 194. The application was filed on December 2, 1993 (58 FR 65329, 12/14/93).

The withdrawal was requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: July 30, 1996.

Dennis Puccinelli,
Acting Executive Secretary.

[FR Doc. 96–20255 Filed 8–7–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and request for revocation in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

EFFECTIVE DATE: August 8, 1996.

FOR FURTHER INFORMATION CONTACT: Holly Kuga, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 C.F.R. 353.22(a) and 355.22(a), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. The Department also received a request to revoke in part the antidumping duty order on polyethylene terephthalate film, sheet and strip (PET Film) from Korea.

Initiation of Reviews

In accordance with sections 19 C.F.R. 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. The Department is not initiating an administrative review of any exporters and/or producers who were not named in a review request because such exporters and/or producers were not specified as required under §§ 353.22(a) and 355.22(a)(19 C.F.R. 353.22(a) and 355.22(a)). We intend to issue the final results of these reviews not later than June 30, 1997.

Antidumping duty proceedings	Period to be reviewed
France: Calcium Aluminate Flux, A–427–812	6/1/95–5/31/96
Lafarge Aluminates	
Netherlands: Aramid Fiber, A–421–805	6/1/95–5/31/96
Aramide Products V.O.F.	
Romania: Tapered Roller Bearings,[1] A–485–602	6/1/95–5/31/96
Tehnoimportexport, S.A.	
S.C. Ocromfer SRL	
A. Hartrodt	
Shanghai Yawa Printing Machinery Co., Ltd.	

Antidumping duty proceedings	Period to be reviewed
Famous Freight Forwarding Company	
Accord Shipping Pte Ltd.	
ABCO International Freight (Hong Kong) Ltd. G/F	
Thompson Russel & Ulrich Semiconductor Technologies Inc.	
Votainer Nederland B.V.	
Sunrise Bearing and Technology Ltd.	
Destrex Dora AFV SA DE CV AVE	
Madison Metals Corp.	
Euro Precision	
William McGinty Company	
Associated Dynamics Inc.	
Universal Automotive Trading Company, Ltd.	
Stevens Graphics	
Eurasia Freight Service, Inc.	
ABCO International Freight Inc.	
Ameru Trading de Peru S.A.	
Madison Bearing Company	
TehnoForestImportExport	
S.C. Rulmentul S.A. Brasov	
S.C. Rulmenti Alexandria S.A.	
S.C. Rulmenti S.A. Slatina	
S.C. Rulmenti-Suceava S.A. Suceava	
S.C. Rulmenti S.A. Birlad	
S.C. Rulmenti Grei S.A. Ploiesti	
South Africa: Furfuryl Alcohol, A–791–802	12/16/94–5/31/96
Illovo Sugar Limited	
South Korea: Polyethylene Terephthalate Film, Sheet and Strip (Pet Film) A–580–807	6/1/95–5/31/96
Kolon Industries, Inc.	
SKC Limited	
STC	
Sweden: Stainless Steel Plate, A–401–040	6/1/95–5/31/96
Avesta Sheffield AB	
Uddeholms AB	
The People's Republic of China: * Tapered Roller Bearings, A–570–601	6/1/95–5/31/96
Luoyang Bearing Research Institute of the Ministry of Machinery & Electronics Industry	
The Tenth Institute of Machinery Project Planning & Research of the Ministry of Machinery & Electronics Industry	
Harbin Bearing Factory	
Luoyang Bearing Factory	
Wafangdian Bearing Factory	
Wafangdian Bearing Industry Co.	
Shanghai General Bearing Co., Ltd.	
Shanghai Rolling Bearing Factory	
Xiangyang Bearing Factory	
Shanghai Miniature Bearing Factory	
Suzhou Bearing Factory	
Chengdu General Bearing Factory	
Hailin Bearing Factory	
Hongshan Bearing Factory	
Guiyang Bearing Factory	
Haihong Bearing Factory	
Lanzhou Bearing Factory	
Xibei Bearing Factory	
Beijing Bearing Research Institute	
Changzhi People Factory	
Handan Bearing Factory	
Jining Bearing Factory	
Shenyang Bearing Factory	
Chaoyang Bearing Factory	
Shenyang Steel Ball Plant	
Gongzhuling Bearing Factory	
Wuxi Miniature Bearing Factory	
Jiamusi Bearing Factory	
Shanghai Bearing Technology Research Institute	
Zhongguo Bearing Factory	
Xiamen Bearing Factory	
Shanghai Hongxing Bearing Factory	
Shanghai Steel Ball Plant	
Wuxi Bearing Factory	
Hangzhou Bearing Factory	
Hefei Bearing Factory	
Huainan Bearing Factory	
Longxi Bearing Factory	

Antidumping duty proceedings	Period to be reviewed
Jiangxi Bearing Factory	
Liangshan Bearing Factory	
Yantai Bearing Factory	
Jinan Bearing Factory	
Qingdao Steel Ball Plant	
Huangshi Bearing Factory	
Hubei Steel Ball Plant	
Changsha Bearing Factory	
Guangzhou Bearing Factory	
Guangxi Bearing Factory	
Chongqing General Bearing Factory	
Chongqing Steel Ball Plant	
Yunnan Bearing Factory	
Baoji Bearing Factory	
Tianshui Bearing Instrument Plant	
Beijing Needle Roller Bearing Factory	
Tianjin Miniature Bearing Factory	
Datong Bearing Factory	
Hebei Rolling Mill Bearing Factory	
Hebei Bearing Factory	
Chengde Bearing Factory	
The Third Bearing Factory of Shanxi	
Anshan Bearing Factory	
Yingkou Bearing Factory	
Xingcheng Bearing Factory	
Hunjiang Bearing Factory	
Daan Bearing Factory	
Shanghai Hunan Bearing Factory	
Shanghai Pujiang Bearing Factory	
Shanghai Changning Bearing Factory	
Shanghai Needle Roller Bearing Factory	
Xuzhou Revolving Support Factory	
Taian Bearing Factory	
Changshu Bearing Factory	
Northwest Bearing Plant	
Huangshi Bearing Factory	
Guangxi Bearing Factory	
Chongqing Bearing Factory	
Yunnan Bearing Factory	
Baoji Bearing Factory	
Xiangtan Bearing Factory	
Shaoguan Bearing Factory	
Xinjiang Bearing Factory	
The Second Bearing Factory of Xuzhou	
Houzhou Bearing Factory	
Yuxi Bearing Factory	
Chifeng Bearing Factory	
Huangyian Bearing Factory	
Xingchang Bearing Factory	
Liuan Bearing Factory	
Zibo Bearing Factory	
Jining Bearing Factory (Shandong)	
Luoyang Dongfeng Bearing Factory	
Kaifeng Bearing Factory	
Ghangge Bearing Factory	
The Second Machine Tools Electric Apparatus Plant of Anyang	
Shashi Bearing Factory	
Wuhan Bearing Factory	
Changde Bearing Factory	
Hengyang Bearing Factory	
Hubei Bearing Factory	
Yueyang Bearing Factory	
Zhuzhou Bearing Factory	
Fanchang Bearing Factory	
Dongguan Bearing Factory	
Chengdu Bearing Company	
Sichuan Small Size Bearing Factory	
Leshan Bearing Factory	
Honghe Bearing Factory	
Shaanxi Bearing Factory	
Shijiazhuang Bearing factory	
Shanxi Bearing Factory	
Yantai Bearing Instrument Plant	

Antidumping duty proceedings	Period to be reviewed
Xiangtan Bearing Factory	
Shaoguan Bearing Factory	
Xinjiang Bearing Factory	
Beijing-Pinggu Bearing Factory	
Huhhot Bearing Factory	
Dalian Bearing Instrument Plant	
Nantong Bearing Factory	
Qingjiang Bearing Factory	
Wuhu Bearing Factory	
Yiyang Bearing Factory	
Zhongshan Bearing Factory	
Changshan Bearing Factory	
Handan Bearing Factory	
Xingcheng Bearing Factory	
Premier Bearing & Equipment, Ltd.	
Chin Jun Industrial, Ltd.	
Kenwa Shipping Co., Ltd.	
Far East Enterprising Co. (H.K.) Ltd.	
Far East Enterprising (H.K.) Co.	
Pantainer Express Line Co.	
Intermodal Systems Ltd.	
China Ningbo Int'l Economic & Technical Cooperation Corp.	
China Ningbo Cixi Import/Export Corp.	
Ningbo Xing Li Bearing Co., Ltd.	
Ningbo Yinxian Import/Export Corp. China	
Ningbo Yinxian Import/Export Corp. Hong Kong	
Santoh HK Ltd.	
Huuzhou Import and Export Corp.	
Ideal Consolidators Ltd.	
Cargo Services Far East Ltd.	
China Resources Transportation & Godown Co., Ltd.	
China Travel Service (HK) Ltd.	
Fortune Network Ltd.	
China Jiangsu Technical Import/Export Corp	
Kaitone Shipping Co., Ltd.	
Profit Cargo Service Co., Ltd.	
United Cargo Management, Inc.	
Zhejang Expanded Bearing Co. China	
Zhejang Expanded Bearing Co. Hong Kong	
Zhejang Yongtong Company China	
Zhejang Yongtong Company Hong Kong	
Wafangdian Hyatt Bearing	
Manufacturing Co., Ltd.	
China National Bearing	
Joint Export Corp	
PFL Pacific Forwarding, Ltd.	
Sui Jun International Ltd.	
Wah Shun Shipping Co., Ltd.	
Aempac System, Inc.	
Xinguang Ind. Prod. Import/Export Corp. of Sichuan Province	
Sunway Line, Inc.	
Trans-Ocean Bridge Services, Ltd.	
Scanwell Container Line Ltd.	
Scanwell Consolidators & Forwarders Ltd.	
China Machine-Bearing International Corp.	
Hyaline Shipping (HK) Co., Ltd.	
Long Trend Ltd.	
China National Automotive Industry Guizhou Import/Export Corp.	
Waiwell Shipping Ltd.	
Special Line Ltd.	
YK Shipping International, Inc.	
Blue Anchor Line Co.	
Onan Shipping Ltd.	
Shanghai Bearing Corporation	
Wing Tung Wei (China) Ltd.	
China Merchants S & E Co., Ltd.	
Zhejiang Huangli Bearing Co., Ltd.	
China Ningbo International Economic & Technical Cooperation Corporation	
Ningbo Free Trade Zone	
China National Machinery Imp. & Exp. Corp., Chongquing Branch	
China-East Resources International	
Distribution Services Ltd.	

Antidumping duty proceedings	Period to be reviewed
Inteks Inc. N.V.O.C.C.	
Shaanxi Machinery & Equipment Imp. & Exp. Corp.	
United Cargo Management Inc., Dalian Office	
Xiangfan International Trade Corp.	
Xiangfan Machinery Foreign Trade Corporation	
Xiang Fan International Trade Corp.	
China Tiancheng Jiangsu Corp. Nanjing	
China Tiancheng Jiangsu Corp. Shanghai	
Zhejiang East Sea Bearing Co., Ltd.	
Mayer Shipping Ltd. HK	
Wholelucks Industrial Lim	
Peko Incorporation	
O/B Manfred Development Co., (HK) Ltd.	
Asia Stone Company Limited	
Asia (USA) Inc. (Shanghai)	
Xiamen Special Economic Zone Trade Co. Ltd.	
Xiang Fan International Trade Corporation	
SEC Line Ltd.	
Jebsin Shipping Ltd.	
Heika Express International Ltd.	
J.P. Freight, Inc. Shanghai, PRC	
Brilliant Ocean Ltd. Corp. (USA)	
Transunion International Company Hong Kong	
Roson Express Int'l Co., Ltd.	
Streamline Shippers Association Hong Kong	
Wholelucks Industrial Lim	
Laconic Freight Forwarding Co., Ltd.	
Mitrans Shipping Co., Ltd.	
Distribution Services Ltd.	
The Ultimate Freight Management (H.K.) Ltd.	
Ideal Consolidators Ltd.	
Luoyang Bearing Research Institute	
Burlington Air Express Ltd.	
Janco Int'l Freight Ltd.	
Guandong Lingnan Industrial Products	
Sunrise Industrial Technology Co.	
Dongguan Industry Development Corp.	
Hi Light Int'l, Inc.	
Ever Concord Ltd.	
Kin Bridge Express (USA) Inc.	
Wice Marine Services Ltd.	
Welley Shipping, Ltd.	
WSA Lines, Ltd.	
Triumph Express Service Int'l Ltd.	
World Pacific Container Line Ltd.	
Hellman Int'l Forwarders, Ltd.	
Sino Eagle Co.	
Ever Concord Ltd. (Guangzhou)	
Ideal Ocean Lines, Ltd.	
MSAS Cargo Int'l (Far East) Ltd.	
Ocean Navigator Express Line	
Sunrise Industries Technology Co.	
China Mudanjiang Heading Factory	
Zhejiang Xinchang Foreign Economic	
Apex Maritime Co., Inc.	
Apex Maritime Co., Inc. (Dalian)	
Dalian Machine Tool Accessories	
Everich Shipping, Ltd	
Eternity Int'l Freight Forwarder	
Ningbo Tiansheng Bearing Corp.	
Trans-Am Sea Freight (HK) Ltd.	
Zhong Shan Transportation Co., Ltd.	
Shenzhen Rising Sun Bearing	
Goldline Ltd.	
Leader Express International (HK)	
Transnation Shipping Ltd.	
Mayer Shipping Ltd.	
Shenzhen Jinyuan Industrial	
Transunion International Co., Ltd.	
Orient Star Consolidating	
Capital Distribution Services	
Buyers Consolidators Ltd.	
Versatile Int'l Corp.	

Antidumping duty proceedings	Period to be reviewed
Panalpina China, Ltd.	
Trust Freight Services, Inc.	
Wah Hing Trading Co.	
China North Industries	
Point Talent International Ltd.	
Votainer Far East BV	
Seatop Shipping Ltd.	
AEL Asia Express (HK). Ltd	
Kenwa Shipping Co., Ltd.	
Wuxi Viking General	
Exbo Shipping Co., Ltd.	
Cots Shipping Co., Ltd.	
Shenzen South China International	
Oceanic Bridge International Inc.	
Streamline Shippers Association	
China Jiansu Technical Import & Export Corp.	
Ever Concord Ltd.	
Air Sea Container Line, Inc.	
CL Consolidator Services Ltd.	
OAG International, Inc.	
Zhejiang Xinchang Foreign Economic	
Heicone Jiang Machinery Import & Export	
Wenling Foreign Trading Corporation	
Aempac System, Inc.	
Scanwell Freight Express Co., Ltd.	
C.U. Transport, Inc.	
Shanghai Dongyu Materials Co.	
EAS International	
Amec International Co., Inc.	
China Dong Feng Motor	
Shang International Corp.	
Air Sea Transport, Inc.	
Air Sea Transport, Inc., Yantai Office	
Air Sea Transport, Inc., Dalian	
Wuhan Machinery & Equipment	
STS Machinery, Inc.	
USA International Business	
Hang Cheong Shipping Co., Ltd.	
China Machinery Equipment Import & Export Wuxi Co., Ltd.	
China Jiangsu Machinery Import and Export (Group) Corp.	
China National Machinery and Equipment Import and Export Corporation (CMEC)	
The China National Machinery and Equipment Import and Export Corporation Henan Co., Ltd. (or Henan Machinery and Equipment Import and Export Corporation)	
The China National Machinery and Equipment Import and Export Corporation Liaoning Co., Ltd. (or Liaoning Machinery and Equipment Import and Export Corporation)	
China National Machinery Import and Export Corporation of Jilin Province (or Jilin Machinery Import and Export Corporation)	
The China National Machinery and Equipment Import and Export Corporation Guizhou Branch (or Guizhou Machinery Import and Export Corporation)	
China National Machinery/Equipment Corp. Harbin Branch	
China National Machinery Import/Export Corporation	
China National Machinery and Equipment Corp. Hunan Co., Ltd.	
Shanghai Machinery & Equipment Import & Export Corp.	
Shanghai Machinery Import/Export Corp.	
Hubei Provincial Machinery Import & Export Corporation	
Zhejang Machinery Import/Export Corp.	
Heilongjang Machinery Import/Export	
Shandong Machinery Import/Export Corp.	
Shanghai Pacific Machinery Import & Export Corporation	
Saanxi Machinery & Equipment I/E Corp.	
Gandong Machinery and Equipment	
CMEC of Sichan	
CMEC of Henan	
CMEC of Shandong	
CMEC of Jiangsu	
CMEC of Guangdong	
CMEC of Hebei	
CMEC of Hunan	
CMEC of Anhui	

Antidumping duty proceedings	Period to be reviewed
CMEC of Hubei	
CMEC of Zhejiang	
CMEC of Liaoning	
CMEC of Jiangxi	
CMEC of Yunnan	
CMEC of Heilongjiang	
CMEC of Shaanxi	
CMEC of Guizhou	
CMEC of Fujian	
CMEC of Shanxi	
CMEC of Jilin	
CMEC of Gansu	
CMEC of Hainan	
CMEC of Qinghai	
CMEC of Chengdu	
CMEC of Zengzhou	
CMEC of Tsinan	
CMEC of Nanjing	
CMEC of Guangzhou	
CMEC of Shijiazhuang	
CMEC of Changsha	
CMEC of Hefei	
CMEC of Wuhan	
CMEC of Hangzhou	
CMEC of Shenyang	
CMEC of Nanchang	
CMEC of Kunming	
CMEC of Harbin	
CMEC of Xian	
CMEC of Guiyang	
CMEC of Fuzhou	
CMEC of Taiyuan	
CMEC of Changchun	
CMEC of Lanzhou	
CMEC of Haikou	
CMEC of Xining	
CMEC of Guangxi Zhuang	
CMEC of Nei Monggol	
CMEC of Xinjiang Uygur	
CMEC of Ningxia Hui	
CMEC of Xizang	
CMEC of Nanning	
CMEC of Hohhot	
CMEC of Urumqi	
CMEC of Yinchuan	
CMEC of Lhasa	
CMEC of Shanghai	
CMEC of Beijing	
CMEC of Tianjin	
China National Machinery Import and Export Corporation (CMC)	
CMC of Sichuan	
CMC of Henan	
CMC of Shandong	
CMC of Jiangsu	
CMC of Guangdong	
CMC of Hebei	
CMC of Hunan	
CMC of Anhui	
CMC of Hubei	
CMC of Zhejiang	
CMC of Liaoning	
CMC of Jiangxi	
CMC of Yunnan	
CMC of Heilongjiang	
CMC of Shaanxi	
CMC of Guizhou	
CMC of Fujian	
CMC of Shanxi	
CMC of Jilin	
CMC of Gansu	
CMC of Hainan	
CMC of Qinghai	
CMC of Chengdu	

Antidumping duty proceedings	Period to be reviewed
CMC of Zengzhou	
CMC of Tsinan	
CMC of Nanjing	
CMC of Guangzhou	
CMC of Shijiazhuang	
CMC of Changsha	
CMC of Hefei	
CMC of Wuhan	
CMC of Hangzhou	
CMC of Shenyang	
CMC of Nanchang	
CMC of Kunming	
CMC of Harbin	
CMC of Xian	
CMC of Guiyang	
CMC of Fuzhou	
CMC of Taiyuan	
CMC of Changchun	
CMC of Lanzhou	
CMC of Haikou	
CMC of Xining	
CMC of Guangxi Zhuang	
CMC of Nei Monggol	
CMC of Xinjiang Uygur	
CMC of Ningxia Hui	
CMC of Xizang	
CMC of Nanning	
CMC of Hohhot	
CMC of Urumqi	
CMC of Yinchuan	
CMC of Lhasa	
CMC of Shanghai	
CMC of Beijing	
CMC of Tianjin	

[1] All other exporters of tapered roller bearings from Romania are conditionally covered by this review.
[2] All other exporters of tapered roller bearings from the People's Republic of China are conditionally covered by this review.

Countervailing Duty Proceedings

None.

If requested within 30 days of the date of publication of this notice, the Department will determine, where appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to any of these reviews if the subject merchandise is sold in the United States through an importer which is affiliated with such exporter or producer.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 C.F.R. 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: August 2, 1996.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–20254 Filed 8–7–96; 8:45 am]

BILLING CODE 3510–DS–P

C–489–502

Certain Welded Carbon Steel Pipe and Tube Products from Turkey; Partial Termination of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of partial termination of countervailing duty administrative review.

SUMMARY: On April 25, 1996, in response to requests from the Government of Turkey (GOT), Borusan Birlesik Boru Fabrikalari A.S. (BBBF), and Borusan Ihracat Ithalat ve Dagitim A.S. (Dagitim), the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on certain carbon steel pipe and tube products from Turkey for BBBF and Dagitim, covering the period January 1, 1995 through December 31, 1995 (61 FR 18378). We are now terminating the review for BBBF and Dagitim because the GOT, BBBF, and Dagitim have timely withdrawn their requests for a review of these companies.

EFFECTIVE DATE: August 8, 1996.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Kelly Parkhill, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1996, the Department received a request from the GOT for an administrative review of the countervailing duty order on certain carbon steel pipe and tube products (including both standard pipe and tube and line pipe) from Turkey for the following four companies: BBBF, Dagitim, Erbosan Erciyas Boru Sanayii Ve Ticaret A.S. (Erbosan), and Mannesman-Sumerbank Boru Endustrisi T.A.S. (Mannesman). Also on March 29, 1996, BBBF and Dagitim submitted requests for administrative reviews of themselves, respectively. On April 25, 1995, the Department published in the Federal Register a notice of ''Initiation of Countervailing Duty Administrative Review,'' initiating the reviews of BBBF,

Dagitim, Erbosan, and Mannesman for the period January 1, 1995 through December 31, 1995.

On June 13, 1996, the GOT, BBBF, and Dagitim collectively withdrew their requests for review for BBBF and Dagitim. On July 2, 1996, Wheatland Tube Company (Wheatland), a domestic interested party, objected to the withdrawal of review requests made by the GOT, BBBF, and Dagitim. On July 11, 1996, the GOT, BBBF, and Dagitim submitted comments in rebuttal to Wheatland's objection.

The GOT did not withdraw its request for review for Erbosan and Mannesman. Therefore, the Department is continuing its review of those companies.

Analysis: Wheatland argues that the Department should not terminate its review of BBBF and Dagitim for a number of reasons. First, Wheatland argues that the statute requires investigation of BBBF and Dagitim. In support, Wheatland points to 19 U.S.C. 1677f-1(e)(1), which states that the Department ''shall determine an individual countervailing subsidy rate for each known exporter or producer of the subject merchandise.'' Second, Wheatland contends that the Department's regulations do not permit partial withdrawal of a review request and that the Department should not exercise its discretion to permit withdrawal of the requests for review of BBBF and Dagitim. Finally, Wheatland points out that it has a strong interest in the conduct of a review for BBBF and Dagitim, due to the fact that the two companies likely account for a significant portion of subject imports and likely benefit from countervailable subsidies. According to Wheatland, the Department therefore should not permit the review process to be manipulated to exclude these exporters.

The GOT, BBBF, and Dagitim counter that, pursuant to the Uruguay Round Agreements Act (URAA), the Department has the authority to limit reviews to those exporters and/or producers specified in a request for review. The withdrawing parties point to section 355.22(a) of the Department's Interim Regulations for support, which reflects the fact that there is no longer a preference for calculating a single country-wide subsidy rate in countervailing duty proceedings, but rather a company-specific approach similar to antidumping reviews. Similarly, according to the withdrawing parties, section 355.22(a)(5) contemplates a withdrawal of request for review that does not include every company initially included in the request. The Department reaffirmed this view by terminating a review for a portion of the companies for which the review was initially requested in Leather Wearing Apparel from Mexico, 60 FR 53585 (October 16, 1995). Finally, the GOT, BBBF, and Dagitim state that Wheatland's assertion that it has a strong interest in this review covering all exporters is belied by the fact that Wheatland did not request a review.

The Statement of Administrative Action reads that the presumption in favor of a single country-wide CVD rate has been eliminated in favor of individual rates for those companies individually investigated. Statement of Administrative Action at 271. The Department's Interim Regulations have been adapted to reflect this change. Antidumping and Countervailing Duties, Interim Regulations, 60 FR 25130 (May 11, 1995). Indeed, § 355.22(a) makes clear that parties requesting a review must specify the producers or exporters to be reviewed. The Department's regulations further stipulate that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. 19 CFR 355.22(a)(5)(1995).

In this case, the GOT, BBBF, and Dagitim submitted their withdrawal of request for review within the 90-day deadline. Furthermore, with respect to the GOT's withdrawal, there is no statutory or regulatory suggestion that a request for review of multiple companies can only be withdrawn on an all-or-none basis. In fact, § 355.22(a)(5) provides for partial termination. Moreover, as pointed out by the withdrawing parties, in Leather Wearing Apparel from Mexico the Department accepted the Government of Mexico's withdrawal of review for a portion of the companies for which a review was originally requested.

Neither Wheatland nor any other company requested a review for BBBF and Dagitim. In addition, no significant work has been completed on these reviews and the Department has not been unduly burdened by its review of these companies. Therefore, for the reasons stated above, we are terminating our review for BBBF and Dagitim.

This notice is published in accordance with 19 CFR 355.22(a)(5).

Dated: July 30, 1996.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–20253 Filed 8–7–96; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

Announcement of the American Petroleum Institute's Standards Activity

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of intent to develop or revise standards and request for public comment and participation in standards development.

SUMMARY: The American Petroleum Institute (API), with the assistance of other interested parties, continues to develop standards, both national and international, in several areas. This notice lists the standardization efforts currently being conducted by API committees. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of API is being undertaken as a public service. NIST does not necessarily endorse, approve, or recommend the standards referenced.

- General Committee on Pipelines

Risk Management for Pipelines

500 Classification of Locations for Electrical Installations at Petroleum Facilities

1104 Welding of Pipelines and Related Facilities

1110 Pressure Testing of Liquid Petroleum Pipelines

DATES: The Pipeline Conference will be held in Dallas, Texas at the Wyndham Anatole Hotel from March 12 through March 14, 1997. Interested parties may contact Allie Chamberline via fax at (202) 682–8222 for more information regarding attending this meeting.

FOR FURTHER INFORMATION CONTACT: Douglas Read, Manufacturing, Distribution, and Marketing, American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005.

- General Committee on Marketing

Recommended Practice on Bulk Oil Handling

1529 Aviation Fueling Hose

1542 Airport Equipment Marking for Fuel Identification

1581 Specifications and Qualifications Procedure for Aviation Jet Fuel/Separators

DATES: The 1996 Operations & Engineering Marketing Symposium will be held in Orlando, Florida at the Omni Rosen Hotel on October 6 and 7, 1996. Interested parties may contact Karen Halligan via fax at (202) 682–8222 for more information regarding attending this meeting.

FOR FURTHER INFORMATION CONTACT: Douglas Read, Manufacturing, Distribution, and Marketing, American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005.

• General Committee on Refining

Technical Data Book, Petroleum Refining
421 Management of Water Discharges: Design and Operation of Oil-Water Separators
500 Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities
505 Recommended Practice for the Application of IEC 79–10 to the Classification of Electrical Installations at Petroleum Facilities
510 Pressure Vessel Inspection Code
536 Post Combustion NOx Control for Fired Heaters
540 Electrical Installations in Petroleum Processing Plants
553 Control Valve Applications
556 Fired Heaters and Steam Generators
571 Recognition of Conditions Causing Deterioration or Failure
572 Inspection of Pressure Vessels
574 Inspection of Piping, Tubing, Valves, and Fittings
576 Inspection of Pressure-Relieving Devices
577 Inspection of Welding
578 Construction Material Quality Assurance
579 Fitness-for-Service
580 Risk-Based Inspection
589 Fire Test for Evaluation of Valve Stem Packing
591 User Acceptance of Refinery Valves
594 Water and Wafer-Lug Check Valves
598 Valve Inspection and Testing
602 Compact Steel Gate Valves
607 Fire Test for Soft-Seated Quarter-Turn Valves
609 Butterfly Valves: Double Flanged, Lug and Wafer-Type
611 General Purpose Steam Turbines
614 Lubrication, Shaft-Sealing and Control-Oil Systems for Special Purpose Applications
616 Gas Turbines for Refinery Services
620 Design and Construction of Large, Welded, Low-Pressure Storage Tanks
650 Welded, Steel Tanks for Oil Storage
651 Cathodic Protection of Aboveground Petroleum Storage Tanks
652 Lining of Aboveground Petroleum Storage Tank Bottoms
653 Tank Inspection, Repair, Alt. & Reconstruction
660 Shell and Tube Heat Exchangers
661 Air-Cooled Heat Exchangers
671 Special Purpose Couplings for Refinery Service
673 Positive Displacement Pumps-Reciprocating
677 General Purpose Gear Units for Refinery Service
685 Sealless Centrifugal Pumps
751 Safe Operation of Hydrofluoric Acid Alkylation Units
2000 Venting Atmospheric and Low-Pressure Storage Tanks: Nonrefrigerated and Refrigerated

DATES: The Tank Standards Forum will be held in Houston, Texas at the Houston Airport Marriott from September 16 through September 20, 1996. Interested parties may contact Karen Halligan via fax at (202) 682–8222 for more information regarding attending this meeting.

The Fall Refining Meeting will be held in Houston, Texas at the Westin Galleria & Oaks from October 21 through October 23, 1996. Interested parties may contact Jody Hayden via fax at (202) 682–8051 for more information regarding attending this meeting.

FOR FURTHER INFORMATION CONTACT: Douglas Read, Prentiss Searles or David Soffrin, Manufacturing, Distribution, and Marketing, American Petroleum Institute, 1220 L Street, NW, Washington, DC 20005.

• General Committee on Marine Transportation

1139 Training Guidelines for Tank Ship Personnel.

DATES: Interested parties may contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Douglas Read, Manufacturing, Distribution, and Marketing, American Petroleum Institute, 1220 L Street, NW, Washington, DC 20005.

• Safety and Fire Protection Subcommittee

2003 Protection Against Ignitions Arising Out of Static, Lightning, and Stray Currents
2021 Fire Fighting In and Around Flammable and Combustible Liquid Atmospheric Storage Tanks
2023 Guide for Safe Storage and Handling of Heated Petroleum Derived Asphalt Products and Crude Oil Residue
2202 Dismantling and Disposing of Steel From Above0ground Leaded Gasoline Storage Tanks
2207 Preparing Tank Bottoms for Hot Work
2218 Fire Proofing in Refineries
2219 Safe Operating Guidelines for Vacuum Trucks in Petroleum Service

DATES: Interested parties may contact, in writing, the persons listed below.

FOR FURTHER INFORMATION CONTACT: Andrew Jaques or Ken Leonard, Health and Environmental Affairs, Safety and Fire Protection, American Petroleum Institute, 1220 L Street NW., Washington, DC 20005.

• Committee on Petroleum Measurement

MPMS Chapter 4.2—Conventional Pipe Provers
MPMS Chapter 4.3—Small Volume Provers
MPMS Chapter 4.4—Tank Provers
MPMS Chapter 4.5—Master-Meter Provers
MPMS Chapter 4.6—Pulse Interpolation
MPMS Chapter 3.X—Hybrid Tank Gauging
MPMS Chapter 5.1—General Consideration for Measurement by Meters
MPMS Chapter 5.3—Measurement of Liquid Hydrocarbons by Turbine Meters
MPMS Chapter 5.4—Accessory Equipment for Liquid Meters
MPMS Chapter 12.2—(Parts 3–5)—Calculation of Petroleum Quantities Using Dynamic Measurement Methods and Volumetric Correction Factors
MPMS Chapter 14.3—Part 2—Specification and Installation Requirements for Orifice Plates, Meter Tubes and Associated Fittings
MPMS Chapter 17.X—Marine Vessel Preloading Tank Inspection Guidelines
MPMS Chapter 17.2—Measurement of Cargoes on Board Tank Vessels
MPMS Chapter 19.X—Air Concentration Test for Internal and External Floating Roof Rim Seals
MPMS Chapter 19.X—Weight Loss Test for Internal Floating Roof Rim Seals
MPMS Chapter 19.X—Weight Loss Test for Internal Floating Roof Deck Seams
MPMS Chapter 19.X—Weight Loss Test for Internal Floating Roof Fittings
MPMS Chapter 19.X—Evaporative Loss Factor for Storage Tanks—Certification Program
MPMS Chapter 19.X—Certified Loss Factor Testing—Laboratory Registration
MPMS Chapter 21.2—Liquid Flow Measurements Using Electronic Metering Systems

DATES: Interested parties may contact, in writing, the persons listed below.

FOR FURTHER INFORMATION CONTACT: J.C. Beckstrom or Steve Chamberlian, Exploration & Production Department, American Petroleum Institute, 1220 L Street NW., Washington, DC 20005.

• General Committee on Exploration and Production—Oil Field Equipment and Materials Standards

2A–WSD Offshore Structure Design (WSD)
2A–LRFD Offshore Structure Design (LFRD)
2X Ultrasonic Examination of Welds
2B Fabricated Steel Pipe
2I Inspection of Mooring Hardware
2M Steel Anchor Design
4F Specification for Drilling and Well Servicing Structures
5A3 Thread Compounds
5C6 Welding Connectors to Pipe (under development)
5CLP Coiled Line Pipe (Under Development)
5L9 Unprimed External Fusion Bonded Epoxy Coating of Line Pipe under development)
5TR1 Imperfection Terminology
6A Valves and Wellhead Equipment
6D Pipeline Valves (Steel Gate, Plug, Ball and Check Valves)
7 Specification for Rotary Drill Stem Elements
7A1 Testing of Thread Compound for Rotary Shouldered Connections
7G Drill Stem Design and Operating Limits
7K Drilling Equipment
8A Drilling and Production Hoisting Equipment
8B Procedures for Inspection, Maintenance Repair, and Remanufacture of Hoisting Equipment
8C Drilling and Production Hoisting Equipment (PSL 1 and PSL 2)
9A Specification for Wire Rope
10D Casing Centralizers
11AR Care and Use of Subsurface Pumps
11B Sucker rods
11BR Care and Handling of Sucker Rods
11IW Independent Wellhead Equipment (under development)
11E Pumping Units
11S3 Electric Submersible Pump Installations
11S4 Sizing and Selection of Electric Submersible Pump Installations
11S9 Rating and Testing Electrical Submersible Pump Motors (under development)
11V1 Gas Lift Valves, Orifices, Reverse Flow Valves and Dummy Valves
11V2 Gas Lift Performance
11V5 Operation, Maintenance and Trouble Shooting of Gas Lift Installations
500 Classificaton of Locations for Electrical Installations at Petroleum Facilities
xxx Inspection and Maintenance of Production Piping (under development)
13A Specification for Drilling Fluid Materials
14F Design and Installation of Electrical Systems for Offshore Production Platforms
15LR Low Pressure Fiberglass Pipe
15TR Fiberglass Tubing (under development)
16D Specification for Control Systems for Drilling Control Equipment
17A Subsea Production Systems
17F Subsea Control systems (under development)
17H ROV Interfaces with Subsea Equipment (under development)
17I Subsea Umbilicals
17J Specification for Flexible Pipe (under development)
MF 4C1 Model Form—Drilling Contract
MF 4C2 Model Form—Bid Sheet
MF 4S1 Model Form—Master Well Servicing
MF 5005 Model Form—Offshore Operating

—Drilling and Production Practices

27 Determining Permeability of Porous Media (to be combined with API 40)
31 Standard Format For Electromagnetic Logs
33 Standard Calibration & Format For Gamma Ray & Neutron Logs
40 Core Analysis Procedures (to be combined with API 27)
43 Evaluation of Well Perforator Systems
44 Sampling Reservoir Fluids
45 Analysis of Oil field Waters
49 Drilling & Drill Stem Testing of Wells Containing Hydrogen Sulfide
53 Blowout Prevention Equipment Systems for Drilling Wells
59 Well Control Operations
64 Diverter System Equipment and Operations
65 Standard Calibration of Gamma Ray Spectroscopy Logging Instruments and Format for K–U–Th Logs
66 Exploration and Production Data Digital Interchange
D12A API Well Number & Standard State, County, Offshore Area Codes
xx Well Servicing/Workover Operations Involving Hydrogen Sulfide (under development)
xx Rheology of Cross Linked Fracturing Fluids (under development)
xx Cargo Handling at Offshore Facilities (under development)
xx Long Term Conductivity Testing of Proppants (under development)

DATES: The 1997 Winter Standardization Conference on Oilfield Equipment and Materials will be held January 13–17, 1997, at the Westin Hotel in Dallas, Texas. Interested parties may contact Arnetta Smith via fax at (202)682–8426 for more information regarding attending this meeting.

FOR FURTHER INFORMATION CONTACT: David Miller/Tim Sampson, Exploration & Production Department, American Petroleum Institute, 1220 L Street, NW, Washington, DC 20005.

SUPPLEMENTARY INFORMATION: The American Petroleum Institute develops and publishes voluntary standards for equipment, operations, and processes. These standards are used by both private industry and by governmental agencies. All interested persons should contact in writing the appropriate source as listed for further information.

Authority: 15 U.S.C. 272

Dated August 1, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–20224 Filed 8–7–96; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 072596C]

Development of the Commencement Bay Natural Resource Damage Assessment Restoration Plan, Pierce County, WA

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

ACTION: Notice of availability of a draft Restoration Plan and Programmatic Environmental Impact Statement (RP/EIS) and public meeting.

SUMMARY: This notice advises the public that the draft RP/EIS for the Commencement Bay Natural Resource Damage Assessment (CB/NRDA) restoration planning process is available for public review. Comments are requested and a public meeting will be held.

DATES: Written comments are requested by October 7, 1996. A public meeting will be held on September 10, 1996, from 6:30 p.m. to 8:30 p.m.

ADDRESSES: The public meeting will be held at the World Trade Center, Port of Tacoma Road, Tacoma, WA. Written comments on the draft RP/EIS, requests for inclusion on the RP/EIS mailing list, and requests for copies of any documents associated with the draft RP/

EIS should be directed to: U.S. Fish and Wildlife Service, 3704 Griffin Lane SE., Suite 102, Olympia, WA 98501-2192, or NOAA/NMFS Restoration Center NW, 7600 Sand Point Way NE., Seattle, WA 98115-0070.

FOR FURTHER INFORMATION CONTACT: Judy Lantor, FWS, (360) 753-6056, or Dr. Robert Clark Jr., NOAA/NMFS Restoration Center, (206) 526-4338.

SUPPLEMENTARY INFORMATION: A notice of availability will be mailed to all agencies, organizations, and individuals who participated in the scoping process or were identified during the RP/EIS process. Copies of the draft RP/EIS have been sent to all participants who have already requested copies.

A. Background

Study Area

Commencement Bay is a deep-water embayment that occupies approximately 5,700 acres in south Puget Sound, WA. The study area for the RP/EIS includes the Bay, the watershed, its main tributaries, and the Puget Sound coastal areas adjacent to the Bay, focusing on those areas that serve as habitat for or otherwise support the natural resources of Commencement Bay. Commencement Bay was placed on a national interim list of 115 highest priority hazardous waste sites on October 23, 1981. The Commencement Bay Nearshore/Tideflats site was added to the National Priorities List after fish, shellfish, and sediments within the waterways were found to have elevated concentrations of hazardous substances. Commencement Bay Natural Resource Damage Assessment (CB/NRDA)

The CB/NRDA is being conducted by Federal and state agencies and tribal governments identified as Natural Resource Trustees (Trustees) for the Commencement Bay environment pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq., the Oil Pollution Act of 1990, 33 U.S.C. 2701-2761, and other applicable laws. The Trustees have the authority to recover damages from parties that have caused injury through the releases of hazardous substances or a discharge of oil to Commencement Bay natural resources and to use those damages to restore, rehabilitate, replace and/or acquire the equivalent of those injured natural resources and services. The RP/EIS will be used to guide decision-making regarding the implementation of CB/NRDA restoration activities.

Because the planning, selection, design, construction, monitoring, and funding of specific restoration measures will unfold over a period of many years, a tiered EIS process has been selected for environmental compliance. Project-specific National Environmental Policy Act documents will be prepared for each project proposed under the selected restoration approach.

Cooperating Agencies

Cooperating Agencies are the Washington Department of Ecology (as lead State trustee), the Washington State Departments of Natural Resources and Fish and Wildlife, the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe (Trustees), along with the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency.

B. Development of the Draft RP/EIS

The Trustees have initiated actions during the RP/EIS process to assure compliance with the purpose and intent of the National Environmental Policy Act of 1969, as amended. A Notice of Intent to prepare the RP/EIS was published in the Federal Register (59 FR 44711-2, August 30, 1994). Formal and informal scoping meetings were held to provide the public with an early opportunity to participate in discussions regarding the RP/EIS and to provide oral and written comments.

C. Alternatives Analyzed in the Draft RP/EIS

During the informal and formal scoping meetings for the RP/EIS, eight initial restoration concepts were presented to the public to stimulate discussion. Those concepts and other potential approaches were identified and discussed during scoping meetings. Subsequent to evaluation of the public scoping comments, a preliminary screening was performed by the Trustees using evaluation criteria developed to evaluate how well each approach met the identified purpose and needs of the CB/NRDA restoration program. The alternatives selected for further evaluation are presented in the RP/EIS no action, a species-specific approach, habitat function approach, acquisition of equivalent natural resources and services, and an integrated approach.

The draft RP/EIS evaluates the environmental impacts of the various restoration alternatives and presents a proposed conceptual restoration management plan. Key issues addressed in this draft RP/EIS are identified as the effects that implementation of various alternatives would have upon fish and wildlife and their habitats and physical environmental factors, and the degree to which various alternatives are able to meet the purpose and need of the CB/NRDA program.

The draft RP/EIS concludes, based on those evaluations, that the preferred alternative is the integrated approach, which is a comprehensive plan based upon the best features of the other alternatives. This alternative best meets the needs of the CB/NRDA restoration goals and principles by maximizing ecological benefits for a wider range of natural resources and their associated services.

Dated: July 22, 1996.

William F. Shake,

Acting Regional Director, U.S. Fish and Wildlife Service, Portland, OR.

Dated: August 1, 1996.

Charles Karnella,

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

[FR Doc. 96–20132 Filed 8–7–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Specialized Treatment Services (STS) Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties that Dwight D. Eisenhower Army Medical Center (EAMC) has been designated a Regional Specialized Treatment Services Facility for Cardiac Surgery. This designation covers the following Diagnosis Related Groups:

104—Cardiac valve procedure with cardiac cath
105—Cardiac valve procedure without cardiac cath
106—Coronary bypass with cardiac cath
107—Coronary bypass without cardiac cath
108—Other cardiothoracic procedures
112—Percutaneous cardiovascular procedures

Travel and lodging for the patient and, if stated to be medically necessary by a referring physician, for one nonmedical attendant, will be reimbursed by EAMC in accordance with the provisions of the Joint Federal Travel Regulation. All DoD beneficiaries who reside in the EAMC STS Catchment Area must be evaluated by EAMC before receiving CHAMPUS cost sharing for procedures that fall under the above Diagnosis Related Groups. Evaluation in person is preferred, and travel and lodging expenses for the evaluation will be reimbursed as stated above. It is possible to conduct the evaluation telephonically if the patient is unable to

travel to EAMC. If the procedure cannot be performed at EAMC, Humana Military Healthcare Services will provide a medical necessity review in order to support issuance of a Nonavailability Statement by EAMC.

The EAMC STS Catchment Area is defined by zip code in the Defense Medical Information System STS Facilities Catchment Area Directory, dated December 1, 1995. The Catchment Area includes zip codes within TRICARE Region 3 that fall within a 200 mile radius of EAMC, summarized as follows:

All South Carolina zip codes EXCEPT: 29566, 29582.

All Georgia zip codes EXCEPT: 30108, 30109, 30113, 30117, 30125, 30138, 30140, 30176, 30182, 30707, 30728, 30731, 30736, 30741, 30742, 30750, 30752, 31626, 31629, 31713, 31715, 31717, 31723, 31724, 31725, 31728, 31729, 31734, 31736, 31741, 31745, 31751, 31754, 31759, 31761, 31773, 31792, 31797, 31799.

The following Alabama zip codes: 36801, 36802, 36803, 36851, 36852, 36854, 36856, 36859, 36863, 36867, 36868, 36869, 36871, 36872, 36874, 36875, 36877.

The following Florida zip codes: 32011, 32034, 32035, 32046, 32097.

EFFECTIVE DATE: September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Tina Lukens, EAMC, at (706) 787–6714, Major Thomas Wagner, DoD Health Services Region 3, at (706) 787–2010, or colonel Michael Dunn, OSD (Health Affairs), at (703) 695–6800.

SUPPLEMENTARY INFORMATION: In FR DOC 93–27050, appearing in the Federal Register on November 5, 1993 (Vol. 58, FR 58995–58964), the final rule on the STS Program was published. Included in the final rule was a provision that a notice of all military and civilian STS facilities be published in the Federal Register annually.

Dated: August 2, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–20158 Filed 8–7–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 29 and 30 August 1996.

Time of Meeting: 0800–1600, 29 August 1996; 1000–1700, 30 August 1996.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board (ASB) Ad Hoc Study on ''The Impact of Information Warfare on Army C4I Systems'' will meet for report writing sessions. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C. Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Program Support Specialist, Army Science Board.

