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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–85–AD; Amendment 39–10031; AD 97–11–02]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that requires an inspection to determine the thickness of the intercostal that attaches the third crew member seat to the floor structure in the flight compartment, and replacement, if necessary. This amendment is prompted by a report from the manufacturer indicating that intercostals have been installed that are not of sufficient thickness (and consequent strength) to support the third crew member seat during emergency landing dynamic conditions. The actions specified by this AD are intended to prevent the failure of this intercostal during an emergency landing, which could consequently result in injury to the flight crew.

DATES: Effective July 2, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 2, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2148; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes was published in the **Federal Register** on October 28, 1996 (61 FR 55585). That action proposed to require inspection of the intercostal that attaches the third crew member seat to the floor structure in the flight compartment to determine the thickness of this part; and replacement with a new intercostal of the correct thickness, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 15 Jetstream Model 4101 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $900, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

97–11–02 Jetstream Aircraft Limited: Amendment 39–10031. Docket 96–NM–85–AD.

Applicability: Model 4101 airplanes, as listed in Jetstream Alert Service Bulletin J41–A53–030, dated January 19, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance

of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure during emergency landing dynamic conditions of the intercostal that attaches the third crew member seat (''third crew seat'') to the floor structure in the flight compartment, which could consequently result in injury to the flight crew, accomplish the following:

(a) Within 30 days after the effective date of this AD, inspect the intercostal in the floor structure that supports the third crew seat in the flight compartment to determine the thickness of this part, in accordance with Part 1 of Jetstream Alert Service Bulletin J41–A53–030, dated January 19, 1996.

(b) If the thickness of the intercostal is 0.064 inch, no further action is required by this AD.

(c) If the thickness of the intercostal is 0.048 inch, accomplish the actions specified in either paragraph (c)(1) or (c)(2) of this AD.

(1) Prior to further flight, replace the intercostal with a new part manufactured from material having the correct thickness, in accordance with Jetstream Alert Service Bulletin J41–A53–030, dated January 19, 1996. After replacement, no further action is required by this AD. Or

(2) Prior to further flight, install a placard, in accordance with Jetstream Alert Service Bulletin J41–A53–030, dated January 19, 1996, to prohibit use of the third crew seat when the total weight of carry-on items stored in the forward right stowage area is more than 100 pounds. Within 6 months after installation of the placard, replace the intercostal with a new part manufactured from material having the correct thickness, in accordance with the service bulletin. After installation of the new intercostal, the placard may be removed.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(f) The actions shall be done in accordance with Jetstream Alert Service Bulletin J41–A53–030, dated January 19, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 2, 1997.

Issued in Renton, Washington, on May 12, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–12858 Filed 5–27–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–33–AD; Amendment 39–10038; AD 97–11–09]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–215T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Bombardier Model CL–215T series airplanes. This action requires revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits the positioning of the power levers below the flight idle stop during flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop during flight. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the propeller ground beta range was used improperly during flight. The actions specified in this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Effective June 12, 1997.

Comments for inclusion in the Rules Docket must be received on or before July 28, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–33–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The information concerning this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Peter LeVoci, Flight Test Pilot, Engine and Propeller Directorate, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7514; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: In recent years, the FAA has received reports of 14 incidents and/or accidents involving intentional or inadvertent operation of the propellers in the beta range during flight on airplanes equipped with turboprop engines. (For the purposes of this amendment, Beta is defined as the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.)

Five of the fourteen in-flight beta occurrences were classified as accidents. In each of these five cases, operation of the propellers in the beta range occurred during flight. Operation of the propellers in the beta range during flight, if not prevented, could result in loss of airplane controllability, or engine overspeed with consequent loss of engine power.

Communication between the FAA and the public during a meeting held on June 11–12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the FAA-approved Airplane Flight Manual (AFM) for airplanes that are not certificated for in-flight operation with the power levers below the flight idle stop. (Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.)

FAA's Determinations

The FAA has examined the circumstances and reviewed all available information related to the incidents and accidents described previously. The FAA finds that the Limitations Section of the AFM's for

certain airplanes must be revised to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. The FAA has determined that the affected airplanes include those that are equipped with turboprop engines and that are not certificated for in-flight operation with the power levers below the flight idle stop. Since Bombardier Model CL–215T series airplanes meet these criteria, the FAA finds that the AFM for these airplanes must be revised to include the limitation and statement of consequences described previously.

U.S. Type Certification of the Airplane

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. The FAA has reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

This AD requires revising the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

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

Cost Impact

None of the Bombardier Model CL–215T series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required actions, at an average labor charge of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–33–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

97–11–09 Bombardier (Formerly Canadair): Amendment 39–10038. Docket 97–NM–33–AD.

Applicability: All Model CL–215T series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

''Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.''

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

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

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

(d) This amendment becomes effective on June 12, 1997.

Issued in Renton, Washington, on May 19, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–13846 Filed 5–27–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–61–AD; Amendment 39–9995; AD 97–08–07]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in the above-captioned airworthiness directive (AD), which was published in the **Federal Register** on April 22, 1997 (62 FR 19477). The typographical error resulted in reference to an alert service bulletin that does not exist.

DATES: Effective May 7, 1997.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of May 7, 1997 (62 FR 19477, April 22, 1997).

FOR FURTHER INFORMATION CONTACT: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5345; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 97–08–07, amendment 39–9995, applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, was published in the **Federal Register** on April 22, 1997 (62 FR 19477). That AD supersedes an existing AD to continue to require an inspection to determine the type of fluorescent light ballasts installed in the cabin sidewall; and replacement, or removal/disconnection of the ballast, if necessary. That AD also continues to require, for some airplanes, removal of the dust barriers from the outboard ceiling panels, and installation of modified outboard ceiling panels. That AD also requires replacement of certain ballasts on which a protective cover is installed with other ballasts, or removal/disconnection of the ballast.

As published, AD 97–08–07 contained a typographical error, which appeared in paragraph (c)(1) of the AD. The error indicated that the actions required by that paragraph were to be accomplished in accordance with the Accomplishment Instructions of ''Boeing Alert Service Bulletin MD80–33A110.'' However, no such alert service bulletin exists. The correct alert service bulletin reference is ''McDonnell Douglas Alert Service Bulletin MD80–33A110.'' (In all other parts of the published AD and its preamble, the alert service bulletin was cited correctly.)

This document corrects the reference to the alert service bulletin cited in paragraph (c)(1) of AD–97–08–07, to read as follows:

* * * * *

''(1) Replace the Day-Ray Products Incorporated ballast and protective cover with a Bruce Industries Incorporated ballast, in accordance with Condition 2 of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD80–33A110, dated February 25, 1997, or Revision 1, dated March 11, 1997. Or''

* * * * *

Since no other part of the regulatory information has been changed, the final rule is not being republished.

Issued in Renton, Washington on May 19, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–13845 Filed 5–27–97; 8:45 am]

BILLING CODE 4910–13–U

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Final Rule: Requirements for Child-Resistant Packaging; Packages Containing More Than 50 mg of Ketoprofen

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a rule to require child-resistant packaging for ketoprofen preparations containing more than 50 mg of ketoprofen per retail package. Ketoprofen is a nonsteroidal anti-inflammatory drug and is used to relieve minor aches and pains and to reduce fever. The Commission has determined that child-resistant packaging is necessary to protect children under five years of age from serious personal injury and serious illness resulting from ingesting ketoprofen. The Commission takes this action under the authority of the Poison Prevention Packaging Act of 1970.

DATES: The rule will become effective on November 24, 1997 and applies to

ketoprofen preparations packaged on or after that date.

FOR FURTHER INFORMATION CONTACT: Michael Bogumill, Division of Regulatory Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0400 ext. 1368.

SUPPLEMENTARY INFORMATION:

A. Background

1. Relevant Statutory and Regulatory Provisions

The Poison Prevention Packaging Act of 1970 (''PPPA''), 15 U.S.C. 1471–1476, authorizes the Commission to establish standards for the ''special packaging'' of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance.

Special packaging, also referred to as ''child-resistant (CR) packaging,'' is packaging that (1) is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) is not difficult for ''normal adults'' to use properly. 15 U.S.C. 1471(4). Household substances for which the Commission may require CR packaging include (among other categories) foods, drugs, or cosmetics as these terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). 15 U.S.C. 1471(2)(B). The Commission has performance requirements for special packaging. 16 CFR 1700.15, 1700.20.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CR packaging only if the manufacturer (or packer) also supplies the substance in CR packages of a popular size, and the non-CR packages bear conspicuous labeling stating: ''This package for households without young children.'' 15 U.S.C. 1473(a), 16 CFR 1700.5.

2. Ketoprofen

Ketoprofen is a nonsteroidal anti-inflammatory drug (''NSAID''). This class of compounds also includes ibuprofen and naproxen. Ketoprofen is used to relieve minor aches and pains such as those associated with colds, toothaches, menstrual cramps, and muscular aches. It is also used to reduce fever.[1, 2] [1] For the past ten years, ketoprofen has been a prescription drug. Like most prescription drugs, it was required to be in CR packaging by the Commission's regulation of human oral prescription drugs, 16 CFR 1700.14(a)(10). The U.S. patent on ketoprofen expired in 1993. On October 6, 1995, the Food and Drug Administration (''FDA'') granted nonprescription (''over-the-counter'' or ''OTC'') status to ketoprofen.[2]

The OTC formulations, ketoprofen and ketoprofen tartrazine, contain 12.5 milligrams (mg) of ketoprofen per dose. The recommended dose is one tablet every four to six hours. The maximum daily dose is six tablets.[2]

3. Special Packaging

The current marketers are voluntarily placing ketoprofen in CR packaging. However, a mandatory special packaging standard for ketoprofen products will ensure that other companies that may market such products in the future would use CR packaging.

Two other NSAIDs that previously became available OTC are ibuprofen and naproxen. After ibuprofen was introduced OTC, there was an increased incidence of accidental ingestions of the drug by children under five.[2]

In part to avoid a similar experience with naproxen, in 1995, the Commission then issued a rule requiring CR packaging for naproxen preparations containing 250 mg or more per retail package. 60 FR 38671. The rule became effective February 6, 1996. Similar reasoning applies to ketoprofen.

A mandatory standard for ketoprofen will also enable the Commission to ensure that its packaging meets the performance requirements of the PPPA test protocol set forth at 16 CFR 1700.15, 1700.20.

4. The Proposed Rule

On November 20, 1996, the Commission issued a notice of proposed rulemaking (''NPR'') that would require CR packaging for OTC drugs containing more than 50 mg of ketoprofen. 61 FR 59043. The Commission received only one comment, from the American Society of Health-System Pharmacists, in response to the proposed rule.[6] That comment expressed support for the proposed rule, stating that the toxicity data demonstrate that ketoprofen can cause serious illness and injury to children and that the proposed rule was consistent with packaging rules for other NSAIDs.

B. Toxicity of Ketoprofen

As explained in the NPR, the Commission's Directorate for Epidemiology and Health Sciences reviewed the toxicity of ketoprofen. Side effects commonly associated with ketoprofen, as with other NSAID's, are gastrointestinal (GI) complications, such as nausea, vomiting, diarrhea, constipation, heartburn, and abdominal pain. Other common adverse effects include headache, dizziness, visual disturbances, rash, and hypersensitivity reactions.[2]

Ketoprofen may also cause more severe adverse GI effects, such as gastric or duodenal ulcers with bleeding or perforation; intestinal ulcers; ulcerative stomatitis or colitis; gingival ulcers; perforation and hemorrhage of the esophagus, stomach, small or large intestine; hematemesis; and rectal bleeding. Renal injuries also may result from chronic use of ketoprofen.[2]

The staff reviewed the relevant medical literature which cites several cases of severe adverse reactions to ketoprofen administration and ketoprofen overdoses.[2] The NPR provides details of some of these cases. 61 FR 59044–45.

The FDA maintains a data base known as the Adverse Events Reporting System (''AERS'') for reports of adverse reactions detected after marketing a drug or biological product. Drug manufacturers are required to report to the FDA any known adverse effects associated with their products.

Of the 903 ketoprofen-associated cases reported to the FDA between 1986 and October 1995, the most common adverse reactions were abdominal pain (122), diarrhea (87), nausea (82), GI hemorrhage (70), rash (55), indigestion (39), labored breathing (34), allergic reaction (30), dizziness (30), and hives (30). Among the ketoprofen cases in the AERS database are 51 more serious reactions, i.e., hospitalizations, reactions resulting in permanent disability, or deaths. Five of these involved children under 16 years of age.[2]

The staff reviewed accidental ingestion data for children under age five. The American Association of Poison Control Center (''AAPCC'') collects incident data through its Toxic Exposure Surveillance System (''TESS''). Poisoning incidents involving ketoprofen from 1985 to 1994 were not recorded separately from other NSAIDs unless they were fatal. No deaths involving ketoprofen were reported during this period.[2] In 1995, CPSC

[1] Numbers in brackets refer to documents listed at the end of this notice.

staff requested a separate report on ketoprofen. This report showed 250 accidental ingestions of ketoprofen involving children under five years old in 1995. Twelve of these incidents resulted in minor outcomes.[8]

CPSC's data base, the National Electronic Injury Surveillance System (''NEISS'') monitors emergency room visits to selected hospitals throughout the United States. As stated in the NPR, review of NEISS data from 1988 to June 1996 showed three cases involving ketoprofen and children under five years old. All three incidents occurred in 1996. None were fatal or required hospitalization.[2] Since publication of the NPR, seven new cases of children ingesting ketoprofen were reported through NEISS.[8]

C. Level for Regulation

This rule requires special packaging for OTC ketoprofen products containing more than 50 mg ketoprofen per retail package, the same level as proposed in the NPR. This level is based on established guidelines for medical treatment following pediatric ingestion of NSAIDs.[5] These guidelines suggest medical treatment for young children who ingest five times the maximum single therapeutic dose. For ketoprofen, the maximum single therapeutic dose is 75 mg or 1.08 mg/kg assuming an average adult weight of 70 kg. The dose of ketoprofen requiring medical intervention would be five times 1.08 mg/kg, which in a 10-kg child would be more than 50 mg of ketoprofen, or four OTC tablets.[2]

D. Statutory Considerations

1. Hazard to Children

As noted above and in the NPR, the toxicity data concerning children's ingestion of ketoprofen demonstrate that this compound can cause serious illness and injury to children. Moreover, the preparations are readily available to children. The Commission concludes that a regulation is needed to ensure that products subject to the regulation will be placed in CR packaging. The regulation will enable the Commission to enforce the CR packaging requirement and ensure that effective CR packaging is used.

Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission finds that the degree and nature of the hazard to children from ingesting ketoprofen is such that special packaging is required to protect children from serious illness. The Commission bases this finding on the toxic nature of these products, described above, and their accessibility to children in the home.

2. Technical Feasibility, Practicability, and Appropriateness

In issuing a standard for special packaging under the PPPA, the Commission is required to find that the special packaging is ''technically feasible, practicable, and appropriate.'' 15 U.S.C. 1472(a)(2). Technical feasibility may be found when technology exists or can be readily developed and implemented by the effective date to produce packaging that conforms to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Packaging is appropriate when it will adequately protect the integrity of the substance and not interfere with the substance's intended storage or use.[4, 10]

The current marketers of OTC ketoprofen voluntarily use CR packaging. Similar designs have been shown to meet the revised testing protocol for senior adult use effectiveness. Therefore, the Commission concludes that CR packaging for ketoprofen is technically feasible, practicable, and appropriate.[3, 4, 10]

3. Other Considerations

In establishing a special packaging standard under the PPPA, the Commission must consider the following:

a. The reasonableness of the standard;

b. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

c. The manufacturing practices of industries affected by the PPPA; and

d. The nature and use of the household substance. 15 U.S.C. 1472(b).

The Commission has considered these factors with respect to the various determinations made in this notice, and finds no reason to conclude that the rule is unreasonable or otherwise inappropriate.

E. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such final regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n.

The Commission does not believe that a shorter effective date is necessary to protect the public interest. The companies that are currently marketing ketoprofen are voluntarily using CR packaging. The Commission does not have any indication that quantities of ketoprofen will be marketed in non-CR packaging before a 180-day effective date, other than in a single size non-CR package, as allowed under the PPPA. Thus, the Commission finds that a 180-day effective date is consistent with the public interest. Accordingly, this rule will take effect 180 days after its publication in the **Federal Register** and will apply to products that are packaged on or after the effective date.

F. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

When the Commission issued its proposed rule, the Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of a rule to require special packaging for ketoprofen preparations with more than 50 mg ketoprofen in a single package.[3] Based on this assessment, the Commission concluded that such a requirement would not have a significant impact on a substantial number of small businesses or other small entities because the current marketers of ketoprofen are using CR packaging and the relatively low costs of CR packaging should not be an entry burden for future marketers. The Commission received no comments on this determination and is aware of no information that would alter its determination.[9] Therefore, the Commission certifies that this rule would not have a significant impact on a substantial number of small businesses or other small entities.

G. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission assessed the possible environmental effects associated with the proposed PPPA requirements for ketoprofen preparations.

The Commission's regulations state that rules requiring special packaging

for consumer products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(3). Therefore, as stated in the proposed rule, because the rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.[3]

H. Preemption

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations.

The PPPA provides that, generally, when a special packaging standard issued under the PPPA is in effect, ''no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the [PPPA] standard.'' 15 U.S.C. 1476(a). A State or local standard may be excepted from this preemptive effect if (1) the State or local standard provides a higher degree of protection from the risk of injury or illness than the PPPA standard; and (2) the State or political subdivision applies to the Commission for an exemption from the PPPA's preemption clause and the Commission grants the exemption through a process specified at 16 CFR Part 1061. 15 U.S.C. 1476(c)(1). Also, the Federal government, or a State or local government, may establish and continue in effect a non-identical special packaging requirement that provides a higher degree of protection than the PPPA requirement for a household substance for the Federal, State or local government's own use. 15 U.S.C. 1476(b).

Thus, with the exceptions noted above, the rule requiring CR packaging for ketoprofen would preempt non-identical state or local special packaging standards for ketoprofen.

I. Other Executive Orders

The Commission certifies that the rule does not have sufficient implications for federalism to warrant a Federalism Assessment under Executive Order 12612 (October 26, 1987). Independent regulatory agencies are encouraged, but not required, to comply with Executive Order 13045 (April 23, 1997). This rulemaking is not subject to that order because it is not a ''covered agency action'' as defined in the order and because the rulemaking was initiated before the order was issued. In any event, the Commission's discussion in this notice of the issues involved in the rulemaking comply with the order's requirements for an analysis of the rule and its environmental, health and safety effects on children.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, 16 CFR part 1700 is amended as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231. 15 U.S.C. 2079(a).

2. Section 1700.14 is amended by republishing paragraph (a) introductory text and adding new paragraph (a)(26) to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(26) *Ketoprofen.* Ketoprofen preparations for human use and containing more than 50 mg of ketoprofen in a single retail package shall be packaged in accordance with the provisions of § 1700.15(a), (b) and (c).

* * * * *

Dated: May 21, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

(Note. This list of relevant documents will not be printed in the Code of Federal Regulations.)

1. Briefing memorandum from Jacqueline Ferrante, Ph.D., HSPS, to the Commission, ''Proposed Rule to Require Child-Resistant Packaging for Ketoprofen,'' October 15, 1996.
2. Memorandum from Susan C. Aitken, Ph.D., HSHE, to Jacqueline Ferrante, Ph.D., HSPS, ''Toxicity of Ketoprofen,'' August 19, 1996.
3. Memorandum from Marcia P. Robins, EC, to Jacqueline Ferrante, Ph.D., HSPS, ''Preliminary Assessment of Economic and Environmental Effects of a Proposal to Require Child-Resistant Packaging for OTC Pharmaceuticals Containing Ketoprofen,'' August 19, 1996.
4. Memorandum from Charles Wilbur, HSPS, to Jacqueline Ferrante, Ph.D., HSPS, ''Technical Feasibility, Practicability, and Appropriateness Determination for the Proposed Rule to Require Child-Resistant Packaging for OTC Products Containing Ketoprofen,'' August 20, 1996.
5. Vale, J.S. and Meredith, T.J., Acute Poisoning Due to Non-steroidal Anti-inflammatory Drugs: Clinical Features and Management. Med. Toxicol. 1:12–31, 1986.
6. Letter from Gary C. Stein, Ph.D., Senior Government Affairs Associate, American Society of Health-System Pharmacists, to Office of the Secretary, CPSC, dated January 30, 1997.
7. Briefing memorandum from Jacqueline Ferrante, Ph.D., HSPS, to the Commission, ''Final Rule to Require Child-Resistant Packaging for Ketoprofen,'' May 5, 1997.
8. Memorandum from Susan C. Aitken, Ph.D., HSHE, to Jacqueline Ferrante, Ph.D., HSPS, ''Update of Injuries to Accidental Ingestion of Ketoprofen Products,'' March 4, 1997.
9. Memorandum from Marcia P. Robins, EC, to Jacqueline Ferrante, Ph.D., HSPS, ''Final Rule for Child-Resistant Packaging for OTC Packages Containing More than 50 mgs Ketoprofen: Regulatory Flexibility Issues,'' February 18, 1997.
10. Memorandum from Charles Wilbur, HSPS, to Jacqueline Ferrante, Ph.D., HSPS, ''Technical Feasibility, Practicability, and Appropriateness Determination for the Final Rule to Require Child-Resistant Packaging for OTC Products Containing Ketoprofen,'' February 27, 1997.

[FR Doc. 97–13842 Filed 5–27–97; 8:45 am]

BILLING CODE 6355–01–P

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: This rule amends existing regulations governing requests for waiver of the two-year home-country physical presence requirement made by interested United States Government agencies on behalf of an exchange visitor. Changes to the regulations governing waiver requests by interested United States Government agencies are

necessary to provide for uniform administration of such requests. The Agency anticipates that such changes will increase administrative efficiency and speed of response and also ensure that multiple waiver requests on behalf of an individual exchange visitor are not processed.

EFFECTIVE DATE: This regulation is effective May 28, 1997.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, United States Information Agency, 301 4th Street, SW., Washington, DC 20547; Telephone, (202) 619–6829.

SUPPLEMENTARY INFORMATION: Under the aegis of the Exchange Visitor Program, some 175,000 foreign nationals work, study, or train in the United States annually. As part of the public diplomacy efforts of the United States Government, these foreign nationals enter the United States as participants in the Agency administered Exchange Visitor Program which seeks to promote peaceful relations and mutual understanding with other countries through educational and cultural exchange programs. Accordingly, many exchange visitors entering the United States are subject to a statutory provision, set forth at 8 U.S.C. 212(e), which requires that they return to their home country for a period of two years to share with their countrymen the knowledge, experience and impressions gained during their sojourn in the United States.

Foreign nations entering the United States as Exchange Visitor Program participants are subject to the return home requirement if they: (i) receive U.S. or foreign government financing for any part of their studies or training in the U.S.; (ii) studies or trained in a field deemed or importance to their home government and such field is on the ''skills list'' maintained by the Agency in consultation with foreign governments; or, (iii) entered the U.S. to pursue graduate medical education or training. An exchange visitor subject to Section 212(e) is not eligible for an H or L visa, or legal permanent resident status until the return home requirement is fulfilled or waived.

If subject to the two-year return home requirement, an exchange visitor may seek a waiver of such requirement. The bases upon which a waiver may be granted are: (i) a no objection statement from the visitor's home government; (ii) exceptional hardship to the visitor's U.S. citizen spouse or child; (iii) a request, on the visitor's behalf, by an interested United States Government agency; (iv) a reasonable fear of persecution if the visitor were to return to his or her home country; and, (v) a request by a state on behalf of an exchange visitor who has pursued graduate medical education or training in the U.S. Section 212(e) also prohibits a foreign medical graduate from applying for a waiver on the basis of a no objection statement from the visitor's home government.

The exact number of exchange visitors that are subject to the 212(e) requirement is not known; but, a careful examination of this matter would suggest that upwards of 100,000 exchange visitors are in fact currently subject to the return home requirement.

Interested U.S. Government Agency Waiver Requests

The Agency Exchange Visitor Program Services, Waiver Review Branch, is responsible for processing waiver applications. Last year, this branch processed over 6,000 waiver applications, 95 percent of which were based upon either a no objection statement from the visitor's home government or a request from an interested government agency. Over the past three years, the number of interested government agency requests submitted to the Agency has increased five-fold to some 1700 annually.

The vast majority of interested government agency requests processed by the Agency involve foreign medical graduates who entered the United States to pursue graduate medical education or training. Currently, the Department of Agriculture and the Appalachian Regional Commission will act as an interested government agency on behalf of a foreign medical graduate seeking a waiver of his or her two-year home-country physical presence requirement in order to work in health professional shortage area. The Department of Veterans Affairs has acted on behalf of foreign medical graduates in the past but is not prevented from doing so by Section 622 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The Department of Housing and Urban Development has also acted on behalf of foreign medical graduates in the past but has now placed a moratorium on such requests.

As explained in the supplementary information of the Agency's September 4, 1996 **Federal Register** announcement of proposed rules for this type of waiver request, inconsistency in the administration of such requests among the participating agencies has created a degree of confusion in the administrative process. Further, foreign medical graduates have also pursued concurrent waiver requests with multiple agencies. These concurrent requests reflect conflicting commitments and are therefore inappropriate, waste limited administrative staff resources, and do not further the requesting agency's mission and policy objectives. Further, such concurrent requests are unfair to the communities named in the unapproved applications given the considerable expenditure of resources that local communities devote to the waiver process.

To address these concerns, the Agency adopts at 22 CFR 514.44(c)(4) specific provisions regarding the documentation that must accompany an interested government agency waiver request submitted on behalf of a foreign medical graduate. These requirements were developed by an inter-agency working group comprised of representatives from the Departments of Health and Human Services, Housing and Urban Development, Agriculture and Veterans Affairs as well as the Appalachian Regional Commission. These requirements are designed to enhance the underlying programmatic objectives that the submitting agency seeks to meet, viz., making primary medical care available to Americans living in areas without adequate access to medical care.

To this end, an employment contract that specifies the foreign medical graduate will provide not less than 40 hours per week of primary medical care, for a period of not less than three years, in a designated primary care Health Professional Shortage Area (''HPSA'') or designated Medically Underserved Area (''MUA'') or psychiatric care in a designated Mental Health Professional Shortage Area (''MHPSA'') will be required. As the underlying policy objective for an agency to act on behalf of a foreign medical graduate is to provide primary health care to the residents of such areas, the contract shall not include a non-compete clause enforceable against the foreign medical graduate. This provision is adopted to ensure that the foreign medical graduate is not forced to leave a HPSA, MHPSA, or MUA at the end of his or her contract. In similar fashion, the Agency also sought public comment regarding the inclusion of liquidated damages clauses in these contracts of employment. No clear evidence exists that such clauses either enhance or are detrimental to the underlying policy objectives of interested government agencies and accordingly, no regulatory provision governing this matter is adopted.

In addition to a copy of the employment contract, each waiver request filed on behalf of a foreign

medical graduate by an interested United States Government agency must include two written statements. The first statement must be signed and dated by the head of the health care facility that will employ the foreign medical graduate. The head of the facility will attest that the facility is located in a designated HPSA, MHPSA, or MUA and that the facility provides medical care to Medicaid or Medicare eligible and indigent uninsured patients. These requirements must be met in order to satisfy the underlying program and policy interests of the requesting agency. A second statement must be submitted by the foreign medical graduate that declares he or she does not have a pending interested federal agency or state department of health request awaiting administrative action and will not request that another agency pursue a waiver request on his behalf while the immediate request is being processed.

Nine comments were received in response to the Notice of Proposed Rulemaking published on September 4, 1996. A detailed comment was submitted by the American Immigration Lawyers Association. This comment presented an argument that agencies should request waivers on behalf of specialists as well as primary care physicians and that the physical location of the health care facility that employs the foreign medical graduate need not be physically located in a HPSA, MHPSA, or MUA. Other comments received advanced similar arguments. The working group carefully considered, but decided against, these suggestions because of the predicted over-supply of specialists in the United States, the greater need for primary medical care in health professional shortage areas, and in order to confirm with such programs as the National Health Service Corps established within the United States to provide health care in shortage areas.

Further, specific unmet needs for physicians in prisons, mental hospitals, or specific population groups may be met by obtaining the required designation from the Department of Health and Human Services. Designation of these facilities or population groups as site-specific HPSA, MHPSA, or MUA areas will allow foreign medical graduates to provide primary care services or psychiatric care to these populations. Such designation takes into account the suggestion in certain comments received by the Agency, that limiting the practice of foreign medical graduates to the geographic environs of a HPSA, MHPSA, or MUA would prevent these site-specific populations from receiving primary care or psychiatric care services.

In accordance with 5 U.S.C. 605(b), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of Section 1(b) of E.O. 12291, nor does it have federal implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 22 CFR Part 514

Cultural exchange programs.

Dated: May 21, 1997.

R. Wallace Stuart,

Acting General Counsel.

Accordingly, 22 CFR Part 514 is amended as follows:

PART 514—EXCHANGE VISITOR PROGRAM

1. The authority citation for Part 514 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1258; 22 U.S.C. 1431–1442, 2451–2460: Reorganization Plan No. 2 of 1977, 42 FR 62461, 3 CFR, 1977 Comp. p. 200; E.O. 12048, 43 FR 13361, 3 CFR, 1978 Comp. p. 168; USIA Delegation Order No. 85–5 (50 FR 27393).

2. Section 514.44 is amended by revising paragraph (c) to read as follows:

§ 514.44 Two-year home-country physical presence requirement.

* * * * *

(c) *Requests for waiver made by an interested United States Government Agency.* (1) A United States Government agency may request a waiver of the two-year home-country physical presence requirement on behalf of an exchange visitor if such exchange visitor is actively and substantially involved in a program or activity sponsored by or of interest to such agency.

(2) A United States Government agency requesting a waiver shall submit its request in writing and fully explain why the grant of such waiver request would be in the public interest and the detrimental effect that would result to the program or activity of interest to the requesting agency if the exchange visitor is unable to continue his or her involvement with the program or activity.

(3) A request by a United States Government agency shall be signed by the head of the agency, or his or her designee, and shall include copies of all IAP–66 forms issued to the exchange visitor, his or her current address, and his or her country of nationality or last legal permanent residence.

(4) A request by a United States Government agency, excepting the Department of Veterans Affairs, on behalf of an exchange visitor who is a foreign medical graduate who entered the United States to pursue graduate medical education or training, and who is willing to provide primary medical care in a designated primary care Health Professional Shortage Area, or a Medically Underserved Area, or psychiatric care in a Mental Health Professional Shortage Area, shall, in addition to the requirements set forth in § 514.44(c) (2) and (3), include:

(i) A copy of the employment contract between the foreign medical graduate and the health care facility at which he or she will be employed. Such contract shall specify a term of employment of not less than three years and that the foreign medical graduate is to be employed by the facility for the purpose of providing not less than 40 hours per week of primary medical care, i.e. general or family practice, general internal medicine, pediatrics, or obstetrics and gynecology, in a designated primary care Health Professional Shortage Area or designated Medically Underserved Area (''MUA'') or psychiatric care in a designated Mental Health Professional Shortage Area. Further, such employment contract shall not include a non-compete clause enforceable against the foreign medical graduate.

(ii) A statement, signed and dated by the head of the health care facility at which the foreign medical graduate will be employed, that the facility is located in an area designated by the Secretary of Health and Human Services as a Medically Underserved Area or Primary Medical Care Health Professional Shortage Area or Mental Health Professional Shortage Area and provides medical care to both Medicaid or Medicare eligible patients and indigent uninsured patients. The statement shall also list the primary care Health Professional Shortage Area, Mental Health Professional Shortage Area, or Medically Underserved Area/Population identifier number of the designation (assigned by the Secretary of Health and Human Services), and shall include the FIPS county code and census tract or block numbering area number (assigned by the Bureau of the Census) or the 9-digit zipcode of the area where the facility is located.

(iii) A statement, signed and dated by the foreign medical graduate exchange visitor that shall read as follows:

I, _____ (name of exchange visitor) hereby declare and certify, under penalty of the provisions of 18 U.S.C. 1101, that I do not now have pending nor am I

submitting during the pendency of this request, another request to any United States Government department or agency or any State Department of Public Health, or equivalent, other than _____ (insert name of United States Government Agency requesting waiver) to act on my behalf in any matter relating to a waiver of my two-year home-country physical presence requirement.

(iv) Evidence that unsuccessful efforts have been made to recruit an American physician for the position to be filled.

(5) Except as set forth in § 514.44(f)(4), infra, the recommendation of the Waiver Review Branch shall constitute the recommendation of the Agency and such recommendation shall be forwarded to the Commissioner.

* * * * *

[FR Doc. 97–13918 Filed 5–27–97; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach, CA; 97–002]

RIN 2115–AA97

Safety Zone; San Pedro Bay, CA, Cerritos Channel

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the United States in San Pedro Bay within the Cerritos Channel near the Henry Ford (Badger Avenue) Railroad Bridge, from 6 a.m. PDT on Monday, May 5, 1997 to 12 p.m. PDT on Thursday, October, 2, 1997.

This regulation is needed to restrict vessel traffic in the regulated area due to construction operations on the Henry Ford Bridge involving the addition of new bridge towers and replacement of its movable spans. For construction purposes, the bridge will need to be in the closed (down) position, effectively closing the Cerritos Channel in the vicinity of the bridge to navigation and leaving only nine (9) feet of vertical clearance available over Mean High Water. This regulation prohibits general navigation in the regulated area until the bridge renovation is completed; upon completion, it will become a lift bridge, allowing for general vessel navigation, except to allow a train to cross or for maintenance purposes.

EFFECTIVE DATES: This regulation is effective from 6:00 a.m. PDT on Monday, May 5, 1997 to 12:00 p.m. PDT on Thursday, October 21, 1997 unless cancelled earlier by the Captain of the Port.

ADDRESSES: Marine Safety Office/Group Los Angeles-Long Beach, 165 N. Pico Ave., Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Lieutenant Keith T. Whiteman, Chief, Port Safety and Security Division, Marine Safety Office/Group Los Angeles-Long Beach at (562) 980–4454.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publication of a notice of proposed rulemaking and delay of its effective date would be contrary to the public interest since the details of the Henry Ford (Badger Avenue) Railroad Bridge construction were not finalized until a date fewer than 30 days prior to the event date.

Drafting Information: The drafters of this regulation are Lieutenant (junior grade) Kevin M. Nagata, Project Officer, Marine Safety Office/Group Los Angeles-Long Beach, CA and Lieutenant Kevin Bruen, Project Attorney, Maintenance and Logistics Command Pacific Legal Division.

Discussion of Regulation

The renovation of the existing Henry Ford (Badger Avenue) Railroad Bridge located in the San Pedro Bay Cerritos Channel from a drawbridge into a lift-type bridge similar to the adjacent Commodore Heim Bridge has an estimated timetable of 150 calendar days. During this time period. the Henry Ford Bridge will need to be in the closed (or down) position in order to install new bridge towers and replace movable spans, effectively closing down the channel to vessel navigation. The period of channel closure will last from May 5, 1997 to October 2, 1997 unless cancelled earlier by the Captain of the Port. The bridge, which is the only rail connection to Terminal Island, is currently under construction and several short-term modifications of the drawbridge regulation have already been authorized to facilitate piledriving and cofferdam installation among other operations. The bridge replacement requires significant channel adjacent to the bridge. In most cases it would be unsafe or impractical to have vessels transiting this area during the construction period.

Vessels desiring to transit through the Cerritos Channel in the vicinity of the Henry Ford Bridge during the period of the safety zone will need to use an alternate route via the outer harbor or outside the Federal Breakwater. These alternate routes, although longer, should accommodate the reasonable needs of navigation.

Regulatory Evaluation

This regulation 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 been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal 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. Due to the short duration of the safety zone and the availability of alternate routes, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this regulation and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways. *Regulation*: In consideration of the foregoing, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T11–057 is added to read as follows:

§ 165.T11–057 Safety Zone: San Pedro Bay, CA, Cerritos Channel

(a) *Location.* The following area is a safety zone: in the navigable waters in the Cerritos Channel of the Port of Long Beach, CA near the Henry Ford (Badger Avenue) Railroad Bridge, in an area more particularly described in follows: beginning at point 33°–46′01″ N, 118°–14′25.5″ W; thence east-northeast along the northern boundary of the Cerritos Channel to point 33°–46′02″ N, 118°14′22.5″ W; thence south to point 33°45′54″ N, 118°–14′22″ W; thence west-northwest along the southern boundary of the Cerritos Channel to point 33°–45′55″ N, 118°–14′25″ W; thence north to the point of beginning.

(b) *Effective Dates.* This regulation is effective from 6:00 A.M. PDT on Monday, May 5, 1997 to 12:00 P.M. PDT on Thursday, October 2, 1997 unless cancelled earlier by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port.

Dated: May 5, 1997.

E.E. Page,

Coast Guard, Captain of the Port, Los Angeles-Long Beach, California.

[FR Doc. 97–13837 Filed 5–27–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–97–026]

RIN 2115–AA97

Safety Zone: USS WASP, Fleet Week 1997, Port of New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone on May 28, 1997, for the departure of the USS WASP following Fleet Week 1997. This moving safety zone includes all waters 500 yards fore and aft, and 200 yards on each side of the USS WASP as the vessel departs the Port of New York and New Jersey.

EFFECTIVE DATE: This regulation is effective on May 28, 1997.

ADDRESSES: Waterways Oversight Branch, Waterways Management Division, Coast Guard Activities New York, Bldg 108, Governors Island, New York 10004–5096.

FOR FURTHER INFORMATION CONTACT: Lieutenant John W. Green, Chief, Waterways Oversight Branch, Waterways Management Division, Coast Guard Activities New York, (212) 668–7906.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM, and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date that specific, detailed information on the departure plans following the USS WASP's visit to New York City was made available to the Coast Guard, there was insufficient time to draft and publish an NPRM. Immediate action is needed to protect the maritime public from the hazards associated with a large vessel with limited manueverability transisting the Port of New York and New Jersey.

Background and Purpose

The Intrepid Museum Foundation is sponsoring the Fleet Week 1997 Parade of Ships. The USS WASP has been designated as the Fleet Week Flagship and will enter the Port of New York and New Jersey on May 21, 1997, as a participant in the parade of ships. USS WASP intends to depart the Port of New York and New Jersey following the completion of Fleet Week 1997 on May 28, 1997. This regulation will be effective during the departure of the USS WASP on May 28, 1997. This regulation establishes a moving safety zone within 500 yards fore and aft and 200 yards on each side of the USS WASP as it transits the Port of New York and New Jersey between Pier 88, Manhattan, New York, and Ambrose Channel Lighted Buoys ''1'' and ''2'', at or near 40°29.6′ N latitude, 73°55.9′ W longitude (NAD 1983). No vessels will be permitted to enter or move within this moving safety zone unless authorized by the Captain of Port, New York.

This regulation is needed to protect the maritime public from possible hazards to navigation associated with a large naval vessel transiting the Port of New York and New Jersey with limited maneuverability in restricted waters. It provides a clear traffic lane in order for the USS WASP to safely navigate to and from its berth.

Regulatory Evaluation

This rule 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 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This moving safety zone will prevent vessels from transiting portions of Upper New York Bay and the Hudson River in the Port of New York and New Jersey on Wednesday, May 28, 1997. Although there is a regular flow of traffic through this area, there is not likely to be a significant impact on recreational or commercial traffic for several reasons: due to the moving nature of the safety zone, no single location will be affected for a prolonged period of time; the safety zone distances are less than the typical safe passage distances appropriate for transit near large vessels and aircraft carriers; vessels can transit on either side of the safety zone; and alternate routes are available to commercial and recreational vessels that can safely transit the Harlem and East Rivers, Kill Van Kull, Arthur Kill, and Buttermilk Channel. Similar safety zones have been established in the past for the arrival and departure of large naval vessels

with minimal or no disruption to vessel traffic or other interests in the port. In addition extensive, advance advisories will be made to the maritime community so mariners can adjust their plans accordingly.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Small Entities

The Coast Guard has considered the economic impact of this rule under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). For the reasons discussed in the Regulatory Evaluation section, the Coast Guard finds that there will not be a significant impact on small entities.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under 2.B.2.e.(34)(g) of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994), this safety zone is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section 165.T01–026 is added to read as follows:

§ 165.T01–026 Safety Zone: USS WASP, Fleet Week 1997, Port of New York and New Jersey.

(a) *Location.* This moving safety zone includes all waters within 500 yards fore and aft and 200 yards on each side of the USS WASP as it transits the Port of New York and New Jersey between Pier 88, Manhattan, New York, and Ambrose Channel Lighted Buoys ''1'' and ''2'', at or near 40°29.6′ N latitude, 73°55.9′ W longitude (NAD 1983).

(b) *Effective period.* This regulation is effective on May 28, 1997.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply to this safety zone.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 12, 1997.

Richard C. Vlaun,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 97–13838 Filed 5–27–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM 22–1–7103a; FRL–5831–3]

Approval and Promulgation of Implementation Plan for New Mexico: General Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: The EPA published, without prior proposal, a **Federal Register** (FR) action approving a State Implementation Plan (SIP) revision submitted by the State of New Mexico for general conformity in fulfilling the requirements of 40 CFR part 52, subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. The direct final approval action was published on March 26, 1997 (62 FR 14332). The EPA subsequently received an adverse comment on the action. Therefore, EPA is withdrawing its direct final approval action. The public comment received will be addressed in a subsequent final rulemaking action.

EFFECTIVE DATE: This withdrawal is effective on May 27, 1997.

ADDRESSES: Copies of the New Mexico General Conformity SIP and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Air Quality Bureau, New Mexico Environment Department, 1190 St. Francis Drive, Santa Fe, New Mexico 87502, Telephone: (505) 827–0042.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION:

I. Background

On March 26, 1997, EPA published a direct final action for approving the New Mexico general conformity SIP revision without a prior proposal action. Subsequently, EPA received an adverse comment on the direct final action. The commenter cited that a section in the New Mexico general conformity rule is more stringent than the Federal rule.

II. Withdrawal Action

The EPA is withdrawing its direct final approval action on the New Mexico general conformity SIP revision which was submitted by the Governor on July 18, 1996. The direct final approval action was published in the **Federal Register** of March 26, 1997 (62 FR 14332). The EPA is taking this action because an adverse comment was received during the public notice period. A subsequent final action will be published in the **Federal Register** for addressing the public comment. This withdrawal action is effective May 27, 1997.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, General conformity, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

Dated: May 16, 1997.

Jerry Clifford,

Acting Regional Administrator.

2. Accordingly, the direct final rule published on March 26, 1997 (62 FR 14332) that amended 40 CFR 52.1620 is withdrawn.

[FR Doc. 97–13925 Filed 5–27–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1 ; Amdt. 1–288]

Organization And Delegation Of Powers And Duties; Delegation To The Administrator, Federal Highway Administration

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation delegates to the Administrator, Federal Highway Administration, the authority to manage the Department's $400 million loan with the Alameda Corridor Transportation Authority (ACTA). This requires a change to the Code of Federal Regulations.