[FR Doc. 96–20239 Filed 8–7–96; 8:45 am]

BILLING CODE 3710–28–M

Department of the Navy

Notice of Government-Owned Inventions; Availability for Licensing

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy. Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number. Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the copies of patent applications sold to avoid premature disclosure. The following patents are available for Licensing: Patent 5,459,099: METHOD OF FABRICATING SUB-HALF-MICRON TRENCHES AND HOLES; filed 17 November 1994; patented 17 October 1995.// Patent 5,459,332: SEMICONDUCTOR PHOTODETECTOR DEVICE; filed 31 March 1994; patented 17 October 1995.// Patent 5,459,745: TM:YALO, 1.94–MICRON, SOLID STATE LASER; filed 28 April 1993; patented 17 October 1995.// Patent 5,460,866: VIBRATION DAMPING STRUCTURAL LAMINATE; filed 4 September 1990; patented 24 October 1995.// Patent 5,461,648: SUPERCRITICAL WATER OXIDATION REACTOR WITH A CORROSION-RESISTANT LINING; filed 27 October 1994; patented 24 October 1995.// Patent 5,463,523: ZERO FIELD DEGAUSSING SYSTEM AND METHOD; filed 1 September 1993; patented 31 October 1995.// Patent 5,464,926: SYNTHESIS AND POLYMERIZATION OF OLIGOMERIC MULTIPLE AROMATIC ETHER-CONTAINING PHTHALONITRILES; filed 27 July 1994; patented 7 November 1995./Patent 5,465,274: DIGITAL CIRCUIT FOR DECODING ENCODED DOPPLER DATA; filed 7 April 1995; patented 7 November 1995.// Patent 5,466,467: LIPOSOMES CONTAINING POLYMERIZED LIPIDS FOR NON-COVALENT IMMOBILIZATION OF PROTEINS AND ENZYMES; filed 30 March 1994; patented 14 November 1995.// Patent 5,466,578: SURFACTANT-ENHANCED LIGHT EMISSION-OR ABSORBANCE-BASED BINDING ASSAYS FOR POLYNUCLEIC ACIDS; filed 26 July 1994; patented 14 November 1995.// Patent 5,467,814: GRAPHITE/EPOXY HEAT SINK/MOUNTING FOR COMMON PRESSURE VESSEL; filed 24 February 1995; patented 21 November 1995.// Patent 5,468,356: LARGE SCALE PURIFICATION OF CONTAMINATED AIR; filed 23 August 1991; patented 21 November 1995.// Patent 5,468,570: LIGHTWEIGHT ZINC ELECTRODE; filed 26 January 1995; patented 21 November 1995.// Patent 5,468,597: SELECTIVE METALLIZATION PROCESS; filed 20 August 1993; patented 21 November 1995.// Patent 5,469,369: SMART SENSOR SYSTEM AND METHOD USING A SURFACE ACOUSTIC WAVE VAPOR SENSOR ARRAY AND PATTERN RECOGNITION FOR SELECTIVE TRACE ORGANIC VAPOR DETECTION; filed 2 November 1992; patented 21 November 1995.// Patent 5,470,373: OXIDATION RESISTANT COPPER; filed 15 November 1993; patented 28 November 1995.// Patent 5,471,072: PLATINUM AND PLATINUM SILICIDE CONTACTS ON B-SILICON CARBIDE; filed 13 December 1993; patented 28 November 1995.// Patent 5,473,694: SYNCHRONIZATION OF NONAUTONOMOUS CHAOTIC SYSTEMS; filed 29 June 1994; patented 5 December 1995.// Patent 5,474,059: AEROSOL DISPENSING APPARATUS FOR DISPENSING A MEDICATED VAPOR INTO THE LUNGS OF A PATIENT; filed 8 April 1995; patented 12 December 1995.// Patent 5,474,625: DESENSITIZED SOLID ROCKET PROPELLANT FORMULATION; filed 16 December 1993; patented 12 December l995.// Patent 5,475,304: MAGNETORESISTIVE LINEAR DISPLACEMENT SENSOR, ANGULAR DISPLACEMENT SENSOR, AND

VARIABLE RESISTOR USING A MOVING DOMAIN WALL; filed 1 October 1993; patented 12 December 1995.// Patent 5,477,482: ULTRA HIGH DENSITY, NON-VOLATILE FERROMAGNETIC RANDOM ACCESS MEMORY; filed 1 October 1993; patented 19 December 1995.// Patent 5,478,532: LARGE SCALE PURIFICATION OF CONTAMINATED AIR; filed 10 May 1995; patented 26 December 1995.// Patent 5,479,094: POLARIZATION INSENSITIVE CURRENT AND MAGNETIC FIELD OPTIC SENSOR; filed 24 April 1995; patented 26 December 1995.// Patent 5,481,189: ELECTRON TUNNELING MAGNETIC FIELD SENSOR WITH CONSTANT TUNNELING CURRENT MAINTAINED BETWEEN TUNNELING TIP AND ROTATABLE MAGNET; filed 7 February 1994; patented 2 January 1996.// Patent 5,481,492: FLOATING GATE INJECTION VOLTAGE REGULATOR; filed 14 December 1994; patented 2 January 1996.// Patent 5,481,904: OIL SPILLAGE DETECTOR; filed 28 September 1994; patented 9 January 1996.// Patent 5,482,574: METHOD OF MAKING COMPOSITE STRUCTURE HAVING A POROUS SHAPE-MEMORY COMPONENT; filed 4 October 1994; patented 9 January 1996.// Patent 5,483,017: HIGH TEMPERATURE THERMOSETS AND CERAMICS DERIVED FROM LINEAR CARBORANE-(SILOXANE OR SILANE)-ACETYLENE COPOLYMERS; filed 7 November 1994; patented 9 January 1996.// Patent 5,483,410: ADVANCED DEGAUSSING COIL SYSTEM; filed 25 March 1994; patented 9 January 1996.// Patent 5,483,953: AEROSOL DISPENSING APPARATUS FOR DISPENSING A MEDICATED VAPOR INTO THE LUNGS OF A PATIENT; filed 22 June 1995; patented 16 January 1996.// Patent 5,485,363: WARM-UP TIME DELAY SYSTEM FOR RELAY CONTROLLED ELECTRICAL POWER SUPPLY; filed 25 June 1993; patented 16 January 1996.// Patent 5,485,786: ELECTRONIC PRIMER IGNITION SYSTEM; filed 2 May 1995; patented 23 January 1996.// Patent 5,485,972: CABLE RECOVERY WINDER; filed 19 November 1993; patented 23 January 1996.// Patent 5,486,495: GERMANATE GLASS CERAMIC; filed 23 December 1994; patented 23 January 1996.// Patent 5,486,811: FIRE DETECTION AND EXTINGUISHMENT SYSTEM; filed 9 February 1994; patented 23 January 1996.// Patent 5,487,079: CONTINUOUSLY TUNABLE UV CE:LISAF SOLID STATE LASER; filed 5 January 1995; patented 23 January 1996.// Patent 5,487,981: APPARATUS FOR AND METHOD OF DETECTING/IDENTIFYING MICROBIAL CONTAMINATION IN ULTRA-PURE WATER SYSTEMS; filed 30 July 1993; patented 30 January 1996.// Patent 5,488,076: WATER ABLATIVE COATING FOR DRAG REDUCTION APPLICATIONS; filed 8 August 1973; patented 30 January 1996.// Patent 5,488,278: LOAD LIMIT SYSTEM FOR MECHANICAL LINEAR ACTUATOR; filed 23 September 1994; patented 30 January 1996.// Patent 5,488,475: ACTIVE FIBER CAVITY STRAIN SENSOR WITH TEMPERATURE INDEPENDENCE; filed 31 March 1994; patented 30 January 1996.// Patent 5,488,919: CANTED RUDDER SYSTEM FOR PITCH ROLL AND STEERING CONTROL; filed 20 June 1995; patented 6 February 1996.// Patent 5,489,132: SAFETY LATCH; filed 30 September 1994; patented 6 February 1996.// Patent 5,489,200: COMPRESS/MELT PROCESSOR FOR CONTAMINATED PLASTIC WASTE; filed 29 November 1994; patented 6 February 1996.// Patent 5,490,517: OCCUPANT REACH AND MOBILITY APPARATUS; filed 12 April 1994; patented 13 February 1996.// Patent 5,490,973: PULSED CORONA REACTOR SYSTEM FOR ABATEMENT OF POLLUTION BY HAZARDOUS AGENTS; filed 23 May 1994; patented 13 February 1996.// Patent 5,491,185: EPOXY SELF-PRIMING TOPCOATS; filed 7 March 1994; patented 13 February 1996.// Patent 5,491,335: FIBER OPTIC TRANSDUCER WITH FLUID COUPLING MEANS BETWEEN OPTICAL FIBER AND TRANSDUCTION MATERIAL; filed 31 August 1994; patented 13 February 1996.// Patent 5,491,487: SLAVED GRAM SCHMIDT ADAPTIVE NOISE CANCELLATION METHOD AND APPARATUS; filed 30 May 1991; patented 13 February 1996.// Patent 5,491,579: BROADBAND THERMAL OPTICAL LIMITER FOR THE PROTECTION OF EYES AND SENSORS; filed 31 May 1994; patented 13 February 1996.// Patent 5,491,716: WEIGHT-VALUE CONTROLLED ADAPTIVE PROCESSOR FOR SPREAD SPECTRUM RECEIVER; filed 18 June 1990; patented 13 February 1996.// Patent 5,493,273: SYSTEM FOR DETECTING PERTURBATIONS IN AN ENVIRONMENT USING TEMPORAL SENSOR DATA; filed 28 September 1993; patented 20 February 1996.// Patent 5,493,445: LASER TEXTURED SURFACE ABSORBER AND EMITTER; filed 13 July 1994; patented 20 February 1996.// Patent 5,493,540: SYSTEM FOR ESTIMATING FAR-FIELD ACOUSTIC TONALS; filed 30 June 1994; patented 20 February 1996.// Patent 5,493,993: DECOY; filed 23 January 1995; patented 27 February 1996.// Patent 5,494,240: VEHICLE RECOVERY DEVICE FOR USE BY HELICOPTER; filed 7 October 1994; patented 27 February 1996.// Patent 5,494,468: FLIPPER ENERGY SOURCE; filed 25 January 1995; patented 27 February 1996.// Patent 5,494,469: INFLATABLE LIFE VEST; filed 30 September 1994; patented 27 February 1996.// Patent 5,494,617: METHOD OF INDUCING PIEZOELECTRIC PROPERTIES IN POLYMERS; filed 16 May 1994; patented 27 February 1996.// Patent 5,494,634: MODIFIED CARBON FOR IMPROVED CORROSION RESISTANCE; filed 15 January 1993; patented 27 February 1996.// Patent 5,495,106: DETECTION OF SUBSURFACE FISSIONABLE NUCLEAR CONTAMINATION THROUGH THE APPLICATION OF PHOTONUCLEAR TECHNIQUES; filed 6 October 1994; patented 27 February 1996.// Patent 5,495,366: APPARATUS AND METHOD FOR ELIMINATING POLARIZATION SENSITIVITY IN TRANSDUCERS; filed 3 May 1993; patented 27 February 1996.// Patent 5,495,416: AUDIO INFORMATION APPARATUS FOR PROVIDING POSITION INFORMATION; filed 7 November 1994; patented 27 February 1996.// Patent 5,495,496: METHOD AND APPARATUS FOR SUPPRESSING LINEAR AMPLITUDE INTERFERENCE FROM BANDSPREAD COMMUNICATION SIGNALS; filed 26 September 1991; patented 27 February 1996.// Patent 5,495,497: METHOD AND APPARATUS FOR SUPPRESSING INTERFERENCE FROM BANDSPREAD COMMUNICATION SIGNALS; filed 25 September 1991; patented 27 February 1996.// Patent 5,496,700: OPTICAL IMMUNOASSAY FOR MICROBIAL ANALYTES USING NON-SPECIFIC DYES; filed 6 August 1993; patented 5 March 1996.// Patent 5,497,000: METHOD OF ELECTROCHEMICAL DETECTION/IDENTIFICATION OF SINGLE ORGANIC MOLECULES USING SCANNING TUNNELING MICROSCOPY; filed 27 January 1994; patented 5 March 1996.// Patent 5,497,053: MICRO-ELECTRON DEFLECTOR; filed 15 November 1993; patented 5 March 1996.// Patent 5,497,487: MERGE, COMMIT RECOVERY PROTOCOL FOR REAL-TIME DATABASE MANAGEMENT SYSTEMS; filed 28 April 1994; patented 5 March 1996.// Patent 5,497,614: EXTERNAL COMBUSTION ENGINE HAVING AN ASYMMETRICAL CAM AND METHOD OF OPERATION; filed 30 November 1994; patented 12 March 1996.// Patent 5,499,255: COAXIAL

HYBRID WIGGLER; filed 12 July 1994; patented 12 March 1996.// Patent 5,499,314: SHOCK RESISTANT OPTIC FIBER ROTARY SPLICE HOLDING DEVICE; filed 22 November 1994; patented 12 March 1996.// Patent 5,499,399: TWO-DIMENSIONAL KERNEL ADAPTIVE INTERFERENCE SUPPRESSION SYSTEM; filed 29 May 1991; patented 12 March 1996.// Patent 5,499,919: AIRCRAFT CONTROL LEVER SIMULATOR; filed 4 October 1993; patented 19 March 1996.// Patent 5,502,345: UNITARY TRANSDUCER WITH VARIABLE RESISTIVITY; filed 29 August 1994; patented 26 March 1996.// Patent 5,502,448: METHOD AND MEANS FOR SHORT PULSE INTERFERENCE REJECTION; filed 30 August 1977; patented 26 March 1996.// Patent 5,502,449: GROUND UNIT FOR THE DETECTION, IDENTIFICATION, AND DIRECTION DETERMINATION OF A MARKER BEACON; filed 23 March 1994; patented 26 March 1996.// Patent 5,504,770: LIQUID METAL CONFINEMENT CYLINDER FOR OPTICAL DISCHARGE DEVICES; filed 27 December 1993; patented 2 April 1996.// Patent 5,506,415: METHOD AND APPARATUS FOR COUNTING PHOTONS IN A SINGLE-MODE, COHERENT MICROWAVE FIELD; filed 20 December 1994; patented 9 April 1996.// Patent 5,506,812: TOROIDAL VOLUME SEARCH SONAR; filed 30 June 1993; patented 9 April 1996.// Patent 5,506,817: ENHANCED ADAPTIVE STATISTICAL FILTER PROVIDING SPARSE DATA STOCHASTIC MENSURATION FOR RESIDUAL ERRORS TO IMPROVE PERFORMANCE FOR TARGET MOTION ANALYSIS NOISE DISCRIMINATION; filed 25 May 1995; patented 9 April 1996.// Patent 5,508,116: METAL MATRIX COMPOSITE REINFORCED WITH SHAPE MEMORY ALLOY; filed 28 April 1995; patented 16 April 1996.// Patent 5,509,294: APPARATUS FOR DETERMINING AMOUNT OF GASES DISSOLVED IN LIQUIDS; filed 4 April 1995; patented 23 April 1996.// Patent 5,509,459: PRESSURE CAST ALUMINA TILE REINFORCED ALUMINUM ALLOY ARMOR AND PROCESS FOR PRODUCING THE SAME; filed 28 September 1994; patented 23 April 1996.// Patent 5,509,621: MECHANISM FOR HIGH SPEED LINEAR PAYOUT OF MONO-FILAMENT STRAND; filed 16 March 1993; patented 23 April 1996.// Patent 5,513,032: ACTIVELY PUMPED FARADAY OPTICAL FILTER; filed 3 May 1995; patented 30 April 1996.// Patent application 08/491,693: ORTHOGONAL SHEAR STRESS MEASUREMENT PROBE ASSEMBLY FOR BOUNDARY LAYER FLOW; filed 19 June 1995.// Patent application 08/497,708: FREEZE DRIED RED BLOOD CELLS AND PLATELETS; filed 30 June 1995.// Patent application 08/499,244: PROCESS FOR TREATING BY PRODUCTS OF LITHIUM/SULFUR HEXAFLUORIDE; filed 7 July 1993.// Patent application 08/511,341: DUAL WAVELENGTH SURGICAL LASER SYSTEM; filed 4 August 1995.// Patent application 08/511,494: FIBER OPTIC HOLDER; filed 11 July 1995.// Patent application 08/514,570: COMBINATION PIN FOR ATTACHING TRIGGER ASSEMBLY AND SAFING SMALL ARM; filed 14 August 1995.// Patent application 08/514,576: SINGLE SPRING BOLT LOCK AND CARTRIDGE EJECTOR; filed 14 August 1995.// Patent application 08/514,884: BREECH BOLT AND LOCK ASSEMBLY; filed 14 August 1995.// Patent application 08/523,528: HIGH TEMPERATURE EPOXY-PHTHALONITRILE BLENDS; filed 1 September 1995.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research (Code OOCC), Arlington, Virginia 22217–5660, Telephone (703) 696–4001.

Dated: July 30, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–20238 Filed 8–07–96; 8:45 am]

BILLING CODE 3810–FF–P

Notice of Open Meeting; Secretary of the Navy's Advisory Subcommittee on Naval History

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Secretary of the Navy's Advisory Subcommittee on Naval History, a subcommittee of the Department of Defense Historical Advisory Committee, will meet from 0800–1600 on September 26 and September 27, 1996 in Building 1 of the Naval Historical Center, Washington Navy Yard, Washington, DC. The meeting will be open to the public.

The purpose of the meeting is to review naval historical activities since the last meeting of the Advisory Subcommittee on Naval History on 21 and 22 September 1995, and to make comments and recommendations on these activities to the Secretary of the Navy.

FOR FURTHER INFORMATION: Write to the Director of Naval History, 901 M. Street, SE, Bldg 57, WNY, Washington, DC 20374–5060, or call Dr. William S. Dudley at (202) 433–2210.

Dated: July 29, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–20236 Filed 8–7–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

DATES: Wednesday, August 21, 1996: 6:50 pm–9:30 pm (Mountain Standard Time).

ADDRESS: Indian Pueblo Cultural Center, 2401 12th St. NW., Albuquerque, NM.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845–4094.

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

6:50 pm Public Comment Period
7:00 pm Approval of Agenda
7:05 pm Approval of 6/19/96 Minutes
7:10 pm Chair's Report
7:15 pm Future Land Use: Management Area 7 Report/Presentation/Discussion
7:45 pm Nominating Committee Report: Slate/Nominees for Executive Office
8:00 pm Bylaws Committee Report
8:05 pm Public Involvement Committee Report
8:10 pm Break
8:20 pm Self Evaluation—Approval of Goals and Work Plan
9:05 pm New/Other Business
9:30 pm Adjourn

A final agenda will be available at the meeting Wednesday, August 21, 1996.

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 Mike Zamorski's office at the address or 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. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

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 Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on August 5, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–20211 Filed 8–7–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

Notice of Intent To Solicit National Industrial Competitiveness Through Energy, Environment and Economics (NICE 3) Grants

AGENCY: The Department of Energy, (DOE).

ACTION: Notice of Intent To Issue a Solicitation.

SUMMARY: The Office of Industrial Technologies of the Department of Energy is funding a State Grant Program entitled National Industrial Competitiveness through Energy, Environment and Economics (NICE 3). The goals of the NICE 3 Program are to improve energy efficiency, promote cleaner production, and to improve competitiveness in industry. The intent of the NICE 3 program is to fund projects that have completed the research and development stage and are ready to demonstrate a fully integrated commercial unit. Some industrial technologies that the NICE 3 project has funded follow: SO_3 Cleaning Process in the Manufacture of Semiconductors; Innovative Design of a Brick Kiln Using Low Thermal Mass Technology; Continuously Reform Electroless Nickel Plating Solutions; Recovery and Reuse of Water-Washed Overspray Paint; and HCl Acid Recovery System. For the past five years the NICE 3 program has offered 64 grants (approximately $20.9 million) to fund innovative industrial technologies.

DATES: The solicitation will be available September 3, 1996. Applications must be received by January 15, 1997.

FOR FURTHER INFORMATION CONTACT: Amy Johnson and/or Doug Hooker at the U.S. Department of Energy Golden Field Office, 1617 Cole Boulevard, Golden, Colorado 80401, (303) 275–4716 for referral to appropriate DOE Regional Support Office or State Agency.

SUPPLEMENTARY INFORMATION: In 1996 the Department of Energy offered $6.1 million in grants to 17 U.S. companies in 14 states.

Availability of Fund in FY 1997

With this publication, DOE is announcing the availability of up to $5 million dollars in grant/cooperative agreement funds for fiscal year 1997. The awards will be made though a competitive process. In response to the solicitation, a State agency may include up to 10 percent, not to exceed $25,000 per project, for State agency program support. Size of grants including State agency program support may range up to $425,000. Projects may cover a period of up to 3 years.

Restricted Eligibility

Eligible applicants for purposes of funding under the program include any authorized agency of the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and any territory or possession of the United States. For convenience, the term State in this notice refers to all eligible State agency applicants. Local governments, State and private universities, private non-profits, private businesses and individuals, who are not eligible as direct applicants, must work with the appropriate State agencies in developing projects and forming participation arrangements. DOE strongly encourages and requires these types of cooperative arrangements in support of program goals. The Catalog of Federal Domestic Assistance number assigned to this program is 81.105. Up to $5 million in Federal funds will be made available by DOE for this effort. Cost sharing is required by all participants. The Federal Government will provide up to 45 percent of the funds for the project. The remaining funds must be provided by the eligible applicants and/or cooperating project participants. Cost sharing, by industry/State partners, beyond the 55 percent required match is desirable. In addition to direct financial contributions, cost sharing can include beneficial services or items, such as manpower equipment, consultants, and computer time that are allowable in accordance with applicable cost principles. The inclusion of Industrial partners is required for a proposal to be considered responsive to the solicitation to be eligible for grant consideration. A State agency application signed by an authorized State official is required for a proposal to be responsive.

Evaluation Criteria

The first tier, administrative review will occur at the appropriate DOE Regional Support Office. Applications will receive technical and final evaluation review by a panel comprised of members representing DOE's Office of Energy Efficiency and Renewable Energy. More detailed information is available from the U.S. Department of Energy Golden Field Office at 303/275–4716. DOE reserves the right to fund, in whole or in part, any, all, or none of the proposals submitted in response to this notice.

Issued in Golden, Colorado, on July 29, 1996.

John W. Meeker.

Chief, Procurement, GO.

[FR Doc. 96–20210 Filed 8–7–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER95–625–002, et al.]

Cincinnati Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

July 31, 1996

Take notice that the following filings have been made with the Commission:

1. Cincinnati Gas & Electric Company

[Docket No. ER95–625–002]

Take notice that on July 22, 1996, Cincinnati Gas & Electric Company tendered for filing its refund report in the above-referenced docket.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. R.J. Dahnke & Associates, Cenergy, Inc., Electrade Corporation, EDC Power Marketing, Inc., AIG Trading Corporation, Proven Alternatives, and Delhi Gas Pipeline Corporation

[Docket Nos. ER94–1352–008, ER94–1402–009, ER94–1478–008, ER94–1538–007, ER94–1691–010, ER95–473–005, and ER95–940–005 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On July 26, 1996, R.J. Dahnke & Associates filed certain information as required by the Commission's August 10, 1994, order in Docket No. ER94–1352–000.

On July 25, 1996, Cenergy, Inc. filed certain information as required by the Commission's December 7, 1994, order in Docket No. ER94–1402–000.

On July 26, 1996, Electrade Inc. filed certain information as required by the Commission's August 25, 1994, order in Docket No. ER94–1478–000.

On July 23, 1996, EDC Marketing, Inc. filed certain information as required by the Commission's September 14, 1994, order in Docket No. ER94–1538–000.

On July 26, 1996, AIG Trading Corporation filed certain information as required by the Commission's January 19, 1995, order in Docket No. ER94–1691–000.

On July 17, 1996, Proven Alternatives filed certain information as required by the Commission's March 29, 1995, order in Docket No. ER95–473–000.

On July 25, 1996, Delhi Gas Pipeline Corporation filed certain information as required by the Commission's June 1, 1995, order in Docket No. ER95–940–000.

3. Kohler Company, Premier Enterprises, Inc., Premier Enterprises, Inc., Proler Power Marketing, Inc., Industrial Energy Applications, Inc., PennUnion Energy Services, L.L.C., and ConAgra Energy Services, Inc.

[Docket Nos. ER95–1018–001, ER95–1123–002, ER95–1123–003, ER95–1433–003 ER95–1465–003, ER95–1511–002, and ER95–1751–003 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On July 29, 1996, Kohler Company filed certain information as required by the Commission's August 4, 1995, order in Docket No. ER95–1018–000.

On July 23, 1996, Premier Enterprises, Inc. filed certain information as required by the Commission's August 7, 1995, order in Docket No. ER95–1123–000.

On July 23, 1996, Premier Enterprises, Inc. filed certain information as required by the Commission's August 7, 1995, order in Docket No. ER95–1123–000.

On July 25, 1996, Proler Marketing, Inc. filed certain information as required by the Commission's October 16, 1995, order in Docket No. ER95–1433–000.

On July 26, 1996, Industrial Energy Applications, Inc. filed certain information as required by the Commission's September 28, 1995, order in Docket No. ER95–1465–000.

On July 25, 1996, PennUnion Energy Services, L.L.C. filed certain information as required by the Commission's September 11, 1995, order in Docket No. ER95–1511–000.

On July 26, 1996, ConAgra Energy Services, Inc. filed certain information as required by the Commission's October 23, 1995, order in Docket No. ER95–1751–000.

4. Coral Power, L.L.C., Paragon Gas Marketing, Heath Petra Resources, Inc., Quantum Energy Resources, Inc., WPS Power Development, Inc., and Alliance Power Marketing, Inc.

[Docket Nos. ER96–25–003, ER96–380–003, ER96–381–003, ER96–947–002, ER96–1088–004, and ER96–1818–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On July 29, 1996, Coral Power, L.L.C filed certain information as required by the Commission's December 6, 1995, order in Docket No. ER96–25–000.

On July 23, 1996, Paragon Gas Marketing filed certain information as required by the Commission's December 20, 1995, order in Docket No. ER96–380–000.

On July 23, 1996, Heath Petra Resources, Inc. filed certain information as required by the Commission's December 20, 1995, order in Docket No. ER96–381–000.

On July 17, 1996, Quantum Energy Resources, Inc. filed certain information as required by the Commission's March 5, 1996, order in Docket No. ER96–947–000.

On July 26, 1996, WPS Power Development, Inc. filed certain information as required by the Commission's April 16, 1996, order in Docket No. ER96–1088–000.

On July 24, 1996, Alliance Power Marketing, Inc. filed certain information as required by the Commission's June 17, 1996, order in Docket No. ER96–1818–000.

5. Northwest Power Marketing Company, L.L.C.

[Docket No. ER96–688–001]

Take notice that on July 24, 1996, Northwest Power Marketing Company, L.L.C. tendered for filing its Rate Schedule FERC No. 1 and Code of Conduct Regarding the Relationship between Kansas City Power & Light Company and Northwest Power Marketing Company, L.L.C. This filing was made in compliance with the Commissions Order of June 13, 1996, in this docket.

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

[Docket No. ER96–1600–001]

Take notice that on July 2, 1996, Portland General Electric Company submitted a compliance filing in this docket.

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Energy2, Inc.

[Docket No. ER96–2361–000]

Take notice that on July 10, 1996, Energy2, Inc. tendered for filing an application for Waivers, Blanket Approvals, and Order Approving Rate Schedule.

8. Northern States Power Company (Minnesota Company)

[Docket No. ER96–2522–000]

Take notice that on July 25, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing Relocation Agreement between NSP and the City of Delano (City). NSP files this agreement on behalf of the City and itself.

The Relocation Agreement provides for relocating the City's connection to NSP's transmission system for the benefit of the City. NSP requests the Commission waive its Part 35 notice requirements and accept this Agreement for filing effective July 26, 1996.

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Energy Services, Inc.

[Docket No. ER96–2523–000]

Take notice that on July 25, 1996, Northeast Energy Services, Inc. tendered for filing an Application for Acceptance of Initial Rate Schedule, Waivers, and Blanket Authority.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Symmetry Device Research, Inc.

[Docket No. ER96–2524–000]

Take notice that on July 25, 1996, Symmetry Device Research, Inc. tendered for filing an Application for Blanket Authorizations, Certain Waivers, And Order Approving Rate Schedule.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Plum Street Energy Marketing, Inc.

[Docket No. ER96–2525–000]

Take notice that on July 25, 1996, Plum Street Energy Marketing, Inc. (PSEM), tendered for filing with the Federal Energy Regulatory Commission Rate Schedule No. I, which permits PSEM to make wholesale power sales at market-based rates.

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of New Mexico

[Docket No. ER96–2526–000]

Take notice that on July 26, 1996, Public Service Company of New Mexico (PNM), tendered for filing a Notice of Termination of the Rio Grande Project Interconnection Agreement between El Paso Electric Company (EPE), Plains Electric Generation and Transmission Cooperative, Inc. (Plains), Texas-New Mexico Power Company (TNP), Western Area Power Administration (Western), and PNM, dated October 2, 1969. Termination of the Rio Grande Project Interconnection Agreement is to be effective as of May 7, 1996. PNM requests waiver of the applicable notice requirements.

Copies of the Notice of Termination have been served upon EPE, Plains, TNP, Western, and the New Mexico Public Utility Commission.

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas and Electric Company

[Docket No. ER96–2527–000]

Take notice that on July 26, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Enron Power Marketing, Inc. under Rate GSS.

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company

[Docket No. ER96–2528–000]

Take notice that on July 26, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Western Power Services, Inc. under Rate GSS.

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Interstate Power Company

[Docket No. ER96–2529–000]

Take notice that on July 26, 1996, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Dairyland Power Cooperative (Dairyland). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Dairyland.

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Interstate Power Company

[Docket No. ER96–2530–000]

Take notice that on July 26, 1996, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Illinois Power Company (IP). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service IP.

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Northern States Power Company (Minnesota Company)

[Docket No. ER96–2531–000]

Take notice that on July 26, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Construction Agreement (Agreement) dated May 21, 1996, between NSP and the City of New Ulm (New Ulm). NSP files this Agreement and Amendment No. 1 to the Agreement on behalf of New Ulm and itself.

The Agreement provides for relay and wiring work by NSP for the benefit of New Ulm. The Amendment No. 1 to the Agreement provides for additional wiring work at an additional location by NSP for the benefit of New Ulm. NSP requests the Commission waive its Part 35 notice requirements and accept this Agreement and the Amendment No. 1 for filing effective July 29, 1996.

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. UtiliCorp United Inc.

[Docket No. ER96–2532–000]

Take notice that on July 26, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *Jpower*. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *Jpower* pursuant to the tariff, and for the sale of capacity and energy by *Jpower* to Missouri Public Service pursuant to Jpower's Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Jpower*.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. UtiliCorp United Inc.

[Docket No. ER96–2533–000]

Take notice that on July 26, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with *Jpower*. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to *Jpower* pursuant to the tariff, and for the sale of capacity and energy by *Jpower* to WestPlains Energy-Kansas pursuant to *Jpower's* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Jpower*.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. PacifiCorp

[Docket No. ER96–2534–000]

Take notice that on July 26, 1996, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, various Service Agreements with customers under, PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 3, Service Schedule PPL–3.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory

Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Central Vermont Public Service Corporation

[Docket No. ER96–2535–000]

Take notice that on July 26, 1996, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with LG&E Power under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power and energy at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on July 30, 1996.

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Entergy Services, Inc.

[Docket No. ER96–2536–000]

Take notice that on July 26, 1996, Entergy Services, Inc. (Entergy Services), submitted for filing the First Amendment to the Interchange Agreement between the City of Tallahassee, Florida and Entergy Arkansas, Inc. (formerly Arkansas Power & Light Company), Entergy Gulf States, Inc. (formerly Gulf States Utilities Company), Entergy Louisiana, Inc. (formerly Louisiana Power & Light Company), Entergy Mississippi, Inc. (formerly Mississippi Power & Light Company), Entergy New Orleans, Inc. (formerly New Orleans Public Service Inc.), and Entergy Services, Inc. Entergy Services requests a waiver of the notice requirements of the Federal Power Act and the Commission's regulations to permit the First Amendment to become effective concurrent with the effective date of the Interchange Agreement.

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Entergy Services, Inc.

[Docket No. ER96–2537–000]

Take notice that on July 26, 1996, Entergy Services, Inc. (Entergy Services), submitted for filing the First Amendment to the Interchange Agreement between City Water and Light Plant of the City of Jonesboro, Arkansas and Energy Arkansas, Inc. (formerly Arkansas Power & Light Company), Entergy Gulf States, Inc. (formerly Gulf States Utilities Company), Entergy Louisiana, Inc. (formerly Louisiana Power & Light Company), Entergy Mississippi, Inc. (formerly Mississippi Power & Light Company), Entergy New Orleans, Inc. (formerly New Orleans Public Service Inc.), and Entergy Services, Inc. Entergy Services requests a waiver of the notice requirements of the Federal Power Act and the Commission's regulations to permit the First Amendment to become effective concurrent with the effective date of the Interchange Agreement.

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Sandia Energy Resources Company

[Docket No. ER96–2538–000]

Take notice that on July 26, 1996, Sandia Energy Resources Company (SERC), petitioned the Commission for (1) blanket authorization to sell electricity at market-based rates; (2) a disclaimer of jurisdiction over SERC's power brokering activities; (3) acceptance of SERV's Rate Schedule FERC No. 1; (4) waiver of certain Commission Regulations; and (5) such other waivers and authorizations as have been granted to other power marketers, all as more fully set forth in SERC's petition on file with the Commission.

SERC states that it intends to engage in electric power transactions as a broker and as a marketer. In transactions where SERC acts as a marketer, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with purchasing parties.

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Great Bay Power Corporation

[Docket No. ER96–2539–000]

Take notice that on July 26, 1996, Great Bay Power Corporation (Great Bay), tendered for filing two service agreements between Fitchburg Gas & Electric Light Co. and Great Bay and UNITIL Power Corp. and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–726–000. The service agreements are proposed to be effective July 22, 1996.

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. PECO Energy Company

[Docket No. ER96–2540–000]

Take notice that on July 29, 1996, PECO Energy Company (PECO) filed a Service Agreement dated July 18, 1996 with Tennessee Valley Authority (TVA) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds TVA as a customer under the Tariff.

PECO requests an effective date of July 18, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to TVA and to the Pennsylvania Public Utility Commission.

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. PECO Energy Company

[Docket No. ER96–2541–000]

Take notice that on July 29, 1996, PECO Energy Company (PECO), filed a Service Agreement dated July 24, 1996, with Commonwealth Edison Company (ComEd) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds ComEd as a customer under the Tariff.

PECO requests an effective date of July 24, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to ComEd and to the Pennsylvania Public Utility Commission.

Comment date: August 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Central Illinois Public Service Company

[Docket No. OA96–215–000]

Take notice that on July 18, 1996, Central Illinois Public Service Company tendered for filing a request for extension of time to comply with unbundling requirements of code of conduct pending completion of Ameren Merger.

Comment date: August 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Consolidated Water Power Company

[Docket No. OA96–217–000]

Take notice that on July 24, 1996, Consolidated Water Power Company pursuant to Order Nos. 888 and 889 tendered for filing a request for waiver of Part 37 and Section 35.28 of the Commission's Regulations.

Comment date: August 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. Energy2, Inc.

[Docket No. ER96–2361–000]

Take notice that on July 10, 1996, Energy2, Inc. tendered for filing an

application for Waivers, Blanket Approvals, and Order Approving Rate Schedule.

Comment date: August 13, 1996, 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, 888 First 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. 96–20222 Filed 8–7–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–2490–000, et al.]

PECO Energy Company, et al.; Electric Rate and Corporate Regulation Filings

July 30, 1996.

Take notice that the following filings have been made with the Commission:

1. PECO Energy Company

[Docket No. ER96–2490–000]

Take notice that on July 22, 1996, PECO Energy Company (PECO), filed a Service Agreement dated July 17, 1996 with Dayton Power and Light Company (Dayton P&L) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds Dayton P&L as a customer under the Tariff.

PECO requests an effective date of July 17, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Dayton P&L and to the Pennsylvania Public Utility Commission.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. PECO Energy Company

[Docket No. ER96–2491–000]

Take notice that on July 22, 1996, PECO Energy Company (PECO), filed a Service Agreement dated July 11, 1996 with Morgan Stanley Capital Group, Inc. (Morgan Stanley) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Morgan Stanley as a customer under the Tariff.

PECO requests an effective date of July 11, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Morgan Stanley and to the Pennsylvania Public Utility Commission.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. PECO Energy Company

[Docket No. ER96–2492–000]

Take notice that on July 22, 1996, PECO Energy Company (PECO) filed a Service Agreement dated July 11, 1996 with Morgan Stanley Capital Group, Inc. (Morgan Stanley) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds Morgan Stanley as a customer under the Tariff.

PECO requests an effective date of July 11, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Morgan Stanley and to the Pennsylvania Public Utility Commission.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. New York State Electric & Gas Corporation

[Docket No. ER96–2493–000]

Take notice that on July 22, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Sonat Power Marketing, Inc. (Sonat). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to Sonat and Sonat will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on July 23, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Sonat.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Midwest Energy, Inc.

[Docket No. ER96–2494–000]

Take notice that on July 22, 1996, Midwest Energy, Inc. (Midwest), tendered for filing with the Federal Energy Regulatory Commission, a Service Agreement for Firm Transmission Service with the City of Hill City, Kansas.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. AEP Power Marketing, Inc.

[Docket No. ER96–2495–000]

Take notice that on July 23, 1996, AEP Power Marketing, Inc. (Applicant), filed with the Federal Energy Regulatory Commission, an application for blanket authorizations and for certain waivers of the Commission's regulations and its FERC Electric Rate Schedule No. 1.

Applicant has requested that its rate schedule be accepted for filing and allowed to become effective immediately upon acceptance. Applicant is not currently in the business of generating, transmitting or distributing electricity. Applicant intends to engage in transactions in which it sells electricity at rates and on terms and conditions that are negotiated with the purchasing party.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Idaho Power Company

[Docket No. ER96–2496–000]

Take notice that on July 22, 1996, Idaho Power Company, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Notice of Cancellation for Idaho Power's Rate Schedule FERC No. 82, the Agreement for Purchase and Sale of Power and Energy between The Montana Power Company and Idaho Power Company.

Copies of this filing were supplied to Montana Power Company.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Carolina Power & Light Company

[Docket No. ER96–2498–000]

Take notice that on July 22, 1996, Carolina Power & Light Company (Carolina), tendered for filing separate Service Agreements executed between

Carolina and the following Eligible Entities: TransCanada Power Corporation, PanEnergy Power Services, Inc., Entergy Power Marketing Corporation, Williams Energy Services Company, The Toledo Edison Company, The Cleveland Electric Illuminating Company, Delmarva Power & Light Company, Southern Energy Marketing, Inc. and IUC, Inc. Service to each Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. The Cincinnati Gas & Electric Company PSI Energy, Inc.

[Docket No. ER96–2504–000]

Take notice that on July 23, 1996, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI)(hereinafter collectively referred to as ''Cinergy Operating Companies''), tendered for filing pursuant to Section 205 of the Federal Power Act an Enabling Agreement between the Cinergy Operating Companies and USGen Power Services.

Copies of the filing were served on representatives of USGen Power Services.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. The Cincinnati Gas & Electric Company, PSI Energy, Inc.

[Docket Nos. ER96–2505–000 and ER96–2506–000]

Take notice that on July 23, 1996, The Cincinnati Gas and Electric Company (CG&E) and PSI Energy, Inc. (PSI), (hereinafter collectively referred to as ''Cinergy Operating Companies''), tendered revisions to Cinergy Operating Companies Non-Firm Power Sales Standard Tariff, FERC Electric Tariff Original Volume No. 4. Such revisions would allow the Cinergy Operating Companies to make sales for resale to non-affiliated companies at market based rates. PSI also filed a Notice of Cancellation of its Rate Schedule FS–1 and Transmission Tariff approved in Commission Opinion Nos. 349 and 349–A.

Copies of the filing were served on customers of Cinergy Operating Companies Non-Firm Power Sales Standard Tariff. No customers took service under Rate Schedule FS–1; therefore, no additional persons have been mailed a copy of this filing.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER96–2507–000]

Take notice that on July 24, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between TransCanada Power Corporation and Virginia Power, dated July 8, 1996, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to TransCanada Power Corporation under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER96–2508–000]

Take notice that on July 24, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between PacifiCorp Power Marketing, Inc. and Virginia Power, dated July 8, 1996, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to PacifiCorp Power Marketing, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER96–2509–000]

Take notice that on July 24, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Vastar Power Marketing, Inc. and Virginia Power, dated July 1, 1996, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Vastar Power Marketing, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedule included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER96–2510–000]

Take notice that on July 24, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Baltimore Gas and Electric Company and Virginia Power, dated June 30, 1996, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Baltimore Gas and Electric Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, and the Maryland Public Service Commission.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Virginia Electric and Power Company

[Docket No. ER96–2511–000]

Take notice that on July 24, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between KN Marketing, Inc. and Virginia Power, dated July 8, 1996, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to KN Marketing, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation

Commission and the North Carolina Utilities Commission.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER96–2512–000]

Take notice that on July 24, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Union Electric Company and Virginia Power, dated July 8, 1996, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Union Electric Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, the Missouri Public Service Commission, and the Illinois Commerce Commission.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Portland General Electric Company

[Docket No. ER96–2513–000]

Take notice that on July 24, 1996, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, First Revised Volume No. 2, an executed Service Agreement for Aquila Power Corporation.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL91–2–002), PGE respectfully requests the Commission to grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective August 1, 1996.

A copy of this filing was served upon Aquila Power Corporation as noted in the filing letter.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Portland General Electric Company

[Docket No. ER96–2514–000]

Take notice that on July 24, 1996, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, Original Volume No. 5 (Docket No. ER96–333–000), executed Service Agreements for PACIFICORP-WEST and USGen Power Services, L.P.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission to grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreements to become effective June 1, 1996.

Copies of this filing were served upon PACIFICORP-WEST and USGen Power Services, L.P.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. UtiliCorp United Inc.

[Docket No. ER96–2515–000]

Take notice that on July 24, 1996, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Western Power Services, Inc. for service under its interruptible open access transmission service tariff for its operating division, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Northern Indiana Public Service Company

[Docket No. ER96–2517–000]

Take notice that on July 25, 1996, Northern Indiana Public Service company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and VTEC Energy, Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to VTEC, Energy, Inc. pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company, 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of August 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Cinergy Services, Inc.

[Docket No. ER96–2518–000]

Take notice that on July 25, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Delmarva Power & Light Company.

Cinergy and Delmarva Power & Light Company are requesting an effective date of July 26, 1996.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Louisville Gas and Electric Company

[Docket No. ER96–2519–000]

Take notice that on July 25, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Associated Electric Coop. Inc. under Rate GSS.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Louisville Gas and Electric Company

[Docket No. ER96–2520–000]

Take notice that on July 25, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Entergy Services, Inc. under Rate GSS.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Louisville Gas and Electric Company

[Docket No. ER96–2521–000]

Take notice that on July 25, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Sonat Power Marketing, Inc. under Rate GSS.

Comment date: August 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. William H. Walker, Jr.

[Docket No. ID–2970–000]

Take notice that on July 23, 1996, William H. Walker, Jr. (Applicant) tendered for filing a supplemental application under Section 305(b) of the Federal Power Act to hold the following positions:

Director—Central Louisiana Electric Company, Inc.
President—Howard, Weil, Labouisse, Priedrichs Incorporated
Director—Howard, Weil, Labouisse, Priedrichs Incorporated

Comment date: August 13, 1996, 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, 888 First 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. 96–20219 Filed 8–7–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–2642–000, et al.]

PECO Energy Company, et al.; Electric Rate and Corporate Regulation Filings

August 1, 1996.

Take notice that the following filings have been made with the Commission:

1. PECO Energy Company

[Docket No. ER96–2542–000]

Take notice that on July 29, 1996, PECO Energy Company (PECO), filed a Service Agreement dated July 24, 1996 with Montaup Electric Company (MONTAUP) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds MONTAUP as a customer under the Tariff.

PECO requests an effective date of July 24, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to MONTAUP and to the Pennsylvania Public Utility Commission.

Comment date: August 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. PECO Energy Company

[Docket No. ER96–2543–000]

Take notice that on July 29, 1996, PECO Energy Company (PECO), filed a Service Agreement dated July 19, 1996, with PanEnergy Power Services, Inc. (PANENERGY) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds PANENERGY as a customer under the Tariff.

PECO requests an effective date of July 19, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to PANENERGY and to the Pennsylvania Public Utility Commission.

Comment date: August 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. PECO Energy Company

[Docket No. ER96–2544–000]

Take notice that on July 29, 1996, PECO Energy Company (PECO), filed a Service Agreement dated July 19, 1996, with Florida Power Corporation (FLORIDA POWER) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds FLORIDA POWER as a customer under the Tariff.

PECO requests an effective date of July 19, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to FLORIDA POWER and to the Pennsylvania Public Utility Commission.

Comment date: August 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Louisville Gas and Electric Company

[Docket No. ER96–2545–000]

Take notice that on July 29, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Industrial Energy Applications, Inc., under Rate GSS.

Comment date: August 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company

[Docket No. ER96–2546–000]

Take notice that on July 29, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Vitol Gas and Electric LLC under Rate GSS.

Comment date: August 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Company

[Docket No. ER96–2547–000]

Take notice that on July 29, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Koch Power Services, Inc. under Rate GSS.

Comment date: August 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. TransCanada Power Corp.

[Docket No. ER96–2555–000]

Take notice that on July 29, 1996, TransCanada Power Corp. (TPC), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that TPC had completed all the steps for pool membership. TPC requests that the Commission amend the WSPP Agreement to include it as a member.

TPC requests an effective date of May 31, 1996 for the proposed amendment. Accordingly, TPC requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: August 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric Company

[Docket No. ER96–2548–000]

Take notice that on July 29, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Rainbow Energy Marketing Corporation under Rate GSS.

Comment date: August 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Louisville Gas and Electric Company

[Docket No. ER96–2549–000]

Take notice that on July 29, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Louis Dreyfus Electric Power, Inc. under Rate GSS.

Comment date: August 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER96–2550–000]

Take notice that on July 29, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Entergy Power Marketing Corporation (ENTERGY), dated July 24, 1996. This Service Agreement specifies that ENTERGY has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1.

The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and ENTERGY to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of July 24, 1996 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: August 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER96–2551–000]

Take notice that on July 29, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Vastar Power Marketing, Inc. (VASTAR), dated July 24, 1996. This Service Agreement specifies that VASTAR has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and VASTAR to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of July 24, 1996 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: August 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas and Electric Company

[Docket No. ER96–2552–000]

Take notice that on July 29, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Sonat Power Marketing under Rate GSS.

Comment date: August 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company

[Docket No. ER96–2553–000]

Take notice that on July 29, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Entergy Power Marketing Corp. under Rate GSS.

Comment date: August 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Maine Public Service Company

[Docket No. ER96–2554–000]

Take notice that on July 29, 1996, Maine Public Service Company (Maine Public), filed an executed Service Agreement with New England Power Company.

Comment date: August 15, 1996, 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, 888 First 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. 96–20223 Filed 8–7–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–583–000, et al.]

MidCon Texas Pipeline Corp., et al; Natural Gas Certificate Filings

July 29, 1996.

Take notice that the following filings have been made with the Commission:

1. MidCon Texas Pipeline Corp.

[Docket No. CP96–583–000]

Take notice that on June 19, 1996, MidCon Texas Pipeline Corp. (MidCon Texas), located at 3200 Southwest Freeway, Houston, TX 77027–7523, filed in Docket No. CP96–583–000, an application pursuant to Section 3 of the Natural Gas Act, Part 153 of the Commission's Regulations, Executive Order Nos. 10485 and 12038, and the Secretary of Energy's Delegation Order No. 0204–112. MidCon Texas seeks a Presidential Permit and Section 3 authority to site, construct, connect, operate, and maintain certain pipeline and metering facilities (the border crossing facilities) near Roma, Starr County, Texas, at a point on the International Boundary between the United States and the Republic of Mexico. MidCon Texas' proposal is more fully set forth in the application which is on file with the Commission and open to public inspection.

MidCon Texas states that the border crossing facilities would consist of a dual-12-inch meter on the U.S. side of the Rio Grande River and approximately 800 feet of 24-inch pipe extending to the international Boundary in the middle of the river. The border crossing facilities are said to have a design capacity of 270 Mmcfd and are estimated to cost $520,000.

The border crossing facilities will connect to a new 24-inch pipeline to be constructed in Mexico by MidCon Gas Natural de Mexico, S.A. de C.V., an affiliate of MidCon Texas. MidCon Texas states that it will extend its existing intrastate pipeline system in southwest Texas by constructing 15.6 miles of 24-inch pipeline to connect to the proposed border crossing facilities.

Comment date: August 19, 1996, in accordance with Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP96–640–000]

Take notice that on July 15, 1996, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP96–640–000 an application

pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain certificated and uncertificated facilities to Mitchell Gas Services, Inc. (Mitchell), all as more fully set forth in the application on file with the Commission and open to public inspection.

Natural proposes to abandon the facilities which make up its Wise County Gathering system in Wise County, Texas. It is also requested that the Commission determine the future jurisdiction of the entire Wise Gathering System. It is stated that if this abandonment is granted a request under NGA Section 4 would be made to terminate the services performed by these facilities.

It is also stated that services would continue to be performed until the closing date of the sale.

Comment date: August 19, 1996, in accordance with Standard Paragraph F at the end of this notice.

3. Destin Pipeline Company Inc.

[Docket Nos. CP96–655–000, CP96–656–000 and CP96–657–000]

Take notice that on July 24, 1996, Destin Pipeline Company Inc. (Destin), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket Nos. CP96–655–000, CP96–656–000 and CP96–657–000 an application pursuant to Section 7(c) of the Natural Gas Act and Parts 284 and 157 of the Commission's Regulations for a certificate of public convenience and necessity to construct, own and operate natural gas pipeline facilities subject to the jurisdiction of the Commission, to provide open-access firm and interruptible transportation service through such facilities and to engage in certain routine activities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Destin states that it is a new company which seeks authorization to construct and operate a new large diameter interstate pipeline to transport gas from the Gulf of Mexico to interconnections with five interstate pipelines in the State of Mississippi. Destin states that the development of deepwater and corridor prospects in the Mississippi Canyon, DeSoto Canyon, Viosca Knoll, Main Pass, Destin Dome and Mobile areas in the Gulf of Mexico (Destin Corridor) is expected to make large volumes of gas supply available for downstream markets beginning in 1999; however, there are capacity constraints in much of the existing pipeline infrastructure in southeastern Louisiana. Destin states that the proposed new pipeline, which will interconnect with pipelines at points well downstream of significant existing pipeline capacity constraints, will enable these deepwater gas supplies to flow directly into downstream markets.

In Docket No. CP96–655–000, Destin requests authorization to construct and operate one gathering platform in Main Pass Block 248, Gulf of Mexico; one junction platform in Viosca Knoll Block 119, Gulf of Mexico; one 14,100 horsepower compressor station in Jackson County, Mississippi; one 11,600 horsepower compressor station in Greene County, Mississippi; 207 miles of 36-inch and 30-inch pipeline, and two miles of 16-inch pipeline extending from the proposed gathering platform northward to shore near Pascagoula, Mississippi and further to interconnections with Southern Natural Gas Company, Florida Gas Transmission Corporation, Transcontinental Gas Pipe Line Corporation and Tennessee Gas Pipeline Company in Mississippi; and related pipeline interconnection, measurement and appurtenant facilities. Destin states that these pipelines serve a large portion of the natural gas markets and provide access to numerous other interstate pipelines through which the Destin Corridor reserves can be delivered to practically any area of the eastern United States through separate transportation arrangements. Destin states that an additional delivery point to Texas Eastern Transmission Corporation in Mississippi is planned through one such separate transportation arrangement with Southern and an application for approval of this arrangement will be filed shortly. In addition, Destin states that a third-party, non-jurisdictional processing plant, near Pascagoula, Mississippi, is contemplated as a separate component of the proposed project.

Destin maintains that the proposed pipeline project will accommodate the transportation of approximately 1 Bcf of natural gas per day for delivery to downstream pipeline interconnections in Mississippi. Destin estimates the cost of the facilities to be $294 million which will financed by equity and long-term debt.

Destin requests a Preliminary Determination on non-environmental issues by January 15, 1997, with final approval on all issues by August 1, 1997, so that the proposed facilities can be placed in service by February 1, 1999. Destin states that it does not have executed firm transportation contracts at this time and anticipates that it will require executed 10-year firm transportation agreements for at least 700 Mmcf per day, the approximate level which Destin states is required in order to go forward with this project. Destin states that it will hold an open season from August 1, 1996 to December 15, 1996 and expects to file with the Commission executed firm transportation agreements within 60 days after issuance of the requested Preliminary Determination.

In Docket No. CP96–656–000, Destin requests a blanket transportation certificate of public convenience and necessity under Part 284 of the Commission's Regulations in which to provide open-access, self-implementing firm and interruptible transportation service on behalf of interstate pipelines and other shippers. Destin states that it will offer two firm transportation services. It is stated that service under Rate Schedule FT–1 will apply to any shipper that contracts for firm transportation service for a term of 10 years or more. Destin states that it proposes to charge for this service a traditional cost of service rate methodology that is levelized over a 10-year period matching the 10-year commitment term of the initial service agreements. In addition, Destin states that the billing determinants for the Rate Schedule FT–1 service reflect a build-up matching the expected development profile of the Destin Corridor deliverability in the first three years of operation and an assumed 100 percent subscription in the next seven years. Destin states that it expects the vast majority of its throughput will be under Rate Schedule FT–1, or a negotiated 10-year rate. It is stated that service under Rate Schedule FT–2 will apply to shippers contracting for firm transportation service for a term of less than 10 years. In addition, it is stated that service under Rate Schedule IT will be applicable to any shipper contracting for interruptible transportation regardless of contract term. Destin states that in order to tailor its commercial negotiations to the needs of its customers, its *pro forma* tariff provides that Destin may file negotiated rates consistent with Commission policy. Destin states that the recourse rate for negotiated rate transactions of 10 years or longer will be the FT–1 rate, and for shorter transactions, the recourse rate will be the FT–2 rate.

Destin states that it will provide certain special features of transportation service which includes a transportation banking provision and, for an interim period prior to commercial operation of the pipeline, the allocation of delivery point capacity on a pro rata basis.

In Docket No. CP96–657–000, Destin requests a blanket certificate of public convenience and necessity under Part 157 of the Commission's Regulations

authorizing the various activities stated in Subpart F of Part 157 of the Commission's Regulations.

Comment date: Augyst 19, 1996, in accordance with Standard Paragraph F at the end of this notice.

4. CNG Transmission Corporation Columbia Gulf Transmission Company Texas Eastern Transmission Corporation, Transcontinental Gas Pipe Line Corporation, Texas Gas Transmission Corporation

[Docket No. CP96–658–000]

Take notice that on July 23, 1996, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302–2450; Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 1273, Charleston, West Virginia 25325–1273; Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77521–1642; Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, 2800 Post Oak Boulevard, Houston, Texas 77251–1396; and Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301 filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order granting permission and approval to abandon certain X-Rate Schedules in Volumes 2 and 2A of the above-named companies' respective FERC Gas Tariffs for transportation and/or exchanges of natural gas in the Gulf of Mexico area, on and offshore Louisiana, and offshore Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The X-Rate Schedules for which abandonment authority is requested are:

Company	Rate schedule
CNG	X–13, X–16, X–17, X–18, X–19, X–22, X–27
Columbia Gulf	X–18, X–19, X–52
Texas Eastern	X–70, X–74
Transco	X–72
Texas Gas	X–54, X–78

CNG states that these X-Rate Schedule transportation and exchange agreements utilized capacity in the ''Southern State'' facilities for which CNG received abandonment authority from the Commission in Docket Nos. CP93–340, CP93–596, and CP94–148. Therefore, the companies named above seek to abandon the subject X-Rate Schedules since they are no longer necessary.

Comment date: August 19, 1996, in accordance with Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP96–664–000]

Take notice that on July 24, 1996, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed an abbreviated application for an Order Approving Abandonment in the above-referenced docket.

By its application, Tennessee seeks approval to abandon a 1,000 horsepower turbine compressor unit and related facilities at Tennessee's Compressor Station 230B in East Aurora, New York. Tennessee states that the unit is not currently being utilized and that the abandonment will not affect service to any customer.

Comment date: August 19, 1996, in accordance with Standard Paragraph F at the end of this notice.

6. Williams Natural Gas Company

[Docket No. CP96–665–000]

Take notice that on July 25, 1996, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP96–665–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon in place approximately 700 feet of 12-inch lateral pipeline and to construct approximately 900 feet of 4-inch replacement pipeline in Oklahoma County, Oklahoma, under Williams' blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams states that the projected volume of delivery will remain unchanged.

Williams states further that construction cost is estimated to be $30,936 which will be fully reimbursed.

Comment date: September 12, 1996, in accordance with Standard Paragraph G at the end of this notice.

7. Ozark Gas Transmission System

[Docket No. CP96–666–000]

Take notice that on July 25, 1996, Ozark Gas Transmission System (Ozark), 13430 Northwest Freeway, Suite 1200, Houston, Texas 77040, filed in Docket No. CP96–666–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to operate in interstate commerce certain facilities previously constructed or operated to effectuate transportation services pursuant to Section 311 of the Natural Gas Policy Act (NGPA) under Ozark's blanket certificate issued in Docket No. CP85–134 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Ozark seeks authorization to operate in interstate commerce certain existing delivery points which were initially installed under Section 311 of the NGPA. The points at issues are the ONG 6″ Delivery Point located in Haskell County, Oklahoma, the AOG/Stevens McBride Delivery Point located in Sebastian County, Arkansas, and the AECC Delivery Point located in Franklin County, Arkansas.

Ozark states that its request is being filed to improve its operational flexibility and attendant market responsiveness to the increasingly competitive natural gas industry. Ozark further states that granting its request would make the subject facilities available to any shipper desiring the transportation of natural gas in interstate commerce.

Comment date: September 12, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) 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 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 filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the

certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20221 Filed 8–7–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–639–000, et al.]

National Fuel Gas Supply Corporation, et al.; Natural Gas Certificate Filings

July 31, 1996.

Take notice that the following filings have been made with the Commission:

1. National Fuel Gas Supply Corporation

[Docket No. CP96–639–000]

Take notice that on July 15, 1996, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203 filed in Docket No. CP96–639–000, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new sales tap that will render service to an existing firm transportation customer, National Fuel Gas Distribution Corporation (Distribution), and perform construction at and operate an existing sales tap that also serves Distribution, under National's blanket authorization issued in Docket No. CP83–4–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

National proposes to construct and operate a new sales tap in Mercer County, Pennsylvania, on National's Line S. National says the proposed annual quantity of gas at this sales tap is about 42,825 Mcf. National states that this tap will provide service to Distribution, pursuant to National's EFT Rate Schedule. National relates that the estimated cost of the sales tap will be about $1,500, for which National will be reimbursed by the end-user customer of Distribution, International Timber & Veneer L.C., whose need for gas created the need for this new sales tap.

National also proposes to perform construction at and operate its Caledonia station, an existing sales tap in Livingston County, New York, to enable it to meet the pressure requirements at this interconnection with Distribution. National states it delivers gas to Distribution at the Caledonia station under National's EFT Rate Schedule. National explains that the proposed construction consists principally of replacing approximately 324 feet of 4-inch pipe and associated valving with approximately 324 feet of new coated 6-inch pipe running along the same path as the retired 4-inch pipe, allowing for a higher maximum operating pressure. National says it is also constructing some ''auxiliary installations'' pursuant to 18 CFR Section 2.55(b) (mostly an odorizer) at the Caledonia station. National states that the estimated annual quantity of gas at this sales tap will remain 5,300 Mcf per day but the potential deliverability of the station would be about 15,400 Mcf per day.

National relates that the estimated cost of work at the sales tap will be about $70,000, for which National will be reimbursed by Distribution for $45,000.

Comment date: September 16, 1996, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP96–650–000]

Take notice that on July 22, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP96–650–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate the new Sandy Meter Station to provide natural gas service to new distribution facilities of Northwest Natural Gas Company in Clackamas County, Oregon, all under Northwest's blanket certificate issued in Docket No. CP82–433–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that the proposed Sandy Meter Station will consist of a four-inch tap, one four-inch turbine meter, four three-inch regulators in monitor configuration, relief valve, and appurtenances. Northwest says the new meter station will have a maximum design delivery capacity of approximately 9,015 Dth per day at a 400 psig delivery pressure.

Northwest states that firm transportation service to the proposed meter station will be subject to Northwest's Rate Schedule TF–1; while interruptible service will be subject to Northwest's Rate Schedule TI–1. Northwest reports that the total cost to construct the proposed meter station is estimated at approximately $560,000.

Comment date: September 16, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP96–669–000]

Take notice that on July 26, 1996, Columbia Gas Transmission Corporation (Columbia), a Delaware corporation, having its principal place of business at 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed an abbreviated application pursuant to Section 7(c) of the Natural Gas Act for certificate authorization for the following:

(1) To increase the certificated horsepower at the Greencastle Compressor Station located in Franklin County, Pennsylvania of an existing Solar Turbines, Inc. (Solar) Centaur unit from 3,300 to 3,830 horsepower (an increase of 530 actual horsepower), resulting in 7,070 total station horsepower.

(2) To increase the certificated horsepower at the Gettysburg Compressor Station located in Adams County, Pennsylvania of an existing Solar Centaur unit from 2,710 horsepower to 3,830 horsepower (an increase of 1,120 horsepower reflecting both an actual change in horsepower and a change in rating standard from NEMA to ISO resulting in 7,500 total station horsepower.

Both Greencastle and Gettysburg compressor stations are located on Lines 1804 and 10240, a portion of Columbia's transmission pipeline system which traverses southern Pennsylvania. The increased horsepower at Greencastle and Gettysburg is available in both Centaur units without any further modification to the engine or compressors. Columbia states that the horsepower increases proposed herein

will provide additional design and operating flexibility that will enhance Columbia's ability to serve its existing customers reliably and more efficiently at current firm levels. Any incremental firm capacity that may become available as a result of these horsepower increases, will be offered to prospective shippers in accordance with Columbia's tariff. Columbia estimates that additional capacity will be less than 400 Dth/d west of Greencastle.

The estimated expense to implement the operation of both units at the higher horsepower level is $57,400. These expenses will consist primarily of conducting pre- and post-uprating sound studies at both stations and installing additional sound attenuation devices at the Gettysburg compressor station. The costs will be charged to a maintenance transmission expense account.

Comment date: August 16, 1996, in accordance with Standard Paragraph F at the end of this notice.

4. National Fuel Gas Supply Corporation

[Docket No. CP96–671–000]

Take notice that on July 26, 1996, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP96–671–000 an application pursuant to Sections 7(b) and (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities in order to create additional firm transportation capacity of 48,000 Dth per day from the Niagara import point to the interconnection between National Fuel and Transcontinental Gas Pipe Line Corporation (Transco) at Leidy and Wharton, Pennsylvania, (1997 Niagara Expansion Project), and permission and approval to abandon certain facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National Fuel states that as a result of an open season conducted between August and September 1995, National Fuel entered into agreements for firm transportation quantities of 21,344 Dth per day with Enron Capital & Trade Corp. (EC&T) and 23,000 Dth per day of winter-only service with Renaissance Energy (U.S.), Inc. (Renaissance). It is stated that the shippers plan to use the additional capacity on National Fuel's system in combination with additional capacity on Transco's system that has been proposed by Transco in its SeaBoard Expansion Project at Docket No. CP96–545–000. National Fuel states that it is currently soliciting service requests for the remaining 3,656 Dth per day of firm winter capacity. National Fuel further submits that the shippers have committed to firm transportation service for terms of ten years.

It is stated that EC&T will receive firm transportation under National Fuel's Rate Schedule FT at existing rates. Renaissance has request firm transportation only during the winter period (November 1st through March 31st of each contract year), and the facilities designed by National Fuel for this shipper will create additional capacity that is available only during the winter period. With certain proposed tariff changes discussed in Section VIII of its application, National will contends that it will be in a position to render a winter-only firm transportation service under Rate Schedule FT. As discussed in Section VI of its application, National Fuel proposes a surcharge to its FT rates to make up the difference between the revenues generated by its maximum rates and the revenues needed over each winter period to cover the cost of service associated with the additional winter firm capacity.

In order to provide the firm transportation services for the 1997 Niagara Expansion shippers, National Fuel proposes to construct, install and operate the following facilities:

1. Modifications to existing units 1–5 at National Fuel's Concord Compressor Station in Erie County, New York, to increase the horsepower (hp) of the station from 9,950 hp to 11,250 hp.

2. Modifications to the existing Ellisburg Compressor Station in Potter County, Pennsylvania, including the abandonment of four compressor units (three 330 hp units and one 300 hp unit) used for storage and installation of one new 2,250 hp compressor.

In addition, National Fuel proposes to increase the maximum allowable operating pressure of Lines X–North and XM–2 located in Niagara and Erie Counties, New York, from the authorized 720 psig to 780 psig.

National Fuel estimates that the proposed facilities will cost $10.6 million. It is stated that included in the cost of the project are the costs associated with uprating the Lockport Station, located on the jointly-owned Niagara Loop Line, which will be performed by Tennessee Gas Pipeline Company (Tennessee), its operator, pursuant to a separate filing.

National Fuel requests that the Commission grant rolled-in rate treatment with respect to the costs and revenues associated with its 1997 Niagara Expansion Project in its next Section 4 rate proceeding. National Fuel contends that if the FT surcharge is approved, and costs are allocated in the manner discussed in Section VII of its application, the project would not increase the rates of any of National Fuel's firm shippers and would decrease the rates of some of its shippers.

In addition, National Fuel requests waiver of Section 3.2 of its Rate Schedule FT to the extent necessary to permit National Fuel to accept a guaranty from Renaissance's parent company, Renaissance Energy Ltd., to guarantee the obligations of Renaissance under the service agreement to be executed by National Fuel and Renaissance.

National Fuel also requests a waiver of the provisions of its Rate Schedule FT to the extent necessary to permit National Fuel to enter into a service agreement with one of its prospective shippers, EC&T, which grants shippers a unilateral right to extend the term of the service agreement. National Fuel states that such a waiver is appropriate in view of the contractual relationship between EC&T and Transco.

In its application, National Fuel also seeks waiver of its tariff to the extent necessary to include a mutual waiver of consequential, punitive and certain other damages, found in Article VI(10) of the form of service agreement between National Fuel and EC&T.

National Fuel requests that the Commission issue an order granting the authorization requested herein on or before April 1, 1997 to allow for the commencement of the new services as scheduled on November 1, 1997.

Comment date: August 21, 1996, in accordance with Standard Paragraph F at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP96–680–000]

Take notice that on July 30, 1996, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed an application in Docket No. CP96–680–000 pursuant to Section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of firm storage and exchange service provided to Mid Louisiana Gas Company (Mid Louisiana) under Transco's Rate Schedule X–140, effective September 1, 1996, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Transco and Mid Louisiana are parties to a firm storage and exchange agreement dated August 31, 1977, as amended, which agreement is Rate Schedule X–140 in Volume 2 of

Transco's FERC Gas Tariff. Transco states that such agreement was approved by Commission order issued July 14, 1977 in Docket No. CP77–267, 59 FPC 672 (1977).

Transco states that, pursuant to such agreement, it is authorized to receive, at special points of delivery, up to 25,500 Mcf/d and to inject thermally equivalent quantities into the Hester Field for Mid Louisiana's account and to withdraw up to 76,500 Mcf/d from the Hester Field and to deliver thermally equivalent quantities to Mid Louisiana at the specified points of delivery. Transco states that it was authorized to provide a firm storage service of 3,000,000 Mcf of gas annually.

Transco states that the primary term of the storage and transportation agreement underlying Rate Schedule X–140 was set to expire on October 1, 1990, but that such term was extended by amendments dated August 31, 1990 and August 14, 1992. Transco states that it received notice from Mid Louisiana by letter dated September 1, 1995 that it was terminating the storage and exchange service effective September 1, 1996. Transco further states that Mid Louisiana has a pending request, in Docket No. CP95–730–000 for Commission authorization to abandon the firm storage service it receives from Transco at the Hester Storage Field, to become effective September 1, 1996. Transco states that the purpose of its application is to obtain Commission authorization to abandon its obligations to provide firm storage and transportation and exchange service to Mid Louisiana pursuant to Rate Schedule X–140, effective September 1, 1996.

Transco also seeks Commission approval, to the extent necessary, to retain the storage capacity and associated injection and withdrawal rights in the Hester Field which are currently held by Mid Louisiana and for which abandonment authorization is sought herein. Transco states that since the implementation of Order No. 636 on the Transco system, it has relied extensively on Mid Louisiana's injection and withdrawal rights at the Hester Field as a tool for system balancing as permitted by the Rate Schedule X–140 agreement. It is stated that Exhibit Z–1 of the application illustrates Transco's use of Mid Louisiana's injection and withdrawal rights in the Hester Storage Field or the annual periods commencing January 1993 through May 1996.

Transco states that no facilities are proposed to be abandoned by the instant application and that no service to any of Transco's other customers will be terminated because of the requested abandonment. In addition, Transco states that the proposed abandonment will have no effect upon any of Transco's other existing rate schedules or tariffs on file with the Commission.

Comment date: August 21, 1996, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) 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 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 filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20220 Filed 8–7–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RM96–14–001]

Secondary Market Transactions on Interstate Natural Gas Pipelines

Issued July 31, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Proposed Experimental Pilot Program to Relax the Price Cap for Secondary Market Transactions, and Request for Office of Management and Budget Emergency Processing of Submission of Collection of Information

SUMMARY: The Federal Energy Regulatory Commission is issuing an order establishing a proposed pilot program to release the price cap for releases of capacity and sales of interruptible and short-term firm transportation in certain geographic areas.

Because the Commission anticipates implementing the pilot program for the 1996–97 winter heating season, the Commission, pursuant to 5 CFR 1320.13, is providing notice of its request to the Office of Management and Budget (OMB) for emergency processing of the proposed collection of information relating to the pilot program.

DATES: The Commission requests applications for the pilot program by August 30, 1996. Comments on the applications will be due 15 days after filing of applications to participate. Applications and comments on the applications should be filed with the Office of the Secretary and should refer to Docket No. RM96–14–001.

Because the Commission has requested OMB to process the proposed collection of information in Docket No. RM96–14–001 on an emergency basis, comments on this collection of information should be filed with OMB, attention Desk Officer FERC, as soon as possible.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Goldenberg, Office of the

General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2294.

For information relating to the data template, contact:

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–1283.

Elizabeth A. Taylor, Office of Pipeline Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0826.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, N.E., Washington D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS indefinitely in ASCII and WordPerfect 5.1 format for one year. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 2A, 888 First Street, NE., Washington, DC 20426.

The Commission's bulletin board system also can be accessed through the FedWorld system directly by modem or through the Internet. To access the FedWorld system by modem:

- Dial (703) 321–3339 and logon to the FedWorld system.
- After logging on, type: /go FERC

To access the FedWorld system, through the Internet:

- Telnet to: fedworld.gov
- Select the option: [1] FedWorld
- Logon to the FedWorld system
- Type: /go FERC

Or:

- Point your Web Browser to: http://www.fedworld.gov
- Scroll down the page to select FedWorld Telnet Site
- Select the option: [1] FedWorld
- Logon to the FedWorld system
- Type: /go FERC

Secondary Market Transactions on Interstate Natural Gas Pipelines

Docket No. RM96–14–001

Proposed Experimental Pilot Program To Relax the Price Cap for Secondary Market Transactions

Issued July 31, 1996.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

In a Notice of Proposed Rulemaking (NOPR) issued in this docket and published in the Federal Register of August 7, 1996, the Federal Energy Regulatory Commission (Commission) proposes to permit shippers releasing capacity, and pipelines selling interruptible transportation, to sell at rates above the pipeline's maximum tariff rate when they can demonstrate they do not possess market power in the secondary market. The Commission further intends to hold a technical conference to explore issues related to the proposal and the methods for measuring market power. To complement the NOPR and provide additional record evidence for evaluating the criteria for evaluating market power, the Commission is proposing an experimental pilot program to remove the price ceiling for releases of capacity and pipeline sales of interruptible and short-term firm transportation into qualifying markets.

Background

Under Commission policy, price ceilings can be removed when pipelines and shippers do not possess market power, because, without the ability to control price or output, shippers are unable to exact charges above the competitive level and hence their rates are just and reasonable under the Natural Gas Act (NGA).[1] The NOPR proposes to require pipelines and shippers seeking to sell capacity above the cap to make filings to demonstrate that they do not possess market power. These filings could be based on the criteria for assessing market power in the Commission's Policy Statement on Alternatives to Cost-of-Service Ratemaking or on modifications to that policy that the Commission adopts after consideration of the comments on the NOPR.

In the NOPR, the Commission also identifies certain additional prerequisites that must be present for pipelines and LDCs to establish that they lack market power. In order to ensure that capacity release is fully competitive with pipeline services, pipelines would have to implement tariff provisions ensuring that they treat capacity release transactions comparably to their own interruptible and short-term services. Without comparability, pipeline services may, in many respects, be superior to capacity release and have a competitive advantage in the marketplace.

For LDCs, the necessary prerequisite would be a showing that they provide an acceptable open access transportation service on their own facilities. In the absence of a viable open access program, LDCs may well be able to exercise market power over customers behind their city-gates. The LDC may be able to structure its intrastate service so that the end-user's ability to obtain released interstate capacity from shippers other than its own LDC is limited. An LDC's control over primary delivery points also may give rise to market power over the LDC's customers.

To deal with issues of market power over customers behind the city-gate, the NOPR proposes that an LDC must provide customers with identical open access transportation service on the LDC's system, regardless of whether the customer purchases interstate capacity from the LDC or another shipper. In addition, open access service would need to include a right for customers behind the city-gate to use the LDC's city-gate as a primary delivery point, regardless of whether they purchase interstate capacity from the LDC. As explained in the NOPR, if a customer cannot use the LDC's city-gate as a primary delivery point, it may not have available adequate alternative sources of capacity, because the purchase of interstate capacity from a shipper other than its own LDC (with the resulting use of the city-gate delivery point on a secondary basis) may not be the equivalent of purchasing primary point capacity from its own LDC.

Proposed Pilot Program

In conjunction with the NOPR, the Commission is proposing this pilot program to help assess whether compliance with the criteria identified in the NOPR is indicative of a lack of market power. Under this program, the price cap will be lifted for released capacity and pipeline interruptible and short-term firm capacity in a designated geographic area. Specifically, the cap will be released for capacity released by an LDC to delivery points in its delivery area, for interruptible and short-term

[1] Policy Statement on Alternatives to Cost-of-Service Ratemaking, 74 FERC ¶ 61,076 (1996).

firm transportation sold by the pipeline into the same area, and for capacity released by other shippers into the area. The cap would be released only for the duration of the experiment.[2] Because prices for released capacity generally approach the maximum rate only during peak periods, the Commission anticipates the pilot program needs to last at least through the 1996–1997 winter heating season, if not longer.

Applications to participate in the program should include information showing why the pipelines and the LDCs cannot exercise market power in the relevant area, although this showing need not constitute the detailed market power analysis set out in the Commission's Policy Statement on Alternatives to Cost-Of-Service Ratemaking. One item of information that should be included in the application is the name of each shipper on the pipeline, together with the amount of its firm capacity that could be used to effect deliveries to the LDC's delivery area.[3]

In addition to this information, LDCs need to meet the NOPR's requirement for open access service. LDCs with state-approved pilot open access programs meet the requirement. For instance, it appears from the information available to the Commission that New York and California may have open access tariffs that would qualify, since these states provide for open access transportation to non-core industrial customers as well as to core or residential customers that aggregate their demand.

However, special discounting programs limited to industrials will not be sufficient. An LDC that does not meet the open access requirement still may apply, but it will have to bear a greater burden of establishing that it lacks market power and, therefore, must present a more comprehensive analysis of market power.

In order to qualify, pipelines would have to implement tariff revisions to assure comparability between interruptible service and capacity release. In the Business Practices Rule in Docket No. RM96–1–000, the Commission adopted, by reference, a standard timeline for capacity release transactions established by the Gas Industry Standards Board. This timeline, in general, provides that, so long as a pipeline is notified of a non-biddable capacity release 2½ hours prior to its nomination deadline, the replacement shipper can nominate under the deal.[4] Pipelines are to implement these standards by the spring of 1997. Pipelines seeking to participate in the pilot program can comply with the comparability requirement by implementing the standard capacity release timeline early.[5]

Pipelines and LDCs may file joint or concurrent applications to participate. LDCs, however, may file individual applications so long as the application provides enough information to establish a lack of market power in the relevant area for both the LDC and the pipeline. If an LDC files individually, the Commission must obtain, prior to the Commission's approval of the application, a commitment from the pipeline to participate in the pilot program by implementing the comparability requirements and providing the reporting data (outlined below). After receipt of the applications, the Commission will provide an opportunity for comment on which applications to accept and on the design of the program.

Reporting Requirements

To judge whether the market, under these conditions, provides adequate consumer protection against market power abuses, the Commission will require the pipelines and LDCs participating in the program to submit periodic data reports for the period of the experiment. Additionally, to provide a basis for comparing the use of capacity and prices, the same data also will be needed for the year prior to the experiment. Pipelines and LDCs will not be required to provide these data (including the prior year's data) until after the Commission has accepted applications to participate in the program according to a schedule to be established. This information will be made available to the public to assist in the assessment of the experiment.

The Commission needs sufficient information to evaluate whether capacity is being allocated efficiently and whether consumers—options for buying and selling gas have been expanded. These data will help in analyzing changes in the number and concentration of market participants (buyers and sellers) relative to the pre-experimental base period, as well as the concentration of buyers and sellers participating in the market each day and the volumes traded by each. These data further will reveal changes in the use of capacity relative to the pre-experimental base period. For example, these data will show any changes in the mix of interruptible, firm, release capacity, and bundled sales and any changes in the use of storage. These data also will permit analysis of how daily prices vary depending on the availability of capacity, which may be suggestive of whether market power is being exercised.

For pipelines, the information that is needed would include for the period of the experiment and for one year prior to the start of the experiment, the following information for all transactions that potentially could be used to make deliveries to the LDC's delivery area:

1. For each capacity release and firm transaction into which parties have entered that affects the relevant area, the name of the shipper; the contract number; the rate schedule; the rate charged (including all terms and conditions of the rate);[6] the maximum rate; the contractual quantity; the beginning and end date of the transaction; the date on which the parties to a capacity release transaction posted the transaction to the pipeline; the receipt and delivery points of the transaction; an identification of any changes to different primary or secondary receipt or delivery points made by the replacement shipper; an identification of whether a capacity release transaction is a segmented release;[7] and an identification of an affiliate relationship with the pipeline;

2. For each capacity release, interruptible, and firm shipment made on its system that affects the relevant area, for each day, the name of the shipper, the contract number, the daily quantity of gas scheduled, and the daily total revenue derived.

3. The available capacity on the mainline and for receipt and delivery points, for each day, and any operational flow orders that are in effect for each day that would affect the relevant area.

For LDCs, the required information would include a map of the LDC's system, showing its capacity at city-gate delivery points and the following information for the period of the experiment and for one year prior to the start of the experiment the following:

1. For its interstate capacity, by pipeline, by rate schedule, by day, the total quantity of its interstate capacity and the amount used

[2] Thus, if shippers entered into a long-term capacity release transaction, the ability to release above the cap would not extend beyond the end of the experiment.

[3] For example, such data might include all firm capacity in the same zone as the LDC and any downstream zone.

[4] For biddable short-term deals, the timeline requires notification to the pipeline the day prior to nomination.

[5] While the NOPR in this docket proposes the elimination of the competitive bidding requirement, pipelines need not seek to implement this recommendation for the pilot program. However, if they do, they would need to file a separate tariff provision limited to the LDC or LDCs participating in the program.

[6] Terms and conditions would include, for example, a rate that varied depending on the volume shipped.

[7] In a segmented release, the releasing shipper divides its capacity into one or more segments and either separately releases multiple segments or releases one or more segments while retaining some capacity for its own use.

for traditional on-system retail sales at WACOG, for capacity release, for off-system bundled gas/transportation sales, and for on-system bundled gas/transportation sales at other than WACOG;

2. For each off-system or on-system bundled gas/transportation sale at other than WACOG, the name of the shipper, the rate charged (including all terms and conditions of the rate), the maximum rate (if applicable), the daily quantity of gas sold, the daily revenue derived, the receipt and delivery points, and the beginning and end date of the transaction.

In addition, where applicable, LDCs must provide a statement of the amount of interstate pipeline capacity held by an affiliated marketer, and for the period of the experiment and one year prior to the experiment, a list of any capacity release transactions with an affiliate.

The Commission will require pipelines and LDCs to file these data in electronic form. The template for reporting the information will be made available to those making applications, upon request, so they can comment on the format. Those filing proposals and comments should discuss the design of the program, including, but not limited to, how long the experiment should run, the period for filing the year-before data and the periodic reports (monthly, quarterly).

Application and Comment Procedures

The Commission hopes to be able to begin the pilot program in the 1996–97 winter heating season. LDCs or pipelines, therefore, should file their applications by August 30, 1996, although later applications also will be considered. After receiving the requests to participate, the Commission will provide 15 days for comment on which applications should be granted as well as on the design of the experiment and possible improvements. In addition, at the end of the pilot program, the Commission intends to solicit comments from both buyers and sellers providing their assessment of the results.

Applications and comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and should refer to Docket No. RM96–14–001. Additionally, the Commission strongly encourages applicants and commenters to submit a computer diskette of their comments in WordPerfect version 6.1 format or lower or in ASCII format, with the name of the filer and Docket No. RM96–14–001 on the outside of the diskette. Those providing files in ASCII format should take care to examine the form of an ASCII conversion to ensure, for instance, that it includes footnotes, headers, and footers, as these have often been left out in past electronic filings. All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426, during regular business hours.

Information Collection

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and Office of Management and Budget (OMB) implementing regulations at 5 CFR 1320.10 require OMB to approve certain reporting and recordkeeping requirements (collections of information) imposed by a federal agency. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date.

The proposed pilot program will be done under two new temporary data collections, FERC–549AP, Gas Pipeline Certificates: Application for Capacity Release/Pilot Program), (OMB Control No. (to be assigned by OMB)) (FERC–549AP), and FERC–549P, Gas Pipeline Rates: Capacity Release/Pilot Program (OMB Control No. (to be assigned by OMB)) (FERC–549–P). The respondents will be local distribution companies and interstate natural gas pipelines. Because participation in the program is voluntary, the Commission is unable to estimate the total number of applicants, nor can the Commission determine the number of applications it will approve until after it receives the applications.

The Commission estimates that the average time per respondent for reviewing the requirements to participate in the program, searching existing data sources, and preparing the application will be 40 hours, with a total cost per respondent of about $2,000. For those applicants chosen to participate in the program, the estimate for extracting and reporting the year-before and periodic data in the required format will average 60 hours per respondent, with an estimated cost of about $6,000 per respondent. Participation in this program is purely voluntary, and the costs are one-time costs that will not be incurred on an annual basis.

The proposed collection of information is being submitted to OMB for review. Because the Commission hopes to approve certain applications to participate in the pilot program in time for the 1996–97 winter heating season, the Commission has requested applications within 30 days of this order. Accordingly, the Commission has requested the Office of Management and Budget (OMB) to provide for emergency processing of this proposed collection of information by August 15, 1996. Comments on the collection of information, therefore, should be filed with the Office of Management and Budget as soon as possible to provide OMB sufficient time for its review. For copies of the OMB submission, contact Michael Miller at (202)208–1415. Interested persons may send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reductions of burden, to the Desk Officer FERC, Office of Management and Budget, Room 3019 NEOB, Washington, D.C. 20503, phone 202–395–3087 or via the Internet at hillier__t@a1.eop.gov. Comments should be filed with the Office of Management and Budget. A copy of any comments filed with the Office of Management and Budget also should be sent to the following address at the Commission: Federal Energy Regulatory Commission, Information Services Division, Room 41–17, Washington, DC 20426, Attention: Michael Miller.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20179 Filed 8–7–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00192; FRL–5385–6]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collection as described below. The ICR is a continuing ICR entitled ''Polychlorinated Biphenyls (PCBs): Use in Electrical Equipment and Transformers,'' EPA ICR No. 1000, OMB No. 2070–0003. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

DATES: Written comments must be submitted on or before October 7, 1996.

ADDRESSES: Submit three copies of all written comments to: TSCA Document Receipts (7407), Room NE-G99, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone 202-260-7099. All comments should reference administrative record number AR-162. This ICR is available for public review at, and copies may be requested from, the docket address and phone number listed above. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the administrative record number ''AR-162 and ICR 1000.'' No CBI should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III. of this document.

FOR FURTHER INFORMATION CONTACT: For general information contact: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-554-1404, TDD: 202-554-0551, e-mail: TSCA–Hotline@epamail.epa.gov. For technical information contact: Tom Simons, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-3991; Fax: 202-260-1724; e-mail: simons.tom@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of the ICR are available from the EPA Public Access gopher (gopher.epa.gov) at the Environmental Sub-Set entry for this document under ''Rules and Regulations.''

I. Background

Entities potentially affected by this action are owners of PCB-containing transformers used in industry, utilities, government and private buildings or elsewhere. For the collection of information addressed in this notice, EPA would like to solicit comments to:

(i) 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.

(ii) 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.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) 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.

II. Information Collection

EPA is seeking comments on the following Information Collection Request.

Title: Polychlorinated Biphenyls (PCBs): Use in Electrical Equipment and Transformers; EPA ICR No. 1000, OMB No. 2070-0003, expires April 30, 1997.

Abstract: Section 6(e) of the Toxic Substances Control Act (TSCA) generally prohibits the manufacture, processing, distribution in commerce, and use of PCBs after July 2, 1979. EPA has authority, however, to allow a use to continue if it determines that the use will not present unreasonable risks to public health and the environment. In the case of regulating PCB electrical equipment, EPA has promulgated a series of rules since the 1978 prohibition on the use of PCBs (see 40 CFR part 761).

EPA imposed the reporting requirements contained in these rules to ensure that the National Response Center is informed immediately of fires involving PCB transformers. PCB transformer fires generate hazardous dioxins and furans, substances many times more toxic than PCBs. The recordkeeping requirements are used to document the use, location and condition of PCB equipment. The reporting and recordkeeping requirements are essential to prevent adverse effects to human health and the environment from leaks or spills of PCB fluids or from potential exposures to dioxins and furans during transformer fires. Without such recordkeeping and reporting safeguards, EPA would not be able to fulfill its responsibility under TSCA of preventing unreasonable risk to human health and the environment from exposure to PCBs.

Responses to the collection of information are mandatory (see 40 CFR part 761). The information collected under this ICR is not considered to be confidential.

Burden Statement: The burden to respondents for complying with this ICR is estimated to total 24,906 hours per year, with an annual cost of $967,758. These totals are based on an average burden of approximately 10 minutes (0.17 hours) per response for an estimated 150,000 respondents performing one or more required inspections annually of PCB-containing transformers and maintaining associated records, and an average burden of approximately 1 hour per response for an estimated 6 respondents submitting reports of PCB transformer fires. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

III. Public Record

A record has been established for this action under docket number ''OPPTS-00192'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

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

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in

writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

List of Subjects

Environmental protection and Information collection requests.

Dated: July 30, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–20226 Filed 8–7–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5547–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Notification of Regulated Waste Activity Under the Resource Conservation and Recovery Act (RCRA), Part A Hazardous Waste Permit Application and Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Requests (ICR) have been forwarded to the Office of Management and Budget (OMB) for review and approval: Notification of Regulated Waste Activities (Notification), OMB No. 2050–0028; and RCRA Hazardous Waste Permit Application and Modification Part A (Part A), OMB No. 2050–0034, both expiring on October 1, 1996. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 9, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 261.12 (Notification) and EPA ICR No. 262.08 (Part A).

SUPPLEMENTARY INFORMATION:

Title: Notification of Regulated Waste Activity, EPA ICR #261.12, OMB No. 2050–0028, RCRA Hazardous Waste Permit Application and Modification Part A, EPA ICR #262.08, OMB No. 2050–0034. This is a request for extension of a currently approved collection.

Abstract: Section 3010 of Subtitle C of RCRA, as amended, requires any person who generates or transports regulated waste or who owns or operates a facility for the treatment, storage, or disposal (TSD) of regulated waste to notify EPA of their activities, including the location and general description of the activities and the regulated wastes handled. Section 3005 of Subtitle C of RCRA requires TSDs to obtain a permit. To obtain the permit, the TSD must submit an application describing the facility's operation. There are two parts to the RCRA permit application—Part A and Part B. Part A defines the processes to be used for treatment, storage, and disposal of hazardous wastes; the design capacity of such processes; and the specific hazardous wastes to be handled at a facility. The Part B ICR will be addressed in a future Federal Register notice when that ICR is submitted to OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on these collections of information were published on April 4, 1996 (FR 61 15065); 7 comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for the Notification collection of information is estimated to average 3.25 hours per response, and the annual public reporting and recordkeeping burden for the Part A collection of information is estimated to average 23.6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Notification

Respondents/Affected Entities: Generators and Treaters, storers and disposers of Hazardous Waste.

Estimated Number of Respondents: 44,000.

Frequency of Response: One-time.

Estimated Total Annual Hour Burden: 143,000 hours.

Estimated Total Annualized Cost Burden: $132,000.

Part A

Respondents/Affected Entities: Treaters, storers and disposers of Hazardous Waste.

Estimated Number of Respondents: 56.

Frequency of Response: One-time.

Estimated Total Annual Hour Burden: 1,368 hours.

Estimated Total Annualized Cost Burden: $351.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 261.12, OMB Control No. 2050–0028 for Notification, and EPA ICR No. 262.08, OMB Control No. 2050–0034 for Part A in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget—Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: August 1, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–20244 Filed 8–7–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5549–2]

Agency Information Collection Activities Under OMB Review; NESHAP: Benzene Waste Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that Information Collection Request (ICR) #1541.04 has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before September 9, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1541.05.

SUPPLEMENTARY INFORMATION:

Title: NESHAP: Benzene Waste Operations (OMB Control No. 2060–0183; EPA ICR No. 1541.05) expiring 8/31/96. This is a request for extension of a currently approved collection.

Abstract: Any facility which manages a waste containing benzene must maintain records and submit reports to the Agency. There is a tiered threshold for burden. Facilities managing waste containing less than 1 megagram of benzene must simply certify to that affect and maintain documentation to support their finding. Facilities managing more than 1 megagram and less than 10 megagrams of benzene-containing waste must prepare an initial certification, test annually to verify that their waste stream still falls within this range and maintain documentation to support these findings. Facilities managing more than 10 megagrams of waste must submit quarterly and annual reports documenting the results of continuous monitoring. The Agency uses this information to determine compliance and to select plants or processes for inspection.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 5/29/96 (61 FR 26901); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 71 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Chemical plants, petroleum refineries, coke by-product recovery plants, and commercial treatment, storage, and disposal facilities.

Estimated Number of Respondents: 240.

Frequency of Response: quarterly, annually.

Estimated Total Annual Hour Burden: 17,028 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1541.05 and OMB Control No. 2060–0183 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: July 31, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–20245 Filed 8–7–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5547–8]

Agency Information Collection Activities Under OMB Review; Renewal Request for OMB No. 2070–0143

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Office of Prevention, Pesticides and Toxic Substances has forwarded the Information Collection Request (ICR) entitled: Alternate Threshold for Low Annual Reportable Amounts; Toxic Chemical Release Reporting (EPA ICR #1704.03; OMB Approval #2070–0143), which is abstracted below, to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument. The Agency is requesting the renewal of the existing approval, which is scheduled to expire on September 30, 1996. A Federal Register notice proposing this submission and providing 60 days for public comment on the request and the contents of this ICR was issued on May 15, 1996 (61 FR 24488). EPA only received one comment during the comment period, which expressed support for the maintenance of the Alternate Reporting Threshold, urging OMB to promptly approve the renewal request in order to ensure its continued availability.

DATES: Any comments must be submitted to the addresses listed below on or before September 9, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, 202–260–2740, and refer to EPA ICR No. 1704.03.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses: Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2137), 401 M Street, SW, Washington, DC 20460, with a copy also sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503. Please refer to EPA ICR No. 1704.03 and OMB Control No. 2070–0143 in any correspondence.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection.

ICR Numbers: EPA ICR No. 1704.03 and OMB No. 2070–0143.

Current Expiration Date: Current OMB approval expires on September 30, 1996.

Title: Alternate Threshold for Low Annual Reportable Amounts; Toxic Chemical Release Reporting.

Abstract: This information collection request (ICR) covers the public reporting and recordkeeping requirements associated with toxics release inventory (TRI) reporting based on an alternate threshold for facilities with low amounts of chemicals in waste, under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(f)(2)).

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals in excess of the applicable threshold quantities to report their environmental releases of such chemicals annually. Each covered facility must file a separate Form R for each listed chemical

manufactured, processed or otherwise used in excess of the reporting thresholds established in section 313(f)(1). EPA has authority to revise these threshold amounts pursuant to section 313(f)(2); however, such revised threshold amounts must obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to section 313. A revised threshold may be based on classes of chemicals or categories of facilities. Section 328 provides EPA with general rulemaking authority to develop regulations necessary to carry out the purposes of the Act.

EPA has established an alternate threshold for those facilities with low amounts of a listed toxic chemical in wastes. A facility that meets the current section 313 reporting thresholds, but estimates that the total amount of the chemical in total waste does not exceed 500 pounds per year, can take advantage of an alternate manufacture, process or otherwise use threshold of 1 million pounds per year, for that chemical, provided that certain conditions are adhered to. The amounts in total waste are the combined total of amounts released at the facility, treated at the facility (as represented by amounts destroyed or converted by treatment processes), recovered at the facility as a result of recycling operations, combusted for the purpose of energy recovery at the facility, and transferred from the facility to off-site locations for the purpose of recycling, energy recovery, treatment, or disposal.

Each qualifying facility that chooses to apply the revised manufacture, process or otherwise use threshold must file an annual certification statement in lieu of a complete Form R. This annual certification is submitted to both the EPCRA reporting center and the designated state recipient in the same manner that the Form R is submitted. The annual certification provides a signed statement that the sum of the amount of the TRI chemical in wastes did not exceed 500 pounds for this reporting year, and that the chemical was manufactured, processed, or otherwise used in an amount not exceeding 1 million pounds during this reporting year.

The primary function served by the certification statement is to satisfy the statutory requirement to maintain reporting on a substantial majority of releases for all listed chemicals. Without the certification statement, users of TRI data would have no access to any information on these chemicals. The certification statement can also be considered a de facto range report that indicates that the sum of amounts of the chemical in waste did not exceed 500 pounds, which can be useful to any party interested in amounts being handled at a particular facility or for broader statistical purposes. Additionally, the certification statement provides compliance monitoring and enforcement programs along with other interested parties a means to track chemical management activities and verify overall compliance with the rule.

This ICR is similar to the one previously approved by OMB, but has been amended slightly to reflect TRI delisting actions that have occurred since the last ICR and which impact the estimated number of potential certifications. To date, EPA has either completely removed or modified the listing for 7 chemicals. This reduces the number of certification statements estimated by approximately 12 percent compared to the previous ICR for the alternate threshold, which acts to reduce the estimated burden for this data collection.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 34.5 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Respondents/Affected Entities: Chemical facilities that manufacture, process or otherwise use certain toxic chemicals and which are required, under EPCRA section 313, to report annually to EPA their environmental releases of such chemicals.

Estimated No. of Respondents: 10,257

Estimated Total Annual Burden on Respondents: 709,784 hours.

Frequency of Collection: Annual.

Dated: July 31, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–20249 Filed 8–7–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5549–3]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent to Certify Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of agency receipt of a notification of intent to certify equipment and initiation of 45 day public review and comment period.

SUMMARY: The Agency has received a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR Part 85, Subpart O. Pursuant to § 85.1407(a)(7), today's Federal Register notice summarizes the notification below, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review this notification of intent to certify, as well as comments received, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The Engine Control Systems Ltd. (ECS) notification of intent to certify, as well as other materials specifically relevant to it, are contained in category XIV–A of Public Docket A–93–42, entitled ''Certification of Urban Bus Retrofit/Rebuild Equipment''. This docket is located at the address below.

Today's notice initiates a 45 day period during which the Agency will accept written comments relevant to whether or not the equipment included in this notification of intent to certify should be certified. Comments should be provided in writing to Public Docket A–93–42, Category XIV–A, at the address below. An identical copy should be submitted to Anthony Erb, also at the address below.

DATES: Comments must be submitted on or before September 23, 1996.

ADDRESSES: Submit separate copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category XIV-A), Room M–1500, 401 M Street S.W., Washington, DC 20460.
2. Anthony Erb, Engine Compliance Programs Group, Engine Programs and Compliance Division (6405J), 401 ''M'' Street S.W., Washington, DC 20460.

The ECS notification of intent to certify, as well as other materials specifically relevant to it, are contained

in the public docket indicated above. Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Engine Compliance and Programs Division (6403J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. Telephone: (202) 233–9259.

SUPPLEMENTARY INFORMATION

I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Program 1 sets particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Program 2 is a fleet averaging program that establishes specific annual target levels for average PM emissions from urban buses in an operator's fleet.

A key aspect of the program is the certification of retrofit/rebuild equipment. To meet either of the two compliance options, operators of the affected buses must use equipment which has been certified by the Agency. Emissions requirements under either of the two compliance options depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Program 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Program 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. For Program 1, information on life cycle costs must be submitted in the notification of intent to certify in order for certification of the equipment to initiate (or trigger) program requirements. To trigger program requirements, the certifier must guarantee that the equipment will be available to all affected operators for a life cycle cost of $7,940 or less at the 0.10 g/bhp-hr PM level, or for a life cycle cost of $2,000 or less for the 25 percent or greater reduction in PM. Both of these values are based on 1992 dollars.

II. Notification of Intent to Certify

By a notification of intent to certify signed December 13, 1995, ECS has applied for certification of equipment applicable to Detroit Diesel Corporation (DDC) two-cycle engines originally equipped in an urban bus from model year 1979 to model year 1993 (Table A). The notification of intent to certify states that the equipment being certified is an oxidation converter muffler (OCM). The OCM contains an oxidation catalyst developed specifically for diesel applications, packaged as a direct replacement for the muffler. The application states that the candidate equipment provides a 25 percent or greater reduction in emissions of particulate matter (PM) for petroleum fueled diesel engines relative to an original engine configuration with no after treatment installed. The engines are to be rebuilt to original specifications, or not rebuilt but able to meet specified engine calibrations. A 25 percent reduction is also claimed for engines that have been retrofit/rebuilt with certified new rebuild kits that do not include after treatment devices. The latter applies to the DDC retrofit/rebuild kits which were certified on October 2, 1995 (60 FR 51472) and July 19, 1996 (61 FR 37738).

TABLE A.—CERTIFICATION LEVELS

Engine Models	Model Year	PM Level [1] with OCM	PM Level [2] with OCM and DDC Certified Rebuild Kit	Code/ Family
6V92TA MUI	1979–87	0.38	0.22	All
	1988–1989	0.23	0.17	All
6V92TA DDEC I	1986–87	0.23	N/A	All
6V92TA DDEC II	1988–90	0.23	0.17	All
	1991	0.23	N/A	.....
	1992–93	0.19	N/A	All
6V71N	1973–89	0.38	N/A	All
6V71T	1985–86	0.38	N/A	All
6L71TA	1988–89	0.23	N/A	All
6L71TA DDEC	1990–91	0.23	N/A	All

[1] The original PM certification levels for the 1991 6V92TA DDEC II, and 6L71TA DDEC engine models are based on Federal Emission Limits (FELs) under the averaging, banking and trading program. These limits are higher than the 1991 PM standard of 0.25 g/bhp–hr. The PM level listed in this table for the engines that are equipped with the OCM provide at least a 25% reduction from the original certification levels. The 1992 to 1993 6V92TA DDEC II engine models were also certified using FELs under the trading and banking program and likewise the PM levels for the engines equipped with the OCM represent at least a 25% reduction from the original certification levels.

[2] For 6V92TA MUI and 6V92TA DDEC II models that are rebuilt using a certified DDC emissions retrofit kit, ECS is certifying the PM engine emissions to reduced levels as provided in Table A. provided the OCM is installed at the same time the rebuild with the certified DDC upgrade kit takes place. The DDC upgrade kit certification notifications were published in the FEDERAL REGISTER on October 2, 1995 (60 FR 51472) and July 19,1996 (61 FR 37738) respectively.

ECS indicates that the maximum cost in 1995 dollars will not exceed $2,169.00 (or $2,000 in 1992 dollars). Equipment cost is listed to be $2,089.00 and installation costs are not to exceed $80.00 (maximum of 2.0 hours of labor time estimated). ECS states that there is no fuel economy impact based on the fuel economy data generated during testing, and that no incremental maintenance will be necessary due to the addition of this equipment. Therefore, this equipment may qualify as a trigger for program requirements for the 25% reduction standard. However, it is noted that designation as a trigger is not necessary in this case as trigger technology is already certified for the 25% reduction standard for every engine model for which this technology would be certified.

ECS presents exhaust emission data from testing the candidate equipment configurations on two engines using the federal engine-dynamometer test procedures of 40 CFR Part 86, as well as chassis dynamometer testing. A 1991 model year DDC 6V92TA DDEC II engine was tested on an engine dynamometer and a 1987 model year DDC 6V71N engine was tested on a chassis dynamometer. The 6V71N engine was selected to represent a ''worst case'', with respect to PM, for the engines for which certification of the equipment is being sought based on a pre-rebuild PM level for the 6V71N of 0.50, from the table in 40 CFR section 85.1403(c)(1)(iii)(A). The 6V71N engine qualifies as a ''worst case'' engine for all two-stroke/cycle engines with the exception of the 1990 DDC 6L71TA. The 1991 6V92TA DDEC engine was tested to show the ability of the OCM to reduce PM based on a ''pre-rebuild'' certification level of 0.31 g/bhp-hr. All testing was conducted using test fuel having a maximum sulfur level of 0.05 weight percent.

Baseline testing was conducted on the 6V71N engine after rebuild to the manufacturer's original engine configuration. The 6V92TA DDEC II engine was a former durability test engine that had been used by the manufacturer (DDC) and was purchased from DDC in 1994. This engine was not rebuilt and had accumulated 1120 hours of operation prior to the baseline test. Subsequent engine tests were performed after the candidate equipment was installed.

Table B summarizes the emission levels from the engine dynamometer testing for the 6V92TA DDEC II engine and for the chassis tests performed on the 6V71N engine. The driving cycles used for the chassis testing were the Central Business District (CBD), and the New York Bus Composite Cycle (NYC). Additional testing information is provided in the attachments to the notification.

TABLE B.—TEST ENGINE EMISSION

Engine	Gaseous and Particulate				Smoke			Comment
	HC	CO	NO_X	PM	ACC	LUG	Peak	
Engine Dyno	g/bhp-hr				percent opacity			
1991 6V92TA DDEC	1.3	15.5	10.7	0.25	20	15	50	1991 EPA stds.
	0.42	1.19	4.95	0.18	3.4	0.6	5.8	Baseline.
	0.14	0.39	4.87	0.13	3.8	0.8	6.4	With catalyst.
Chassis Dyno	g/mile				percent opacity			
1987 6V71N	3.25	43.04	31.93	2.94	N/A	N/A	N/A	Baseline CBD.
	0.57	3.47	26.16	1.64	N/A	N/A	N/A	CBD with catalyst.
	4.82	35.56	26.61	2.47	N/A	N/A	N/A	Baseline NYC.
	1.46	6.80	25.54	1.55	N/A	N/A	N/A	NYC with catalyst.

Section 85.1406(a) of the program regulations state ''The test results must demonstrate that the retrofit/rebuild equipment * * * will not cause the urban bus engine to fail to meet any applicable Federal emission requirements set for that engine in the applicable portions of 40 CFR part 86 * * *''.

ECS's emission test data indicate that the candidate equipment reduces hydrocarbon (HC) and carbon monoxide (CO), when compared with baseline (pre-retrofit) emissions. In the test sequence, for the 1991 6V92TA DDEC engine, the test on the engine that was equipped with the catalytic converter shows a 26% decrease in PM emissions compared to the baseline engine. This test also shows that hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen (NO_X) emissions are within the applicable emission standards. ECS provided smoke emission test measurements for this engine indicating that the engine complies with applicable smoke standards with the OCM installed. In the CBD chassis test sequence for the 1987 6V71N engine, the test with the OCM in place produced a 42% reduction in PM compared to the baseline test. In the NYC chassis test sequence the reduction in PM with the OCM in place was 37%. The information submitted by ECS indicates that this equipment achieves a 25% or greater reduction in PM emissions and will be sold for less than the cost ceiling of $2,000 (1992 dollars). Urban bus operators are currently required to use equipment that is certified to provide 25% or greater equivalent reduction to comply with Program 1 of the regulation. Certification of the ECS equipment will provide another choice of certified equipment from which operators may choose. Under Program 1, the requirement to use equipment providing a 25% reduction will continue until equipment which reduces PM emissions to 0.10 g/bhp-hr is certified at or below the $7,940 life cycle cost ceiling. If equipment is certified to the 0.1 g/bhp-hr PM level below the life-cycle cost ceiling, operators under Program 1 will be required to use it.

If EPA approves ECS's certification request, urban bus operators who chose to comply under Option 2 of this regulation may also use this equipment.

At a minimum, EPA expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) The certification requirements of § 85.1406, including whether the testing accurately substantiates the claimed emission reduction or emission levels; and, (2) the requirements of § 85.1407 for a notification of intent to certify, including whether the data provided by ECS complies with the life cycle cost requirements.

The Agency requests that those commenting also consider these

regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) Problems with installing, maintaining, and/or using the candidate equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The date of this notice initiates a 45 day period during which the Agency will accept written comments relevant to whether or not the equipment described in the ECS notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review the notification of intent to certify and provide comment during the 45 day period. Please send separate copies of your comments to each of the above two addresses.

The Agency will review this notification of intent to certify, along with comments received from interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45 day period.

Dated: August 1, 1996.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 96–20246 Filed 8–7–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5549–6]

Board of Scientific Counselors (BOSC); Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2), notice is hereby given that the Environmental Protection Agency (EPA), Office of Research and Development (ORD), Board of Scientific Counselors (BOSC) will hold its Executive Committee Meeting, August 20–21, 1996, at the Ritz-Carlton Hotel, 1250 South Hayes Street, Arlington, Virginia. The meeting will start at 9 a.m. and recess at 5:15 p.m. on August 20, 1996, and start at 9 a.m. and adjourn at 4 p.m. on August 21, 1996. All times noted are eastern time. The meeting is open to the public. Any member of the public wishing to make comments at the meeting, should contact Shirley Hamilton, Designated Federal Official, Office of Research and Development (8701), 401 M Street, SW., Washington, DC 20460; by telephone at (202) 260–0468. In general, each individual making an oral presentation will be limited to a total time of 3 minutes. Anyone desiring a draft BOSC agenda may fax their request to Shirley R. Hamilton, (202) 260–0929.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Official, U.S. Environmental Protection Agency, Office of Research and Development, NCERQA (MC8701), 401 M Street, SW., Washington, DC 20460, 202–260–0468.

Dated: August 2, 1996.

Robert J. Huggett,

Assistant Administrator for Research and Development.

[FR Doc. 96–20227 Filed 8–7–96; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–42052S; FRL–5384–2]

Urea-formaldehyde Pressed Wood; Notice of Availability of Final Report on Formaldehyde Exposure Testing Pilot Study; Plans for Peer Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the final report of a pilot study addressing exposure testing of indoor emissions of formaldehyde gas from urea-formaldehyde pressed wood building materials. Such materials are used in the construction of conventionally-built and manufactured housing, cabinets and furniture. In September, 1996, the Agency will submit this report for peer review by experts on residential indoor air. The peer review will assist EPA in determining the future course of its formaldehyde exposure testing efforts and its ongoing regulatory investigation of formaldehyde emissions from pressed wood building materials used in building homes, cabinets and furniture.

DATES: Any person having comments on the final report should submit such comments to EPA by September 30, 1996.

ADDRESSES: Written comments regarding the pilot study final report should be sent in triplicate, to: Document Control Office (7407), Room G–099, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Written comments must be identified by the docket number OPPTS–42052S.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–42052S. No confidential business information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Library. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

FOR FURTHER INFORMATION CONTACT: To request a copy of ''Residential Indoor Air Formaldehyde Testing Program: Pilot Study Final Report'' contact: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Telephone (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov. By internet: e-mail requests to: oppt.ncic@epamail.epa.gov. The report is also available on EPA's gopher server (gopher://gopher.epa.gov) and the world wide web (www) (http://www.epa.gov) under the heading ''Rules, Regulations and Legislation.''

SUPPLEMENTARY INFORMATION: EPA is concerned about formaldehyde that is emitted by urea-formaldehyde (UF) pressed wood products. UF pressed wood products include particleboard, hardwood plywood and medium density fiberboard. They are used as interior building materials and as components of doors, cabinets and furniture. Formaldehyde emissions from these products can elevate the concentrations of this gas in homes and other indoor settings where such products are used and may irritate the eyes, nose and respiratory systems of the large number of persons so exposed.

In the Federal Register of December 23, 1992 (57 FR 61240) (FRL–4178–1), EPA published its 1992 Master Testing List which set forth the Agency's chemical testing agenda under the Toxic Substances Control Act (TSCA). Among other priorities, the list identified a need for testing that would better characterize formaldehyde levels in conventional and manufactured housing when these houses are new and over a period of time. Contemporary exposure data in

new housing, in light of formaldehyde's known health hazards, would help EPA to determine if there is a need for further reduction in formaldehyde emissions from UF pressed wood.

On January 28, 1993, EPA held a public meeting to discuss a draft indoor formaldehyde exposure testing program. The proposed testing program was designed to obtain data that would both address the aforementioned exposure information needs and aid in the evaluation of the accuracy of computer models which are used by the Agency to estimate residential formaldehyde exposure arising from pressed wood emissions.

Soon after the meeting, the National Particleboard Association (NPA) proposed to the Agency an alternative approach for collecting indoor formaldehyde exposure data and indicated NPA's interest in performing laboratory and field testing on a voluntary basis. Although NPA had offered a different methodological approach to that presented by EPA for collecting data, the testing objectives were similar. Building on the strengths of NPA's proposal and improving its study design parameters, EPA modified the design of EPA's original testing program plan to incorporate key elements of the NPA proposal. (The testing program document, which resulted from these modifications is entitled ''Proposed Residential Indoor Air Formaldehyde Testing Program'' and is available to interested parties upon request from the same source identified under ''FOR FURTHER INFORMATION CONTACT'' for obtaining the pilot study final report.) However, the modifications to the study design of the testing program were based on new and yet untested experimental methods. Accordingly, a research-oriented pilot study was also developed that would test and possibly yield refinements in the new methods before they were applied in a testing program that would have a much larger scope and entail greater cost.