EFFECTIVE DATE: This rule is effective May 28, 1997.

FOR FURTHER INFORMATION CONTACT: Gwyneth Radloff, Office of the Assistant General Counsel for Regulation and Enforcement at (202) 366–9305, Department of Transportation , 400 7th Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This rule delegates to the Federal Highway Administrator the responsibility to manage the Department's $400 million loan with the Alameda Corridor Transportation Authority (ACTA). Title V, Chapter 5 of the Act Making Omnibus Consolidated Appropriations for Fiscal Year 1997 (Act) appropriates funds for direct Federal loans not to exceed $400 million under the authority of Section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R). The reason for the 4R authorization is unrelated to DOT's institutional organization, and the Act, as well as the applicable language from Section 505, confers loan responsibility with the Secretary of Transportation. In addition to this loan, our financial participation includes Federal-Aid Highway funds administered by FHWA's California division. Delegating loan management to FHWA will assure that administrative, legal, engineering and financial aspects of this unique project are managed by a single operating administration.

This rule is being published as a final rule and is being made effective on the date of publication. It relates to departmental management, organization, procedure, and practice. For this reason, the Secretary for good cause finds, under 5 U.S.C. 553(b) B and (d)(3), that notice and comment on it are unnecessary and that it may be made effective in fewer than 30 days after publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

For the reasons set forth above, part 1 of title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)((2).

2. Section 1.48 is amended by adding a new paragraph (kk) as follows:

§ 1.48 Delegations to Federal Highway Administrator.

* * * * *

(kk) Carry out the functions vested in the Secretary of Transportation by section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, relating to the Alameda Corridor Project in consultation with the Federal Railroad Administrator.

Issued in Washington, D. C. on May 20, 1997.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 97–13950 Filed 5–27–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 385

[FHWA Docket No. MC–94–22; FHWA–97–2252]

RIN 2125–AC 71

Safety Fitness Procedures; Safety Ratings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule is being issued in response to a decision of the U.S. Court of Appeals, District of Columbia Circuit, entered on March 18, 1997. In this interim final rule, the FHWA is publishing its Safety Fitness Rating Methodology (SFRM) as Appendix B to 49 CFR 385 to be used as an interim measure until a notice of proposed rulemaking (NPRM), published elsewhere in today's **Federal Register**, becomes final. The SFRM, which is a detailed explanation of the means by which the factors comprising a safety rating are evaluated and calculated, will be used during this interim period only to rate motor carriers that are transporting hazardous materials in quantities for which vehicle placarding is required, or transporting more than 15 passengers, including the driver. This is necessary to implement the prohibitions contained in the Motor Carrier Safety Act of 1990.

DATES: This rule is effective from May 28, 1997 until November 28, 1997. Comments must be received on or before July 28, 1997.

ADDRESSES: Submit written, signed comments to the docket number that appears in the heading of this document to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Hill, Vehicle and Operations Division, Office of Motor Carrier Research and Standards, (202) 366–4009, or Mr. Charles Medalen, Office of Chief Counsel, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590,. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The FHWA promulgated 49 CFR Part 385, Safety Fitness Procedures, in 1988, to determine the safety ratings of motor carriers and to establish procedures to resolve disputes. (*See* 53 FR 50961, December 19, 1988.)

On August 16, 1991, the FHWA issued an interim final rule implementing a provision of the Motor Carrier Safety Act of 1990, Pub.L. 101–500, § 15(b)(1), 104 Stat. 1218, 49 U.S.C. 5113, prohibiting the transportation of passengers or placardable quantities of hazardous materials by any motor carrier with an *unsatisfactory* rating (after being afforded 45 days to improve it) (56 FR 40801). At the same time, the agency announced that it was using the Safety Fitness Rating Methodology (SFRM), comprised of six rating factors and a detailed explanation of how each is calculated, to provide guidance to

safety investigators in applying Part 385 during compliance reviews (CRs) of motor carriers. The SFRM is the mechanism the agency uses to determine how well motor carriers are adhering to 49 CFR 385.5, Safety fitness standard. Since August 16, 1991, the FHWA has provided the SFRM to anyone upon request. The contents of the SFRM were the subject of requests for comments from interested members of the public in FHWA Docket Nos. MC–91–8, published on August 16, 1991, at 56 FR 40801, and MC–94–22, published on September 14, 1994, at 59 FR 47203. An analysis of these comments as they are relevant to the SFRM is provided elsewhere in today's **Federal Register** in a notice of proposed rulemaking (NPRM) that proposes to make the SFRM applicable to all motor carriers.

The U.S. Court of Appeals, District of Columbia Circuit, recently ruled in favor of a motor carrier which had appealed its *conditional* safety fitness rating. *MST Express and Truckers United for Safety v. Department of Transportation and Federal Highway Administration*, No. 96–1084, March 18, 1997. The court ruled that the FHWA had failed to carry out its statutory obligation to establish, by regulation, a means of determining whether a carrier has complied with the safety fitness requirements of the Motor Carrier Safety Act of 1984, Pub. L. 98–554, 98 Stat. 2832 (codified at 49 U.S.C. 31144). Because the carrier's *conditional* safety rating was determined, in part, based upon rules that were not promulgated pursuant to notice and comment rulemaking, as 49 U.S.C. 31144(a) requires, the petitioner's *conditional* safety rating was vacated and the matter remanded to the FHWA for such further action as it may wish to take, consistent with the decision.

The FHWA is adopting the SFRM as Appendix B to 49 CFR Part 385, Safety Fitness Procedures, in this interim final rule. This SFRM is the same one that has been used to rate motor carriers since October 1, 1994, with only minor editorial changes. During this interim period, the SFRM will only be used to rate motor carriers that are transporting hazardous materials in quantities for which vehicle placarding is required, or transporting more than 15 passengers, including the driver. Elsewhere in today's **Federal Register**, the FHWA is proposing to use the SFRM with some further modifications, for the rating of all motor carriers.

To meet the legislative requirement of 49 U.S.C. § 31144(a)(1)(C), i.e., to include specific time deadlines for action by the Secretary, the FHWA is adding a provision to 49 CFR 385.9 requiring a rating to be issued by the FHWA within 30 days following completion of a CR.

Rulemaking Analyses and Notices

The Administrative Procedure Act (5 U.S.C. 553(b)) provides that its notice and comment requirements do not apply when an agency for good cause finds that they are impracticable, unnecessary, or contrary to the public interest. Although the FHWA is publishing an NPRM on a modified SFRM elsewhere in today's **Federal Register**, the agency has determined that the current methodology must be implemented for particular segments of the industry immediately without prior notice and comment because to do otherwise would be contrary to the public interest.

Section 5113(a) of title 49 of the United States Code provides that a motor carrier receiving an *unsatisfactory* safety rating from the Secretary of Transportation has 45 days to improve the rating to *conditional* or *satisfactory*. If it does not, beginning on the 46th day, the motor carrier may not operate a commercial motor vehicle to transport either hazardous materials for which placarding of a motor vehicle is required or more than 15 passengers, including the driver. If the FHWA does not implement the SFRM to enable it to give *unsatisfactory* ratings to motor carriers who may currently be rated as *satisfactory* or *conditional*, the 45-day period will not be triggered and the intent of Congress that *unsatisfactory* motor carriers be precluded from transporting hazardous materials or people will not be realized.

Moreover, 49 U.S.C. 5113(c) prohibits any department, agency, or instrumentality of the United States Government from using a motor carrier with an *unsatisfactory* rating from transporting either hazardous materials for which placarding is required or more than 15 passengers, including the driver. Unlike the requirements set forth in § 5113(a), however, the carrier is not given a 45-day period in which to improve its rating; this prohibition is effective on receipt of the rating. Without the interim final rule, the FHWA would not have a mechanism in place to give *unsatisfactory* safety ratings. Therefore, an unrated carrier could transport hazardous materials or people for the United States Government even if the FHWA were to determine that the carrier should be rated as *unsatisfactory*.

Although the FHWA has authority under 49 U.S.C. 521(b)(5)(A) to place out of service (OOS) all or part of a carrier's commercial motor vehicle operations if it determines that there is an imminent hazard to safety, the operational conditions creating the imminent hazard must be such that they are likely to result in serious injury or death if not discontinued immediately. That authority, however, is limited to a determination that the imminent hazard results from a violation or violations of provisions of Federal motor carrier safety statutes and the Federal Motor Carrier Safety Regulations. The FHWA does not have similar authority to place carriers OOS if it is determined that an imminent hazard exists as a result of violations of the Hazardous Materials Transportation Act (Pub. L. 93–633, 88 Stat. 2156, as amended) or the Hazardous Materials Regulations. In those cases, a civil action must be brought in a district court of the United States pursuant to 49 U.S.C. 5122(b).

Carriers of hazardous materials and passengers, currently rated as *unsatisfactory*, could also be adversely affected by a decision not to promulgate this interim final rule. Those carriers may have corrected the deficiencies in their operations and seek a review to receive a rating of *conditional* or *satisfactory*. Yet, if the SFRM were not implemented immediately without prior notice and comment, the FHWA would not be able to give those carriers their improved ratings. As a result, carriers which would otherwise have been cleared to carry hazardous materials or people would still be prevented from doing so. This not only would be contrary to Congress' desires—49 U.S.C. 5113(b) requires the Secretary to review the factors that resulted in the *unsatisfactory* rating within 30 days of a motor carrier's request for review—but it would place those carriers at least at a competitive disadvantage to carriers who are currently rated as either *satisfactory* or *conditional* or, in some cases, even those who are unrated. Moreover, without the interim final rule, some carriers who are unable to carry hazardous materials or people because of their *unsatisfactory* ratings—ratings that the FHWA would be precluded from changing even if changes were merited—may be forced out of business.

Accordingly, the FHWA finds that there is good cause to waive prior notice and comment for the limited purposes described above. For the same reasons, the FHWA finds, pursuant to 5 U.S.C. 553(d)(3), that there is good cause for making the interim final rule effective upon publication. Nevertheless, because the FHWA is implementing the SFRM on an emergency basis, it is doing so only until it believes the emergency will

end, that is, until it expects to be able to promulgate a final rule following its analysis of the comments received to this interim final rule and the companion NPRM, which is contained elsewhere in today's **Federal Register**. Therefore, the interim final rule will remain in effect only until November 28, 1997. Comments received will be carefully considered in evaluating whether any changes to this action are required. Indeed, if, as a result of comment analysis, the FHWA believes that a change in the interim final rule is warranted before the expiration date, it will issue an immediate revision.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined this action is not a significant regulatory action within the meaning of Executive Order 12866, but it is significant within the meaning of Department of Transportation regulatory policies and procedures because there is substantial public interest in the safety fitness determination process. It is unlikely that this regulatory action will have an annual effect on the economy of $100 million or more. This final rule does not impose new requirements upon the motor carrier industry nor alter the basic outline of the August 16, 1991, interim final rule implementing the provisions of 49 U.S.C. 5113. There should be no negative economic impact resulting from this action because it merely continues in effect, but on a smaller scale, a practice that has been followed for the past eight years. This final rule imposes no costs on motor carriers in addition to those assessed in the Regulatory Evaluation and Regulatory Flexibility Analysis prepared in support of the 1988 final rule. (The 1991 interim final rule amended the 1988 rule in ways that the FHWA believes had minimal economic impact on motor carriers.) Moreover, a negative impact on those carriers presently rated *unsatisfactory* will be averted by allowing them the opportunity to resume business upon an improvement to their rating.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities and has determined that it would not have a significant economic impact on a substantial number of small entities. The motor carriers economically impacted by this rulemaking will be those who are rated as *unsatisfactory*, and fail to take appropriate actions to have their rating upgraded. In the past, relatively few small motor carriers had been affected by the statutory consequences of an *unsatisfactory* safety rating, and there is no reason to believe those impacts will increase in any way by this action.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. These safety requirements do not directly preempt any State law or regulation, and no additional costs or burdens would be imposed on the States as a result of this action. Furthermore, the State's ability to discharge traditional State governmental functions will not be affected by this rulemaking.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 385

Highways and roads, Motor carriers, Motor vehicle safety, and Safety fitness procedures.

Issued on: May 21, 1997.

Jane F. Garvey,

Acting Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 49, Code of Federal Regulations, Chapter III, Part 385, as follows:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 continues to read as:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), 5113, 31136, 31144, 31502; and 49 CFR 1.48.

§ 385.9 [Amended]

2. Section 385.9 is amended by designating the current undesignated text as paragraph (a), and by adding a paragraph (b) to read as follows:

§ 385.9 Determination of a safety rating.

(a) * * *

(b) Unless otherwise specifically provided in this chapter, a safety rating will be issued to a motor carrier within 30 days following the completion of a compliance review.

3. Part 385 is amended by designating the existing appendix as Appendix A and adding Appendix B to read as follows:

Appendix B to Part 385—Safety Rating Process

Section 215 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31144) directed the Secretary of Transportation to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles operating in interstate or foreign commerce. The Secretary, in turn, delegated this responsibility to the Federal Highway Administration (FHWA).

As directed, FHWA promulgated a safety fitness regulation, Safety Fitness Procedures, which established a procedure to determine the safety fitness of motor carriers through the assignment of safety ratings and established a safety fitness standard which a motor carrier must meet to obtain a *satisfactory* safety rating.

To meet the safety fitness standard, a motor carrier must demonstrate to FHWA that it has adequate safety management controls in place which function effectively to ensure acceptable compliance with the applicable safety requirements. A ''safety fitness rating methodology'' (SFRM) was developed by FHWA, which uses data from onsite reviews to rate motor carriers.

The safety rating process developed by FHWA's Office of Motor Carriers is used to:

1. Evaluate safety fitness and assign one of three safety ratings (*satisfactory, conditional* or *unsatisfactory*) to motor carriers operating in interstate commerce. This process conforms with 49 CFR 385.5—Safety fitness standard and § 385.7—Factors to be considered in determining a safety rating.

2. Identify motor carriers needing improvement in their compliance with the

Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Material Regulations (HMRs). These are carriers rated *unsatisfactory* or *conditional.*

Source of Data for Rating Methodology

The FHWA's rating process is built upon the operational tool known as the compliance review (CR). This tool was developed to assist Federal and State safety specialists in gathering pertinent motor carrier compliance and accident information.

The CR is an in-depth examination of a motor carrier's operations and is used (1) to rate unrated motor carriers, (2) to conduct a follow-up investigation on motor carriers rated *unsatisfactory or conditional* as a result of a previous review, (3) to investigate complaints, or (4) in response to a request by a motor carrier to reevaluate its safety rating. Documents such as those contained in driver qualification files, records of duty status and vehicle maintenance records are thoroughly examined for compliance with the FMCSRs and HMRs. Violations are cited on the CR document. Performance based information, when available, is utilized to evaluate the carrier's compliance with the vehicle regulations. Recordable preventable accident information is also collected.

Converting CR Information Into a Safety Rating

The FHWA gathers information through an in-depth examination of the motor carrier's compliance with portions of the FMCSRs and HMRs which have been identified as ''acute'' or ''critical'' regulations.

Acute regulations are those so essential that noncompliance is obvious and requires immediate corrective actions by a motor carrier regardless of its overall safety posture. An example of an acute regulation is § 383.37(b)—Allowing, requiring, permitting, or authorizing an employee with more than one Commercial Driver's License (CDL) to operate a commercial motor vehicle. Noncompliance with § 383.37(b) is usually discovered when the motor carrier's driver qualification file reflects that the motor carrier had knowledge of a driver with more than one CDL, and still permitted the driver to operate a commercial motor vehicle. If the motor carrier did not have knowledge or could not reasonably be expected to have knowledge, then a violation would not be cited.

Critical regulations are those which relate directly to management and/or operational controls. Noncompliance with those regulations is indicative of a breakdown in a carrier's management controls. An example of a critical regulation is § 395.3(a)(1)—Requiring or permitting a driver to drive more than 10 hours.

The list of the acute and critical regulations used in determining safety ratings is provided at the end of this document.

Noncompliance with acute regulations and patterns of noncompliance with critical regulations are quantitatively linked to inadequate safety management controls and usually higher than average rates of recordable preventable accidents. The FHWA has used noncompliance with acute regulations and patterns of noncompliance with critical regulations since 1989 to determine motor carriers' adherence to the § 385.5—Safety fitness standard. Compliance with the regulatory factors, (1) [Parts 387, & 390]; (2) [Parts 382, 383 & 391]; (3) [Parts 392 & 395]; (4) [Parts 393 & 396, when there are *less* than three vehicle inspections in the last 12 months to evaluate]; and (5) [Parts 397, 171, 177 & 180], will be evaluated as follows:

For each instance of noncompliance with an acute regulation or each pattern of noncompliance with a critical regulation documented during the CR, one point will be assessed. A pattern is more than one violation. When large numbers of documents are reviewed the number of violations required to meet a pattern is equal to at least 10 percent of those examined.

However, each pattern of noncompliance with a critical regulation relative to Part 395, Hours of Service of Drivers, will be assessed two points.

Vehicle Factor

When there are a combination of *three or more inspections recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months prior to the CR or performed at the time of the review,* the Vehicle Factor (Parts 393 & 396) will be evaluated on the basis of the Out-of-Service (OOS) rate and noncompliance with acute regulations and/or a pattern of noncompliance with critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor rating as follows:

1. If a motor carrier has three or more roadside vehicle inspections in the twelve months prior to the carrier review, or three vehicles inspected at the time of the review, or a combination of the two totaling three or more, and the vehicle OOS rate is 34% or greater, the initial factor rating will be *conditional.* The requirements of Part 396—Inspection, Repair, and Maintenance—will be examined during each review. The results of the examination could lower the factor rating to *unsatisfactory* if noncompliance with an acute regulation or a pattern of noncompliance with a critical regulation is discovered. If the examination of Part 396 requirements reveals no such problems with the systems the motor carrier is required to maintain for compliance, the Vehicle Factor remains *conditional.*

2. If a carrier's vehicle OOS rate is less than 34%, the initial factor rating will be *satisfactory.* If noncompliance with an acute regulation or a pattern of noncompliance with a critical regulation is discovered during the examination of Part 396 requirements, the factor rating will be lowered to *conditional.* If the examination of Part 396 requirements reveals no such problems with the systems the motor carrier is required to maintain for compliance, the Vehicle Factor remains *satisfactory.*

Nearly two million vehicle inspections occur on the roadside each year. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain their vehicles. Since many of the roadside inspections are targeted to visibly defective vehicles and since there are a limited number of inspections for many motor carriers, the use of that data is limited. Each CR will continue to have the requirements of Part 396—Inspection, Repair, and Maintenance reviewed as indicated by the above explanation.

Accident Factor

In addition to the five regulatory rating factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable preventable accident rate which the carrier has experienced during the past 12 months. *Recordable preventable accident* means an accident that (1) Involves a commercial motor vehicle; (2) that meets the definition of an accident in § 390.5; and (3) that could have been averted but for an act, or failure to act, by the motor carrier or driver. The sixth factor is assigned a rating based on the carrier's recordable preventable accident rate compared to the national accident rate distribution.

To determine this national distribution, recordable preventable accidents per million miles were computed for each CR performed in a year. Most of these carriers (over 50%) had no recordable accidents. The national average for all carriers reviewed in 1988 was 0.46 per million miles; in 1996, 0.50 per million miles. From these data, the percent of all carriers below or above any proposed accident per million mile breakpoint could be established. The breakpoints shown below were determined from consideration of both the national average and the percentage of carriers below and above alternative breakpoints, i.e.:

The Recordable Preventable Accident Rating Scale (total recordable preventable accidents divided by total mileage times 1 million) is:

Satisfactory=less than .3
Conditional=0.3 to 1.0
Unsatisfactory=greater than 1.0

Exceptions to the Recordable Preventable Accident Rating Scale

Single Accident Exception: The accident factor excludes the accident rates for all motor carriers that have only one recordable preventable accident. One accident occurring in 12 months is too isolated an occurrence to allow it to impact the accident factor.

Urban Carriers Exception: Experience has shown that urban carriers, those motor carriers operating entirely within a radius of less than a 100 air miles (normally in urban areas) have a higher exposure to accident situations because of their environment and normally have higher accident rates. Therefore, the rating does not become *unsatisfactory* for an urban carrier until it exceeds the 2.0 recordable preventable accident rate per million miles.

Small Carrier Exception: Accident rates for small carriers (fewer than 20 drivers) vary to a great extent from one year to the next. Therefore, the lowest ''accident factor'' rating assigned to a small carrier is *conditional.*

The Factor rating is determined by the following table.

FACTOR #6.—RECORDABLE PREVENTABLE ACCIDENT RATE TABLE

Calculated accident rate	Rating	Rating: urban carriers only
Less than .3	Satisfactory ..	Satisfactory.
0.3 to 1.0	Conditional ...	Conditional.
Greater than 1.0 to 2.0.	Unsatisfactory.	Conditional.
Greater than 2.0.	Unsatisfactory.	Unsatisfactory.

Factor Ratings

In the methodology, parts of the FMCSRs and the HMRs having similar characteristics are combined together into five regulatory areas called ''factors.''

The following table shows the five regulatory factors, parts of the FMCSRs and HMRs associated with each factor, and the accident factor.

FACTORS

Factor 1—General=Parts 387 & 390
Factor 2—Driver=Parts 382, 383 & 391
Factor 3—Operational=Parts 392 & 395
Factor 4—Vehicle=Parts 393 & 396
Factor 5—Haz. Mat=Parts 397, 171, 177 & 180
Factor 6—Accident Factor=Recordable Preventable Rate

Factor Ratings are determined as follows:
''Satisfactory''—if the acute and/or critical=0 points
''Conditional''—if the acute and/or critical=1 point
''Unsatisfactory''—if the acute and/or critical=2 or more points

Safety Rating

The ratings for the five factors, along with the recordable preventable accident rate for the 12 months prior to the review, are then entered into a rating table which establishes the motor carrier's safety rating.

The FHWA has developed a computerized rating formula for assessing the information obtained from the CR document and is using that formula in assigning a safety rating.

MOTOR CARRIER SAFETY RATING TABLE

Factor ratings		Overall safety rating
Unsatisfactory	Conditional	
0	2 or less	Satisfactory.
0	more than 2	Conditional.
1	2 or less	Conditional.
1	more than 2	Unsatisfactory.
2 or more	0 or more	Unsatisfactory.

Anticipated Safety Rating

The *anticipated* (emphasis added) safety rating will appear on the CR.

The following appropriate information will appear after the last entry on the CR, MCS–151, Part B.

''It is anticipated the official safety rating from Washington, D.C. will be SATISFACTORY.''

Or

''It is anticipated the official safety rating from Washington, D.C. will be CONDITIONAL. The safety rating will become effective thirty days from the date of the CR.''

Or

''It is anticipated the official safety rating from Washington, D.C., will be UNSATISFACTORY. The safety rating will become effective thirty days from the date of the CR.''

Assignment of Rating/Motor Carrier Notification

When the official rating is determined in Washington, D.C., the FHWA notifies the motor carrier in writing of its safety rating as prescribed in § 385.11. An anticipated safety rating which is higher than the existing rating becomes effective as soon as the official safety rating from Washington, D.C. is issued. Notification of a *conditional* or *unsatisfactory* rating includes a list of those Parts of the regulations, or recordable preventable accident rate, for which corrective actions must be taken by the motor carrier to improve its overall safety performance.

Motor Carrier Procedural Rights

Under §§ 385.15 and 385.17, motor carriers have the right to petition for a review of their ratings *if there are factual or procedural disputes,* and to request another review after corrective actions have been taken. They are the procedural avenues a motor carrier, which believes its safety rating to be in error, may use, and the means to request another review after corrective action has been taken.

Conclusion

The FHWA believes this ''safety rating methodology'' is a reasonable approach for assigning a safety rating which best describes the current safety fitness posture of a motor carrier as required by the safety fitness regulations (§ 385.9).

Improved compliance with the regulations leads to an improved rating, which in turn increases safety. This increased safety is our regulatory goal.

List of Acute and Critical Regulations

§ 382.115(c) Failing to implement an alcohol and/or controlled substance testing program. (acute)
§ 382.201 Using a driver who has an alcohol concentration of 0.04 or greater. (acute)
§ 382.211 Using a driver who has refused to submit to an alcohol controlled substances test required under Part 382. (acute)
§ 382.213(b) Using a driver who has used a controlled substance. (acute)
§ 382.215 Using a driver who has tested positive for a controlled substance. (acute)
§ 382.301(a) Failing to require driver to undergo pre-employment controlled substance testing. (critical)
§ 382.303(a) Failing to conduct post accident testing on driver for alcohol and/or controlled substances. (critical)
§ 382.305(a) Failing to implement a random controlled substances and/or an alcohol testing program. (acute)
§ 382.305(b)(1) Failing to conduct random alcohol testing at an annual rate of not less than 25 percent of the average number of driver positions. (critical)
§ 382.305(b)(2) Failing to conduct random controlled substances testing at an annual rate of not less than 50 percent of the average number of driver positions. (critical)
§ 382.309(a) Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. (acute)
§ 382.309(b) Using a driver who has not undergone a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances. (acute)
§ 382.503 Driver performing safety sensitive function, after engaging in conduct prohibited by Subpart B, without being evaluated by substance abuse professional, as required by § 382.605. (critical)
§ 382.505(a) Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater but less than 0.04. (acute)
§ 382.605(c)(1) Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than .02 or with verified negative test result, after engaging in conduct prohibited by Part 382, Subpart B. (acute)
§ 382.605(c)(2)(ii) Failing to subject a driver who has been identified as needing assistance to at least six unannounced follow-up alcohol and controlled substance tests in the first 12 months following the driver's return to duty. (critical)
§ 383.23(a) Operating a commercial motor vehicle without a valid commercial driver's license. (critical)
§ 383.37(a) Allowing, requiring, permitting, or authorizing an employee with a Commercial Driver's License which is suspended, revoked, or canceled by a state or who is disqualified to operate a commercial motor vehicle. (acute)
§ 383.37(b) Allowing, requiring, permitting, or authorizing an employee with more than one Commercial Driver's License to operate a commercial motor vehicle. (acute)
§ 383.51(a) Allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle. (acute)
§ 387.7(a) Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage. (acute)
§ 387.7(d) Failing to maintain at principal place of business required proof of financial responsibility. (critical)
§ 387.31(a) Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility. (acute)
§ 387.31(d) Failing to maintain at principal place of business required proof of financial responsibility for passenger vehicles. (critical)

§ 390.15(b)(2) Failing to maintain copies of all accident reports required by State or other governmental entities or insurers. (critical)

§ 390.35 Making, or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records. (acute)

§ 391.11(a)/391.95 Using an unqualified driver, a driver who has tested positive for controlled substances, or refused to be tested as required. (acute)

§ 391.11(b)(6) Using a physically unqualified driver. (acute)

§ 391.15(a) Using a disqualified driver. (acute)

§ 391.45(a) Using a driver not medically examined and certified. (critical)

§ 391.45(b) Using a driver not medically examined and certified each 24 months. (critical)

§ 391.51(a) Failing to maintain driver qualification file on each driver employed. (critical)

§ 391.51(b)(1) Failing to maintain medical examiner's certificate in driver's qualification file. (critical)

§ 391.51(c)(1) Failing to maintain medical examiner's certificate in driver's qualification file. (critical)

§ 391.51(c)(3) Failing to maintain inquiries into driver's driving record in driver's qualification file. (critical)

§ 391.51(d)(1) Failing to maintain medical examiner's certificate in driver's qualification file. (critical)

§ 391.87(f)(5) Failing to retain in the driver's qualification file test finding, either ''Negative'' and, if ''Positive'', the controlled substances identified. (critical)

§ 391.93(a) Failing to implement a controlled substances testing program. (acute)

§ 391.99(a) Failing to require a driver to be tested for the use of controlled substances, upon reasonable cause. (acute)

§ 391.103(a) Failing to require a driver-applicant whom the motor carrier intends to hire or use to be tested for the use of controlled substances as a pre-qualification condition. (critical)

§ 391.109(a) Failing to conduct controlled substance testing at a 50% annualized rate. (critical)

§ 391.115(c) Failing to ensure post-accident controlled substances testing is conducted and conforms with 49 CFR Part 40. (critical)

§ 392.2 Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. (critical)

§ 392.4(b) Requiring or permitting a driver to drive while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle. (acute)

§ 392.5(b)(1) Requiring or permitting a driver to drive a motor vehicle while under the influence of, or in possession of, an intoxicating beverage. (acute)

§ 392.5(b)(2) Requiring or permitting a driver who has consumed an intoxicating beverage within 4 hours to operate a motor vehicle. (acute)

§ 392.6 Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed. (critical)

§ 392.9(a)(1) Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured. (critical)

§ 395.1(i)(1)(i) Requiring or permitting a driver to drive more than 15 hours. (Driving in Alaska.) (critical)

§ 395.1(i)(1)(ii) Requiring or permitting a driver to drive after having been on duty 20 hours. (Driving in Alaska.) (critical)

§ 395.1(i)(1)(iii) Requiring or permitting driver to drive after having been on duty more than 70 hours in 7 consecutive days. (Driving in Alaska.) (critical)

§ 395.1(i)(1)(iv) Requiring or permitting driver to drive after having been on duty more than 80 hours in 8 consecutive days. (Driving in Alaska.) (critical)

§ 395.3(a)(1) Requiring or permitting driver to drive more than 10 hours. (critical)

§ 395.3(a)(2) Requiring or permitting driver to drive after having been on duty 15 hours. (critical)

§ 395.3(b) Requiring or permitting driver to drive after having been on duty more than 60 hours in 7 consecutive days. (critical)

§ 395.3(b) Requiring or permitting driver to drive after having been on duty more than 70 hours in 8 consecutive days. (critical)

§ 395.8(a) Failing to require driver to make a record of duty status. (critical)

§ 395.8(e) False reports of records of duty status. (critical)

§ 395.8(l) Failing to require driver to forward within 13 days of completion, the original of the record of duty status. (critical)

§ 395.8(k)(1) Failing to preserve driver's record of duty status for 6 months. (critical)

§ 395.8(k)(1) Failing to preserve driver's records of duty status supporting documents for 6 months. (critical)

§ 396.3(b) Failing to keep minimum records of inspection and vehicle maintenance. (critical)

§ 396.9(c)(2) Requiring or permitting the operation of a motor vehicle declared ''out-of-service'' before repairs were made. (acute)

§ 396.11(a) Failing to require driver to prepare driver vehicle inspection report. (critical)

§ 396.11(c) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report. (acute)

§ 396.17(a) Using a commercial motor vehicle not periodically inspected. (critical)

§ 396.17(g) Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards. (acute)

§ 397.5(a) Failing to ensure a motor vehicle containing Class A or B explosives (Class 1.1, 1.2, or 1.3) is attended at all times by its driver or a qualified representative. (acute)

§ 397.7(a)(1) Parking a motor vehicle containing Class A or B explosives (1.1, 1.2, 1.3) within 5 feet of traveled portion of highway. (critical)

§ 397.7(b) Parking a motor vehicle containing hazardous material(s) within 5 feet of traveled portion of highway or street. (critical)

§ 397.13(a) Permitting a person to smoke or carry a lighted cigarette, cigar or pipe within 25 feet of a motor vehicle containing explosives, oxidizing materials, or flammable materials. (critical)

§ 397.19(a) Failing to furnish driver of motor vehicle transporting Class A or B explosives (Class 1.1, 1.2, 1.3) with a copy of the rules of Part 397 and/or emergency response instructions. (critical)

§ 397.67(d) Requiring or permitting the operation of a motor vehicle containing Division 1.1, 1.2, or 1.3 (explosive) material that is not accompanied by a written route plan. (critical)

§ 171.15 Carrier failing to give immediate telephone notice of an incident involving hazardous materials. (critical)

§ 171.16 Carrier failing to make a written report of an incident involving hazardous materials. (critical)

§ 177.800(a) Failing to instruct a category of employees in hazardous materials regulations. (critical)

§ 177.817(a)) Transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper. (critical)

§ 177.817(e) Failing to maintain proper accessibility of shipping papers. (critical)

§ 177.823(a) Moving a transport vehicle containing hazardous material that is not properly marked or placarded. (critical)

§ 177.841(e) Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals. (acute)

§ 180.407(a) Transporting a shipment of hazardous material in cargo tank that has not been inspected or retested in accordance with § 180.407. (critical)

§ 180.407(c) Failing to periodically test and inspect a cargo tank. (critical)

§ 180.415 Failing to mark a cargo tank which passed an inspection or test required by § 180.407. (critical)

§ 180.417(a)(1) Failing to retain cargo tank manufacturer's data report certificate and related papers, as required. (critical)

§ 180.417(a)(2) Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required. (critical)

[FR Doc. 97–13874 Filed 5–27–97; 8:45 am]

BILLING CODE 4910–22–P

Proposed Rules

Federal Register
Vol. 62, No. 102
Wednesday, May 28, 1997

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–37–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–44 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Bombardier Model CL–44 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to modify the limitation that prohibits positioning the power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This proposal is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the ground propeller beta range was used improperly during flight. The actions specified by the proposed AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

DATES: Comments must be received by July 7, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–37–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Peter LeVoci, Flight Test Pilot, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7514; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–37–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–37–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In recent years, the FAA has received reports of 14 incidents and/or accidents involving intentional or inadvertent operation of the propellers in the ground beta range during flight on airplanes equipped with turboprop engines. (For the purposes of this proposal, Beta is defined as the range of propeller operation intended for use during taxi, ground idle, or reverse operations as controlled by the power lever settings aft of the flight idle stop.)

Five of the fourteen in-flight beta occurrences were classified as accidents. In each of these five cases, operation of the propellers in the beta range occurred during flight. Operation of the propellers in the beta range during flight, if not prevented, could result in loss of airplane controllability, or engine overspeed with consequent loss of engine power.

Communication between the FAA and the public during a meeting held on June 11–12, 1996, in Seattle, Washington, revealed a lack of consistency of the information on in-flight beta operation contained in the FAA-approved airplane flight manual (AFM) for airplanes that are not certificated for in-flight operation with the power levers below the flight idle stop. (Airplanes that are certificated for this type of operation are not affected by the above-referenced conditions.)

U.S. Type Certification of the Airplane

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determinations

The FAA has examined the circumstances and reviewed all available information related to the incidents and accidents described previously. The FAA finds that the Limitations Section of the AFM's for certain airplanes must be revised to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of

positioning the power levers below the flight idle stop. The FAA has determined that the affected airplanes include those that are equipped with turboprop engines and that are not certificated for in-flight operation with the power levers below the flight idle stop. Since Bombardier Model CL–44 series airplanes meet these criteria, the FAA finds that the AFM for these airplanes must be revised to include the limitation and statement of consequences described previously.

Explanation of the Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other Bombardier Model CL–44 series airplanes of the same type design, the proposed AD would require revising the Limitations Section of the AFM to modify the limitation that prohibits the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 1 Bombardier Model CL–44 series airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $60 for the one affected airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly Canadair): Docket 97–NM–37–AD.

Applicability: All Model CL–44 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

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

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

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

Issued in Renton, Washington, on May 19, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–13847 Filed 5–27–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–23]

Modification of Class E Airspace; Grafton, ND, Grafton Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Grafton, ND. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 17 and Amendment 1 to the GPS SIAP to Runway 35 have been developed for Grafton Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions

from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before July 14, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–23, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Manuel A. Torres, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AGL–23.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Grafton, ND; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 17 SIAP and GPS Runway 35 SIAP at Grafton Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1995–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Grafton, ND [Revised]

Grafton Municipal Airport, ND
(lat. 48°24′17″N, long. 97°22′15″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Grafton Municipal Airport and within 1 mile each side of the 360° bearing extending from the 6.5-mile radius to 9 miles north of the airport and within 1 mile each side of the 180° bearing extending from the 6.5-mile radius to 9 miles south of the airport.

* * * * *

Issued in Des Plaines, Illinois on May 14, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–13839 Filed 5–27–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 150

[Docket No. 28149]

Proposed Final Policy on Part 150 Approval and Funding of Noise Mitigation Measures

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed final policy on part 150 approval and funding of Noise Mitigation Measures, and request for supplemental comment on its Impacts on Passenger Facility Charges.

SUMMARY: The Federal Aviation Administration (FAA) has prepared for issuance a final policy concerning approval and eligibility for Federal funding of certain noise mitigation measures. This policy would increase the incentives for airport operators to prevent the development of new noncompatible land uses around airports and assure the most cost-effective use of Federal funds spent on noise mitigation measures. This would include certain limitations on the eligibility of airport improvement program (AIP) funds and passenger facility charges (PFC). The proposed policy was published in the **Federal Register** on March 20, 1995 (60 FR 14701), and public comments were received and considered. This document sets forth the revised policy as proposed for issuance. However, prior to the issuance of the policy the FAA is requesting supplemental comment on the impact of its limitations on PFC eligibility. The FAA will consider any comments on PFC eligibility thus received and revise the policy as may be appropriate prior to issuing the final policy. All other issues are considered to have been adequately covered during the original comment period.

Accordingly and after any revisions resulting from supplemental comments received on the impacts on PFC eligibility, as of January 1, 1998, the FAA will approve under 14 CFR part 150 (part 150) only remedial noise mitigation measures for existing noncompatible development and only preventive noise mitigation measures in areas of potential new noncompatible development. The FAA will not approve remedial noise mitigation measures for new noncompatible development that is allowed to occur in the vicinity of airports after the effective date of this final policy. As of the same effective date, eligibility for Airport Improvement Program (AIP) funding under the noise set-aside will be determined using criteria consistent with this policy. Specifically, remedial noise mitigation measures for new noncompatible development that occurs after the effective date of this final policy will not be eligible for AIP funding under the noise set-aside, regardless of previous FAA approvals under part 150, the status of implementation of an individual airport's part 150 program, or the status of any pending application for AIP funds. This policy also applies to projects that are eligible for noise set-aside funds without a part 150 program. This change in AIP eligibility will change in a similar way the eligibility of noise projects for passenger facility charge (PFC) funding. That is, the FAA will not approve the use of PFC funds to remediate noise impacts for new noncompatible development that occurs after the effective date of this policy.

DATES: Comments are due on or before June 27, 1997. This policy will be effective January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. William W. Albee, Policy and Regulatory Division (AEE–300), Office of Environment and Energy, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3553, facsimile (202) 267–5594; Internet: WAlbee@mail.hq.faa.gov; or Mr. Ellis Ohnstad, Manager, Airports Financial Assistance Division (APP–500), Office of Airport Planning and Programming, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3831, facsimile (202) 267–5302.

SUPPLEMENTARY INFORMATION:

Background

The Airport Noise Compatibility Planning Program (14 CFR part 150, hereinafter referred to as part 150 or the part 150 program) was established under the Aviation Safety and Noise Abatement Act of 1979 (49 U.S.C. 47501 through 47509, hereinafter referred to as ASNA). The part 150 program allows airport operators to submit noise exposure maps and noise compatibility programs to the FAA voluntarily. According to the ASNA, a noise compatibility program sets forth the measures that an airport operator has taken or has proposed for the reduction of existing noncompatible land uses and the prevention of additional noncompatible land uses within the area covered by noise exposure maps.

The ASNA embodies strong concepts of local initiative and flexibility. The submission of noise exposure maps and noise compatibility programs is left to the discretion of local airport operators. Airport operators may also choose to submit noise exposure maps without preparing and submitting a noise compatibility program. The types of measures that airport operators may include in a noise compatibility program are not limited by the ASNA, allowing airport operators substantial latitude to submit a broad array of measures—including innovative measures—that respond to local needs and circumstances.

The criteria for approval or disapproval of measures submitted in a part 150 program are set forth in the ASNA. The ASNA directs the Federal approval of a noise compatibility program, except for measures relating to flight procedures: (1) If the program measures do not create an undue burden on interstate or foreign commerce; (2) if the program measures are reasonably consistent with the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses; and (3) if the program provides for its revision if necessitated by the submission of a revised noise exposure map. Failure to approve or disapprove a noise compatibility program within 180 days, except for measure relating to flight procedures, is deemed to be an approval under the ASNA. Finally, the ASNA sets forth broad eligibility criteria, consistent with the ASNA's overall deference to local initiative and flexibility.

The FAA is authorized, but not obligated, to fund projects via the Airport Improvement Program (AIP) to carry out measures in a noise compatibility program that are not disapproved by the FAA. Projects that are eligible for AIP funding are also eligible to be funded with local PFC revenue upon the FAA's approval of an application filed by a public agency that owns or operates a commercial service airport. The use of PFC revenue for such projects does not require an approved noise compatibility program under part 150.

In establishing the airport noise compatibility planning program, which became embodied in FAR part 150, the ASNA did not change the legal authority of state and local governments to control the uses of land within their jurisdictions. Public controls on the use of land are commonly exercised by zoning. Zoning is a power reserved to the states under the U.S. Constitution. It is an exercise of the police powers of the states that designates the uses permitted on each parcel of land. This power is usually delegated in state enabling legislation to local levels of government.

Many local land use control authorities (cities, counties, etc.) have not adopted zoning ordinances or other controls to prevent noncompatible development (primarily residential) within the noise impact area of airports. An airport's noise impact area, identified within noise contours on a noise exposure map, may extend over a number of different local jurisdictions that individually control land uses. For example, at five airports recently studied, noise contours overlaid portions of 2 to 25 different jurisdictions.

While airport operators have included measures in noise compatibility programs submitted under part 150 to prevent the development of new noncompatible land uses through zoning and other controls under the authorities of appropriate local jurisdictions, success in implementing these measures has been mixed. A study performed under contract to the FAA, completed in January 1994, evaluated 16 airports having approved part 150 programs for the implementation of land use control measures. This study found that of the 16 airports, 6 locations had implemented the recommended zoning measures, 7 locations had not implemented the recommended zoning measures, and 3 were in the process of implementation.

Another independent study evaluated 10 airports that have FAA approved part 150 programs in place and found that 4 locations had prevented new noncompatible development and 6 locations had not prevented such new development. At the letter 6 locations, the study reported that 26 nonairport sponsor jurisdictions had approved new noncompatible development and 28 nonairport sponsor jurisdictions and 1 airport sponsor jurisdiction had vacant land that is zoned to allow future noncompatible development.

The independent study identified the primary problem of allowing new noncompatible land uses near airports to be in jurisdiction that are different from the airport sponsor's jurisdiction. This is consistent with observations by the FAA and with a previous General Accounting Office report which observed that the ability of airport operators to solve their noise problems is limited by their lack of control over the land surrounding the airports and the operators's dependence on local communities and states to cooperate in implementing land use control measures, such as zoning for compatible uses.

The FAA's January 1994 study explored factors that contribute to the failure to implement land use controls for noise purposes. A major factor is the multiplicity of jurisdictions with land use control authority within airport noise impact areas. The greater the number of different jurisdictions, the greater the probability that at least some of them will not implement controls. Some jurisdictions have not developed cooperative relationships with the airport operator, which impedes appropriate land use compatibility planning. Some jurisdictions are not aware of the effects of aircraft noise and of the desirability of land use controls. This appears to be caused by a lack of ongoing education and communication between the airport and the jurisdictions, and to be worsened by lack of continuity in local government.