By September, 1993, NPA had agreed, in principle, to conduct pilot study testing voluntarily. Noting EPA's expertise in the areas of indoor air monitoring and research, NPA asked EPA if, for purposes of executing the pilot study, it would be willing to share the Agency's expertise under the terms of a Cooperative Research and Development Agreement (CRDA) authorized by the Federal Technology Transfer Act of 1988. In the interest of expediting the pilot study so that the testing program could proceed, EPA agreed to pursue such an arrangement. In September, 1994, the Agency and NPA signed a CRDA which provided that pilot study research would be conducted under EPA administration with NPA providing funds ($460,000) which were then estimated as being sufficient to defray pilot study costs, products used in the pilot study (UF pressed wood building material, cabinets, etc.) and product emission testing services. In addition, EPA agreed to fund the development of a Quality Assurance Project Plan that would govern data collection under the pilot study. That plan was finalized in October, 1994, and pilot study research began soon thereafter. In March, 1996, EPA received the final report on the pilot study.

EPA believes that it is appropriate and helpful to obtain peer review of technical documents that contain new information or interpretations that may likely have importance for decisionmaking on future data collection activities or other regulatory purposes under TSCA. The final report of the indoor formaldehyde pilot study appears to justify such review. Accordingly, EPA intends to conduct a peer review of the final report, in the context of the formaldehyde exposure testing program proposal, utilizing recognized experts in residential indoor air quality and monitoring. Peer review is scheduled to commence in September, 1996. The results of peer review will be placed in the public record that has been established for Formaldehyde Exposure Testing.

A record has been established for this notice under docket number ''OPPTS–42052S'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

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

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

List of Subjects

Environmental protection.

Dated: July 29, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–20225 Filed 8–7–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

August 2, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 9, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal

Communications, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain____t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: On March 6, 1996 the Commission submitted the following collection to OMB for review and approval. The Commission inadvertently did not publish the Federal Register Notice requesting public comments upon submission of this collection. Therefore we are requesting comments.

OMB Approval Number: 3060–0223.

Title: Section 90.129(b) Supplemental information to be routinely submitted with applications (non-type-accepted equipment)

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 100.

Estimated Time Per Response: 30 minutes.

Total Annual Burden: 50 hours

Estimated Costs Per Respondent: $128. This includes the costs for electronic filing (if applicable) and the costs for hiring a consultant to assist in preparing the information.

Needs and Uses: Practically all radio transmitting equipment in this country is manufactured to certain technical specifications. For those few applicants proposing to use transmitting equipment not proven to meet these specifications a description of the proposed equipment is required. The information is used to determine interference potential of the proposed operation.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–20216 Filed 8–7–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

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 of 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.

Richmond Forwarding, 11416 SE 219th Place, Kent, WA 98031, Jessica Marie Richmond, Sole Proprietor

Ultimate Media Express Inc., d/b/a/ Ultimate Express, 144–25 155th Street, Jamaica, NY 11434, Officers: Diane M. Correll, President, James W. Correll, Sr., Secretary

Oceanic Freight & Consolidation Inc., 11801 N.W. 100th Road., Suite #8, Medley, FL 33178, Officers: Neil Rubenstein, President, Haniff Mohammed, Vice President

Global Connection, 350 Joyce Avenue, Arcadia, CA 91006, Suin P. Forand, Sole Proprietor

Dated: August 5, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–20209 Filed 8–7–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

Stichting Prioriteit ABN AMRO Holding, Stichting Administratiekantoor ABN AMRO Holding, ABN AMRO Holding N.V., and ABN AMRO Bank N.V., all of Amsterdam, The Netherlands (collectively, Notificants), have applied for Board approval pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), to acquire all the voting shares of ChiCorp Inc. (ChiCorp), Chicago, Illinois, and thereby indirectly acquire its direct and indirect subsidiaries, including The Chicago Corporation (TCC), Chicago, Illinois. TCC currently engages in a variety of investment banking, financial advisory, and securities- and futures-related execution, clearing and advisory activities, and is a member of most United States securities and futures exchanges. Notificants propose to merge TCC with and into Notificants' existing section 20 subsidiary, ABN AMRO Securities (USA) Inc., Chicago, Illinois (Company), upon consummation of the proposal. Notificants would engage in the proposed services throughout the world.

Notificants have requested approval to engage in the following nonbanking activities through the acquisition of ChiCorp:

(i) making, acquiring, and servicing loans pursuant to 12 C.F.R. 225.25(b)(1);

(ii) providing investment and financial advisory services pursuant to 12 C.F.R. 225.25(b)(4);

(iii) leasing personal or real property or acting as agent, broker or adviser in leasing such property pursuant to 12 C.F.R. 225.25(b)(5);

(iv) operating ISI Systems, an automated front-end securities order entry system, and thereby providing to others data processing and data transmission services, facilities or data bases, or access to such services, facilities or data bases, for the processing, transmission or storage of financial, banking, or economic data pursuant to 12 C.F.R. 225.25(b)(7);

(v) providing discount and full-service brokerage services pursuant to 12 C.F.R. 225.25(b)(15);

(vi) underwriting and dealing in government obligations and other obligations that state member banks may underwrite and deal in pursuant to 12 C.F.R. 225.25(b)(16);

(vii) acting as a futures commission merchant (''FCM'') for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for financial commodities pursuant to 12 C.F.R. 225.25(b)(18);

(viii) providing investment advice as an FCM or a commodity trading adviser (CTA) with respect to the purchase or sale of futures contracts and options on futures contracts for financial commodities pursuant to 12 C.F.R. 225.25(b)(19);

(ix) buying and selling all types of debt and equity securities on the order of customers as a ''riskless principal'' and acting as agent in the private placement of all types of debt and equity securities (*see Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989); *J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1990); *see also Order Revising the Limitations Applicable to Riskless Principal Activities*, 82 FRB—(1996) (Order dated June 11, 1996));

(x) underwriting and dealing, to a limited extent, in all types of debt and equity securities, except interests in open-end investment companies (*see Canadian Imperial Bank of Commerce, et al.*, 76 Federal Reserve Bulletin 158 (1990); *J.P. Morgan & Co. Incorporated*,

et al., 75 Federal Reserve Bulletin 192 (1989));

(xi) trading for its own account, for purposes other than hedging, in gold and silver bullion, bars, rounds and coins, and platinum and palladium coin and bullion (*See Swiss Bank Corporation*, 81 FRB 185 (1995); *The Bessemer Group, Incorporated*, 82 FRB 569 (1996) (*Bessemer*);

(xii) acting as a commodity pool operator registered with the Commodity Futures Trading Commission (CFTC) (*See Bessemer*);

(xiii) serving as the general partner of, and holding an equity interest in, certain limited partnerships that would be exempt from registration as investment companies under the Investment Company Act of 1940 (15 U.S.C. § 80a-1)(*see Meridian Bancorp, Inc.*, 80 Federal Reserve Bulletin 736 (1994); and

(xiv) trading for its own account, for purposes other than hedging, in foreign exchange spot, forward, futures, options and options on futures, and providing foreign exchange-related execution and advisory services to unaffiliated parties (*see The Long-Term Credit Bank of Japan*, 79 Federal Reserve Bulletin 347 (1993)).

Notificants has stated that Company would engage in the proposed activities in accordance with the limitations and conditions established by the Board in its regulations, related interpretations and order, with certain exceptions.

In connection with its securities brokerage activities, Company proposes to provide execution-only services with respect to options on securities to institutional customers. In addition, Company proposes to provide discretionary securities investment management services to retail customers. The Board previously has determined by order that, subject to certain conditions, a bank holding company may provide discretionary securities investment management services to retail customers under section 4(c)(8) of the BHC Act. *See CoreStates Financial Corp.*, 80 FRB 644 (1994) (CoreStates). Notificants, however, do not propose to provide discretionary securities investment management services to retail customers in accordance with the limitations set forth in *CoreStates*. Notificants state that Company would operationally separate the investment management and trade execution functions provided to retail customers through the proposed discretionary management program (Program). Notificants contends that this separation, and the Program's proposed fee arrangements, are sufficient to address the potential adverse effects identified by the Board in *CoreStates*, including the potential for ''churning'' and providing biased investment advice.

TCC currently engages in, and Notificants request authority for Company to engage in, a variety of futures-related activities. In this regard, Notificants propose that Company act as an FCM for institutional and non-institutional hedger customers in connection with the execution and clearance of futures and options on futures on financial and non-financial commodities that are not listed in section 225.25(b)(18) of Regulation Y. *See Bank of Montreal*, 79 FRB 1049 (1993) (Bank of Montreal); *Societe Generale*, 81 FRB 880 (1995) (*Societe Generale*)(defining non-institutional hedger customer). These contracts include certain futures and options on futures contracts for which bank holding companies have not previously requested Board approval to provide execution and clearing services. The proposed futures execution and clearance services provided to institutional and non-institutional hedger customers would include execution-only and clearing-only services. *See Northern Trust; Bank of Montreal; Societe Generale*. Furthermore, Company proposes to establish a subsidiary that would become a clearing member of the London Commodity Exchange.

Company also proposes to provide investment advice as an FCM or commodity trading advisor (CTA) on the purchase and sale of financial and non-financial futures and options on futures contracts to institutional and non-institutional hedger customers. The proposed investment advisory services would include providing discretionary futures portfolio management services to institutional and non-institutional hedger customers. *See CS Holding*, 81 FRB 803 (1995).

Furthermore, Company proposes to provide clearing-only services to, and serve as the primary clearing firm for, certain locals on the Kansas City Board of Trade and the Minneapolis Grain Exchange. *See Stichting Prioriteit ABN AMRO Holding*, 77 FRB 189 (1991). Notificants contend that TCC currently has, and Company would have, adequate risk management systems and other operational procedures to monitor and control the financial and operational risks associated with the proposed activity.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity that the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. Notificants propose to engage in certain activities that the Board previously has not determined are closely related to banking under section 4(c)(8) of the BHC Act. A particular activity may be found to meet the ''closely related to banking'' test if it is demonstrated that banks generally have provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity, or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 794, 806 (1984).

First, Notificants propose that Company provide advice on the financial and non-financial commodities that underlie futures contracts and options on futures contracts. Company proposes to provide such advice only as an incident to futures advisory activities. Notificants contend that, because the price of a future on a particular commodity is integrally related to the price of the underlying commodity, a bank holding company providing advice on futures contracts or options on a futures contracts is particularly well suited to analyze and forecast the expected price movement of the underlying commodity. Notificants also contend that the procedures and expertise used in connection with providing advice on futures and options on futures is functionally inseparable from those used to provide advice on the commodities underlying those futures and options on futures.

Second, Notificants propose that Company provide clearing-only services with respect to options on securities to institutional customers. Notificants contend that the proposed clearing-only services with respect to securities options involve the same procedures, operations, and risks as the provision of clearing-only services with respect to futures and options on futures. Notificants note that the Board previously has approved bank holding companies to provide clearing-only services for futures and options on

futures. *See Northern Trust; Bank of Montreal.*

Third, Notificants propose that Company provide execution and advisory services on over-the-counter forward contracts for the delivery of certain non-financial commodities. Notificants contend that forward contracts on non-financial commodities are operationally and functionally similar to futures contracts on non-financial commodities. Because bank holding companies may provide execution and advisory services on futures contracts based on non-financial commodities, Notificants contend that bank holding companies are well suited to provide execution and advisory services on forward contracts based on the same underlying non-financial commodities. Notificants also contend that providing brokerage and advisory services with respect to forward contracts on non-financial commodities involve the same type of financial intermediation services that banks and bank holding companies provide with respect to other types of financial instruments, including futures contracts or forward contracts on foreign exchange.

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Notificants ''can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' 12 U.S.C. 1843(c)(8). Notificants believe that the proposal would produce public benefits that outweigh any potential adverse effects. In particular, Notificants believe that the acquisition of ChiCorp by Notificants would permit Notificants to enhance the services provided by ChiCorp and increase competition for the proposed services. Notificants also contend that, subject to the limitations on the proposed activities agreed to by Notificants, consummation of the proposal would not produce adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. In this regard, Notificants contend that Company would have the risk management systems necessary to monitor and control the risks associated with the proposed securities and futures-related activities.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act. Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than August 22, 1996. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago.

Board of Governors of the Federal Reserve System, August 2, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–20200 Filed 8–7–96; 8:45 am]

BILLING CODE 6210–01–F

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 28, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Michael Macielag, Chestertown, Maryland; to acquire an additional 1.88 percent, for a total of 10.57 percent, of the voting shares of Chesapeake Bancorp, Chestertown, Maryland, and thereby indirectly acquire Chesapeake Bank and Trust Company, Chestertown, Maryland.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Leslie R. and David R. Andersen, Omaha, Nebraska; to acquire 27.3 percent of the voting shares of Hilltop Bancshares, Inc., Bennington, Nebraska, and thereby indirectly acquire Bank of Bennington, Bennington, Nebraska.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Ned S. Holmes and Sherry Holmes, Houston, Texas; to acquire an additional 4.1 percent, for a total of 27.9 percent, of the voting shares of Commercial Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Heritage Bank, Wharton, Texas.

Board of Governors of the Federal Reserve System, August 2, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–20198 Filed 8–7–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater

convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 22, 1996.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Cambridge Bancorp, Cambridge, Massachusetts; to engage *de novo* through its subsidiary Cambridge Investment Services of New Hampshire, Inc., Concord, New Hampshire, in expanding the previously approved investment advisory activities to include the provision of discretionary investment management services to noninstitutional customers. The Board has previously found this activity to be so closely related to banking. See *Keystone Financial, Inc.*, 82 Fed. Res. Bull. 84 (1996); *CoreStates Financial Corp.*, 80 Fed. Res. Bull. 644 (1994).

B. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Cooperative Centrale Raiffeisen-Boereleenbank B.A., Rabobank Nederland, Utrecht, The Netherlands; to acquire through its 51 percent owned subsidiary, Agricredit Acceptance LLC, Des Moines, Iowa, all of the assets of Agricredit Acceptance Corporation and thereby engage in: (i) receivables financing (including leasing) activities pursuant to § 225.25(b)(1) of the Board's Regulation Y; (ii) leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y; (iii) insurance activities pursuant to § 225.25(b)(8)(i) and (ii) of the Board's Regulation Y; and (iv) data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 2, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–20199 Filed 8–7–96; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Health Care Policy and Research, Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of August 1996:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: August 29–30, 1996, 8:00 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Conference Room TBA, Bethesda, Maryland 20814.

Open August 29, 8:00 a.m. to 8:15 a.m.

Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications proposing to conduct research on computerized decision support systems (CDSS) as a component of electronic medical record systems. The goal of this research is to assist providers' decisionmaking and to improve the cost-effective delivery of health services.

Agenda: The open session of the meeting on August 29, from 8:00 a.m. to 8:15 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the panel will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to include personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Carmen Johnson, Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449 x1613.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: August 1, 1996.

Clifton R. Gaus,

Administrator.

[FR Doc. 96–20206 Filed 8–7–96; 8:45 am]

BILLING CODE 4160–90–M

Agency for Toxic Substances and Disease Registry

[ATSDR–109]

Availability of ATSDR Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of pending publication of Toxicological Profiles for public comment.

SUMMARY: This notice announces the status of the development of toxicological profiles scheduled for development in fiscal year 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6322.

SUPPLEMENTARY INFORMATION: Section 104(i)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604 (i)(3)], directs the Administrator of ATSDR to prepare toxicological profiles of priority hazardous substances most frequently found at National Priorities List sites. New sets of profiles are normally made available on October 17th of each year. Due to uncertainty associated with the Superfund appropriations in the Federal budgetary process for fiscal year 1996, development of set 10 of the toxicological profiles was unavoidably delayed. In order to ensure that the scientific and technical integrity of the profiles is not compromised, development of set 10 will not be accelerated, but will proceed using the normal established methodology and timeframe. When set 10 is completed, it will be released in draft for public comment, as usual. At that time, a notice will be published in the Federal Register announcing availability.

Dated: August 2, 1996.

Claire V. Broome,

Deputy Administrator Agency for Toxic Substances and Disease Registry.

[FR Doc. 96–20205 Filed 8–7–96; 8:45 am]

BILLING CODE 4163–70–P

Health Care Financing Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Evaluation of the Per-Episode Home Health Prospective Payment Demonstration; *Form No.:* HCFA–R–195; *Use:* This evaluation will collect primary data from samples of patients and from demonstration agencies to assess impacts of per-episode payment on access to care, quality of care, and the use of non-Medicare services; *Frequency:* Other (one time); *Affected Public:* Not for profit institutions, individuals and households, business or other for profit; *Number of Respondents:* 19,191; *Total Annual Hours:* 1,901.

2. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* ICR in the Hospice Care Regulation for 42 CFR@418.22, 418.24, 418.28, 418.56(b), 418.56(e)(1), 418.56(e)(3), 418.58, 418.70(d), 418.70(e), 418.74, 418.83, 418.96(b) and 418.100(b); *Form No.:* HCFA–R–30; *Use:* The HCFA-R–30 establishes standards for hospices who wish to participate in the Medicare program. The regulations establish standards for eligibility, reimbursement standards and procedures, and delineate conditions that hospices must meet to be approved for participation in Medicare. *Frequency:* On occasion; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 1,927; *Total Annual Responses:* 1,927; *Total Annual Hours Requested:* 3,977,762.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Blood Bank Inspection Checklist and Report; *Form No.:* HCFA–282; *Use:* The blood bank inspection checklist instrument is used by State agency to record data collected as part of the survey and certification process to determine compliance with the requirement for blood bank services under Clinical Laboratory Improvement Amendments; *Frequency:* Biennially; *Affected Public:* State, local, and tribal government, business or other for profit, not for profit institutions, federal government; *Number of Respondents:* 2,500; *Total Annual Hours:* 1,250.

To obtain copies of the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: August 2, 1996.

Edwin J. Glatzel,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–20235 Filed 8–7–96; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

Government-Owned Inventions; Availability for Licensing: HIV Protease-Related Technologies

AGENCY: National Institutes of Health.

ACTION: Notice.

The inventions referenced below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESS: Licensing information and a copy of the patent applications and issued patents may be obtained by contacting Cindy K. Fuchs, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7735 ext 232; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Human Immunodeficiency Virus Specific Proteolytic Enzyme and a Method for Its Synthesis and Renaturation

S Oroszlan, TD Copeland (NCI)

Serial No. 07/057,183 filed 01 Jun 87

U.S. Patent No. 5,252,477 issued 12 Oct 93

Inhibition of the HIV protease enzyme is currently an important component of combination therapies for HIV infection and AIDS. This patent discloses the amino acid and DNA sequences for natural and biologically active synthetic HIV–1 protease, as well as a method for its synthesis and purification. The synthetic enzyme, which has the correct stereospecific conformation, can be used to design HIV–1 protease inhibitors and to test their effectiveness against HIV–1. This technology is described further in the following publications: Copeland, T.D., et al., *Gene Anal Techn* 5: 109–115 (1988) and Louis, J.M., et al., *Biochem Biophys Res Comm* 164(1): 30–38 (1989). (Portfolio: Infectious Diseases—Reagents)

Human Immunodeficiency Virus Specific Proteolytic Enzyme and a Method for Its Synthesis and Renaturation

S Oroszlan, TD Copeland (NCI)

Serial No. 08/100,703 filed 30 Jul 1993

U.S. Patent No. 5,354,683 issued 11 Oct 94 (CIP of U.S. Patent 5,252,477)

Inhibition of the HIV protease enzyme is currently an important component of combination therapies for HIV infection and AIDS. This patent discloses the amino acid sequence of natural and biologically active synthetic HIV–2 protease, as well as a method for its synthesis and purification. The synthetic enzyme, which has the correct stereospecific conformation, can be used to design HIV–2 protease inhibitors and to test their effectiveness against HIV–2. This technology is described further in Copeland, T.D., et al., *Gene Anal Techn* 5: 109–115 (1988). (Portfolio: Infectious Diseases—Reagents)

Synthetic HIV Protease Gene and Method for Its Expression

JL Medabalimi (NIDDK), S. Oroszlan, PT Mona (NCI)

Filed 02 Mar 93

Serial No. 08/024,916 (CIP of U.S. Patent 5,252,477)

Inhibition of the HIV protease enzyme is currently an important component of combination therapies for HIV infection and AIDS. This patent application discloses a DNA construct for biologically active recombinant HIV–1 protease, as well as a method for its production and purification. The recombinant enzyme can be used to design HIV–1 protease inhibitors and to test their effectiveness against HIV–1. This technology is described further in Louis, J.M., et al., *Biochem Biophys Res Comm* 159(1): 87–94 (1989). Foreign intellectual property rights are available in Australia, Canada, Israel, and Japan. (Portfolio: Infectious Diseases—Reagents)

Transframe Peptide Inhibitor of Viral Protease

JL Medabalimi (NIDDK)

Filed 05 Oct 95

Serial No. 08/539,432

The inhibition of protease is an increasingly important approach in the control of pathogenic organisms, including retroviruses such as the human immunodeficiency virus (HIV). The present invention embodies small, water-soluble peptides isolated from a native retroviral inhibitory sequence that block maturation of HIV protease and also inhibit the mature enzyme. The peptides may be used in the treatment of HIV-infected cells, in the preparation of HIV vaccine formulations, in the generation of clinically relevant anti-HIV antibodies and anti-idiotypic antibodies, and as components of a screening assay or kit used to identify other similarly acting HIV protease inhibitors. The invention encompasses the inhibitory peptides, pharmaceutical compositions containing the peptides, methods of using the peptides in the treatment and prevention of HIV-induced pathogenesis, a kit and methods for screening test compounds (peptide or non-peptide) for use as HIV protease inhibitors, and antibodies and anti-idiotype antibodies to HIV protease. (Portfolio: Infectious Diseases—Therapeutics, anti-virals, AIDS; Infectious Diseases—Vaccines, viral, AIDS; Infectious Diseases—Reagents)

2,5-Diamino-3,4-Disubstituted-1,6-Diphenylhexane Isosteres Comprising Benzamide, Sulfonamide and Anthranilimide Subunits and Methods of Using Same

RS Randad, JW Erickson (NCI)
Filed 20 Dec 94
Serial No. 08/359,612

This invention concerns retroviral protease inhibitors which are potential drugs for the treatment of HIV infection and AIDS. The compounds of the invention contain novel nonpeptidic and achiral substituents, wherein achiral benzamide, sulfonamide and anthranilamide subunits are introduced onto the 2,5-diamino-3,4-disubstituted-1,6-diphenylhexane isostere core. The compounds are resistant to viral and mamalian protease degradation. The best compounds had a K_i (inhibition constant) of less than 100 pM for HIV protease. CEM cells chronically infected with HIV–1 were used to test the *in vitro* anti-retroviral activity of the compounds. The concentrations needed to inhibit 50% of viral activity were on the order of 5 nM. Therefore, these compounds compare favorably in their anti-retorviral potency to HIV protease inhibitors currently in clinical trials and on the market. These compounds are described in three recent publications: Randad, R.S., et al., *Bioorganic & Medicinal Chemistry Letters*, 5(15): 1707–1712 (1995); Randad, R.S., et al., *Bioorganic & Medicinal Chemistry Letters*, 5(21): 2557–2562 (1995); and Randad, R.S., et al., *Bioorganic & Medicinal Chemistry Letters* (1996, in press). Foreign intellectual property rights are available in PCT member countries. (Portfolio: Infectious Diseases—Therapeutics, anti-virals, AIDS)

Novel Retroviral Agents Containing Anthranilamide, Substituted Benzamide and Other Subunits, and Methods of Using Same

RS Randad, JW Erickson, TN Bhat (NCI)
Filed 22 Nov 95
Serial No. 08/562,013

This invention concerns retroviral protease inhibitors which are potential drugs for the treatment of HIV infection and AIDS. The compounds of the invention are symmetric and asymmetric 2,5-diamino-3,4-disubstituted-1,6-diphenylhexane (DAD) isosteres with achiral, nonpeptidic anthranilimide, substituted benzamide, sulfonamide and other subunits. The DAD isosteres may also include amino acid subunits. The compounds are more resistant to mammalian and viral protease degradation than currently available retroviral protease inhibitors, and therefore, have greater plasma half-life and oral bioavailability. Pharmacokinetic and bioavailability studies are currently being conducted. The best compound has a K_i (inhibition constant) of approximately 3 pM for HIV protease. *In vitro* anti-retroviral activity was tested in CEM cells chronically infected with HIV–1. The concentration required to inhibit 50% of viral activity was on the order of 6 nM. This compound thus compares favorably in its *in vitro* anti-retroviral potency to HIV protease inhibitors currently in clinical trials and on the market. (Portfolio: Infectious Diseases—Therapeutics, anti-virals, AIDS)

Dated: July 30, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–20266 Filed 8–7–96; 8:45 am]

BILLING CODE 4140–01–M

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications and issued patents listed below may be obtained by contacting David Sadowski at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone: 301/496–7056 ext 288; fax: 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Nurse's Hand Protection

B Thornton, A Peterson, M Allen, B Fahey, M Woolery Antill, J Taylor, V Wheeler, P Coleman, S Kedrowski, L Jeanneret (CC)
Filed 15 Aug 95
Serial No. 08/515,499

This invention provides nurses and other health care workers with protection against accidental needle sticks. Specifically, a device has been

created which protects the most susceptible areas on the back and sides of the thumb, forefinger, and the area of the hand there between. This offers the notable advantage of preventing infections from accidental needle sticks. This invention is particularly useful during the risky task of inserting a twisted or kinked needle (such as a Huber needle) into a pot-a-cath. Stage of Development: prototype built. (portfolio: Devices/Instrumentation—Environmental Technology, prevention, apparatus; Devices/Instrumentation—Miscellaneous)

Separation of Polar Compounds by Affinity Countercurrent Chromatography

Y Ma, Y Ito (NHLBI)
Filed 14 Aug 95
Serial No. 08/514,917
Patent Status: U.S. patent application pending, foreign rights available

A new and highly advantageous method of purifying polar organic compounds using affinity countercurrent chromatography, has been created. This invention permits separation of very hydrophilic organic compounds using countercurrent chromatography in which a ligand for the desired analytes is used to enhance the partitioning of polar species into the organic layer of an aqueous-organic solvent mixture. Examples of polar organic compounds which may be recovered using the present invention include: compounds having two or more functional groups on each molecule which are hydroxyl, amino, acid or lower acyl (e.g., catecholamines, carbohydrates, polyalcohols, polyamines, amino acids, peptides, and nucleic acids). Stage of Development: completed and tested. (portfolio: Devices/Instrumentation—Research Tools, devices, chromatographic)

Apparatus and Method for the In-Situ Detection of Areas of Cardiac Electrical Activity

H Bassen, V Krauthamer (FDA)
Filed 11 Aug 95
Serial No. 08/513,713
Patent Status: U.S. patent application pending and foreign rights available

This invention provides new means for diagnosis (e.g., two dimensional mapping) and treatment of electrically-active tissue without the need for surgery. For example, electrical activity of the heart may be mapped *in vivo*, in a minimally invasive manner, without cutting either the chest wall or the heart wall. The invention employs a multifibered endoscope and multiple tissue dyes to map electrical activity. This permits identification and treatment of potentially lethal electrical abnormalities without surgery. In regard to the cardiac diagnosing aspect of this invention alone, over 400,000 people die in the U.S. each year from cardiac electrical rhythm diseases. This invention provides a minimally invasive and less expensive means for diagnosis and treatment of such diseases. (portfolio: Devices/Instrumentation—Diagnostics, devices, invasive; Devices/Instrumentation—Diagnostics, imaging; Devices/Instrumentation—Therapeutics, devices)

Displacement Countercurrent Chromatography

Y Ito (NHLBI)
Serial No. 08/263,924 Filed 21 June 94
U.S. Patent No. 5,449,461 issued 12 Sep 95

A new method of preparative scale pH-zone refining countercurrent chromatography has been invented, which may be operated analogously to displacement chromatography. It has been discovered that use of a retainer base or acid in the stationary phase retains analytes in the column. The analytes may then be eluted using a displacer acid or base in order of increasing or decreasing pKa or hydrophobicity. This invention has many advantages, including: producing a train of highly concentrated rectangular solute peaks with minimum overlap; the retaining and displacing compositions may be switched (i.e., the retaining material may be made the displacing material, and vice versa); eluted material is provided as a salt free acid or base in an organic solvent, which can easily be separated by evaporating the solvent; the displacement mode of this invention may be utilized in a ligand-affinity separation which may cover a broad range of analytes, including nonionizable compounds; allowing the sample to be loaded onto the separation column as a suspension, or as a mixture of compounds that are only partially soluble in the solvent system, and; permitting the separation of greater volumes than with previous methods. (portfolio: Devices/Instrumentation—Research Tools, devices, chromatographic)

Method for In Situ Testing of Integrity of Electrical Stimulator Leads

R Schmukler (FDA)
Filed 21 Jun 94
Serial No. 08/263,312

This invention provides an in situ method for testing the integrity of the insulation of electrical stimulators leads. It allows the electrical stimulator to measure and thereby continually monitor the insulation of its leads. By being able to detect premature degradation of the leads of implanted electrical stimulators, e.g., pacemakers, unexpected failures of the device can be reduced. Replacement of the electrical stimulator leads in the heart is a traumatic process, to be avoided unless necessary. Currently available pacemakers and other implanted electrical stimulators do not allow for accurate monitoring of the lead insulation, so that advance warning of degradation may be obtained. This invention allows for the degradation of the lead insulation to be detected earlier than is now possible, thereby providing warning of potential failure before it becomes critical to the patient. (portfolio: Devices/Instrumentation—Therapeutics, devices, implants)

A Detection Device and Quantification Method for Therapeutic Agents in Blood

E Kohn, L Liotta (NCI)

Serial No. 08/041,438 filed 31 Mar 93

U.S. Patent No. 5,405,782 issued 11 Apr 95

New methods have been invented which provide improved determination of therapeutic agents in blood. A solid phase extraction of a solute from plasma is followed by reverse phase high performance liquid chromatography on a column of irregularly shaped C–18 liquid chromatography on a column of irregularly shaped C–18 modified silica. By comparing the chromatogram produced by this invention with a standard, a precise and accurate quantification of the amount of solute in the blood may be made. This invention also has the advantage of facilitating automation of the extraction and chromatography steps, thereby permitting rapid testing of a plurality of samples. (portfolio: Devices/Instrumentation—Research Tools, devices, chromatographic; Devices/Instrumentation—Research Tools, devices, separation; Cancer—Therapeutics, conventional chemotherapy, antimetabolites)

Dated: July 30, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–20267 Filed 8–7–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; AA–8103–15, AA–8103–17]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), and Sec. 14 of the Alaska Land Status Technical Corrections Act of 1992, 43 U.S.C. 1621(c)(2), will be issued to Doyon, Limited for approximately 1,561 acres. The lands involved are in the vicinity of Flat, Alaska, within Tps. 26 and 27 N., Rs. 47 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until September 9, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 96–20204 Filed 8–7–96; 8:45 am]

BILLING CODE 4310–$$–P

[UT–910–06–1020–00]

Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Draft Standards for Rangeland Health and Guidelines for Grazing Management on BLM Lands in Utah and related Land Use Planning/NEPA Compliance Document.

SUMMARY: The Bureau of Land Management (BLM) is soliciting public review and comment of the recently completed Draft Standards for Rangeland Health and Guidelines for Grazing Management document as well as an accompanying Land Use Planning/NEPA Compliance Document. The ''Standards and Guidelines'' document explains how the BLM in Utah intends to comply with the requirements of BLM's grazing regulations of August, 1995 (43 CFR part 4100). The Land Use Planning/NEPA Compliance Document explains how BLM in Utah will meet the requirements of the National Environmental Policy Act (NEPA) and Federal Land Use Planning and Management Act (FLPMA).

DATES: Comments will be accepted during the 60 day period commencing with publication of this Notice. Public meetings will be conducted in September, times and places to be announced through the media and direct mailings.

FOR FURTHER INFORMATION CONTACT: Deane Zeller, Team Leader, Bureau of Land Management, Utah State Office, 324 So. State Street, Salt Lake City, UT 84111–2303; phone (801) 539–4052; Fax (801) 539–4070; or dzeller@ut.blm.gov on the Internet.

SUPPLEMENTARY INFORMATION: The Utah BLM Resource Advisory Council and BLM in Utah has developed Draft Standards and Guidelines (S&G's) pursuant to the regulations approved by the Secretary in August, 1995. After the 60-day public comment period, Final S&G's will be developed which, when approved by the Secretary, will be State Director's Policy and will be used by all BLM offices in Utah as guidance for land use planning, developing rangeland improvement projects, issuing grazing permits and leases, and general grazing administration. Because the Draft S&G's are nearly identical to the ''minimum'' and ''fallbacks'' analyzed in the EIS for Rangeland Reform '94, no detailed NEPA analysis is performed at this time. Scoping by BLM could not identify issues or impacts different than those addressed in the nationwide EIS. NEPA analysis will be performed on implementation actions, such as land use plan amendments, preparation of new land use plans, permit issuance, rangeland improvements, etc. and prior to any decisions taken under these Standards and Guidelines.

Refer to the Land Use Plan/NEPA Compliance Record for additional information concerning planning and NEPA requirements.

G. William Lamb,

Utah State Director.

[FR Doc. 96–20240 Filed 8–7–96; 8:45 am]

BILLING CODE 4310–DQ–P

[CO–070–5101–CO12]

Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Notice of Scoping Meetings, on a Proposed Replacement Raw Water Pipeline in Mesa County, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Notice of Scoping Meetings, on a proposed Replacement Raw Water Pipeline in Western Colorado.

SUMMARY: Pursuant to section 102 (2) (C) of the National Environmental Policy Act of 1969 (NEPA), the Grand Junction Resource Area office, Grand Junction District, will be directing the preparation of a NEPA document. The NEPA document will be an EIS. The document will be prepared by a third party contractor, and will address impacts of the Plateau Creek Pipeline Replacement project proposed by the Ute Water Conservancy District (Ute Water). The project is a raw water conveyance system proposed on private and public lands in Mesa County, Colorado to replace a deteriorated and under sized pipeline currently approved under BLM ROW grant C 081282.

DATES: Written comments will be accepted until 4:00 PM, MST, on September 23, 1996. A public scoping meeting/workshop will be held from 3:00–7:00 PM on August 28, 1996, at the Two Rivers Convention Center, 159 Main Street, Grand Junction, Colorado.

ADDRESSES: Comments should be sent to the Grand Junction Area Manager, Bureau of Land Management, 2815 H Road, Grand Junction, CO 81506, ATTN: Plateau Creek Pipeline Replacement Project.

FOR FURTHER INFORMATION CONTACT: Dave Stevens, (970) 244–3009.

SUPPLEMENTARY INFORMATION: The existing Plateau Creek Pipeline is an essential part of the Ute Water system which provides water to more than 55,000 Grand Valley residents. The Ute Water service area includes most of the Grand Valley area surrounding the City of Grand Junction, Colorado, and extends from east of the Town of Palisade to within 5 miles of the Colorado-Utah stateline. Ute Water is a political subdivision of the State of

Colorado formed under the Water Conservancy Act of 1937, and is considered to be a quasi-municipal entity. In order for Ute Water to meet its commitment of providing a reliable, cost effective, high quality water source, replacement of the pipeline is necessary.

Water is conveyed via a 24-inch-diameter pipeline approximately 14 miles along Plateau Creek Canyon and adjacent to Interstate Highway 70 to Ute Water's treatment plant located on Rapid Creek, near the Town of Palisade. As of 1994, the pipeline was no longer able to provide an adequate flow rate to meet the peak day customer demands. The pipeline is presently subject to frequent breaks due to deteriorated pipe condition, and is unreliable due to its location within geologic hazards and stream erosion areas. The Bureau of Land Management and Ute Water had performed scoping to : (1) identify interested stakeholders and agencies, (2) define key issues, and (3) identify initial project alternatives for preparation of an Environmental Assessment. The initial filing of the Notice of Intent was on March 14, 1995. On the basis of subsequent information and comments provided to the BLM it was determined that issues and concerns would best be analyzed in an EIS.

During the initial scoping, 16 alternatives were developed. These include seven alternatives along the Plateau Creek corridor, three different alternatives involving use of water from nearby utilities, a Colorado River pump station alternative, two alternatives for supplying water from the Kannah Creek watershed, two alternatives for supplying water from the Whitewater Creek watershed, and a No Action alternative. Groundwater alternatives and conservation actions will be addressed in the EIS. Four of the initially considered alternatives, selected on the basis of screening criteria described in Section 404(b) of the Clean Water Act, are proposed for evaluation in the EIS. These are:

Alternative A—Replacement of the pipeline on an alignment parallel to Plateau Creek such that impacts to all resources are minimized.

Alternative B—Replacement of the pipeline parallel to Plateau Creek entirely within the existing state highway 65 and 330 rights-of-way.

Alternative C—Replacement of the pipeline in either alignment A or B with a smaller pipeline. This alternative includes provisions for construction of a booster station at the mouth of Plateau Canyon to be built at a future date to meet long-term demands.

Alternative D—A ''no federal action'' alternative. Major issues identified during the scoping include: (1) wetlands and riparian areas, (2) threatened and endangered species, (3) Prime and Unique Farmlands, (4) water depletion issues, and (5) impacts to State highway 65. Preliminary review by the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), and Army Corps of Engineers (ACOE) indicates that the anticipated impacts within the project area may be entirely mitigable, and may be limited to temporary disturbance.

The tentative project schedule is:

Begin Public Comment Period—August 1996
Complete Draft EIS—March 1997
Record of Decision—June 1997
Complete Final Design—April 1998
Begin Construction—June 1998

The BLM's scoping process will include: (1) Identification of additional issues to be addressed; (2) Identification of additional viable alternatives, (3) Notification of interested groups, individuals and agencies so that additional information concerning these issues can be obtained, and (4) Review of the information obtained to date.

The scoping process will be initiated by publication of this NOI in the Federal Register and issuance of a news release announcing the start of the process; letters of invitation to participate in the scoping process, and distribution of a scoping document describing the proposed action, alternatives and significant issues being considered is available upon request.

Mark T. Morse,

District Manager.

[FR Doc. 96–20175 Filed 8–07–96; 8:45 am]

BILLING CODE 4310–JB–P

[ID–990–1020–01]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council meeting locations and times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) council meeting of the Upper Snake River Districts Resource Advisory Council will be held as indicated below. The agenda includes a meeting to discuss historical and cultural issues, healthy rangeland standards and guidelines, and a presentation by the Watershed Advisory Groups and Basin Area Advisory Groups. There will also be a float trip on the Snake River and presentation by the Area Manager on the resources, issues and programs. All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meeting is listed below. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Debra Kovar at the Shoshone Resource Area Office, P. O. Box 2–B, Shoshone, ID, 83352, (208) 886–7201.

DATE AND TIME: Date is September 18–19, 1996, starts at 8:30 a.m. at the BLM Office, 1405 Hollipark Drive, Idaho Falls, Idaho. Public comments from 1:00 p.m.–1:30 p.m. on September 18, 1996.

SUPPLEMENTARY INFORMATION: The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands.

FOR FURTHER INFORMATION Contact Debra Kovar, Shoshone Resource Area Office, P. O. Box 2–B, Shoshone, ID 83352, (208) 886–7201.

Dated: July 31, 1996.

Howard Hedrick,

District Manager.

[FR Doc. 96–20232 Filed 8–7–96; 8:45 am]

BILLING CODE 4310–GG–P

[CA–050–1330–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given that the next meeting of the Ukiah Resource Advisory Council will be held on Wednesday, September 4 and Thursday, September 5, 1996 in Redding, California.

DATES: The meeting is scheduled for Wednesday, September 4 and Thursday, September 5, 1996.

SUPPLEMENTARY INFORMATION: The meeting on Wednesday will begin at 10:00 a.m. at the Redding Resource Area

Office conference room, 355 Hemsted Dr., Redding, CA 96002. It will begin with a raft trip on the Sacramento River looking at proposed exchange parcels and management of public lands managed by the Redding Resource Area along the Sacramento River. The agenda for the meeting Thursday begins at 8:00 a.m. with the election of the chair and vice-chair, an update on the Rangeland Standards and Guidelines process and updates from the Arcata, Clear Lake and Redding Area Managers on emphasis programs within the respective resource areas for which the Council would like to focus future agendas and actions.

The meeting is open to the public with a public comment period scheduled for 1:30–2:30 p.m., Thursday, September 5. Depending on the number of persons wishing to speak, a time limit may be imposed. Summary minutes of the meeting will be maintained at the Arcata, Clear Lake and Redding Resource Area Offices.

Due to the limitations of BLM owned equipment, anyone interested in participating in the raft tour will need to make their own arrangements.

FOR MORE INFORMATION CONTACT: Renee Snyder, Bureau of Land Management, Clear Lake Resource Area, 2550 N. State St., Ukiah, CA 95482, 707–468–4000.

Renee Snyder,

Clear Lake Resource Area Manager.

[FR Doc. 96–20234 Filed 8–7–96; 8:45 am]

BILLING CODE 4310–40–P

[ID–030–1110–04]

Land Use Plan Amendment: Medicine Lodge Resource Management Plan (RMP); Area of Critical Environmental Concern (ACEC) Designation; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare a Plan Amendment/EA for the Medicine Lodge RMP for the proposed Henrys Lake ACEC.

SUMMARY: Approximately 1,681 acres of public land listed below possess excellent fish and wildlife habitat as well as recreation opportunities. They are sufficiently unique to deserve special management attention obtained by an ACEC designation. This would provide sufficient priority status to help ensure funding for adequate multiple use management. Such special designations are made through the land use planning process required in the Federal Land Policy and Management Act (FLPMA). The intended effect of this action is to designate as an ACEC a composite of the BLM-administered parcels listed below and to identify in the RMP a proximal area containing non-BLM land on which ACEC designation would be instantly conferred in the event of future acquisition by BLM for that stated purpose.

DATES: Comments with information useful to formulate supplemental issues and alternatives for the environmental analysis are hereby requested and will be accepted until September 9, 1996.

FOR FURTHER INFORMATION CONTACT: Karen Rice, Bureau of Land Management, 1405 Hollipark Drive, Idaho Falls, ID 83401, (208) 524–7549.

SUPPLEMENTARY INFORMATION: Several scattered tracts of public land, collectively comprising approximately 1,681 acres more or less, possess important fish, wildlife, and threatened and endangered species habitat as well as recreation opportunities. All of the tracts are in the Henrys Lake Flat area. Several tracts are along the Henrys Lake shore. All are influenced by the resources and activity occurring in and around the lake. An additional 350 acres of BLM-administered land immediately north of Henrys Lake comprise the Henrys Lake Wilderness Study Area. The following public land in Fremont County, Idaho, will be analyzed for possible collective designation as the Henrys Lake Area ACEC:

Boise Meridian, Idaho

T. 15N., R. 42 E.,
Sec. 1, E½SE¼;
Sec. 12, NE¼NE¼, S½NE¼.
T. 16 N., R. 43 E.,
Sec. 31, Lot 3;
Sec. 32, N½NW¼;
Sec. 33, N½, N½NE¼SE¼, NW¼SW¼NE¼SE¼, E½SE¼NE¼SE¼, SW¼SE¼NE¼SE¼.
T. 15 N., R. 43 E.,
Sec. 3, SW¼NW¼, W½SW¼;
Sec. 4, Lots 2 to 4, inclusive;
Sec. 7, Lot 8;
Sec. 8, Lot 1;
Sec. 9, Lots 1, 3 and 4;
Sec. 13, SE¼NE¼;
Sec. 17, Lots 1 to 3, inclusive;
Sec. 18, Lot 5, NE¼SW¼, NE¼SE¼, SW¼SE¼;
Sec. 20, Lots 1 to 4, inclusive;
Sec. 21, Lot 3;
Sec. 27, Lots 4 and 5, SW¼SW¼.
T. 14 N., R. 43 E.,
Sec. 2, Lot 3.
T. 16 N., R. 44 E.,
Sec. 31, E½SW¼.
T. 15 N., R. 44 E,
Sec. 31, Lot 8.
T. 14 N., R. 44 E.,
Sec. 5, Lots 1 and 2;
Sec. 7, Lots 1 to 3, inclusive, Lot 8;
Sec. 17, SE¼SW¼, S½SE¼.

The primary issues envisioned are: (a) protection of special riparian areas, (b) protection of threatened and endangered species habitat, (c) land acquisition, and (d) recreation enhancement—especially for fishermen and hunters. The same planning criteria used for the original RMP will be used for this amendment. No meetings are planned at this time, however, all known affected parties and other interested parties will have opportunities to have input to this amendment. All of the tracts listed above are proposed for multiple use management in perpetuity.

Dated: July 31, 1996.

Joe Kraayenbrink,

Area Manager, Medicine Lodge Resource Area.

[FR Doc. 96–20233 Filed 8–7–96; 8:45 am]

BILLING CODE 4310–GG–P

Minerals Management Service

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: This notice announces plans for MMS to followup on recommendations from the International Platform and Pipeline Decommissioning Workshop and related studies.

DATES: MMS is inviting the public to comment on the decommissioning plans listed in this notice. MMS will consider all comments received by September 9, 1996.

ADDRESSES: Please mail or hand-carry your comments on this notice to the Department of the Interior; Minerals Management Service, Mail Stop 4700; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Sharon Buffington, Engineering and Standards Branch, telephone (703) 787–1600 or FAX (703) 787–1555.

SUPPLEMENTARY INFORMATION: On April 15–17, 1996, MMS jointly sponsored an International Platform and Pipeline Decommissioning Workshop in New Orleans, Louisiana.

The International Workshop drew over 475 attendees to discuss and make recommendations pertaining to policies, regulations, and related issues concerning:

- Decommissioning wells, platforms, and pipelines;
- Planning, managing, and maintaining habitats; and
- Removing facilities and clearing sites.

Working groups discussed current decommissioning practices and the recent National Research Council report entitled ''An Assessment of Techniques

for Removing Offshore Structures'' (Marine Board Study). Each working group made specific recommendations to improve offshore decommissioning. The proceedings of the International Workshop will be published in the fall of 1996.

The April 1996 International Workshop primarily focused on decommissioning activities in the Gulf of Mexico. However, MMS is also investigating opportunities to solicit views and recommendations concerning other offshore areas, including California.

MMS is discussing sponsoring an additional decommissioning workshop in California (the first California workshop was held in March 1994).

On a national level, MMS is working on an action plan to respond to recommendations made by the Marine Board Study and the general comments from the International Workshop.

Our general plan is to:

1. Improve our partnering and consultations on lease decommissioning issues—MMS is continuing to meet with the National Marine Fisheries Service (NMFS), fishing interests, the oil and gas industry, and other concerned members of the public. For example, we are discussing survey requirements for turtles and marine mammals, limitations of charge sizes and the number of detonations, and loss of nursery habitats. Recently, MMS met with NMFS and the oil and gas industry to discuss the impact of structure removals on endangered species.

MMS also plans to participate on relevant committees concerning international decommissioning policies of offshore oil and gas installations. One of the committees will develop guidelines for disposing of platforms.

2. Analyze our policies and regulations—

MMS is working with other agencies and sponsoring scientific studies to help us analyze our policies and regulations on decommissioning. In 1997, MMS plans to publish a Notice to Lessee and/or regulations to clarify MMS's policy on structure severing depths, partial facility removals, deep-water decommissioning, and site clearance requirements (including liability).

3. Conduct research and environmental studies—

MMS is conducting or will initiate research on the following topics in 1996 and early 1997:

- Turtle detection techniques,
- Fish and turtle scare devices,
- The effects of removal depths on soil transport,
- Improved well abandonment techniques,
- Ecological role of natural reefs and oil and gas production platforms on rocky reef fishes,
- Ecology of invertebrate communities on platform structures,
- Casing removal depths and removal methods,
- The effects of explosives on cement plugs,
- Deep-water pipeline abandonment procedures,
- Advanced explosive and nonexplosive removal techniques,
- Deep-water artificial reefs,
- Attraction vs. production in cold-water environments with ample hard-bottom,
- Habitat and water depth profile for fish kill from explosives,
- The effects of platform size on various fish,
- Forecasts of Federal platform removals,
- Offshore and onshore facility disposal methods, and
- An environmental and safety risk assessment for platform and pipeline decommissioning and removals.

MMS is also issuing a request for research proposals in the ''Commerce Business Daily'' concerning decommissioning research.

Our goal is to decommission wells, platforms, pipelines, and other structures to prevent or minimize environmental impacts and to ensure that a location is cleared of obstructions to other uses of the Outer Continental Shelf (OCS). MMS will achieve its goal by enhancing its partnerships with the other OCS stakeholders and by using science to evaluate the techniques, policies, and regulations associated with decommissioning.

Dated: July 29, 1996.

Lucy R. Querques,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 96–20231 Filed 8–7–96; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Concurrent Jurisdiction in Maryland

AGENCY: National Park Service, Interior.

ACTION: Notice of Concurrent Jurisdiction.

SUMMARY: Notice is hereby given that the State of Maryland has ceded to the National Park Service (NPS) concurrent legislative jurisdiction over lands and waters, owned, leased or administratively controlled by the NPS, within the boundaries of the 17 NPS units in the State of Maryland. This jurisdiction is in addition to those park areas already under concurrent jurisdiction in Maryland.

EFFECTIVE DATE: Concurrent legislative jurisdiction within NPS units became effective on June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Einar Olsen, Ranger Services Division, National Capitol Field Area, National Park Service, 1100 Ohio Drive, SW, Washington, DC 20242. Telephone 202–619–7065.

SUPPLEMENTARY INFORMATION: On June 19, 1996, pursuant to Annotated Code of Maryland Section 14–102, the Honorable Parris Glendening, Governor of the State of Maryland, ceded by agreement to the NPS concurrent legislative jurisdiction over lands and waters, owned, leased or administratively controlled by the NPS, within the boundaries of the 17 NPS units in the State of Maryland. Acting in accordance with the provisions of 16 U.S.C. 1a–3 and 40 U.S.C. 255, Secretary of the Interior Bruce Babbitt signed the agreement on January 4, 1995. In addition, the United States retrocedes and relinquishes exclusive jurisdiction over those NPS areas in the State where the United States had exclusive jurisdiction. The agreement became effective on the date of the last signature, June 20, 1996.

The 17 NPS Areas Include

Antietam National Battlefield (Washington County)
Assateague Island National Seashore (Worchester County)
Chesapeake and Ohio Canal National Historical Park (Montgomery, Frederick, Washington, and Allegheny Counties)
Clara Barton National Historic Site (Montgomery County)
Fort Foote Park (Prince George's County)
Fort McHenry National Monument and Historic Shrine (Baltimore City)
Fort Washington Park (Prince George's County)
Clara Barton Parkway (Montgomery County)
Hampton National Historical Site (Baltimore County)
Harmony Hall (Prince George's County)
Harpers Ferry National Historical Park (Washington County)
Monocacy National Battlefield (Frederick County)
Oxon Cove Park (Prince George's County)
Piscataway Park, including Colonial Farms and Marshall Hall (Prince George's County)
Piscataway Park (Charles County)
Thomas Stone National Historic Site (Charles County)

Baltimore-Washington Parkway (Anne Arundel County)

Dated: August 2, 1996.

Chris Andress,

Chief, Division of Ranger Activities, National Park Service.

[FR Doc. 96–20207 Filed 8–7–96; 8:45 am]

BILLING CODE 4310–70–P

Devils Tower National Monument, Wyoming

AGENCY: National Park Service, Interior.

ACTION: Notice—reconsideration of a portion of the Devils Tower Climbing Management Plan.

SUMMARY: The National Park Service (NPS) has decided to reconsider certain portions of the Climbing Management Plan for Devils Tower National Monument which address climbing limitations based on concerns about Indian religious and cultural values.

DATES: Written comments will be accepted through September 23, 1996.

ADDRESSES: Comments should be addressed to: Superintendent, Devils Tower National Monument, P.O. Box 10, Devils Tower, Wyoming 82714–0010.

FOR FURTHER INFORMATION CONTACT: Deborah O. Liggett, Superintendent, Devils Tower National Monument. Telephone 307–467–5283.