Some jurisdictions do not perceive land use controls as a priority because the amount of vacant land available for noncompatible development within the airport noise impact area is small, perhaps constituting only minor development on dispersed vacant lots, or because the current demand for residential construction near the airport is low to nonexistent. In such areas, land use control changes are not considered to have the ability to change substantially the number of residents affected by noise. Jurisdictions may also give noise a low priority compared to the economic advantages of developing more residential land or the need for additional housing stock within a community. A zoning change from residential to industrial or commercial may not make economic sense if little demand exists for this type of development. Therefore, a zoning change is viewed as limiting development opportunities and dimishing the opportunities for tax revenues.

In some cases, zoning for compatible land use has meet with organized public opposition by property owners arguing that the proposed zoning is a threat to private property rights, and that they deserve monetary compensation for any potential property devaluation. Further, basis zoning doctrine demands that the individual and parcels be left with viable economic value, i.e., be zoned for a use for which here is reasonable demand and economic return. Otherwise, the courts may determine a zoning change for compatibility to be a ''taking'' of private property for public use under the Fifth Amendment to the U.S. Constitution, requiring just compensation.

One or more of the factors hindering effective land use controls may be sufficient importance to preclude some jurisdictions from following through on the land use recommendations of an airport's part 150 noise compatibility program. When either an airport sponsor's or a nonairport sponsor's jurisdiction allows additional noncompatible development within the airport's noise impact area, it can result in noise problems for the people who move into the area. This can, in turn, result in noise problems for the airport operator in the form of inverse condemnation or noise nuisance lawsuits, public opposition to the expansion of the airport's capacity, and local political pressure for airport operational and capacity limitations to reduce noise. Some airport operators have taken the position that they will not provide any financial assistance to mitigate aviation noise for new noncompatible development. Other airport operators have determined that it is a practical necessity for them to include at least some new residential areas within their noise assistance programs to mitigate noise impacts that they were unable to prevent in the first place—particularly if they have airport expansion plans. Over a relatively short period of time, the distinctions blur between what is ''new'' and what is ''existing'' residential development with respect to airport noise issues.

Airport operators currently may include new noncompatible land uses, as well as existing noncompatible land uses, within their part 150 noise compatibility programs and recommend that remedial noise mitigation measures—usually either property acquisition or noise insulation—be applied to both situations. These measures have been considered to qualify for approval by the FAA under 49 USC 47504 and 14 CFR part 150. The part 150 approval enables noise mitigation measures to be eligible for Federal funding, although it does not guarantee that Federal funds will be provided.

Similar remedial measures are eligible to be funded with PFC revenue collected by public agencies pursuant to the provisions of 49 USC 40117 and 14 CFR part 158. Project eligibility for PFC use is established by the eligibility of such a project under the AIP. While approval by the FAA for a public agency to use PFC revenue for noise mitigation purposes does not require an approval part 150 noise compatibility program, the public agency must demonstrate the existence of noncompatible land uses around the airport and the efficacy of the proposed noise project.

The Change in FAA Policy

Beginning January 1, 1998, the FAA will approve under part 150 only remedial noise mitigation measures for

existing noncompatible development and only preventive noise mitigation measures in areas of potential new noncompatiable development and only preventive noise mitigation measures in areas of potential new noncompatible development. As of the same date, criteria for determining AIP eligibility under the noise set-aside and the use of PFC revenue that are consistent with this policy will be applied by the FAA. Specifically, after the effective date of this final policy, remedial noise mitigation measures for new noncompatible development that occurs from that date forward will not be eligible for AIP funding under the noise set-aside, regardless of previous FAA approvals under part 150, the status of implementation of an individual airport's part 150 program, or the status of any pending application for AIP funds. This policy also applies to projects that are eligible for the noise set-aside without a part 150 program pursuant to 49 U.S.C. 4704(c). Additionally, because a project must be eligible under the AIP to be eligible for PFC funds, this policy will affect the eligibility of noise mitigation measures for PFC funding. Consequently, after the effective date of this final policy, the FAA will not approve the use of PFC funds to implement remedial noise mitigation measures for new noncompatible development that occurs from that date forward.

Additional Comment Period for Effects on PFC Eligibility

This final policy explicitly includes passenger facility charges (PFC) within the prohibition of funding for remedial noise measures for new noncompatible development. However, the proposed policy that was published in the **Federal Register** and made available for public comment was more generic in its discussion of funding and did not specifically cite PFC eligibility. The public comments on funding that were received focused almost exclusively on Airport Improvement Program (AIP) funding. The policy's impact on PFC eligibility is identical to its impacts on AIP eligibility. Accordingly, a docket is open for a period of 30 days after the date of publication of this proposed final policy for public comment upon those issues related to the policy's impacts upon PFC eligibility. All other issues are considered to have been adequately covered during the original comment period. After consideration of any public comments thus received, the FAA may further refine the policy by revising portions of the policy related to PFC eligibility. Inasmuch as the FAA anticipates that any such revisions may be incorporated and the final policy issued within a reasonably short time, the effective date of this policy will be January 1, 1998.

Discussion

The continuing development of noncompatible land uses around airports is not a new problem. The FAA, airport operators, and the aviation community as a whole have for some years expended a great deal of effort to deal with the noise problems that are precipitated by such development.

With respect to the part 150 program and Airport Improvement Program (AIP) noise grants, the FAA considered in the 1989–1990 timeframe whether to disallow Federal assistance for new noncompatible development (note that these deliberations occurred prior to the advent of the PFC program). The choice posed at that time was either (1) allow Federal funding for airport operator recommendations in part 150 programs that included new noncompatible land uses within the parameters of noise mitigation measures targeted for financial assistance from the airport (e.g., acquisition, noise insulation), or (2) disallow all Federal funding for new noncompatible development that local jurisdictions fail to control through zoning or other land use controls. No other alternatives were considered.

The FAA selected the first option—to continue to allow Federal funds to be used to mitigate new noncompatible development as well as existing noncompatible development if the airport operator so chose. Several factors supported this decision. One factor was lack of authority by airport operators to prevent new noncompatible development in nonairport sponsor jurisdictions, although airport sponsors bear the brunt of noise lawsuits. Intense local opposition to an airport can be detrimental to its capacity, especially if any expansion of airport facilities is needed. The FAA also considered the plight of local citizens living with a noise impact that they may not have fully understood at the time of home purchase. Land use noise mitigation measures, funded by the airport either with or without Federal assistance, may be the only practical tool an airport operator has to mitigate noise impacts in a community. The FAA was hesitant to deny airport operators and the affected public Federal help in this regard. In addition, the FAA gave deference to the local initiative, the flexibility, and the broad eligibility for project funding under the ASNA.

Since this review in 1989–1990, the FAA has given extensive additional consideration to the subject of noncompatible land uses around airports. The change in FAA policy presented here involves a more measured and multifaceted approach than the proposal considered in 1989–1990.

A primary criterion in the ASNA for the FAA's approval of measures in an airport's part 150 noise compatibility program is that the measures must be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses. Until now, the FAA has applied this criterion as a whole when issuing determinations under part 150; that is, if a measure either reduces or prevents noncompatible development, no matter when that development occurs, it may be approved as being reasonably consistent. No distinction has been made by the FAA between remedial noise mitigation measures that reduce noncompatible development and preventive noise mitigation measures that prevent new noncompatible development. Airport operators may, therefore, recommend and receive FAA approval under part 150 for remedial acquisition or soundproofing of new residential development.

The FAA now believes that it would be more prudent to distinguish between (1) noise mitigation measures that are reasonably consistent with the goal of reducing existing noncompatible land uses (i.e., remedial measures) and (2) noise mitigation measures that are reasonably consistent with the goal of preventing the introduction of additional noncompatible land uses (i.e., preventive measures). Using such a distinction, airport operators would need to identify clearly within the area covered by noise exposure maps the location of existing noncompatible land uses versus the location of potentially new noncompatible land uses. Many airport operators currently record this distinction in their noise exposure map submissions, when identifying noncompatible land uses. Potentially new noncompatible land uses could include (1) areas currently undergoing residential or other noncompatible construction; (2) areas zoned for residential or other noncompatible development where construction has not begun; and (3) areas currently compatible but in danger of being developed noncompatibly within the timeframe covered by the airport's noise compatibility program.

The purpose of distinguishing between existing and potential new noncompatible development is for airport operators to restrict their

consideration of remedial noise mitigation measures to existing noncompatible development and to focus preventive noise mitigation measures on potentially new noncompatible development. The most commonly used remedial noise mitigation measures are land acquisition and relocation, noise insulation, easement acquisition, purchase assurance, and transaction assistance. The most commonly used preventive noise mitigation measures are comprehensive planning, zoning, subdivision regulations, easement acquisition restricting noncompatible development, revised building codes for noise insulation, and real estate disclosure. Acquisition of vacant land may also be a preventive noise mitigation measure with supporting evidence in the airport operator's part 150 submission that acquisition is necessary to prevent new noncompatible development because noncompatible development on the vacant land is highly likely and local land use controls will not prevent such development. Often, combinations of these measures are applied to ensure the maximum compatibility.

Under this final FAA policy, airport operators would not be limited to applying the most commonly used noise mitigation measures in their noise compatibility programs. Local flexibility to recommend other measures, including innovative measures, under part 150 would be retained. However, all noise mitigation measures applied to existing noncompatible development must clearly be remedial and serve the goal of reducing existing noncompatible land uses. Similarly, all noise mitigation measures applied to potential new noncompatible development must clearly be preventive and serve the goal of preventing the introduction of additional noncompatible land uses.

Any future FAA determinations issued under part 150 will be consistent under this policy. The FAA's approval of remedial noise mitigation measures will be limited to existing noncompatible development. The FAA's approval of preventive noise mitigation measures will be applied to potential new noncompatible development. The FAA recognizes that there will be gray areas which will have to be addressed on a case-by-case basis within these policy guidelines. For example, minor development on vacant lots within an existing residential neighborhood, which clearly is not extensive new noncompatible development, may for practical purposes need to be treated with the same remedial measure applied to the rest of the neighborhood. Another example would be a remedial situation in which noise from an airport's operation has significantly increased, resulting in new areas that were compatible with initial conditions becoming noncompatible. Airport operators will be responsible for making the case for exceptions to the policy guidelines in their part 150 submittals.

It should be noted that noise mitigation would continue to be eligible for AIP and PFC funds if approved as mitigation measures in an FAA environmental document for airport development project(s). This final policy does not affect that eligibility.

Eligibility for Federal funding of noise projects through the noise set-aside of the AIP will follow the same policy as the FAA's part 150 determinations—remedial projects for existing noncompatible development and preventive projects for potential new noncompatible development. The FAA will apply the same eligibility criteria to those few types of noise projects, such as soundproofing of schools and health care facilities, that are eligible for AIP funds under the noise set-aside without an approved part 150 program. The change in AIP eligibility will cause a like change in the eligibility of noise projects for PFC funding.

The impact of revising the FAA's policy on part 150 determinations and funding eligibility will be to preclude the use of the part 150 program and AIP or PFC funds to remediate new noncompatible development within the noise contours of an airport after the effective date of this final policy. By precluding this option while at the same time emphasizing the array of preventive noise mitigation measures that may be applied to potential new noncompatible development, the FAA seeks to focus airport operators and local governments more clearly on using these Federal programs to the maximum extent to prevent noncompatible development around airports, rather than attempting to mitigate noise in such development after the fact. The FAA has determined that such a policy will better serve the public interest. Unlike the FAA's previous consideration of this issue in 1989–1990, AIP and PFC funding may be available to assist airport operators in dealing with new noncompatible development that is not being successfully controlled by local jurisdictions, so long as the airport's methods prevent the noncompatible development rather than mitigating it after development has occurred. This should be a more cost-effective use of available funds since remedial noise mitigation measures generally cost more for a given unit than preventive measures.

In selecting a date to implement this final policy, the FAA is balancing a desire to implement a beneficial program change as rapidly as possible with practical transition considerations of ongoing part 150 programs. One approach considered was to implement it on an airport-by-airport basis, selecting either the date of the FAA's acceptance of an airport's noise exposure maps or the date of the FAA's approval of an airport's noise compatibility program under part 150.

This approach would have the advantage of directly typing this policy to a point in time for which an airport operator has defined, in a public process, the size of the airport's noise impact area and has consulted with local jurisdictions on measures to reduce and prevent noncompatible land uses. There are, however, disadvantages to this approach. More than 200 airports have participated in the part 150 program, beginning in the early 1980's. Thus, selecting either the noise exposure map's acceptance date or the noise compatibility program's approval date for these airports, which includes the great majority of commercial service airports with noise problems, would entail either applying this final policy retroactively or applying it prospectively at some future date as such airports update their maps and programs.

The selection of an airport-by-airport retroactive date would have required the FAA and airport operators to review previous part 150 maps and programs, historically reconstructing which land use development was ''existing'' at that time and which development is ''new'' since then, potentially to withdraw previous FAA part 150 determinations approving remedial measures for ''new'' development, and not issue new AIP grants for any ''new'' development (which by 1997 may have already been built and in place for a number of years and be regarded locally as an integral part of the airport's mitigation program for existing development). There was the further practical consideration of benefits to be achieved. It may now be too late to apply preventive noise mitigation measures to noncompatible land uses that have been developed since an airport's noise exposure maps have been accepted or noise compatibility program has been approved. If remedial noise mitigation measures were now determined not to be applicable to such areas, the areas would be left in limbo, having had no advance warning of a change in Federal policy.

There would also be disadvantages to applying this final policy prospectively on an airport-by-airport basis as an airport either updates a previous part 150 program or completes a first-time part 150 submission. The major disadvantages would be in the timeliness of implementing this final policy and the universality of its coverage. Since part 150 is a voluntary program, airport operators may select their timing of entry into the program and the timing of updates to previous noise exposure maps and noise compatibility programs. The result would be a patchwork implementation, with some airports operating under the new policy regarding part 150 noise mitigation measures and funding and other airports operating under the old policy for an unspecified number of years. An unintended and counterproductive side effect could be the postponement by some airports of updated noise exposure maps and noise compatibility programs in order to maintain Federal funding eligibility under the previous policy.

The FAA has determined that its preferred option is to select one prospective date nationwide as the effective date for this final policy, rather than to implement it based on an individual airport's part 150 activities, either maps or program. A specific date will ensure nationwide application on a uniform basis and provide a more timely implementation than prospective airport-by-airport implementation dates. A specific date will also eliminate any perceived advantages in postponing new or updated part 150 programs. the FAA considered two options with respect to the selection of a specific date: (1) The date of issuance of a final policy following the evaluation of comments received on its proposal or (2) a future date, 180 days to a year after publication of a final policy to allow transition time for airport operators to accommodate previously approved part 150 programs, recent part 150 submissions, or those programs or submissions under development.

While the date of issuance of a final policy was considered to have the advantage of timeliness, this was outweighed by the disadvantage of too abrupt a transition from one policy to another without giving airport operators and local communities a chance to react. The FAA anticipated in its notice of this change in policy that there would be a transition period from the date of issuance of a final policy of at least 180 days to avoid disrupting airport operators' noise compatibility programs that have already been submitted to the FAA and are undergoing statutory review. The FAA also announced in its notice that provision for this period plus an additional margin of time beyond 180 days would allow airport operators adequate opportunity to amend previously completed noise compatibility programs or programs currently underway, in consultation with local jurisdictions, to emphasize preventive rather than remedial measures for new development. Accordingly, the FAA sought comment on how long to extend a transition period beyond the 180 days noted—to a possible maximum of 1 year from the date of issuance of the final policy. In view of the extended time period since publication of the original notice, plus the opportunity for supplemental comment on the impacts of the policy on PFC eligibility, the effective date of January 1, 1998, is considered to more than fulfill the 1 year implementation timeframe that was proposed in the original notice and should provide adequate time to revise or update noise compatibility programs that are in preparation.

The potential future expenditure of AIP funds for projects to remediate new noncompatible development during a transition period is believed to be minimal, based upon the FAA's review of the sample of airports included in the FAA's recent study and in an independent study, as well as general program knowledge. Not all airports have a problem of continuing uncontrolled noncompatible development within the area covered by noise contours. Among those that do have a problem, few of them offer to provide remedial financial assistance for the new development, as shown in their part 150 submissions. Even in those cases where financial assistance for remediation has been recommended for new noncompatible development, it has generally been limited in scope and identified as a lower priority than funding remediation for existing noncompatible development. Further, funding for such new noncompatible development tends to be anticipated only in the latter years of an airport's part 150 program when it may not be needed because of shrinking noise contours resulting from the national transition to the use of Stage 3 aircraft.

Since part 150 is a voluntary program, each airport operator has the discretion to make its own determinations regarding the impact of this final policy on existing noise compatibility programs. If an impact is found, each operator can determine whether to immediately amend its program during the allowed transition period or to wait until the program is otherwise updated. The FAA will not initiate withdrawals of any previous part 150 program approvals based on this policy. However, any remedial noise mitigation measures for noncompatible development that is allowed to occur within the area of an airport's noise exposure maps after the effective date of this final policy will have to be funded locally, since the measures will not be eligible for AIP assistance from the noise set-aside or for PFC funding. New part 150 approvals after the effective date of this final policy will conform to this policy.

Discussion of Comments

On March 20, 1995, the FAA issued a notice of proposed policy (60 FR 14701), and solicited comments from the public on the proposed policy change. The issues raised in the comments are summarized and addressed below:

Twenty-one individuals and organizations submitted comments on the proposal. Comments were submitted by airport operators, airport associations, aviation associations, pilot associations, public agencies, community civic organizations, and businesses and business organizations. Of the 21 commenters, all but 8 commented favorably upon the policy as proposed by the FAA. Those eight commenters expressed preferences for three of the five alternatives upon which the FAA had solicited comments: retain the existing policy (alternative Number 1), retain the existing policy for airport operators that have taken earnest but unsuccessful steps to prevent new noncompatible development in jurisdictions outside their control (alternative Number 2), retain the existing policy for noncompatible land uses within the DNL 65 dB contour with an all Stage 3 fleet (alternative Number 3), retain existing policy for part 150 approval, but eliminate Federal funding eligibility for remedial measures for new noncompatible development (alternative Number 4), and implement the proposed policy on a airport-by-basis (alternative Number 5). Three of those commenters expressed a preference for alternative Number 1; three preferred alternative Number 2; and two preferred alternative Number 4. A discussion of the issues raised by the commenters follows. Comments were also requested on how long a transition period beyond the 180 days to allow—to a possible maximum 1 year total—from the date of issuance of the policy. Discussion of the comments on the effective date of the policy and the FAA's response follows the discussion of issues.

Issues

A review of the comments on the substance of the proposed policy revealed six general issues or concerns. Each of those issues and the FAA's response is presented below.

Issue: Airport expansion causing the noncompatibility: Four commenters expressed concern that airport expansion which increased the noise exposure of previously compatible development might become ineligible for Federal noise mitigation funds.

FAA Response: The new policy will continue the eligibility of such properties. From the discussion of the proposed policy (60 FR 14701, March 20, 1995), ''The FAA recognizes that there will be gray areas which will have to be addressed on a case-by-case basis within these policy guidelines. (An) example would be a remedial situation in which noise from an airport's operation has significantly increased, resulting in new areas that were compatible with initial conditions becoming noncompatible. Airport operators would be responsible for making the case for exceptions to the policy guidelines in their part 150 submittals.''

It should be noted that noise mitigation would continue to be eligible for AIP and PFC funds if approved as mitigation measures in an FAA environmental document for airport development project(s). This final policy does not affect that eligibility. Foresighted airport planning, the programmed phase out of noisy Stage 2 transport type jet airplanes and the subsequent shrinkage of noise contours for many airports, plus aggressive noise compatibility planning and implementation through effective local land use controls and building codes, can and should largely preclude situations in which airport expansion causes new noncompatible uses.

Issue: Compatible development on bypassed lots within existing noise impacted neighborhoods: Several commenters expressed concern about development of bypassed lots or additions to existing structures within noise impacted neighborhoods.

FAA Response: Bypassed lots, e.g., vacant or in-fill lots and other small parcels of vacant land within otherwise developed neighborhoods, are usually unsuitable for development with uses significantly different from that of their neighbors. It would be impractical, for example, to require industrial or commercial development on a vacant lot within an existing residential neighborhood. Any policy or land use control that effectively prevents any economically viable development of such properties raises the specter of public use of private property without due compensation. The new policy will continue the eligibility of such properties, although on a case-by-case basis. From the discussion of the proposed policy (60 FR 14701, March 20, 1995), ''For example, minor development on vacant lots within an existing residential neighborhood, which is clearly not extensive new noncompatible development, may for practical purposes need to be treated with the same remedial measure applied to the rest of the neighborhood.'' Also from that discussion, ''Airport operators would be responsible for making the case for exceptions to the policy guidelines in their part 150 submittals.'' In interpreting this, any such new structures or additions to existing structures should have the appropriate sound attenuation measures incorporated as an integral part of their initial construction rather than planning to have them added through a subsequent remedial soundproofing program. Those remedial programs are designed to bring relief to preexisting structures.

Issue: School additions serving population growth in existing noise impacted neighborhoods: One commenter asked for continued eligibility for school additions necessary to serve rapidly growing school age population within existing noise impacted neighborhoods.

FAA Response: Generally, when a school addition or other community facility is necessary to serve the local neighborhood and relocation outside the noise impact area is impractical, it should remain eligible for Federal funding assistance for the additional cost of including the appropriate sound attenuation in its initial construction. Eligibility for remedial noise mitigation measures for additions to existing noise impacted schools or neighborhood service facilities required by demographic changes within their service areas will be considered by the FAA on a case-by-case basis.

Issue: Proposed Policy will be more costly and weakens the position of the airport operator: One or more commenters felt that the proposed policy is less preferable than the present policy and may be more costly since it encourages airport operators to acquire land or rights in land in lieu of negotiations with neighboring communities. Concern was expressed that it also removes an important negotiating tool—that of Federal matching grants to mitigate the noise in neighboring jurisdictions.

FAA Response: Purchase of noise impacted lands by the airport without their use for an airport purpose, or their lease or resale for an airport compatible use, is costly both in terms of the acquisition costs and of the extended costs of maintenance and loss of tax base. The proposed policy is, in part, designed to give airport operators who do not exercise land use control jurisdiction an incentive to press responsible officials into action and to engage in more vigorous negotiations with land use control jurisdictions that have land impacted by the airport's noise, but do not have proprietary interest in the airport. The policy does so by assuring both airport sponsors and local land use control jurisdictions that no AIP of PFC funds will be available to mitigate the airport's noise impacts upon the noncompatible uses that they permit to be developed in the face of and in full knowledge of the airport's noise.

Issue: Conflicts with state noise compatibility programs: One commenter expressed concern that the proposed change was not compatible with its existing state noise compatibility laws.

FAA Response: The state cited, California, has been a leader in the airport noise compatibility effort and has noise standards in place that require airport operators to bring noncompatible land uses into compliance with those standards. However, the airport operator has no direct control to prevent the introduction of new noncompatible uses. The new policy is not intended to work counter to such positive noise compatibility efforts, it is intended to reinforce such efforts. Where noncompatible uses existed prior to the effective date of this policy, they are still eligible for AIP or PFC assistance for remedial noise compatibility measures. The new policy is designed to provide the airport operator with additional leverage to discourage the introduction of new noncompatible uses.

Issue: Sharing of responsibilities: One commenter suggested that the language of the original notice tended to suggest that local communities that are not the airport's sponsors might not be predisposed to act in a fully responsible manner to carry through with noise compatibility programs.

FAA Response: This was certainly not the intent of the notice, nor is that the FAA's perspective. The FAA recognizes that by and large most communities act, within their means, in a quite responsible manner vis-á-vis airport noise compatibility. However, we also recognize that such communities may be under locally significant economic

and political pressures to allow noncompatible development. It is the FAA's view that the active cooperation and coherent efforts of all parties involved are required to successfully plan and implement an airport noise compatibility program that meets the community's economic, political, and aviation needs. That is a central goal of the part 150 program and the rationale for its extensive consultation and community involvement elements.

Effective date of the policy

Several commenters made recommendations on dates for the provisions of the policy to become effective after its publication in the **Federal Register.** Their recommended dates ranged from ''as soon as possible,'' to 90 days, to ''no earlier than 18 months.'' In selecting a date to implement this final policy, the FAA balanced the desire to implement a beneficial program change as rapidly as possible with the practical transition considerations of ongoing part 150 programs. In the notice for public comment, the FAA anticipated a transition period of at least 180 days from the date of issuance of a final policy to avoid disrupting airport operators' noise compatibility programs that have already been submitted to the FAA and are undergoing statutory review. The notice also suggested an additional margin of time to a maximum of 1 year to allow airport operators adequate opportunity to amend previously completed noise compatibility programs or programs currently under development, in consultation with local jurisdictions, to emphasize preventive rather than remedial measures for new development. Accordingly, and after careful consideration of the public comments on this issue and the extended time since FAA issued notice of this proposed policy, the FAA selects a transition period to end December 31, 1997. This should afford airport operators, local land use control authorities, developers, and others with ample opportunity to revise their plans, programs, land use controls, and building codes.

Issue: Use of statements from the proposed policy: We note that statements in the proposed policy (60 FR 14701) have been misread.

FAA Response: These statements recognized the role that state and local governments play in airport noise compatibility planning. They did not reach the issue of whether zoning decisions that regulate airports development and operations within an airport's existing boundaries may be federally preempted. The statement ''Neither the FAA nor any agency of the Federal Government has zoning authority'' has been deleted because it led to some confusion.

Notice of Proposed FAA Policy

Accordingly, by this publication the FAA is formally notifying airport operators and sponsors, airport users, the officials of all public agencies and planning agencies whose area, or any portion of whose area, of jurisdiction are within the noise contours as depicted on an airport's part 150 noise exposure map, and all persons owning property within, considering acquisition of property within, considering moving into such areas, or having other interests in such areas, of the following proposed final FAA policy concerning future approval under 14 CFR part 150 and eligibility of AIP and PFC funding of certain noise mitigation measures.

Proposed Final Policy Statement

Beginning January 1, 1998, the FAA will approve under part 150 only remedial noise mitigation measures for existing noncompatible development and only preventive noise mitigation measures in areas of potential new noncompatible development. As of the same date, edibility for AIP noise set-aside funding and PFC funding will be determined using criteria that are consistent with this policy. Specifically, remedial noise mitigation measures for new noncompatible development occurring after the effective date of this final policy will not be approved by the FAA under part 150 and will not be eligible for AIP noise set-aside funding or approved for the use of PFC funding, regardless of previous FAA approvals of such measures under part 150, the status of implementation of an individual airport's part 150 program, or the status of any pending application to use AIP funds or PFC revenue for noise mitigation purposes. This policy also applies to projects that are eligible under the noise set-aside without a part 150 program. Eligibility for remedial noise mitigation measures for bypassed lots or additions to existing structures within noise impacted neighborhoods, additions to existing noise impacted schools or other community facilities required by demographic changes within their service areas, and formerly noise compatible uses that have been rendered noncompatible as a result of airport expansion or changes in airport operations, and other reasonable exceptions to this policy on similar grounds must be justified by airport operators in submittals to the FAA and will be considered by the FAA on a case-by-case basis. This policy does not affect noise mitigation that is included in FAA-approved environmental documents for airport development projects.

Issued in Washington, DC, on May 20, 1997.

Paul R. Dykeman,

Deputy Director of Environment and Energy.

[FR Doc. 97–13953 Filed 5–27–97; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 436

Franchise Rule Public Workshop Conferences

AGENCY: Federal Trade Commission.

ACTION: Public workshop conferences.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') will hold six public workshop conferences in connection with the Advance Notice of Proposed Rulemaking (''ANPR'') on the Trade Regulation Rule entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,'' 16 CFR Part 436 (the ''Franchise Rule'' and ''Rule''). In addition, the Commission will continue to accept comments on the ANPR until December 31, 1997.

DATES: The public workshop conferences will be held as follows:

Conf. No.	Topics	Location	Dates
1	Trade Show Promoters	Washington, DC	July 28, 29.
2	Business Opportunities	Chicago, IL	Aug. 21, 22.
3	UFOC, Internet, International Co-Branding, Alternative Law Enforcement	New York, NY	Sept. 18, 19.
4	Business Opportunities	Dallas, TX	Oct. 20, 21.
5	UFOC, Internet, International, Co-Branding, Alternative Law Enforcement	Seattle, WA	Nov. 6, 7.
6	Business Opportunities	Washington, DC	Nov. 20, 21.

The first day of each conference will run from 9 a.m. until 5 p.m., and the second day will run from 9 a.m. until 3 p.m. The first day of each conference will consist of a roundtable discussion on the various issues described below. Members of the public will also have the opportunity to comment on the issues raised during the roundtable discussions. The second day will be reserved for members of the general public who wish to make statements for the record on any of the topics raised by the ANPR.

ADDRESSES: Parties interested in participating in one or more of the Public Workshop Conferences should submit a request to participate on or before July 1, 1997, to Myra Howard, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580. The Commission will also accept requests to participate received at the following E-mail address: ''FRANPR@ftc.gov'', and at the Commission's ANPR hotline telephone number: (202) 326–3573.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, (202) 326–3135, or Myra Howard, (202) 326–2047, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC. 20580.

SUPPLEMENTARY INFORMATION:

Part A—Overview of the Commission's ANPR

On February 28, 1997, the Commission published an ANPR announcing the Commission's proposal to commence a rulemaking proceeding to amend the Franchise Rule. 62 FR 9115 (February 28, 1997). The ANPR requested comment on whether the Franchise Rule should be amended to: (1) Revise the Rule's disclosure requirements based upon the Uniform Franchise Offering Circular Guidelines (''UFOC'') model; (2) distinguish between disclosures for business opportunities and for franchises; (3) exempt trade show promoters from liability as ''brokers;'' (4) require trade show exhibitors to have their disclosure documents available for public inspection; (5) require franchisors to inform prospective franchisees that franchisors are permitted to disclose earnings information, and where franchisors elect not to do so, to require such franchisors to state that they make no earnings representations and do not authorize their salespersons to make them; (6) clarify that the Rules does not apply to the sale of franchises to be located outside the United States; (7) clarify the applicability of the Rule to the sale of franchises over the Internet; and (8) clarify the applicability of the Rule to the sale of co-branded franchise systems. In addition, the ANPR asked whether the Commission should develop a program to reduce or waive civil penalties for certain violations of the Franchise Rule.

Part B—Extension of Comment Period

The ANPR stated that comments must be submitted on or before April 30, 1997. The Commission is now extending the comment period until after the final public workshop conference is held, as set forth below, in order to provide the public with maximum opportunity to participate in the rulemaking process. Therefore, submissions of views, drafts of proposed amendments to the Rule, and any other written, oral, or visual materials will be accepted throughout the conference period, and up until December 31, 1997. All such comments will also be made part of the public record.

Part C—Overview of the Public Workshop Conferences

The ANPR announced that Commission staff would hold several public workshop conferences. These conferences are intended to serve several purposes: (1) To allow Commission staff and interested parties the opportunity to discuss openly issues raised in the ANPR and in the comments to the ANPR; (2) to offer the general public an opportunity to make statements on the record concerning the issues raised in the ANPR; and (3) to assist Commission staff in drafting a proposed amended rule.

Accordingly, the first day of each public workshop conference will consist of a roundtable discussion centered on a specific topic or topics, as noted below. In addition to discussing and analyzing the issues, the participants will be asked to offer concrete suggestions on revising the Rule in those specific areas. Participation by the general public the first day will be limited to a discussion of the topics raised that day. The second day of each conference will be reserved for the general public to share their comments and concerns about any of the issues raised in the ANPR. Statements by members of the general public may be limited to a few minutes, depending on the number of persons who wish to make statements. All discussions and comments will be transcribed and placed on the public record.

The Commission staff will select a limited number of parties to join in the roundtable discussions. To the extent possible, Commission staff will select parties to represent the following affected interests: franchisors; franchisees; business opportunity promoters; business opportunity purchasers; franchise and business opportunity trade show organizers; franchise and business opportunity brokers; franchisor, franchise, business opportunity, and other trade or industry associations; franchise consultants; economists and academicians; Federal, State and local law enforcement and regulatory authorities; and any other interests that Commission staff may identify and deem appropriate for representation.

Parties representing the above-referenced interests will be selected on the basis of the following criteria:

1. The party must submit a comment. First priority will be given to those parties who submit their comment by July 1, 1997. After that date, parties may be considered as participants on a space-available basis.

2. The party must also notify Commission staff in writing, via E-mail, or via the hotline number, of its interest in being a roundtable participant and, if required, authorization to represent an affected interest, on or before July 1, 1997. The party must also identify which conference or conferences that party wishes to attend. Those parties submitting their requests after July 1, 1997, will also be considered on a space-available basis.

3. The party's participation would promote a balance of interests represented at the conference.

4. The party's participation would promote the consideration and discussion of the topics being discussed at the conference.

5. The party has experience or expertise in activities affected by the Franchise Rule.

6. The party adequately reflects the views of the affected interest(s).

7. The number of parties selected will not be so large as to inhibit effective discussion among them.

The Commission strongly encourages all interested parties to participate in the public workshop conferences, as the transcripts from the conferences will be an important part of the public record in this rulemaking proceeding. Individuals wishing to make statements on the record the second day of any conference need not submit a request to participate, and the Commission will make every effort to provide time for all members of the general public to make statements regarding any of the ANPR issues. Each conference will be facilitated by a Commission staff member. Prior to each conference,

participants will be provided with tentative agendas as well as copies of the comments submitted in response to the ANPR.

Part D—Schedule of Public Workshop Conferences

The first public workshop will be held on July 28 and 29, 1997, at the Federal Trade Commission, Room 432, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. The roundtable discussion on July 28, 1997, will focus on the possible exemption of trade show promoters from the Rule's disclosure requirements and the development of possible voluntary industry standards.

The second public workshop conference will be held on August 21 and 22, 1997, at the Chicago Regional Office, Federal Trade Commission, 55 E. Monroe Street, Suite 1860, Chicago, Illinois 60603. The roundtable discussion on August 21, 1997, will focus on revisions to the business opportunity section of the Rule, including a definition of the term ''business opportunity.''

The third public workshop conference will be held on September 18 and 19, 1997, at the Jacob Javits Federal Building, 26 Federal Plaza, Floor 36, Conference Room 3604, New York, NY 10278. The roundtable discussion on September 18, 1997, will focus on whether the Commission should revise the Rule based upon the UFOC model and possible modifications; the sale of franchises through the Internet; the sale of co-branded franchise systems; and alternative approaches to Franchise Rule law enforcement.

The fourth public workshop conference will be held on October 20 and 21, 1997, at the Dallas Regional Office, Federal Trade Commission, 1999 Bryan Street, Suite 2150, Dallas, Texas 75201. The roundtable discussion on October 20, 1997, will focus on proposals for a revised definition of the term ''business opportunity,'' and specific proposed disclosure requirements for business opportunity sellers.

The fifth public workshop conference will be held on November 6 and 7, 1997, at the Seattle Regional Office, Federal Trade Commission, 915 Second Avenue, Suite 2886, Seattle, Washington 98174. The roundtable discussion on November 6, 1997, will focus on whether the Commission should revise the Rule based upon the UFOC model and possible modifications; the sale of franchises through the Internet; the sale of co-branded franchise systems; and alternative approaches to Franchise Rule law enforcement.

The final public workshop conference will be held on November 20 and 21, 1997, at the Federal Trade Commission, Room 432, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. The roundtable discussion on November 20, 1997, will focus on drafting revised business opportunity disclosures.

List of Subjects in 16 CFR Part 436

Advertising, Business and industry, Franchising, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–13870 Filed 5–27–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 251

RIN 101–AC10

Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Extending comment period for proposed rule.

SUMMARY: This document extends to July 29, 1997 the reopening of the comment period published on May 1, 1997 (62 FR 23705), the deadline for the submission of comments on the proposed revision of requirements governing Geological and Geophysical Explorations of the Outer Continental Shelf, that was published February 11, 1997.

DATES: We will consider all comments received by July 29, 1997. We will review comments at that time and may not fully consider comments received after July 29, 1997.

ADDRESSES: Mail or hand-carry written comments to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4700; Herndon, Virginia 20170–4817; Attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, Engineering and Operations Division, at (703) 787–1600.

SUPPLEMENTARY INFORMATION: On May 15, 1997 MMS met with industry representatives to discuss issues raised by the proposed revisions of MMS's requirements governing geological and geophysical explorations of the Outer Continental Shelf that were published February 11, 1997 (62 FR 6149). On the basis of the discussion MMS is extending the comment period to allow respondents more time to prepare detailed and comprehensive comments. We will publish a notice in the **Federal Register** to announce a meeting date and place to further discuss this rulemaking.

Dated: May 21, 1997.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 97–13848 Filed 5–27–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 95, 100, 173, 174, 175, 177, 179, 181, and 183

46 CFR Part 25

[CGD 97–029]

Review of Regulations on Boating Safety

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard will conduct a comprehensive review of currently effective boating safety regulations during and after the meeting of the National Boating Safety Advisory Council (NBSAC) in October 1997. This Request describes which of them will come within the review and solicits comments from the boating community in response to issues that this Request will pose. The review is to determine which if any of those regulations need change. The Coast Guard will provide a summary of the comments received to the members of the NBSAC for them to consider before that meeting, and will itself consider all relevant comments as it determines which if any of those regulations need change.

DATES: Comments must reach the Coast Guard on or before July 28, 1997.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA, 3406) [CGD 97–029], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

The Executive Secretary maintains the public docket for this regulatory review. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 3406,

U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carlton Perry, Project Manager, Office of Boating Safety, Program Management Division, 202–267–0979. You may obtain a copy of this Request by calling the Coast Guard Customer Infoline at 1–800–368–5647, or on the Internet Office of Boating Safety Web Site at URL address http://www.access.digex.net/~prostech/uscg/.

SUPPLEMENTARY INFORMATION:

Background and Purpose

NBSAC is an advisory committee created under 46 U.S.C. 13110(a) and section 304(f) of Pub. L. 104–324. It advises the Coast Guard on substantive matters of boating safety. It comprises 21 members drawn equally from 3 segments of the boating community: the boating industry; State officials on boating safety; and representatives of national recreational boating organizations and of the general public. The Coast Guard must consult it in the formulation of boating safety regulations.

The Coast Guard conducted comprehensive reviews of its boating safety regulations in conjunction with meetings of NBSAC in May 1981, 1986, and 1992. It asked NBSAC to determine whether the regulations were still necessary, beneficial, cost-effective, and in step with current technology. These reviews led NBSAC to make numerous recommendations to improve and update specific provisions in the regulations. The next comprehensive review is due at the meeting of NBSAC in October 1997. (The Coast Guard will publish details of the exact time and place of the meeting in the **Federal Register** at a later date. The meeting will be open to the public.) The review will encompass currently effective regulations issued under the authority of the Assistant Commandant for Operations, at Coast Guard Headquarters, or of his predecessors. It will not encompass any rules not yet final. The review will encompass at least these rules:

- Restrictions on and responsibilities of persons operating recreational vessels while intoxicated (33 CFR part 95).
- Requirements for persons organizing regattas and marine parades to notify the Coast Guard and apply for permits before the event (33 CFR part 100).
- Requirements for operators of recreational vessels and for States to number, or register, those vessels and report accidents (33 CFR parts 173 & 174).
- Requirements for operators of recreational vessels to carry personal flotation devices (PFDs) on the vessels (33 CFR part 175).
- Requirements for operators of recreational vessels to carry visual distress signals (VDSs) on the vessels (33 CFR part 175).
- Requirements for operators of recreational vessels regarding especially hazardous conditions (33 CFR part 177).
- Requirements for manufacturers and importers of recreational vessels and associated equipment to notify purchasers of the vessels about safety defects and to recall products (33 CFR part 179).
- Requirements for manufacturers and importers of recreational vessels to certify compliance of boats and associated equipment (33 CFR part 181, subpart B).
- Requirements for manufacturers and importers of recreational vessels to identify the vessels with hull identification numbers (33 CFR part 181, subpart C).
- Requirements for manufacturers of PFDs to furnish informational pamphlets about the PFDs (33 CFR part 181, subpart G).
- Requirements for manufacturers and importers of recreational vessels to calculate and display safe capacities for loading and powering (33 CFR part 183, subparts, B, C, D, and N).
- Requirements for manufacturers and importers of recreation vessels regarding standards for flotation of recreational vessels (33 CFR part 183, subparts, F, G, and H).
- Requirements for manufacturers and importers of recreational vessels regarding electrical and fuel systems (33 CFR part 183, subparts I and J).
- Requirements for manufacturers and importers of recreational vessels regarding powered and natural ventilation systems (33 CFR part 183, subpart K).
- Requirements for manufacturers and importers of outboard engines to protect against the engines starting in gear (33 CFR part 183, subpart L).
- Requirements for operators of recreational vessels to carry fire extinguishers on the vessels (46 CFR subpart 25.30).
- Requirements for operators of recreational vessels to carry an acceptable means of backfire flame control on the vessels (46 CFR subpart 25.35).
- Requirements for operators of recreational vessels regarding operable ventilation systems on the vessels (33 CFR part 175, subpart D; and 46 CFR subpart 25.40).

You may read copies of the boating safety regulations under review at any of the many public libraries that carry the United States Code of Federal Regulations. You may buy them from the Superintendent, Government Printing Office, telephone: 202–512–2250; facsimile: 202–512–1800. You may also read them on, and run copies of them from, the Internet at URL address http://law.house.gov/cfrhelp.htm.

Request for Comments

The Coast Guard encourages interested person from all segments of the boating community to participate in this regulatory review by submitting written data, views, or arguments regarding any changes to the currently effective boating safety regulations, including elimination or revocation of any requirements. (This review is not required by but is consistent with 5 U.S.C. 610, which directs agencies to conduct periodic reviews of regulations they issue that have a significant impact on a substantial number of small entities.) Persons submitting comments should include their names and addresses, identify this Request [CGD 97–029] and the specific provision in the regulation to which each comment applies, state each change needed, and give all reasons to support each change. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard is especially interested in receiving data, views, and arguments on the following issues:

- *Need*—Is there still a reasonable need for the regulations? Is the problem that the regulation was originally intended to solve still a problem?
- *Technical Accuracy*—Has the regulation kept pace with the technological, economic, or other relevant conditions? Would any particular changes make it more effective in achieving its intended goal?
- *Cost/Benefit*—What are the costs, or other burdens or adverse effects, of the regulation? What are the benefits of the regulation in terms of person safety or other values? Do the benefits outweigh the cost?
- *Problems*—Are there any problems or complaints in understanding or complying with the regulations?
- *Alternatives*—Are there any nonregulatory ways to achieve the goal

the regulation at lower cost, or lower burden or adverse effect?

The Coast Guard will summarize—and will provide to the members of NBSAC for them to consider before the meeting in October 1997—all comments received during the comment period in response to this Request. It will consider all relevant comments in the formulation of any changes to the boating safety regulations that may result from this review.

Dated: May 21, 1997.

N.T. Saunders,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 97–13872 Filed 5–27–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 385

[FHWA Docket No. MC–94–22; FHWA–97–2252]

RIN 2125–AC 71

Safety Fitness Procedure; Safety Ratings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: This document is in response to a decision of the U.S. Court of Appeals, District of Columbia Circuit, entered on March 18, 1997. In this rulemaking the FHWA is proposing to incorporate a modified Safety Fitness Rating Methodology (SFRM), which would be used to measure the safety fitness of motor carriers against the safety standard, as an appendix to its Safety Fitness Procedures regulations. An interim final rule published elsewhere in today's **Federal Register** incorporates the current SFRM for an interim period to rate motor carriers that are transporting hazardous materials in quantities for which vehicle placarding is required, or transporting 15 or more passengers including the driver.

DATES: Comments must be received on or before July 28, 1997.

ADDRESSES: Submit written, signed comments to the docket number that appears in the heading of this document to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Hill, Vehicle and Operations Division, Office of Motor Carrier Research and Standards, (202) 366–4009, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Court of Appeals for the District of Columbia Circuit ruled that the FHWA's procedures for assigning safety ratings were adopted contrary to law. *MST Express and Truckers United for Safety* v. *Department of Transportation and Federal Highway Administration,* No. 96–1084, March 18,1997. The court ruled that the FHWA had failed to carry out its statutory obligation to establish, by regulation, a means of determining whether a motor carrier has complied with the safety fitness requirements of the Motor Carrier Safety Act of 1984 (MCSA) (codified at 49 U.S.C 31144). Because the carrier's safety rating was determined based upon rules that were not promulgated pursuant to notice and comment rulemaking, as 49 U.S.C. 31144(a) requires, the petitioner's *conditional* safety rating was vacated and the matter remanded to the FHWA ''for such further action as it may wish to take, consistent with the decision.''

In this notice of proposed rulemaking (NPRM), the FHWA proposes to modify the SFRM, incorporate it as Appendix B to Part 385, and use it as the means for deciding whether motor carriers meet the safety fitness requirements.

The FHWA has been using an SFRM, comprised of six rating factors, since October 1, 1989, as the mechanism for determining how well motor carriers are adhering to 49 CFR 385.5, Safety fitness standard. In addition to making the detailed explanation available since August 16, 1991, the FHWA has sought comments from interested members of the public in FHWA Docket Nos. MC–91–8 (56 FR 40801) and MC–94–22 (59 FR 47203).

In the first docket, the FHWA solicited public comment on an interim final rule (56 FR 40801) (August 16, 1991) implementing that provision of the MCSA of 1990, Pub. L. 101–500, § 15(b)(1), 104 Stat. 1218, 49 U.S.C. 5113, prohibiting a motor carrier with an *unsatisfactory* safety rating from operating a commercial motor vehicle (CMVs) to transport: (1) hazardous materials in quantities for which vehicle placarding is required, or (2) more than 15 passengers including the driver. This prohibition becomes effective after 45 days have elapsed following receipt of an *unsatisfactory* safety rating issued by the FHWA. During the 45-day period, the motor carrier should take such action as may be necessary to improve its safety rating to *conditional* or *satisfactory* or be subject to the prohibition. Fourteen comments were received in response to the 1991 interim final rule. Such of those comments as provide relevant information to this NPRM are discussed herein. The FHWA will also determine whether the 1991 interim rule is to be made final after consideration of the comments received in response to today's NPRM.

In the second docket, the FHWA published in the **Federal Register** on September 14, 1994, a notice and request for comments (59 FR 47203) explaining changes made to the SFRM in 1993, which was then being used to evaluate a motor carrier's adherence to the § 385.5 safety fitness standard. Additional changes to the SFRM, which became effective on October 1, 1994, were also explained. These changes initiated the use of violations of the safety regulations designated as ''acute'' or ''critical'' to rate each of the five regulatory factors evaluated when performing a compliance review (CR) at a carrier's place of business.

The FHWA also solicited comments concerning: (1) changes made in 1994, (2) the direction that future modifications to the SFRM should take, and (3) how best to disseminate information to the industry about new regulations and the FHWA programs that encourage ''voluntary compliance.''

The 17 comments received in response to changes to the rating criteria are discussed in this notice to the extent they provide relevant information to this NPRM. Comments that are duplicative of those discussed under the prior docket discussion are not repeated.

In today's NPRM, the FHWA is proposing to incorporate as Appendix B to Part 385 the SFRM in a form substantially similar to that which has been used over the past 8 years and adopted by the interim final rule published elsewhere in today's **Federal Register**. The SFRM proposed in this NPRM has been modified, however, to change the accident factor. The reasons for this proposed modification are as follows. The preventable recordable accident criteria have been used by

FHWA since the mid-1980s. The FHWA has, however, received complaints that the criteria are too subjective. During the CR, preventability is evaluated based on the safety specialist's assessment. The FHWA believes that if a driver, who exercises normal judgment and foresight could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable. However, individuals will not always agree when the same fact situations are evaluated.

We are proposing to use all recordable accidents in evaluating the accident factor because we believe this is a more objective standard. The data indicate that the vast majority of all accidents have been determined to be preventable. For Fiscal Year 1995, the average accident rate, derived from CRs performed during that time frame, was 0.812 for all carriers and 1.029 for carriers that operated entirely within a 100 air mile radius.

We are proposing to double the average rate to determine when a carrier is *unsatisfactory* in the accident factor. The FHWA believes that it would be reasonable to rate *unsatisfactory,* for the accident factor alone, any motor carrier with an accident rate that is twice the average rate for all carriers (or for carriers operating entirely within the 100 air mile radius, as the case may be), because the FHWA believes that it is likely that a carrier with an accident rate substantially above the norm for similarly situated carriers has inadequate or improperly functioning safety management controls. *See* 49 CFR § 385.7. Nevertheless, the recordable accident rate will be used to rate Factor 6, Accident, for a carrier only when the carrier has had two or more recordable accidents within the 12 months prior to the CR. The FHWA believes that a single accident within that time frame could be due to any number of reasons not reflecting on the adequacy of the carrier's safety management controls. Additionally, the FHWA proposes no longer to assign *satisfactory* or *conditional* ratings for this factor; only *unsatisfactory* ratings will be assigned.

Discussion of Comments

Purpose of Safety Ratings

The Interstate Truckload Carriers Conference (ITCC) stated that the FHWA's safety rating process was never intended to be used as an administrative mechanism for imposing severe sanctions upon motor carriers. The safety rating system, according to the ITCC, was developed as an educational and management tool so the FHWA could focus its limited resources on the operations of motor carriers with problems. The commenter claimed that a motor carrier could receive a rating as a result of factors or considerations which were never part of a rulemaking proceeding and thus possibly be a violation of the Administrative Procedure Act (APA).

The American Trucking Associations (ATA) had similar concerns that because the safety criteria had not gone through public notice and comment rulemaking, it would be a possible violation of the APA and unfair for the FHWA to use those criteria for enforcement purposes. The ATA wanted the FHWA to provide the formula that establishes the *unsatisfactory* safety rating. It also stated that the safety rating process should be developed through notice and comment rulemaking. Comments concerning the safety review (SR) are no longer relevant since that review process was discontinued on September 30, 1994.

The FHWA adopted a final rule in 1988, after notice and opportunity for comment, that implemented the requirements of section 215 of the MCSA of 1984 and established a procedure to determine the safety fitness of motor carriers. The FHWA believed that the SFRM that it used to supplement the procedures set forth in its regulations did not amount to substantive requirements necessitating notice and comment rulemaking. In its interim final rule adopted in 1991, the FHWA advised motor carriers that they could obtain copies of the safety rating process by contacting the agency. *See* 56 FR at 40803. This offer to provide copies of the SFRM to carriers was reiterated in 1994. *See* 59 FR at 47205.

In light of the court's decision in *MST Express,* the FHWA is now soliciting public comment on its proposal to add the SFRM, modified as described in this NPRM, to Part 385. The FHWA notes that the SFRM proposed today has been modified, in part, in light of public comments received in response to the 1991 interim final rule and the 1994 request for public comment.

Accident Factor

The ATA and the American Bus Association (ABA) were concerned about the inclusion of the reportable/preventable (subsequently changed to recordable/preventable) accident frequency in the rating process, as there are no regulations specifying acceptable frequencies for a *satisfactory* rating. Also, they believe that in borderline cases preventability is a judgment call that may be influenced by short-term objectives. The ABA stated that the FHWA has not defined a preventable accident, and it would like the criteria for preventability ''spelled out.'' The ABA also suggested that the FHWA could consider all reportable (now recordable) accidents in its safety rating process, which would eliminate subjective evaluations of whether particular accidents were preventable.

In response to these comments, the FHWA is proposing to adopt a recordable accident rate for the accident factor in the SFRM as discussed above.

The recordable accident rate will be used to rate Factor 6, Accident, only when two or more recordable accidents occurred within the 12 months prior to the initiation of the CR. Urban carriers (a carrier operating entirely within the 100 air mile radius) with a recordable accident rate greater than 2.1 will receive an *unsatisfactory* rating for the accident factor. All other carriers with a recordable accident rate greater than 1.6 would receive an *unsatisfactory* factor rating.

Definitions of ''Conditional'' and ''Unsatisfactory''

The ATA noted that the § 385.3 definitions of *conditional* and *unsatisfactory* should be changed to reflect § 385.5 (a)–(k), and not (h), as published in the August 16, 1991, **Federal Register**. That change is proposed in this notice.

Objectivity of Ratings

The Chemical Waste Transportation Institute (CWTI) supported the FHWA's efforts to develop a computerized rating formula, and wanted the subjectivity minimized as much as possible. It also suggested that the FHWA describe what steps are being taken to minimize human error in the safety rating process.

The FHWA believes that having modified the SFRM to rate on the basis of actual violations of acute regulations and patterns of violations of critical regulations, as well as performance proposed to be measured by recordable accidents and vehicle out-of-service (OOS) rates from roadside vehicle/driver inspections, the safety rating process has been made more objective.

Definitions of ''Acute'' and ''Critical'' Regulations

General Electric recommended having the ''critical'' and ''acute'' regulations made available to the public and the definitions of the terms ''critical'' and ''acute'' defined in part 385. It also recommended that the definitions of *conditional* and *unsatisfactory* be revised to make a clearer distinction

between these two ratings. The ABA stated that ''the definitions of critical and acute violations are too vague to allow a reasonable objective judgment.'' The ''acute'' and ''critical'' regulations and the definitions of the terms are being published in the proposed Appendix B to 49 CFR 385.

Algorithm

Blakely & Associates wanted a computerized algorithm with a formula table so that carriers can determine ratings themselves. It also suggested that the FHWA provide to the carrier the rating at the conclusion of the CR. The SFRM contains explanations of the factor ratings and the Motor Carrier Safety Rating Table, which is the formula for determining a safety rating. The FHWA has also modified its procedures to provide motor carriers with an anticipated rating at the conclusion of the CR.

Elimination of the SR

Hanson Trucking and the ITCC believe that the SR should not have been eliminated as ''it takes the focus of the audit from realistic safety concerns and places the focus on inaccuracies in paperwork.'' Hanson Trucking did not believe that noncompliance in the areas of false entries and improper form and manner will lead to increased accident frequency and severity. The ITCC believed that the 70-question format allowed carriers to police their operations and determine the quality of their safety compliance in advance of a CR by the FHWA. It stated that the first concern of an on-site audit should be the accident history of the motor carrier. Further, the ITCC believes that if a high accident frequency is in evidence, a CR should then be conducted in an attempt to educate the carrier in accident preventability. According to the ITCC, the lack of significant accident data (no accidents) should indicate that the motor carrier has an adequate safety program in place. The end goal, the ITCC stated, should be: no accident problems equals no CR or enforcement action.

The FHWA discontinued the SR since the CR is a more objective means to assess a motor carrier's adherence to the § 385.5, safety fitness standard. To the extent a carrier needs to know how far into noncompliance it can slip without risking a bad rating, the carrier will now be able to assess its safety compliance by conducting a self-review to determine if it has violations of ''acute'' regulations or patterns of violations of ''critical'' regulations.

Vehicle Factor

In factor 4 (Vehicle), the California Highway Patrol (CHP) believes the former system of a *conditional* threshold at 17 percent vehicle OOS rate for the vehicle factor was more appropriate than the current 34 percent OOS rate for *conditional*, and the Advocates for Highway and Auto Safety (Advocates) generally agreed with this position. The CWTI requested the FHWA to disclose its rationale for 34 percent OOS rate for a *conditional* factor 4 rating and for selecting 10 percent for the pattern of violations when evaluating compliance with ''critical'' regulations. The NPTC stated that the original 17 percent OOS rate should be the threshold for assigning a *conditional* factor rating, and then random vehicle inspections should be performed at the time of the CR. If there is total compliance with the part 396 requirements, the factor rating should be upgraded.

The ATA and several carriers were concerned that vehicles are sometimes inspected, no defects are discovered and the vehicles are then allowed to proceed without written inspection reports. Because of this, they contend the FHWA should re-evaluate the use of OOS percentages as a major component of factor 4 (Vehicle) rating, and place more importance on the motor carrier's compliance with part 396. Some carriers contended that for the OOS rate to be an accurate representation of a motor carrier's compliance with the regulations, it must be adjusted to the carrier's size.

The FHWA considered the comments concerning the method of evaluating compliance with the Vehicle Factor. The FHWA believes that the current method is appropriate and will not propose any changes at this time. Our goal is to utilize ''performance-based information'' to rate motor carriers whenever possible. Vehicle OOS rates are, therefore, used as a first indicator to evaluate factor 4-(Vehicle). A minimum of three or more inspections would be required to use vehicle OOS rates as a first indicator. The three inspections must have occurred in the twelve months prior to the CR, or be a combination of inspections performed at the motor carrier's facility at the time of the CR.

If it appears during the CR that the motor carrier's maintenance has either improved or deteriorated since the inspections in the Motor Carrier Management Information System, it is appropriate for the individual conducting the CR to perform inspections at the motor carrier's facility if vehicles are available (vehicles ready to be dispatched or vehicles that just came off the road). Inspections may also be performed at the motor carrier's facility at the time of the CR, if there are fewer than three inspections on the carrier profile for the prior 12 months.

The reason for using a 34 percent or greater OOS rate for the *conditional* first indicator is as follows: (1) The national OOS rate has been in the low thirties for several years; (2) many of the roadside inspections are targeted at visibly defective vehicles; (3) some vehicles receive a cursory inspection and if there are no apparent defects, the vehicles are allowed to proceed without an inspection report being generated; and (4) using a minimum of three or more vehicle inspections, one OOS vehicle should not be able to impact the factor rating. The second indicator is the motor carrier's compliance with part 396, inspection, repair, and maintenance requirements. The number of records to be reviewed is derived from the International Standard of sampling procedures. If a violation of a part 396 acute regulation, or a pattern of violations of a critical regulation is discovered, a first indicator factor rating of *conditional* will be lowered to *unsatisfactory*, and a *satisfactory* factor rating to *conditional*, respectively.

Using two indicators to evaluate this factor is a reasonable approach. The vehicle OOS rates are either confirmed, with the first indicator rating remaining the same, or if significant noncompliance with part 396 is discovered, the factor rating is lowered to *conditional* or *unsatisfactory*, respectively. All of the defects that have been identified as OOS violations have the same weight, which is an additional reason for the OOS rate being set at 34 percent for *conditional* as the first indicator in the factor rating.

Selection of Records for Review

The ATA and several carriers stated that the safety rating process is not based upon a random sampling of the motor carrier's records. The FHWA has given a great deal of consideration to the issue of selecting carriers' records for review. The § 385.5 safety fitness standard was developed to measure the effectiveness of a motor carriers' safety management controls. The CR identifies and documents areas where a motor carrier's safety management controls have failed or are ineffective. The FHWA focuses its review on drivers and vehicles that were involved in accidents, those drivers who incurred OOS violations during roadside inspections, or those drivers or vehicles for which violations are more likely to be found (e.g. those drivers driving the

most miles). The drivers and vehicles reviewed using the ''focused sample'' are the same ones carrier officials should be focusing their efforts upon. The minimum number of records to be reviewed is derived from the International Standard of sampling procedures, which is based upon the number of drivers or vehicles that the motor carrier operates. When the number of records from this focused sample has been exhausted and there are fewer records than the sampling guidelines specify, random sampling is used to meet the minimum number required to be reviewed. Classifying certain regulations as ''acute'' or ''critical'' assists motor carriers in their compliance efforts as they can concentrate their initial efforts on complying with these regulations. It should be noted, however, that only full compliance with all of the safety regulations will ensure that motor carriers comply with the provisions of the § 385.5, safety fitness standard.

''Acute'' regulations are ones where violations should not occur for a motor carrier with effective safety management controls. An example of an ''acute'' regulation is § 382.211, using a driver who has refused to submit to an alcohol or controlled substances test required under part 382. A motor carrier which commits this violation is one that instructed the driver to undergo testing, and the driver refused to be tested. There is no reasonable excuse for a carrier to use the driver after that driver's refusal to be tested.

A pattern of noncompliance is required before a rating factor is impacted by violations of ''critical'' regulations because even a motor carrier with effective safety management controls will, in all likelihood, violate some of the ''critical'' regulations. An example of a ''critical'' regulation is § 395.3(a)(1), requiring or permitting driver to drive more than 10 hours. By identifying this regulation as ''critical,'' the FHWA has ensured that violations will not impact factor 3 (Hours of Service) unless they constitute a pattern. A pattern is defined as a number of violations (more than one) constituting 10 percent or more of the occasions where like violations could have occurred. Thus, when evaluating compliance with a ''critical'' regulation, the motor carrier's safety management controls usually are judged to be effective if the number of discovered violations is under 10 percent.

The FHWA believes that motor carriers with effective safety management controls are able to achieve a level of compliance with ''critical'' regulations before they reach a pattern of violations. For rating purposes, all violations are considered, and effective safety management oversight should result in a violation rate of less than 10 percent of the records or occasions reviewed.

Opportunity to Challenge a Rating

Several commenters wanted the procedures changed to allow a motor carrier 30 days to challenge an anticipated safety rating where there are factual issues in dispute.

The FHWA believes that providing a motor carrier the anticipated rating at the conclusion of the CR gives the carrier adequate notice that a rating of *conditional* or *unsatisfactory* will become effective 30 days from that date. Motor carriers receiving such a notice can immediately: (1) Take corrective action on the discovered violations, which will enable them to request a reevaluation based upon corrective action taken (§ 385.17), and/or (2) petition the Director, Office of Motor Carrier Field Operations, if there are factual or procedural issues in dispute (§ 385.15). Either option may be utilized before the carrier receives a final safety rating.

Point Assessment for Violations of ''Acute'' and ''Critical'' Regulations

The ATA stated that assessing one point for a violation of an 'acute' regulation discriminates against the large motor carrier since more records are reviewed. Thus, it contends, there is a greater chance of one violation being discovered. The ATA further stated that violations of ''acute'' regulations should be evaluated on a percentage basis analogous to the 10% threshold for ''critical'' regulations. Rocor International wanted the percentage of violations of an ''acute'' regulation to be set at five percent of the records examined before one point is assessed. It stated that this would be fairer to the larger motor carrier where the probability of discovering a violation of one ''acute'' regulation increases directly with the number of records examined. The NPTC commented ''Automatically assigning a *conditional* rating for a single instance of noncompliance with an ''acute'' regulation may not be justified and fair. Just as there are many factors that determine the safety fitness of a motor carrier—vehicle condition, driver condition, over-the-road performance—when one part of one of these factors is out of compliance, it does not necessarily mean the motor carrier is unsafe.''

Acute regulations have been identified as regulations where noncompliance is so severe (and avoidable by the attentive motor carrier) that its occurrence is itself demonstrable of the absence of effective safety management controls. It is reasonable to demand zero tolerance for violations of these regulations. Thus, regardless of the number of motor carrier records checked, there should not be any instances of noncompliance with these identified ''acute'' regulations. If a motor carrier has violated an acute regulation, one instance of noncompliance will cause the factor rating to be *conditional*, but will not, in and of itself, cause the motor carrier to have a less than *satisfactory* safety rating. A motor carrier with as many as two factor ratings of *conditional* will still be rated as *satisfactory*. The FHWA believes that this is adequate protection for a motor carrier, of any size, that violates an acute regulation.

The CHP and the Advocates agreed with two points being assessed for a pattern of non-compliance with part 395 critical regulations.

On the other hand, the ATA and several other commenters believed that there is no justification for doubling the point value for hours of service violations, and that the FHWA has no evidence to show that fatigue or lack of alertness related accidents are tied to hours of service violations. Schafer Trucking wanted factor 3 (Hours of Service) changed from two points to one point for a pattern of noncompliance with a critical regulation unless the CR reveals the absence of an effective hours of service compliance program as indicated by either: (i) A recordable/preventable accident rate of more than 0.45 per million miles, or (ii) the failure of the carrier to have in place an hours of service compliance program enforced by sanctions which include driver suspensions and/or terminations for hours of service violations.''

The FHWA believes that there are data to draw the conclusion that hours of service violations are related to fatigue. Studies have shown that driver error is a significant factor in the majority of accidents. The FHWA is continuing its major research efforts to better understand fatigue. There are no ''acute'' regulations in part 395 (Hours of Service). Thus, to have a rating of less than *satisfactory* in factor 3, a motor carrier would need a pattern of noncompliance with a ''critical'' regulation. When reviewing driver records of duty status (RODS), it is very rare that only several records are reviewed as a driver would typically generate 30 RODS in a month. The FHWA believes that motor carriers with effective safety management controls

will have less than a 10 percent rate of noncompliance with any of the part 395 critical regulations.

Rating Factors

The ITCC stated that the assignment of equal weights for the six rating factors seems inconsistent with the underlying purpose of giving more weight to violations of regulations that are acute or critical. It did not think that all factors should be weighted equally. The ITCC also stated that the overall factor rating is the correct area in which to place greater emphasis upon compliance with violations of the hours of service regulations.

The FHWA's SFRM, developed in 1988–89, combines parts of the FMCSRs and HMRs having similar characteristics into five regulatory areas called ''rating factors.'' A sixth factor is included to address the accident history of the motor carrier. Each of the factors is rated *satisfactory, conditional* or *unsatisfactory*. Each of the six factors is weighted equally in the safety rating methodology. Giving each of the six factors equal weight is an attempt to balance the safety significance of the regulations, except that the FHWA believes it is appropriate to increase the point value for patterns of noncompliance with ''critical'' regulations relating to Part 395. Otherwise, the FHWA intends to retain the equal weight of the six factor ratings.

Regarding some comments suggesting more or less relationship between enforcement and rating factors, the FHWA believes that separating enforcement actions from safety ratings is appropriate. Both are tools that are used to induce motor carriers to improve their compliance with regulatory requirements. There will be instances where a motor carrier has an enforcement action pending against it, and appropriately has a satisfactory safety rating. An example of this is where one terminal has a 15 percent violation rate for compliance with § 395.3 (a)(1), requiring or permitting driver to drive more than 10 hours. The motor carrier's overall violation rate may be seven percent for compliance with § 395.3(a)(1), which is satisfactory; however, an enforcement action may be initiated against the carrier for its terminal with the 15 percent violation rate. The FHWA believes this is appropriate as the carrier's overall compliance is *satisfactory* yet it has a significant noncompliance problem at one terminal with a 15 percent violation rate for noncompliance with § 395.3(a)(1).

Future Direction

Today's NPRM is necessary to meet the FHWA's obligation under 49 U.S.C. § 31144, as interpreted by the court in *MST* v. *DOT*, to prescribe regulations establishing a procedure to decide on the safety fitness of owners and operators of commercial motor vehicles, which shall include—

(A) specific initial and continuing requirements to be met by the owners, operators, and persons to prove safety fitness;

(B) a means of deciding whether the owners, operators, and persons meet the safety fitness requirements of clause (A) of this paragraph; and

(C) specific time deadlines for action by the Secretary in making fitness determinations.

The FHWA believes incorporation of the SFRM and the other amendments to Part 385 proposed herein will meet that obligation. It is now soliciting further comments on the SFRM as an appendix to Part 385 for use in determining a motor carrier's safety fitness, the proposed change to the accident factor, as well as on the other minor changes proposed to be made to Part 385 itself.

The FHWA views this proposed action as a short-term approach. For the long term, the FHWA is moving toward a more performance-based means of determining when it is that carriers are not fit to conduct commercial motor vehicle operations safely in interstate commerce.

Under legislative direction in the Intermodal Surface Transportation and Efficiency Act of 1991, the FHWA has been conducting pilots in five States to determine the feasibility of relating safety performance to vehicle registrations. This has led to the development of a system of data collection, called Safestat, which incorporates all the safety information known about motor carriers and produces a relative ranking of each carrier against all others similarly situated. Within the next year or two, the FHWA believes the system will have reached the point where it can be successfully employed to identify the worst performing carriers. The system is presently used to identify problem carriers and prioritize them for CRs.

Several sections in part 385 are proposed to be amended to correct previous technical errors. The definition of ''*Safety review*'' in section 385.3 would be removed since the Safety Review was discontinued as of October 1, 1994. The definition of *Conditional safety rating* in section 385.3 would be revised to ''ensure compliance with the safety fitness standard that could result in occurrences listed in § 385.5(a) through (k).'' The definition of *Unsatisfactory safety rating* would be revised to ''ensure compliance with the safety fitness standard which has resulted in occurrences listed in § 385.5(a) through (k). Section 385.9 would be revised to include a subsection (b) to meet the 49 U.S.C § 31144(a)(C) requirement that there be specific time deadlines for action by the Secretary in making fitness decisions. Section 385.17 would be revised to ''conditionally suspend the prohibition of operating with the *unsatisfactory* safety rating for an additional period of up to 10 days.'' The current Appendix to Part 385 is changed to Appendix A in the interim final rule published elsewhere in today's **Federal Register**. The revised Safety Rating Process is added as Appendix B.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866. No serious inconsistency or interference with another agency's actions or plans is likely to result, and it is unlikely that this regulatory action will have an annual effect on the economy of $100 million or more. This Notice of proposed rulemaking rule is administrative in nature in that it neither imposes new requirements upon the motor carrier industry nor alters the August 16, 1991, interim final rule implementing the provisions of 49 U.S.C. 5113. The FHWA does not anticipate any new economic impacts as a result of this rulemaking. This rule would not impose any costs on motor carriers in addition to those assessed in the Regulatory Evaluation and Regulatory Flexibility Analysis prepared in support of the 1988 final rule. (The 1991 interim final amended the 1988 rule in ways that the FHWA believes had minimal economic impact on motor carriers.)

The existing rating factors are used to evaluate the degree to which the motor carrier complies with the regulations and add no costs because the carrier is already required to comply. Compliance with regulations, however, is only a surrogate for actual safety performance. The addition of the accident factor introduced a direct measure of performance into the equation. In 1988, this factor was not considered as having a cost consequence because the effect of a negative rating resulting from substantially higher accidents than the

norm would be virtually identical to the impact on the carrier's business that would flow from public knowledge of its poor safety performance.

The impact resulting from a negative rating generally relates to knowledge of the rating by a shipper or insurer. If those same entities know of the unusually high accident rate, the FHWA believes the consequences would or should be approximately the same.

The instant proposal to consider all recordable accident instead of only preventable recordable accidents would have the same sort of impact. Nevertheless, the FHWA believes that this is a significant regulatory action within the meaning of the Department of Transportation's regulatory policies and procedures because it expects that there will be significant public interest in this action.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities and has determined that it would not have a significant economic impact on a substantial number of small entities. The motor carriers economically impacted by this rulemaking will be those who are rated as unsatisfactory, and fail to take appropriate actions to have their rating upgraded. In the past, relatively few small motor carriers had been affected by the statutory consequences of an *unsatisfactory*, and there is no reason to believe that those impacts will increase in any way by this action.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. These safety requirements do not directly preempt any State law or regulation, and no additional costs or burdens would be imposed on the States as a result of this action. Furthermore, the State's ability to discharge traditional State governmental functions would not be affected by this rulemaking.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 385

Highway safety, Highways and roads, Motor carriers, Motor vehicle safety, and Safety fitness procedures.

Issued on: May 21, 1997.

Jane F. Garvey,

Acting Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, Chapter III, Part 385 as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), 5113, 31136, 31144, and 31502; 49 CFR 1.48.

2. In § 385.3, under the definition ''Reviews'', remove and reserve paragraph ''(2) Safety review''; and under the definition ''Safety ratings'', revise paragraphs ''(2) Conditional safety rating'' and ''(3) Unsatisfactory safety rating'' to read as follows:

§ 385.3 Definitions.

* * * * *

Reviews. * * *

(1) * * *

(2) [Reserved]

(3) * * *

Safety ratings: (1) * * *

(2) *Conditional safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in §§ 385.5 (a) through (k).

(3) *Unsatisfactory safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in §§ 385.5 (a) through (k).

* * * * *

3. Section 385.9 is amended by designating the current undesignated text as paragraph (a), and by adding paragraph (b) to read as follows:

§ 385.9 Determination of a safety rating.

(a) * * *

(b) Unless otherwise specifically provided in this chapter, a safety rating will be issued to a motor carrier within 30 days following the completion of a compliance review.

4. Section 385.17 is amended by revising paragraph (c) to read as follows:

§ 385.17 Request for a change in a safety rating; corrective action taken.

* * * * *

(c) In cases where the FHWA is unable to make a determination within the 45-day period established in § 385.13 and the motor carrier has submitted evidence that corrective actions have been taken pursuant to paragraph (a) of this section, and has cooperated in any investigation, the FHWA may conditionally suspend the prohibition of operating with the unsatisfactory safety rating for an additional period of up to 10 days.

5. Part 385 is amended by designating the existing appendix as appendix A, and by adding appendix B to read as follows:

Appendix B To Part 385—Safety Rating Process

Section 215 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31144) directed the Secretary of Transportation, in cooperation with the Interstate Commerce Commission, to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles operating in interstate or foreign commerce. The Secretary, in turn, delegated this responsibility to the Federal Highway Administration (FHWA).

As directed, FHWA promulgated a safety fitness regulation, entitled ''Safety Fitness Procedures'', which established a procedure to determine the safety fitness of motor carriers through the assignment of safety ratings and established a ''safety fitness standard'' which a motor carrier must meet to obtain a *satisfactory* safety rating.

To meet the safety fitness standard, a motor carrier must demonstrate to FHWA that it has adequate safety management controls in

place which function effectively to ensure acceptable compliance with the applicable safety requirements. A ''safety fitness rating methodology'' (SFRM) was developed by the FHWA, which uses data from compliance reviews (CRs) to rate motor carriers.

The safety rating process developed by FHWA's Office of Motor Carriers is used to:

1. Evaluate safety fitness and assign one of three safety ratings (*satisfactory, conditional* or *unsatisfactory*) to motor carriers operating in interstate commerce. This process conforms with 49 CFR 385.5—Safety fitness standard and § 385.7—Factors to be considered in determining a safety rating.

2. Identify motor carriers needing improvement in their compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Material Regulations (HMRs). These are carriers rated *unsatisfactory* or *conditional*.

Source of Data for Rating Methodology

The FHWA's rating process is built upon the operational tool known as the CR. This tool was developed to assist Federal and State safety specialists in gathering pertinent motor carrier compliance and accident information.

The CR is an in-depth examination of a motor carrier's operations and is used (1) to rate unrated motor carriers, (2) to conduct a follow-up investigation on motor carriers rated *unsatisfactory* or *conditional* as a result of a previous review, (3) to investigate complaints, or (4) in response to a request by a motor carrier to reevaluate its safety rating. Documents such as those contained in driver qualification files, records of duty status and vehicle maintenance records are thoroughly examined for compliance with the FMCSRs and HMRs. Violations are cited on the CR document. Performance based information, when available, is utilized to evaluate the carrier's compliance with the vehicle regulations. Recordable accident information is also collected.

Converting CR Information Into a Safety Rating

The FHWA gathers information through an in-depth examination of the motor carrier's compliance with identified ''acute'' or ''critical'' regulations of the FMCSRs and HMRs.

Acute are those identified regulations, where noncompliance is so severe to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier. An example of an acute regulation is § 383.37(b)—Allowing, requiring, permitting, or authorizing an employee with more than one Commercial Driver's License (CDL) to operate a commercial motor vehicle. Noncompliance with § 383.37(b) is usually discovered when the motor carrier's driver qualification file reflects that the motor carrier had knowledge of a driver with more than one CDL, and still permitted the driver to operate a commercial motor vehicle. If the motor carrier did not have knowledge or could not reasonably be expected to have knowledge, then a violation would not be cited.

Critical are those identified regulations, where noncompliance relates to management and/or operational controls. Noncompliance with these regulations is indicative of a breakdown in a carrier's management controls. An example of a critical regulation is § 395.3(a)(1)—Requiring or permitting a driver to drive more than 10 hours.

The list of the acute and critical regulations which are used in determining safety ratings is included at the end of this document.

Noncompliance with acute regulations and patterns of noncompliance with critical regulations are quantitatively linked to inadequate safety management controls and usually higher than average accident rates. The FHWA has used noncompliance with acute regulations and patterns of noncompliance with critical regulations since 1989 to determine motor carriers' adherence to the § 385.5—Safety fitness standard. Compliance with regulatory factors (1) Parts 387, & 390, (2) Parts 382, 383 & 391, (3) Parts 392 & 395, (4) Parts 393 & 396, when there are less than three vehicle inspections in the last 12 months to evaluate, and (5) Parts 397, 171, 177 & 180, will be evaluated as follows:

For each instance of noncompliance with an acute regulation or each pattern of noncompliance with a critical regulation during the CR, one point will be assessed. A pattern is more than one violation. When large numbers of documents are reviewed the number of violations required to meet a pattern is equal to at least 10 percent of those examined.

However, each pattern of noncompliance with a critical regulation relative to Part 395, Hours of Service of Drivers, will be assessed two points.

Vehicle Factor

When there are a combination of *three or more inspections recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months prior to the CR or performed at the time of the review*, the Vehicle Factor (Parts 393 & 396) will be evaluated on the basis of the Out-of-Service (OOS) rates and noncompliance with acute regulations and/or a pattern of noncompliance with critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor rating as follows:

1. If a motor carrier has three or more roadside vehicle inspections in the twelve months prior to the carrier review, or three vehicles inspected at the time of the review, or a combination of the two totaling three or more, and the vehicle OOS rate is 34% or greater, the initial factor rating will be *conditional*. The requirements of Part 396—Inspection, Repair, and Maintenance, will be examined during each review. The results of the examination could lower the factor rating to *unsatisfactory* if noncompliance with an acute regulation or a pattern of noncompliance with critical regulation is discovered. If the examination of the Part 396 requirements reveals no such problems with the systems the motor carrier is required to maintain for compliance, the Vehicle Factor remains *conditional*.

2. If a carrier's vehicle OOS rate is less than 34%, the initial factor rating will be *satisfactory*. If noncompliance with an acute regulation or a pattern of noncompliance with a critical regulation is discovered during the examination of Part 396 requirements, the factor rating will be lowered to *conditional*. If the examination of Part 396 requirements discovers no such problems with the systems the motor carrier is required to maintain for compliance, the Vehicle Factor remains *satisfactory*.

Nearly two million vehicle inspections occur on the roadside each year. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain their vehicles. Since many of the roadside inspections are targeted to visibly defective vehicles and since there are a limited number of inspections for many motor carriers, the use of that data is limited. Each CR will continue to have the requirements of Part 396-Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.

Accident Factor

In addition to the five regulatory rating factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate which the carrier has experienced during the past 12 months. *Recordable accident* means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

The recordable accidents per million miles were computed for each CR performed in Fiscal Year 1995. The national average for all carriers rated was 0.812, and 1.029 for carriers operating entirely within the 100 air mile radius.

Experience has shown that those motor carriers operating primarily in less than a 100 air mile radius (normally in urban areas) have a higher exposure to accident situations because of their environment and normally have higher accident rates.

The recordable accident rate will be used to rate Factor 6, Accident. It will be used only when a motor carrier incurs two or more recordable accidents within the 12 months prior to the CR. An urban carrier (a carrier operating entirely within the 100 air mile radius) with a recordable accident rate greater than 2.1 will receive an *unsatisfactory* rating for the accident factor. All other carriers with a recordable accident rate greater than 1.6 will receive an *unsatisfactory* factor rating. The rates are a result of doubling the national average accident rate for all carriers rated in Fiscal Year 1995.

Factor Ratings

In the methodology, parts of the FMCSRs and the HMRs having similar characteristics are combined together into five regulatory areas called ''factors.''

The following table shows the five regulatory factors, parts of the FMCSRs and HMRs associated with each factor, and the accident factor.

FACTORS

Factor 1	General	=	Parts 387 and 390.
Factor 2	Driver	=	Parts 382, 383 and 391.
Factor 3	Operational	=	Parts 392 and 395.
Factor 4	Vehicle	=	Parts 393 and 396.
Factor 5	Haz. Mat	=	Parts 397, 171, 177 and 180.
Factor 6	Accident Factor	=	Recordable Rate.

Factor Ratings are determined as follows:

''Satisfactory''—if the acute and/or critical = 0 points
''Conditional''—if the acute and/or critical = 1 point
''Unsatisfactory''—if the acute and/or critical = 2 or more points

Safety Rating

The ratings for the six factors are then entered into a rating table which establishes the motor carrier's safety rating.

The FHWA has developed a computerized rating formula for assessing the information obtained from the CR document and is using that formula in assigning a safety rating.

MOTOR CARRIER SAFETY RATING TABLE

Factor ratings		Overall safety rating
Unsatisfactory	Conditional	
0	2 or less	Satisfactory.
0	More than 2	Conditional.
1	2 or less	Conditional.
1	More than 2	Unsatisfactory.
2 or more	0 or more	Unsatisfactory.

Anticipated Safety Rating

The *anticipated* (emphasis added) safety rating will appear on the CR.

The following appropriate information will appear after the last entry on the CR, MCS–151, Part B.

''It is anticipated the official safety rating from Washington, D.C. will be SATISFACTORY.''

or

''It is anticipated the official safety rating from Washington, D.C. will be CONDITIONAL. The safety rating will become effective thirty days from the date of the CR.''

or

''It is anticipated the official safety rating from Washington, D.C., will be UNSATISFACTORY. The safety rating will become effective thirty days from the date of the CR.''

Assignment of Rating/Motor Carrier Notification

When the official rating is determined in Washington, D.C., the FHWA notifies the motor carrier in writing of its safety rating as prescribed in § 385.11. An anticipated safety rating which is higher than the existing rating becomes effective as soon as the official safety rating from Washington, D.C. is issued. Notification of a *conditional or unsatisfactory* rating includes a list of those Parts of the regulations, or recordable accident rate for which corrective actions must be taken by the motor carrier to improve its overall safety performance.

Motor Carrier Procedural Rights

Under §§ 385.15 and 385.17, motor carriers have the right to petition for a review of their ratings *if there are factual or procedural disputes,* and to request another review after corrective actions have been taken.

Conclusion

The FHWA believes this ''safety rating methodology'' is a reasonable approach for assigning a safety rating which best describes the current safety fitness posture of a motor carrier as required by the safety fitness regulations (Section 385.9).

Improved compliance with the regulations leads to an improved rating, which in turn increases safety. This increased safety is our regulatory goal.