SUPPLEMENTARY INFORMATION:

Background

In March 1995, the NPS adopted a Final Climbing Management Plan (Plan) for Devils Tower National Monument. In general, the Plan states that Devils Tower will be managed primarily as a crack climbing site and that climbing will be managed taking into account the religious and cultural significance of Devils Tower as a site sacred to some Native Americans.

To this end, the Plan calls for technical rock climbers to voluntarily refrain from climbing Devils Tower during the culturally significant month of June. In addition, the Plan states that commercial use licenses for climbing will not allow commercially guided climbing during June (starting in 1996).

On May 24, 1996, Executive Order 13007 was issued by the President. It generally states that federal agencies with land management responsibilities, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, are to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and to avoid adversely affecting the physical integrity of sacred sites. The Executive Order supplements the protection afforded by the Religious Freedom Restoration Act of 1993 and the American Indian Religious Freedom Act Amendments of 1994.

On June 8, 1996, the United States District Court for the District of Wyoming issued a preliminary order in *Bear Lodge Multiple Use Association* v. *Babbitt*, C.A. No. 96–CV–0063D. The court's order enjoined the NPS from restricting commercial guide climbing activities during the month of June pending a final decision of the court. The order upheld the Plan's voluntary program to encourage climbers not to climb in the month of June.

In light of these circumstances, NPS has decided to reconsider those portions of the Plan which address climbing limitations based on concerns about Indian religious and cultural values. Pending the outcome of this reconsideration and in accordance with the court's order, the NPS will not enforce the Plan's requirements regarding commercial guide climbing in the month of June. Except with respect to commercial guide activities in the month of June, the Plan remains in full force and effect.

Through this notice, the public is asked to comment on the Plan's climbing limitations based on concerns about Indian religious and cultural values. Particularly, the public is asked to comment on appropriate means for the NPS at Devils Tower to comply with the President's Executive Order regarding Indian Sacred sites. NPS, upon consideration of all public comments received, will determine whether to continue the Plan or to modify it with respect to climbing limitations based on concerns about Indian religious and cultural values. It is expected that this reconsideration will be completed by December 1, 1996.

Copies of the Plan, the court's order and Executive Order 13007 will be made available upon request from Devils Tower National Monument.

Dated: August 2, 1996.

Chris Andress,

Chief, Division of Ranger Activities, National Park Service.

[FR Doc. 96–20208 Filed 8–7–96; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

Quarterly Status Report of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions that are new, modified, discontinued, or completed since the last publication of this notice on April 30, 1996. The February 5, 1996, notice should be used as a reference point to identify changes. The number in parenthesis corresponds to the number in the February 5, 1996, notice. This notice is one means in which the public is informed about contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the Federal Register and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of new releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Alonzo Knapp, Manager, Reclamation Law, Contract, and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–236–1061 extension 224.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, Apr. 13, 1987, Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations,

published in 47 FR 7763, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 1996. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior or, pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposal will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or area office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who request the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BCP)	Boulder Canyon Project.
(CAP)	Central Arizona Project.
(CUP)	Central Utah Project.
(CVP)	Central Valley Project.
(CRSP)	Colorado River Storage Project.
(D&MC)	Drainage and Minor Construction.
(FR)	Federal Register.
(IDD)	Irrigation and Drainage District.
(ID)	Irrigation District.
(M&I)	Municipal and Industrial.
(O&M)	Operation and Maintenance.
(P–SMBP)	Pick-Sloan Missouri Basin Program.
(R&B)	Rehabilitation and Betterment.
(SRPA)	Small Reclamation Projects Act.
(WCUA)	Water Conservation and Utilization Act.
(WD)	Water District.

The following contract actions are either new, modified, discontinued, or completed in the Bureau of Reclamation since the April 30, 1996, Federal Register notice.

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Boise, Idaho 83706–1234, telephone 208–378–5346.

1. New Contract Actions:

(21) Baker Valley Irrigation District, Baker Project, Oregon: Warren Act contract with cost of service charge to allow for use of project facilities to store nonproject water.

2. Contract Actions Completed:

(19) Contracts for 1996 have been executed with Stanfield ID and Westland ID.

Mid Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5030.

1. New Contract Actions:

(20) Solano County Water Agency and Solano Irrigation District, Solano Project, California: Contract to transfer responsibility for operation and maintenance of Monticello Dam, Putah Diversion Dam, Headworks of Putah South Canal, and Parshall Flume at Milepost 0.18 of Putah South Canal to Solano Irrigation District and provide that the Solano County Water Agency shall provide the funds necessary for operation and maintenance of the facilities.

2. Contract Action Completed:

(12) Pershing County Water Conservation District, Nevada: Repayment contract for Safety of Dams work on Rye Patch Dam. Action: Contract executed February 29, 1996.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

1. New Contract Actions:

(49) Pacific Gas and Electric Company, BCP, California: Short-term delivery contract for surplus and/or unused apportionment Colorado River water for domestic and industrial use at the Topock Compressor Station, California.

(50) Mr. Don Schuler, BCP, California: Proposed short-term delivery contract for surplus and/or unused apportionment Colorado River water for domestic and industrial use on 18 lots of recreational homes in California.

(51) Salt River Pima Maricopa Indian Community, CAP, Arizona: O&M Contract for their water distribution system.

(52) Salt River Project Agricultural Improvement and Power District, Salt River Project, Arizona: Funding Agreement for Safety of Dams construction activities at Horse Mesa Dam and Mormon Flat Dam.

(53) U.S. Army Proving Ground, BCP, Arizona: Proposed permanent allocation of 1,883 acre-feet of Colorado River water.

(54) Arizona Public Service, BCP, Arizona: Colorado River water diversion contract for 1,500 a.f. for domestic use at Yucca Power Plant, near Yuma, Arizona.

(55) Arizona State Lands, BCP, Arizona: Approval of assignment of water delivery contract with Lakeview City for 400 a.f. of Colorado River water for domestic use.

(56) Murphy Broadcasting, Inc., BCP, California: Change of use and assignment of the Schroeder's PPR entitlement for 12.0068 a.f.

(57) Brooke Water L.L.C., CAP, Arizona: Approval of assignment of Consolidated Water Utilities LTD M&I water subcontract for 3,932 a.f. of CAP water.

2. Contract Actions Modified:

(43) County of San Bernardino, San Savaine Creek Project, California: Repayment Contract is in negotiation, covering $20,079,000 reimbursable costs and a Grant for $27,371,000. Total project cost is $81,171,000.

3. Contract Actions Deleted:

(8 and 26) Kent Sea Farms, Yuma, AZ: Contract to divert and return 32,000 acre-feet of water per year from ad to, respectively, the Main Outlet Drain Extension for one or more fish farms.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–4419.

1. New Contract Actions:

(26) Department of Energy, San Juan-Chama Project, New Mexico. Reassignment of rights under Contract No. 7–07–51–X0883 from the Department of Energy to the County of Los Alamos for 1,200 acre-feet of San Juan-Chama Project water to be used for municipal, commercial, residential, and scientific purposes.

(27) City of Albuquerque, San Juan-Chama Project, New Mexico. Amend water storage Contract No. 3–CS–53–01510 to exempt the City of Albuquerque from acreage limitation and reporting provisions.

(28) The State of Colorado, the State of New Mexico, the Southern Ute Indian Tribe, the Ute Mountain Ute Tribe, and certain other entities that executed the June 30, 1986 ''Agreement in Principle Concerning the Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas-La Plata Project Cost Sharing'': Amendment to the terms of that cost sharing agreement in order for that agreement to conform with Phase I, Stage A of the project. The proposed amendment would allow cost sharing contributions from Colorado non-federal entities to be credited to the municipal and industrial repayment obligation on an interim basis, rather than to the Colorado non-Indian irrigation.

2. Contract Actions Modified:

(9) The National Park Service, Colorado Water Conservation Board, Wayne N. Aspinall Unit, CRSP, Colorado: Contract to provide specific flow patterns in the Gunnison River through the Black Canyon of the Gunnison National Monument.

(10) Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Long-term water service contract for municipal, domestic, and irrigation use.

3. Contract Actions Deleted:

(12) Collbran Conservancy District, Collbran project, Colorado: Amendatory contract defining priority of use of project water.

(13) U.S. Fish and Wildlife Service, North Fork Water Conservancy District, Paonia Project, Colorado: Contract for releases to support endangered fish in the Gunnison and Colorado Rivers: water available for releases will come from reserve capacity held by Reclamation as a sediment pool, estimated to be 1,800 acre-feet annually; contract will define the terms and conditions associated with delivery of this water.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730.

1. Contract Actions Modified:

(11) City of Rapid City and Rapid Valley Water Conservancy District, Rapid Valley Unit, P–SMBP, South Dakota: Contract renewal for up to 55,000 acre-feet of storage capacity in Pactola Reservoir.

2. Contract Actions Completed:

(4) Cedar Bluff Irrigation District No. 6, Cedar Bluff Unit, P–SMBP, Kansas: In accordance with Section 901 of Public law 102–575, 106 Stat. 4600, terminate the Cedar Bluff Irrigation District's repayment contract and transfer use of the District's portion of the reservoir storage capacity to the State of Kansas for fish, wildlife, recreation, and other purposes.

(15) Mountain Park Master Conservancy District, Mountain Park Project, Oklahoma: Pursuant to Title IV of Pub. L. 103–434, amend the District's contract to reallocate the project costs to reflect the environmental activities authorized by Title IV and provide for a discounted prepayment of all or a portion of the reimbursable costs allocated for its M&I water supply.

(17) Canadian River Municipal Water Authority, Canadian River Project, Texas: Contract for the United States to pay up to 33 percent of the costs of the salinity control project. These costs are to be used for the design and construction management of the project facilities.

3. Contract Actions Discontinued:

(7) Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work.

(8) Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs of the construction of the Sulphur, Oklahoma, pipeline and pumping plant (if constructed).

(12) Belle Fourche Irrigation District, Belle Fourche Unit, P–SMBP, South Dakota: Amendment to Contract No. 5–07–60–WR170. The amendment will initiate the repayment period for the rehabilitation and betterment work to begin June 30, 1996. The amendment will also provide an additional $10.5 million for additional rehabilitation and betterment work.

Dated: July 18, 1996.

Wayne O. Deason,

Assistant Director, Program Analysis Office.

[FR Doc. 96–20230 Filed 8–7–96; 8:45 am]

BILLING CODE 4310–94–P

Draft Environmental Impact Report/ Environmental Impact Statement on the Stanislaus River Basin and Calaveras River Water Use Program (Also Known as the American River/ Folsom South Conjunctive Use Optimization Study)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of cancellation.

SUMMARY: The Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR) are canceling plans to continue work under the National Environmental Policy Act and the California Environmental Quality Act on the Environmental Impact Report/ Environmental Impact Statement (EIR/ EIS) for the Stanislaus River Basin and Calaveras River Water Use Program. DWR terminated participation in this joint EIR/EIS since the Program would not likely result in any increased yield to the State Water Project. The notice of intent was published in 55 FR 15291, Apr. 23, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. David Lewis, Mid-Pacific Region, Bureau of Reclamation, Attention: MP–700, 2800 Cottage Way, Sacramento, CA 95825–1898; telephone: (916) 979–2336.

SUPPLEMENTARY INFORMATION: The Program was a joint study by Reclamation and DWR to formulate a plan for increasing and optimizing water supply, and for the long-term use of water supply for the area between the Stanislaus and Calaveras Rivers. In terminating their participation, DWR indicated the Program would not likely result in any increased yield to the State Water Project. Interim water supplies once available for use outside the study area appear to now be needed to meet water quality, fish, and wildlife requirements as required by both the Central Valley Project Improvement Act and the December 1994 Bay-Delta Accord. Owing to the ongoing Reclamation activity entitled New Melones Water Management Study, Short-term, it is advantageous for Reclamation to write a transition report documenting study activities. The New Melones Water Management Study, Short-Term, is developing an interim plan of operation and suitable method of allocation to manage available water supplies in the Stanislaus River Basin until either the California State Water Resources Control Board completes the water rights phase of the Bay-Delta hearings or until a long-term operation plan for New Melones Reservoir is negotiated among the stakeholders. The New Melones Water Management

Study, Long-Term, is the second phase and is intended to develop a long-term operation strategy for New Melones Reservoir. This study will negotiate a consensus among stakeholders concerning New Melones Reservoir long-term operation. If it is determined that upon completion of both the New Melones Water Management Study, Short-Term and Long-Term, there are still unmet demands, a new planning study will be developed to address these needs.

Roger Patterson,

Regional Director.

[FR Doc. 96–20177 Filed 8–7–96; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 25, 1996, Allen, Dovensky & Company, Inc., 3529 Lincoln Highway, Thorndale, Pennsylvania 19372, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of morphine (9300) a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture morphine for the purpose of deuterium labeled internal standards for distribution to analytical laboratories.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 7, 1996.

Dated: July 31, 1996.

Gene R. Haislip,

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

[FR Doc. 96–20161 Filed 8–7–96; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on June 27, 1996, B.I. Chemical, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Acetylmethadol (9601)	I
Phenylacetone (8501)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Thebaine (9333)	II

The firm intends to import the listed controlled substances to sell to its customers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC., 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 31, 1996.

Gene R. Haislip,

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

[FR Doc. 96–20162 Filed 8–7–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 16, 1996, U.S. Drug Testing, Inc., 10410 Trademark Street, Rancho Cucamonga, California 91730, made application, which was received for processing on June 20, 1996, to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Tetrahydrocannabinols (7370)	I
Heroin (9200)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Benzoylecgonine (9180)	II
Morphine	II

The firm plans to manufacture small quantities of the listed controlled substances to make drug test kits.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 7, 1996.

Dated: July 31, 1996.

Gene R. Haislip,

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

[FR Doc. 96–20163 Filed 8–7–96; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 96–11]

Gerald E. Vangsgard, M.D.; Revocation of Registration

On November 27, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Gerald Vangsgard, M.D., (Respondent), of Carmel, California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AY0018970, and deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f), for the reason that on December 28, 1993, the California Medical Board (Board) issued a Decision which prohibited him from practicing medicine until such time as he passed required examinations, which he had not done.

The Respondent filed a timely request for a hearing, and the matter was docketed before Administrator Law Judge Mary Ellen Bittner. However, prior to the hearing, the Government filed a Motion for Summary Disposition on January 17, 1996, noting that the Respondent was unauthorized to practice medicine in California until requirements levied by an order of the Board had been met. Attached to the motion was a copy of the Board's accusations, a copy of a Stipulation and Waiver signed by the Respondent on July 2, 1993, and a copy of the Board's order dated December 28, 1993, which adopted the Stipulation and Waiver as its decision. The Respondent was afforded an opportunity to respond to the Government's motion on or before February 2, 1996. The Respondent did not file a response specifically addressing the Government's motion, but the Respondent's physician submitted a letter stating that the Respondent planned to meet the Board's requirements in the spring of 1996. However, the Respondent has not denied that he is not authorized to handle controlled substances in the State of California.

On February 15, 1996, Judge Bittner issued her Opinion and Recommended Decision, (1) Finding that the Respondent had not taken and passed the required examinations and therefore, lacked authorization to practice medicine in California; (2) finding that it was reasonable to infer, and that the Respondent had not denied, that he thus lacked state authorization to handle controlled substances; (3) granting the Government's Motion for Summary Disposition; and (3) recommending that the Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her decision, and on March 15, 1996, Judge Bittner transmitted the record of these proceedings and her opinion to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

Specifically, the Deputy Administrator finds that the Respondent signed a Stipulation and Waiver on July 2, 1993, in response to the Board's accusation filed against the Respondent on September 16, 1992. In relevant part, the Stipulation and Waiver ordered the Respondent to pass an oral and a written examination, and prohibited him from practicing medicine until he met this requirement and received written notification from the Board. Further, the Respondent was ordered to undergo a medical and a psychiatric evaluation, and he was not to engage in the practice of medicine until he was notified in writing by the Division of its determination that the Respondent is medically and mentally fit to practice medicine. On December 28, 1993, the Board adopted the Stipulation and Waiver.

In the Motion for Summary Disposition, the Government asserted that it did not have any indication that the Respondent had taken and passed the required examinations, or that the Board's restrictions had been removed. The Deputy Administrator finds that the Respondent has not submitted any information or evidence to the contrary, and concludes that the Respondent consequently is not authorized to practice medicine or to handle controlled substances in the State of California.

The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 823(f) (authorizing the Attorney General to register a practitioner to dispense controlled substances only if the applicant is authorized to dispense controlled substances under the laws of the state he or she practices); 802(21) (defining ''practitioner'' as one authorized by the United States or the state in which he or she practices to handle controlled substances in the course of professional practice or research). This prerequisite has been consistently upheld. See Dominick A. Ricci, M.D., 58 FR 51,104 (1993); James H. Nickens, M.D., 57 FR 59,847 (1992); Roy E. Hardman, M.D., 57 FR 49,195 (1992); Myong S. Yi, M.D., 54 FR 30,618 (1989); Bobby Watts, M.D., 53 FR 11,919 (1988).

Here, it is clear that the Respondent is not currently authorized to practice medicine in California. The Deputy Administrator agrees with Judge Bittner's finding that ''[i]t is therefore reasonable to infer, and Respondent does not deny, that because he is not authorized to practice medicine, he is also not authorized to handle controlled substances.'' Likewise, since the Respondent lacks state authority to handle controlled substances, DEA lacks authority to continue the Respondent's registration.

Judge Bittner also properly granted the Government's motion for summary disposition. Here, the parties did not dispute that the Respondent was unauthorized to handle controlled substances in California, the state in which he proposed to conduct his practice. Therefore, it is well-settled that when no question of fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory, Dominick A. Ricci, M.D., 58 FR at 51,104; see also Phillip E. Kirk, M.D., 48 FR 32,887 (1983), aff'd sub nom Kirk V. Mullen, 749 F2d 297 (6th Cir. 1984); Alfred Tennyson Smurthwaite, M.D., 43 FR 11,873 (1978); NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, 549 F.2d 634 (9th Cir. 1977).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AY0018970, previously issued to Gerald Vangsgard, M.D., be, and it hereby is, revoked, and any pending application for renewal of such registration is hereby denied. This order is effective September 9, 1996.

Dated: July 31, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–20159 Filed 8–7–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary; Submission for OMB Review; Comment Request

August 1, 1996.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

* 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;

* 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;

* enhance the quality, utility, and clarity of the information to be collected; and

* 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.

Agency: Employment Standards Administration.

Title: FECA Medical Report Forms.

OMB Number: 1215–0103.

Agency Number: CA–7, CA–8, CA–16b, CA–17b, CA–20, CA–20a, CA–1090, CA–13–3, CA–1305, CA–1306, CA–1314, CA–1316, CA–1331, CA–1332, CA–1336, OWCP–5A, OWCP–5b, and OWCP–5c.

Frequency: As needed.

Affected Public: Individuals or households; Business or other for-profit; Federal Government.

Form	Total respondents	Responses	Reponse time per respondent (minutes)	Burden hours
CA–7	200	200	20	67
CA–8	200	200	5	17
CA–16B	157,000	157,000	5	13,083
CA–17B	134,000	134,000	5	11,167
CA–20	92,000	92,000	5	7,667
CA–20a	20,000	20,000	5	1,667
CA–1090	800	800	5	67
CA–1303	4,000	4,000	20	1,333
CA–1305	80	80	20	27
CA–1306	25	25	10	4
CA–1314	1,200	1,200	20	400
CA–1316	1,100	1,100	10	183
CA–1331	750	750	5	63
CA–1332	1,500	1,500	30	750
CA–1336	2,000	2,000	5	167
OWCP–5a	7,000	7,000	15	1,750
OWCP–5b	5,000	5,000	15	1,250
OWCP–5c	15,000	15,000	15	3,750
Totals	441,855	441,855	.....	43,412

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $154,649.

Description: The information collected by these forms is used by claims examiners to determine eligibility for and the computation of benefits. The claim forms with supporting medical evidence are used to determine whether or not the claimant is entitled to compensation for disability for work or permanent impairment of a scheduled member; the appropriate period, rate of pay, compensation rate, and any concurrent employment or dual benefits, and third-party credit. Without the requested information, an eligible beneficiary could be denied benefits, or benefits could be authorized at an incorrect rate, resulting in an underpayment or overpayment of compensation.

Agency: Mine Safety Health Administration.

Title: Quarterly Mine Employment and Coal Production Report.

OMB Number: 1219–0006.

Agency Number: 7000–2.

Frequency: Quarterly.

Affected Public: Business or other for-profit.

Number of Respondents: 83,594.

Estimated Time Per Respondent: 34 minutes.

Total Burden Hours: 46,680.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $27,000.

Description: Requires mine operators to report to MSHA quarterly employment levels and coal production. Employment and production data when correlated with accident and injury data provide information for making

decisions on improving safety and health enforcement programs, focusing education and training efforts, and establishing priorities in technical assistance activities in mine safety and health.

Agency: Mine Safety Health Administration.

Title: Quarterly Mine Employment and Coal Production Report.

OMB Number: 1219–0007.

Agency Number: 7000–1.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 56,759.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 28,380.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $23,200.

Description: Mine operators are required to submit form 7000–1 to the Mine Safety Health Administration to report on accidents, injuries, and illnesses at their mines shortly after an accident or injury has occurred or a work-related illness has been identified. The use of the form provides for uniform information gathering.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–20185 Filed 8–7–96; 8:45 am]

BILLING CODE 4510–27–M, 4510–43–M

NATIONAL SCIENCE FOUNDATION

Fellowship Applications and Award Forms; Submission for OMB Review: comment request

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) will publish periodic summaries of proposed projects. Such a notice was published at Federal Register 28904, Dated June 6, 1996. No public comments were received.

The materials are now being sent to OMB for review. Send any written comments to Desk Officer: OMB No. 3145–0023, OIRA, Office of Management and Budget, Washington, DC 20503. Comments should be received by September 6, 1996.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed projects. Section 10 of the National Science Foundation Act, as amended, states that ''The Foundation is authorized to award, within the limits of funds made available * * * scholarships and graduate fellowships for scientific study or scientific work in the mathematical, physical, medical, biological, engineering, social, and other sciences at appropriate nonprofit American or nonprofit foreign institutions selected by the recipient of such aid, for stated periods of time.''

The Foundation Fellowship Programs are designed to meet the following objectives:

- To assure that some of the Nation's most talented students in the sciences obtain the education necessary to become creative and productive scientific researchers.
- To train or upgrade advanced scientific personnel to enhance their abilities as teachers and researchers.
- To promote graduate education the sciences, mathematics, and engineering at institutions that have traditionally served ethnic minorities.
- To encourage pursuit of advanced science degrees by students who are members of ethnic groups traditionally under-represented in the Nation's advanced science personnel pool.

The Foundations has the following Fellowship award programs:

NSF Graduate Research Fellowships
  Graduate Fellowships
  Minority Graduate Fellowships
  Women in Engineering and Computer and Information Science
Earth Sciences Postdoctoral Research Fellowships
Postdoctoral Research Fellowships in Chemistry
Mathematical Sciences Postdoctoral Research Fellowships
NSF-NATO Postdoctoral Fellowships in Science and Engineering
Minority Postdoctoral Research Fellowships and Supporting Activities
Postdoctoral Research Fellowships in Biosciences Related to the Environment
Postdoctoral Research Fellowships in Molecular Evolution
Ridge Inter-Disciplinary Global Experiments
Advanced Study Institute Travel Awards
International Opportunities for Scientists and Engineers
  Japan Research Fellows
  North American Research Fellows
  International Research Fellows
Ethics and Values Fellowship Awards

These are annual award programs with application deadlines varying according to the fellowship program. Public burden may also vary according to program, however it is estimated that each submission is averaged to be 12 hours per respondent.

Dated: August 5, 1996.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 96–20258 Filed 8–7–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 150–00004 License No. CA 2799–80 EA 96–065]

Industrial Marine Testing Laboratories, Inc.; Order Imposing Civil Monetary Penalty

I

Industrial Marine Testing Laboratories, Inc. (Industrial Marine or Licensee) is the holder of Radioactive Materials License No. CA 2799–80 issued by the state of California, an Agreement State, on December 27, 1993. The license authorizes the Licensee to possess and use sealed radioactive sources in conducting industrial radiography at specific locations in San Diego, California and at temporary jobsites in areas not under exclusive federal jurisdiction throughout the state of California in accordance with the conditions specified therein. Pursuant to NRC practice, the Licensee may conduct the same activities in areas under NRC jurisdiction provided that the NRC is notified and the provisions of 10 CFR 150.20 are followed. Otherwise, an NRC license is required for such activities in accordance with the requirements of 10 CFR 30.3.

II

An inspection and investigation of the Licensee's activities was conducted during June 13, 1995, through February 15, 1996. The results of the inspection and investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated June 6, 1996. The Notice stated the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated July 1, 1996. In its response, the Licensee admitted the

violation but requested further mitigation of the civil penalty, asserting that imposition of the civil penalty would hurt Industrial Marine financially.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of $1,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

Whether on the basis of the violation admitted by the Licensee, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 31st day of July 1996.

Joseph R. Gray,

Acting Director, Office of Enforcement.

Appendix

Evaluation and Conclusion

On June 6, 1996, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection and investigation. Industrial Marine Testing Laboratories, Inc. (Industrial Marine or Licensee) responded to the Notice on July 1, 1996. The licensee admitted the violation but requested mitigation on grounds that the imposition of the civil penalty would hurt the company financially. The NRC's evaluation and conclusion regarding the licensee's requests are as follows:

Summary of Licensee's Request for Mitigation

In its July 1, 1996, ''Answer to a Notice of Violation,'' the Licensee stated that it is a very small business and that although the NRC has already taken that into consideration, the imposition of the proposed civil penalty in the amount of $1,500 would hurt the company financially. The Licensee did not want to imply that the NRC was being unfair in arriving at the amount, but noted that it was financial duress that helped to create the problem.

NRC Evaluation of Licensee's Request for Mitigation

The base civil penalty for the uncontested Severity Level III violation is $5,000. However, considering the circumstances, including the fact that Industrial Marine is a small business, the NRC exercised discretion and reduced the civil penalty to $1,500. The reduced civil penalty is roughly equivalent to the fees the Licensee would have paid to remain in compliance.

In cases such as this, an NRC enforcement action is used as a deterrent to emphasize the importance of compliance with requirements. In this regard, further reduction of the penalty would do little to emphasize the importance of compliance with the involved requirements.

However, NRC's Enforcement Policy also provides, ''... it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities.''

Therefore, to balance these considerations and to be responsive to the potential financial hardship to the licensee, rather than mitigating the civil penalty the licensee should be permitted to pay it in monthly installments.

NRC Conclusion

The NRC has concluded that the violation occurred as stated and that Industrial Marine did not provide an adequate basis for further reduction of the civil penalty. Consequently, the proposed civil penalty in the amount of $1,500 should be imposed. However, to be responsive to the potential for further financial hardship, the NRC should permit Industrial Marine to pay the civil penalty in monthly installments.

[FR Doc. 96–20213 Filed 8–8–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–390]

Watts Bar Nuclear Plant, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NFP–90, issued to the Tennessee Valley Authority (TVA or the licensee) for operation of the Watts Bar Nuclear Plant (WBN), Unit 1 located in Rhea County, Tennessee.

The proposed amendment would change Technical Specification (TS) 3.6.12 to allow a one-time extension of the three month surveillance requirement (SR) for the ice condenser lower inlet doors to coincide with the plant mid-cycle outage. Specifically, this proposed amendment would add notes to SRs 3.6.12.3, 3.6.12.4, and 3.6.12.5 and their respective bases to state, ''The 3-month performance due September 9, 1996, (per SR 3.0.2) may be extended until October 21, 1996.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a

margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The four previous performances of SR 3.6.12.3 and 3.6.12.4 have all been successful. The most recent performance of SR 3.6.12.5 on May 17, 1996, was successful. However, because a previous performance of SR 3.6.12.5 on May 13, 1996, had identified several doors which did not pass portions of the surveillance, the results of the May 13, 1996, performance were reviewed in detail.

Conduct of the May 13, 1996, surveillance yielded initial ''as-found'' test results which indicate that 15 of the 48 lower inlet doors did not meet the 40 degrees open position opening torque 13 by an average of 2.8 percent, one by 13 percent and one by 23 percent). This has been evaluated by TVA and Westinghouse as to the potential effect on current design basis analysis. The review also addressed three doors which exceeded the overall friction criteria by 0.3 percent. The evaluation consisted of a review of the Subcompartment analysis, Long-Term LOCA [loss-of-coolant accident] Containment analysis, Long-Term MSLB [main steamline break] Containment analysis, Maximum Reverse Differential Pressure analysis, and Deck Bypass. The result of these analyses, indicates that the ''as-found'' deviations in ice condenser inlet door opening performance are still bounded by the current licensing design basis containment related accident analysis. In addition, since the ''as-left'' conditions were within the TS requirements and a subsequent performance on May 17, 1996, did not identify any deficiencies, justification exists to allow extension of the 3-month surveillance for the ice condenser lower inlet doors until the plant mid-cycle outage scheduled for October 1996.

Other considerations to support this justification for surveillance extension, are the initial ice mass relative to TS requirements in the WBN ice condenser, and the probability of core damaging small break LOCAs requiring Ice Condenser function during the extension period.

In a supplemental letter dated April 15, 1996, regarding WBN's Ice Bed and Flow Channel inspection Surveillance Frequencies amendment request, TVA documented the initial ice loading for the WBN unit ice condenser was 2,877,685 lbs. This value is 473,885 lbs more (about 20 percent) than the currently approved TS value of 2,403,800 lbs provided for an 18-month surveillance interval, and 752,685 lbs greater (about 31 percent) than the safety analysis value of 2,125,000 lbs. For the LBLOCA [larege break loss-of-coolant accident] the doors would have been expected to open as designed, considering that all surveillances since fuel load have indicated that all doors passed the (SR) 3.6.12.4 test requiring an opening torque of 675 inch lbs.

For the small break LOCA, door opening torque at the 40 degrees open position becomes important to avoid steam maldistribution effects. As stated previously, one surveillance had two doors that did not meet the torque criteria for the mid position by 13 percent and 23 percent, respectively (one of two bay 3 doors and one of two bay 5 doors). Several doors also exceeded the criteria by an average of only 2.8 percent. Neglecting these minor exceedances, and conservatively assuming both bay 3 and both bay 5 doors did not open, only 162 ice baskets representing 240,442 lbs of ice would have been unavailable during the event. This is considerably less than the excess margin of ice above the TS requirement for the more challenging large break LOCA. This margin would allow for the failure of 8 doors associated with 4 additional bays. In addition, total blockage would not be likely since the steam/air mixture would reach the impacted bays from adjacent bays or via the operational doors in the two bays of interest. Therefore, it is concluded that the exceedances observed were not significant for the small break LOCA.

Another consideration for surveillance interval extension, is the likelihood of the need for the tested components during the period of the extension. In order to quantify the potential for a SBLOCA [small break loss-of-coolant accident] occurring during the 42 day period of time being requested for the extension of the 3-month surveillance interval, the probability of selected initiating events resulting in core damage occurring during the period was evaluated. During the 42-day period, the probability of small LOCAs resulting core damage was 1.3E–06, and the probability of small break LOCAs requiring ice condenser function was 3.3E–03. Therefore, operation of the facility in accordance with the proposed amendment (extension of the 3-month surveillance for the ice condenser lower inlet doors until the plant mid-cycle outage scheduled for October 1996), when considering the magnitude of the deviations observed in the May 13, 1996, surveillance testing, the sensitivity to the containment related analysis, and other physical/technical considerations discussed in the preceding text, would not involve a significant increase in the probability of an accident previously evaluated nor their respective consequences.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed extension of the surveillance interval affects only the operability confidence associated with the lower ice doors. It has no impact on systems or components, the failure of which could initiate a new design basis accident. It is concluded, therefore, that no new or different kind of accident from any accident previously evaluated is created by the proposed amendment.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in margin of safety.

The preceding text (No significant Hazards Consideration Determination questions 1 & 2) covers TVA's evaluation of test data from the May 13, 1996, surveillance. This evaluation addresses the associated LOCAs requiring the ice condenser function, and the comparison of the initial WBN ice condenser ice loading versus maximum potential loss of ice bed usage. This discussion is applicable to the review to determine if a significant reduction in margin of safety will occur with operation of the WBN facility in accordance with the proposed amendment.

This review determined that there would have been essentially no unavailability of the lower inlet doors for a LBLOCA. For the conditions found, the current TS ice mass of 2,403,800 lbs would have still been met, with the margin between TS and design basis ice mass of 2,125,000 lbs still maintained. For smaller breaks, the additional ice would more than make up for any maldistribution caused by any friction increase in the doors.

A Westinghouse evaluation of the deficiencies identified during the May 13, 1996, surveillance performance indicates that substantial margin exists for the licensing basis subcompartment analysis, Long-Term LOCA Containment Integrity analysis, Long-Term MSLB Containment Integrity analysis, Maximum Reverse Differential Pressure analysis, and concludes that the current licensing analyses remain bounding even without the immediate correction and subsequent reverification on May 17, 1996. Therefore, the proposed amendment would not result in a significant reduction in the margin of safety.

In order to quantify the potential for a SBLOCA during the period of time being requested for extension of the 3-month surveillance interval, the probability of selected initiating events which result in core damage occurring during the period was evaluated. For the probability of selected small break LOCAs resulting in core damage, the probability was 1.3E–06 and for probability of a small break LOCA was 3.3E–03. These event probabilities are small enough to conclude that the margin of safety has not been decreased by the proposed amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license

amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 9, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mr. Frederick J. Hebdon: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Council, Tennessee Valley Authority, ET 10H, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 31, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee.

Dated at Rockville, Maryland, this 2nd day of August 1996.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–20214 Filed 8–7–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Heritage Media Corporation, Class A Common Stock, $.01 Par Value) File No. 1–10015

Heritage Media Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, it has listed the Security with the New York Stock Exchange, Inc. (''NYSE''). In making the decision to withdraw the Security from listing on the Amex, the Company considered the growth of the Company's business and operations and the increase in the market value of the Company's Security.

Any interested person may, on or before August 23, 1996, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–20180 Filed 8–7–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37509; File No. SR–CBOE–96–44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Options on the Goldman Sachs Technology Composite Sub-Indexes

July 31, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on July 2, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the 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 CBOE proposes to list and trade options on six different narrow-based indexes, each of which is composed of components from the GSTI Composite Index (''GSTI Composite Index'').[1] The six sub-indexes are: the GSTI Internet Index (''Internet Index''), the GSTI Software Index (''Software Index''), the GSTI Semiconductor Index (''Semiconductor Index''), the GSTI Hardware Index (''Hardware Index''), the GSTI Services Index (''Services Index''), and the GSTI Multimedia Networking Index (''Multimedia Index'') (collectively ''GSTI Sub-Indexes''). Each of the GSTI Sub-Indexes are cash-settled, modified capitalization-weighted indexes with European-style exercise.

[1] Concurrent with this proposal, CBOE has filed for approval to list and trade options on the Goldman Sachs Technology Composite Index, a broad-based, capitalization weighted index composed of the universe of technology-related company stocks meeting certain objective criteria. *See* SR–CBOE–96–43. A list of components for the Composite Index or any of the Sub-Indexes is available at the Commission or CBOE.

The text of the proposed rule change in available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style index options on six sub-indexes of the GSTI Composite Index. Each of the GSTI Sub-Indexes is modified-capitalization weighted and is composed of components of the GSTI Composite Index. Goldman, Sachs & Co. has designated a GSTI Committee (''Committee'') to oversee the selection of components for the GSTI Sub-Indexes, as discussed below.

Index Design. The Committee selects and assigns stocks to a sub-index based upon relevant qualitative criteria. Any stock in a sub-index must appear in the Composite Index. Stocks may be represented in one or more GSTI Sub-Indexes, however, not all GSTI Composite Index components necessarily will be assigned to a GSTI Sub-Index. All of the components of the index currently trade on the New York Stock Exchange (''NYSE''), the American Stock Exchange (''NYSE''), the American Stock Exchange or are National Market System securities traded on Nasdaq.

Calculation. The Index will be calculated by CBOE or a designee of Goldman Sachs on a real-time basis using last-sale prices and will be disseminated every 15 seconds by CBOE. If a component security is not currently being traded on its primary market, the most recent price at which the security traded on such market will be used in the Index calculation.

The Index is calculated on a ''modified capitalization-weighted'' method. This method is a hybrid between equal weighting (which may

pose liquidity concerns for smaller-cap stocks) and normal capitalization weighting (which may result in two or three stocks dominating the index's performance). Under the method employed for each of the sub-indexes, the maximum weight for the largest stock in the sub-index will be set to 25% on the semiannual rebalancing date. The maximum weight for the second largest stock will be set to 20% and the maximum weight for the third largest stock and any stock thereafter will be set to 15% on the rebalancing date. The weight of all the remaining sub-index stocks shall be market capitalization weighted. Thus, the weights of these remaining stocks are not ''capped''.

For stocks which are not ''capped,'' index shares will equal the company's outstanding common shares. For stocks which are capped, index shares will equal its maximum weight, multiplied by the adjusted total market capitalization of the sub-index, divided by the stock's closing price on the rebalancing date. THe index's adjusted total market capitalization is the total outstanding market capitalization adjusted to reflect the number of ''capped'' stocks.

The divisor for each Sub-Index was initially calculated to yield a benchmark value of 100.00 at the close of trading on April 30, 1996. The divisor for each Sub-Index will be adjusted as needed to ensure continuity in each index whenever there are additions or deletions from an index, share changes, or adjustments to a component's price to reflect rights offerings, spinoffs, and special cash dividends.

Maintenance. The Indexes will be maintained by CBOE and the GSTI Committee. On each semi-annual rebalancing date, the GSTI Composite Index will be adjusted by adding or deleting stocks according to the inclusion criteria detailed in SR–CBOE–96–43. All changes to the GSTI Composite Index will be implemented after the close of trading on the effective date. The effective dates will be the third Friday of January and July. The rebalancing date will be 7 business days inclusive prior to the effective date.

As soon after the close of trading on the day following the rebalancing date for the GSTI Composite Index, the Exchange will provide to the Committee a list of all constituent changes to the GSTI Composite Index. Upon receipt of this list from the Exchange, the Committee will meet to determine any changes to the GSTI Sub-Indexes.

The Committee will notify CBOE of any change in composition for any of GSTI Sub-Indexes before trading starts on the trading day after the Exchange has provided the Composite Index component list to the Committee.[2] The Exchange, in turn, will disseminate the information concerning the components of the GSTI Sub-Indexes to the public. The Committee retains discretion to add or delete stocks from the GSTI Sub-Indexes at the rebalancing or to change a stock's industry classification. At the discretion of the Committee, a stock may also be removed from a Sub-Index due to lack of industry representation in the Sub-Index. At no time will a Sub-Index fall to less than 6 stocks.

Additionally, at the semi-annual rebalancing, stocks with Sub-Index weights which exceed their cap in that SUb-Index, will be restored to the appropriate capped weight.

When a stock is ''Fast Added'' to the GSTI Composite Index, as described in SR–CBOE–96–43, the stock may be ''Fast Added'' to one or more GSTI Sub-Indexes at the same time. If added to a sub-index, the stock's weight cannot exceed the appropriate cap for that sub-index. If a stock is ''Fast Deleted'' from the GSTI Composite Index, it will be removed from all GSTI Sub-Indexes at the same time.

In the case of a merger, the Committee will decide the Sub-Index classification of the merged company. If the weight of the merged company would exceed the relevant cap for the Sub-Index to which it is assigned, the weight of the company will be capped at the time that the merger is completed. The index shares of all other stocks in the effected Sub-Index will remain unchanged.

Index Option Trading. The Exchange proposes to base trading in options on the GSTI Sub-Indexes on the full value of the relevant Sub-Index. The Exchange may list full-value long-term index option series (''LEAPS®''), as provided in Rule 24.9. The Exchange also may provide for the listing of reduced-value LEAPS, for which the underlying value would be computed at one-tenth of the value of the appropriate Sub-Index. The current and closing index value of any such reduced-value LEAPS will, after such initial computation, be rounded to the nearest one-hundredth.

Strike prices will be set to bracket the index in a minimum of 2½ point increments for strikes below 200 and 5 point increments above 200. The minimum tick size for series trading below $3 will be 1/16th and for series trading above $3 the minimum tick will be 1/8th. The trading hours for options on the Index will be from 8:30 a.m. to 3:10 p.m. Chicago time.

Exercise and Settlement. GSTI Sub-Index options will have European-style exercise and will be ''A.M.-settled index options'' within the meaning of the Rules in Chapter XXIV, including Rule 24.9, which is being amended to refer specifically to GSTI Sub-Index options. The proposed options will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

Exchange Rules Applicable. Except as modified herein, the Rules in Chapter XXIV will be applicable to GSTI Sub-Index options. Index option contracts based on the GSTI Sub-Indexes will be subject to the position limit requirements of Rule 24.4A. Ten reduced-value options will equal one full-value contract for such purposes.

CBOE represents that it has the necessary systems capacity to support new series that would result from the introduction of the GSTI Sub-Index options. CBOE has also been informed that the Options Price Reporting Authority (''OPRA'') has the capacity to support such new series.

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will permit trading in options based on the GSTI Sub-Indexes pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. The rule proposal will also serve to further these objectives by providing investors with the ability to invest in options based on additional indexes.

2. Statutory Basis

CBOE believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will permit trading in options based on the IPC pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options based on an additional index.

[2] For example, if CBOE provides to the Committee a list of composition changes to the GSTI Composite Index after the close of trading on Friday, the Committee would in turn inform CBOE of any corresponding changes to the GSTI Sub-Indexes before trading commences on Monday. CBOE would then disseminate such changes to the public prior to the commencement of trading. Telephone Conversation between Eileen Smith, CBOE, and Steve Youhn, SEC, on July 24, 1996.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

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

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–44 and should be submitted by August 29, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

[3] 17 CFR 200.30–3(a)(12) (1994

Jonathan G. Katz,

Secretary.

[FR Doc. 96–20183 Filed 8–7–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37510; International Series Release No. 1012; File No. SR–ISCC–96–03]

Self-Regulatory Organizations; International Securities Clearing Corporation; Order Granting Temporary Approval on a Accelerated Basis of a Proposed Rule Change Relating to the Clearing Fund Formula

August 1, 1996.

On May 16, 1996 the International Securities Clearing Corporation (''ISCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–ISCC–96–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the Federal Register on July 9, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change through August 1, 1997.[3]

I. Description

The proposed rule change extends approval of ISCC's clearing fund formula. In 1986, ISCC and the London Stock Exchange (''LSE'') entered into a linkage agreement which allows ISCC to obtain comparison and settlement services in the United Kingdom from the LSE on behalf of ISCC members.[4] ISCC is obligated to the LSE to pay for all securities delivered to ISCC through the ISCC–LSE link. ISCC has no responsibility to complete open pending trades (*i.e.*, once a member fails, ISCC no longer accepts delivery of securities for such member through the link). To adequately cover ISCC's exposure, each member's clearing fund deposit requirement is calculated and collected on a weekly basis. Each member is required to deposit the greater of (a) the largest clearing fund calculation over the last 365 day period or (b) the deposit that would be required based on the clearing fund calculation using trades due to settle over the next week.[5] Calculations are made each Tuesday, and members are required to deposit additional clearing fund amounts within three days.[6]

ISCC's clearing fund formula is: (Gross Debit Value) x (Market Risk Factor) + (Foreign Exchange Factor).[7] The Gross Debit Value is a member's largest single daily gross debit value based on debit values for five consecutive business days including the day on which the calculation is performed less 15% of the Institutional Net Settlement (''INS'') receive value for that same day.[8] The Market Risk Factor is based on the largest calculated percentage change in the Financial Times Index over a six day period over a minimum of 365 days.[9] The Market

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 37390 (July 1, 1996), 61 FR 36096.

[3] The Commission temporarily approved two previous ISCC proposed rule changes amending ISCC's clearing fund formula. Securities Exchange Act Release No. 35970 (July 13, 1995), 60 FR 37698 [File No. SR–ISCC–95–03] (notice of filing and order granting accelerated approval on a temporary basis of ISCC's clearing fund formula) and Securities Exchange Act Release No. 34392 (July 15, 1994), 59 FR 37798 [File No. SR–ISCC–94–1] (order temporarily approving on an accelerated basis ISCC's clearing fund formula).

[4] At that time, the LSE settled trades on a fortnightly basis with all trades that occurred during a two week period settling on the same day. On July 18, 1994, the LSE moved to a ten day rolling settlement cycle with trades settling ten days after trade date. On June 26, 1995, the LSE moved to a five day rolling settlement period. In response to the change to a rolling settlement cycle, ISCC adjusted its method of calculating its clearing fund requirements.

[5] During the eight week period ending April 23, 1996, the weekly clearing fund calculation exceeded the 365 day high in only three out of twenty-four calculations. Letter to Jerry Carpenter, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, from Julie Beyers, ISCC (May 16, 1996).

[6] For example, ISCC calculates a member's clearing fund requirement on Tuesday, August 2, based on trades due to settle on Tuesday, August 2, through Monday, August 8, (*i.e.*, trades conducted on Tuesday, July 26, through Monday, August 1). Because an ISCC member has three business days after the calculation to make additional deposits, under the five day rolling settlement cycle, ISCC generally is collecting clearing fund contributions based on trades which already have settled. Under the prior ten day rolling settlement system, the clearing fund formula was based on the actual largest daily obligation of a member during the relevant time period, and the clearing fund deposit could be calculated and collected prior to the settlement day.

[7] Members are required to contribute a minimum of $50,000 to the clearing fund.

[8] Under the INS system, redeliveries of securities from ISCC members to institutional participants can occur automatically through the LSE. Therefore, ISCC generally is not required to pay the LSE for these securities. The debits arising from these redeliveries may be offset only partially because these securities may be reclaimed (*i.e.*, returned) by the receiver, and in such circumstance, ISCC is liable to the LSE for the full value of the reclamation.

[9] ISCC bases its clearing fund calculations on the assumption that it will take one day to sell all of a defaulting participant's positions. Under a five day settlement period, this results in a six day exposure for market risk with five days between trade date and settlement date and one day between settlement date and close out of positions. There also is a one day exposure for foreign exchange risk because ISCC converts U.S. dollars to British pounds on the settlement date and converts the proceeds from the sale of the positions to U.S. dollars the following day.

Risk Factor is set at 7%. The Foreign Exchange Factor is based in part on the estimated foreign exchange volatility, which is an amount that is equal to the largest one day percentage change in the U.S. dollar/British pound foreign exchange rate over a minimum of 365 days.[10] The estimated foreign exchange volatility is set at 4%.[11] The Market Risk Factor and Foreign Exchange Factor for members on surveillance may be increased in the discretion of ISCC by 3%, 5%, and 7% for members on Advisory, Class A, and Class B surveillance, respectively.

II. Discussion

Section 17A(b)(3)(F) of the Act [12] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody of the clearing agency or for which it is responsible. The Commission believes that ISCC's proposal helps to assure the safeguarding of securities and funds in ISCC's custody or control or for which it is responsible because the proposal is designed to protect ISCC's settlement obligations under the LSE linkage should a participant default. The formula is based upon the risks to which ISCC is subject (*i.e.*, time market, and foreign exchange risks) and should assist ISCC in assuring the safety of the funds and securities being transferred through the LSE link. ISCC's requirement that members deposit the greater of (a) the largest clearing fund calculation over the last 365 day period or (b) the deposit that would be required based on the clearing fund calculation using trades due to settle over the next week should provide additional protection to compensate for the clearing fund calculations based upon previously settled trades rather than outstanding obligations.

ISCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because approval of ISCC's current clearing formula will expire on August 1, 1996. The Commission believes that the proposed rule change should continue to be approved on a temporary basis in order to determine the adequacy of the formula in practice. The temporary approval will give ISCC the opportunity to study this further.

III. Conclusion

On the basis of the foregoing, the Commission finds that ISCC's proposal is consistent with the requirements of the Act and in particular with Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–ISCC–96–03) be, and hereby is temporarily approved on an accelerated basis through August 1, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–20181 Filed 8–7–96; 8:45 am]

BILLING CODE 8010–01–M

[10] The Foreign Exchange Factor is the product of the Gross Debit Value and the estimated foreign exchange volatility less the product of the Gross Debit Value times the Market Risk Factor times the estimated foreign exchange volatility.

[11] During the period from 1989 to 1992, the maximum fluctuation in the U.S. dollar/British pound exchange rate was 4.445%. ISCC will continue to review annually the foreign exchange risk factor.

[12] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[13] 17 CFR 200.30–3(a)(12)(1995).

[Release No. 34–37512; File No. SR–MBSCC–96–01]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving a Proposed Rule Change To Modify Participants Fund Deposit Requirements

August 1, 1996.

On March 8, 1996, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–MBSCC–96–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') to modify its participants fund deposit requirements.[1] On March 25, and May 30, 1996, MBSCC filed amendments to the proposed rule change.[2] Notice of the proposal was published in the Federal Register on June 14, 1996.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change revises the basic deposit component of the MBSCC participants fund requirements to correlate more closely with participants' actual usage of MBSCC services.[4] The basic deposit component is intended to ensure that participants' obligations to MBSCC for fees will be satisfied if participants are unable to meet such obligations.[5] The rule change reduces the basic deposit requirement for participants from $10,000 per account maintained at MBSCC to a minimum of $1,000 for each participant regardless of the number of accounts maintained.[6] If a participant's average monthly services bill, as determined by MBSCC on a semiannual basis, exceeds $1,000, the participant's basic deposit requirement will be the amount of such average monthly services bill up to a maximum amount of $10,000 per account maintained by such participant.

II. Discussion

Section 17A(b) (3) (F) [7] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that MBSCC's proposed rule change is consistent with MBSCC's obligations under the Act because the revised basic deposit requirements should adequately protect MBSCC from losses resulting from a participant's failure to pay MBSCC fees without placing an undue burden on participants. Moreover, revision of the basic deposit requirement should more closely

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letters from Anthony H. Davidson, MBSCC, to Christine Sibille, Division of Market Regulation (''Division''), Commission (March 18, 1996) and to Mark Steffensen, Division, Commission (May 24, 1996).

[3] Securities Exchange Act Release No. 37294 (June 10, 1996), 61 FR 30268.

[4] The MBSCC participants fund is composed of a basic deposit, a minimum market margin differential deposit (''3MD''), and a daily margin requirement referred to as a market margin differential deposit (''MMD''). The purpose of the 3MD is to provide additional assurances that each participant's fund contributions will be adequate to satisfy all open commitments recorded with MBSCC. Currently, the deposit required to satisfy this component of the participants fund is $250,000 per participant. The purpose of the MMD is to ensure that a participant. The purpose of the MMD is to ensure that a participant's open obligations to MBSCC will be satisfied in the event the participant is unable to meet such obligations. MMD is derived from a formula which assesses various factors including the type of position held and marked-to-market value fluctuations. The rule change will not affect the requirements of MBSCC participants with regard to the MMD and 3MD components of the participants fund.

[5] Notwithstanding the purposes of the basic deposit, MMD, and 3MD components of the participants fund, MBSCC is not limited in its application of participants fund proceeds. Rather, MBSCC can utilize the total participants fund to satisfy a participant's obligations to MBSCC irrespective of the nature of the obligation.

[6] MBSCC determined that its participants on average maintain two accounts at MBSCC. The monthly maintenance fee per account is $350 or $700 for two accounts. MBSCC based the minimum deposit amount of $1,000 upon these averages and other participant usage data.

[7] 15 U.S.C. § 78q–1(b)(3) (F) (1988).

correlate a participant's actual usage of and billing for MBSCC services with its correspondent deposit to the participants fund.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MBSCC–96–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–20184 Filed 8–7–96; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12) 1995).

[Release No. 34–37513; File No. SR–NASD–96–24]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to the Extension of the Effectiveness for One Year of the Arbitration Procedures for Large and Complex Cases

August 1, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 10,[1] 1996 the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to extend the effectiveness of the arbitration Procedures for Large and Complex Cases, Rule 10334 of the Code of Arbitration Procedure (''Code''),[2] to August 1, 1997. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletion are in brackets.

CODE OF ARBITRATION PROCEDURE

Procedure for Large and Complex Cases

Rule 10334

* * * * *

Temporary Effectiveness

(h) This Section shall remain in effect until August 1, 199[6]*7* unless modified or extended prior thereto by the Board of Governors.