List of Acute and Critical Regulations

§ 382.115(c) Failing to implement an alcohol and/or controlled substance testing program. (acute)

§ 382.201 Using a driver who has an alcohol concentration of 0.04 or greater. (acute)

§ 382.211 Using a driver who has refused to submit to an alcohol controlled substances test required under Part 382. (acute)

§ 382.213(b) Using a driver who has used a controlled substance. (acute)

§ 382.215 Using a driver who has tested positive for a controlled substance. (acute)

§ 382.301(a) Failing to require driver to undergo pre-employment controlled substance testing. (critical)

§ 382.303(a) Failing to conduct post accident testing on driver for alcohol and/or controlled substances. (critical)

§ 382.305 Failing to implement a random controlled substances and/or an alcohol testing program. (acute)

§ 382.305(b)(1) Failing to conduct random alcohol testing at an annual rate of not less than 25 percent of the average number of driver positions. (critical)

§ 382.305(b)(2) Failing to conduct random controlled substances testing at an annual rate of not less than 50 percent of the average number of driver positions. (critical)

§ 382.309(a) Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. (acute)

§ 382.309(b) Using a driver who has not undergone a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances. (acute)

§ 382.503 Driver performing safety sensitive function, after engaging in conduct prohibited by Subpart B, without being evaluated by substance abuse professional, as required by § 382.605. (critical)

§ 382.505(a) Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater but less than 0.04. (acute)

§ 382.605(c)(1) Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than .02 or with verified negative test result, after engaging in conduct prohibited by Part 382 Subpart B. (acute)

§ 382.605(c)(2)(ii) Failing to subject a driver who has been identified as needing assistance to at least six unannounced follow-up alcohol and controlled substance tests in the first 12 months following the driver's return to duty. (critical)

§ 383.23(a) Operating a commercial motor vehicle without a valid commercial driver's license. (critical)

§ 383.37(a) Allowing, requiring, permitting, or authorizing an employee with a Commercial Driver's License which is suspended, revoked, or canceled by a state or who is disqualified to operate a commercial motor vehicle. (acute)

§ 383.37(b) Allowing, requiring, permitting, or authorizing an employee with more than one Commercial Driver's License to operate a commercial motor vehicle. (acute)

§ 383.51(a) Allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle. (acute)

§ 387.7(a) Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage. (acute)

§ 387.7(d) Failing to maintain at principal place of business required proof of financial responsibility. (critical)

§ 387.31(a) Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility. (acute)

§ 387.31(d) Failing to maintain at principal place of business required proof of financial responsibility for passenger vehicles. (critical)

§ 390.15(b)(2) Failing to maintain copies of all accident reports required by State or other governmental entities or insurers. (critical)

§ 390.35 Making, or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records. (acute)

§ 391.11(a)/391.95 Using an unqualified driver, a driver who has tested positive for controlled substances, or refused to be tested as required. (acute)

§ 391.11(b)(6) Using a physically unqualified driver. (acute)

§ 391.15(a) Using a disqualified driver. (acute)

§ 391.45(a) Using a driver not medically examined and certified. (critical)

§ 391.45(b) Using a driver not medically examined and certified each 24 months. (critical)

§ 391.51(a) Failing to maintain driver qualification file on each driver employed. (critical)

§ 391.51(b)(1) Failing to maintain medical examiner's certificate in driver's qualification file. (critical)

§ 391.51(c)(1) Failing to maintain medical examiner's certificate in driver's qualification file. (critical)

§ 391.51(c)(3) Failing to maintain inquiries into driver's driving record in driver's qualification file. (critical)

§ 391.51(d)(1) Failing to maintain medical examiner's certificate in driver's qualification file. (critical)

§ 391.87(f)(5) Failing to retain in the driver's qualification file test finding, either ''Negative'' and, if ''Positive'', the controlled substances identified. (critical)

§ 391.93(a) Failing to implement a controlled substances testing program. (acute)

§ 391.99(a) Failing to require a driver to be tested for the use of controlled substances, upon reasonable cause. (acute)

§ 391.103(a) Failing to require a driver-applicant whom the motor carrier intends to hire or use to be tested for the use of controlled substances as a pre-qualification condition. (critical)

§ 391.109(a) Failing to conduct controlled substance testing at a 50% annualized rate. (critical)

§ 391.115(c) Failing to ensure post-accident controlled substances testing is conducted and conforms with 49 CFR Part 40. (critical)

§ 392.2 Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. (critical)

§ 392.4(b) Requiring or permitting a driver to drive while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle. (acute)

§ 392.5(b)(1) Requiring or permitting a driver to drive a motor vehicle while under the influence of, or in possession of, an intoxicating beverage. (acute)

§ 392.5(b)(2) Requiring or permitting a driver who has consumed an intoxicating beverage within 4 hours to operate a motor vehicle. (acute)

§ 392.6 Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed. (critical)

§ 392.9(a)(1) Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured. (critical)

§ 395.1(i)(1)(i) Requiring or permitting a driver to drive more than 15 hours. (Driving in Alaska.) (critical)

§ 395.1(i)(1)(ii) Requiring or permitting a driver to drive after having been on duty 20 hours. (Driving in Alaska.) (critical)

§ 395.1(i)(1)(iii) Requiring or permitting driver to drive after having been on duty more than 70 hours in 7 consecutive days. (Driving in Alaska.) (critical)

§ 395.1(i)(1)(iv) Requiring or permitting driver to drive after having been on duty more than 80 hours in 8 consecutive days. (Driving in Alaska.) (critical)

§ 395.3(a)(1) Requiring or permitting driver to drive more than 10 hours. (critical)

§ 395.3(a)(2) Requiring or permitting driver to drive after having been on duty 15 hours. (critical)

§ 395.3(b) Requiring or permitting driver to drive after having been on duty more than 60 hours in 7 consecutive days. (critical)

§ 395.3(b) Requiring or permitting driver to drive after having been on duty more than 70 hours in 8 consecutive days. (critical)

§ 395.8(a) Failing to require driver to make a record of duty status. (critical)

§ 395.8(e) False reports of records of duty status. (critical)

§ 395.8(l) Failing to require driver to forward within 13 days of completion, the original of the record of duty status. (critical)

§ 395.8(k)(1) Failing to preserve driver's record of duty status for 6 months. (critical)

§ 395.8(k)(1) Failing to preserve driver's records of duty status supporting documents for 6 months. (critical)

§ 396.3(b) Failing to keep minimum records of inspection and vehicle maintenance. (critical)

§ 396.9(c)(2) Requiring or permitting the operation of a motor vehicle declared ''out-of-service'' before repairs were made. (acute)

§ 396.11(a) Failing to require driver to prepare driver vehicle inspection report. (critical)

§ 396.11(c) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report. (acute)

§ 396.17(a) Using a commercial motor vehicle not periodically inspected. (critical)

§ 396.17(g) Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards. (acute)

§ 397.5(a) Failing to ensure a motor vehicle containing Class A or B explosives, (Class 1.1, 1.2, or 1.3) is attended at all times by its driver or a qualified representative. (acute)

§ 397.7(a)(1) Parking a motor vehicle containing Class A or B explosives (1.1, 1.2, 1.3) within 5 feet of traveled portion of highway. (critical)

§ 397.7(b) Parking a motor vehicle containing hazardous material(s) within 5 feet of traveled portion of highway or street. (critical)

§ 397.13(a) Permitting a person to smoke or carry a lighted cigarette, cigar or pipe within 25 feet of a motor vehicle containing explosives, oxidizing materials, or flammable materials. (critical)

§ 397.19(a) Failing to furnish driver of motor vehicle transporting Class A or B explosives (Class 1.1, 1.2, 1.3) with a copy of the rules of Part 397 and/or emergency response instructions. (critical)

§ 397.67(d) Requiring or permitting the operation of a motor vehicle containing Division 1.1, 1.2, or 1.3 (explosive) material that is not accompanied by a written route plan. (critical)

§ 171.15 Carrier failing to give immediate telephone notice of an incident involving hazardous materials. (critical)

§ 171.16 Carrier failing to make a written report of an incident involving hazardous materials. (critical)

§ 177.800(a) Failing to instruct a category of employees in hazardous materials regulations. (critical)

§ 177.817(a) Transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper. (critical)

§ 177.817(e) Failing to maintain proper accessibility of shipping papers. (critical)

§ 177.823(a) Moving a transport vehicle containing hazardous material that is not properly marked or placarded. (critical)

§ 177.841(e) Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals. (acute)

§ 180.407(a) Transporting a shipment of hazardous material in cargo tank that has not been inspected or retested in accordance with § 180.407. (critical)

§ 180.407(c) Failing to periodically test and inspect a cargo tank. (critical)

§ 180.417 Failing to mark a cargo tank which passed an inspection or test required by § 180.407. (critical)

§ 180.417(a)(1) Failing to retain cargo tank manufacturer's data report certificate and related papers, as required. (critical)

§ 180.417(a)(2) Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required. (critical)

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Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

Farmland Protection Program; Notice of Request for Proposals

AGENCY: Commodity Credit Corporation and Natural Resources Conservation Service, United States Department of Agriculture (USDA).

SUMMARY: Section 388 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) established the Farmland Protection Program (FPP). The FPP is administered under the supervision of the Chief of the Natural Resources Conservation Service (NRCS) who is a Vice President of the Commodity Credit Corporation (CCC). CCC is requesting proposals from States, Tribes, and units of local government to cooperate in the acquisition of conservation easements of other interests in prime, unique, or other productive soil that is subject to a pending offer from a State, Tribe, or local government for the purpose of limiting conversion to nonagricultural uses of that land.

DATES: Proposals must be received in the NRCS State Office by July 14, 1997.

ADDRESSES: Proposals are to be sent to the appropriate State Conservationist, Natural Resources Conservation Service, United States Department of Agriculture. The telephone numbers and addresses of the NRCS State Conservationists are attached in the appendix of this notice.

FOR FURTHER INFORMATION CONTACT: Humberto Hernandez, Director, Community Assistance and Rural Development Division, Natural Resources Conservation Service, phone: 202–720–2847; fax: 202–690–0639; e-mail: cardd.nrcs@usda.gov. Subject 97FPP.

SUPPLEMENTARY INFORMATION:

Background

According to the 1987 Census of Agriculture, one-third of the Nation's agricultural products are produced in metropolitan counties adjacent to large cities. Another one-fourth of these agricultural products are produced in counties adjacent to significant urban populations. Historically, American settlements were located in areas where the land was the most productive. Consequently, some of the Nation's most valuable and productive farmland is located in urban and developing areas. Nearly 85 percent of domestic fruit and vegetable production and 80 percent of our dairy products come from urban-influenced areas.

These areas are continually threatened by rapid development and urban sprawl. Several social and economic changes over the past three decades have influenced the rate at which land is converted to urban and industrial uses. Population growth, shifts in age distribution, transportation, and economic development have contributed to increases in agricultural land conversion rates. Urban development has been a major cause of farmland conversion. Since 1960, farmland has been converted to other uses at a rate of approximately 1.5 million acres per year.

The gross acreage of farmland converted to urban development is not necessarily the most troubling concern. A greater cause for concern is the quality and the pattern of farmland being converted. In most States, prime farmland is being converted at 2 to 4 times the rate of other less-productive land. Most urbanization takes place as sprawl instead of orderly growth management. In addition, remaining farmland is placed under greater environmental, economic, and social strain as agrarian and urbanizing interests compete. For the agricultural producer, increased costs of production and liability risks are negative side effects of urban development. Agricultural producers are also induced by the development pressure to farm the remaining acreage more intensively, thus, generating adverse impacts on water quality and soil health. For urban dwellers, the loss of open space, and issues related to agricultural production such as pesticide overspray, animal nutrient odors, dust, and noise are conflicting concerns.

There is, therefore, an important national interest in the protection of farmland. Once developed, productive farmland with rich topsoil is lost forever, placing future food security for the Nation at risk. In addition, agricultural lands are important components of environmental quality, historic landscapes, and are equally important simply for their scenic beauty.

In fiscal year 1996, the CCC signed cooperative agreements with 37 State and local government entities in 17 States and obligated $14.3 million in funds to acquire conservation easements or other interests in land to limit conversion to nonagricultural uses of the land. Once the acquisition of the pending easement offers is completed, approximately 76,000 acres of valuable farmland on about 200 farms will be protected with an estimated easement value of $116 million.

With funds available for fiscal year 1997 limited to $2 million, the FPP is being designed to take advantage of conservation programs such as the Wetland Reserve Program (16 U.S.C. 3837), the Conservation Reserve Program (16 U.S.C. 3830–3836), the Environmental quality Incentives Program (16 U.S.C. 3839), the Wildlife Habitat Incentives Program (16 U.S.C. 3836a), and other State, Tribal, or local conservation programs that have complimentary objectives of the FPP. This will allow the use of these complementary programs to protect additional lands and stretch farmland protection efforts.

Availability of Funding in Fiscal Year 1997

Effective on the date of publication of this notice, the CCC is announcing the availability of up to $1.92 million for the FPP for fiscal year 1997. Selection will be based on the FPP criteria and special requirements addressed in the section of ''Special Requirements for Fiscal Year 1997''. Government entities responding to this RFP must have an existing farmland protection program, have pending offers, and be able to provide at least 50% of the fair market easement value for the pending offers. CCC will evaluate the merits of the requests for participation utilizing the FPP criteria and special requirements described in this notice and will enter

into cooperative agreements with the States, Tribes, or units of local government that have proposals that CCC determines will effectively meet the objectives of the FPP. CCC must receive proposals for participation by July 14, 1997.

Overview of the Farmland Protection Program

CCC will accept proposals submitted to the NRCS State Offices from States, Tribes, and units of local government that have pending offers with landowners for the acquisition of conservation easements or other interests in lands that contain prime, unique, or other productive soils. The pending offers must be for the purpose of protecting topsoil by limiting conversion to nonagricultural uses of the land. Reference information regarding the FPP can be found in the Catalog of Federal Domestic Assistance. The number assigned to the FPP in the Catalog of Federal Domestic Assistance is 10.913.

Government entities must work with the appropriate NRCS State Conservationist to develop proposals and to develop operating arrangements once selected. The State Conservationist may consult with the State Technical Committee (established pursuant to 16 U.S.C. 3861) to evaluate the technical merits of proposals submitted in that State. All requests must be submitted to the NRCS State Conservationist by July 14, 1997.

The NRCS State Conservationist will review the requests for participation for consistency with USDA priorities by using a ranking system to determine: (1) the likelihood of conversion considering developmental pressure, zoning, utility availability, and other related factors; (2) the quality of the land considering the soils, economic viability, size and product sales; and (3) other factors including its historical, scenic, and environmental qualities.

The State Conservationist will then submit only the top request that meets the special requirements established for fiscal year 1997 discussed in the Special Requirements Section of this notice, to the appropriate NRCS Regional Conservationist by July 28, 1997. The NRCS Regional Conservationist will then forward no more than three proposals submitted from the region to the NRCS National Office in Washington, D.C. by August 11, 1997. Because of the limited funds available for fiscal year 1997, proposals will not be accepted by the NRCS National Office without having gone through the NRCS State and Regional Conservationists. Proposals sent to the NRSC National Office without having been sent through the NRCS State and regional offices will be returned to the submitting entity.

Once all proposals for participation are received in the NRCS National Office, the Chief of NRCS, who is a Vice President of the CCC, will authorize cooperative agreements to be developed and signed by September 30, 1997, spelling out terms of the FPP for each proposal accepted. Allocation of the funds to the successful cooperating entities will be made by considering such factors as: the capability of each entity to fund at least half of the fair market easement cost of each of the pending offers selected for funding; the value of such offers; the high probability of using other Federal, State, Tribal, or local conservation programs such as the Wetland Reserve Program, Conservation Reserve Program, Environmental Quality Incentives Program, Wildlife Habitat Incentives Program; and the total number of eligible acres included in the offers.

To be selected for participation in the FPP, a pending offer must provide for the acquisition of an easement or other interests in land for a minimum duration of 30 years, with priority given to those offers providing permanent protection. If a pending offer is selected for participation in the FPP, the conveyance document used by the State, Tribal, or local program will contain a reversionary clause. The reversionary clause will provide that all rights conveyed by the landowner under the document will become vested in the United States should the State, Tribal, or local program abandon or terminate the exercise of the rights so acquired. As a condition for participation, all lands enrolled shall be encompassed by a conservation plan developed and implemented according to the NRCS Field Office Technical Guide.

Special Requirements for Fiscal Year 1997

Because of the limited funding available for fiscal year 1997, NRCS encourages the prospective cooperating entity to submit proposals that illustrate a collaborative effort that integrates the FPP with other Federal, State, Tribal, or local conservation programs with complementary objectives. For example, if a particular parcel is enrolled or eligible for enrollment in the Wetland Reserve Program, if it has a pending offer of a conservation easement or other interests on an adjacent parcel, the said parcel will get a higher priority rating as per the special requirements of the FPP for 1997.

The following special requirements are in effect for the fiscal year 1997 FPP: (1) Farms which includes lands under the Conservation Reserve Program or other long-term conservation contracts protected from conversion must meet the FPP criteria to be considered. If selected, the FPP easement price must account for other program payments through appropriate discount factors; and (2) Lands meeting the FPP criteria and participating or eligible to participate in cost-sharing conservation programs that provide funds for installing conservation measures such as the Wildlife Habitat Incentives Program, or the Environmental Quality Incentives Program will be considered. If selected, such program's payment will normally not have an effect on the negotiated easement price.

In evaluating the proposals submitted, the NRCS State Conservationist will determine the priority for selection based on the State, Tribal, or local program eligibility, the land eligibility, and the ranking consideration described in this notice. In addition, a higher priority will be placed on proposals that collaboratively use the FPP with other conservation programs underway or planned.

Eligible State, Tribal, or Local Farmland Protection Programs

A State, Tribe, or unit of local government must have a farmland protection program that purchases agricultural conservation easements for the purpose of protecting topsoil by limiting conversion to nonagricultural uses of land. It must also have pending offers to apply. A State, Tribe, or local entity may apply for participation as a cooperating entity by submitting responses to the RFP to the appropriate NRCS State Conservationist.

NRCS State Conservationist will evaluate the State, Tribal, or local program based on the conservation benefits derived from such farmland protection efforts. An eligible State, Tribal, or local farmland protection program must: (1) Demonstrate a commitment to long-term conservation of agricultural lands through legal devices, such as right-to-farm laws, agricultural districts, zoning, or land use plans; (2) use voluntary easements or other legal devices to protect farmland from conversion to nonagricultural uses; (3) demonstrate a capability to acquire, manage, and enforce easements and other interests in land; and (4) demonstrate that at least 50% of the total easement acquisition costs will be available by the time the cooperative agreement is signed.

Proposals

In addition to meeting program eligibility requirements, a prospective cooperating entity must submit a proposal that has an overview of the program with a map showing the existing protected area, the amount and source of funds available for easement acquisition, the parameters and their values used to set the acquisition priorities, and a listing of the pending offers including the: (1) Priority of the offer; (2) size of the land parcel; (3) location identified on the map; (4) area participating in or its relative proximity to parcels participating in other conservation programs identified on the map; (5) acres of the prime, unique, or other productive soil in the parcel for the FPP easement or other interests; (6) size of the parcel in acres for the FPP easement or other interests; (7) acres enrolled or eligible to enroll in other conservation programs and the type or proposed type of contract or easement; (8) proposed costs of the FPP easement or other interests; (9) payments or proposed payments from the Conservation Reserve Program or other similar programs; (10) bargaining price that may be offered by the landowner; (11) type of the FPP easement or other interests to be used; (12) indication of the accessibility to markets; (13) indication of an existing agricultural infrastructure and other support system; (14) level of threat from urban development; (15) other factors from an evaluation and assessment system used for setting priorities for easement acquisition by the entity.

To avoid double counting, local and county programs must coordinate their proposals with each other and the State program if particular parcels are subject to pending offers under multiple programs.

Eligible Land

Once program eligibility and the merits of each proposal have been evaluated, NRCS shall determine whether the lands may be included in the FPP. The following land, if subject to a pending offer by a State, Tribe, or unit of local government, is eligible for enrollment in FPP: (1) Land with prime, unique, or other productive soil; and (2) Other incidental land that would not otherwise be eligible, but when considered as part of a pending offer, NRCS determines that the inclusion of such land would significantly augment the protection of the associated farmland. The definition of prime, unique, or other productive soil can be found in section 1540(c)(1) of the Farmland Protection Policy Act, 7 U.S.C. 4201 (c)(1).

NRCS will only consider enrolling eligible land in the program that is configured in a size and with boundaries that allow for the efficient management of the area for the purposes of FPP. The land must have access to markets for its products and an infrastructure appropriate for agricultural production. NRCS will not enroll land in the FPP that is owned in fee title by an agency of the United States, or land that is already subject to an easement or deed restriction that limits the conversion of the land to nonagricultural use. NRCS will not enroll otherwise eligible lands if NRCS determines that the protection provided by the FPP would not be effective because of on-site or off-site conditions.

Ranking Considerations

Pending offers by a State, Tribe, or unit of local government must be for the acquisition of an easement or other interest in land for a minimum duration of 30 years. NRCS shall place priority on acquiring easements or other interests in lands that provide the longest period of protection from conversion to nonagricultural use. For fiscal year 1997, NRCS will place a higher priority on lands and locations linked to other Federal, State, or local conservation programs with complementary farmland protection objectives. NRCS may place a higher priority on lands that provide special social, economic, and environmental benefits to the region.

A higher priority may be given to certain geographic regions where the enrollment of particular lands may help achieve National, State, and regional goals and objectives, or enhance existing government or private conservation projects. NRCS will give preference to the acquisition of easements or interests in land where the cooperating entity shares the greater costs of enrolling such lands.

Cooperative Agreements

The CCC will use a cooperative agreement with a State, Tribe, or unit of local government as the mechanism for participation in the FPP. The cooperative agreement will address: (1) The interests in land to be acquired; (2) the management and enforcement of rights; (3) the technical assistance that may be provided by the NRCS; (4) the holder of the easement or other interests in the land enrolled in the FPP; and (5) other requirements deemed necessary by the CCC to protect the interests of the United States. It will also include an attachment that lists the pending offers accepted in the FPP, landowner's names, address, locations, and other relevant information.

Signed at Washington, DC, on May 21, 1997

Paul W. Johnson,

Chief, Natural Resources Conservation Service, Vice President, Commodity Credit Corporation.

United States Department of Agriculture Natural Resources Conservation Service State Conservationists

AL—Ronnie D. Murphy, 3381 Skyway Drive, Auburn, AL 36830, Phone: 334/887–4500, Fax: 334/887–4551, (V) 9027–4593

AK—Charles W. Bell, 949 East 36th Ave., Suite 400, Anchorage, AK 99508–4302, Phone: 907/271–2424, Fax: 907/271–3951, (V) 9000–807–2170

AZ—Michael Somerville, 3003 North Central Ave., Suite 800, Phoenix, AZ 85012–2945, Phone: 602/280–8808, Fax: 602/280–8809, (V) 9011–8810

AR—Kalven L. Trice, Room 5404 Federal Building, 700 West Capitol Avenue, Little Rock, AR 72201–3228, Phone: 501/324–5445, Fax: 501/324–5648, (V) 9000–747–1890

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CO—Duane L. Johnson, 655 Parfet Street, Room E200C, Lakewood, CO 80215–5517, Phone: 303/236–2886 x202, Fax: 303/236–2896, (V) 9000–925–1000

CT—Margo L. Wallace, 16 Professional Park Road, Storrs, CT 06268–1299, Phone: 860/487–4013, Fax: 860/487–4054, (V) 9013–114

DE—Elesa K. Cottrell, 1203 College Park Drive, Suite 101, Dover, DE 19904–8713, Phone: 302/678–4160, Fax: 302/678–0843, (V) 9000–767–2000

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GUAM—Joan Perry, Director, Pacific Basin Area, FHB Building, Suite 301, 400 Route 8, Maite, GU 96927, Phone: 9–011–671–472–7490, Fax: 9–011–671–472–7288, (V) 9000–767–2075

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IL—William J. Gradle, 1902 Fox Drive, Champaign, IL 61820–7335. Phone: 217/398–5267, Fax: 217/373–4550, (V) 9000–449–1310

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PA—Janet L. Oertly, 1 Credit Union Place, Suite 340, Harrisburg, PA 17110–2993, Phone: 717/782–2202, Fax: 717/782–4469, (V) 9000–767–2505
PR—Juan A. Martinez, Director, Caribbean Area, IBM Building, Suite 604, 654 Munoz Rivera Avenue, Hato Rey, PR 00918–4123, Phone: 787/766–5206, Fax: 787/766–5987, (V) 9000–769–1030
RI—Denis G. Nickel, 60 Quaker Lane, Suite 46, Warwick, RI 02886–0111, Phone: 401/828–1300, Fax: 401/828–0433, (V) 9000–449–1075
SC—Mark W. Berkland, Strom Thurmond Federal Building, 1835 Assembly Street, Room 950, Columbia, SC 29201–2489, Phone: 803/765–5681, Fax: 803/253–3670, (V) 9000–945–3930
SD—Dean F. Fisher, Federal Building, Room 203, 200 Fourth Street, S.W., Huron, SD 57350–2475, Phone: 605/352–1200, Fax: 605/352–1270, (V) 9000–764–1035
TN—James W. Ford, 675 U.S. Courthouse, 801 Broadway, Nashville, TN 37203–3878, Phone: 615/736–5471, Fax: 615/736–7135, (V) 9021–7495
TX—John P. Burt, W.R. Poage Building, 101 South Main Street, Temple, TX 76501–7682, Phone: 817/298–1214, Fax: 817/298–1388, (V) 9000–765–1395
UT—Phillip J. Nelson, W.F. Bennett Federal Building, 125 South State Street, Room 4402, Salt Lake City, UT 84138, Phone: 801/524–5050, Fax: 801/524–4403, (V) 9000–655–1000
VT—John C. Titchner, 69 Union Street, Winooski, VT 05404–1999, Phone: 802/951–6796, Fax: 802/951–6327, (V) 9000–767–2035
VA—M. Denise Doetzer, Culpeper Building, Suite 209, 1606 Santa Rosa Road, Richmond, VA 23229–5014, Phone: 804/287–1691, Fax: 804/287–1737, (V) 9003–?–1682
WA—Lynn A. Brown, Rock Pointe Tower II, W. 316 Boone Avenue, Suite 450, Spokane, WA 99201–2348, Phone: 509/323–2900, Fax: 509/323–2909, (V) 9000–951–1000
WV—Richard Sims (Acting), William J. Hartman (eff. 6/22), 75 High Street, Room 301, Morgantown, WV 26505, Phone: 304/291–4153, Fax: 304/291–4628, (V) 9000–291–4551
WI—Patricia S. Leavenworth, 6515 Watts Road, Suite 200, Madison, WI 53719–2726, Phone: 608/264–5341 x122, Fax: 608/264–5483, (V) 9018–?–122
WY—Lincoln Ed Burton, Federal Building, Room 3124, 100 East B Street, Casper, WY 82601–1911, Phone: 307/261–6453, Fax: 307/261–6490, (V) 9000–951–1015

[FR Doc. 97–13841 Filed 5–27–97; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF AGRICULTURE

Forest Service

Western Washington Cascades Province Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Western Washington Cascades PIEC Advisory Committee will meet on June 13, 1997 at the Whitehorse Grange, State Highway 530 at Sweede Heaven Road, six miles west of Darrington, Washington. The meeting will begin at 9:00 a.m. and continue until about 3:00 p.m. Agenda items to be covered include: (1) Formal introduction of new members, and a review and discussion of Committee operating procedures and ground rules; (2) discussion of the Finney Adaptive Management Area and related resource and management issues; (3) updates on the Mt. Baker-Snoqualmie National Forest timber program, monitoring, cooperative ecosystem management, fisheries, and recreation management; (4) tentative agenda and topics for August field trip and meeting; (5) other topics as appropriate; and, (6) open public forum. A field trip for Advisory Committee members will take place the previous day, Thursday, May 12, 1997. Members will tour portion of the Finney Adaptive Management Area and nearby areas on the Darrington Ranger District. The trip will commence about 8:30 a.m. at the Darrington Ranger District Office, 1405 Emmons St., in Darrington, Washington, and end at the District Office about 5:00 p.m. The purpose of the trip is to familiarize Advisory Committee members with the Finney Adaptive Management Area, including location, land, resources, historical context, planning situation, and the socioeconomic and communities setting. All Western Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are encourage to attend. Interested citizens are also welcome to joint he June 12 field trip; however, they must provide their own transportation.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chris Hansen-Murray, Province Liaison, USDA, Mt. Baker-Snoqualmie National Forest, 21905 64th Avenue

West, Mountlake Terrace, Washington 98043, 206–744–3276.

Dated: May 21, 1997.

Dennis E. Bschor,

Forest Supervisor.

[FR Doc. 97–13862 Filed 5–27–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway: Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) has received a request from Nornir Group A/S (Nornir) to conduct a new shipper administrative review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway, which has an April anniversary date. In accordance with the Department's regulations, we are initiating this administrative review.

EFFECTIVE DATE: May 28, 1997.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20320, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

The Department has received a request pursuant to section 751(a)(2)(B) of the Act, and 19 CFR 353.22(h) of the regulations, for a new shipper review of this antidumping duty order, which has an April anniversary date.

Initiation of Review

In its request of April 30, 1997, Nornir certified that it did not export the subject merchandise to the United States during the period of investigation (POI) (September 1, 1989, through February 28, 1990) and that it is not affiliated with any exporter or producer who exported the subject merchandise to the United States during POI. Accompanying its request, Nornir provided certifications which indicate the date the merchandise was first entered for consumption in the United States, that it is not affiliated with any other company, and that it did not under its current or a former name export the subject merchandise to the United States during the POI.

In accordance with section 751(a)(2)(B) and 19 CFR 353.22(h), we are initiating a new shipper review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway. We intend to issue the final results of these reviews not later than 270 days from the publication of this notice.

The standard period of review (POR) in a new shipper review initiated following the anniversary month is the six months preceding the anniversary month. However, the Department may define the POR to cover the first exportation of a new shipper. *See Initiation of New Shipper Antidumping Duty Administrative Review: Certain Pasta from Italy* 62 FR 8927 (February 27, 1997). Therefore, the POR for this review has been defined to include the anniversary month.

Antidumping duty proceeding	Period to be reviewed
Norway: Fresh and Chilled Atlantic Salmon, A–403–801: Nornir Group A/S	11/01/96–04/30/97

Concurrent with publication of this notice, we will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the company listed above, in accordance with 19 CFR 353.22(h).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

This initiation 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(h).

Dated: May 19, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–13948 Filed 5–27–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On May 16, 1997, Gouvernement du Quebec filed a first request for panel review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. On May 19, 1997 a second request was filed on behalf of Norsk Hydro. Panel review was requested of the final countervailing duty Administrative review made by the International Trade Administration in the administrative review respecting Pure and Alloy Magnesium From Canada: Final Results of the Third (1994) Countervailing Duty Administrative Review from Canada. This determination was published in the **Federal Register** on April 17, 1997 (62 FR 18749). The NAFTA Secretariat has assigned Case Number USA–97–1904–04 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for

Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established Rules of Procedure for Article 1904 Binational Panel Reviews (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter will be conducted in accordance with these Rules.

A first Request for Panel Review was filed with the U.S. Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on May 16, 1997, requesting panel review of the final countervailing duty administrative review described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is June 16, 1997);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is June 30, 1997); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: May 20, 1997.

James R. Holbein,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 97–13947 Filed 5–27–97; 8:45 am]

BILLING CODE 3510–GT–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Meeting

AGENCY: Department of Defense Education Benefits Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the board has been scheduled to execute the provisions of Chapter 101, Title 10, United States Code (10 U.S.C. 2006 *et seq.*). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the G.I. Bill. Persons desiring to: (1) Attend the DoD Education Benefits Board of Actuaries meeting or, (2) make an oral presentation or submit a written statement for consideration at the meeting must notify Anita Ryan at (703) 696–7400 by July 23, 1997.

Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: August 1, 1997, 10:00 am to 1:00 pm.

ADDRESSES: The Pentagon, Room 1E801—Room 4.

FOR FURTHER INFORMATION CONTACT: Benjamin I. Gottlieb, Executive Secretary, DoD Office of the Actuary, 1555 Wilson Boulevard, Suite 701, Arlington, VA 22209–2405, (703) 696–7408.

Dated: May 21, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–13851 Filed 5–27–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Meeting

AGENCY: Department of Defense Retirement Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the board has been scheduled to execute the provisions of Chapter 74, Title 10, United States Code (10 U.S.C 1464 *et seq.*) The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the Military Retirement System. Persons desiring to: (1) Attend the DoD Retirement Board of Actuaries meeting or, (2) make an oral presentation or submit a written statement for consideration at the meeting, must notify Anita Ryan at (703) 696–7400 by July 24, 1997.

Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: July 31, 1997, 1:00 pm to 5:00 pm.

ADDRESSES: The Pentagon, Room 1E801—Room 7.

FOR FURTHER INFORMATION CONTACT: Benjamin I. Gottlieb, Executive Secretary, DoD Office of the Actuary, 1555 Wilson Boulevard, Suite 701, Arlington, VA 22209–2405, (703) 696–7408.

Dated: May 21, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–13852 Filed 5–27–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education, Meeting

AGENCY: National Advisory Council on Indian Education, ED.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES AND TIMES: June 11, 1997, 8:30 a.m. to 4:30 p.m.

ADDRESSES: The Director of Office of Indian Education, Conference Area, 1250 Maryland Avenue, Portals Building, Suite 4300, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. David Beaulieu, Director, Office of Indian Education, 1250 Maryland Avenue, Portals 4300, Washington, DC 20202. Telephone: (202) 260–1516; Fax: (202) 260–779.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is a Presidentially appointed advisory council on Indian education established under Section 9151 of Title IX of the Elementary and Secondary Education Act of 1965, as amended, (20 U.S.C. 7871). The Council advises the Secretary of Education and the Congress on funding and administration of programs with respect to which the Secretary has jurisdiction and that includes Indian children and adults as participants or from which they benefit. The Council also makes recommendations to the Secretary for filling the position of Director of Indian Education whenever a vacancy occurs.

This meeting will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public

may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration. Written statements should be submitted to the address listed above.

A summary of the proceedings and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting, and are available for public inspection at the Office of Elementary and Secondary Education, U.S. Department of Education, 1250 Maryland Avenue, SW., Washington, DC 20202 from the hours of 8:30 a.m. to 5:00 p.m.

Gerald N. Tirozzi,

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 97–13853 Filed 5–27–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC–500]

Proposed Information Collection and Request for Comments

May 22, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before July 28, 1997.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–500 ''Application for License for Water Projects with more than 5MW capacity'' (OMB No. 1902–0058) is used by the Commission to implement the statutory provisions of Part I of the Federal Power Act (FPA), 16 U.S.C. Sections 791a *et seq.* & 3301–3432, as amended by the Electric Consumers Protection Act (ECPA) (Pub. L. 99–495, 100 Stat. 1243 (1986). The FPA as amended by ECPA provides the Commission with the responsibility of issuing licenses for nonfederal hydroelectric power plants, plus requiring the Commission in its licensing activities to give equal consideration to preserving environmental quality. ECPA also amended sections 10(a) and 10(j) of the FPA which stipulates the conditions on which hydropower licensees are issued, to direct that the project be adopted in accordance with a comprehensive plan that improves waterways for interstate/foreign commerce and for the protection, enhancement and mitigation of damages to fish and wildlife. The information collected under designation FERC–500 is in the form of a written application for a license and is used by Commission staff to determine the broad impact of the license application. Commission staff conducts a systematic review of the prepared application with supplemental documentation provided by the solicitation of comments from other agencies and the public. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 4.32; 4.38; 4.40; 4.41; 4.50–.51; 4.61; 4.71; 4.93; 4.202, 292.203 and 292.208.

Action: The Commission is requesting a three-year extension of the current expiration date.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
13	13	832	10,816

Estimated cost burdens to respondents: 10,816 hours divided by 2,087 hours per year times $104,350 per year equals $540,800. The cost per respondent is equal to $41,600.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13882 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC–505]

Proposed Information Collection and Request for Comments

May 22, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted within 60 days of the publication of this notice.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–505 ''Application for License for Water Projects with less than 5MW capacity'' (OMB No. 1902–0058) is used by the Commission to implement the statutory provisions of Part I of the Federal Power Act (FPA), 16 U.S.C. Sections 791a *et seq.* & 3301–3432, as amended by the Electric Consumers Protection Act (ECPA) (Pub. L. 99–495, 100 Stat. 1243 (1986). The FPA as amended by ECPA provides the Commission with the responsibility of issuing licenses for nonfederal hydroelectric power plants, plus requiring the Commission in its licensing activities to give equal consideration to preserving environmental quality. ECPA also amended sections 10(a) and 10(j) of the FPA which stipulates the conditions on which hydropower licenses are issued, to direct that the project be adopted in accordance with a comprehensive plan that improves waterways for interstate/foreign commerce and for the protection, enhancement and mitigation of damages to fish and wildlife. Submission of the information is necessary to fulfill the requirements of Sections 9 and 10(a) of the Act in order for the Commission to make the required finding that the proposal is economically, technically, and environmentally sound, and is best adapted to the comprehensive plan of development of the water resources of the region. Under Section 405(c) of the Public Utilities Regulatory Policies Act of 1978, the Commission may in its discretion (by rule or order) grant an exemption in whole or in part from the requirements of Part I of the FPA to small hydroelectric power projects having a proposed installed capacity of 5,000 kilowatts or less. The information collected under designation FERC–505 is in the form of a written application for a license and is used by Commission staff to determine the broad impact of the license application. Commission staff conducts a systematic review of the prepared application with supplemental documentation provided by the solicitation of comments from other agencies and the public. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 4.61; 4.71; 4.93; 4.107; 4.108; 4.201; 4.202, 292.203 and 292.208.

Action: The Commission is requesting a three-year extension of the current expiration date.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
19	19	169	3,211

Estimated cost burdens to respondents: 3,211 hours divided by 2,087 hours per year times $104,350 per year equals $160,550. The cost per respondent is equal to $8,450.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and for information technology. Indirect costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13883 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC–512]

Proposed Information Collection and Request for Comments

May 22, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted July 28, 1997.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0837, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–512 ''Application for a Preliminary Permit'' (OMB No. 1902–0058) is used by the Commission to implement the statutory provisions of Sections 4(f), 5 and 7 of the Federal Power Act (FPA), 16 U.S.C. Sections 791a *et seq.* & 3301–3432. The purpose of obtaining a preliminary permit is to maintain priority of the application for a license for a hydroelectric power facility while examining and surveying to prepare maps, plans, specifications and estimates; conducting engineering, economic and environmental feasibility studies; and making financial arrangements. The conditions under which the priority will be maintained are set forth in each permit. During the term of the permit, no other application for a preliminary permit or application for a license submitted by another party can be accepted. The term of a permit is three years. The information collected under the designation FERC–512 is in the form of a written application for a preliminary permit which is used by Commission staff to determine the qualifications of the applicant to hold a preliminary permit, review the proposed hydro development for feasibility and to issue a notice of the application to solicit public and agency comments. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 4.31–.33, 4.81–82.

Action: The Commission is requesting a three-year extension of the current expiration date.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3))
150	150	73	10,950

Estimated cost burdens to respondents: 10,950 hours divided by 2,087 hours per year times $104,350 per year equals $547,550. The cost per respondent is equal to $3,650.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13884 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

[Docket No. ER97–2724–000]

Atlantic City Electric, Company; Notice of Filing

May 21, 1997.

Take notice that on April 24, 1997, Atlantic City Electric Company (AE) tendered for filing its quarter 1997 Summary Report of all AE transactions pursuant to the market based rate power service tariff, made effective by the Commission on April 20, 1996 in Docket No. ER96–1361–000.

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 June 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13891 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2729–000]

Atlantic City Electric Company; Baltimore Gas and Electric Company; Delmarva Power & Light Company; Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; Pennsylvania Power & Light Company; PECO Energy Company; Potomac Electric Power Company; Public Service Electric and Gas Company (PJM Interconnection); Notice of Filling

May 21, 1997.

Take notice that on April 23, 1997, Aquila Power Corporation and Southern Energy Trading and Marketing Inc. tendered for filing a letter requesting to become signatories to the Pennsylvania-New Jersey-Maryland Interconnection Agreement.

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 June 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13915 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–197–003]

Chandeleur Pipe Line Company, Notice of Compliance Filing

May 21, 1997.

Take notice that on May 19, 1997, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets hereto in compliance with directives noted in the Commission's Letter Order Pursuant to § 375.307 (b)(1) and (b)(3) issued May 7, 1997 in the above-referenced docket, to become effective June 1, 1997.

Chandeleur states that it is serving copies of the filing to its customers, State Commissions and interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.211 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13907 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1747–000]

Cinergy Services, Inc.; Notice of Filing

May 21, 1997.

Take notice that on April 28, 1997, Cinergy Services, Inc. tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene 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 June 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13889 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2425–000]

Cinergy Services, Inc.; Notice of Filing

May 21, 1997.

Take notice that on April 22, 1997, Cinergy Services, Inc., tendered for filing a letter requesting withdrawal of the peaking capacity agreement filed in the above-referenced docket.

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 June 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13890 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2725–000]

Detroit Edison Company; Notice of Filing

May 21, 1997.

Take notice that on April 25, 1997, Detroit Edison Company tendered for

filing its quarterly report of market-based transactions for the quarter ending March 31, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 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 June 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13892 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2728–000]

Duke Power Company; Notice of Filing

May 21, 1997.

Take notice that on April 28, 1997, Duke Power Company (Duke) tendered for filing Schedule MR quarterly transaction summaries for service under Duke's FERC Electric Tariff, Original Volume No. 3 for the quarter ended March 31, 1997.

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 385.214). All such motions or protests should be filed on or before June 2, 1997. 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. 97–13894 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–525–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

May 21, 1997.

Take notice that on May 15, 1997, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP97–525–000 a request pursuant to sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon certain miscellaneous tap and meter facilities and the service under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso proposes to abandon 19 miscellaneous tap and meter facilities, with associated appurtenances and the related natural gas service rendered by means of such facilities. The facilities are located in Arizona, New Mexico, and Texas. El Paso states that the abandonments will not result in or cause any interruption, reduction or termination of natural gas service presently rendered by El Paso to any of its customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13888 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2739–000]

Florida Power Corporation; Notice of Filing

May 21, 1997.

Take notice that on April 23, 1997, Florida Power Corporation (Florida Power) tendered for filing a fully executed copy of Amendment No. 1 to Contract for Interchange Service between Florida Power and SCANA Energy Marketing, Inc. (SCANA).

On February 4, 1997, Florida Power tendered for filing a partially executed copy of Amendment No. 1 to its interchange contract with SCANA. The sole purpose of this filing is to provide the Commission with a fully executed copy of Amendment No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 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 June 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13895 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–147–003]

High Island Offshore System; Notice of Proposed Changes in FERC Gas Tariff

May 21, 1997.

Take notice that on May 19, 1997, High Island Offshore System (HIOS), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective June 1, 1997. The tariff sheets are filed to comply with the Commission's directives in its May 7, 1997, letter order in the captioned proceeding:

Substitute Fourth Revised Sheet No. 110
Substitute Original Sheet No. 110A
Substitute Original Sheet No. 110B

HIOS states that copies of the filing were served on all affected entities.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13903 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–152–003]

Michigan Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

May 21, 1997.

Take notice that on May 19, 1997, Michigan Gas Storage Company (MGSCo) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, a number of revised tariff sheets to become effective June 1, 1997. The sheets were filed in compliance with a letter order of May 7, 1997 in this docket. The sheets and order deal with Gas Industry Standards Board standards.

MGSCo states that copies of this filing are being served on all customers and applicable state regulatory agencies and on all those on the official service list in this docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13905 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–151–003]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 21, 1997.

Take notice that on May 19, 1997, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing the tariff sheets listed in Appendix A and Appendix B to the filing to be included in its FERC Gas Tariff, Third Revised Volume No. 1.

Mid Louisiana asserts that the purpose of this filing is to comply with the Commission's Letter Order, dated May 7, 1997, in Docket No. RP97–151–001 wherein the Commission directed Mid Louisiana to refile certain tariff sheets.

The modifications evidenced on the enclosed tariff sheets reflect Mid Louisiana's compliance with such directives. All sheets are submitted with the effective date unchanged, June 1, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13904 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2663]

Minnesota Power and Light Company; Notice of Authorization for Continued Project Operation

May 21, 1997.

On May 12, 1995, Minnesota Power and Light Company, licensee for the Pillager Project No. 2663, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2663 is located on the Crow Wing River in the Township of Pillager in Cass and Morrison Counties, Minnesota.

The license for Project No. 2663 was issued for a period ending May 11, 1997. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2663 is issued to Minnesota Power and Light Company for a period effective May 12, 1997, through May 11, 1998, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before May 11, 1998, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the

Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Minnesota Power and Light Company is authorized to continue operation of the Pillager Project No. 2663 until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13897 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–158–001]

Mississippi River Transmission Corporation; Notice of Filing of Interruptible Revenue Crediting Report

May 21, 1997.

Take notice that on May 8, 1997, Mississippi River Transmission Corporation (MRT) tendered for filing an amendment to its December 2, 1996, interruptible revenue credit report to correct for an error relating to the amount of GRI and AOS costs derived from providing service under Rate Schedules ITS and ISS.

MRT states that the calculation of MRT's Excess Revenues results in a principal refund amount of $724,494 applicable to Rate Schedules FTS and SCT customers and a principal refund amount of $5,414 applicable to Rate Schedule FSS customers attributable to the twelve month period ended October 31, 1996. MRT states that the filing is being made pursuant to Section 17 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1.

MRT states that a copy of this filing is being mailed to each of MRT's customers and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 27, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13906 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–362–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 21, 1997.

Take notice that on May 15, 1997, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective July 1, 1997:

Tenth Revised Sheet Number 156
Tenth Revised Sheet Number 157

Northern Border proposes to decrease the Maximum Rate form 5.345 cents per 100 Dekatherm-Miles to 5.201 cents per 100 Dekatherm-Miles and to increase the Minimum Revenue Credit from 2.259 cents per 100 Dekatherm-Miles to 2.279 cents per 200 Dekatherm-Miles. The revised Maximum Rate and Minimum Revenue Credit are being filed in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1.