* * * * *

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 NASD 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 NASD 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

The Procedures for Large and Complex Cases (''Procedures''), adopted effective May 2, 1995, for a one-year pilot period and codified at Rule 10334 of the Code, will expire on August 1, 1996.[3] Since Rule 10334 became effective until July 25, 1996, there have been 578 cases filed that were eligible for disposition as large and complex cases. Of those cases, there have been 178 Administrative Conference held under Rule 10334(b), and in 25 of those cases the parties agreed to proceed under the Procedures.

In general the NASD's experience with the Procedures since they became effective has been positive. The anecdotal information that has been gathered indicates that the administrative conference provided for under the Procedures is an effective and productive case management tool that most parties appreciate. Parties like the opportunity to develop a hearing plan, including developing a discovery plan, even if they ultimately decline to proceed under the Procedures. In addition, the administrative conference affords the staff an opportunity to explore mediation with the parties.

In addition, many parties regard the mandatory preliminary hearing with the chairperson of the panel as a valuable case management too.[4] It affords them an opportunity to seek resolution of discovery disputes and to resolve other issues prior to the hearing. Parties also appreciate the opportunity to select arbitrators through preference rankings.

The NASD has also noted that relatively few cases are arbitrated under the Procedures because eligible disputes are often not sufficiently complicated to justify utilizing the rules, especially because of the additional costs imposed on the parties for arbitrator compensation. In addition, parties perceive that many of the provisions available under the Procedures are also available elsewhere in the Code.

On the basis of the foregoing, the NASD believes that the Procedures have been successful in affording additional benefits in the form of useful procedures to parties to large and complex cases, but that additional experience is necessary to evaluate fully the efficacy of the Procedures. In addition, the NASD Arbitration Policy Task Force has recommended that the one-year pilot test of Rule 10334 be extended in order to permit the Arbitration Department to gather additional data. This additional data will permit the NASD to develop a meaningful comparison with the experience of the American Arbitration Association with its large and complex case procedures. Accordingly, rather than seek permanent effectiveness of Rule 10334, the NASD is proposing to extend the effectiveness of the rule until August 1, 1997. During that time the

[1] The NASD filed Amendment No. 1 to the proposed rule change on July 26, 1996. Amendment No. 1 amended the proposed rule change to: state that the NASD Board of Governors approved the filing of the proposed rule change; supplement and clarify information contained in Item II. A.; request that the Commission find good cause to grant accelerated approval to the proposed rule change; and undertake to provide the Commission with information concerning the operation of Rule 10334. See Letter from John Ramsay, Deputy General Counsel, NASD Regulation, Inc. (''NASDR'') to Ivette Lopez, Assistant Director, Division of Market Regulation, Commission (July 26, 1996).

[2] Formerly Section 46 of the Code of Arbitration Procedure.

[3] The rule was to have expired on May 2, 1996; however, the SEC agreed to extend the effectiveness of the rule until August 1, 1996. See Securities Exchange Act Release No. 34154 (April 30, 1996), 61 FR 20301 (May 6, 1996).

[4] Subsection (d) of Rule 10334 provides that the Director of Arbitration shall appoint one member of the panel to preside over the preliminary hearing, but does not require that the arbitrator be the panel chair. The chair is elected by the NASDR Office of Dispute Resolution staff. NASDR routinely selects the chair of the panel to preside over preliminary hearings under subsection (d), although the rule permits the NASDR staff to select any member of the panel.

NASD will continue to monitor the usefulness of the rule to arbitration parties.

(2) Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[5] of the Act in that extending the effectiveness of the procedures in the Code for large and complex cases will serve the public interest by enhancing the satisfaction and perceived fairness of such proceedings by the parties to such proceedings as demonstrated by the positive comments of the parties noted by the NASD.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A(b)(6). The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will benefit users of the arbitration process in that providing a temporary extension of the Procedures will permit arbitration participants to continue to use the Procedures. In addition, except with respect to the administrative conference required under the Rule, the application of the Rule to any case submitted to arbitration is voluntary. Thus, accelerating the approval of the proposed rule change to maintain the continuity of the process will not have any adverse impact on the investing public.

[5] 15 U.S.C. § 79*o*–3.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file 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 change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD–96–24 and should be submitted by August 29, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD–96–24 be, and thereby is, approved through August 1, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 96–20250 Filed 8–7–96; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Rescission of Social Security Ruling SSR 82–50 Title II: Definition of Living in the Same Household

AGENCY: Social Security Administration.

ACTION: Rescission of Social Security Ruling SSR 82–50.

SUMMARY: The Commissioner of Social Security gives notice of the rescission of SSR 82–50.

EFFECTIVE DATE: September 9, 1996.

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: 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.

SSR 82–50, issued in 1982, was published in the 1981–1985 Cumulative Edition of the Rulings on page 64. SSR 82–50 interpreted the definition of living in the same household to allow for extended separations due to confinement of either spouse in a nursing home, hospital, or other medical institution. The husband and wife were considered living in the same household as long as evidence indicated they were initially separated, and continue to be separated, solely for medical reasons and would otherwise have resided together.

The Social Security Administration published elsewhere in today's Federal Register final regulations which incorporate the living in the same household policy interpretation found in SSR 82–50. Since the policy in SSR 82–50 has been incorporated into these regulations, the Ruling is rescinded as of the date the final regulations take effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance.)

Dated: July 25, 1996.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 96–20122 Filed 8–7–96; 8:45 am]

BILLING CODE 4190–29–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary; Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT).

ACTION: Notice and Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request an emergency 90-day reinstatement, without change, of a previously approved information collection for which approval has expired. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the

Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

DATES: Comments on this notice must be received on or before October 7, 1996.

ADDRESSES: Comments should be sent to the Special Authorities Division (X–57), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 7th Street, S.W., Washington, DC 20590–0002. This information collection is available for inspection at the Special Authorities Division (X–57), Office of Aviation Analysis, DOT, at the address above. Copies of 14 CFR Part 380 can be obtained from Mr. Scott Keller at the address and telephone number shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Keller or Mr. Charles McGuire, Office of the Secretary, Office of Aviation Analysis, X–57, Department of Transportation, at the address above. Telephone: (202) 366–1031/4534.

SUPPLEMENTARY INFORMATION

Office of the Secretary, Office of Aviation Analysis

Title: Public Charters.

OMB Control Number: 2106–0005.

Type of Request: Emergency processing for reinstatement for 90 days, without change, a previously approved information collection for which approval has expired.

Affected Entities: Public charter operators.

Abstract: In 14 CFR 380 (adopted 1979) of its Special Regulations the Department established the terms and conditions governing the furnishing of public charters in air transportation by direct air carriers and public charter operators. Public charter operators arrange transportation for groups of persons on aircraft chartered from direct air carriers. This arrangement is less expensive for the travelers than individually buying a ticket. Further, the charter operator books hotel rooms, tours, etc., at destination for the convenience of the traveler. Part 380 exempts charter operators from certain provisions of the U.S. Code in order that they may provide this service.

A primary goal of Part 380 is to seek protection for the consumer. Accordingly, the rule stipulates that the charter operator must file evidence (a prospectus) with the Department for each charter program certifying that it has entered into a binding contract with a direct carrier to provide air transportation and that it has also entered into agreements with Department-approved financial institutions for the protection of the charter participants' funds. The prospectus must be approved by the Department prior to the operator's advertising, selling or operating the charter. The forms (OST Forms 4532, 4533, 4534 and 4535) that comprise the operator's filing is the information collection at issue here.

In September 1992, the Department issued a notice of proposed rulemaking (NPRM) [57 FR 42864, 9–16–92] to propose, among other revisions, that charter operators need no longer file prospectuses. The NPRM was in response to comments that prospectus filings were burdensome and unnecessary. However, the majority of respondents to the NPRM have urged the Department to retain the existing prospectus filing requirements. They desire the more complete consumer protection provided by the current rule. Without a complete prospectus it would be extremely difficult to assure that financial security and other consumer protection requirements are in place for each public charter operation.

The collection involved here requests general information about the charter operator and direct air carrier that will provide a public charter and requires each to certify that it has contracted with the other to provide the transportation. The routing, charter price and tour itinerary of the proposed charter are also identified. The collection also requires the charter operator, direct air carrier and financial institution(s) involved to certify that proper financial instruments are in place or other arrangements have been made to protect the charter participants' funds and that all parties will abide by the Department's public charter regulations.

Average Annual Burden per Respondents: 4.25 hours.

Estimated Total Burden on Respondents: 31,343 hours.

Issued in Washington, DC, on August 5, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–20260 Filed 8–7–96; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary; Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 22, 1996 [FR 61, page 25734].

DATES: Comments must be submitted on or before September 5, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph Freeman, (202) 366–6057, and refer to the OMB Control Number.

SUPPLEMENTARY INFORMATION

Maritime Administration

Title: Trustee's Supplemental Certification.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2133–0015.

Affected Entities: Banks and trust companies.

Abstract: Provide for approval of banks and trust companies to act as Trustees under certain ship financing trusts and provide a procedure for assuring the validity and preferred status of mortgages on U.S. flag vessels and certain mortgages requiring Secretarial approval. The approved bank or trust company is required to furnish its supplemental certification every five years in order to remain on the Roster of Approved Trustees. The processing fee for this application is $215.00 per filing.

Need and Use of the Information: Information collection provides information that will be used by the Maritime Administration to determine whether the bank or trust company continues to meet the statutory requirements to serve as Trustees.

Annual Responses: 68.

Annual Burden: 51 hours.

Comments: Send all comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected to the Office of Information and Regulatory Affairs,

Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention DOT Desk Officer.

Issued in Washington, DC, on August 5, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–20259 Filed 8–7–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

International Civil Aviation Organization (ICAO), Committee On Aviation Environmental Protection (CAEP)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise interested parties of the next in a continuing series of briefings to be given by The Office of Environmental and Energy on the status of the ICAO/CAEP process to be held on August 28, 1996. The ICAO/CAEP is a group of government and industry aviation experts responsible for recommending international noise and emissions standards for civil aircraft and engines. The current status of the ICAO/CAEP process, including the disposition of the recommendations offered by the committee at their meeting in December 1995 and the organization of the continuing work of the committee, will be discussed.

DATES: The meeting will be held on August 28, 1996.

TIME: 2 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at Department of Transportation Nassif building, 400 Seventh St., Washington, D.C., 20590 in room 6332.

FOR FURTHER INFORMATION CONTACT: Mr. James P. Muldoon or Mr. James R. Littleton Jr., Office of Environmental and Energy Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, fax (202) 267–5594.

Attendance is open to the public, but will be limited to the space available. Arrangements can be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

James R. Littlejohn, Jr.,

Analysis and Evaluation Branch, Office of Environment and Energy.

[FR Doc. 96–20264 Filed 8–7–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Title 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance with certain requirements of the Federal safety laws and regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Boone & Scenic Valley (BSV) Railroad (Waiver Petition Docket Number PB–96–1)

The Iowa Railroad Historical Society, Boone & Scenic Valley (BSV) Railroad, seeks a permanent waiver of compliance from Title 49, Part 232, Section 17(b)(2) on passenger cars equipped with U type air brakes by extending the clean, oil, test, and stencil (COT&S) period from 15 calendar months to 15 operating months. BSV seeks relief for their eight antique passenger cars built in years 1927–1929, from the present requirements to perform COT&S as required by § 232.17(b)(2) and specified in Standard S–045 in the Manual of Standards and Recommended Practices of the Association of American Railroads A–III–256, Section 2.1.2. The BSV is a non-profit tourist lien that operates only 6 months a year, with one trip per day during the week and 3 trips on Saturday and Sunday over a 15-mile, captive service route originating in Boone, Iowa. BSV explains that they have been performing the COT&S every 12 calendar months at considerable expense for 6 months of operation and that by granting this waiver, they would perform the COT&S every 24 months for 12 months of operation.

Title 49 CFR 232.17 ''Freight and passenger train car brakes'' states in Part (b)(2): Brake equipment on passenger cars must be cleaned, repaired, lubricated, and tested as often as necessary to maintain it in a safe and suitable condition for service but not less frequently than as required in Standard S–045 in the Manual of Standards and Recommended Practices of the AAR.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comments, they should notify FRA in writing, before the end of the comment period and specify the basis of their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g. Waiver Petition Docket Number PB–96–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received within 45 days of the date of publication of this notice, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practical. All written communication concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on August 5, 1996.

Phil Olekszyk,

Acting Deputy Administrator for Safety.

[FR Doc. 96–20263 Filed 8–7–96; 8:45 am]

BILLING CODE 4910–06–M

[FRA Docket No. RST–93–3]

Petition for an Extension of the Period Within Which Compliance With the Provisions of 49 CFR 213.113(a)(2), Notes C and D, Will be Waived

Burlington Northern Santa Fe

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that Burlington Northern Santa Fe (BNSF) has submitted a petition dated May 20, 1996 for the continued use on certain of its lines of a track device known as a Bulldog Clamp®. The purpose of the device is to provide additional security between detection and removal of certain types of transverse defects internal to a rail head. The device achieves this purpose by functioning as

a boltless track joint centered on a rail at the location of a flaw and being attached to the rail by two ''C'' clamps. It is claimed that avoidance of bolting the joint saves time, but more important, eliminates drilled bolt holes in the rail web which can serve later as sources of equally unwanted defects of a different type.

The petition requests that, for regions of the railroad where it is proposed to employ the device, the Federal Railroad Administration (FRA) specifically approve the following three conditions:

1. Once clamps are applied to detail fractures, engine burn fractures or defective welds measuring 25 percent or greater of the head area, train sped shall be limited to 60 miles per hour or the maximum allowable speed under section 213.9 of 49 CFR Part 213 for the class of track, whichever is lower.

2. BNSF shall remove these devices from the rails not more than 20 days after application. If the internal rail head defect has not been removed by that time, bolted joint bars will be immediately applied and the provisions of section 213.113 shall govern.

3. This waiver shall continue in effect for a period of 24 months from the date that it is issued by FRA.

It should be noted that this petition is the fourth in a series that commenced in August of 1990 (see at 55 FR 50266, 56 FR 13515 and 59 FR 9518 for earlier Federal Register notices descriptive of this program). In the virtual six years since that date, the device has been used, it is claimed, well over one hundred times and not once did a rail defect so protected progress to failure.

Interested parties are invited to participate in these proceedings by submitting written views, data or comments. FRA does to anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify EFRA, in writing, before the need of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Number RST–93–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590. Communications received within 45 days after publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m. to 5:00 p.m.) in Room 8201, 400 Seventh Street, SW., Washington, DC 20690.

Issued in Washington, DC on August 5, 1996.

Phil Olekszyk,

Acting Associate Administrator for Safety.

[FR Doc. 96–20262 Filed 8–7–96; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF VETERANS AFFAIRS

Disease Not Associated With Exposure to Certain Herbicide Agents

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) hereby gives notice that the Secretary of Veterans Affairs, under the authority granted by the Agent Orange Act of 1991, has determined that a presumption of service connection based on exposure to herbicides used in the Republic of Vietnam during the Vietnam era is not warranted for the following conditions: Hepatobiliary cancers, nasal/nasopharyngeal cancer, bone cancer, female reproductive cancers, breast cancer, renal cancer, testicular cancer, leukemia, abnormal sperm parameters and infertility, cognitive and neuropsychiatric disorders, motor/coordination dysfunction, chronic peripheral nervous system disorders, metabolic and digestive disorders, immune system disorders, circulatory disorders, respiratory disorders (other than certain respiratory cancers), skin cancer, gastrointestinal tumors, bladder cancer, brain tumors, and any other condition for which the Secretary has not specifically determined a presumption of service connection is warranted.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7230.

SUPPLEMENTARY INFORMATION: Section 3 of the Agent Orange Act of 1991, Pub. L. 102–4, 105 Stat. 11, directed the Secretary to seek to enter into an agreement with the National Academy of Sciences (NAS) to review and summarize the scientific evidence concerning the association between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam era and each disease suspected to be associated with such exposure. Congress mandated that NAS determine, to the extent possible: (1) Whether there is a statistical association between the suspect diseases and herbicide exposure, taking into account the strength of the scientific evidence and the appropriateness of the methods used to detect the association; (2) the increased risk of disease among individuals exposed to herbicides during service in the Republic of Vietnam during the Vietnam era; and (3) whether there is a plausible biological mechanism or other evidence of a causal relationship between herbicide exposure and the suspect disease. Section 3 of Pub. L. 102–4 also required that NAS submit reports on its activities every two years (as measured from the date of the first report) for a ten-year period.

Section 2 of Pub. L. 102–4 provides that whenever the Secretary determines, based on sound medical and scientific evidence, that a positive association (i.e., the credible evidence for the association is equal to or outweighs the credible evidence against the association) exists between exposure of humans to an herbicide agent (i.e., a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the Vietnam era) and a disease, the Secretary will publish regulations establishing presumptive service connection for that disease. If the Secretary determines that a presumption of service connection is not warranted, he is to publish a notice of that determination, including an explanation of the scientific basis for that determination. The Secretary's determination must be based on consideration of the NAS reports and all other sound medical and scientific information and analysis available to the Secretary.

Although Pub. L. 102–4 does not define ''credible,'' it does instruct the Secretary to ''take into consideration whether the results [of any study] are statistically significant, are capable of replication, and withstand peer review.'' Simply comparing the number of studies which report a positive relative risk to the number of studies which report a negative relative risk for a particular condition is not a valid method for determining whether the weight of evidence overall supports a finding that there is or is not a positive association between herbicide exposure and the subsequent development of the particular condition. Because of differences in statistical significance, confidence levels, control for confounding factors, and other pertinent

characteristics, some studies are clearly more credible than others, and the Secretary has given the more credible studies more weight in evaluating the overall weight of the evidence concerning specific diseases.

NAS issued its initial report, entitled ''Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam,'' on July 27, 1993. The Secretary subsequently determined that a positive association exists between exposure to herbicides used in the Republic of Vietnam and the subsequent development of Hodgkin's disease, porphyria cutanea tarda, multiple myeloma and certain respiratory cancers, and that there was no positive association between herbicide exposure and any other condition, other than chloracne, non-Hodgkin's lymphoma, and soft-tissue sarcomas, for which presumptions already existed. A notice of the diseases that the Secretary determined were not associated with exposure to herbicide agents was published on January 4, 1994 (See 59 FR 341–46).

NAS issued a second report, entitled ''Veterans and Agent Orange: Update 1996,'' on March 14, 1996. The focus of this updated review was on new scientific studies published since the release of the first report and updates of scientific studies previously reviewed.

The day that NAS issued its second report, the Secretary announced the formation of a VA task force to review the report and pertinent studies and to make recommendations to assist the Secretary in determining whether a positive association exists between herbicide exposure and any condition. That review has been completed, and the task force's recommendations were submitted to the Secretary. This notice, pursuant to Pub. L. 102–4, conveys the Secretary's determination that there is no positive association between herbicide exposure and hepatobiliary cancers, nasal/nasopharyngeal cancer, bone cancer, female reproductive cancers, breast cancer, renal cancer, testicular cancer, leukemia, abnormal sperm parameters and infertility, cognitive and neuropsychiatric disorders, motor/coordination dysfunction, chronic peripheral nervous system disorders, metabolic and digestive disorders, immune system disorders, circulatory disorders, respiratory disorders (other than certain respiratory cancers), skin cancer, gastrointestinal tumors, bladder cancer, brain tumors, and any other condition for which the Secretary has not specifically determined a presumption of service connection is warranted.

NAS, in its 1996 report, assigns hepatobiliary cancers, nasal/nasopharyngeal cancer, bone cancer, female reproductive cancers, breast cancer, renal cancer, testicular cancer, leukemia, abnormal sperm parameters and infertility, cognitive and neuropsychiatric disorders, motor/coordination dysfunction, chronic peripheral nervous system disorders, metabolic and digestive disorders, immune system disorders, circulatory disorders, respiratory disorders (other than certain respiratory cancers), and skin cancer to a category labeled inadequate/insufficient evidence to determine whether an association exists. This is defined as meaning that the available studies are of insufficient quality, consistency, or statistical strength to permit a conclusion regarding the presence or absence of an association with herbicide exposure.

Hepatobiliary cancers are cancers of the liver and bile duct. There are a variety of risk factors, including hepatitis B and C, alcohol abuse, cirrhosis, exposure to polychlorinated biphenyl (PCB), and smoking, that should be considered by a credible study. NAS, in its 1993 report, found the relevant studies to be few, and to have not adequately controlled for these risk factors. One large case-control study showed a positive relationship between herbicide exposure and the subsequent development of hepatobiliary cancer; however, most other credible studies of similar size indicated no relationship. A large occupational study and a study of farmers found no relationship. See 59 FR 343 for study citations.

NAS noted in its 1996 report that an association between dioxin and liver cancer is biologically plausible, in view of evidence that very high exposures to similar compounds which interact with the Ah receptor (an intracellular protein) increase liver cancer risk. However, NAS concluded in that report that the available evidence is inadequate to determine whether an association exists between exposure to herbicides or dioxin and the incurrence of hepatobiliary cancer. The evidence of biologic plausibility may lend credibility to the evidence for an association between herbicide exposure and liver cancer, but does not itself provide significant evidence of such an association. A case-control study of North Vietnamese veterans (Cordier S., Le T.B., Verger P., Bard D., Le C.D., Larouge B., Dazza M.C., Houng T.Q., Abenhaim L., 1993. Viral infections and chemical exposures as risk factors for hepatocellular carcinoma in Vietnam. International Journal of Cancer 55:196–201) found a significantly increased risk of hepatobiliary cancer (odds ratio (OR) = 8.8, confidence interval (CI) 1.9–41) based on Vietnam service generally. However, investigation of those who had direct contact with aerial sprayings of herbicides yielded a much smaller and nonsignificant OR = 1.3. Also, NAS noted that the value of that study was limited because most cancer cases were diagnosed on clinical or biochemical grounds and were not confirmed histologically. NAS, in its 1996 report, noted that there are few occupational, environmental, or veterans' studies of liver cancer, and most of these are small in size and were not controlled for other risk factors. For example, one small occupational study of workers with potential exposure to TCDD and 4-aminobiphenyl (Collins J.J., Strauss M.E., Levinskas G.J., Connor P.C., 1993. The mortality experience of workers exposed to 2,3,7,8-tetrachlorodibenzo-p-dioxin in a trichlorophenal process accident. Epidemiology 4:7–13) showed a slight, but not statistically significant, increased risk for hepatobiliary cancer; however, it did not control for exposure to 4-aminobiphenyl. A large study of herbicide applicators in Finland (Asp S., Riihimaki V., Hernberg S., Pukkala E., 1994. Mortality and cancer morbidity in Finnish chlorophenoxy herbicide applicators: an 18-year prospective follow-up. American Journal of Industrial Medicine 26:243–253) found no increased risk of hepatobiliary cancer. A study of farmers in 23 states (Blair A., Mustafa D., Heineman E.F., 1993. Cancer and other causes of death among male and female farmers from twenty-three states. American Journal of Industrial Medicine 23:729–742) found no increase in proportionate cancer mortality for liver cancer. In summary, most studies that address hepatobiliary cancers suffer from methodological problems or do not reflect an association. Accordingly, the Secretary has found that the credible evidence against an association between hepatobiliary cancer and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS noted in its 1993 report an association between nasal cancers and occupational exposure to nickel and chromates. Exposure to wood dust is also a risk factor for nasal cancers; smoking and exposure to formaldehyde may increase the risk associated with wood dust. There is also evidence that leather workers have an increased risk for nasal cancers, and that there is an association between chronic nasal diseases and consumption of salt-

preserved foods. Most studies showed inconclusive results, and often did not control for known confounding variables. Pharmacokinetic studies indicate that dioxin accumulates in the nasopharyngeal areas of animals. Two epidemiological studies and one case-control study showed increased risk associated with herbicide exposure; however, two of those studies were statistically insignificant and the small size of the three studies limits their value in detecting an association. (See 59 FR 345 for study citations.) One study (Wiklund K., 1983. Swedish agricultural workers: a group with a decreased risk of cancer. Cancer 51:566–568) found a decreased risk of nasal cancer in Swedish agricultural workers. A study of Vietnam veterans (Centers for Disease Control, 1990. The association of selected cancers with service in the U.S. military in Vietnam. III. Hodgkin's disease, nasal cancer, nasopharyngeal cancer, and primary liver cancer. The Selected Cancers Cooperative Study Group. Archives of Internal Medicine 150:2495–2505) found no association between nasal/nasopharyngeal cancers and Vietnam service. NAS noted in its 1996 report that the scientific evidence concerning an association between herbicide exposure and nasopharyngeal cancer continues to be too sparse to make a definitive conclusion regarding the association of nasal/nasopharyngeal cancers with herbicide exposure. An 18-year follow-up of Finnish herbicide applicators (Asp et al., 1994) showed a small, statistically insignificant increased risk and a decreased mortality risk for cancers of the nasopharynx and larynx. Moreover, that study presented little data and combined cancers of the nasopharynx and larynx into a single category, which diminishes its importance regarding the relationship between herbicide exposure and nasopharyngeal cancers. An environmental study based on a follow-up of the Seveso, Italy, population (Bertazzi A., Pesatori A.C., Consonni D., Tironi A., Landi M.T., Zocchetti C., 1993. Cancer incidence in a population accidentally exposed to 2,3,7,8-tetrachlorodibenzo-para-dioxin. Epidemiology 4:398–406) found a statistically insignificant increased risk for cancer of the nose and nasal cavity among women in the least-contaminated area and found no cases among men in the same area (although 1.5 were expected) and no cases in the most-contaminated areas. Accordingly, the Secretary has found that the credible evidence against an association between nasal/nasopharyngeal cancer and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Bone cancers were considered together with joint cancers in the 1993 NAS report. Because of the rarity of bone cancers, most studies were too small to detect a significant risk. There was not a consistent finding of bone cancer in exposed groups; a number of studies showed no association, and the few studies that demonstrated a positive relationship were small and had large confidence intervals. The small size of the studies and the statistical limitations compromised their credibility. (See 59 FR 343 for study citations.) NAS noted in its 1996 report only two new studies that considered bone cancers. Both studies (Collins et al., 1993 and Blair et al., 1993) found nonsignificant increases in mortality rates due to bone cancers. Methodologic problems did not permit NAS to reach a conclusion regarding the presence or absence of an association between bone cancers and exposure to herbicides. Accordingly, the Secretary has found that the credible evidence against an association between bone cancers and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Female reproductive cancers reviewed by NAS in its 1993 report included those of the breast, ovaries, and uterus (including the cervix and endometrium). The data related to women and herbicide exposure were extremely limited because few of the studies included women. Most of the breast cancer studies showed no association. Two studies, both of which failed to control for reproductive histories and had methodological problems, showed a nonsignificant risk for breast cancer. (See 59 FR 343 for study citations.) Because of the public health significance of breast cancer, NAS, in its 1996 report, considered breast cancer separately from the other reproductive cancers. The data relating exposure to herbicides to breast cancer are sparse. In its 1996 report, NAS reviewed four recently published studies (Bertazzi et al., 1993; Blair et al., 1993; Kogevinas M., Saracci R., Winkelman R., Johnson E.S., Bertazzi P.A., Bueno de Mesquita B.H., Kauppinen T., Littorin M., Lynge E., Neuberger M., 1993. Cancer incidence and mortality in women occupationally exposed to chlorophenoxy herbicides, chlorophenols, and dioxins. Cancer Causes and Control 4:547–553; and Dalager M.S., Kang H.K., Thomas T.L., 1995. Cancer mortality patterns among women who served in the military: The Vietnam experience. Journal of Occupational and Environmental Medicine 37:298–305) that showed no increased risk for breast cancer. NAS noted that it was unclear whether the female members of those cohorts had substantial chemical exposure. Accordingly, the Secretary has found that the credible evidence against an association between herbicide exposure and breast cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

In the 1993 report, NAS identified only one small case-control study which found an association with ovarian cancer, but the confidence intervals were very large. See 59 FR 343 for study citation. The larger occupational and farm worker studies generally showed no increased risk for ovarian or uterine cancers. (See, e.g., Ronco G., Costa G., Lynge E., 1992. Cancer risk among Danish and Italian farmers. British Journal of Industrial Medicine 49:220–225; and Saracci R., Kogevinas M., Bertazzi P.A., Bueno de Mesquita B.H., Coggon D., Green L.M., Kauppinen T., L'Abbe K.A., Littorin M., Lynge E., Mathews J.D., Neuberger M., Osman J., Pearce N., Winkelmann R., 1991. Cancer mortality in workers exposed to chlorophenoxy herbicides and chlorophenols. Lancet 338:1027–1032.) The 1993 NAS report identified three studies (Saracci et al., 1991; Ronco et al., 1992; and Wiklund, 1983) showing no increased risk for uterine cancer (including cancers of the cervix and endometrium). One study (Lynge E., 1985. A follow-up study of cancer incidence among workers in manufacture of phenoxy herbicides in Denmark. British Journal of Cancer 52:259–270) showed a slightly increased risk for cervical cancer and no increased risk for endometrial cancer. In its 1996 report, NAS reviewed a follow-up study of the Seveso population (Bertazzi et al., 1993) which found no significant increased risk of ovarian or uterine cancer. A study of 701 women occupationally exposed to chlorophenoxy herbicides, chlorophenols, and dioxins (Kogevinas et al., 1993) found one death from each of the following types of cancer: cervical (standardized mortality rate (SMR)=80), uterine nonspecified (SMR=192), and ovarian (SMR=74). However, no confidence intervals were cited. One study (Lynge E., 1993. Cancer in phenoxy herbicide manufacturing workers in Denmark, 1947–87—an update. Cancer Causes and Control 4:261–272) found a statistically significant increase in cervical cancer

among employees of two Danish phenoxy herbicide manufacturing facilities, based on seven cases (standardized incidence rate (SIR)=3.2, CI 1.3–6.6). A study of farmers in 23 states (Blair et al., 1993) found no increase in the proportionate cancer mortality ratio (PCMR) for cervical cancer in white female farmers, but found a significantly increased PCMR in nonwhite female farmers. The Blair study did not correlate the increased PCMR to herbicide exposure and NAS noted that the increased mortality may reflect risks associated with factors other than herbicide exposure. A study of female Vietnam veterans (Dalager et al., 1995) showed a nonsignificant increased risk of uterine cancer. Although the studies cited in the 1996 NAS report provide some evidence of an association between herbicide exposure and cervical cancer, there continues to be a number of significant studies showing no association between herbicide exposure and either ovarian or uterine cancers (including cervical and endometrial cancers). Considering the entire evidence, the Secretary has found that the credible evidence against an association between herbicide exposure and ovarian and uterine cancers outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS found in its 1993 report that the leather industry, asbestos, cadmium, petroleum products, analgesics, smoking, and obesity are associated with renal cancers. Studies of renal cancers in relation to herbicide exposure have generally produced inconclusive results because of failure to adequately control for these confounding factors. Only one study of agricultural and forest workers showed a significantly increased risk of death from renal cancers; however, the preponderance of studies, including the two largest, showed either no relationship with renal cancers or increased risk which was not significant. (See 59 FR 343 for study citations.) In its 1996 report, NAS reviewed two new studies (Blair et al., 1993; and Visintainer P.F., Barone M., McGee H., Peterson E.L., 1995. Proportionate mortality study of Vietnam-era veterans of Michigan. Journal of Occupational and Environmental Medicine 37:423–428) that showed increased risk for renal cancer that was not significant. A third cohort study (Bertazzi et al., 1993) demonstrated no increased risk of renal cancer in highly exposed individuals. One case-control study (Mellengaard R., Engholm G., McLaughlin J.K., Olsen J.H., 1994. Occupational risk factors for renal-cell carcinoma in Denmark. Scandinavian Journal of Work, Environment, and Health 20:160–165) showed increased risk for renal cancer; however, the results were considered highly uncertain because of the wide confidence limits. Accordingly, the Secretary has found that the credible evidence against an association between renal cancer and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS, in its 1993 report, identified the major risk factors for testicular cancer as undescended testis and other factors, such as genetic abnormalities, infections, etc., which produce atrophy and dysfunction. Occupational and environmental studies found either no association between herbicide exposure and testicular cancer, or increased risk which was not significant. (See 59 FR 343 for study citations.) In its 1996 report, NAS reviewed three new studies (Blair et al., 1993; Bertazzi et al., 1993; and Bullman T.A., Watanabe K.K., Kang H.K., 1994. Risk of testicular cancer associated with surrogate measures of Agent Orange exposure among Vietnam veterans on the Agent Orange Registry. Annals of Epidemiology 4:11–16) that produced results generally consistent with the 1993 findings, i.e., either no association with testicular cancer, or increased risk which was not significant. Accordingly, the Secretary has found that the credible evidence against an association between testicular cancer and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS, in its 1993 report, found that the potential evidence for an association between herbicide exposure and leukemia came from studies of farmers and residents of Seveso, Italy. When farmers were stratified by suspected herbicide exposure, the incidence of leukemia was generally not elevated, and in some cases elevation appeared to be due to factors other than herbicide exposure. Those studies generally did not adequately control for other significant confounding exposures. The suggestive evidence of increased risk concerning Seveso, Italy, was not significant because of the small number of actual cases in which leukemia was found. (See 59 FR 343–44 for study citations.) In its 1996 report, NAS reviewed seven new studies (Kogevinas et al., 1993; Asp et al., 1994; Blair et al., 1993; Bertazzi et al., 1993; Visintainer et al., 1995; Semenciw R.M., Morrison H.I., Morrison D., Mao Y., 1994. Leukemia mortality and farming in the prairie provinces of Canada. Canadian Journal of Public Health 85:208–211; and Dean G., 1994. Deaths from primary brain cancers, lymphatic and haematopoietic cancers in agricultural workers in the Republic of Ireland. Journal of Epidemiology and Community Health 48:364–368). Six of these studies showed no association between herbicide exposure and leukemia or a nonsignificant elevated risk. Blair et al. (1993), a mortality study of farmers, showed a significantly increased PCMR for leukemia. The Blair study, however, did not correlate the increased PCMR to suspected herbicide exposure and did not control for other confounding factors. Accordingly, the Secretary has found that the credible evidence against an association between leukemia and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Infertility incorporates two concepts: the inability to conceive and the inability to produce live children. Most studies do not take into account the desire for children, contraceptive practices, and other factors influencing fertility. The 1993 NAS report found no occupational or environmental studies that examined herbicide exposure and infertility, and veteran studies did not support an association between herbicide exposure and infertility. There are several components of male fertility, including sperm parameters and reproductive hormones. The common parameters used to evaluate toxic effects to sperm are number, motility, structure, and morphology. NAS found in its 1993 report that many chemicals have been implicated in interfering with motility and sperm structure. One occupational study and one study of Vietnam veterans found no association with decreased sperm count. Another study of Vietnam veterans found lower sperm concentrations and reduced sperm motility, but suggested these outcomes may be associated with the Vietnam experience rather than exposure to herbicides. NAS did not cite any studies concerning male reproductive hormone levels in its 1993 report. (See 59 FR 344 for study citations.) NAS, in its 1996 report, reviewed one occupational study (Egeland G.M., Sweeney M.H., Fingerhut M.A., Wille K.K., Schnorr T.M., Halperin W.E., 1994. Total serum testosterone and gonadotropins in workers exposed to dioxin. American Journal of Epidemiology 139:272–281 and Egeland G.M., Sweeney M.H.,

Fingerhut M.A., Wille K.K., Schnorr T.M., Halperin W.E., 1995. Reply to letter to the editor. American Journal of Epidemiology 141:477–478); and, although it suggested an association between TCDD exposure and changes in male reproductive hormones, there were a number of methodologic concerns that did not permit definitive conclusions to be drawn. NAS noted that the hormonal changes were subtle, and it is not known whether they would have any implications for reproductive failure. Accordingly, the Secretary has found that the credible evidence against an association between abnormal sperm parameters and infertility and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS found in its 1993 report that the studies of cognitive and neuropsychiatric disorders were beset by a number of methodologic problems, including exposure measures, the wide variety of ''standardized'' test instruments used, and the inability to detect or correct for other influences on test results such as emotional state, non-neurologic disease, metabolic conditions, fatigue, medications, or style of the examiner. Because of their failure to adequately control for these confounding factors, those studies lacked credibility in assessing the relationship of herbicide exposure to these conditions. The 1996 NAS report reviewed one study (Peper M., Klett M., Frentzel-Beyme R., Heller W.D., 1993. Neuropsychological effects of chronic exposure to environmental dioxins and furans. Environmental Research 60:124–135) that found multiple neuropsychological changes; however, the significance of these findings is uncertain because of the small number of subjects, possible selection bias, the lack of an external control group, and the low estimated amount of exposure. Another reviewed study of a large sample of Vietnam veterans (Decoufle P., Holmgreen P., Boyle C.A., Stroup N.E., 1992. Self-reported health status of Vietnam veterans in relation to perceived exposure to herbicides and combat. American Journal of Epidemiology 135:312–323) found reports of psychological dysfunction correlated with self-reports of combat exposure and level of herbicide exposure. Without confirmation of the subject reports, the significance of these results is in doubt. Because of methodological problems with the preceding studies and two other reviewed studies (Zober A., Ott M.G., Messerer P., 1994. Morbidity follow up study of BASF employees exposed to 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) after a 1953 chemical reactor incident. Occupational and Environmental Medicine 51:469–486; and Visintainer et al., 1995), there continues to be no credible evidence for an association between herbicide exposure and cognitive disorders or neuropsychiatric effects. Accordingly, the Secretary has determined that a positive association does not exist.

NAS indicated in its 1993 report that it had found no significant studies available to analyze whether an association exists between herbicide exposure and motor/coordination dysfunction. NAS, in its 1996 report, reported finding no new studies directly addressing this topic. Accordingly, the Secretary has found that there is no credible evidence for an association between motor/coordination dysfunction and herbicide exposure, and he has determined that a positive association does not exist.

Chronic peripheral nervous system disorders (chronic peripheral neuropathy) can be induced by many common medical and environmental disorders unrelated to herbicide exposure, such as alcoholism, diabetes, and exposure to other toxic chemicals. NAS, in its 1993 report, stated that many case reports suggested that acute or subacute (transient) peripheral neuropathy can develop with exposure to dioxin, but that the most rigorously conducted studies argued against a relationship between dioxin or herbicides and chronic peripheral neuropathy. NAS's first report stated that, as a group, the studies on peripheral neuropathy suffered from various methodologic defects, such as not applying consistent methods to define a comparison group, determine exposure, evaluate clinical deficits, use standard definitions of peripheral neuropathy, or eliminate confounding variables. Occupational studies that did not have those methodological problems showed no difference in the incidence of peripheral neuropathy for workers exposed to herbicides and workers not so exposed. (See 59 FR 343 for study citations.)

NAS, in its 1996 report, assigned acute and subacute peripheral neuropathy to the category labeled limited/suggestive evidence of an association with herbicide exposure, which it defined as meaning there is evidence suggestive of an association between herbicide exposure and a particular health outcome, but that evidence is limited because chance, bias, and confounding could not be ruled out with confidence. However, NAS continued to assign chronic peripheral neuropathy to the category labeled inadequate/insufficient evidence to determine whether an association exists. Two case studies (Todd R.L., 1962. A case of 2,4–D intoxication. Journal of the Iowa Medical Society 52:663–664; and Berkley M.C., Magee K.R., 1963. Neuropathy following exposure to a dimethylamine salt of 2,4–D. Archives of Internal Medicine 111:133–134) reported development of peripheral neuropathies within days of exposure to 2,4–D followed by gradual recovery over a period of months. Studies of the Seveso, Italy, accident (Boeri R., Bordo B., Crenna P., Filippini G., Massetto M., Zecchini A., 1978. Preliminary results of a neurological investigation of the population exposed to TCDD in the Seveso region. Rivista di Patologia Nervosa e Mentale 9:111–128; Pocchiari F., Silano V., Zampieri A., 1979. Human health effects from accidental release of tetrachlorodibenzo-p-dioxin (TCDD) at Seveso, Italy. Annals of the New York Academy of Science 320:311–320; and Filippini G., Bordo B., Crenna P., 1981. Relationship between clinical and electrophysiological findings and indicators of heavy exposure to 2,3,7,8-tetrachlorodibenzo-p-dioxin. Scandinavian Journal of Work, Environment, and Health 7:257–262) suggested that peripheral nerve problems were more prevalent in the exposed group. Filippini et al. (1981) demonstrated that those individuals with clinical signs of significant exposure (chloracne or elevated liver enzymes) showed a risk ratio of 2.8. Two subsequent follow-up studies (Barbieri S., Pirovano C., Scarbato G., Tarchini P., Zappa A., Maranzana M., 1988. Long-term effects of 2,3,7,8-tetrachlorodibenzo-p-dioxin on the peripheral nervous system. Clinical and neurophysiological controlled study on subjects with chloracne from the Seveso area. Neuroepidemiology 7:29–37; and Assennato G., Cervino D., Emmett E.A., Longo G., Merlo F., 1989. Follow-up of subjects who developed chloracne following TCDD exposure at Seveso. American Journal of Industrial Medicine 16:119–125) showed no increased frequency of peripheral neuropathy several years after the accident among the highly exposed group. Environmental studies and case reports suggest that the development of peripheral neuropathy can follow high levels of exposure to herbicides, and that peripheral neuropathy associated with herbicide exposure will manifest very soon after exposure. The trend to recovery in the individual cases

reported and the negative findings of many long-term follow up studies of peripheral neuropathy (e.g., Zober et al., 1994) suggest that, if a neuropathy develops, it resolves with time. Their findings are consistent with others who found no evidence of increased occurrence of chronic persistent peripheral neuropathy after TCDD exposure. Although the Secretary has found a positive association between herbicide exposure and acute and subacute peripheral neuropathy, considering all of the evidence, he has found that the credible evidence against an association between chronic nervous system disorders and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Metabolic and digestive disorders include diabetes mellitus, hepatic enzyme abnormality, lipid abnormalities, and ulcers. Although NAS found no biological basis to suspect an association between herbicide exposure and diabetes in its 1993 report, abnormal glucose tolerance tests were reported in three studies. While this suggested such an association, the evidence was inconclusive and its credibility was questionable because an abnormal glucose tolerance test is not an absolute indicator of diabetes and none of the studies allowed for the confounding role of obesity. Two other studies found no association, and a number of studies showed no increased death rates from diabetes. Two studies related to hepatic enzyme abnormality did not demonstrate an association with liver disease, and confounding factors (alcohol abuse, cirrhosis, hepatitis, and other toxic chemicals) were not ruled out. Studies showing lipid abnormalities did not control for the confounding variables of obesity and genetic factors, and no medical significance of the modest and variable increases was demonstrated. The risk of gastric ulcers in exposed populations was not sufficiently studied to establish an association with herbicide exposure. Only one study indicated any increase, and in that study it was difficult to rule out the many factors (e.g., alcoholism, non-steroidal anti-inflammatory drugs, and H. pylori infection) known to be associated with ulcers. (See 59 FR 344–45 for study citations.) In its 1996 report, NAS reviewed two studies of workers at a BASF plant who had been potentially exposed to TCDD and other chemicals in a plant accident in 1953 (Ott M.G., Zober A., Germann C., 1994. Laboratory results for selected target organs in 138 individuals occupationally exposed to TCDD. Chemosphere 29:2423–2437; and Zober et al., 1994) for any relationship between herbicide exposure and diabetes. Ott et al. (1994) showed a marginal elevation in fasting serum glucose levels, but did not control for obesity. Zober et al. (1994) demonstrated no increase in diabetes with chloracne severity or TCDD levels, and the study did not control for obesity. A third study, involving employees of six chemical factories in Germany (Von Benner A., Edler L., Mayer K., Zober A., 1994. ''Dioxin'' investigation program of the chemical industry professional association. Arbeitsmedizin Sozialmedizin Praventivmedizin 29:11–16) showed no correlation between serum TCDD levels and blood glucose levels. In its 1996 report, NAS reviewed the same three studies (Ott et al., 1994; Zober et al., 1994; and Von Benner et al., 1994) when considering the relationship between herbicide exposure and hepatic enzyme abnormalities. The noted increases in abnormal liver function tests or the frequency of chronic liver disease were confounded by the lack of control for alcohol abuse. Zober, et al. (1994) found a nonsignificant increase in liver disease among individuals exposed to dioxin, and Von Benner, et al. (1994) found no correlation between serum dioxin levels and abnormalities in liver function tests. One new study was reviewed in the 1996 NAS report concerning any association between herbicide exposure and lipid abnormalities (Ott et al., 1994) and showed no substantial differences between the exposed and reference groups. The only new study reviewed in the 1996 NAS report concerning any relationship between ulcers and exposure to herbicides (Zober et al., 1994) showed no increases in the frequency of ulcers. Accordingly, the Secretary has found that the credible evidence against an association between metabolic and digestive disorders and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS found, in its 1993 report, that the available data dealt with two categories of immune system disorders: immune modulation and autoimmunity. Many immune parameters were studied; however, few showed a relationship to herbicide exposure. Most studies addressed such a wide range of immune parameters that it was likely that at least some of the positive results were due to chance alone. Other studies found no relationship between immune system disorders and herbicide exposure. (See 59 FR 345 for study citations.) NAS noted in its 1996 report that no new studies of heightened susceptibility to infectious disease or new studies that investigated the association of autoimmune disease with exposure to herbicides have been identified. However, some new information has been published regarding the effects of TCDD on immunological parameters in laboratory measurements. The new studies (Ott et al., 1994; Von Benner et al., 1994; Jansing P.J., Korff R., 1994. Blood levels of 2,3,7,8-tetrachlorodibenzo-p-dioxin and gamma-globulins in a follow-up investigation of employees with chloracne. Journal of Dermatological Science 8:91–95; Svenson B.G., Hallberg T., Nilsson A., Schutz A., Hagmar L., 1994. Parameters of immunological competence in subjects with high consumption of fish contaminated with persistent organochlorine compounds. International Archives of Occupational and Environmental Health 65:351–358; Neubert R., Maskow L., Webb J., Jacob-Muller U., Nogueira A.C., Delgado I., Helge H., Neubert D., 1993. Chlorinated dibenzo-p-dioxins and dibenzofurans and the human immune system. 1. Blood cell receptors in volunteers with moderately increased body burdens. Life Sciences 53:1995–2006; and Neubert R., Maskow L., Delgado I., Helge H., Neubert D., 1994. Chlorinated dibenzo-p-dioxins and dibenzofurans and the human immune system. 2. In vitro proliferation of lymphocytes from workers with quantified moderately increased body burdens. Life Sciences 56:421–436) reviewed such a wide range of immune parameters that it is likely that at least some of the abnormal laboratory tests were due to chance. In addition, these studies failed to show a relationship between laboratory abnormalities and development of disease in the populations studied. Accordingly, the Secretary has found that the credible evidence against an association between immune system disorders and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS noted in its 1993 report that most occupational studies concerning circulatory disorders showed no increased mortality or morbidity after herbicide exposure. The studies of the residents of Seveso, Italy, showed some increased risk of mortality in the first five-year follow-up; however, those studies had a number of technical problems: They were not specific to

circulatory disease and did not control for the confounding variables of smoking, diabetes, and hypertension. Certain of the veteran studies suggested that any increase in heart disease may be associated with the Vietnam experience rather than herbicide exposure, and most of those studies did not adjust for confounding variables. (See 59 FR 345 for study citations.) NAS reviewed one study (Zober et al., 1994) in its 1996 report that showed no increase in the frequency of heart disease. Another study (Von Benner, et al., 1994) found possible correlations for elevated systolic blood pressure; however, this relationship was difficult to evaluate because age and body-mass index also had a significant effect. An analysis (Wolfe W.H., Michalek J.E., Miner J.C., Roegner R. H., Grubbs W.D., Lustik M.B., Brockman A.S., Henderson S.C., Williams D.E., 1992. The air force health study: An epidemiologic investigation of health effects in Air Force personnel following exposure to herbicides, serum dioxin analysis of 1987 examination results. Chemosphere 25:213–216) of the data from an Air Force study (Air Force Health Study, 1991. An Epidemiologic Investigation of Health Effects in Air Force Personnel Following Exposure to Herbicides. Serum Dioxin Analysis of 1987 Examination Results. 9 vols. Brooks AFB, TX: USAF School of Aerospace Medicine) provides some potentially significant evidence for an association with dioxin exposure, since the results were derived from the first large-scale study of dose-response relationships. However, this study did not control for the confounding factor of diabetes. There was a significant increased risk of essential hypertension for the participants with a high-level of dioxin exposure. However, the reverse analysis of participants suffering from hypertension did not show an association with dioxin, suggesting lack of dose-response relationships. Accordingly, the Secretary has found that the credible evidence against an association between circulatory disorders and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

In its 1993 report, NAS examined studies that covered a wide variety of respiratory disorders (e.g., chronic bronchitis, asthma, pleurisy, pneumonia, and tuberculosis), other than respiratory cancers. Studies of individuals exposed in occupational settings revealed no increase in mortality from respiratory disease. Environmental exposure studies similarly showed no significant differences in mortality due to respiratory disease. Mortality studies of Vietnam veterans generally found no increased risk. Morbidity data were generally difficult to evaluate because of methodological problems and because studies focused on symptoms, lung function tests and x-ray interpretation rather than disease. One occupational study showed no excess morbidity; another occupational study found increased symptomatology of respiratory disease, but did not adequately control for the confounding factor of age. (See 59 FR 345 for study citations.) NAS, in its 1996 report, reviewed three new studies (Zober et al., 1994; Garry V.F., Kelly J.T., Sprafka J.M., Edwards S., Griffith J., 1994. Survey of health and use characterization of pesticide appliers in Minnesota. Archives of Environmental Health 49:337–343; and Senthilselvan A., McDuffie H.H., Dosman J.A., 1992. Association of asthma with use of pesticides: results of a cross-sectional survey of farmers. American Review of Respiratory Diseases 146:884–887), all of which found no significant increase in respiratory disease associated with herbicide exposure. Accordingly, the Secretary has found that the credible evidence against an association between respiratory disorders (other than certain respiratory cancers) and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS, in its 1993 report, assigned skin cancer to a category labeled limited/suggestive evidence of no association with herbicide exposure. This is defined as meaning that several adequate studies, covering the full range of levels of exposure that humans are known to encounter, are mutually consistent in not showing a positive association between herbicide exposure and the particular health outcome at any level of exposure. There were many credible studies that showed no association or a negative association with herbicide exposure. (See Chapter 8 of NAS's first report.) The 1996 NAS report reviewed one new study (Lynge, 1993) that did find an excess risk of skin cancer. However, another new study (Bertazzi et al., 1993) found no increased risk of skin cancer. Three other new studies (Asp et al., 1994; Collins et al., 1993; and Bueno de Mesquita H.B., Doornbos G., Van der Kuip D.A., Kogevinas M., Winkelmann R., 1993. Occupational exposure to phenoxy herbicides and chlorophenols and cancer mortality in the Netherlands. American Journal of Industrial Medicine 23:289–300) were too small to have sufficient statistical power to give definitive results. A mortality study of farmers in 23 states utilizing occupational information from death certificates (Blair et al., 1993) found an increased PCMR for skin cancer in white male farmers. The Blair study, however, did not correlate the increased PCMR to suspected herbicide exposure and did not control for other confounding factors. NAS felt that these studies, while not providing suggestive evidence of an association with herbicide exposure, undermined the evidence of no association discussed in its first report, and thus warranted changing skin cancer from the ''limited/suggestive evidence of no association'' category to the ''inadequate/insufficient evidence to determine whether an association exists'' category. Based on the available evidence, the Secretary has found that the credible evidence against an association between skin cancer and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS, in its 1996 report (as it had in its 1993 report), also reviewed the current literature with respect to possible associations between herbicide exposure and various reproductive effects, i.e., spontaneous abortion, spina bifida, birth defects (other than spina bifida), neonatal/infant deaths and stillbirths, low birthweights, and childhood cancer in offspring. Compensation of a veteran or a veteran's child for these effects is beyond VA's authority (See title 38, U.S.C.) and would require enabling legislation.

NAS, in its 1996 report, assigns three diseases or categories of diseases to a category labeled limited/suggestive evidence of no association with herbicide exposure, which it defined in the same manner as in the 1993 NAS report (see above). The conditions include gastrointestinal tumors (stomach cancer, pancreatic cancer, colon cancer, and rectal cancer), bladder cancer, and brain tumors. There were many credible studies (see the 1996 NAS report, Chapter 7) concerning all of these conditions that showed no association or a negative association with herbicide exposure. Accordingly, the Secretary has found that the credible evidence against an association between gastrointestinal tumors (stomach cancer, pancreatic cancer, colon cancer, and rectal cancer), bladder cancer, and brain tumors and herbicide exposure outweighs the credible evidence for such an association, and he has

determined that a positive association does not exist.

NAS reviewed scientific and medical articles published since the publication of its first report as an integral part of the process that resulted in ''Veterans and Agent Orange: Update 1996.'' In our judgment, the comprehensive review and evaluation of the available literature which NAS conducted in conjunction with its report has permitted VA to identify all conditions for which the current body of knowledge supports a finding of an association with herbicide exposure. Accordingly, the Secretary has determined that there is no positive association between exposure to herbicides and any other condition for which he has not specifically determined that a presumption of service connection is warranted.

Approved: July 8, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

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August 8, 1996

Part II

Department of Transportation

Coast Guard

33 CFR Parts 154 and 156

Facilities Transferring Oil or Hazardous Materials in Bulk; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154 and 156

[CGD 93–056]

RIN 2115–AE59

Facilities Transferring Oil or Hazardous Materials in Bulk

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the regulations covering facilities transferring oil or hazardous materials in bulk. These revisions are intended to update and clarify the current regulations. The revisions should result in regulations that are more effective in providing a high level of safety and environmental protection.

DATES: This rule is effective on February 5, 1997. The Director of the Federal Register approves as of February 5, 1997 the incorporation by reference of certain publications listed in the regulations.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander, John W. Farthing, Office of Compliance, (202) 267–0505.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 23, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Facilities Transferring Oil or Hazardous Materials in Bulk'' in the Federal Register (60 FR 10044). The Coast Guard received 28 letters commenting on the proposal. One public meeting was requested; however, due to budgetary constraints and limitations imposed by organizational changes, none was held.

Background and Purpose

Until 1990, the regulations covering the transfer of products between vessels and facilities capable of transferring oil or hazardous materials in bulk to or from a vessel with a capacity of 250 barrels or more were contained in two different parts of the Code of Federal Regulations (CFR). Facilities transferring oil in bulk were covered by 33 CFR part 154, while those transferring hazardous materials in bulk were covered by 33 CFR part 126 (Handling of Explosives or Other Dangerous Cargoes Within or Contiguous to Waterfront Facilities). The Coast Guard consolidated and revised the provisions in part 154 (Facilities Transferring Oil or Hazardous Materials in Bulk) in a final rule published on September 4, 1990 (55 FR 6252). Since that time, numerous comments have been received from industry and Coast Guard personnel about problems arising from implementation of part 154. The NPRM addressed proposed changes to alleviate these problems.

These regulations have also been reviewed under the Coastal Zone Management Act of 1972 (CZMA), (16 U.S.C. 1451 *et seq.*), as amended, and its implementing regulations, 15 CFR Parts 921, 923, 925, 927, 928, 932 and 933 as promulgated by the National Oceanic and Atmospheric Administration (NOAA). Among other things, the CZMA requires that an applicant for a Federal license or permit to conduct any activity ''affecting any land or water use or natural resource of the coastal zone'' must provide to the licensing or permitting agency a certification that the proposed activity will comply with the approved Coastal Zone Management Program of any affected State (16 U.S.C. 1456(c)(3)). The CZMA Federal consistency requirements further provide that no Federal license or permit may be granted until the affected State(s) have concurred with the applicant's certification, such concurrence is presumed, or the Secretary of Commerce has found that the activity either is consistent with the CZMA or in the interest of national security (16 U.S.C. 1456(c)(3)(A)).

However, 16 U.S.C. 1456(f) exempts from Federal consistency determinations any requirement imposed by or established pursuant to the Federal Water Pollution Control Act (FWPCA), as amended (33 U.S.C. 1251 *et seq.*).

Similarly, 16 U.S.C. 1456(e)(1) provides that the CZMA does not diminish Federal or state jurisdiction over the planning, development, or control of water resources, submerged lands, or navigable waters, among other things.

The regulations established in parts 154 and 156 of this rulemaking could appear to implicate the CZMA and its Federal consistency requirement because they require Coast Guard approval for bulk transfers of oil or hazardous materials between facility's and vessels, for approval of a facility's Operations Manual, and for any alternative procedure or equipment used to comply with these regulations. These activities appear to be the type that may affect land or water use or a natural resource of a coastal zone.

These requirements are intended to protect the coastal environment. The Coast Guard does not anticipate any conflict between these regulations and a State's coastal zone management plan. However, because these regulations are issued under the authority of the FWPCA, as amended by the Water Quality Act of 1987 (Pub. L. 100–4, 101 Stat. 75) and the Oil Pollution Act of 1990 (Pub. L. 101–380, 104 Stat. 507 *et seq.*), the Coast Guard finds they are exempt from CZMA consistency requirements under 16 U.S.C. 1456(f).

The FWPCA requires the issuance of regulations to prevent the discharge of oil or hazardous materials from vessels and facilities, to require installation and inspection of discharge removal equipment on vessels, and to require monitoring, reporting, and recordkeeping regarding discharges of oil or hazardous materials by facilities (33 U.S.C. 1321(j)(1) (C) and (D), (j)(6) and (m)(2)).

The Coast Guard notes that the existing part 154 and 156 regulations also cite the Ports and Waterways Safety Act (33 U.S.C. 1231) regarding ports and waterways regulations and 46 U.S.C. 3715 regarding lightering; however, those provisions do not address the core purpose of this rulemaking, which is to regulate bulk oil and hazardous materials transfers between facilities and vessels. In contrast, the regulations being implemented today are promulgated under the mandate of the FWPCA and are consequently exempt from the CZMA's Federal consistency requirements (16 U.S.C. 1456(f)).

Discussion of Comments and Changes

The Coast Guard received 28 letters commenting on the NPRM entitled ''Facilities Transferring Oil or Hazardous Materials in Bulk'' published in the Federal Register on February 23, 1995 (60 FR 10044), and has considered the comments in developing this final rule.

Weights and Measures

Coast Guard regulatory practice is that primary weights and measures be specified in metric units. Therefore, this rule specifies all weights and measures in metric units followed by English equivalents. The conversion of weights and measures ensure that equipment or procedures complying with the English values in the NPRM will also comply with the metric values in this rule.

Therefore, the conversions should have no impact on compliance with this rule.

Applicability

Four comments addressed the proposed changes to § 154.100. Two of these comments requested that the wording of this section be clarified to state that these regulations do not apply to offshore facilities regulated under the Department of Interior's (DOI's) Minerals Management Service (MMS) regulations in 33 CFR 250. Under Executive Order 12777, jurisdictional responsibility for offshore facilities was delegated to MMS. On February 3, 1994, under the Memorandum of Understanding (MOU) between DOI, the Environmental Protection Agency (EPA) and the Department of Transportation (DOT), spill prevention and control, contingency planning, and equipment inspection activities associated with offshore facilities were assigned to the DOI. Section 154.100 has been revised to clarify that this part does not apply to offshore facilities operating under the jurisdiction of the Secretary of the DOI.

A new paragraph is added to the applicability section which specifies all of the requirements that are applicable to mobile transfer facilities.

Definitions

The definitions of ''caretaker status'', ''marine transfer area'', and ''onshore facility'' have been added, and the definitions of ''facility'', ''offshore facility'' and ''transfer'' have been revised.

The Coast Guard is adding a definition of ''caretaker status'' to these regulations. ''Caretaker status'' is used to identify a facility whose marine transfer equipment has been taken out of service. Two comments discussed the proposed definition of ''caretaker status'' in the NPRM. One of these comments stated that existing state requirements for decommissioning criteria obviate the need for a new Federal definition. One of these comments stated that the Coast Guard should further justify the need to define the term ''caretaker status''. The Coast Guard does not agree with these comments. The revised regulations contain numerous references to facilities that are in a ''caretaker status''. Without clear definition of this term, it would be difficult for industry to comply with Coast Guard regulations. The proposed definition has been clarified to state that it only applies to those parts of a waterfront facility subject to Coast Guard jurisdiction.

The Coast Guard is also adding a definition for ''marine transfer area'' to these regulations. This term is used several times in the existing and revised regulations but has not been previously defined. The new definition is similar to the one found in other Coast Guard waterfront facility regulations and is intended to delineate those areas of a waterfront facility subject to Coast Guard jurisdiction.

Two comments addressed the proposed definition of ''facility''. One comment requested that a definition of ''onshore facility'' be added to the regulations. The Coast Guard agrees with this comment and is adding the definition of ''onshore facility'' as found in the Federal Water Pollution Control Act (FWPCA) [33 U.S.C. § 1321(a)(10)]. The definition of ''facility'' has also been clarified to exclude offshore facilities operating under the jurisdiction of the Secretary of the DOI. Additionally, the definition of ''offshore facility'' has been revised to conform with the definition in the authorizing legislation.

Eight comments addressed the proposed revision to the definition of ''transfer''. One comment supported the proposed definition as written. Seven comments strongly objected to the proposed definition. The majority of the dissenting comments stated that the proposed definition would create a regulatory conflict with the requirements of 33 CFR 156.150 which specifies that a transfer may not take place until the declaration of inspection and all necessary inspections have been completed by the persons in charge. One comment also requested that the definition be revised to indicate when a transfer is considered complete. After review of industry comments, the Coast Guard is revising the definition of ''transfer'' to state that a transfer begins when the persons in charge meet to begin the process of completing the declaration of inspection. This revised definition recognizes standard industry practices and better focuses the intent of the regulations on those actions that directly lead to the flow of products. The definition of ''transfer'' is also being revised to state that a transfer is considered complete when all the connections for the transfer have been uncoupled and secured, and when the persons in charge have completed the declaration of inspection to specify the date and time the transfer was completed. The rule contains an amendment that is consistent with the regulations in § 156.150.

Alternatives

Three comments discussed the proposed changes to § 154.107. These comments generally objected to the extended time frame for review of a request for alternative procedures, methods or equipment standards, suggesting that industry could be subjected to hardship if a facility operator had to wait 60 days for the Captain of the Port (COTP) to complete the examination of a request for an alternative. After further review, the Coast Guard is retaining the 30 day time period for COTPs to review proposed alternatives.

Letter of Intent

One comment was received on the proposed changes to § 154.110 citing that it would be more appropriate to change the requirement in § 154.1035 to include the requirement for the name of the facility owner in the Facility Response Plan (FRP). The Coast Guard disagrees with this comment. The Coast Guard recognizes that including this information may be duplicative of the FRP requirements; however, FRP requirements currently only apply to facilities transferring oil and not to those facilities transferring hazardous materials. As stated in the preamble to the NPRM, this additional information will be of great assistance in determining and locating the responsible party during a spill or other emergency.

Operations Manual: Contents

Seven comments discussed the proposed changes to § 154.310. The majority of the comments stated that the proposed facility map requirement was redundant to the information required in the FRP. The Coast Guard recognizes that this requirement may be duplicative for some facilities; however, the FRP requirements currently only apply to those facilities that transfer oil, not to those facilities transferring hazardous materials. Several of these comments also objected to the requirement for a single map of the facility, drawn to scale, to be included in the Operations Manual. The majority of these comments noted that, for large facilities, a single map of this type would be impractical. The Coast Guard agrees with these comments and is revising the proposed requirement to allow multiple maps, plans, drawings, diagrams or aerial photographs that are considered acceptable by the COTP in order to comply with this requirement.

Four comments addressed the proposal that Material Safety Data Sheets (MSDS) be included in the Operations Manual rather than the information currently required by paragraph 154.310(a)(5). The majority of comments supported the use of the MSDS, but objected to the requirements that they be included in the Operations

Manual. Several comments noted that as large facilities routinely handle a high volume of products, the Operations Manual could increase in size by more than a thousand pages. The Coast Guard agrees with these comments. Noting that facilities are currently required to maintain MSDSs under subpart F of this part, and under other Federal, State or local regulations, the Coast Guard is retaining the current product information requirements in § 154.310(a)(5).

Eight comments discussed the proposal to add the names and telephone numbers of state and local officials to the list of names and addresses currently required under paragraph 154.310(a)(7). The majority of the comments stated that the inclusion of this information was redundant to the information required by the FRP. The Coast Guard recognizes this information may be duplicative for some facilities; however, the Coast Guard emphasizes the importance of this information and the necessity that it be readily available to transfer personnel. Several comments requested that the requirement be reworded to allow the title and position of the appropriate Federal, State and/or local officials' name to be listed, because of the frequency in personnel changes. The Coast Guard agrees with these comments and has revised the regulations to require that the title and/or position instead of the name be included.

Two comments discussed the proposed requirement that the maximum allowable working pressure (MAWP) be recorded in the Operations Manual. Both comments supported the inclusion of this information; therefore, the proposed language is retained. An editorial correction is also made to paragraph 154.310(a)(15) to correct the reference.

Four comments addressed the proposed extension of the response period from 14 to 45 days under paragraph 154.320(a)(1), which amends the Operations Manual after examination by the COTP. All of these comments supported the extension of the facility response time in order to better identify any inadequacies found by the COTP. The proposed language is retained. Also, an editorial correction is made to paragraph 154.320(d) to correct the reference.

Operations Manual: Procedures for Examination

The Coast Guard is revising its procedures for reviewing and approving Operations Manuals in paragraphs 154.300 and 154.325. Rather than issue a Letter of Adequacy each time an Operations Manual is reviewed and/or amended, COTPs will now examine the manual to verify it meets the requirements of this chapter. Facility operators will now submit two copies of their Operations Manual, or any changes, to the COTP for review. If the manual, as submitted, meets the requirements of this chapter, the COTP will return one copy to the facility operator marked ''Examined by the Coast Guard''. This change will alleviate some of the paperwork burden on COTPs and on the industry, and conform the Operations Manual regulations in this chapter to other U.S. Coast Guard waterfront facility regulations.

Hose Assemblies

Five comments discussed the proposed changes to § 154.500. One comment supported the proposed language as written. Another comment stated that some arrangement must be made to ensure that vessels pumping ashore to the receiving facility do not exceed the facility's MAWP. The Coast Guard agrees with this comment, and an amendment that conforms to § 156.120 is being included to ensure that as part of the process of completing the declaration of inspection, the persons in charge shall ensure that the transfer pressure does not exceed the facility's MAWP. Two comments objected to the proposed change, stating that the current requirements have become industry standards and changing them would be counterproductive to the intent of the proposed rule. The Coast Guard does not agree with these comments. As stated in the NPRM, it is more reasonable for the MAWP to be based on the actual operational pressure of the transfer system, rather than a pre-specified number. When the MAWP is based on the actual operational pressure, industry can develop tests and inspection criteria based on the needs of the system, avoiding unnecessary expense by testing to a level far higher than that of their systems' operational pressure.

Closure Devices

Two comments agreed with the proposed changes to § 154.520. One of these comments requested that language be included stating that a gasket or other suitable material be installed along with a closure device. The Coast Guard agrees with this comment and has added language similar to the requirement in § 156.130 for closure devices.

Small Discharge Containment

Thirteen comments addressed the proposed changes to § 154.530. All of these comments objected to adding the proposed requirement that fixed or portable containment be placed under each hose connection during coupling, uncoupling, and transfer. The majority of the comments noted that hoses used for transfer operations are normally comprised of several lengths of hoses flanged together with permanent connections and it would be infeasible to provide containment under every connection as they are often located over water or in a vertical alignment where it is impossible to place containment. Noting that paragraph 156.120(p) requires the persons in charge to ensure that all connections in the transfer system are leak free prior to transfer and that paragraph 156.130 allows for permanently connected flanges, the Coast Guard has clarified § 154.530 to state that containment is required under each hose connection that will be coupled or uncoupled as part of the transfer operation during coupling, uncoupling and transfer.

Discharge Removal

Ten comments discussed proposed changes to § 154.540. All of these comments objected to the proposed 1 hour time requirement for removal of any discharge into the containment. These comments opposed the new requirement as too restrictive and requested that the flexibility of the existing language be retained. Noting the requirement in paragraph 156.120(n) and that the discharge containment should be periodically drained to provide the required capacity, the Coast Guard is revising the proposed language to require that any discharged product by removed from the containment within 1 hour of completion of the transfer.

The NPRM proposed to add a paragraph to § 154.545 that would specify that equipment required to be retained under this section may be used in the planning requirements of the facility response plan required by subpart F. No comments were received on this recommendation and the proposed language is retained.

Communications

Four comments discussed the proposed changes to § 154.560. Two comments agreed with the proposed changes. One comment noted that labels tend to wear off over time or become unreadable and, as an alternative, suggested that each facility should be allowed to maintain documentation on

the premises certifying that the equipment in use is intrinsically safe. The Coast Guard agrees with this comment and has revised the proposed language to allow facility operators the option of maintaining documentation at the facility, which shows that the equipment in use meets the requirements of this part. An amendment which conforms to § 154.740 is also included in the requirement to have these records available for inspection by the COTP.

Persons in Charge: Designation and Qualification

Fifteen comments discussed the proposed changes to § 154.710. Some confusion resulted from a misprint in the NPRM that listed § 154.720(a)(23) as a reference. The correct reference should have read § 154.310(a)(21), which requires a description of the training program for persons in charge to be included in the Operations Manual. The majority of the comments objected to a separate approval of the facility's training program by the COTP, as this could lead to vast disparity among the different COTPs as to what training is required. The majority of the comments also noted that by examining the Operations Manual, the COTP is already examining the training program since it is described there in accordance with § 154.310(a)(21). The Coast Guard agrees with these comments and is removing the requirement for the COTP to separately approve the facility's training program.

Seven comments addressed the proposal that the person in charge (PIC) should be in visual sight of the transfer system from the time a hose connection is completed, until the time the connection is broken. All of these comments objected to this requirement as unreasonable and impractical. Several of these comments also noted the requirements in paragraphs 156.160 (a) and (c) where each PIC must directly supervise certain critical operations and must be in the immediate vicinity, immediately available to the transfer personnel. Upon further review, the Coast Guard is removing this proposal.

The Coast Guard wishes to clarify that the requirements for designation and qualification as a PIC in this rule apply only to waterfront facility personnel. The requirements for designation and qualification as a PIC on vessels are contained in a separate rulemaking entitled ''Qualifications for Tankermen, and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases'' (61 FR 17134; April 4, 1995).

New paragraph (e) is being added to § 154.710 to state that training to meet other regulatory requirements can be used to meet the requirements of this section as long as that training addresses the requirements of this section.

Safety Requirements

Twelve comments discussed the proposed changes to § 154.735. Two of these comments supported the continuation of the hot work permit program. Several comments supported doing away with the hot work permit, but objected to the responsibility for the safety of all hot work on vessels moored to the facility being placed on the facility's owner and operator. These comments noted the difficulty a facility would have in providing oversight and subsequent liability concerns. The Coast Guard agrees with these comments and has removed the language concerning hot work on vessels, noting that hot work on tankships and tank barges is already regulated under 46 CFR 35.01–1.

Three comments addressed the proposed changes to § 154.735(s) providing that tank cleaning or gas freeing operations conducted by the facility on vessels carrying oil residues or mixtures be conducted in accordance with specified sections of the International Safety Guide for Oil Tankers and Terminals (ISGOTT). The provision to allow facility owners or operators to request the COTP to approve, in accordance with § 154.107, alternative methods of compliance based on sound industry practices satisfied these comments. One comment stated that the ISGOTT manual was being revised in the near future and that the referenced sections would have to be updated. The Coast Guard has reviewed the new version of the ISGOTT manual and revised this section accordingly.

Seven comments addressed the proposed security requirements for waterfront facilities. All of these comments objected to the proposed requirements. These comments outlined the existing procedures currently used by facilities for controlling access to marine transfer areas such as fencing, gates, and video surveillance. The revised rule has been reworded in a manner similar to the existing text to allow facilities more flexibility in their security arrangements based on existing procedures and local conditions. The proposed requirement that personnel have facility-issued identification cards has been removed.

No comments were received on the proposal to prohibit smoking at waterfront facilities except in designated areas; therefore, the proposed language is retained.

Five comments discussed the proposal to require that three-way warning signs, similar to those required under 33 CFR 126.15(o)(2)(i), be displayed on the facility at the point of transfer, without obstruction, at all times, on a fixed facility, and during coupling, transfer operations, and uncoupling on a mobile facility. Two of these comments supported the proposal as written. One comment requested that, since the requirements for tank vessels and tank barges already cover the requirements for warning signs at the point of transfer, the location of the warning signs should be at each shoreside entrance to the dock or berth for fixed facilities. The Coast Guard agrees with this comment and has revised the final rule accordingly. One of these comments requested that facilities with non-exclusive use of dock space be allowed to use portable signs posted only during transfer operations. While the Coast Guard agrees with this comment, it believes this method does not need to be a regulatory requirement, but rather an alternative that the COTP can approve on a case by case basis.

Records

Seven comments discussed the proposed changes to § 154.740. The majority of these comments supported the maintaining of records in a central location. However, all of the comments objected to the requirement that these records be maintained in the same location as the Operations Manual. The majority of these comments noted that, particularly at large facilities, there are multiple copies of the Operations Manual scattered throughout the facility; however, requiring these records at each location would create a heavy paperwork burden on the industry. The majority of these comments requested that the facility be allowed to designate a centralized location for these records, since many of them are already computerized. The Coast Guard agrees with these comments and has revised the final rule to allow facilities flexibility in designating a centralized location where the records will be kept.

Conforming changes to certain sections of 33 CFR part 156 have been made to ensure consistency with the changes made to part 154.

Requirements for Transfer

In 33 CFR 156.120 the definition of ''transfer'' has been revised to conform to the definition in § 154.105. As previously discussed, other amendments have been revised to conform to § 156.120(w)(5) to ensure that transfer pressures do not exceed a

facility's maximum allowable working pressure (MAWP). A new paragraph (dd) has been added to § 156.120 to clarify that welding, hot work and smoking will not be permitted on vessels during transfer operations. The Coast Guard recognizes that smoking on tank barges or tank vessels is currently regulated under 46 CFR 35.30–5. However, numerous problems have developed because vessel personnel have been discovered smoking during the bunkering of freight vessels which are not currently covered under the regulations. An editorial correction is made to § 156.120(f) to correct the reference.

Supervision by Person in Charge

Eight comments addressed the proposed changes to § 156.160. All of these comments objected to the proposed requirement as impractical and infeasible due to the length of time that transfers take, and the need to occasionally stop a transfer for weather, other facility operations, equipment checks, or crew rest breaks. The Coast Guard agrees with these comments and has retained the original text of the regulations.

Equipment Tests and Inspections

Five comments addressed the proposed changes to § 156.170. One comment requested that, as stated in the preamble, language in the final rule include a provision stating that the test medium does not have to be water. The Coast Guard agrees with this comment and has revised the final rule accordingly. However, facility operators are cautioned against using oil or hazardous material as a test medium. Because leaks are an expected result of any test, a discharge of oil or hazardous material resulting from a test could be considered a willful discharge. An editorial correction is made to § 156.170(c)(1)(i) to correct the reference.

One comment requested that components that have been gas-freed and blanked-off be exempted from the testing requirements. This comment stated that industry frequently takes some components out of service for extended periods of time; therefore, these components should not be required to be tested unless they are returned to service. The revisions to the proposed text allow this option as the Coast Guard has removed the word ''active'' from the proposed § 156.170(f)(1) so that facilities that are not in a caretaker status will be required to conduct their tests either annually, or not less than 30 days prior to the first transfer past the one year inspection date. For example, if a facility had previously tested its components, and then had removed these components from service for the previous 15 months, this facility would be required to test the components that had been removed from service not less than 30 days prior to the first transfer using the components.

Two comments supported the proposal to give the COTP the authority to approve alternative methods of compliance to the testing requirements in this section. Therefore, the proposed language is retained.

Exemptions

Editorial corrections are being made to § 154.108 and § 156.110 to reflect the change in the office title from Chief, Office of Marine Safety, Security and Environmental Protection to the Chief, Marine Safety and Environmental Protection. This change is a result of recent Coast Guard streamlining initiatives.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 154.106 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in that section.

Regulatory Evaluation

This is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 11040; February 26, 1979). A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES.** The Evaluation is summarized as follows:

It is estimated that 2,591 fixed and 539 mobile marine transportation related facilities will be affected by these regulations. Many of the revisions are clarifying changes that will impose no additional costs on facilities presently in compliance with the regulations. For example, information previously kept separately is now required to be kept in the same location. Since this information is not required to be included in the operations manual, no additional cost is incurred for the review by the Coast Guard or the facility.

There are some new requirements associated with this Final Rule. These requirements include the following: a map or maps, drawings, or other diagrams acceptable to the COTP showing the boundaries of the Coast Guard's jurisdiction (§ 154.310(a)(2)); additional requirements for mobile transfer facilities including sufficient fire extinguishers, protective equipment, three-way warning signs, electrical wiring and the ''person in charge requirements'' (§ 154.100(d)); a more extensive training and qualification program for persons in charge (§ 154.710(c)); and three-way warning signs (§ 154.735(v)).

However, other revisions lessen the burden on industry. Examples of the reduction in burden are the deletion of the requirement that transfer hoses have a maximum allowable working pressure of at least 150 psi (§ 154.500(b)) and deletion of the requirement for a facility to obtain a hot work permit (§ 154.735(1)).

In consideration of the additions and deletions to part 154 and 156, it is estimated that the annual net cost to all facilities would be $5,448,235, when capital costs are incurred over a 5 year period.

The overriding benefit of the regulations to industry and the Coast Guard would be the establishment of rules that are easier to understand and that would facilitate and foster industry compliance, leading to a higher level of environmental protection.

The direct monetary benefit of increased protection would come from the reduction of spills resulting from facility operations. These regulations are designed to achieve an overall reduction of oil and hazardous materials spilled into the water by 20%. The weighted average of the annual volume of bulk oil and hazardous material spilled from 1986 to 1995 from facilities was 4,124,430 gallons. The estimated costs of spill cleanup, third party damages, and natural resource damages resulting from this volume total $82,488,600. a 20% reduction will give an annual benefit of $16,497,720.

Comparing the monetary benefits of the provisions against the compliance cost to industry, the annual benefit of the regulations is estimated to be $11,049,485.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and 1996 amendments (enacted as Chapter 8 of Title 5, U.S. Code) the Coast Guard must consider whether this rule, if adopted, will have a significant economic impact on a substantial number of small

entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The majority of facilities are owned by large corporations. The new requirements established by this rule, measured against the proposed relief from other requirements currently in effect, will result in a negligible cost increase for facilities that presently comply with part 154.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule, as adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This rule contains new collection-of-information requirements in the following sections: § 154.310 and § 154.560. The following particulars apply:

DOT No.: 2115.

OMB Control No.: 2115–0078.

Administration: U.S. Coast Guard.

Title: Changes to regulations covering Facilities Transferring Oil or Hazardous Materials in Bulk.

Need for Information: It is required that information, presently kept separately, now be kept in a centralized location. However, little new information is required. Maintaining all records in one location where they are readily accessible will encourage facility owners and operators to be better prepared and thereby help to prevent spills and accidents resulting from improper procedures.

Proposed Use of Information: To determine regulatory compliance.

Frequency of Response: On occasion.

Burden Estimate: 22,632 hours per year.

Respondents: 3,130 operators of bulk oil and hazardous materials transfer facilities.

Form(s): Not applicable.

Average Burden Hours per Respondent: 15.8 hours to prepare and submit an amendment to an existing Operations Manual and 88 hours to prepare and submit a new Operations Manual.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. This final rule contains information collection requirements which have been approved under OMB no. 2115–0078 and which expires on July 31, 1996. The Coast Guard has submitted the requirements to OMB for review and renewal under section 3504(h) of the Paperwork Reduction Act.

The U.S. Coast Guard will publish a notice in the Federal Register prior to the effective date of this final rule of OMB's decision to approve, modify or disapprove the information collection requirements. Individuals and organizations may submit comments on the information collection requirements by October 7, 1996, and should direct them to the Executive Secretary, Marine Safety Council (address above) and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., rm 10235, 725 17th St. NW., Washington, DC 20503, Attention: Desk Officer for DOT.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under paragraph 2.B.2.e(34)(A), (D), and (E) of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation.

This rulemaking will have no direct environmental impact. This rulemaking will revise the regulations covering facilities transferring oil or hazardous material in bulk. these revisions will clarify and consolidate the present rules, as well as adding a number of new operational requirements. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under ''**ADDRESSES**''.

List of Subjects

33 CFR Part 154

Fire prevention, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Incorporation by reference.

33 CFR Part 156

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR parts 154 and 156 as follows:

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

1. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6) and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

Subpart A—General

2. In § 154.100, paragraph (a) is revised and paragraph (d) is added to read as follows:

§ 154.100 Applicability.

(a) This part applies to each facility that is capable of transferring oil or hazardous materials, in bulk, to or from a vessel, where the vessel has a total capacity, from a combination of all bulk products carried, of 39.75 cubic meters (250 barrels) or more. This part does not apply to the facility when it is in a caretaker status. This part does not apply to any offshore facility operating under the jurisdiction of the Secretary of the Department of Interior.

* * * * *

(d) The following sections of this part apply to mobile facilities:

(1) Section 154.105 Definitions.

(2) Section 154.107 Alternatives.

(3) Section 154.108 Exemptions.

(4) Section 154.110 Letter of Intent.

(5) Section 154.120 Facility examinations.

(6) Section 154.300 Operations Manual: General.

(7) Section 154.310 Operations Manual: Contents. Paragraphs (a)(2), (a)(3), (a)(5) through (a)(7), (a)(9), (a)(12), (a)(14), (a)(16), (a)(17)(ii) through (a)(17)(iv), (a)(18), (a)(20) through (23), (c) and (d).

(8) Section 154.320 Operations Manual: Amendment.

(9) Section 154.325 Operations Manual: Procedures for examination.

(10) Section 154.500 Hose assemblies. Paragraphs (a), (b), (c), (d)(1) through (3) and (e)(1) through (3).

(11) Section 154.520 Closure devices.

(12) Section 154.530 Small discharge containment. Paragraphs (a)(1) through (3) and (d).

(13) Section 154.545 Discharge containment equipment.

(14) Section 154.550 Emergency shutdown.

(15) Section 154.560 Communications.

(16) Section 154.570 Lighting. Paragraphs (c) and (d).

(17) Section 154.700 General.

(18) Section 154.710 Persons in charge: Designation and qualification. Paragraphs (a) through (c), (d)(1) through (3), (d)(7) and (e).

(19) Section 154.730 Persons in charge: Evidence of designation.

(20) Section 154.735 Safety requirements. Paragraphs (d), (f), (g), (j)(1) through (2), (k)(1) through (2), (m), (o) through (q), (r)(1) through (3), (s) and (v).

(21) Section 154.740 Records. Paragraphs (a) through (f) and (j).

(22) Section 154.750 Compliance with Operations Manual.

3. In § 154.105, the following definitions of ''Caretaker Status'', ''Marine Transfer Area'', and ''Onshore Facility'' are added in alphabetical order and the definitions of ''Facility'', ''Offshore Facility'' and ''Transfer'' are revised to read as follows:

§ 154.105 Definitions.

* * * * *

Caretaker Status denotes a facility where all piping, hoses, loading arms, storage tanks, and related equipment in the marine transfer area are completely free of oil or hazardous materials, where these components have been certified as being gas free, where piping, hoses, and loading arms terminating near any body of water have been blanked, and where the facility operator has notified the COTP that the facility will be in caretaker status.

* * * * *

Facility means either an onshore or offshore facility, except for an offshore facility operating under the jurisdiction of the Secretary of the Department of Interior, and includes, but is not limited to, structure, equipment, and appurtenances thereto, used or capable of being used to transfer oil or hazardous materials to or from a vessel or public vessel. Also included are facilities that tank clean or strip and any floating structure that is used to support an integral part of the facility's operation. A facility includes federal, state, municipal, and private facilities.

* * * * *

Marine transfer area means that part of a waterfront facility handling oil or hazardous materials in bulk between the vessel, or where the vessel moors, and the first manifold or shutoff valve on the pipeline encountered after the pipeline enters the secondary containment around the bulk storage tank required under 40 CFR 112.7 inland of the terminal manifold or loading arm, or, in the absence of secondary containment, to the valve or manifold adjacent to the bulk storage tank, including the entire pier or wharf to which a vessel transferring oil or hazardous materials is moored.

* * * * *

Offshore facility means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

* * * * *

Onshore facility means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

* * * * *

Transfer means any movement of oil or hazardous material to, from, or within a vessel by means of pumping, gravitation, or displacement. A transfer is considered to begin when the person in charge on the transferring vessel or facility and the person in charge on the receiving facility or vessel first meet to begin completing the declaration of inspection as required by § 156.150 of this chapter. A transfer is considered to be complete when all the connections for the transfer have been uncoupled and secured with blanks or other closure devices and both of the persons in charge have completed the declaration of inspection to include the date and time the transfer was complete.

* * * * *

4. In § 154.106, paragraphs (a) and (b) and the entries for ''National Fire Protection Association (NFPA)'' and ''Oil Companies International Marine Forum (OCIMF)'' are revised to read as follows:

§ 154.106 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register and make the material available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC and at the U.S. Coast Guard, Office of the Compliance (G–MOC), Room 1116, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

* * * * *

National Fire Protection Association (MFPA), 1 Batterymarch Park, Quincy, MA 02269–9101

NFPA 51B, Standard for Fire Prevention in Use of Cutting and Welding Processes, 1994 ..... 154.735

* * * * *

Oil Companies International Marine Forum (OCIMF), 96 Victoria Street, 15th Floor, London SW1E 5JW, England

International Safety Guide for Oil Tankers and Terminals, Section 6.10, Fourth Ed., 1996 ..... 154.810

International Safety Guide for Oil Tankers and Terminals, Sections 9.1, 9.2, 9.3 and 9.5, Fourth Ed., 1996 ..... 154.735

5. Section 154.107 is amended by revising paragraph (b) to read as follows:

§ 154.107 Alternative.

* * * * *

(b) The COTP takes final approval or disapproval action on the request, submitted in accordance with paragraph (a) of this section, in writing within 30 days of receipt of the request.

6. Section 154.108 is amended by revising paragraphs (a) introductory text and (d) to read as follows:

§ 154.108 Exemptions.

(a) The Chief, Marine Safety and Environmental Protection, acting for the Commandant, grants an exemption or partial exemption from compliance with any requirement in this part if:

* * * * *

(d) An exemption is granted or denied in writing. The decision of the Chief, Marine Safety and Environmental Protection is a final agency action.

7. In § 154.110, paragraph (b)(1) is revised to read as follows:

§ 154.110 Letter of intent.

* * * * *

(b) * * *

(1) The names, addresses, and telephone numbers of the facility operator and the facility owner;

* * * * *

Subpart B—Operations Manual

8. In § 154.300, paragraphs (a) introductory text, (c), (e) and (f) are revised to read as follows (the note following paragraph (b) is unchanged):

§ 154.300 Operations Manual: General.

(a) The facility operator of each facility to which this part applies shall

submit, with the letter of intent, two copies of an Operations Manual that:

* * * * *

(c) The COTP shall examine the Operations Manual when submitted, after any substantial amendment, and as otherwise required by the COTP.

* * * * *

(e) If the manual meets the requirements of this part and part 156 of this chapter, the COTP will return one copy of the manual marked ''Examined by the Coast Guard'' as described in § 154.325.

(f) The facility operator shall ensure that a sufficient number of copies of the examined Operations Manual, including a sufficient number of the translations required by paragraph (a)(3) of this section, are readily available for each facility person in charge while conducting a transfer operation.

* * * * *

9. In § 154.310, paragraphs (a)(2), (a)(7), (a)(15), (a)(16) and (a)(22) are revised and paragraph (a)(23) is added to read as follows:

§ 154.310 Operations manual: Contents.

(a) * * *

(2) A physical description of the facility including a plan and/or plans, maps, drawings, aerial photographs or diagrams, showing the boundaries of the facility subject to Coast Guard jurisdiction, mooring areas, transfer locations, control stations, wharfs, the extent and scope of the piping subject to the tests required by § 156.170(c)(4) of this chapter, and the locations of safety equipment. For mobile facilities, a physical description of the facility;

* * * * *

(7) The name and telephone number of the qualified individual identified under § 154.1026 of this part and the title and/or position and telephone number of the Coast Guard, State, local, and other personnel who may be called by the employees of the facility in an emergency;

* * * * *

(15) Quantity, type, location, and instructions for use of fire extinguishing equipment required by § 154.735(d) of this part;

(16) The maximum allowable working pressure (MAWP) of each loading arm, transfer pipe system, and hose assembly required to be tested by § 156.170 of this chapter, including the maximum relief valve setting (or maximum system pressure when relief valves are not provided) for each transfer system;

* * * * *

(22) Statements explaining that each hazardous materials transfer hose is marked with either the name of each product which may be transferred through the hose or with letters, numbers, symbols, color codes or other system acceptable to the COTP representing all such products and the location in the Operations Manual where a chart or list of symbols utilized is located and a list of the compatible products which may be transferred through the hose can be found for consultation before each transfer; and

(23) For facilities that conduct tank cleaning or stripping operations, a description of their procedures.

* * * * *

10. In § 154.320, paragraphs (a)(1) and (d) are revised to read as follows:

§ 154.320 Operations manual: Amendment.

(a) * * *

(1) The COTP will notify the facility operator in writing of any inadequacies in the Operations Manual. The facility operator may submit written information, views, and arguments regarding the inadequacies identified, and proposals for amending the Manual, within 45 days from the date of the COTP notice. After considering all relevant material presented, the COTP shall notify the facility operator of any amendment required or adopted, or the COTP shall rescind the notice. The amendment becomes effective 60 days after the facility operator receives the notice, unless the facility operator petitions the Commandant to review the COTP's notice, in which case its effective date is delayed pending a decision by the Commandant. Petitions to the Commandant must be submitted in writing via the COTP who issued the requirement to amend the Operations Manual.

* * * * *

(d) Amendments to personnel and telephone number lists required by § 154.310(a)(7) of this part do not require examination by the COTP, but the COTP must be advised of such amendments as they occur.

11. Section 154.325 is revised to read as follows:

§ 154.325 Operations Manual: Procedures for examination.

(a) The operator of a facility shall submit two copies of the Operations Manual to the Captain of the Port of the zone in which the facility is located.

(b) Not less than 60 days prior to any transfer operation, the operator of a new facility shall submit, with the letter of intent, two copies of the Operations Manual to the Captain of the Port of the zone in which the facility is located.

(c) After a facility is removed from caretaker status, not less than 30 days prior to any transfer operation the operator of that facility shall submit two copies of the Operations Manual to the COTP of the zone in which the facility is located unless the manual has been previously examined and no changes have been made since the examination.

(d) If the COTP finds that the Operations Manual meets the requirements of this part and part 156 of this chapter, the COTP will return one copy of the manual to the operator marked ''Examined by the Coast Guard''.

(e) If the COTP finds that the Operations Manual does not meet the requirements of this part and/or part 156 of this chapter, the COTP will return the manuals with an explanation of why it does not meet the requirements of this chapter.

(f) No person may use any Operations Manual for transfer operations as required by this chapter unless the Operations Manual has been examined by the COTP.

(g) The Operations Manual is voided if the facility operator—

(1) Amends the Operations Manual without following the procedures in § 154.320 of this part;

(2) Fails to amend the Operations Manual when required by the COTP; or

(3) Notifies the COTP in writing that the facility will be placed in caretaker status.

Subpart C—Equipment Requirements

12. In § 154.500, paragraphs (a) and (b) are revised to read as follows:

§ 154.500 Hose assemblies.

* * * * *

(a) The minimum design burst pressure for each hose assembly must be at least four times the sum of the pressure of the relief valve setting (or four times the maximum pump pressure when no relief valve is installed) plus the static head pressure of the transfer system, at the point where the hose is installed.

(b) The maximum allowable working pressure (MAWP) for each hose assembly must be more than the sum of the pressure of the relief valve setting (or the maximum pump pressure when no relief valve is installed) plus the static head pressure of the transfer system, at the point where the hose is installed.

* * * * *

13. Section 154.520 is revised to read as follows:

§ 154.520 Closure devices.

(a) Except as provided in paragraph (b) of this section, each facility to which

this part applies must have enough butterfly valves, wafer-type resilient seated valves, blank flanges, or other means acceptable to the COTP to blank off the ends of each hose or loading arm that is not connected for the transfer of oil or hazardous material. Such hoses and/or loading arms must be blanked off during the transfer of oil or hazardous material. A suitable material in the joints and couplings shall be installed on each end of the hose assembly or loading arm not being used for transfer to ensure a leak-free seal.

(b) A new, unused hose, and a hose that has been cleaned and is gas free, is exempt from the requirements of paragraph (a) of this section.

14. In § 154.530, paragraph (a) is revised and paragraph (e) is added to read as follows:

§ 154.530 Small discharge containment.

(a) Except as provided in paragraphs (c), (d), and (e) of this section, each facility to which this part applies must have fixed catchments, curbing, or other fixed means to contain oil or hazardous material discharged in at least—

(1) Each hose handling and loading arm area (that area on the facility that is within the area traversed by the free end of the hose or loading arm when moved from its normal stowed or idle position into a position for connection);

(2) Each hose connection manifold area; and

(3) Under each hose connection that will be coupled or uncoupled as part of the transfer operation during coupling, uncoupling, and transfer.

* * * * *

(e) Fixed or portable containment may be used to meet the requirements of paragraph (a)(3) of this section.

15. Section 154.540 is revised to read as follows:

§ 154.540 Discharge removal.

Each facility to which this part applies must have a means to safely remove discharged oil or hazardous material, within one hour of completion of the transfer, from the containment required by § 154.530 of this part without discharging the oil or hazardous material into the water.

16. In § 154.545, paragraph (e) is added to read as follows:

§ 154.545 Discharge containment equipment.

* * * * *

(e) Equipment and procedures maintained to satisfy the provisions of this chapter may be utilized in the planning requirements of subpart F of this part.

17. In § 154.560, paragraph (e) is revised to read as follows:

§ 154.560 Communications.

* * * * *

(e) Portable radio devices used to comply with paragraph (a) of this section during the transfer of flammable or combustible liquids must be marked as intrinsically safe by the manufacturer of the device and certified as intrinsically safe by a national testing laboratory or other certification organization approved by the Commandant as defined in 46 CFR 111.105–11. As an alternative to the marking requirement, facility operators may maintain documentation at the facility certifying that the portable radio devices in use at the facility are in compliance with this section. Subpart D—Facility Operations.

18. In § 154.710, paragraphs (b), (c), (d) introductory text, (d)(7) and (d)(8) are revised and paragraph (e) is added to read as follows:

§ 154.710 Persons in charge: Designation and qualification.

* * * * *

(b) The person has had at least 48 hours of experience in transfer operations at a facility in operations to which this part applies. The person also has enough experience at the facility for which qualification is desired to enable the facility operator to determine that the person's experience is adequate;

(c) The person has completed a training and qualification program established by the facility operator and described in the Operations Manual in accordance with § 154.310(a)(21), that provides the person with the knowledge and training necessary to properly operate the transfer equipment at the facility, perform the duties described in paragraph (d) of this section, follow the procedures required by this part, and fulfill the duties required of a person in charge during an emergency, except that the COTP may approve alternative experience and training requirements for new facilities; and

(d) The facility operator must certify that each person in charge has the knowledge of, and skills necessary to—

* * * * *

(7) Follow local discharge reporting procedures; and

(8) Carry out the facility's response plan for discharge reporting and containment.

(e) Training conducted to comply with the hazard communication programs required by the Occupational Safety and Health Administration (OSHA) of the Department of Labor (DOL) (29 CFR 1910.1200) or the Environmental Protection Agency (EPA) (40 CFR 311.1), or to meet the requirements of subpart F of this part may be used to satisfy the requirements in paragraphs (c) and (d) of this section, as long as the training addresses the requirements in paragraphs (c) and (d) of this section.

19. In § 154.735, the introductory text, paragraphs (l) and (s) through (t) are revised and paragraphs (u) through (v) are added to read as follows:

§ 154.735 Safety requirements.

Each operator of a facility to which this part applies shall ensure that the following safety requirements are met at the facility:

* * * * *

(l) All welding or hot work conducted on or at the facility is the responsibility of the facility operator. The COTP may require that the operator of the facility notify the COTP before any welding or hot work operations are conducted. Any welding or hot work operations conducted on or at the facility must be conducted in accordance with NFPA 51B. The facility operator shall ensure that the following additional conditions or criteria are met:

(1) Welding or hot work is prohibited during gas freeing operations, within 30.5 meters (100 feet) of bulk cargo operations involving flammable or combustible materials, within 30.5 meters (100 feet) of fueling operations, or within 30.5 meters (100 feet) of explosives or 15.25 meters (50 feet) of other hazardous materials.

(2) If the welding or hot work is on the boundary of a compartment (i.e., bulkhead, wall or deck) an additional fire watch shall be stationed in the adjoining compartment.

(3) Personnel on fire watch shall have no other duties except to watch for the presence of fire and to prevent the development of hazardous conditions.

(4) Flammable vapors, liquids or solids must first be completely removed from any container, pipe or transfer line subject to welding or hot work.

(5) Tanks used for storage of flammable or combustible substances must be tested and certified gas free prior to starting hot work.

(6) Proper safety precautions in relation to purging, inserting, or venting shall be followed for hot work on containers;

(7) All local laws and ordinances shall be observed;

(8) In case of fire or other hazard, all cutting, welding or other hot work equipment shall be completely secured.

* * * * *

(s) Tank cleaning or gas freeing operations conducted by the facility on vessels carrying oil residues or mixtures shall be conducted in accordance with

sections 9.1, 9.2, 9.3, and 9.5 of the OCIMF International Safety Guide for Oil Tankers and Terminals (ISGOTT), except that—

(1) Prohibitions in ISGOTT against the use of recirculated wash water do not apply if the wash water is first processed to remove product residues;

(2) The provision in ISGOTT section 9.2.10 concerning flushing the bottom of tanks after every discharge of leaded gasoline does not apply;

(3) The provision in ISGOTT section 9.2.11 concerning that removal of sludge, scale, and sediment does not apply if personnel use breathing apparatus which protect them from the tank atmosphere; and

(4) Upon the request of the facility owner or operator in accordance with § 154.107, the COTP may approve the use of alternative standards to ISGOTT if the COTP determines that the alternative standards provide an equal level of protection to the ISGOTT standards.

(t) Guards are stationed, or equivalent controls acceptable to the COTP are used to detect fires, report emergency conditions, and ensure that access to the marine transfer area is limited to—

(1) Personnel who work at the facility including persons assigned for transfer operations, vessel personnel, and delivery and service personnel in the course of their business;

(2) Coast Guard personnel;

(3) Other Federal, State, or local governmental officials; and

(4) Other persons authorized by the operator.

(u) Smoking shall be prohibited at the facility except that facility owners or operators may authorize smoking in designated areas if—

(1) Smoking areas are designated in accordance with local ordinances and regulations;

(2) Signs are conspicuously posted marking such authorized smoking areas; and

(3) ''No Smoking'' signs are conspicuously posted elsewhere on the facility.

(v) Warning signs shall be displayed on the facility at each shoreside entry to the dock or berth, without obstruction, at all times for fixed facilities and for mobile facilities during coupling, transfer operation, and uncoupling. The warning signs shall conform to 46 CFR 151.45–2(e)(1) or 46 CFR 153.955.

20. In § 154.740, the introductory text and paragraph (b) are revised and paragraph (j) is added to read as follows:

§ 154.740 Records.

Each facility operator shall maintain at the facility and make available for examination by the COTP:

* * * * *

(b) The name of each person designated as a person in charge of transfer operations at the facility and certification that each person in charge has completed the training requirements of § 154.710 of this part;

* * * * *

(j) If they are not marked as such, documentation that the portable radio devices in use at the facility under § 154.560 of this part are intrinsically safe.

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

21. The authority citation for part 156 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1) (C) and (D); 46 U.S.C. 3715; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351, 49 CFR 1.46. Section 156.120(bb) is issued under the authority of section 4110, Pub. L. 101–380, 104 Stat. 515.

Subpart A—Oil and Hazardous Materials Transfer Operations

22. Section 156.110 is amended by revising paragraphs (a) introductory text and (d) to read as follows:

§ 156.110 Exemptions.

(a) The Chief, Marine Safety and Environmental Protection, acting for the Commandant, may grant an exemption or partial exemption from compliance with any requirement in this part, and the District Commander may grant an exemption or partial exemption from compliance with any operating condition or requirement in subpart C of this part, if:

* * * * *

(d) An exemption is granted or denied in writing. The decision of the Chief, Marine Safety and Environmental Protection is a final agency action.

23. In § 156.120, the introductory text and paragraphs (f) and (w)(5) are revised and paragraphs (cc) and (dd) are added to read as follows:

§ 156.120 Requirements for transfer.

A transfer is considered to begin when the person in charge on the transferring vessel or facility and the person in charge on the receiving facility or vessel first meet to begin completing the declaration of inspection, as required by § 156.150 of this part. No person shall conduct an oil or hazardous material transfer operation unless:

* * * * *

(f) The end of each hose and loading arm that is not connected for the transfer of oil or hazardous material is blanked off using the closure devices required by §§ 154.520 and 155.805 of this chapter;

* * * * *

(w) * * *

(5) Details of the transferring and receiving systems including procedures to ensure that the transfer pressure does not exceed the maximum allowable working pressure (MAWP) for each hose assembly, loading arm and/or transfer pipe system;

* * * * *

(cc) Smoking is not permitted in the facilities marine transfer area except in designated smoking areas.

(dd) Welding, hot work operations and smoking are prohibited on vessels during the transfer of flammable or combustible materials, except that smoking may be permitted in accommodation areas designated by the master.

24. In § 156.150, paragraphs (c)(3) and (c)(5) are revised and paragraph (c)(6) is added to read as follows:

§ 156.150 Declaration of inspection.

* * * * *

(c) * * *

(3) The date and time the transfer operation is started;

* * * * *

(5) A space for the date, time of signing, signature, and title of each person in charge during transfer operations on the transferring vessel or facility and a space for the date, time of signing, signature, and title of each person in charge during transfer operations on the receiving facility or vessel certifying that all tests and inspections have been completed and that they are both ready to begin transferring product; and

(6) The date and time the transfer operation is completed.

* * * * *

25. In § 156.170, paragraphs (c)(1)(i), (c)(1)(iv) and (f)(1) are revised, paragraph (f)(2) is revised and redesignated as (f)(3) and paragraphs (f)(2) and (h) are added to read as follows:

§ 156.170 Equipment tests and inspections.

* * * * *

(c) * * *

(1) * * *

(i) Have no unrepaired loose covers, kinks, bulges, soft spots or any other defect which would permit the discharge of oil or hazardous material through the hose material, and no

gouges, cuts or slashes that penetrate the first layer of hose reinforcement as defined in § 156.120(i).

* * * * *

(iv) Hoses not meeting the requirements of paragraph (c)(1)(i) of this section may be acceptable after a static liquid pressure test is successfully completed in the presence of the COTP. The test medium is not required to be water.

* * * * *

(f) * * *

(1) For facilities, annually or not less than 30 days prior to the first transfer conducted past one year from the date of the last tests and inspections;

(2) For a facility in caretaker status, not less than 30 days prior to the first transfer after the facility is removed from caretaker status; and

(3) For vessels, annually or as part of the biennial and mid-period inspections.

* * * * *

(h) Upon the request of the owner or operator, the COTP may approve alternative methods of compliance to the testing requirements of paragraph (c) of this section if the COTP determines that the alternative methods provide an equal level of protection.

Dated: July 30, 1996.

J.C. Card,

U.S. Coast Guard, Chief, Marine Safety and Environmental Protection.

[FR Doc. 96–20020 Filed 8–7–96; 8:45 am]

BILLING CODE 4910–14–M

federal register

Thursday
August 8, 1996

Part III

Environmental Protection Agency

Resource Conservation and Recovery Act; OUST; Docket: Relocation; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5549–3]

Resource Conservation and Recovery Act OUST Docket: Relocation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of move and of closing of OUST Docket during the move.