On October 15, 1996, Northern Border filed with the Commission in Docket No. RP96–45–000 a Stipulation and Agreement (Stipulation) in its rate case which when placed into effect will result in a significantly lower cost of service and resulting Maximum Rate under Rate Schedule IT–1. Once the Stipulation is effective, Northern Border will make the appropriate filing to effectuate a Maximum Rate based on the cost of service established by the terms of the Stipulation.

Northern Border states that the herein proposed changes do not result in a change in Northern Border's total revenue requirement.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and applicable state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13908 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–518–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

May 21, 1997.

Take notice that on May 12, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP97–518–000 a request pursuant to Sections 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, 157.216) for authorization to abandon by transfer to UtiliCorp United, Inc. (UCU) certain facilities, to abandon certain other facilities and to relocate other facilities, all located in Steel, Dodge and Olmsted Counties, Minnesota, under Northern's blanket certificate issued in Docket No. CP82–401–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to abandon by transfer to UCU approximately 1 mile of its 12-inch Rochester pipeline including certain farm tap facilities, located in Steele County, Minnesota. It is stated that these farm tap facilities will be combined with UCU's local distribution system. Northern proposes to abandon approximately 11 miles of its 10-inch Rochester branchline, located in Steele and Dodge Counties, Minnesota. Northern proposes to relocate certain farm tap facilities connected to the 10-inch line to an adjacent 12-inch line. It is stated that the proposed

abandonments and relocation are needed as part of Northern's replacement of its Rochester branchline, which was installed in 1932. It is asserted that no customers will lose service as a result of the proposals and that customers will continue to receive service from Northern or from UCU. It is further asserted that deliveries of volumes to the relocated farm tap users will be made pursuant to Northern's currently effective throughout service agreements with UCU and will not impact Northern's peak day or annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13885 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–519–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

May 21, 1997.

Take notice that on May 12, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in the above docket a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install and operate a new delivery tap, located in Blackhawk County, Iowa, to accommodate natural gas deliveries to UtiliCorp United Inc. (UCU) under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the N.A., all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern proposes to install a tee and valve at the site of the proposed delivery tap. UCU will install a meter, construct, own and operate the nonjurisdictional facilities downstream of Northern's tap.

Northern states that the service will be provided to UCU pursuant to currently effective throughput service agreement(s). It is asserted that the proposed volumes to be delivered for UCU at the proposed delivery tap are 1.5 MMBtu on a peak day and 200 MMBtu on an annual basis. Northern estimates the cost for constructing the proposed delivery tap to be $4.000. Northern states that it will be reimbursed for the total cost of construction.

Northern states that the total volumes to be delivered to UCU after the request do not exceed the total volumes authorized prior to the request. Northern further states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to Northern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the National Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on 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. 97–13886 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–368–000]

Northwest Alaskan Pipeline Company; Notice of Tariff Changes

May 21, 1997.

Take notice that on May 16, 1997, Northwest Alaskan Pipeline Company (Northwest Alaskan), tendered for filing as part of its FERC Gas Tariff Original Volume No. 2 Fortieth Revised Sheet No. 5 to be effective July 1, 1997.

Northwest Alaskan states that it is submitting Fortieth Revised Sheet No. 5 reflecting an increase in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. (Pan-Alberta) and resold to Pan-Alberta Gas (U.S.), Inc. (PAG–US) under Rate Schedules X–1, X–2 and X–3, and a decrease in total demand charges for Canadian gas purchased from Pan-Alberta and resold to Pacific Interstate Transmission Company (PIT) under Rate Schedule X–4.

Northwest Alaskan states that it is submitting Fortieth Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and PAG–US and PIT, and pursuant to Rate Schedules X–1, X–2, X–3 and X–4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (July 1, 1997 through December 31, 1997) the demand charges and demand charge adjustments which Northwest Alaskan will charge during the period.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 petition to intervene. Copies of this filing are on

file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13909 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–103–002]

OkTex Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

Mray 21, 1997.

Take notice that on May 16, 1997, OkTex Pipeline Company (OkTex), filed the tariff sheets in compliance with the Commission's directives in Orders No. 587 and 587–B.

OkTex states that the tariff sheets reflect the changes to OkTex's tariff that result from the Gas Industry Standards Boards (GISB) consensus standards that were adopted by the Commission in its July 17, 1996 Order No. 587 in Docket No. RM96–1–000, Order No. 587–B, and Commission order issued May 1, 1997, in Docket No. RP97–103–001. OkTex further states that Order No. 587 contemplates that OkTex will implement the GISB consensus standards for June 1997 business, and that the tariff sheets therefore reflect an effective date of June 1, 1997.

OkTex states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20416, in accordance with section 385.211 of the Commission's Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13901 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP91–229–024, RP92–166–017, and RS92–22–015]

Panhandle Eastern Pipe Line Company; Notice of Refund Report

May 21, 1997.

Take notice that on May 16, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its Refund Report in accordance with Article II, Section 5 of the Stipulation and Agreement (Settlement) dated September 12, 1996.

Panhandle states that on April 17, 1997 it paid the Settlement Refund Amounts to all affected parties in accordance with Article II, Sections 2, 3, 4 and 6(c) of the Settlement either by check, wire transfer or by application of Settlement Refund Amounts against accounts receivable balances.

Panhandle further states that it has included its computation of the Total Settlement Refund Amount and additional interest for all affected customers. The Settlement refunds consist of the following; (1) the Combined 1991 Rate Case Settlement Refund Amount and the 1992 Pre-Restructuring Rate Case Settlement Refund Amount, (2) the Post-Restructuring Settlement Refund Amount and Supplemental Settlement Refund Amount and (3) additional interest.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to these proceedings.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 27, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13898 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–260–005]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

May 21, 1997.

Take notice that on May 16, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective June 1, 1997.

Panhandle asserts that the purpose of this filing is to comply with the Commission letter order issued April 17, 1997 in Docket Nos. RP96–260–000, 001, 002 and 004.

Panhandle states that on February 12, 1997, it filed a Stipulation and Agreement (Settlement) in Docket No. RP96–260–000 to recover the Miscellaneous Stranded Costs pursuant to Section 18.14 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff. On April 17, 1997, the Commission issued a letter order approving the Settlement and directed Panhandle to file within thirty (30) days the tariff sheets necessary to implement the Settlement. In compliance with the Commission's April 17, 1997 letter order, Panhandle submits the attached revised tariff sheets, which in accordance with Article I, Section 2(d)(iii) reflect a 0.09¢ settlement surcharge applicable to Rate Schedules IT and EIT to be effective June 1, 1997.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to these proceedings.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13899 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–369–000]

Public Service Company of Colorado and Cheyenne Light Fuel and Power Company; Notice of Petition for an Order Establishing Procedures for the Payment of Refunds

May 21, 1997.

Take notice that on May 16, 1997, Public Service Company of Colorado and Cheyenne Light, Fuel and Power Company (Petitioners) filed a request that the Commission issue an order establishing procedures for the payment of refunds of overcharges related to Kansas ad valorem taxes, as required by the decision of the United States Court of Appeals for the District of Columbia Circuit issued on August 2, 1996, in *Public Service Co. of Colorado* v. *FERC,* 91 F.3d 1478 (D.C. Cir. 1996), *cert. denied*, (May 12, 1997).

The Petitioners state that as customers of several interstate pipelines during the 1980's they paid amounts for Kansas ad valorem taxes as part of the Commission-approved rates for gas sales service. In Public Service Co. of Colorado, the Court upheld the Commission's determination that Kansas ad valorem taxes paid by the first sellers were not severance taxes that qualified as an ''add-on'' to the maximum lawful price under section 110 of the Natural Gas Policy Act (NGPA). The Court held that all first sellers were to refund all amounts for Kansas ad valorem taxes collected with respect to production since October 1983, when they had notice of the Commission's proceeding instituted to determine whether the taxes were recoverable under the NGPA.

The Petitioners assert that to implement the decision in Public Service Co. of Colorado, the Commission must require first sellers that collected revenues in excess of the NGPA maximum lawful prices as reimbursement of Kansas ad valorem taxes for sales since 1983 to refund the unlawful overcharges to the pipeline purchasers, with interest calculated using the Commission's applicable interest rate for each quarter since collection of the taxes. The pipeline purchasers must then flow through the refunds to the customers that were actually overcharged. The Petitioners request that the Commission issue an order establishing such procedures for the payment of refunds.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before June 11, 1997. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13910 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2726–000]

South Carolina Electric & Gas Company; Notice of Filing

May 21, 1997.

Take notice that on April 28, 1997, South Carolina Electric & Gas Company (SCE&G) tendered for filing its quarterly report which summarizes negotiated market sales tariffs for short term service. SCE&G states that this report is being filed pursuant to the requirements stated in Docket No. ER96–1085–000.

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 June 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13893 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–146–003]

U–T Offshore System; Notice of Proposed Changes in FERC Gas Tariff

May 21, 1997.

Take notice that on May 19, 1997, U–T Offshore System (U–TOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective June 1, 1997. The tariff sheets are filed to comply with the Commission's directives in its May 7, 1997 letter order in the captioned proceeding:

Substitute Sixth Revised Sheet No. 73
Substitute Original Sheet No. 73A
Substitute Original sheet No. 73B.

U–TOS states that copies of the filing were served on all affected entities.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13902 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–523–000]

Williams Natural Gas Company; Notice of Request under Blanket Authorization

May 21, 1997.

Take notice that on May 15, 1997, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP97–523–000 a request pursuant to Sections 157.205, 157.208, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208, 157.212 and 157.216) for authorization (1) to abandon by reclaim

and in place approximately 12.7 miles of the Falls City 8-inch lateral pipeline beginning in Section 27, Township 4 South, Range 17 East (Horton mainline gate) and ending in Section 28, Township 2 South, Range 17 East (Hiawatha mainline gate), Brown County, Kansas, (2) to install approximately 12.7 miles of replacement 8-inch lateral pipeline beginning in Section 27, Township 4 South, Range 17 East and ending in Section 28, Township 2 South, Range 17 East, Brown County, Kansas, offset approximately 15 feet from the line to be abandoned, and (3) to relocate three Western Resources, Inc. (WRI) town border deliveries and seven WRI domestic meters to the new 8-inch pipeline, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that the proposed change is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers. WNG also states the change will not have an effect on its peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request. WNG estimates the total cost for new is $2,073,000 and abandoned is $12,498.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13887 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP–97–67–005]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 21, 1997.

Take notice that on May 16, 1997, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute First Revised Sheet Nos. 503 and 504 and Original Sheet No. 505, to be effective May 1, 1997.

WNG states that this filing is being made to correct its Electronic Data Interchange Trading Partner Agreement for an inadvertent ommission.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13900 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG93–8–000, et al.]

Entergy Richmond Power Corp., et al.; Electric Rate and Corporate Regulation Filings

May 19, 1997.

Take notice that the following filings have been made with the Commission:

1. Entergy Richmond Power Corporation

[Docket No. EG93–8–000]

Take notice that on May 1, 1997, pursuant to Section 365.7 of the Commission's Regulations, 18 CFR 365.7, Entergy Richmond Power Corporation filed notification that it surrenders its status as an exempt wholesale generator under Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended.

2. The Detroit Edison Company

[Docket No. ER97–2806–000]

Take notice that on May 1, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between Detroit Edison Transmission Operations and The Toledo Edison Company under Detroit Edison's Open Access Transmission Tariff, FERC Electric Tariff No. 2, dated as of April 2, 1997. Detroit Edison requests that the Service Agreement be made effective as of April 2, 1997.

Comment date: June 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Virginia Electric and Power Company

[Docket No. ER97–2807–000]

Take notice that on May 1, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service between American Electric Power Service Corporation and Virginia Power under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide firm point-to-point service to American Electric Power Service Corporation as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Company Services, Inc.

[Docket No. ER97–2808–000]

Take notice that on May 1, 1997, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as

Southern Companies), tendered for filing the informational filings required under Southern Companies' Open Access Transmission Tariff.

Comment date: June 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Public Service Company

[Docket No. ER97–2809–000]

Take notice that on May 1, 1997, Southwestern Public Service Company (Southwestern) submitted an executed service agreement under its open access transmission tariff as both transmission customer and transmission provider. The service agreement is for firm point-to-point transmission service.

Comment date: June 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER97–2810–000]

Take notice that on May 1, 1997, Entergy Services, Inc. (Entergy Services), as agent for System Energy Resources, Inc. (SERI), tendered for filing the annual informational update (Update) containing the 1997 redetermination of the Monthly Capacity Charges, prepared in accordance with the provisions of SERI's Power Charge Formula (PCF) Tariff. Entergy Services states that the Update redetermines the formula rate in accordance with the annual rate redetermination provisions of Section 2(B) of the PFC.

Comment date: June 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Delmarva Power & Light Company

[Docket No. ER97–2811–000]

Take notice that on May 2, 1997, Delmarva Power & Light Company, tendered for filing executed umbrella service agreements with CNG Energy Services Corporation, South Carolina Electric & Gas Company and Illinois Power Company under Delmarva's market rate sales tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96–2571–000. Delmarva requests that the Commission make these agreements effective as of their respective execution dates.

Comment date: June 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Western Resources, Inc.

[Docket No. ER97–2812–000]

Take notice that on May 1, 1997, Western Resources, Inc., tendered for filing non-firm transmission agreements between Western Resources and Utilicorp dba WestPlains Energy-Kansas and Utilicorp dba Missouri Public Service. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreements are proposed to become effective April 11, 1997.

Copies of the filing were served upon Utilicorp dba WestPlains Energy-Kansas, Utilicorp dba Missouri Public Service, and the Kansas Corporation Commission.

Comment date: June 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Otter Tail Power Company

[Docket No. ER97–2813–000]

Take notice that on May 2, 1997, Otter Tail Power Company (OTP), tendered for filing a Coordination Sales Tariff. The Tariff provides for the sales of Negotiated Capacity and/or Energy and General Purpose Energy. OTP states that sales under the Tariff will be made at negotiated prices no lower than system incremental energy costs and no higher than the Company's fully allocated cost of capacity plus 100% of incremental energy costs. OTP states service will be provided under the Tariff only to customers who sign Service Agreements.

OTP requests an immediate effective date and, accordingly, seeks waiver of the Commission's notice requirements. OTP states that copies of this filing have been served on the Minnesota Public Utilities Commission, the North Dakota Public Service Commission, and the South Dakota Public Service Commission.

Comment date: June 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Central Power and Light Company

[Docket No. ER97–2814–000]

Take notice that on May 2, 1997, Central Power and Light Company (CPL), tendered for filing an amendment (Amendment) to the July 30, 1993 Capacity Sales Agreement (Agreement) between CPL and Southwestern Electric Service Company (SESCO).

CPL requests that the Amendment be accepted to become effective July 1, 1997, sixty days from the date of this filing. Copies of the filing were served upon SESCO and the Public Utility Commission of Texas.

Comment date: June 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER97–2815–000]

Take notice that on May 2, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing executed Service Agreements between Virginia Electric and Power Company and (1) Delhi Energy Services, Inc.; (2) City of Vineland, New Jersey; and (3) CMS Marketing, Services and Trading Company under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service Agreements Virginia Power agrees to provide services to (1) Delhi Energy Services, Inc.; (2) City of Vineland, New Jersey; and (3) CMS Marketing, Services and Trading 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, and the North Carolina Utilities Commission.

Comment date: June 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER97–2816–000]

Take notice that on May 2, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service with Heartland Energy Services, Inc., the Michigan Companies (Consumers Power Company and The Detroit Edison Company) and Delmarva Power & Light Company under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to the Transmission Customers as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Michigan Public Service Commission.

Comment date: June 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER97–2817–000]

Take notice that on May 2, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between PECO Energy Company and Virginia Power under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to PECO Energy Company as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 2, 1997, 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. 97–13881 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2818–000, et al.]

Northeast Utilities Service Company, et al.; Electric Rate and Corporate Regulation Filings

May 20, 1997.

Take notice that the following filings have been made with the Commission:

1. Northeast Utilities Service Company

[Docket No. ER97–2818–000]

Take notice that on May 2, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Detroit Edison Company under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Detroit Edison Company.

NUSCO requests that the Service Agreement become effective June 1, 1997.

Comment date: June 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Minnesota Power & Light Company

[Docket No. ER97–2819–000]

Take notice that on May 2, 1997, Minnesota Power & Light Company (MP), tendered for filing a copy of Amendment No. 1 to the Firm Power Transaction Agreement between Minnesota Power and Northern States Power Company. The Firm Power Transaction Agreement has been previously accepted for filing by the Commission in Docket No. ER97–1109–000 as a market based power sale designated as Minnesota Power rate schedule Service Agreement No. 1 under FERC Electric Tariff, Original Volume 5.

Comment date: June 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER97–2820–000]

Take notice that on May 2, 1997, Florida Power & Light Company filed depreciation rates for use in its formula rates.

Comment date: June 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Multitrade of Pittsylvania County, L.P.

[Docket No. ER97–2821–000]

Take notice that on May 2, 1997, Multitrade of Pittsylvania County, L.P. (MPC), tendered for filing an amendment to Rate Schedule FERC No. 1, the Power Purchase and Operating Agreement between MPC and Virginia Electric and Power Company (Virginia Power). MPC also filed a supplement to Rate Schedule FERC No. 1. Copies of the filing have been served upon Virginia Power.

Comment date: June 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. The Washington Water Power Company

[Docket No. ER97–2822–000]

Take notice that on May 2, 1997, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission Service Agreements for Network Integration Transmission Service under WWP's Open Access Transmission Tariff—FERC Electric Tariff, Original Volume No. 8 for service to participants in WWP's More Options for Power Service program in the state of Washington and the state of Idaho. WWP requests an effective date of July 1, 1997.

Comment date: June 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Central Illinois Public Service Company

[Docket No. ER97–2823–000]

Take notice that on May 2, 1997, Central Illinois Public Service Company (CIPS), submitted a Service Agreement, dated January 31, 1997, establishing Southern Energy Trading and Marketing, Inc. as a customer under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests an effective date of April 2, 1997 for the service agreement and the revised Index of Customers. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon Southern Energy Trading and Marketing, Inc. and the Illinois Commerce Commission.

Comment date: June 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Houston Lighting & Power Company

[Docket No. ER97–2824–000]

Take notice that on May 2, 1997, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with Aquila Power Corporation (Aquila) for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Second Revised Volume No. 1, for Transmission Service To, From and

Over Certain HVDC Interconnections. HL&P has requested an effective date of May 2, 1997.

Copies of the filing were served on Aquila and the Public Utility Commission of Texas.

Comment date: June 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Central Louisiana Electric Company, Inc.

[Docket No. ER97–2825–000]

Take notice that on May 2, 1997, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing a service agreement under which CLECO will provide non-firm point-to-point transmission service to Kansas City Power & Light Company under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on Kansas City Power & Light Company.

Comment date: June 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER97–2826–000]

Take notice that on May 2, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Southern Indiana Gas & Electric Company (SIGECO).

Cinergy and SIGECO are requesting an effective date of May 1, 1997.

Comment date: June 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER97–2827–000]

Take notice that on May 2, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated May 1, 1997 between Cinergy, CG&E, PSI and Plum Street Energy Marketing, Inc. (PSEM).

The Interchange Agreement provides for the following service between Cinergy and PSEM:

1. Exhibit A—Power Sales by PSEM
2. Exhibit B—Power Sales by Cinergy

Cinergy and PSEM have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on Plum Street Energy Marketing, Inc., the Kentucky Public Service Commission, the New York Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: June 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. The Dayton Power and Light Company

[Docket No. ER97–2830–000]

Take notice that on April 25, 1997, The Dayton Power and Light Company (Dayton), tendered for filing an amendment in the above referenced docket.

Comment date: June 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Dayton Power and Light Company

[Docket No. ER97–2831–000]

Take notice that on April 29, 1997, The Dayton Power and Light Company (DP&L), tendered for filing a summary of transactions made by DP&L during the 1st quarter of calendar year 1997 pursuant to its market-based sales tariff, effective October 1, 1996.

Comment date: June 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER97–2834–000]

Take notice that on May 2, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing an executed Service Agreement with Southern Energy Trading & Marketing, Inc. which it had filed in unexecuted form on January 30, 1997.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Southern California Edison Company

[Docket No. ER97–2835–000]

Take notice that on May 2, 1997, Southern California Edison Company (Edison), tendered for filing the 1997 Edison-Vernon Agreement (Agreement) between Edison and the City of Vernon, California (Vernon), which amends the Edison-Vernon 1993 Settlement Agreement, FERC Rate Schedule Nos. 13.25.2, 154.22, 207.16, and 276.1.

Edison seeks waiver of the 60 day prior notice requirement and requests that the Commission assign an effective date of May 3, 1997.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: June 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Oklahoma Gas and Electric Company

[Docket No. ER97–2836–000]

Take notice that on May 5, 1997, Oklahoma Gas and Electric Company (OG&E), tendered for filing a proposed Power Supply and Transmission Service Agreement with Purcell Public Works Authority, a Service Agreement for Network Integration Transmission Service, and a Standard Form of Network Operating Agreement. OG&E also requests cancellation of its existing Agreement with the Southwestern Power Administration (SWPA) and its Service Agreement with the City of Purcell.

Copies of this filing have been sent to City Manager of Purcell Oklahoma, SWPA, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission. OG&E requests an effective date of June 1, 1997.

Comment date: June 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation

[Docket No. ER97–2837–000]

Take notice that on May 5, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and PacifiCorp Power Marketing, Inc. This Transmission Service Agreement specifies that PacifiCorp Power Marketing, Inc. has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and PacifiCorp Power Marketing, Inc. to enter into separately scheduled transactions under which NMPC will provide transmission service for PacifiCorp Power Marketing, Inc. as the parties may mutually agree.

NMPC requests an effective date of April 29, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and PacifiCorp Power Marketing, Inc.

Comment date: June 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Duquesne Light Company

[Docket No. ER97–2838–000]

Take notice that on May 5, 1997, Duquesne Light Company (DLC), filed a Service Agreement dated April 30, 1997 with LG&E Power Marketing, Inc. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds LG&E Power Marketing, Inc. as a customer under the Tariff. DLC requests an effective date of April 30, 1997 for the Service Agreement.

Comment date: June 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Public Service Electric & Gas Company

[Docket No. ER97–2832–000]

Take notice that on April 30, 1997, Public Service Electric & Gas Company (PSE&G), tendered for filing copies of Transaction Summary of its activity for the first quarter of 1997, under its Market-Based Rate Tariff, Original Volume No. 6. PSE&G also submitted that it had no sales under its Market-Based Tariff during the first quarter of 1997.

Comment date: June 3, 1997, 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. 97–13880 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1517–008 Utah]

Monroe City Corporation; Notice of Availability of Draft Environmental Assessment

May 21, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Upper Monroe Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA) for the project. The project, which is located near Monroe City, in Sevier County, Utah, diverts water from three tributaries of Monroe Creek: Shingle Creek, First Lefthand Fork of Monroe Creek, and Serviceberry Creek.

In the DEA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. For further information, contact Mr. John Costello, Environmental Coordinator, at (202) 219–2914.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13896 Filed 5–27–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice; Sunshine Act Meeting

May 21, 1997.

The following notice of Meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub.L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: May 28, 1997, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E. Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

***Note**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro; 676th Meeting—May 28, 1997; Regular Meeting (10:00 a.m.)

CAH–1. OMITTED		
CAH–2. DOCKET# P–2727	046	BANGOR HYDRO-ELECTRIC COMPANY
CAH–3. DOCKET# P–5	021	THE MONTANA POWER COMPANY, CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION
CAH–4. DOCKET# P–3574	004	CONTINENTAL HYDRO CORPORATION

CONSENT AGENDA—ELECTRIC

CAE–1. DOCKET# ER97–2067	000	BOSTON EDISON COMPANY
OTHER#S ER97–2262	000	BOSTON EDISON COMPANY
CAE–2. DOCKETER97–2188	000	PUBLIC SERVICE ELECTRIC AND GAS COMPANY, PECO ENERGY COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, ETC.

OTHER#S ER97–2189	000	PUBLIC SERVICE ELECTRIC AND GAS COMPANY, PECO ENERGY COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, ETC.
ER97–2190	000	PUBLIC SERVICE ELECTRIC AND GAS COMPANY, PECO ENERGY COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, ETC.
ER97–2191	000	PUBLIC SERVICE ELECTRIC AND GAS COMPANY, PECO ENERGY COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, ETC.
CAE–3. DOCKET# ER97–2380	000	MINNESOTA POWER & LIGHT COMPANY
CAE–4. DOCKET# ER97–2517	000	XENERGY, INC.
OTHER#S ER97–2518	000	NEW YORK STATE ELECTRIC & GAS CORPORATION
CAE–5. DOCKET# ER97–1686	000	CATAULA GENERATING COMPANY, L.P.
CAE–6. DOCKET# OA96–68	000	SIERRA PACIFIC POWER COMPANY
CAE–7. DOCKET# OA96–14	000	CENTRAL HUDSON GAS & ELECTRIC CORPORATION
CAE–8. DOCKET# OA97–90	000	CENTRAL MINNESOTA MUNICIPAL POWER AGENCY, DELANO, GLENCOE, JANESVILLE, KENYON, LAKE CRYSTAL, MINNESOTA, ETC.
OTHER#S OA97–10	000	INTERMOUNTAIN RURAL ELECTRIC ASSOCIATION
OA97–93	000	EMPIRE DISTRICT ELECTRIC COMPANY
OA97–94	000	INLAND POWER & LIGHT COMPANY
OA97–98	000	VERMONT ELECTRIC POWER COMPANY, INC.
OA97–99	000	MONTANA-DAKOTA UTILITIES COMPANY
OA97–116	000	CENTRAL VERMONT PUBLIC SERVICE CORORATION
OA97–119	000	CENTRAL POWER AND LIGHT COMPANY AND WEST TEXAS UTILITIES COMPANY
OA97–135	000	NORTHWESTERN WISCONSIN ELECTRIC COMPANY
OA97–139	000	OTTER TAIL POWER COMPANY
OA97–289	000	SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY
OA97–438	000	MICHIGAN PUBLIC POWER AGENCY
OA97–486	000	MICHIGAN PUBLIC POWER RATE PAYERS ASSOCIATION
OA97–503	000	INTERMOUNTAIN RURAL ELECTRIC ASSOCIATION
OA97–513	000	PEOPLE'S ELECTRIC COOPERATIVE
OA97–514	000	LAFAYETTE UTILITIES SYSTEM
OA97–524	000	CITY OF VERNON, CALIFORNIA
OA97–525	000	MOON LAKE ELECTRIC ASSOCIATION, INC.
OA97–554	000	ST. JOSEPH LIGHT & POWER COMPANY
OA97–559	000	MICHIGAN SOUTH CENTRAL POWER AGENCY
CAE–9. DOCKET# EL97–27	000	SOUTH SUBURBAN CITIZENS OPPOSED TO POLLUTING OUR ENVIRONMENT V. CHEWTON GLEN ENERGY-FORD HEIGHTS, L.L.C.
OTHER#S QF92–101	002	SOUTH SUBURBAN CITIZENS OPPOSED TO POLLUTING OUR ENVIRONMENT V. CHEWTON GLEN ENERGY-FORD HEIGHTS, L.L.C.
CAE–10. OMITTED.		

CONSENT AGENDA—GAS AND OIL

CAG–1. DOCKET# RP97–137	004	SOUTHERN NATURAL GAS COMPANY
CAG–2. DOCKET# RP97–164	001	TEXAS-OHIO PIPELINE, INC.
CAG–3. DOCKET# RP97–295	000	GASDEL PIPELINE SYSTEM, INC.
CAG–4. DOCKET# RP97–314	000	EAST TENNESSEE NATURAL GAS COMPANY
CAG–5. DOCKET# RP97–316	000	MIDWESTERN GAS TRANSMISSION COMPANY
CAG–6. DOCKET# RP97–330	000	EAST TENNESSEE NATURAL GAS COMPANY
CAG–7. DOCKET# RP97–339	000	KO TRANSMISSION COMPANY
CAG–8. DOCKET# RP97–341	000	TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–9. DOCKET# RP97–344	000	TEXAS GAS TRANSMISSION CORPORATION
CAG–10. DOCKET# RP97–347	000	ANR PIPELINE COMPANY
CAG–11. DOCKET# RP97–349	000	CNG TRANSMISSION CORPORATION
CAG–12. DOCKET# RP97–355	000	CNG TRANSMISSION CORPORATION
CAG–13. DOCKET# RP97–359	000	TEXAS EASTERN TRANSMISSION CORPORATION
CAG–14. DOCKET# RP97–352	000	WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–15. OMITTED.		
CAG–16. DOCKET# RP97–20	006	EL PASO NATURAL GAS COMPANY
CAG–17. DOCKET# RP97–148	002	WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–18. DOCKET# RP97–163	001	WESTGAS INTERSTATE, INC.
OTHER#S RP97–324	000	WESTGAS INTERSTATE, INC.
CAG–19. OMITTED.		
CAG–20. DOCKET# RP97–180	002	NORTHWEST PIPELINE CORPORATION
OTHER#S RP97–180	003	NORTHWEST PIPELINE CORPORATION
RP97–315	000	NORTHWEST PIPELINE CORPORATION
CAG–21. DOCKET# RP97–336	000	TRAILBLAZER PIPELINE COMPANY
CAG–22. DOCKET# RP97–337	000	NORTHERN NATURAL GAS COMPANY
CAG–23. DOCKET# RP97–342	000	KERN RIVER GAS TRANSMISSION COMPANY
CAG–24. DOCKET# RP97–351	000	KOCH GATEWAY PIPELINE COMPANY
CAG–25. DOCKET# RP97–353	000	NATURAL GAS PIPELINE COMPANY OF AMERICA

CAG–26. DOCKET# RP97–357	000	OZARK GAS TRANSMISSION SYSTEM
CAG–27. DOCKET# RP97–361	000	MOBIL BAY PIPELINE COMPANY
CAG–28. DOCKET# RP97–364	000	KOCH GATEWAY PIPELINE COMPANY
CAG–29. DOCKET# RP97–365	000	KOCH GATEWAY PIPELINE COMPANY
CAG–30. DOCKET# TM97–2–59	000	NORTHERN NATURAL GAS COMPANY
CAG–31. DOCKET# RP96–275	002	TENNESSEE GAS PIPELINE COMPANY
OTHER#S RP96–275	001	TENNESSEE GAS PIPELINE COMPANY
CAG–32. DOCKET# RP97–182	001	SOUTH GEORGIA NATURAL GAS COMPANY
OTHER#S RP97–182	002	SOUTH GEORGIA NATURAL GAS COMPANY
RP97–182	004	SOUTH GEORGIA NATURAL GAS COMPANY
CAG–33. DOCKET# RP97–88	004	ALABAMA TENNESSEE NATURAL GAS COMPANY
OTHER#S RP97–88	003	ALABAMA TENNESSEE NATURAL GAS COMPANY
RP97–89	002	ALABAMA TENNESSEE NATURAL GAS COMPANY
CAG–34. DOCKET# RP94–325	005	PANHANDLE EASTERN PIPE LINE COMPANY
CAG–35. DOCKET# RP96–339	003	PACIFIC GAS TRANSMISSION COMPANY
CAG–36. DOCKET# RP97–16	001	NORTHERN NATURAL GAS COMPANY
CAG–37. OMITTED.		
CAG–38. DOCKET# IS97–15	000	AMERADA HESS PIPELINE CORPORATION
CAG–39. DOCKET# RP97–123	001	KERN RIVER GAS TRANSMISSION COMPANY
OTHER#S RP97–123	002	KERN RIVER GAS TRANSMISSION COMPANY
CAG–40. DOCKET# RP96–338	003	TEXAS EASTERN TRANSMISSION CORPORATION
CAG–41. DOCKET# IS94–10	008	AMERADA HESS PIPELINE CORPORATION
OTHER#S IS94–11	008	ARCO TRANSPORTATION ALASKA, INC.
IS94–12	008	BP PIPELINES (ALASKA) INC.
IS94–13	007	MOBIL ALASKA PIPELINE COMPANY
IS94–14	008	EXXON PIPELINE COMPANY
IS94–15	008	MOBIL ALASKA PIPELINE COMPANY
IS94–16	008	PHILLIPS ALASKA PIPELINE CORPORATION
IS94–17	008	UNOCAL PIPELINE COMPANY
IS94–31	008	UNOCAL PIPELINE COMPANY
IS94–34	007	ARCO TRANSPORTATION ALASKA, INC.
IS94–38	008	PHILLIPS ALASKA PIPELINE CORPORATION
OR94–2	003	TRANS ALASKA PIPELINE SYSTEM
CAG–42. OMITTED.		
CAG–43. DOCKET# RP96–367	005	NORTHWEST PIPELINE CORPORATION
CAG–44. DOCKET# RP88–262	032	PANHANDLE EASTERN PIPE LINE COMPANY
OTHER#S RP88–262	034	PANHANDLE EASTERN PIPE LINE COMPANY
RP88–262	035	PANHANDLE EASTERN PIPE LINE COMPANY
CAG–45. OMITTED.		
CAG–46. DOCKET# MG97–10	000	PACIFIC INTERSTATE TRANSMISSION COMPANY
CAG–47. DOCKET# CP96–492	001	CNG TRANSMISSION CORPORATION
CAG–48. OMITTED.		
CAG–49. DOCKET# CP96–758	002	TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S CP96–758	001	TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–50. DOCKET# CP96–638	000	COLUMBIA GAS TRANSMISSION CORPORATION
CAG–51. DOCKET# CP96–643	000	SOUTHERN NATURAL GAS COMPANY
CAG–52. DOCKET# CP97–7	000	WILLIAMS NATURAL GAS COMPANY
CAG–53. DOCKET# CP97–193	000	TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–54. OMITTED.		
CAG–55. OMITTED.		
CAG–56. DOCKET# CP96–477	000	K N INTERSTATE GAS TRANSMISSION COMPANY
CAG–57. OMITTED.		
CAG–58. DOCKET# RM97–1	000	APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILTIES, FOR EXPORT OR IMPORT, ETC.
CAG–59. DOCKET# CP97–106	000	TEXAS GAS TRANSMISSION CORPORATION
CAG–60. DOCKET# RP95–167	003	SEA ROBIN PIPELINE COMPANY
CAG–61. DOCKET# IS97–16	000	MOBIL ALASKA PIPELINE COMPANY
CAG–62. DOCKET# CP96–687	000	IROQUOIS GAS TRANSMISSION SYSTEM, L.P

HYDRO AGENDA

H–1. RESERVED.

ELECTRIC AGENDA

E–1. DOCKET# EC97–13	000	DUKE POWER COMPANY AND PANENERGY CORP ORDER ON MERGER APPLICATION.

OIL AND GAS AGENDA

I. PIPELINE RATE MATTERS
PR–1. RESERVED
II. PIPELINE CERTIFICATE MATTERS

PC–1.(A) DOCKET# CP96–153	002	SOUTHERN NATURAL GAS COMPANY

OTHER#S CP96–153	000	SOUTHERN NATURAL GAS COMPANY; ORDER ON APPLICATION TO CONSTRUCT FACILITIES.
PC–1.(B) DOCKET# CP97–343	000	ALABAMA-TENNESSEE NATURAL GAS COMPANY ORDER ON APPLICATION TO CONSTRUCT FACILITIES.
PC–1.(C) DOCKET# RP97–331	000	DECATUR UTILITIES, CITY OF DECATUR, ALABAMA, ETC. V. ALABAMA-TENNESSEE NATURAL GAS COMPANY ORDER ON COMPLAINT.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13978 Filed 5–22–97; 4:38 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5831–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Quality Assurance Specification and Requirements

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 Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: ICR Number 0866.05, Quality Assurance Specification and Requirements, OMB Control Number 2080—0033, which expires June 30, 1997. 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 June 27, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0866.05.

SUPPLEMENTARY INFORMATION:

Title: Quality Assurance Specification and Requirements (OMB Control No. 2080—0033; EPA ICR No. 0866, expiring 6/30/97. This is a request for extension of a currently approved collection.

Abstract: This ICR covers the quality assurance (QA) paperwork burden that appears at 40 CFR 30.54 [which supercedes 40 CFR 30.503(d)] and 40 CFR 31.45. These are subsections from 40 CFR Part 30—Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and 40 CFR Part 31—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, respectively. The information collection activity involves the preparation of QA plans or narrative statements that provide supporting documentation sufficient to produce data that are of quality adequate to meet project objectives and (for 40 CFR 30.54) to minimize loss of data due to out-of-control conditions or malfunctions. The quality system of the 40 CFR 30.54 assistance recipient must comply with the requirements of ANSI/ASQC E4, ''Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs.'' All QA submissions are reviewed and approved by an EPA certified project officer or a designated quality assurance officer.

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 2/10/97 (FRL–5686–9); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 37 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: Entities applying for Federal financial assistance for proposed projects that include environmentally related measurements.

Estimated Number of Respondents: 1497.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 55,635 hours.

Estimated Total Annualized Cost Burden: $1,498,038.

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. 0866 and OMB Control No. 2080–0033 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, PPE 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: May 21, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–13924 Filed 5–27–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5831–7]

OMB Review of Pesticide 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 the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and expected cost and burden; where appropriate, they include the actual data collection instrument.

DATES: Comments must be submitted on or before June 27, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0155.06 or EPA ICR No. 1759.02.

SUPPLEMENTARY INFORMATION:

1. *Review Requested:* This is a request to extend the OMB approvals for the following two approved information collection activities pursuant to 5 CFR 1320.12.

Title: Certification of Pesticide Applicators.

ICR No.: OMB Control No. 2070–0029; EPA ICR No. 0155.06.

Expiration Date: June 30, 1997.

Abstract: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) allows a pesticide to be classified as ''restricted use'' if the pesticide meets certain toxicity or criteria. Restricted use pesticides, because of their potential to harm people or the environment, may be applied only by a certified applicator or someone under the direct supervision of a certified applicator. In order to become a certified applicator, a person must meet certain standards of competency. The primary mechanism for certifying pesticide applicators is State certification plans approved by EPA. 40 CFR part 171 establishes the criteria for State and EPA administered certification plans. In addition, these regulations establish criteria for certification plans from Federal agencies or Indian tribes who wish to develop their own program in lieu of using State certification programs.

The recordkeeping and reporting requirements in these regulations allow the Agency to ensure that restricted use pesticides are used only by or under the direct supervision of properly trained and certified applicators, and to monitor the application of restricted use pesticides.

Burden Statement: The annual respondent burden for the Certification of Pesticide Applicators program is estimated to average 3 hours per certified applicator, 78.4 hours per State reporting, 0.17 hours per Colorado Federal Program, and 5 hours per Pesticide Dealer. These estimates include the time needed for: planning activities, creating information, gathering information, processing, compiling, and reviewing information for acuracy, recording, disclosing or displaying the information, and storing, filing, and maintaining the data. Third party notification is included in this ICR as the applicators are reporting to state lead agencies. 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: Certified pesticide applicators who require certification to apply restricted use pesticides, and States, Indian tribes, and Federal Agencies with EPA-approved certification plans.

Estimated No. of Respondents: 330,644.

Estimated Total Annual Burden on Respondents: 997,222 hours.

Frequency of Collection: On occassion.

2. *Title:* Pesticides Worker Protection Standard Training and Notification.

ICR No.: OMB Control No. 2070–0148; EPA ICR No. 1759.02.

Expiration Date: May 31, 1997.

Abstract: The Worker Protection Standard (WPS) for agricultural pesticides, 40 CFR part 170 and 40 CFR part 156 subpart K, includes requirements for protection of agricultural workers and pesticide handlers from hazards of pesticides used on farms, on forests, in nurseries, and in greenhouses. 40 CFR part 170 contains the standard and workplace practices and 40 CFR part 156 prescribes the statements that must be placed on the pesticide label and in pesticide labeling. The WPS workplace practices are designed to reduce or eliminate exposure to pesticides and establish procedures for responding to exposure-related emergencies. The practices include prohibitions against applying pesticides in a way that would cause exposure to workers and others; a waiting period before workers can return to areas treated with pesticides (restricted entry period); basic safety training and distribution and posting of information about pesticide hazards, as well as pesticide application information; arrangements for the supply of soap, water, and towels in case of pesticide exposure; and provisions for emergency assistance.

Prior to September 1995, the WPS information collection activities were covered under OMB ICR No. 2070–0060. In September 1995, however, OMB approved an ICR that consolidated all the WPS information collection activities under a new ICR (EPA No. 1759; OMB No. 2070–0148). The information collection activity associated with the pesticides WPS includes a voluntary program to verify that training has been provided; the WPS provisions for display of basic pesticide safety information and pesticide-specific treatment (application) information at a central location on the agricultural establishment; the provisions requiring that employers provide employees with pesticide-specific treatment (application) information in the form of oral or written (posted) notification; the provisions that require the actual training for which the verification program was established or that basic pesticide safety information be provided to employees who have not completed the full WPS pesticide safety training and before they enter a treated area; the provisions requiring that pesticide handler employers provide pesticide-specific information to agricultural employers prior to treatment, that pesticide handler employers provide notification to handler employees regarding the safe operation and repair of equipment to be used in handling activities, and that pesticide handler employers provide emergency information on pesticide treatments to employees believed to be poisoned or those treating them; and the provisions requiring that employers provide employees with notification when exceptions/exemptions to the early entry restrictions are being implemented. (The major WPS labeling program was a one-time collection and is completed. Registrants of EPA-registered products may request that the Agency amend their previously approved label. Future requests from registrants for label amendments are covered as part of routine label amendments under a separate ICR approved by OMB under 2070–0060 (EPA ICR No. 277)).

The WPS requires that agricultural employers assure that agricultural workers and pesticide handlers are trained in basic pesticide safety practices to reduce the risk of pesticide poisoning and other injuries. The EPA Training Verification Program is intended to achieve this by requiring the issuance of safety information to workers and handlers. Upon the completion of the training, the WPS provides for the issuance of ''EPA-Approved Worker Protection Standard Training Certificates'' to workers and handlers to allow employers to verify that workers and handlers have received WPS safety training. The initial burden for this collection activity (24,990 burden hours) is predicted to taper off to a much lower annual burden.

Burden Statement: The annual respondent burden for the Pesticides Worker Protection Standard Training and Notification program is estimated to average 0.23 hours per event. This estimate includes the time needed for: planning activities, creating information, gathering information, processing, compiling, and reviewing information for acuracy, recording,

disclosing or displaying the information, and storing, filing, and maintaining the data. Third party notification is included in this ICR.

Respondents/Affected Entities: Parties affected by this information collection activity agricultural employers, including employers in farms, as well as nursery, forestry, and greenhouse establishments.

Estimated No. of Respondents: 1,800,130.

Estimated Total Annual Burden on Respondents: 2,238,304 hours.

Frequency of Collection: On occassion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses. Please refer to EPA No. 0155.06 and OMB Control No. 2070–0029 or ICR No. 1759.02 and OMB No. 2070–0148, as appropriate, in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (2137), 401 M Street, SW., Washington, D.C. 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, D.C. 20503

Dated: May 21, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–13927 Filed 5–27–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5832–2]

National Drinking Water Advisory Council; Notice of Open Meeting

Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on June 16, 1997, from 5:00 p.m. until 7:00 p.m., in the Thames Room, Marriott Marquis, 265 Peachtree Center Avenue, Atlanta, Georgia 30303. Several Council members will be present at the meeting, with additional members participating by conference call. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting is to provide the Council with a summary of public comments on the Draft ''State Source Water Assessment and Protection Programs Guidance'' and seek its advice on finalization of this Guidance due in August 1997. The summary will be presented by the Council's Source Water Protection Working Group representatives.

The Council encourages the hearing of outside statements and will allocate one-half hour for this purpose. Oral statements will be limited to five minutes, and its is preferred that only one person present the statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 260–2285 before June 12, 1997.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Members of the public that would like to attend the meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Designated Federal Officer, National Drinking Water Advisory Council, U.S. EPA, Office of Ground Water and Drinking Water (4601), 401 M Street, SW., Washington, DC 20460. The telephone number is Aea Code (202) 260–2285 or E-Mail, shaw.charlene@epamail.epa.gov.

Dated: May 21, 1997.

Richard Kuhlman,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–13928 Filed 5–27–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30435; FRL–5715–1]

W. Neudorf GmbH KG; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by June 27, 1997.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30435] and the file symbols to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM-22), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460. Office location, telephone number, and e-mail address: Rm. 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703 305–7740, e-mail: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 67702–R. Applicant: W. Neudorff GmbH KG, Postfach 1209, An der Muhle 3, D-31860 Emmerthal,

Germany. Product Name: NEU1140F RTU Copper Soap. Fungicide. Active ingredient: Copper octanoate. Proposed classification/Use: None. For use to control diseases on a wide range of plants, including many vegetables, fruits and ornamentals.

2. File Symbol: 67702–E. Applicant: W. Neudorff GmbH KG. Product Name: NEU1140F Copper Soap. Fungicide. Active ingredient: Copper octanoate. Proposed classification/Use: None. For use to control diseases on a wide range of plants, including many vegetables, fruits and ornamentals.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30435] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (OPP-30435). Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703-305-5805) to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: May 14, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–13797 Filed 5–27–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5831–5]

Proposed CERCLA Administrative De Minimis Settlement; Tri-Cities Barrel Co., Inc. Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative *de minimis* settlement concerning the Tri-Cities Barrel Co., Inc. Superfund Site in the Hamlet of Port Crane, Town of Fenton, Broome County, New York, with the following settling parties: Champion Products, Inc. (successor to Norwich Mills, Inc.) and Rexham Industries Corporation. The settlement requires the settling parties to pay $72,831 to the Hazardous Substances Superfund. The amount required to be paid by each settling party represents the share attributable to such Respondent of the projected total response costs at the Site, based upon the Respondent's estimated volumetric contribution, plus a premium to account for the potential of cost overruns, the potential of failure of the selected remedy, other risks, and their declination of a previous de minimis settlement offer. The settlement includes a covenant not to sue or take other administrative action against the settling parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region II, Office of Regional Counsel, New York/Caribbean Superfund Branch, 290 Broadway, 17th Floor, New York, NY 10007–1866.

DATES: Comments must be submitted on or before June 27, 1997.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region II, Office of Regional Counsel, New York/Caribbean Superfund Branch, 290 Broadway, 17th Floor, New York, NY 10007–1866. A copy of the proposed settlement may be obtained from the individual listed below. Comments should reference the Tri-Cities Barrel Co., Inc. Superfund Site, Hamlet of Port Crane, Town of Fenton, Broome County, New York and EPA Index No. II–CERCLA–96–0209, and should be addressed to the individual listed below.

FOR FURTHER INFORMATION CONTACT: Carl P. Garvey, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, NY 10007–1866, Telephone: (212) 637–3181.

Dated: April 26, 1997.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 97–13926 Filed 5–27–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5831–4]

Taylor Road Landfill Superfund Site; Notice of Proposed De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed de minimis settlement.

SUMMARY: Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) proposes to enter into an Administrative Order on Consent (AOC) with 8 *de minimis* parties at the Taylor Road Landfill Superfund Site (Site), located in Hillsborough County, Florida, to settle claims for past and future response costs at the Site. EPA will consider public comments on the proposed settlement

for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement and a list of proposed settling de minimis parties are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency—Region 4, Program Services Branch, Waste Management Division, 61 Forsyth Street, Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: May 12, 1997.

Jewell Harper,

Acting Director, Waste Management Division.

[FR Doc. 97–13929 Filed 5–27–97; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by P.L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Thursday, June 12, 1997, from 9:30 a.m. to 3:00 p.m.. The meeting will be held at The Federal Reserve Bank, 101 Market Street, The Interpretive Center, Ground Floor, East Lobby, San Francisco, California 94105.

Agenda: The meeting agenda will include a discussion of competitiveness with two panels discussing features and programs regularly offered by competitor ECAs, and how these features and programs made a difference in the contract award outcome. In addition, they will discuss how Ex-Im Bank programs meet these objectives and what benefits have accrued to their organizations as a result of using Ex-Im Bank.

Public Participation: The meeting will be open to public participation; and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Nancy Carkci, Room 1215, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3512, not later than June 1, 1997. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to June 1, 1997, Nancy Carkci, Room 1215, 811 Vermont Avenue, N.W., Washington, DC 20571, Voice: (202) 565–3512 or TDD: (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Nancy Carkci, Room 1215, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3512.

Kenneth W. Hansen,

General Counsel.

[FR Doc. 97–13871 Filed 5–27–97; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL RESERVE SYSTEM

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 June 11, 1997.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. John Porter Pennington, El Paso, Texas; to acquire an additional 12.46 percent, for a total of 21.41 percent, of the voting shares of Ruidoso Bank Corporation, Ruidoso, New Mexico, and thereby indirectly acquire Ruidoso State Bank, Ruidoso, New Mexico.

Board of Governors of the Federal Reserve System, May 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–13932 Filed 5–27–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 20, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. First State Bancshares of Blakely, Inc., Blakely, Georgia; to acquire 100 percent of the voting shares of First State Bank of Donalsonville, Donalsonville, Georgia (following its conversion from First Federal Savings Bank of Southwest Georgia, Donalsonville, Georgia).

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Meade Bancorp, Inc., Brandenburg, Kentucky; to acquire at least 15.6 percent of the voting shares of Bedford Loan & Deposit Bancorp, Inc., Bedford, Kentucky, and thereby indirectly acquire Bedford Loan & Deposit Bank, Bedford, Kentucky.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice

President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Binger Agency, Inc., Binger, Oklahoma; to merge with Midstate Bancorp, Inc., Hinton, Oklahoma, and thereby indirectly acquire Legacy Bank TC, Blanchard, Oklahoma, and Legacy Bank, Hinton, Oklahoma.

Board of Governors of the Federal Reserve System, May 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–13931 Filed 5–27–97; 8:45 am]

BILLING CODE 6210–01–F

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Monday, June 2, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 23, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–14088 Filed 5–23–97; 2:31 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OPRE–97–1]

Availability of Funds and Requests for Applications for Welfare Reform Studies and Analyses

AGENCY: Office of Planning, Research, and Evaluation; ACF; DHHS.

ACTION: Announcement of the availability of funds and requests for applications for welfare reform studies and analyses (OPRE–97–1).

SUMMARY: The Administration for Children and Families (ACF) announces that competing applications are being accepted for funding to stimulate research and support a wide range of studies and analyses of varied aspects of welfare program changes at the national, state and local levels. This research will address the effects of welfare reform changes on families and children; the experiences of states and localities involved in implementing changes; or the experiences, responses and impacts on other entities or programs involved in implementing changes. Organizations eligible to apply for this Federal funding include public entities; private for-profit organizations (if fee is waived); and public or private nonprofit organizations, including universities. Federal funding under this announcement is intended to support research analysis and evaluation exclusively, not program operation or service provision. Projects funded under this announcement are intended to complement other aspects of the ACF research strategy for welfare reform evaluation and study. Funding under this announcement is intended to stimulate research and support a wide range of studies or components of studies and analyses of welfare program changes brought about by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and specifically the Temporary Assistance to Needy Families (TANF) program. Subject to the availability, funding under this announcement is authorized by section 1110 of the Social Security Act governing Social Services Research and Demonstration activities (Catalog of Federal Domestic Assistance 93.647) and is intended to support research analysis and evaluation, not program operation or service provision. ACF anticipates providing up to $1.95 million for the total group of approved projects in FY 1997 and up to $750,000 in FY 1998, subject to the availability of funds in each year, and a like amount in succeeding years. We estimate that this level of funding will support 4 to 8 separate projects under this announcement in FY 1997.

CLOSING DATE: The closing date for submission of applications is July 28, 1997. Mailed applications postmarked after the closing date will be classified as late.

MAILING ADDRESS: Lois B. Hodge, Administration for Children and Families, Division of Discretionary Grants—Room 6C–462, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

For hand delivered applications or applications sent via over-night mail services, use: ACF MAIL ROOM—2nd floor. Attn: Lois B. Hodge, Administration for Children and Families, Division of Discretionary Grants, 901 D Street, S.W., Washington, D.C. 20024

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families; Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, S.W., Washington, DC 20447.

Nancye Campbell (202) 401–5760
Mark Fucello (202) 401–4538

Overview

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 brings historic changes to state control over the design of Federally funded public assistance under title IV–A of the Social Security Act as well as changes regarding how states choose to delegate decisions and administrative control to local agencies and authorities. These changes create the need to explore a broad array of issues to understand the effects on families and the varied institutions involved and to document programs and initiatives put in place to encourage and support self-sufficiency among welfare recipients.

ACF's national strategy for welfare reform research and evaluation is multi-faceted, including initiatives such as the State Welfare Reform Evaluation projects, the Child Care Research Partnership projects, the Project on State-Level Child Outcomes, the National Longitudinal Study of Children and Families in the Child Welfare System, and Departmental collaborations on topics such as employment stability and immigration and public assistance. The purpose of this announcement is to stimulate research and augment ongoing studies that are consistent with ACF's multi-faceted strategy and address areas not adequately covered by other projects in our welfare reform research and evaluation agenda. While we have identified some specific areas of interest to ACF within this announcement, researchers are encouraged to submit their own ideas and rationale for potential topics. This broad approach will assist ACF in continuing to develop research questions pertinent to welfare reform programs and policies and to fund projects that offer the most promise to adequately address such questions.

Currently, there is a great deal of activity in research institutes and firms,

universities, and philanthropic foundations focused on various aspects of the changes occurring in state and local design of welfare programs. ACF is interested in partnering with such entities and providing support to enhance or expand studies by other funders as well as to provide full support for a range of studies or projects that address some of the most critical questions about outcomes for families and children, program design and implementation at various levels, and program management in the new public assistance environment.

With the changes brought about by enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and in particular the provisions of the Temporary Assistance to Needy Families (TANF) program, it will be extremely important to policy makers and program administrators at all levels of government to fully understand how programs are implemented, how the culture of welfare offices is changing, how children and families are progressing under new rules and requirements, how specific subgroups or populations are affected, and whether policies and services are effective. Well-executed implementation analyses are important to providing early feedback on the new flexibility accorded to States under TANF as are illustrations of the changing culture of local public assistance offices brought about by TANF. Likewise, the implementation of Tribal TANF programs should be assessed to provide needed feedback. ACF is interested in supporting studies of this type.

We have special interest in studies that aim to understand and monitor family and child well-being, to complement the work being done as part of the Project on State-Level Child Outcomes, because such studies will be critical to increasing knowledge and measuring the success of reforms on family economic independence and child well-being. We encourage additional projects focusing on child outcomes. Further, analyses that can illustrate and examine outcomes for children and families will be needed to answer the array of questions presented about TANF's effects on family self-sufficiency and child well-being.

Understanding the complex issues surrounding the relationship between employment stability and child care is a necessary aspect of measuring the effects of reforms. To supplement the projects to be funded under the ACF Child Care Research Partnership program announcement, analyses that focus on the relationship between child care and employment, including quality of care and associated child development and well-being, are important.

While State-level evaluations of welfare reform begun under waiver authority and supported through ACF's State Welfare Reform Evaluation initiative will provide very useful information, additional analyses that examine changes resulting from TANF across a spectrum of environments (e.g., neighborhoods, communities, political subdivisions, public and other institutions, service providers) are needed to understand the breadth and scope of welfare reform that is being undertaken and its effects on other entities and programs.

As an important part of ACF's national strategy for welfare reform evaluation and analysis, we intend to fund projects through this announcement to address questions not adequately addressed elsewhere in other ACF research and evaluation projects, such as those noted above. Under this announcement we expect to fund a varied group of projects that complement those efforts and provide information on program implementation, address a range of program and policy questions of importance to states, the Federal government and the general public, and examine family and child well-being.

This program announcement consists of three parts. Part I describes the activities supported by this announcement and application requirements. Part II describes the application review process. Part III provides information and instructions for the development and submission of applications. The forms to be used for submitting an application follow Part III.

Part I—Project Purpose and Design

Purpose

The primary purpose of this announcement is to stimulate research to further ACF's national strategy for welfare reform evaluation and analysis by supporting short-term and multi-year studies and evaluations (or components of such projects) to document and examine the experience of state or local agencies in implementing welfare reform and to better understand the effects of welfare reform on low-income children and families. A wide range of well-designed studies and evaluations will be considered under this announcement. We may provide principal or possibly sole funding for short-term, small-scale projects, such as process studies to provide rapid feedback on TANF implementation or the implementation of programs or services aimed at assisting families to obtain employment or respond to other aspects of welfare reform.

Through the short-term studies, we are particularly interested in obtaining information about the implementation and effects of innovative initiatives to help welfare families become self-sufficient but the study of other topics will also be considered. Through the multi-year projects, we are primarily interested in supporting supplements or enhancements to existing studies funded by others in order to address important questions regarding agencies, communities, and low-income families and children affected by welfare reform which may not otherwise be included in an existing study. ACF will also consider fully funding multi-year studies subject to the availability of funds and agency research priorities; however, we do not expect to provide full funding for large-scale, multi-year impact studies.

The studies may be descriptive in nature, collecting and reporting on information about the characteristics of individuals and organizations involved with and affected by welfare reform. They may examine the effects of specific welfare reform policies (e.g., work requirements or time limits) or address a broad range of welfare reform issues and outcomes. They may be focused on specific geographic areas or include multiple sites. They may document the effects of welfare reform over time at various levels (e.g, national, state, local, community, family and individual) or provide a quick report on the early stages and effects of reform initiatives.

ACF's interests in TANF implementation (at the state, local, and Tribal levels); child and family outcomes and well-being; and welfare office culture change are not the only research topics for which funding will be provided under this announcement. We invite a broad response to this announcement for well-designed studies which can be expected to add significantly to the research knowledge base. We wish to partner with those supporting well-designed evaluations or analyses which are currently planned or under way in the research and evaluation community so that we may consider funding types of studies that expand the agenda we have outlined here.

Project Design

As discussed above, funding under this announcement is expected to be used to support studies and evaluations which differ from one another in focus,

scope and scale. State and local welfare agencies, policy makers, and the general public will benefit greatly from a very broad range of different types of public assistance research projects. For that reason ACF does not prescribe here specific research or evaluation designs, but rather we invite varied approaches to advance understanding of welfare reform and child and family functioning. While the research methods for studies submitted may differ, they must be well designed and the project's methods must be adequate and appropriate to address the questions identified for the study. As discussed in the Review Criteria section below, applicants must have experience and a proven track record in conducting studies of the scope and scale proposed. In making decisions, ACF will consider an applicant organization's experience as well as the experience and qualifications of researchers and staff.

As indicated above, we expect to support projects which address different and varied issue areas. Below are some general topics of interest to ACF which are intended to be illustrative only. We invite and expect proposals focused on other issue areas as well.

We are interested in answering questions related to the public assistance programs put in place, the agencies operating the programs and changes in their organizational culture, the community environment and the participants and families involved.

Important questions need to be addressed regarding time limits as they relate to organizational entities and to individuals and families. From a state/local agency perspective, a study might seek to understand what state/local welfare agencies are doing to assist families subject to time limits to gain adequate employment before losing their cash benefits or how the provisions are being implemented and explained at the worker level. It is important to understand the implications and effects of the time limit on other service providers and other service delivery systems. And it is critically important to examine the response of individuals to the time limits and the effects on families and children.

Issues surrounding work are critically important and many important questions exist. These might include questions regarding the operation and effects of policies to move recipients into jobs and help them retain employment, policies to increase employment through linkages or subsidies to employers, and policies intended to effect behavior such as sanctions and disregards.

In addition, other issues related to employment such as supportive services and service coordination are important topics. How are critical aspects of child care being addressed in different programs? Are child care supply and demand, accessibility, costs, and quality factors in supporting families' entry into the work force?

ACF is interested in studies that address important questions about the progress of individuals with special needs. There is a strong need to develop and study models for addressing domestic violence within welfare families. ACF is interested in helping to provide credible information about promising service approaches and strategies in this area.

With requirements to move TANF recipients into the unsubsidized labor force, many programs may exempt individuals with disabilities or their parents from mandatory work and training activity or other program requirements. The result could be that these individuals would lose the opportunity to become self-sufficient and the public assistance community would miss an opportunity to learn how to improve services to disabled recipients and children to better enable families to move toward productive work. ACF is interested in building on the current knowledge about how to assist and integrate families with disabled people into the work force and help them confront obstacles to self-sufficiency.

Under TANF, many teen parents will require alternate adult-supervised living arrangements (e.g. Second Chance Homes) and other services when they cannot live at home. Analysis and evaluation of transitioning into independent living arrangements will be necessary to the success of welfare reform for these young parents at risk. Analysis and evaluation of programs and policies focused on school attendance requirements and successful transition from school to work are also needed.

Another issue area that should be addressed concerns innovative service delivery systems or methods (e.g., home visiting; neighborhood saturation via linkages and collaborations among multiple agencies; and integrated service delivery systems). In addition, questions about improving the material, emotional, and developmental well-being of children via fathers' role in children's and families' lives are also important.

Further, it is important to understand how local jurisdictions, Tribal organizations, and welfare offices have responded to different state approaches to implementing TANF, including how differences in implementation may affect family outcomes. This may include issues related to changes in the culture of welfare offices in response to TANF, family outcomes in special jurisdictions such as reservations, and changes in the management of program components under TANF now operated by different providers, including Tribes, or sectors of the community (e.g., public, for-profit contractor, non-profit service providers).

These topics are illustrative of some of the areas of interest to ACF and are consistent with its overall welfare reform research and evaluation agenda. This announcement seeks to stimulate sound research, evaluation and study of a wide range of topical areas related to welfare reform and a variety of study designs that aim to answer different sorts of questions about policy, service management and delivery, and outcomes for family and child well-being. ACF's purpose is to further its welfare reform research and evaluation agenda by supplementing and complementing other research projects through this announcement by providing sole funding in some cases and by entering into partnerships in other cases with local and national public and private funders.

Eligible Applicants

Organizations eligible to apply for financial assistance under this announcement include public entities; private for-profit organizations (if fee is waived); and public or private nonprofit organizations, including universities. Any nonprofit organization submitting an application must submit proof of its nonprofit status in its application at the time of submission. The nonprofit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

While a variety of organizations and entities are eligible to apply for funding under this announcement, potential applicants should carefully review the Review Criteria in Part II to determine that they meet the requirements for experience and expertise for conducting rigorous, well-designed evaluations and studies of the type and scope discussed herein. Applicants are reminded that funding under this announcement is not

available to support programs or service provision but rather research and evaluation.

Funding Instruments—Grants and Cooperative Agreements

ACF will issue the Financial Assistance Awards under this agreement as either grants or cooperative agreements. Cooperative agreements will be the instrument used to make awards when the amount of Federal involvement that is anticipated by ACF for a particular project is greater than is required and allowed under a grant. Cooperative agreements will be documents which outline the terms of ACF's involvement as well as the responsibilities of the recipient organization or agency. For example, multi-year awards may begin as cooperative agreements in the first year and may be converted to grants after recipients' capabilities have been established or a grant could be converted to a cooperative agreement when developments in a particular project call for greater ACF involvement.

Funding

ACF anticipates providing up to $1.95 million for the total group of approved projects in FY 1997, subject to the availability of funds. All grants and cooperative agreements will be awarded by September 30, 1997. ACF anticipates providing up to $750,000 in FY 1998, subject to the availability of funds, and like amounts in succeeding years. We estimate that this level of funding will support 4 to 8 separate projects under this announcement in FY 1997 (some of which will be parts of other, larger work). Federal funding under this announcement is intended to support research analysis and evaluation, not program operation or service provision.

As indicated, ACF anticipates funding both short-term projects and longer-term studies. In Federal FY 1997 recipients of multi-year awards may be approved for project periods of up to 60 months and will receive an initial Financial Assistance Award for a budget period of 12 months. Multi-year project recipients will be allowed to apply for additional funding in FY 1998 and subsequent years within the overall project period on a non-competitive basis.

We also encourage short-term projects which can provide useful and timely information to program administrators, e.g., implementation analysis. For these studies, we expect to make one-time awards for project and budget periods of 17 months. Applicants who are seeking funds to support short-term studies will be expected to complete the work within a maximum of 17 months. Studies which cannot be completed within that time frame will be considered for multi-year awards as described above.

We may provide sole funding for projects, provide principal funding, or support only individual components of projects which have other funders. The latter types of applications (i.e., those with other funding sources) should include an overview of the funding sources for all components of the project in addition to the Federal budget requirements detailed in Section III of this announcement.

Further, to maximize the benefit of the Federal investment to advance knowledge about welfare reform, ACF may give preference to applicants who provide evidence of other sources of funding for the project (e.g., applicant resources or private foundation funding). The applicant should describe the level, sources, and duration of non-Federal funds or resources committed to the project. Do not, however, list these funds on the budget forms SF 424 and SF 424A described in section III of this announcement. Those forms are for listing only the Federal funds requested under this announcement. There is no non-Federal matching requirement for this announcement; however, recipients will be held accountable for any non-Federal share listed on the SF 424A and the Financial Assistance Award. For this reason, it is important that applicants who provide evidence of other sources of funding for the project do not list these sources on the SF 424A.

Part II—The Review Process

A. Review Process and Funding Decisions

Timely applications from eligible applicants will be reviewed and scored competitively. Reviewers will use the evaluation criteria listed below to review and score the application.

In addition, ACF may refer applications for review to other Federal or non-Federal entities when it is determined to be in the best interest of the Federal Government or the applicant. It may also solicit comments from ACF Regional Office staff, other Federal agencies, and, if determined to be appropriate, interested foundations and national organizations. These comments along with those of the reviewers will be considered by ACF in making the funding decision.

In making award decisions, ACF will aim to fund a group of studies that together address a wide range of questions of the greatest importance to states, the Federal government, and the general public. In order to ensure that a wide array of questions, topics, and policy issues will be addressed through projects funded under this announcement, in making the final selections, in addition to the review criteria identified below, ACF may consider additional factors including geographic diversity, racial/ethnic populations served, opportunities to analyze particular sub-groups of the public assistance population, and the particular TANF provisions under examination.

Further, as noted under Funding above, to maximize the benefit of the Federal investment to stimulate research and advance knowledge about welfare reform, ACF may give preference to applicants who provide evidence of other sources of funding for the project (e.g., applicant resources or private foundation funding).

Disposition of Applications

On the basis of the review of an application, ACF will: (a) Approve the application for funding; or (b) disapprove the application; or (c) approve the application but not fund it for such reasons as a lack of funds or a need for further review.

B. Evaluation Criteria

Using the evaluation criteria below, reviewers will review and score each application. Reviewers will determine the strengths and weaknesses of each application in terms of the appropriate evaluation criteria listed below, provide comments, and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each criterion may be given in the review process.

(1) Organizational Experience, Skills, and Responsibilities

(25 points) The application should provide evidence of the organization's experience in conducting the sort of research analysis proposed. This experience should include background in research on populations receiving public assistance, i.e., title IV–A program benefits, Food Stamps, Medicaid, employment and training program systems, child care subsidies, etc. The application should list key individuals who will work on the project, including all professional staff and (if known) any contractor staff, along with a short description of the nature of their contribution and relevant staff experience.

If more than one agency or organization will conduct the study, the application should identify the

managing organization (i.e., the entity applying for the Financial Assistance Award) as well as other organizations involved. The application should address each organization's experience with regard to this criterion.

If the research is to be conducted in specific sites or with specific organizations, evidence of commitment by appropriate entities to participate fully, as defined by the project design, to support the requirements of the research (e.g., provide data, participate in interviews) must be included in the application.

(2) *Research Questions:* (25 points) The application must include the principal questions to be addressed by the study and the research hypotheses related to those questions, if appropriate. If the application to ACF is for funding of a particular component of a larger study, the applicant should describe the objective of the entire study and explain in detail the questions to be addressed by the activities for which ACF funding is requested. The application will be judged on the extent to which the questions identified include important unanswered questions regarding welfare reform or address areas in which additional information is most critically needed.

(3) *Project Design:* (40 points) The application should describe in detail the project's methods for answering the research questions proposed. Explain why the methods proposed are adequate to address the research questions. Note any weaknesses in the proposed research design and what will be done to compensate for those weaknesses. The application will be judged on the extent to which the evaluation project design (i.e., methods) proposed is adequate and appropriate to measure the key outcomes identified and answer the research questions posed in the application.

(4) *Budget Appropriateness:* (10 points) The application should include a narrative justification for budget items and demonstrate that the project's costs are reasonable and necessary to support the specific project design and evaluation methods proposed and in view of the anticipated results and benefits. Applicants should refer to the budget information presented in the Standard Forms 424 and 424A.

Part III—Instructions for the Development and Submission of Applications

This part contains information and instructions for submitting applications in response to this announcement. The forms to be used for submitting an application follow this part. Please reproduce single-sided copies of the forms and type your information onto the copies. Do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

The SF–424 and the SF–424A are available in .PDF file format at http://mercury.psc.dhhs.gov/forms/sforms.htm They are also available through FTP at ftp://aosftp.psc.dhhs.gov/pub/forms/sf/

This part concludes with a checklist for assembling an application package.

A. Deadline for Submittal of Applications

The closing date for submission of applications is July 28, 1997. Mailed applications postmarked after the closing date will be classified as late.

Deadline

Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants and Audit Resolution, Attention: Lois B. Hodge, 370 L'Enfant Promenade, S.W., Mail Stop 6C–462, Washington, D.C. 20447.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). A postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications handcarried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants and Audit Resolution, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note ''Attention: Lois B. Hodge. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late Applications

Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines

ACF may extend the deadline for all applicants because of acts of God such as floods and hurricanes, widespread disruption of the mails, or when it is anticipated that many of the applications will come from rural or remote areas. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

B. Instructions for Preparing the Application

In order to assist applicants in completing the application, the Standard Forms 424 and 424A and required certifications have been included at the end of Part III of this announcement. Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Item 1. ''Type of Submission''—Non-Construction.

Item 2. ''Date Submitted'' and ''Applicant Identifier''—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. ''Date Received By State''—State use only (if applicable).

Item 4. ''Date Received by Federal Agency''—Leave blank.

Item 5. ''Applicant Information'' ''Legal Name''—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application. The applicant identified will be the entity to which an award under this

announcement will be issued, if the application is approved.

''Organizational Unit''—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. If this is the same as the applicant organization, leave the organizational unit blank.

''Address''—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

''Name and telephone number of the person to be contacted on matters involving this application (give area code)''—Enter the full name and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given.

Item 6. ''Employer Identification Number (EIN)''—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. ''Type of Applicant''—Self-explanatory.

Item 8. ''Type of Application''—New

Item 9. ''Name of Federal Agency''—DHHS/ACF

Item 10. ''Catalog of Federal Domestic Assistance Number''—93.647

Item 11. ''Descriptive Title of Applicant's Project''—Welfare Reform Studies and Analyses—OPRE 97–1

Item 12. ''Areas Affected by Project''—Self-explanatory

Item 13. ''Proposed Project''—Enter the proposed start date for the project and projected completion date. (Note: it is likely that most awards will not be made prior to September 1, 1997 and all project start dates must be within Federal fiscal year 1997 (i.e., before September 30, 1997).

Item 14. ''Congressional District of Applicant/Project''—Enter the number of the Congressional district where the applicant's principal office is located.

Items 15 ''Estimated Funding Levels''—

In completing item 15, enter *only* the dollar amount of Federal funds requested for the first 12 months of the award in box 15a. Note: if applicant is applying for a one-time, short-term study, the amount of Federal funds requested for the full period, up to a maximum of 17 months, should be entered in 15a. *Boxes 15b, 15c, 15d, 15e and 15f should be left blank.* Box 15g should equal the amount listed in box 15a.

The amount listed in 15a should be no greater than the maximum amount available under this announcement for the initial 12-month budget period or for short-term studies, for the full project period, up to the maximum 17 month period.

The total Federal budget proposed, as listed in 15a and 15g, should be inclusive of any indirect costs.

Item 16. ''Is Application Subject to Review By State Executive Order 12372 Process?''

Check ''No.'' We have determined that this program announcement is not subject to Executive Order 12372, Intergovernmental Review of Federal Programs, because it is a program that is national in scope and does not directly affect State and local governments. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. No 12372.

Item 17. ''Is the Applicant Delinquent on any Federal Debt?''—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. ''To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.''—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a-c. ''Typed Name of Authorized Representative, Title, Telephone Number''—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. ''Signature of Authorized Representative''—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature.

Item 18e. ''Date Signed''—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, and E are to be completed. Sections C and D do not need to be completed.

Section A—Budget Summary.

Line 1:

Column (a): Enter ''Welfare Reform Studies and Analyses—OPRE 97–1'';
Column (b): Enter 93.647
Columns (c) and (d): Leave blank.
Column (e): enter the appropriate amounts needed to support the project for the first 12-month budget period or if applying for a one-time award to support a short-term study, enter the amount needed to support the project up to the maximum 17 month period.
Column (f): leave blank
Column (g): Same amount entered into (e)

Section B—Budget Categories. This budget should include *only* the Federal funding for the proposed project for the first 12-month budget period or for up to a 17-month period if applying for one-time support for a short-term study. The total budget should equal item 15g, total funding, on the SF 424 (cover sheet). Under column (5), enter the same amounts by object class category entered in column (1). Columns (2), (3), and (4) should remain blank.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, ''Other.''

Justification: Identify the project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the Federal cost to the project of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, ''Other.''

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by

the project. For grants governed by the administrative requirements of either 45 CFR part 92 or 45 CFR part 74, equipment is defined as tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more *per unit.*

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and contracts with secondary recipient organizations. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line.

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the project to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as ''miscellaneous'' and ''honoraria'' are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter ''none.'' This line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant. In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

Justification: Enclose a copy of the indirect cost rate agreement, if indirect costs are requested.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. As stated under *Eligible Applicants* above, private for-profit entities must waiver any fees in order to compete for these funds.

Justification: Describe the nature, source, and anticipated use of program income in the Project Narrative Statement.

Section C—Non-Federal Resources. Not applicable—Leave blank. However, as noted in the program announcement, applicants which are utilizing multiple funders should include a discussion or presentation of such funding in the application.

Section D—Forecasted Cash Needs. Enter the amount of cash needed by quarter from the award made by ACF during the first year.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. ACF expects to make funds available for approved project period up to 60 months. In this section, provide annual estimates of the Federal funds needed for the balance of the project.

Justification: Describe the anticipated use of latter year project expenses in the Project Narrative Statement.

Section F—Other Budget Information. Not applicable—Leave blank.

3. Project Narrative Statement

The Project Narrative Statement should be clear, concise, and address the issues mentioned under Part I and should address how the application meets the evaluation criteria described in section B of Part II. The applicant should follow the sequence of the review criteria below (as outlined in section B, part II) when composing the project narrative.

(a) Organizational Experience, Skills, and Responsibilities:

(b) Research Questions

(c) Project Design

(d) Budget Appropriateness

The narrative should be typed double-spaced. There is no page limitation, but all pages of the narrative (including charts, references, footnotes, tables, maps, exhibits, appendices, etc.) must be sequentially numbered. Please do not use covers, binders, or tabs.

4. Assurances/Certifications

Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification regarding environmental tobacco smoke and need not mail back the certification with the applications.

Applicants must make the appropriate certification of their compliance with

the Drug-Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications.

Applicants must make the appropriate certification of their compliance with the Pro-Children Act of 1994. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

Copies of the certifications and assurances are attached. Please reproduce single-sided copies of the forms. Do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances and certifications.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

D. Submitting the Application

Each application package must include an original and two copies of the complete application. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered and unbound. In order to facilitate handling, Please do not use covers, binders, or tabs.

E. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to OMB for review and approval any reporting and recordkeeping requirements in regulations, including Program Announcements. 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. This Program Announcement does not contain information collection requirements beyond those approved for ACF grant announcements/applications under OMB Control Number OMB–0970–0139.

F. Intergovernmental Review

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Program and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-three jurisdictions need take no action regarding E.E. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applications must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has sixty (60) days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Appendix B to this Announcement.

G. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original application, signed and dated, plus two copies—without covers, binders, or tabs.

—A complete application consists of the following items in this order:

- Application for Federal Assistance (SF 424);
- Assurances—Non-construction programs (SF 424B); and
- Certification Regarding Lobbying.
- Budget Information—Non-construction programs (SF 424A);
- Budget Justification for SF 424A Section B—Budget Categories;
- Copy of the applicant's approved indirect cost rate agreement, if appropriate;
- Project Narrative that addresses and follows the sequence of the Evaluation Criteria in Part II section B.

Dated: May 21, 1997.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

BILLING CODE 4184–01–P

Appendix A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ - ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify)_____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ - ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (REV 4-92)
Prescribed by OMB Circular A-102

BILLING CODE 4184–01–C

Instructions for the SF 424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget. Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget, Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State, if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) a assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.

—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.

—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and tile of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities.)

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit allowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY						
Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES					
6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 4-92)
Prescribed by OMB Circular A-102

SECTION C — NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E — BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL (sum of lines 16 - 19)	$	$	$	$

SECTION F — OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 4-92) Page 2

BILLING CODE 4184–01–C

Instructions for the SF 424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office or Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Section A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple function or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number of each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g).

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns 9(e) and (f).

For supplemental grants and changes in existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the total for all columns used.

Section B. Budget Categories

In the column headings (1) though (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–1—Show the totals of Lines 6a to 6h in each column.

Line 6i—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in Column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k, should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not all or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources.

Lines 8–11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals in Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeedings funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing

data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget, send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd–3 and 290ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. §§ 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A–133, Audits of Institutions of Higher Learning and other Non-profit Institutions.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

_____

Signature of Authorized Certifying Official

_____

Title

_____

Applicant Organization

_____

Date Submitted

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or

agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system or records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participant in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart F. Sections 76.630 (c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW, Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements

(Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false conviction, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantees does not identify the workplace at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant:

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form—LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–C

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For material change only** Year_____ Quarter_____ date of last report_____

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known.* Congressional District, *if known*	**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** Congressional District, *if known*
6. Federal Department/Agency:	**7. Federal Program Name/Description:** **CFDA Number,** *if applicable:*
8. Federal Action Number, ***if known*****:**	**9. Award Amount,** ***if known*****:** $
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*

Items 11 through 15 are deleted.

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Appendix B—OMB State Single Point of Contact Listing

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315, FAX: (602) 280–8144

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

California

Grants Coordinator, Office of Planning & Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone (916) 323–7480, FAX (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact Executive Department, Thomas Collins Building, P.O. Box 1401, Dover, Delaware: 19903, Telephone (302) 739–3326, FAX: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. & Dev., 717 14th Street, N.W.—Suite 500, Washington, D.C. 20005, Telephone: (202) 727–6554, FAX (202) 727–1617

Florida

Florida State Clearinghouse, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399–2100, Telephone: (904) 922–5438, FAX: (904) 487–2899

Georgia

Tom L. Reid, III, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W.—Room 401J, Atlanta, Georgia 30334, Telephone: (404) 656–3855 or (404) 656–3829, FAX: (404) 656–7938

Illinois

Virginia Bova, State Single Point Of Contact, Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

Indiana

Frances Williams, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–5619, FAX: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4859

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone: (502) 573–2382, FAX: (502) 573–2512

Maine

Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

Maryland

William G. Carroll, Manager, State Clearinghouse for Intergovernmental Assistance, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 255–4490, FAX: (410) 225–4480

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 1900 Edison Plaza, 660 Plaza Drive, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869

Mississippi

Cathy Malette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone: (601) 359–6762, FAX: (601) 359–6764

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, FAX: (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–4065, FAX: (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Mexico

Robert Peters, State Budget Division, Room 190 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605, FAX: (518) 486–5617

North Carolina

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX: (701) 224–2308

Ohio

Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411

Please direct correspondence and questions about intergovernmental review to: Linda Wise, Telephone: (614) 466–0698, FAX: (614) 466–5400.

Rhode Island

Kevin Nelson, Review Coordinator, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2083

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Rodney Grizzle, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street–Room 331, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0356

Texas

Tom Adams, Governors Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 463–1888

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116, State Capitol, Salt Lake City, Utah 84114,

Telephone: (801) 538–1535, FAX: (801) 538–1547

West Virginia

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248

Wisconsin

Jeff Smith, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street–6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, FAX: (608) 267–6931

Wyoming

Matthew Jones, State Single Point of Contact, Office of the Governor, 200 West 24th Street, State Capital, Room 124, Cheyenne, Wyoming 82002, Telephone: (307) 777–7446, FAX: (307) 632–3909

Territories

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444, (809) 723–6190, FAX: (809) 724–3270, (809) 724–3103

North Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, State Single Point of Contact, Office of Management and Budget, Office of the Governor, Saipan, MP, Telephone: (670) 664–2256, FAX: (670) 664–2272, Contact Person: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 644–2289, FAX: (670) 644–2272

Virgin Islands

Nelson Bowry, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069.

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Matthew Jones, State Single Point of Contact, Office of the Governor, 200 West 24th Street, State Capital, Room 124, Cheyenne, Wyoming 82002, Telephone: (307) 777–7446, FAX: (307) 632–3909

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Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444, (809) 723–6190, FAX: (809) 724–3270, (809) 724–3103

North Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, State Single Point of Contact, Office of Management and Budget, Office of the Governor, Saipan, MP, Telephone: (670) 664–2256, FAX: (670) 664–2272, Contact Person: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 644–2289, FAX: (670) 644–2272

Virgin Islands

Nelson Bowry, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069.

[FR Doc. 97–13922 Filed 5–27–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–382]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. 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.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* ESRD Beneficiary Selection; *Form No.:* HCFA–382; *Use:* ESRD facilities have each new home dialysis patient select one of two methods to handle Medicare reimbursement. The intermediaries pay for the beneficiaries selecting Method I and the carriers pay for the beneficiaries selecting Method II. This system was developed to avoid duplicate billing by both intermediaries and carriers. *Frequency:* Other-one time only; *Affected Public:* Individuals or Households, Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 3,100; *Total Annual Hours:* 259.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or to obtain 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 must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Date: May 19, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources.

[FR Doc. 97–13916 Filed 5–27–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–184]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. 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.

Type of Information Collection Request: Extension of currently

approved collection; *Title of Information Collection:* Partnership/Regulated Entity Customer Survey Generic Clearance; *Form No.:* HCFA–R–184; *Use:* Executive Order (E.O.) 12862 directs agencies that ''provide significant services to the public'' to ''survey customers to determine the type and quality of services they want and their level of satisfaction with existing services.'' HCFA is requesting a generic approval for satisfaction surveys of our partners/regulated entities, to ensure that HCFA and its partners/regulated entities continue to strive to guarantee high quality health care services. The Generic Clearance which we are seeking will allow HCFA to field satisfaction surveys in an expeditious manner, as outlined in the generic clearance supporting statement. *Frequency:* Annually; *Affected Public:* Individuals or Households; *Number of Respondents:* 1; *Total Annual Responses:* 1; *Total Annual Hours:* 1.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or to obtain 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 must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 19, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources

[FR Doc. 97–13917 Filed 5–27–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–65]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: July 28, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to Oliver Walker, Housing, Department of Housing and Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Leslie Bromer, Insured Servicing Branch (HSISI), Telephone number (202) 708–1719 ext. 2309 (this is not a toll-free number) for copies of the proposed form and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Single Family Mortgage Insurance—Loss Mitigation Procedures.

OMB Control Number: N/A.

Description of the need for the information and the proposed use: New Section 24 CFR 203.605, ''Loss Mitigation Evaluation,'' requires mortgagees to perform an evaluation of each defaulting mortgagor's circumstances to determine which if any of the available loss mitigation techniques are appropriate in order to assist the mortgage to:

(a) Reinstate the mortgage and retain ownership of the affected property, or

(b) Avoid foreclosure, mitigate the losses to the Department by encouraging the mortgagor to sell the property or, if the mortgagor has no equity in the property, to pursue a buyer under the pre-foreclosure (''short'') sale procedure or to voluntarily convey the deed in lieu of what would otherwise be the imminent foreclosure of the mortgage.

This evaluation must be performed no later than three monthly mortgage installments are due and unpaid, and must be performed monthly thereafter while the account is in default and such foreclosure avoidance and loss mitigation options remain under consideration.

This information is needed to ascertain whether adequate and prudent loan servicing was performed by the mortgagee. If a mortgagee submits a claim for FHA insurance benefits, this information will be subject to post-claim review under the Department's lender monitoring activities.

Agency form numbers: Documentation simply added to lender's servicing files on HUD–27011 insurance claim form.

Members of affected public: Mortgages, loan servicing entities. Estimation of the total numbers of hours needed to prepare the information collection, including:

(a) *Number of respondents:* Each FHA approved lender will be required to respond as part of standard procedures for servicing defaulted loans.

(b) *Frequency of response:* 625,000 (based on 250,000 90-day defaults; 50% self-cure; 125,000, 90+ day defaults averaging 3-additional months).

(c) *Hours of response:* 625,000 @ 0.25 hrs. = 156,250 hours Status of the proposed information collection: Pending approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 20, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–13939 Filed 5–27–97; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4208–N–02]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: June 27, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 21, 1997.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Public Housing Drug Elimination Program—Technical Assistance, FR–4208.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0133.

Description of the Need for the Information and Its Proposed Use: The information is needed so that the applicants can apply and compete for funding opportunities under a Notice of Funding Availability (NOFA). The purpose of this program is to provide short-term technical assistance to public housing agencies (PHAs), Indian housing authorities (IHAs), resident management corporations (RMCs), incorporated resident councils (RCs), and resident organizations (ROs) that are combating drug-related crime and abuse of controlled substances in public and Indian housing communities.

Form Number: HUD–52354.

Respondents: State, local, or Tribal Government.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Consultant Application	400		1		8		3,200
Consultant Justification	400		1		8		3,200
Statement of Work	400		1		48		19,200
Reports and Invoices	300		1		16		4,800
Forms	400		1		2		800

Total Estimated Burden Hours: 31,200.

Status: Reinstatement, with changes.