SUMMARY: The Office of Underground Storage Tanks (OUST) Docket will move from the Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, VA to the Crystal Gateway, Thirteenth Floor, 1235 Jefferson Davis Highway, Arlington, VA. The OUST Docket will be closed from September 16, 1996 through September 20, 1996 for the move. Closing the OUST Docket's during the move will facilitate the moving of the Docket's collection and ensure the integrity of the regulatory dockets. The docket will reopen September 23, 1996. The hours of operation will be from 9:00 a.m. to 4:00 p.m. eastern standard time by appointment only.

FOR FURTHER INFORMATION CONTACT: Shonee Clark 703 603–7147. The phone number to the docket will remain 703/603–9231.

Dated: August 1, 1996.

Lisa Lund,

Acting Director, Office of Underground Storage Tanks.

[FR Doc. 96–20247 Filed 8–7–96; 8:45 am]

BILLING CODE 6560–50–P

federal register

Thursday
August 8, 1996

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Ch. 1, et al.

Federal Acquisition Regulations; Introduction of Miscellaneous Amendments; Final and Interim Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90–41]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document serves to introduce and relate together the interim and final rule documents which follow and which comprise Federal Acquisition Circular (FAC) 90–41. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to issue FAC 90–41 to amend the Federal Acquisition Regulation (FAR) to implement changes in the following subject areas. A companion document, the Small Entities Compliance Guide, follows this FAC and may be located on the Internet at http://www.gsa.gov/far/compliance.

Item	Subject	FAR case	Analyst
I	Information Technology Management Reform Act of 1996	96–319	O'Neill.
II	Compliance with Immigration and Nationality Act Provisions	96–320	DeStefano.
III	Federal Acquisition and Community Right-to-Know	95–305	DeStefano.
IV	Restrictions on Certain Foreign Purchases	95–303	O'Such.
V	Legal Proceedings Costs	93–010	Olson.

DATES: For effective dates and comment dates, see individual documents which appear elsewhere in this separate part.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC, 20405 (202) 501–4755. Please cite FAC 90–41 and FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90–41 amends the FAR as specified below:

CASE SUMMARIES

For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Item I—Information Technology Management Reform Act of 1996 (FAR Case 96–319)

This interim rule implements the Information Technology Management Reform Act (ITMRA) of 1996 (Division E of Public Law 104–106). ITMRA seeks to improve Federal information management and to facilitate acquisition of state-of-the-art information technology that is critical for improving the efficiency and effectiveness of Government operations. Under ITMRA, each executive agency is authorized to acquire information technology, including entering into contracts that provide for multi-agency acquisitions of information technology in accordance with guidance issued by the Office of Management and Budget. This interim rule also contains certain policies and procedures from the Federal Information Resources Management Regulation (FIRMR). The changes to the FAR include (1) addition of a definition of ''information technology'' at 2.101; (2) relocation of the definition of ''major system'' from 34.001 to 2.101; (3) addition of a new Subpart 8.9, Financial Management Systems Software (FMSS) Mandatory Multiple Award Schedule (MAS) Contracts Program; (4) revision of Part 39, Acquisition of Information Technology; (5) addition of a new clause at 52.239–1, Privacy or Security Safeguards; and (6) various conforming amendments in other parts of the FAR.

Item II—Compliance with Immigration and Nationality Act Provisions (FAR Case 96–320)

This interim rule amends FAR 9.406 to implement Executive Order 12989 of February 13, 1996, Economy and Efficiency in Government Procurement Through Compliance with Certain Immigration and Nationality Act Provisions. The Executive Order provides that a contractor may be debarred upon a determination by the Attorney General that the contractor is not in compliance with the employment provisions of the Immigration and Nationality Act.

Item III—Federal Acquisition and Community Right-to-Know (FAR Case 95–305)

The interim rule published in FAC 90–34 is revised and finalized. The rule implements Executive Order 12969, Federal Acquisition and Community Right-to-Know, which requires that Government contractors report in a public manner on toxic chemicals released into the environment. The final rule differs from the interim rule in that it amends FAR Subpart 23.9, the provision at 52.223–13, and the clause at 52.223–14 to clarify that (1) an offeror must submit a Certification of Toxic Chemical Release Reporting regarding only those facilities that it owns or operates, and (2) a contractor must file a Toxic Chemical Release Inventory Form with the Environmental Protection Agency only for its facilities that are subject to the reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986.

Item IV—Restrictions on Certain Foreign Purchases (FAR Case 95–303)

This final rule amends FAR Subpart 25.7 and the clause at 52.225–11 to (1) implement Executive Order 12959, Prohibiting Certain Transactions with Respect to Iran, and (2) reflect the regulations of the Department of the Treasury, Office of Foreign Assets Control (31 CFR Chapter V). Iran and Libya are added to the list of sources from which procurement is restricted; Vietnam, Cambodia, and South Africa are removed from the list.

Item V—Legal Proceedings Costs (FAR Case 93–010)

This final rule amends FAR 31.205–47 to make the costs of pre- or post-award protests unallowable. An

exception to this requirement is made for costs incurred to defend against a protest, if the costs are incurred pursuant to a written request from the contracting officer.

Dated: August 2, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

August 8, 1996; Number 90–41

Federal Acquisition Circular (FAC) 90–41 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

FAR case 96–320 is effective August 8, 1996. FAR cases 93–010, 95–303, and 95–305 are effective October 7, 1996. Far Case 96–319 is effective August 8, 1996, and applies to all information technology solicitations issued on or after August 8, 1996.

Dated: July 29, 1996.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: July 23, 1996.

Edward C. Loeb,

Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Tom Luedtke,

Deputy Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 96–20186 Filed 8–7–96; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, 7, 8, 9, 12, 15, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52, and 53

[FAC 90–41, FAR Case 96–319, Item I]

RIN 9000–AHXX

Federal Acquisition Regulation; Information Technology Management Reform Act of 1996 (ITMRA)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) to provide for a simplified, clear, and understandable process for acquiring information technology (IT) that addresses the management of risk. This interim rule implements the Information Technology Management Reform Act (ITMRA), Division E of Public Law 104–106, dated February 10, 1996. The interim rule also incorporates the recommendations of the Federal Information Resources Management Regulation (FIRMR) Transition Committee, relocating those provisions of the FIRMR, which were recommended for retention, in the FAR. This regulatory action was not subject to Office of Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: Effective Date: August 8, 1996.

Applicability: This regulation applies to all IT solicitations issued on or after August 8, 1996. The General Services Board of Contract Appeals (GSBCA) will not accept any protest received on or after August 8, 1996.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 7, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90–41, FAR case 96–319 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–41, FAR case 96–319.

SUPPLEMENTARY INFORMATION:

A. Background

Federal information systems are critical to every American. The efficiency and effectiveness of the Federal Government is dependent upon the effective use of information. The Information Technology Management Reform Act (ITMRA) of 1996 seeks to improve Federal information management and to facilitate Federal Government acquisition of state-of-the-art IT that is critical for improving the efficiency and effectiveness of Federal Government operations.

Under ITMRA, each executive agency is authorized to acquire IT, including entering into contracts that provide for multi-agency acquisitions of IT in accordance with guidance issued by OMB. The Chief Information Officer (CIO) of each agency is responsible for the IT programs of the agency. The Director of OMB is responsible for improving the acquisition, use, and disposal of IT by the Federal Government. The development and use of best practices in the acquisition of IT will be encouraged. Additionally, the Director will monitor the effectiveness of, and compliance with, directives issued under ITMRA. The Director will also coordinate the development and review of policy by the Administrator, Office of Information and Regulatory Affairs, with the Office of Federal Procurement Policy.

In light of the passage of ITMRA, and the recognition by the CIO Council that a new regulatory framework is necessary to effect the tenor and tenets of the ITMRA, the FIRMR Transition Committee reviewed the FIRMR (41 CFR Chapter 201) and made recommendations as to provisions of the FIRMR that should be included in the FAR. The language resulting from those recommendations is included in this interim rule.

This interim rule implements ITMRA, the recommendations of the FIRMR Transition Committee, and the goals of transforming acquisition of IT into a results-oriented procurement system which ensures responsibility and accountability of Federal agencies in the use of IT in support of agency missions.

Section 5202 of ITMRA encourages agency heads to use modular contracting or incremental acquisition when acquiring a major information technology system. A proposed rule giving guidance to contracting officers on use of this technique will be developed after publication of this interim rule. Regulation drafters will work closely with industry and contracting agencies to ensure that the proposed rule provides guidance to agencies using this technique.

B. Regulatory Flexibility Act

This rule is expected to have a significant beneficial impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule simplifies and streamlines procedures for the acquisition of information technology. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business

Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C 601, *et seq.* (FAR Case 96–319), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the ITMRA, passed February 10, 1996, should be effective by August 8, 1996. Regulations should be in effect by that date. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 5, 7, 8, 9, 12, 15, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52 and 53

Government procurement.

Dated: August 2, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 2, 5, 7, 8, 9, 12, 15, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 2, 5, 7, 8, 9, 12, 15, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52 and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Section 2.101 is amended by adding, in alphabetical order, the definitions for ''Information technology'' and ''Major system'' to read as follows:

2.101 Definitions.

* * * * *

Information technology means any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(a) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency which—

(1) Requires the use of such equipment; or

(2) Requires the use, to a significant extent, of such equipment in the performance of a service or the furnishing of a product.

(b) The term *information technology* includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

(c) The term *information technology* does not include any equipment that is acquired by a contractor incidental to a contract.

Major system means that combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property. A system shall be considered a major system if—

(a) The Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for the acquisition exceeds $300,000,000 (based on fiscal year 1980 constant dollars);

(b) A civilian agency is responsible for the system and total expenditures for the system are estimated to exceed $750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a ''major system'' established by the agency pursuant to Office of Management and Budget Circular A–109, entitled ''Major System Acquisitions,'' whichever is greater; or

(c) The system is designated a ''major system'' by the head of the agency responsible for the system.

* * * * *

PART 5—PUBLICIZING CONTRACT ACTIONS

5.207 [Amended]

3. Section 5.207 is amended in paragraph (g)(1) by revising in the table the entry for ''Code D'' to read ''Information technology services, including telecommunications services.''; and in (g)(2) by revising in the table the entry for ''Code 70'' to read ''General-purpose information technology equipment.''

PART 7—ACQUISITION PLANNING

4. Section 7.403(b)(1) is revised to read as follows:

7.403 General Services Administration assistance.

* * * * *

(b) * * *

(1) Center for Strategic IT Analysis (MKS), Washington, DC 20405, for information on acquisition of information technology.

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.002 [Amended]

5. Section 8.002 is amended by removing paragraph (d) and redesignating paragraphs (e) through (g) as (d) through (f), respectively.

8.402 [Reserved]

6. Section 8.402 is removed and reserved.

7. Subpart 8.9 is added to read as follows:

Subpart 8.9—Financial Management Systems Software (FMSS) Mandatory Multiple Award Schedule (MAS) Contracts Program

Sec.
8.901 General.
8.902 Policy.
8.903 Exceptions.
8.904 Procedures.

8.901 General.

(a) OMB has established a mandatory Governmentwide Financial Management Systems Software (FMSS) program.

(b) Agencies may obtain information and assistance concerning the use of the FMSS MAS contracts program from: General Services Administration, Procurement Services Center (KRB), FMSS Contracting Officer, 18th and F Streets, NW, Washington, DC 20405.

(c) OMB Circular No. A–127, Revised, ''Financial Management Systems,'' provides further policy direction regarding the FMSS program.

8.902 Policy.

The FMSS MAS contracts program is mandatory for use by executive agencies for the acquisition of commercial software for core financial systems and for the acquisition of services and support related to the implementation of such software.

8.903 Exceptions.

(a) If an executive agency holds a licensing agreement for a software package that is available on the FMSS MAS contracts, and the package was obtained under a contract awarded before the award of the FMSS MAS contracts, the agency's use of the FMSS MAS contracts program is optional for the acquisition of services and support related to the implementation of that package until the previous non-MAS contract expires.

(b) Use of the FMSS MAS contracts program by Federal agencies that are not executive agencies is optional and is subject to the FMSS contractor accepting the order.

(c) An executive agency shall obtain a waiver from GSA if it determines that its requirements for financial management systems software cannot be satisfied through use of the FMSS MAS contracts program.

(1) The request for a waiver shall contain the following information—

(i) A description of the agency's requirements;

(ii) The reasons the FMSS MAS contracts program does not satisfy the requirements; and

(iii) A description of how the agency proposes to satisfy its needs for financial management system software.

(2) Agencies shall send waiver requests to GSA at the address in 8.901(b).

8.904 Procedures.

(a) The contracting officer shall announce the agency's requirements in a letter of interest (LOI) to all contractors participating in the FMSS MAS contracts program.

(b) At the time of issuance, the contracting officer shall provide a copy of the LOI to—

(1) GSA at the address in 8.901(b);

(2) OMB at: Office of Federal Financial Management, Federal Financial Systems Branch, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503; and

(3) Department of Treasury at: Division of Financial Management, Financial Management Service, Department of the Treasury, PG Center #2, Room 800A, Hyattsville, MD 20782.

(c) The LOI shall—

(1) Contain sufficient information to enable a competitive acquisition under the FMSS MAS contracts program;

(2) Include instructions to the FMSS MAS contractors for responding to the LOI; and

(3) Include evaluation and award factors.

(d) The agency shall conduct an analysis of the offerings of the FMSS MAS contractors and issue a delivery order to the contractor that provides the most advantageous alternative to the Government.

(e) The contracting officer may issue single or multiple delivery orders to satisfy the total requirement.

(f) The contracting officer shall provide a copy of each delivery order, or modification thereto, to OMB and the Department of Treasury at the address shown in paragraph (b) of this section and to GSA at the address in 8.901(b).

PART 9—CONTRACTOR QUALIFICATIONS

8. Section 9.508(e) is revised to read as follows:

9.508 Examples.

* * * * *

(e) Before an acquisition for information technology is conducted, Company A is awarded a contract to prepare data system specifications and equipment performance criteria to be used as the basis for the equipment competition. Since the specifications are the basis for selection of commercial hardware, a potential conflict of interest exists. Company A should be excluded from the initial follow-on information technology hardware acquisition.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

9. Section 12.603(c)(2)(xiii) is revised to read as follows:

12.603 Streamlined solicitation for commercial items.

* * * * *

(c) * * *

(2) * * *

(xiii) A statement regarding any additional contract requirement(s) or terms and conditions (such as contract financing arrangements or warranty requirements) determined by the contracting officer to be necessary for this acquisition and consistent with customary commercial practices.

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.103 [Amended]

10. Section 13.103 is amended by removing ''GSA Nonmandatory Schedule Contracts for FIP Resources,'' in paragraph (a).

11. Section 13.202(c)(3) is revised to read as follows:

13.202 Establishment of blanket purchase agreements (BPA's).

* * * * *

(c) * * *

(3) Federal Supply Schedule contractors if not inconsistent with the terms of the applicable schedule contract.

PART 15—CONTRACTING BY NEGOTIATION

15.805–1 [Amended]

12. Section 15.805–1(d) is amended in the sixth sentence by removing ''the FIRMR'', and by removing ''regulatory'' and inserting ''regulations'' in its place.

PART 16—TYPES OF CONTRACTS

13. Section 16.500 is amended by revising the fourth and fifth sentences to read as follows:

16.500 Scope of subpart.

* * * Therefore, GSA regulations and the coverage for the Federal Supply Schedule program in subpart 8.4 and part 38 take precedence over this subpart. This subpart may be used to acquire information technology requirements that are not satisfied under the Federal Supply Schedule program. * * *

PART 17—SPECIAL CONTRACTING METHODS

14. Section 17.200 is revised to read as follows:

17.200 Scope of subpart.

This subpart prescribes policies and procedures for the use of option solicitation provisions and contract clauses. Except as provided in agency regulations, this subpart does not apply to contracts for (a) services involving the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property; (b) architect-engineer services; and (c) research and development services. However, it does not preclude the use of options in those contracts.

15. Section 17.204(e) is amended by removing the last sentence and adding in its place two new sentences to read as follows:

17.204 Contracts.

* * * * *

(e) * * * These limitations do not apply to information technology contracts. However, statutes applicable to various classes of contracts, for example, the Service Contract Act (see 22.1002–1), may place additional restrictions on the length of contracts.

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

16. Subsection 19.502–1 is amended by revising the last sentence to read as follows:

19.502–1 Requirements for setting aside acquisitions.

* * * This requirement does not apply to purchases of $2,500 or less, or purchases from required sources of supply under Part 8 (e.g., Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1006 [Amended]

17. Section 22.1006(e)(1) is amended by removing the acronym ''ADP'' and inserting ''information technology'' in its place.

PART 32—CONTRACT FINANCING

18. Section 32.602(h) is revised to read as follows:

32.602 General.

* * * * *

(h) Reimbursement of costs, as provided in 33.102(b) and 33.104(h)(1), paid by the Government where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification.

19. Section 32.603 is revised to read as follows:

32.603 Applicability.

Except as otherwise specified, this subpart applies to all debts to the Government arising in connection with contracts and subcontracts for the acquisition of supplies or services, and debts arising from the Government's payment of costs, as provided in 33.102(b) and 33.104(h)(1), where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification.

PART 33—PROTESTS, DISPUTES, AND APPEALS

20. Section 33.102 is amended by revising the first sentence of paragraph (a); in (b)(3)(i) by removing ''or GSBCA''; in (c) by removing ''or GSBCA'' and by removing ''90 working'' and inserting ''100'' in its place; and by revising (e). The revised text reads as follows:

33.102 General.

(a) Contracting officers shall consider all protests and seek legal advice, whether protests are submitted before or after award and whether filed directly with the agency or the General Accounting Office (GAO). * * *

* * * * *

(e) An interested party wishing to protest is encouraged to seek resolution within the agency (see 33.103) before filing a protest with the GAO, but may protest to the GAO in accordance with GAO regulations (4 CFR part 21).

33.104 [Amended]

21. Section 33.104 is amended in paragraph (a)(3)(i) introductory text by removing ''35'' and inserting ''30'' in its place, and in paragraph (f) by removing ''125'' and inserting ''100'' in its place.

33.105 [Reserved]

22. Section 33.105 is removed and reserved.

PART 34—MAJOR SYSTEM ACQUISITION

34.001 [Amended]

23. Section 34.001 is amended by removing the definition for ''Major system''.

PART 37—SERVICE CONTRACTING

24. Section 37.202(a) is revised to read as follows:

37.202 Exclusions.

* * * * *

(a) Routine information technology services unless they are an integral part of a contract for the acquisition of advisory and assistance services.

* * * * *

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

38.000 [Amended]

25. Section 38.000 is amended by removing the second sentence.

26. Part 39 is revised to read as follows:

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

Sec.
39.000 Scope of part.
39.001 Applicability.
39.002 Definitions.

Subpart 39.1—General

39.101 Policy.
39.102 Management of risk.
39.103 [Reserved]
39.104 [Reserved]
39.105 Privacy.
39.106 Contract clause.

39.000 Scope of part.

This part prescribes acquisition policies and procedures for use in acquiring information technology consistent with other parts of this chapter and OMB Circular No. A–130, Management of Federal Information Resources.

39.001 Applicability.

This part applies to the acquisition of information technology by or for the use of agencies except for acquisitions of information technology for national security systems. However, acquisitions of information technology for national security systems shall be conducted in accordance with 40 U.S.C. 1412 with regard to requirements for performance and results-based management; the role of the agency Chief Information Officer in acquisitions; and accountability. These requirements are addressed in OMB Circular No. A–130.

39.002 Definitions.

National security system, as used in this part, means any telecommunications or information system operated by the United States Government, the function, operation, or use of which—

(a) Involves intelligence activities;

(b) Involves cryptologic activities related to national security;

(c) Involves command and control of military forces;

(d) Involves equipment that is an integral part of a weapon or weapons system; or

(e) Is critical to the direct fulfillment of military or intelligence missions. This does not include a system that is to be used for routine administrative and business applications, such as payroll, finance, logistics, and personnel management applications.

Subpart 39.1—General

39.101 Policy.

In acquiring information technology, agencies shall identify their requirements pursuant to OMB Circular A–130, including consideration of

security of resources, protection of privacy, national security and emergency preparedness, accommodations for individuals with disabilities, and energy efficiency. When developing an acquisition strategy, contracting officers should consider the rapidly changing nature of information technology through market research (see part 10) and the application of technology refreshment techniques.

39.102 Management of risk.

(a) Prior to entering into a contract for information technology, an agency should analyze risks, benefits, and costs. (See part 7 for additional information regarding requirements definition.) Reasonable risk taking is appropriate as long as risks are controlled and mitigated. Contracting and program office officials are jointly responsible for assessing, monitoring and controlling risk when selecting projects for investment and during program implementation.

(b) Types of risk may include schedule risk, risk of technical obsolescence, cost risk, risk implicit in a particular contract type, technical feasibility, dependencies between a new project and other projects or systems, the number of simultaneous high risk projects to be monitored, funding availability, and program management risk.

(c) Appropriate techniques should be applied to manage and mitigate risk during the acquisition of information technology. Techniques include, but are not limited to: prudent project management; use of modular contracting; thorough acquisition planning tied to budget planning by the program, finance and contracting offices; continuous collection and evaluation of risk-based assessment data; prototyping prior to implementation; post implementation reviews to determine actual project cost, benefits and returns; and focusing on risks and returns using quantifiable measures.

39.103–39.104 [Reserved]

39.105 Privacy.

Agencies shall ensure that contracts for information technology address protection of privacy in accordance with the Privacy Act (5 U.S.C. 552a) and part 24. In addition, each agency shall ensure that contracts for the design, development, or operation of a system of records using commercial information technology services or information technology support services include the following:

(a) Agency rules of conduct that the contractor and the contractor's employees shall be required to follow.

(b) A list of the anticipated threats and hazards that the contractor must guard against.

(c) A description of the safeguards that the contractor must specifically provide.

(d) Requirements for a program of Government inspection during performance of the contract that will ensure the continued efficacy and efficiency of safeguards and the discovery and countering of new threats and hazards.

39.106 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause at 52.239–1, Privacy or Security Safeguards, in solicitations and contracts for information technology which require security of information technology, and/or are for the design, development, or operation of a system of records using commercial information technology services or support services.

PART 45—GOVERNMENT PROPERTY

45.608–1 [Amended]

27. Section 45.608–1 is amended in Table 45–1 under the Screening Category ''Special Items'' by removing in the second column ''Automatic data processing equipment.'', and in the third column by removing ''(see 45.608–5(d))'' and revising ''(see 45.608–5(e))'' to read ''(see 45.608–5(d))''.

45.608–5 [Amended]

28. Section 45.608–5 is amended by removing paragraph (d) and by redesignating paragraph (e) as (d).

PART 46—QUALITY ASSURANCE

29. Section 46.801 is amended by revising the first sentence of paragraph (a) to read as follows:

46.801 Applicability.

(a) This subpart applies to contracts other than those for (1) information technology, including telecommunications, (2) construction, (3) architect-engineer services, and (4) maintenance and rehabilitation of real property. * * *

* * * * *

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

30. Section 51.103(c) is revised to read as follows:

51.103 Ordering from Government supply sources.

* * * * *

(c) Contractors placing orders under indefinite delivery contracts issued by GSA for automatic data processing equipment, software and maintenance, communications equipment and supplies, and teleprocessing services shall follow the terms of the applicable contract and the procedures in 51.103(a)(1) and (2).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

31. Section 52.212–5 is amended by revising the clause date; by removing from paragraph (a)(2) ''and 40 U.S.C. 759'' and from the introductory text of paragraph (b) ''and FIRMR''; and by revising (b)(16) and (17) to read as follows:

52.212–5 Contract terms and conditions required to implement statutes or executive orders—commercial items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders-Commercial Items (Aug. 1996)

* * * * *

(b) * * *

_____ (16) 52.239–1, Privacy or Security Safeguards (5 U.S.C. 552a).

_____ (17) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241).

* * * * *

(End of clause)

32. Section 52.222–48 is amended by revising the section heading, the clause heading and date, and by removing from paragraph (a)(2) ''ADP'' and inserting ''information technology'' in its place. The revised text reads as follows:

52.222–48 Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical and/or Office and Business Equipment—Contractor Certification.

* * * * *

Exemption From Application of Service Contract Act Provisions For Contracts For Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical and/or Office and Business Equipment—Contractor Certification (Aug. 1996)

* * * * *

(End of clause)

33. Section 52.233–2 is revised to read as follows:

52.233–2 Service of Protest.

As prescribed in 33.106(a), insert the following provision:

Service of Protest (Aug. 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from _____. [Contracting Officer designate the official or location where a protest may be served on the Contracting Officer.]

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

34. Section 52.233–3 is amended by revising the clause date and the first sentence of paragraph (f) to read as follows:

52.233–3 Protest after Award.

* * * * *

Protest After Award (Aug. 1996)

* * * * *

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. * * *

(End of clause)

* * * * *

35. Section 52.239–1 is added to read as follows:

52.239–1 Privacy or Security Safeguards.

As prescribed in 39.106, insert a clause substantially the same as the following:

Privacy or Security Safeguards (Aug. 1996)

(a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer's written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.

(b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor shall afford the Government access to the Contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.

(c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

(End of clause)

PART 53–FORMS

36. Section 53.245(a) is amended by revising the last sentence to read as follows:

53.245 Government property.

* * * * *

(a) * * * (See 45.608–2(b)(2) and 45.608–8.)

* * * * *

[FR Doc. 96–20187 Filed 8–7–96; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

[FAC 90–41, FAR Case 96–320, Item II]

RIN 9000–AHXX

Federal Acquisition Regulation; Compliance With Immigration and Nationality Act Provisions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) Part 9 to implement Executive Order 12989 of February 13, 1996, Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Nationality Act Provisions. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: Effective Date: August 8, 1996.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 7, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90–41, FAR case 96–320, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–41, FAR case 96–320.

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order 12989, Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Nationality Act Provisions, was signed on February 13, 1996. The Executive Order provides that a contractor may be debarred upon a determination by the Attorney General that the contractor is not in compliance with the employment provisions of the Immigration and Nationality Act (INA). This interim rule revises FAR 9.406–2, to specify that such a determination by the Attorney General is a basis for debarment, and 9.406–4, to stipulate the duration of the debarment mandated by the Executive order.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Only a small number of Federal contractors are likely to be the subject of a determination, by the Attorney General, that they are not in compliance with the employment provisions of the Immigration and Nationality Act. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 96–320), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling

reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Executive Order 12989, Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Nationality Act Provisions, which was effective upon its execution (February 13, 1996). However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: August 2, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 9 is amended as set forth below:

1. The authority citation for 48 CFR Part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

2. Section 9.406–2 is amended in paragraph (a)(4) in the second parenthetical by removing ''section'' and inserting ''Section'' in its place, and by revising (b) to read as follows:

9.406–2 Causes for debarment.

* * * * *

(b)(1) The debarring official may debar a contractor, based upon a preponderance of the evidence, for—

(i) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—

(A) Willful failure to perform in accordance with the terms of one or more contracts; or

(B) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.

(ii) Violations of the Drug-Free Workplace Act of 1988 (Public Law 100–690), as indicated by—

(A) The offeror's submission of a false certification;

(B) The contractor's failure to comply with its certification; or

(C) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 23.504).

(iii) Intentionally affixing a label bearing a ''Made in America'' inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see Section 202 of the Defense Production Act (Public Law 102–558)).

(iv) Commission of an unfair trade practice as defined in 9.403 (see Section 201 of the Defense Production Act (Public Law 102–558)).

(2) The debarring official may debar a contractor, based on a determination by the Attorney General of the United States, or designee, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12989). The Attorney General's determination is not reviewable in the debarment proceedings.

* * * * *

3. Section 9.406–4 is amended by revising paragraphs (a) and (b) to read as follows:

9.406–4 Period of debarment.

(a)(1) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, debarment should not exceed 3 years, except that—

(i) Debarment for violation of the provisions of the Drug-Free Workplace Act of 1988 (see 23.506) may be for a period not to exceed 5 years; and

(ii) Debarments under 9.406–2(b)(2) shall be for one year unless extended pursuant to paragraph (b) of this subsection.

(2) If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend the debarment for an additional period, if that official determines that an extension is necessary to protect the Government's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. Debarments under 9.406–2(b)(2) may be extended for additional periods of one year if the Attorney General or designee determines that the contractor continues to be in violation of the employment provisions of the Immigration and Nationality Act. If debarment for an additional period is determined to be necessary, the procedures of 9.406–3 shall be followed to extend the debarment.

* * * * *

[FR Doc. 96–20190 Filed 8–7–96; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 23 and 52

[FAC 90–41; FAR Case 95–305; Item III]

RIN 9000–AG68

Federal Acquisition Regulation; Federal Acquisition and Community Right-to-Know

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) Parts 23 and 52 to implement Executive Order 12969. The Executive order requires that Federal agency contractors report in a public manner on toxic chemicals released to the environment. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: October 7, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–41, FAR case 95–305.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule with request for public comment was published on October 30, 1995 (60 FR 55306). Thirty-four comments were received from eight respondents. As a result of analyzing the public comments, the rule was revised to clarify that the owner or operator of a facility that is subject to the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and the Pollution Prevention Act (PPA) reporting requirements is required to file Toxic Chemical Release Inventory Forms with the Environmental Protection Agency, and that offerors will submit certifications regarding only those facilities that the offeror owns or operates that will be used in performing the contract. This final rule also

simplifies the language of the certification at FAR 52.223–13.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*. The rule requires only that offerors in competitive acquisitions exceeding $100,000 in value agree to comply with, or identify the basis for their exemption from, existing EPCRA and PPA reporting requirements. There were no public comments in response to the Regulatory Flexibility Statement published with the interim rule. The rule does not apply to acquisitions of commercial items or to contractor facilities located outside the United States.

C. Paperwork Reduction Act

The final rule imposes no new information collection requirements that require approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq*. The information collection requirements imposed by the interim rule have been approved by OMB under OMB Clearance Number 9000–0139 through September 30, 1996.

List of Subjects in 48 CFR Parts 23 and 52

Government procurement.

Dated: August 2, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 23 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 23 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Section 23.901 is amended by adding a parenthetical at the end to read as follows:

23.901 Purpose.

* * * (See also EPA Notice, ''Guidance Implementing Executive Order 12969'' (60 FR 50738, September 29, 1995).)

23.902 [Amended]

3. Section 23.902 is amended by redesignating the first sentence as paragraph (a) and adding a comma after the word ''land'', and redesignating the second sentence as (b) and revising it to read as follows:

23.902 General.

* * * * *

(b) Under EPCRA section 313 (42 U.S.C. 11023), and PPA section 6607 (42 U.S.C. 13106), the owner or operator of certain manufacturing facilities is required to submit annual reports on toxic chemical releases and waste management activities to the Environmental Protection Agency (EPA) and the States.

4. Section 23.903(b)(1) is revised to read as follows:

23.903 Applicability.

* * * * *

(b) * * *

(1) Acquisitions of commercial items as defined in part 2; or

* * * * *

5. Section 23.906 is amended by revising paragraphs (a), (b), and (c) to read as follows:

23.906 Requirements.

(a) E.O. 12969 requires that solicitations for competitive contracts expected to exceed $100,000 (including all options) include, to the maximum extent practicable, as an award eligibility criterion, a certification by the offeror that, if awarded a contract, either—

(1) As the owner or operator of facilities to be used in the performance of the contract that are subject to Form R filing and reporting requirements, the offeror will file, and will continue to file throughout the life of the contract, for such facilities, the Toxic Chemical Release Inventory Form (Form R) as described in EPCRA sections 313 (a) and (g) and PPA section 6607; or

(2) Facilities to be used in the performance of the contract are exempt from Form R filing and reporting requirements because the facilities—

(i) Do not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(ii) Do not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(iii) Do not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(iv) Do not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in 19.102; or

(v) Are not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(b) A determination that it is not practicable to include the solicitation provision at 52.223–13, Certification of Toxic Chemical Release Reporting, in a solicitation or class of solicitations shall be approved by a procurement official at a level no lower than the head of the contracting activity. Prior to making such a determination for a solicitation or class of solicitations with an estimated value in excess of $500,000 (including all options), the agency shall consult with the Environmental Protection Agency, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxic Substances (Mail Code 7408), Washington, DC 20460.

(c) Award shall not be made to offerors who do not certify in accordance with paragraph (a) of this section when the provision at 52.223–13, Certification of Toxic Chemical Release Reporting, is included in the solicitation. If facilities to be used by the offeror in the performance of the contract are not subject to Form R filing and reporting requirements and the offeror fails to check the appropriate box(es) in 52.223–13, Certification of Toxic Chemical Release Reporting, such failure shall be considered a minor informality or irregularity.

* * * * *

6. Section 23.907 is revised in the introductory text and paragraph (a) to read as follows:

23.907 Solicitation provision and contract clause.

Except for acquisitions of commercial items as defined in part 2, the contracting officer shall—

(a) Insert the provision at 52.223–13, Certification of Toxic Chemical Release Reporting, in all solicitations for competitive contracts expected to exceed $100,000 (including all options) and competitive 8(a) contracts, unless it has been determined in accordance with 23.906(b) that to do so is not practicable; and

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Section 52.223–13 is revised to read as follows:

52.223–13 Certification of Toxic Chemical Release Reporting.

As prescribed in 23.907(a), insert the following provision:

CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING

October 7, 1996

(a) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.

(b) By signing this offer, the offeror certifies that—

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: (*Check each block that is applicable.*)

☐ (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

☐ (ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

☐ (III) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

☐ (iv) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in Section 19.102 of the Federal Acquisition Regulation; or

☐ (v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(End of provision)

8. Section 52.223–14 is revised to read as follows:

52.223–14 Toxic Chemical Release Reporting.

As prescribed in 23.907(b), insert the following clause:

TOXIC CHEMICAL RELEASE REPORTING

October 7, 1996

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if—

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in Section 19.102 of the Federal Acquisition Regulation (FAR); or

(5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt—

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and (ii) continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall—

(1) For competitive subcontracts expected to exceed $100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223–13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding $100,000 (including all options), the substance of this clause, except this paragraph (e).

(End of clause)

[FR Doc. 96–20191 Filed 8–7–96; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 90–41; FAR Case 95–303; Item IV]

RIN 9000–AG82

Federal Acquisition Regulation; Restrictions on Certain Foreign Purchases

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) Parts 25 and 52 to implement Executive Order 12959, Prohibiting Certain Transactions with Respect to Iran, and to conform the FAR to other current restrictions of the Department of the Treasury. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: October 7, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such, at (202) 501–1759 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–41, FAR case 95–303.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Parts 25 and 52 to implement Executive Order

12959, Prohibiting Certain Transactions with Respect to Iran, which became effective May 6, 1995, and to conform the FAR to current restrictions in 31 CFR Chapter V (Office of Foreign Assets Control, Department of the Treasury). Subpart 25.7 and the clause at 52.225–11 are revised to add Iran and Libya to the list of prohibited sources, and to delete restrictions on procurement from Vietnam, Cambodia, and South Africa. A proposed rule was published in the Federal Register on February 22, 1996, at 61 FR 6910. No public comments were received. No changes were made to the proposed rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any new requirements on contractors, large or small. The rule merely notifies contractors of changes in the existing prohibitions against transactions with certain countries. This change should have minimal impact on U.S. firms. There were no public comments in response to the Regulatory Flexibility Act Statement published with the proposed rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: August 2, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 25 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

2. Subpart 25.7 is revised to read as follows:

Subpart 25.7—Restrictions on Certain Foreign Purchases

Sec.
25.701 Restrictions.
25.702 Contract clause.

25.701 Restrictions.

(a) The Government does not acquire supplies or services from foreign governments or their organizations when these supplies or services cannot be imported lawfully into the United States. Therefore, agencies and their contractors and subcontractors shall not acquire any supplies or services originating from sources within, or that were located in or transported from or through—

(1) Cuba (31 CFR part 515);
(2) Iran (31 CFR part 560);
(3) Iraq (31 CFR part 575);
(4) Libya (31 CFR part 550); or
(5) North Korea (31 CFR part 500).

(b) Agencies and their contractors and subcontractors shall not acquire any supplies or services from entities controlled by the Government of Iraq (Executive Orders 12722 and 12724).

(c) Questions concerning these restrictions should be referred to the Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, (202) 622–2520.

25.702 Contract clause.

The contracting officer shall insert the clause at 52.225–11, Restrictions on Certain Foreign Purchases, in solicitations and contracts over $2,500.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.225–11 is revised to read as follows:

52.225–11 Restrictions on Certain Foreign Purchases.

As prescribed in 25.702, insert the following clause:

Restrictions on Certain Foreign Purchases

October 7, 1996

(a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba, Iran, Iraq, Libya, and North Korea.

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the Government of Iraq.

(c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

(End of clause)

[FR Doc. 96–20188 Filed 8–7–96; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 90–41; FAR Case 93–010; Item V]

RIN 9000–AG65

Federal Acquisition Regulation; Legal Proceedings Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to make the costs of pre- or post-award protests unallowable. An exception to this requirement is made for costs incurred to defend against a protest, if the costs are incurred pursuant to a written request from the contracting officer. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: October 7, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–41, FAR case 93–010.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule adds another category of unallowable costs to the list at 31.205–47(f). The rule disallows costs in connection with protests or the defense against protests of solicitations or contract awards, unless the costs of defending against a protest are incurred pursuant to a written request from the contracting officer. A proposed rule was published in the Federal Register on October 26, 1995, at 60 FR 54918. Twelve sources submitted public comments. All comments were considered in developing the final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, applies to this final rule and a Final Regulatory Flexibility Analysis (FRFA) has been performed. Although a number of respondents took exception to the statement in the Federal Register that the proposed rule ''is not expected to have a significant economic impact on a substantial number of small entities * * * because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply'', they added that (1) many contracts awarded to small entities are cost-reimbursable and cost principles apply; (2) cost principles apply when small entities negotiate annual overhead rates; and (3) cost principles apply whenever a cost analysis is performed. We agree that cost principles apply in these cases, but the analysis concluded that a substantial number of small businesses are not involved. In addition, this rule only applies to those small entities (1) whose contracts are governed by cost principles; and (2) who file a protest, or are defending against a protest. Based on the data available, the analysis concludes that the percentage of small entities who meet this second criterion is well below 5 percent. A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: August 2, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31–CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–47 is amended by adding paragraph (f)(8) to read as follows:

31.205–47 Costs related to legal and other proceedings.

* * * * *

(f) * * *

(8) Protests of Federal Government solicitations or contract awards, or the defense against protests of such solicitations or contract awards, unless the costs of defending against a protest are incurred pursuant to a written request from the cognizant contracting officer.

* * * * *

[FR Doc. 96–20192 Filed 8–7–96; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This Small Entity Compliance Guide has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 90–41 which amend the FAR. Further information regarding these rules may be obtained by referring to FAC 90–41 which precedes this notice. This document may be obtained from the Internet at http://www.gsa.gov/far/compliance.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, FAR Secretariat, (202) 501–4755.

SUPPLEMENTARY INFORMATION:

LIST OF RULES IN FAC 90–41

Item	Subject	FAR case
I	Information Technology Management Reform Act of 1996.	96–319
II	Compliance with Immigration and Nationality Act Provisions.	96–320
III	Federal Acquisition and Community Right-to-Know.	95–305
IV	Restrictions on Certain Foreign Purchases.	95–303
V	Legal Proceedings Costs.	93–010

Item I—Information Technology Management Reform Act of 1996 (FAR Case 96–319)

This interim rule implements the Information Technology Management Reform Act (ITMRA) of 1996 (Division E of Public Law 104–106). ITMRA seeks to improve Federal information management and to facilitate acquisition of state-of-the-art information technology that is critical for improving the efficiency and effectiveness of Government operations. Under ITMRA, each executive agency is authorized to acquire information technology, including entering into contracts that provide for multi-agency acquisitions of information technology in accordance with guidance issued by the Office of Management and Budget. This interim rule also contains certain policies and procedures from the Federal Information Resources Management Regulation (FIRMR). The changes to the FAR include (1) addition of a definition of ''information technology'' at 2.101; (2) relocation of the definition of ''major system'' from 34.001 to 2.101; (3) addition of a new Subpart 8.9, Financial Management Systems Software (FMSS) Mandatory Multiple Award Schedule (MAS) Contracts Program; (4) revision of Part 39, Acquisition of Information Technology; (5) addition of a new clause at 52.239–1, Privacy or Security Safeguards; and (6) various conforming amendments in other parts of the FAR.

Item II—Compliance With Immigration and Nationality Act Provisions (FAR Case 96–320)

This interim rule amends FAR 9.406 to implement Executive Order 12989 of February 13, 1996, Economy and Efficiency in Government Procurement Through Compliance with Certain Immigration and Nationality Act Provisions. The Executive Order provides that a contractor may be debarred upon a determination by the Attorney General that the contractor is not in compliance with the employment

provisions of the Immigration and Nationality Act.

Item III—Federal Acquisition and Community Right-to-Know (FAR Case 95–305)

The interim rule published in FAC 90–34 is revised and finalized. The rule implements Executive Order 12969, Federal Acquisition and Community Right-to-Know, which requires that Government contractors report in a public manner on toxic chemicals released into the environment. The final rule differs from the interim rule in that it amends FAR Subpart 23.9, the provision at 52.223–13, and the clause at 52.223–14 to clarify that (1) an offeror must submit a Certification of Toxic Chemical Release Reporting regarding only those facilities that it owns or operates, and (2) a contractor must file a Toxic Chemical Release Inventory Form with the Environmental Protection Agency only for its facilities that are subject to the reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986.

Item IV—Restrictions on Certain Foreign Purchases (FAR Case 95–303)

This final rule amends FAR Subpart 25.7 and the clause at 52.225–11 to (1) implement Executive Order 12959, Prohibiting Certain Transactions with Respect to Iran, and (2) reflect the regulations of the Department of the Treasury, Office of Foreign Assets Control (31 CFR Chapter V). Iran and Libya are added to the list of sources from which procurement is restricted; Vietnam, Cambodia, and South Africa are removed from the list.

Item V—Legal Proceedings Costs (FAR Case 93–010)

This final rule amends FAR 31.205–47 to make the costs of pre- or post-award protests unallowable. An exception to this requirement is made for costs incurred to defend against a protest, if the costs are incurred pursuant to a written request from the contracting officer.

Dated: August 2, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 96–20189 Filed 8–7–96; 8:45 am]

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federal register

Thursday
August 8, 1996

Part V

Department of Housing and Urban Development

24 CFR Part 103

Revision of HUD's Fair Housing Complaint Processing; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 103

[Docket No. FR–4031–I–01]

RIN 2529–AA79

Office of the Assistant Secretary for Fair Housing and Equal Opportunity; Revision of HUD's Fair Housing Complaint Processing

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends HUD's regulations governing fair housing complaint processing. Specifically, this rule removes the provision allowing a respondent to request a subpoena during a fair housing investigation. The removal of this provision will eliminate the delays associated with subpoena requests and expedite the investigation process. Further, the rule will prevent the appearance of a conflict of interest between HUD's dual role as investigator and impartial arbiter of discovery disputes between complainants and respondents. This interim rule will also conform HUD's investigation practices with those of other Federal administrative agencies.

DATES: Effective date: September 9, 1996.

Comments due date: October 7, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding the interim rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Susan Forward, Deputy Assistant Secretary for Enforcement and Investigations, Room 5106, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–4211. For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. (With the exception of the ''800'' number, these numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

I. Background

A. Respondent's Right to Request Subpoena

The Fair Housing Amendments Act of 1988 amended section 811 of the Fair Housing Act (title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601 *et seq.*) (the Act). Section 811, as amended, authorizes the Secretary of HUD to issue subpoenas and order discovery in aid of fair housing investigations and hearings. The Secretary has delegated this investigative authority to the Assistant Secretary for Fair Housing and Equal Opportunity. The Secretary's authority to conduct hearings has been delegated to HUD's administrative law judges.

Prior to the Fair Housing Amendments Act of 1988, the Act did not contain an administrative hearing process with discovery available to the parties. However, the original language of section 811(b) of the Act permitted a respondent to request the issuance of a subpoena during a fair housing investigation:

> Upon written application to the Secretary, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Secretary to the same extent and subject to the same limitations as subpoenas issued by the Secretary himself.
>
> Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his request. 42 U.S.C. 3611(b) (1969).

The Fair Housing Amendments Act of 1988 removed the above-quoted provision from the Act and granted the Secretary sole authority for conducting discovery during fair housing investigations. However, HUD's regulation at 24 CFR 103.215, published on January 23, 1989, includes a provision which permits a respondent to request a subpoena during an investigation. HUD's regulations do not provide a complaining party with the opportunity to request issuance of a subpoena. However, the complainant is permitted to request that the Assistant Secretary for Fair Housing and Equal Opportunity revoke, quash or modify a respondent's subpoena. This difference was based, in part, on the assumption that HUD would be representing the interests of the complaining party, and therefore the respondent should be offered the ability to discover information in its own defense.

A recent Department of Justice memorandum [1] calls that assumption into question. The memorandum states that the responsibility of the government in the conduct of fair housing cases is not to advocate for the complainant, but to serve the government's goals of doing justice and correcting societal wrongs. Consequently, HUD's role in a fair housing investigation is to objectively consider the facts and determine whether cause exists to believe that a violation of the Act has occurred, not to represent the interests of the complainant.

B. Revision of 24 CFR 103.215

The lack of statutory support discussed above has prompted HUD to publish this interim rule, which revises § 103.215 to delete the requirement that HUD issue a subpoena at the request of a respondent. There are additional reasons for HUD's decision to take this action:

1. Prevents Appearance of Conflict of Interest

This interim rule prevents the appearance of a conflict of interest between the Assistant Secretary's dual roles as investigator and as impartial arbiter of discovery disputes between complainants and respondents by removing the requirement that HUD engage in discovery at the direction of one of the parties. The refereeing of these disputes is a function more properly allocated to the administrative law judges in the context of administrative hearings, or district court judges in the context of elected federal litigation.

2. Expedites Investigation Process

This interim rule eliminates delays in the investigation process which are associated with processing subpoena requests from respondents. The Act charges HUD with completing all fair housing investigations within a 100-day period, if practicable. If the fair housing investigation cannot be completed within that time, the Secretary is required to notify the complainant and the respondent of the reasons for the delay. (42 U.S.C. 3610(a)(1).) However, the United States Commission on Civil Rights noted, in its report on enforcement of the Act, that the complexity of some cases and the heavy caseload burden on investigative staff

[1] Assistant Attorney General Walter Dellinger, memorandum to Deval L. Patrick, Assistant Attorney General for Civil Rights, *The Relationship Between Department Attorneys and Persons on Whose Behalf the United States Initiates Cases Under the Fair Housing Act* (January 20, 1995).

bore out the observation that HUD frequently is not able to close complaints or make determinations in 100 days.[2] HUD has determined that pursuing discovery at the direction of the respondent, in addition to the discovery that HUD determines is necessary to the investigation, is not necessary to a fair and impartial determination and can actually impede HUD's efforts to complete the investigation in a timely manner.

3. Conforms HUD's Investigative Practices to Other Federal Agencies

This interim rule will conform HUD's investigation practices with those of other Federal administrative agencies, which do not provide for discovery by parties during the investigation of civil rights complaints. HUD's review of the relevant regulations of the Equal Employment Opportunity Commission for Title VII of the Civil Rights Act of 1968 (29 CFR part 1601), the Americans with Disabilities Act (29 CFR part 1630), the Equal Pay Act (29 CFR part 1620), and the Age Discrimination in Employment Act (29 CFR part 1626) revealed that a respondent does not have an opportunity to request a subpoena during the government's investigation of a civil rights complaint under any of these regulations. Similar regulations governing the Department of Education's enforcement of Title IX of the Education Amendments of 1972 (34 CFR part 106), and the Department of Justice's enforcement of the Immigration Reform and Control Act of 1986 (28 CFR part 44) also do not contain any provisions authorizing a respondent to request a subpoena during a civil rights investigation under these statutes.

HUD believes that the experience of other Federal administrative agencies provides positive guidance for this decision to streamline and simplify the investigation process.

C. Respondent's Ability To Prepare Its Defense

HUD believes it is important to emphasize that this interim rule does not compromise a respondent's ability to prepare its own defense. A respondent may continue to conduct an independent investigation of the facts underlying the fair housing complaint and may obtain the Final Investigative Report on which HUD's determination is based. This interim rule does not change a respondent's ability to compel discovery or request a subpoena from an administrative law judge during the administrative hearing process. (See 24 CFR 104.500–104.590.) This interim rule only affects the ability of a respondent to compel the use of HUD's resources to subpoena evidence independent of the evidence which HUD has determined is necessary to the investigation.

II. Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD finds that in this case prior public comment is contrary to the public interest, since immediate implementation of this interim rule will benefit the public.

This interim rule removes a respondent's right to request a subpoena during the course of a fair housing investigation. HUD's processing of these subpoena requests may delay, and often has delayed, its investigation of complaints alleging discriminatory housing practices. By eliminating these delays, this interim rule expedites HUD's investigations and its ability to enforce the Act. Further, the rule prevents the appearance of a conflict of interest between HUD's dual roles as investigator and impartial arbiter of discovery disputes between complainants and respondents. Such an appearance weakens HUD's ability to conduct fair housing complaint investigations.

This interim rule does not compromise a respondent's ability to prepare its own defense. Respondents will still be able to compel discovery or request subpoenas during the administrative hearing process. The rule only affects the ability of a respondent to compel use of HUD's resources to subpoena evidence over and above the information which HUD has determined is necessary to a full and fair investigation.

Although HUD believes issuing this interim rule for immediate effect will benefit the public, HUD welcomes public comment. All comments will be considered in the development of the final rule.

III. Other Matters

A. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule streamlines HUD's regulations governing fair housing complaint processing. The rule will have no adverse or disproportionate economic impact on small businesses.

B. Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking amends an existing regulation by streamlining provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing the Act. That finding remains applicable to this rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

D. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

[2] United States Commission on Civil Rights, *The Fair Housing Amendments Act of 1988: The Enforcement Report*, at 40–42 (1994).

E. Executive Order 12866, Regulatory Planning and Review

This interim rule was reviewed by the Office of Management and Budget under Executive Order 12866, *Regulatory Planning and Review*. Any changes made to the interim rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 103

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 103 is amended as follows:

PART 103—FAIR HOUSING—COMPLAINT PROCESSING

1. The authority citation for 24 CFR part 103 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619.

2. Section 103.215 is amended by revising paragraph (b) to read as follows:

§ 103.215 Conduct of investigations.

* * * * *

(b) The Assistant Secretary may conduct and order discovery in aid of the investigation by the same methods and to the same extent that discovery may be ordered in an administrative proceeding under 24 CFR part 104, except that the Assistant Secretary shall have the power to issue subpoenas described in 24 CFR 104.590 in support of the investigation. Subpoenas issued by the Assistant Secretary must be approved by the General Counsel as to their legality before issuance.

Dated: April 23, 1996.

Elizabeth K. Julian,

Deputy Assistant Secretary for Policy and Initiatives.

[FR Doc. 96–20201 Filed 8–7–96; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- Telecommunications resources management and use--
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This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 782/P.L. 104–177

Federal Employee Representation Improvement Act of 1996 (Aug. 6, 1996; 110 Stat. 1563)

H.R. 3215/P.L. 104–178

To amend title 18, United States Code, to repeal the provision relating to Federal employees contracting or trading with Indians. (Aug. 6, 1996; 110 Stat. 1565)

H.R. 3235/P.L. 104–179

Office of Government Ethics Authorization Act of 1996 (Aug. 6, 1996; 110 Stat. 1566)

H.R. 3603/P.L. 104–180

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997 (Aug. 6, 1996; 110 Stat. 1569)

H.J. Res. 166/P.L. 104–181

Granting the consent of Congress to the Mutual Aid Agreement between the city of Bristol, Virginia, and the city of Bristol, Tennessee. (Aug. 6, 1996; 110 Stat. 1609)

S. 1316/P.L. 104–182

Safe Drinking Water Act Amendments of 1996 (Aug. 6, 1996; 110 Stat. 1613)

S. 1757/P.L. 104–183

Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1996 (Aug. 6, 1996; 110 Stat. 1694)