Contact: Bertha M. Jones, HUD, (202) 708–1197; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 97–13940 Filed 5–27–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4196–N–02]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: June 27, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the

information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 21, 1997.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection OMB

Title of Proposal: Economic Development and Supportive Services Program: Application Funding Requirements (FR–4196).

Office: Public and Indian Housing.

OMB Approval Number: 2577–0211.

Description of the Need for the Information and Its Proposed Use: The information collection is required in connection with the issuance of a Notice of Funding Availability (NOFA) for the Economic Development and Supportive Services and Tenant Opportunities Grant Programs. Grants will be provided to public and Indian housing authorities to provide economic development and supportive services to assist public and Indian housing residents, the elderly, and persons with disabilities to become economically self-sufficient and to live independently.

Form Number: None.

Respondents: State, local, or Tribal Government.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	350		1		40		14,000
Annual Report	106		1		2		212

Total Estimated Burden Hours: 14,212.

Status: Reinstatement, without changes.

Contact: Maria-Lana Queen, HUD, (202) 708–4214 x4890; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 97–13941 Filed 5–27–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–66]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: June 27, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 21, 1997.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Enterprise Community/Empowerment Zone Business Establishment Survey.

Office: Policy Development and Research.

OMB Approval Number: None.

Description of the Need for the Information and Its Proposed Use: The Enterprise Community/Empowerment Zone (EZ/EC) Business Establishment Survey is a telephone interview administered through the Computer Assisted Telephone Interviewing (CATI) system. The purpose of the survey is to assess the effectiveness of the EZ/EC program. Respondents to this survey are owners and senior staff of businesses located in selected empowerment zones and enterprise communities.

Form Number: None.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Initial Survey	1,800		1		.20		360
Follow-up Survey	1,800		1		.25		450

Total Estimated Burden Hours: 810.

Status: New.

Contact: Judson L. James, HUD, (202) 708–3700 x130; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 97–13942 Filed 5–27–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4183–N–02]

Notice of Funding Availability (NOFA) for Fiscal Year 1997 for Indian Applicants Under the HOME Program; Correction

AGENCY: Office of the Assistant Secretary; Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA); correction.

SUMMARY: This notice corrects and clarifies information that was provided in the notice of funding availability (NOFA) for fiscal year (FY) 1997 for Indian Applicants Under the HOME Program, published in the **Federal Register** on April 11, 1997 (62 FR 17992). Specifically, this notice corrects two regulatory citations in the NOFA, and it corrects a misstatement regarding the minimum number of points required for funding under the competition.

DATES: This notice does not affect the deadline date provided in the April 11, 1997 NOFA. Applications must still be received by the due date of June 20, 1997, at the Area Office of Native American Programs (Area ONAP) having jurisdiction over the applicant on or before 3 p.m. (Area ONAP local time).

FOR FURTHER INFORMATION CONTACT: Prospective applicants may contact the appropriate Area ONAP. Refer to Appendix 1 of the April 11, 1997 NOFA for a complete list of Area ONAPs and telephone numbers.

SUPPLEMENTARY INFORMATION: On April 11, 1997 (62 FR 17992), HUD published in the **Federal Register** the Notice of Funding Availability (NOFA) for Indian Applicants Under the HOME Program for fiscal year (FY) 1997. The NOFA provided, in section I.(a), under the heading ''Authority,'' that the interim regulations for the Indian HOME program are codified at 24 CFR part 954 (62 FR 17992). While HUD has published regulations for the Indian HOME program in the **Federal Register** (61 FR 32292; June 21, 1996), these regulations did not appear in the May 1, 1996 codification of the Code of Federal Regulations (CFR). These regulations will appear in the 1997 codification of the CFR. Since the 1997 codification of the CFR is not yet widely available, however, this notice corrects the NOFA by providing information on the publication of these regulations in the **Federal Register** (61 FR 32292; June 21, 1996).

The April 11, 1997 NOFA also provided, in section I.(d), under the heading ''Selection Criteria and Rating Factors,'' that after the applications are rated, the project must receive at least 60 points to be considered for funding (62 FR 17994). Later in that section, however, where HUD requests that the applicants perform their own preliminary rating for their project, the NOFA mistakenly provides that the minimum point score requirement is 50 points. Therefore, this notice corrects the latter reference to provide that the minimum point score requirement is 60 points.

Finally, the April 11, 1997 NOFA provides, in section I.(d)(2)(i)(B) regarding cash flow projection through project completion, that there must be a projection of costs and revenues for the time the work is being carried out as well as the time of maintenance and repair. This projection identifies what the long term maintenance, repair, and major replacement costs are going to be and how they will be paid (62 FR 17996). In explaining the phrase ''long term,'' the NOFA refers to the minimum period of affordability in 24 CFR 92.614. The regulations for the Indian HOME program, however, will be codified in 24 CFR part 954. Therefore, this notice provides the correct regulatory citation regarding the minimum period of affordability, which is § 954.306 (61 FR 32302; June 21, 1996).

Accordingly, FR Doc. 97–9306, the Notice of Funding Availability (NOFA) for Fiscal Year 1997 for Indian Applicants Under the HOME Program, published in the **Federal Register** on April 11, 1997 (62 FR 17992), is amended as follows:

1. On page 17992, column 3, section I.(a), under the heading ''*Authority*'', the first paragraph is revised to read as follows:

I. Purpose and Substantive Description

(a) Authority

The HOME Investment Partnerships Act (the HOME Act) (title II of the Cranston-Gonzalez National Affordable Housing Act) was signed into law on November 28, 1990 (Pub. L. 101–625), and created the HOME Investment Partnerships (or HOME) Program that provides funds to Indian tribes to expand the supply of affordable housing for very low-income and low-income persons. HUD published interim regulations for the Indian HOME program in the **Federal Register** on June 21, 1996 (61 FR 32292), to be codified at 24 CFR part 954.

* * * * *

2. On page 17994, column 1, section I.(d) under the heading ''*Selection Criteria and Rating Factors*'', the fifth paragraph is revised to read as follows:

I. Purpose and Substantive Description

* * * * *

(d) Selection Criteria and Rating Factors

* * * * *

In responding to each of the components which address the selection criteria, HUD requests that each applicant:

—Use separate tabs for each selection criterion and sub-criterion. In order to be rated, make sure the response is beneath the appropriate heading.

—Keep its responses in the same order as the NOFA.

—Provide the necessary data and the explanation, not exceeding 200 words, that supports the response. Include all relevant material to a response under the same tab. Do not assume the reviewer will search for the answer or information to support the answer elsewhere in the application.

—Do a preliminary rating for its own project, providing a score according to the scoring guide. This will help to show the applicant how its project might be scored by the reviewers. It will also help to show the applicant whether the application meets the eligibility requirements and the minimum point score requirement (60 points), and where the strengths and weaknesses of the application are

located. Then, the applicant can strengthen the weaker parts of the application and retain the stronger parts.

* * * * *

3. On page 17996, column 3, section I.(d)(2)(i)(B), under the heading ''Cash flow projection through project completion (3 points maximum)'', the third paragraph is revised to read as follows:

I. Purpose and Substantive Description

* * * * *

(d) Selection Criteria and Rating Factors

* * * * *

(2) PLANNING AND IMPLEMENTATION—40 points maximum.

* * * * *

(i) Financial—15 points maximum.

* * * * *

(B) Cash flow projection through project completion (3 points maximum).

* * * * *

There must be a projection of costs and revenues for the time the work is being carried out as well as the time of maintenance and repair. The costs and revenues projection identifies what the maintenance and repair and major replacement costs for the long term (i.e., not less than the minimum period of affordability, 24 CFR 954.306) are going to be and how they will be paid. The projection must identify what the costs and revenues are. If the source of revenue is a grant, the grant must be identified. The costs and revenues and the cash flow must cover the construction period and the marketing period (if there will be a marketing period); the period of maintenance and repair must be projected separately. The applicant must identify whether there is a need for short-term borrowing for rehabilitation or whether rehabilitation is paid for entirely from HOME and leveraged funds; any years of negative cash flow; and the cumulative negative cash flow. If the project requires financing, i.e., borrowing, to get through periods of negative cash flow, the applicant must show the financing in the cash flow projection. For scoring, see Table 7. Points will be awarded based on completeness in adequately addressing the pertinent questions.

* * * * *

Dated: May 20, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–13938 Filed 5–27–97; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4245–D–03]

Office of the Assistant Secretary for Community Planning and Development; Revocation of Authority

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of revocation of authority to execute legal instruments pertaining to Section 312 Rehabilitation Loans.

SUMMARY: In this notice, the Assistant Secretary for Community Planning and Development (CPD) revokes the current redelegation of authority to certain CPD officials to execute legal instruments pertaining to the Section 312 Loan Program, published in the **Federal Register** at 60 FR 14295, dated March 16, 1995.

EFFECTIVE DATE: May 19, 1997.

FOR FURTHER INFORMATION CONTACT: Marcia Dodge, Office of Affordable Housing Programs, Room 7168, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, (202) 708–2685. (This is not a toll-free number.) For hearing/speech-impaired individuals, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: Since the Section 312 Rehabilitation Loan program was terminated by Section 289 of the National Affordable Housing Act of 1990 (42 U.S.C. 12839), no Section 312 loans are not being made. However, Section 312 loan collection functions must continue, and 12 U.S.C. 1701g–5c transferred the assets and liabilities of the Section 312 revolving loan fund to the Department's revolving fund for liquidating programs. Although the Assistant Secretary for CPD has historically administered the Section 312 program, most loan management and collection functions of CPD have been contracted out over the years under various contractual arrangements. Under these arrangements, contractor staff may prepare legal instruments to be executed by HUD officials in connection with the servicing and collection of Section 312 loans.

Pursuant to Section 306(e) of the National Housing Act, 12 U.S.C. 1721(e), the Government National Mortgage Association (Ginnie Mae) has authority to service the Section 312 loan portfolio. In order to expedite property foreclosures and judgments against the Section 312 borrowers in default and to take other actions associated with the servicing to Section 312 loans, the Assistant Secretary for CPD and the President of Ginnie Mae have agreed that one or more Ginnie Mae employees should be authorized to sign legal instruments with respect to servicing and collection of Section 312 loans.

In new delegation of authority being published concurrently herewith, the Secretary of Housing and Urban Development has delegated authority to the President of the Government National Mortgage Association (Ginnie Mae) to execute legal instruments pertaining to Section 312 loans, and to redelegate the authority to execute such legal instruments.

Accordingly, the Assistant Secretary for CPD revokes authority as follows:

Section A. Authority Revoked

1. The Assistant Secretary for Community Planning and Development (CPD) revokes in full the redelegation of authority to the Deputy Assistant Secretary for Grant Programs, CPD; the Director, Office of Affordable Housing Programs, CPD; the Deputy Director, Office of Affordable Housing Programs, CPD; and the Affordable Housing Loan Specialist, CPD, published on March 16, 1995, at 60 FR 14295 pertaining to the execution of legal instruments related to Section 312 Rehabilitation Loans, as enumerated therein.

Authority: Section 312 of the Housing Act of 1964, 42 U.S.C. 1452b; 12 U.S.C. 1701g–5c; and section C, Delegation of Authority, 48 FR 49384, October 25, 1983; Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C., Section 3535(d).

Dated: May 19, 1997.

Jacquie M. Lawing,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 97–13945 Filed 5–27–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–4245–D–01]

Delegation of Authority To Execute Legal Instruments Pertaining to Section 312 Rehabilitation Loans

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: In this notice, the Secretary delegates authority to the President of the Government National Mortgage Association (Ginnie Mae) to execute legal instruments (including those enumerated below) pertaining to

Section 312 loans, and to redelegate the authority to execute such legal instruments.

EFFECTIVE DATE: May 19, 1997.

FOR FURTHER INFORMATION CONTACT: Marcia Dodge, Office of Affordable Housing Programs, Room 7168, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, (202) 708–2685. (This is not a toll-free number.) For hearing/speech-impaired. individuals, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: The Secretary of Housing and Urban Development has delegated most functions regarding the Section 312 Rehabilitation Loan Program under Section 312 of the Housing Act of 1964 (42 U.S.C 1452b) to the Assistant Secretary for Community Planning and Development (CPD). That delegation, published in the **Federal Register** on October 25, 1983 at 48 FR 49384, remains in effect today, and is not affected by the delegation from the Secretary herein.

The Secretary has also delegated certain functions pertaining to property management and disposition under the Section 312 Rehabilitation Loan Program to the Assistant Secretary for Housing—Federal Housing Commissioner. The most recent delegation to the Assistant Secretary for Housing—Federal Housing Commissioner was published in the **Federal Register** on January 16, 1984, at 49 FR 1942. That delegation remains in effect today, and is not affected by this present delegation from the Secretary.

Pursuant to Section 306(e) of the National Housing Act, 12 U.S.C. 1721(e), Ginnie Mae has authority to service the Section 312 loan portfolio. Although the Section 312 Rehabilitation Loan Program was terminated by Section 289 of the National Affordable Housing Act of 1990 (42 U.S.C. 12839), Section 312 loan collection functions must continue, and 12 U.S.C. 1701g–5c transferred the assets and liabilities of the Section 312 revolving loan fund to the Department's revolving fund for liquidating programs.

Most loan management and collection functions of the Assistant Secretary for CPD have been contracted out over the years under various contractual arrangements. Under these arrangements, contractor staff may prepare legal instruments to be executed by HUD officials in connection with the servicing and collection of Section 312 loans. In order to expedite property foreclosures and judgments against the Section 312 borrowers in default and to take other actions associated with the servicing of Section 312 loans, the Secretary has determined that the President of Ginnie Mae should be authorized to sign written instruments and documents with respect to Section 312 loans, as enumerated in Section A, below, and to redelegate this authority, as enumerated in Section B, below.

Accordingly, the Secretary delegates authority as follows:

Section A. Authority Delegated. The President, Ginnie Mae, is hereby delegated the authority to execute in the name of the Secretary written instruments relating to Section 312 Rehabilitation Loans, including but not limited to: Deeds of release, quit claim deeds and deeds of reconveyance; substitutions of trustees; compromises; write-offs; close outs; releases related to insurance policies; assignments or satisfactions of notes, mortgages, deeds of trust and other security instruments; and any other written instrument or document related to, or necessary for, servicing or collection of a Section 312 loan, including any such instrument related to Section 312 loan servicing-related property management and disposition functions that have not been delegated to the Assistant Secretary for Housing.

Section B. Authority to Further Redelegate. The President, Ginnie Mae, is authorized to redelegate the authority delegated in Section A.

Authority: Sec. 312 of the Housing Act of 1964, 42 U.S.C. 1452b; 12 U.S.C. 1701g–5c; and section C, Delegation of Authority, 48 FR 49384, October 25, 1983; Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C., Section 3535(d).

Dated: May 19, 1997.

Andrew Cuomo,

Secretary of Housing and Urban Development.

[FR Doc. 97–13943 Filed 5–27–97; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4245–D–02]

Office of the President of the Government National Mortgage Association; Redelegation of Authority To Execute Legal Instruments Pertaining to Section 312 Rehabilitation Loans

AGENCY: Office of the President of the Government National Mortgage Association, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the President of the Government National Mortgage Association (Ginnie Mae) individually redelegates to the Executive Vice President, the Vice President of Finance, the Director of Asset Management, and each Ginnie Mae Asset Management Specialist authority to execute legal instruments, including those enumerated below, pertaining to Section 312 loans.

EFFECTIVE DATE: May 19, 1997.

FOR FURTHER INFORMATION CONTACT: J. Nicholas Shelley, Ginnie Mae Office of Policy, Planning and Risk Management, Room 6206, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–2772. (This is not a toll-free number.) For hearing/speech-impaired individuals, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: Since the Section 312 Rehabilitation Loan program was terminated by Section 289 of the National Affordable Housing Act of 1990 (42 U.S.C. 12839), no Section 312 loans are now being made. However, Section 312 loan collection functions must continue, and 12 U.S.C 1701g–5c transferred the assets and liabilities of the Section 312 revolving loan fund to the Department's revolving fund for liquidating programs. Although the Assistant Secretary for Community Planning and Development (CPD) has historically administered the Section 312 program, most loan management and collection functions of CPD have been contracted out over the years under various contractual arrangements. Under these arrangements, contractor staff may prepare legal instruments to be executed by HUD officials in connection with the servicing and collection of Section 312 loans.

Pursuant to Section 306(e) of the National Housing Act, 12 U.S.C. 1721(e), Ginnie Mae has authority to service the Section 312 loan portfolio. In order to expedite property foreclosures and judgments against the Section 312 borrowers in default and to take other actions associated with the servicing of Section 312 loans, the Assistant Secretary for CPD and the President of Ginnie Mae have agreed that one or more Ginnie Mae employees should be authorized to sign legal instruments with respect to servicing and collection of Section 312 loans.

In a new delegation of authority being published concurrently herewith, the Secretary of Housing and Urban Development has delegated to the President of Ginnie Mae the authority to

execute legal instruments pertaining to Section 312 loans. In this document, the President of Ginnie Mae individually redelegates the authority to execute such legal instruments to the Executive Vice President, the Vice President of Finance, the Director of Asset Management and each Ginnie Mae Asset Management Specialist. In a Revocation of Authority being published concurrently herewith, the Assistant Secretary for CPD is revoking authority previously delegated to certain CPD officials to execute legal instruments pertaining to Section 312 loans.

Accordingly, the President of Ginnie Mae redelegates authority as follows:

Section A. Authority Delegated

The Executive Vice President, the Vice President of Finance, the Director of Asset Management and each Ginnie Mae Asset Management Specialist is individually redelegated the authority to execute in the name of the Secretary written instruments relating to Section 312 Rehabilitation Loans, including but not limited to: Deeds of release, quit claim deeds and deeds of reconveyance; substitutions of trustees; compromises; write-offs; close outs; releases related to insurance policies; assignments or satisfactions of notes, mortgages deeds of trust and other security instruments; and any other written instrument or document related to, or necessary for, servicing or collection of a Section 312 loan, including any such instrument related to Section 312 loan servicing-related property management and disposition functions that have not been delegated to the Assistant Secretary for Housing.

Section B. Authority to Further Redelegate

This authority may not be further relegated.

Authority: Sec. 312 of the Housing Act of 1964, 42 U.S.C. 1452b; 12 U.S.C. 1701g–5c; and section C, Delegation of Authority, 48 FR 49384, October 25, 1983; Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C., Section 3535(d).

Dated: May 19, 1997.

Kevin G. Chavers,

President, Government National Mortgage Association.

[FR Doc. 97–13944 Filed 5–27–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Western Water Policy Review Advisory Commission Meeting

AGENCY: Department of the Interior.

ACTION: Notice of open meeting.

SUMMARY: As required by the Federal Advisory Committee Act, notice is hereby given that the Western Water Policy Review Advisory Commission (Commission), established by the Secretary of the Interior under the Reclamation Projects Authorization and Adjustment Act of 1992, will meet to hear testimony from environmental organizations, and to discuss draft chapters of the Commission Report and meet on other Commission business.

DATES: Tuesday, June 10, 1997, 1:30 p.m.–5:00 p.m.; Wednesday, June 11, 1997, 8:00 a.m.–5:00 p.m.; Thursday, June 12, 1997, 8:00 a.m.–5:00 p.m.

ADDRESSES: The Tuesday meeting will be held in the Multi-purpose Room at the San Francisco Bay Model Visitor Center, 2100 Bridgeway; Sausalito, California. The Wednesday and Thursday meetings will be held at the Sir Francis Drake Hotel, 450 Powell Street, San Francisco, California. Room locations in the hotel will be posted in the hotel lobby.

Copies of the agenda are available from the Western Water Policy Review Office, D–5001; P.O. Box 25007, Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: The Commission Office at telephone (303) 236–6211, FAX (303) 236–4286, or E-mail to rgunnarson@do.usbr.gov.

SUPPLEMENTARY INFORMATION:

Public Participation: Written statements may be provided in advance to the Western Water Policy Review Office, address cited under the **ADDRESSES** caption of this notice, or submitted directly at the meeting. Statements will be provided to the members prior to the meeting if received by no later than May 30, 1997. The Commission's schedule will not allow time for formal presentations by the public during the meeting.

Dated: May 20, 1997.

Larry Schulz,

Administrative Officer.

[FR Doc. 97–13849 Filed 5–27–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Coastal Barrier Improvement Act of 1990 (P.L. 101–591); Amendments to the Coastal Barrier Resources System

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice

SUMMARY: The Department of the Interior, through the Fish and Wildlife Service, has completed modifications to the boundaries of eight units of the Coastal Barrier Resources System (System), all in Florida, as required by Section 220 of Public Law 104–333. The purpose of this notice is to inform the public about the filing, distribution, and availability of maps reflecting these modifications.

DATES: The boundary revisions for these eight units became effective on November 12, 1996.

ADDRESSES: Copies of the revised maps for these eight System units are available for purchase from the U.S. Geological Survey, Earth Science Information Center, P.O. Box 25286, Denver, Colorado 80225. Official maps can be reviewed at the Fish and Wildlife Service offices listed in the appendix.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Glomb, Department of the Interior, U.S. Fish and Wildlife Service, Division of Habitat Conservation, (703) 358–2201.

SUPPLEMENTARY INFORMATION: Section 4 of the Coastal Barrier Improvement Act of 1990 (CBIA), describes a series of maps approved by Congress entitled ''Coastal Barrier Resources System'' dated October 24, 1990. These maps identify and depict those coastal barriers located on the coasts of the Atlantic Ocean, Gulf of Mexico, and the Great Lakes that are subject to the limitations outlined in the CBIA. These maps are in the official custody of the U.S. Fish and Wildlife Service.

Sections 3 and 4 of the CBIA define the Department's responsibilities regarding the System maps. These responsibilities include preparing and distributing copies of the maps. Using the original maps submitted to the Department by the Congress, the Department reproduced these maps for distribution. Notification of the filing, distribution, and availability of the maps entitled ''Coastal Barrier Resources System'' dated October 24, 1990, was published in the **Federal Register** on June 6, 1991, (56 FR 26304–26312).

Section 220 of Public Law 104–333, enacted on November 12, 1996, requires the Department to revise the maps of the following Coastal Barrier Resources System Units, all in Florida:

Conch Island Unit P05,
Matanzas River Unit P05A,
Vero Beach Unit P10,
Hutchinson Island Unit P11,
Frank B. McGilvrey Unit P11A,
Sanibel Island Unit P18,
Cedar Keys Unit P25, and
Moreno Point Unit P32.

The law directs the Department to correct the official System maps ''to

ensure that depictions of areas on those maps are consistent with the depictions of areas on the maps entitled 'Amendments to Coastal Barrier Resources System', dated November 1, 1995, and June 1, 1996, and on file with the Secretary.'' The following boundary modifications have been made, consistent with the boundary modifications depicted on the maps from Congress.

Conch Island Unit P05—The northern boundary of this unit was modified to remove certain property from the System.

Matanzas River Unit P05A—Twelve lots specified on the amending maps have been removed from the System. The overall boundary of the unit remains the same.

Vero Beach Unit P10—The northern boundary of the unit was modified to remove certain property from the System.

Hutchinson Island Unit P11—The northern boundary of an excluded area within the unit was modified to remove certain property from the System.

Frank B. McGilvrey Unit P11A—The northern boundary of the unit was modified to remove certain property from the System.

Sanibel Island Unit P18—The southern and western boundaries of this unit were modified to remove certain property from the System.

Cedar Keys Unit P25—A certain peninsula was removed from the System, expanding an excluded area.

Moreno Point Unit P32—Certain property along the shoreline was removed from the System, expanding an excluded area. Certain other property inland was added to the System. Certain State Park land was designated as a new ''otherwise protected area'' labeled P32P.

Copies of the revised System maps have been filed with the House of Representatives Committee on Resources and the Committee on Banking and Financial Services, and the Senate Committee on Environment and Public Works. Copies of these maps have been distributed to the Chief Executive Officer (or representative) of each appropriate Federal, State, or local agency having jurisdiction over the areas in which the modified units are located. Copies of the maps are also available for inspection at Service headquarters, regional, and field offices (see addresses in appendix).

Appendix

Washington Office

U.S. Fish and Wildlife Service, Division of Habitat Conservation, 4401 N. Fairfax Drive, Room 400, Arlington, Virginia 22203, (703) 358–2201

Regional Office

Region 4, U.S. Fish and Wildlife Service, 1875 Century Blvd., Atlanta, Georgia 30345, (404) 679–7125

Field Offices

Field Supervisor, U.S. Fish and Wildlife Service, 6620 S. Point Dr. South, #310, Jacksonville, Florida 32216, (904) 232–2580. Florida: Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Dixie, Levy, Pasco Counties.

Field Supervisor, U.S. Fish and Wildlife Service, 1360 U.S. Highway 1, #5, Vero Beach, FL 32961, (561) 562–3909. Florida: Pinellas, Hillsborough, Manatee, Sarasota, Charlotte, Lee, Collier, Monroe, Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River Counties.

Field Supervisor, U.S. Fish and Wildlife Service, 1612 June Ave., Panama City, FL 32405–3721, (904) 769–0552. Florida: Wakulla, Franklin, Gulf, Bay, Walton, Okaloosa, Santa Rosa, Escambia Counties.

[Notice of modification to eight units of the Coastal Barrier Resources System.]

Dated: April 25, 1997.

John G. Rogers,

Acting Director, U.S. Fish and Wildlife Service, U.S. Department of the Interior.

[FR Doc. 97–13854 Filed 5–27–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Master Development Plan for Section 14 on the Agua Caliente Indian Reservation, Located Within the Boundaries of the City of Palm Springs, Riverside County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent and public scoping meetings.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) and the City of Palm Springs, in cooperation with the Agua Caliente Band of Cahuilla Indians, intend to prepare a joint Environmental Impact Statement and Environmental Impact Report (EIS/EIR) for the approval of the Section 14 Master Development Plan on the Agua Caliente Indian Reservation located within the boundaries of the City of Palm Springs, Riverside County, California. A description of the proposed project, location, and environmental considerations to be addressed in the EIS/EIR are provided below. In addition to this notice, two public meetings will be held on the proposal and the preparation of the EIS/EIR. This notice is published in accordance with the National Environmental Policy Act (NEPA) regulations found in 40 CFR 1508.22. The purpose of this Notice is to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS/EIR. Comments and participation in this scoping process are encouraged.

DATES: Comments should be received within 30 days of the date of this Notice. Public scoping meetings will be held June 11, 1997, from 1:30 p.m. to 5:00 p.m. and June 12, 1997, from 6:30 p.m. to 10:30 p.m.

ADDRESSES: Comments should be addressed to Ronald Jaeger, Area Director, Sacramento Area Office, 2800 Cottage Way, Room W2550, Sacramento, California 95825. Public scoping meetings will be held on June 11, 1997, at the Planning Commission Meeting in the City Council Chambers, City Hall, 3200 East Tahquitz Canyon Way, Palm Springs, California, which begins at 1:30 p.m. (public hearings begin at 2:00 p.m.) and ends at 5:00 p.m., telephone number (760) 323–8245; and on June 12, 1997, at the Palm Springs Public Library, 300 South Sunrise Way, Palm Springs, California, from 6:30 p.m. to 10:30 p.m., telephone number (760) 322–7323.

FOR FURTHER INFORMATION CONTACT: Robert Eckart, Environmental Protection Specialist, Bureau of Indian Affairs, Sacramento Area Office, 2800 Cottage Way, Room W2550, Sacramento, California 95825, telephone number (916) 979–2600 extension 254; or Gloria Mesteth, Environmental Coordinator, Bureau of Indian Affairs, Palm Springs Field Office, 555 South Palm Canyon Drive, Palm Springs, California 92263, telephone number (760) 323–1725.

SUPPLEMENTARY INFORMATION: The proposed action is approval of the Section 14 Master Development Plan, which will facilitate approval of future leases on trust lands by the BIA in Section 14. Section 14 is located on the Agua Caliente Indian Reservation in downtown Palm Springs. It is comprised of Tribally owned parcels, allotted parcels, and parcels owned in fee. The section is bounded by Alejo Road to the north, Sunrise Road to the east, Ramon Road to the south, and Indian Canyon Drive to the west. The 640 acre section is one block east of downtown Palm Springs and one mile west of Palm Springs Regional Airport.

The intent of the Section 14 Master Development Plan is to (1) create an attractive, feasible and marketable vision for the area's development; (2)

achieve the highest and best use of Indian trust lands; (3) maximize and coordinate the development potential of Indian trust and fee lands in Section 14; (4) ensure compatibility with existing, proposed and planned development in the downtown area; (5) achieve a comprehensive master plan of development that is high quality, marketable and can be implemented in a timely manner; (6) revitalize existing uses; and (7) provide a specific plan that ensures quality development will occur independent of ownership.

Businesses that are expected to be attracted and which will result in new construction include restaurants and a variety of retail establishments. These establishments will consist of cinemas, live theaters, museums, and ''entertainment retail'' shopping where customers are entertained as they browse. There will also be health, sports and recreational complexes along with a large-scale hotel located across from the existing Convention Center.

In addition to the new development, existing structures will receive facade rehabilitation in order to blend in with the new destination resort theme of Section 14. Streets and streetscapes will be redesigned and enhanced within the section to promote a pedestrian-friendly, destination resort environment.

Alternative transportation modes will be established within the area to help limit the amount of automobile traffic. Walkways and bikeways will be linked into the existing street grid and the major attractions of the area. Shade features, such as awnings, overhangs and trellises will be established to attract both recreational and destination oriented pedestrians and cyclists. A rubber-tire shuttle will be installed linking Section 14, the airport and downtown with stops at major hotels and attractions.

Required actions by the BIA and the City of Palm Springs to be evaluated in the EIS/EIR are the approval of lease transactions by the BIA and the approval of a Specific Plan, General Plan amendments, and zone changes by the City of Palm Springs. Environmental issues expected to be addressed include: topography, geology, soils, seismicity, water resources, biological resources, cultural and scientific resources, land use, air quality, traffic, noise, health and safety, public services and utilities, light and glare, and visual resources. In addition to the Year 2010 project proposal, the EIS/EIR will address a number of alternatives, including (1) no action, which would keep the City of Palm Springs' General Plan in effect, (2) less intense development, (3) an alternate design, and (4) an ultimate build-out of 50 years. The range of issues addressed may be expanded, depending upon comments received during the scoping process.

This notice is published pursuant to Sec. 1501.7 and Sec. 1508.22 of the Council of Environmental Quality Regulations (40 CFR, Part 1500 through 1508) implementing the procedural requirements of the NEPA of 1969, as amended (42 U.S.C. 4321 *et seq.*), Department of the Interior Manual (516 DM 1–6) and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM–8.

Dated: May 22, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–13949 Filed 5–27–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/Final Environmental Impact Statement/ Development Concept Plan Wolf Trap Farm Park for the Performing Arts, Virginia

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of the general management plan/final environmental impact statement/development concept plan for Wolf Trap Farm Park for the Performing Arts.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a General Management Plan/Final Environmental Impact Statement/ Development Concept Plan (GMP/FEIS/ DCP) for Wolf Trap Farm Park for the Performing Arts, Virginia.

DATES: 30-day no-action period will follow the Environmental Protection Agency's notice of availability of the GMP/FEIS/DCP.

ADDRESSES: Public reading copies of the GMP/FEIS/DCP will be available for review at the following location: Office of the Superintendent, Wolf Trap Farm Park for the Performing Arts, 1551 Trap Road, Vienna, Virginia 22182, Telephone: (703) 255–1808.

Dated: May 12, 1997.

Terry R. Carlstrom,

Acting Regional Director, National Capital Region.

[FR Doc. 97–13911 Filed 5–27–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 17, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by June 12, 1997.

Carol D. Shull,

Keeper of the National Register.

ALASKA

Valdez-Cordova Borough-Census Area

Chistochina Trading Post, Jct. of Glenn Hwy and Tok cutoff, Gakona vicinity, 97000553

ARKANSAS

Greene County

Paragould War Memorial, Jct. of 3rd and Court Sts., Paragould, 97000554

Mississippi County

Kress Building, 210 W. Main St., Blytheville, 97000555

COLORADO

Denver County

Capitol Life Insurance Building—Capitol Life Tower Addition, 1600 Sherman St. and 225 E. Sixteenth St., Denver, 97000556

FLORIDA

Madison County

Jordan-Beggs House, 211 N. Washington St., Madison, 97000557

GEORGIA

Baldwin County

Westbrook-Hubert Farm, 143 Little Rd., Meriwether vicinity, 97000558

Greene County

Early Hill Plantation, Lickskillet Rd. 0.5 NE of US 278, Greensboro vicinity, 97000559

ILLINOIS

Rock Island County

Rock Island National Cemetery, (Civil War Era National Cemeteries MPS), 250.25 mi N of southern tip of Rock Island, Moline, 97000560

MASSACHUSETTS

Franklin County

Alvah Stone Mill, 42 Greenfield Rd., Montague, 97000562

Middlesex County

Blake and Knowles Steam Pump Company National Register District, Bounded by

Third, Binney, Fifth, and Roger Sts., Cambridge, 97000561

MICHIGAN

Leelanau County

Port Oneida Rural Historic District, Roughly bounded by Lake Michigan, Shell Lake, Bass Lake, and Tucker Lake, Maple City vicinity, 97000563

NEW JERSEY

Cape May County

Ocean City City Hall, Jct. of 9th St. and Asbury Ave., Ocean City, 97000565

Warren County

Cenetary Collegiate Institute, 400 Jefferson St., Hackettstown, 97000564

NEW YORK

Columbia County

Wilbor, The, House, 0.25 mi. NE of jct. of I–90 and Thorne Rd., Old Chatham, 97000567

Greene County

Hunter Mountain Fire Tower, Roughly following Hunter Brook from Spruceton Rd. to Hunter Mountain, Hunter, 97000569

Oneida County

Mills House, 507 N. George St., Rome, 97000566

Orange County

Thompson, Alexander, House, Jct. of NY 302 and Thompson Ridge Rd., Crawford, 97000568

NORTH CAROLINA

Craven County

Ebenezer Presbyterian Church, (Historic African American Churches in Craven County MPS), 720 Bern St., New Bern, 97000573

First Missionary Baptist Church, (Historic African American Churches in Craven County MPS), 819 Cypress St., New Bern, 97000574

Rue Chapel AME Church, (Historic African American Churches in Craven County MPS), 709 Oak St., New Bern, 97000572

St. John's Missionary Baptist Church, Historic African American Churches in Craven County MPS), 1130 Walt Bellamy Dr., New Bern, 97000575

St. Peter's AME Zion Church, (Historic African American Churches in Craven County MPS), 615 Queen St., New Bern, 97000571

Lincoln County

Magnolia Grove (Boundary Increase), Jct. of NC 1309 and NC 1313, Iron Station vicinity, 97000570

OHIO

Mahoning County

Masonic Temple, (Downtown Youngstown MRA), 223–227 Wick Ave., Youngstown, 86003830

OREGON

Benton County

Bethers, George W., House, 225 N. 8th St., Philomath, 97000590

Deschutes County

Sather, Evan Andreas, House, 7 NW. Tumalo Ave., Bend, 97000577

Douglas County

Kohlhagen Building, 630 SE. Jackson St., Roseburg, 97000589

Smith, Henry Clay, House, 275 Winston Section Rd., Winston vicinity, 97000585

Jackson County

Parsons, Reginald, Dead Indian Lodge, Hyatt Prairie Rd., 21 mi. E of Ashland, Ashland vicinity, 97000588

Linn County

Lebanon Southern Pacific Railroad Depot, 735 Third St., Lebanon, 97000584

Marion County

Nelson, Carl E., House, 960 E. St. NE, Salem, 97000587

Multnomah County

Annand—Loomis House, 1825 SW. Vista Ave., Portland, 97000586

Barnhart—Wright House, 1828 NE. Knott St., Portland, 97000582

Genoa Building, 2832 SE. Belmont St., Portland, 97000580

Spies— Robinson House, 2424 NE. Seventeenth Ave., Portland, 97000583

Umatilla County

Clarke, William J. and Lodema, House, 203 NW. Despain Ave., Pendleton, 97000576

Wallowa County

Flora School, 82744 Church St., Flora, 97000579

Wasco County

Reuter, Dr. J. A., House, 420 E. Eighth St., The Dalles, 97000578

Yamhill County

Minthorn Hall, North St. on the George Fox University Campus, Newberg, 97000581

[FR Doc. 97–13864 Filed 5–27–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Biological Opinion of Operations, Maintenance, and Sensitive Species of the Lower Colorado River

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of Biological Opinion and notice of public meetings on Bureau of Reclamation's lower Colorado River operations and maintenance.

SUMMARY: The purpose of this action is to provide notice of the availability for review, the Biological Opinion prepared under the requirements of Section 7 of the Endangered Species Act for operations and maintenance of the lower Colorado River. Public meetings will be held to summarize and help ensure understanding of the Biological Opinion.

DATES AND ADDRESSES: Written comments on the Biological Opinion are requested no later than July 11, 1997. Reclamation invites all interested parties to attend public meetings to be held at the following three locations:

June 16, 1997—10:00 a.m., McCarran Airport, Commissioner's Meeting Room, Las Vegas, Nevada.

June 17, 1997—9:00 a.m., LaQuinta Inn 2510 W. Greenway Road, Phoenix, Arizona.

June 18, 1997—6:00 p.m., Yuma Desalting Plant 7301 Calle Agua Salada, Room C–120, Yuma, Arizona.

FOR FURTHER INFORMATION CONTACT: Written comments should be addressed to Mr. Thomas H. Shrader, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, NV 89006–1470, telephone: (702) 293–8703. Copies of the Biological Opinion may be obtained at the above address.

SUPPLEMENTARY INFORMATION: The Biological Opinion addresses Reclamation's current and projected routine, ongoing lower Colorado River operations and maintenance over the next five years, critical habitat and the biology and distribution of sensitive species found along the lower Colorado River, and the potential effect of such operations and maintenance on species and habitat that have protected status under the Endangered Species Act of 1973, as amended. The geographic area addressed in this document is the mainstem reach of the Colorado River from the upper end of Lake Mead at Pierce Ferry to the Southerly International Boundary with the Republic of Mexico. Reclamation will consolidate all comments on the document for use in the development and implementation of a multi-species conservation program (MSCP) in the Lower Basin.

Dated: May 15, 1997.

Laura Herbranson,

Director, Resource Management and Technical Services.

[FR Doc. 97–13860 Filed 5–27–97; 8:45 am]

BILLING CODE 4310–94–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (703) 516–4743 or via email, MBall@USAID.Gov.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0514.
Form Number: None.
Type of Submission: Renew.
Title: USAID Regulation 1—Rules and Procedures Applicable to Commodity Transactions.
Purpose: USAID finances transactions under Commodity Imports Programs and needs to assure that the transaction complies with applicable statutory and regulatory requirements. In order to assure compliances and request refund when appropriate, information is required from host country importers, suppliers receiving from host country importers, suppliers receiving USAID funds and banks making payments for USAID.
Annual Reporting Burden: Respondents: 358, Annual responses: 1918, Annual burden hours: 5120.

OMB Number: OMB 0412–0538.
Form Number: USAID 1381–4.
Type of Submission: Reinstatement of a previously approved collection.
Title: Participant Data Form (PDF).
Purpose: The Participant Data Form supplies data to the Participant Training Information System (PTIS). The PTIS, in the near future, will be replaced by the Management Information System (MIS). The PTIS is the Agency's computer-based repository of official data on all USAID-sponsored participants. The Participants Data Form is completed by contractors, grantees and host government entities for all USAID-sponsored participants in training in the U.S. The Participant Data Form notifies USAID of the participants arrival. It is used to enroll the participant in the health plan and to advise USAID of all changes regarding the participant's program. Finally, it is used to inform USAID that the program has ended and the participant has returned home.
Annual Reporting Burden: Respondents: 300, Annual responses: 300, Annual burden hours: 7661.

Notice of Public Information Collection Being Reviewed by the U.S. Agency for International Development, Proposed Collections; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID 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 for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections 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 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: Send comments on these information collections on or before May 31, 1997.

ADDRESSES INFORMATION: Contact Mary Ann Ball, Bureau for Management, Office of Administrative Services, Information Support Services Division, U.S. Agency for International Development, Room 1113, SA–16, Washington, DC, (703) 516–1743 or via e-mail Mball@USAID.GOV.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Eligibility for Exchange Visitor (J–1) Status Visas.
OMB No: 0412–00019.
Form No: IAP–66A.
Type of Review: Extension.
Purpose: Applicants must apply for Certificate of Eligibility for Exchange Visitor (J–1) Status visas. J–1 Status visas are needed by USAID sponsored participants (trainees) and are provided by the means of the U.S. Exchange Visitor Program. Visas for these trainees are issued by the Immigration and Naturalization Services upon receipt of from IAP–66, Certificate of Eligibility for Exchange Visitor (J–1) Status.
Annual Reporting Burden: Respondents: 25,000, Total Annual responses: 25,000, Total Annual burden requested: 6,250.

Title: U.S.A.I.D. Contractor Employee Physical Examination Form.
OMB No: 0412–0536.
Form No: USAID 1420–62.
Type of Review: Revision of a currently approved collections.
Purpose: When U.S.A.I.D. hires contractor personnel for overseas assignments, the contractors are required to obtain a physician's certification that they are physically qualified to engage in the type of activity for which they will be employed. Physicians who do not regularly deal with patient going to lesser developed country do not appreciate the difficulties of providing even the most basic medical services in many such areas. This form requests the minimum information needed in order to make a determination as to whether or not the individual should travel to the post in question. The State's Department's Office of the Medical Services (M/MED) reviews the form prior to departure to insure the Mission or Embassy medical facility can meet special medical needs of the contractor. Thus the need for future medical evacuations would be reduced, since M/MED would find most existing medical problems that could not be dealt with locally and the individual would then most likely be denied approval to post.
Annual Reporting Burden: Respondents: 3300, Total Annual responses: 3300, Total Annual burden requested: 13200.

Title: USAID Acquisition Regulations (USAIDAR—Information Collection Elements.
OMB No: 0412–0520.
Form No: USAID 1420–17, Contractor Biographical Data Sheet.
Type of Review: Revision of a currently approved collections.
Purpose: USAID is authorized to make a contract with any corporation, international organization, or other body of persons in or outside of the United States in furtherance of the purposes and within limitations of the Foreign Assistance Act (FAA). The information collection requirements placed on the public are published in 48 CFR Chapter 7. These are all USAID unique procurement requirements. The preaward requirements are based on a need for prudent management in the determination that an offeror either has or can obtain the ability to competently manage development assistance programs utilizing public funds. The requirements for information collection requirements during the post-award period are based on the need to administer public funds prudently.
Annual Reporting Burden: Respondents: 3679, Total Annual

responses: 67,350, Total Annual burden requested: 307,065.

Dated: May 16, 1997.

Willette Smith,

Acting Chief, Information Support Services Division, Office of Administrative Services, Bureau of Management.

[FR Doc. 97–13861 Filed 5–27–97; 8:45 am]

BILLING CODE 6116–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

June 10, 1997; Board of Directors Meeting; Sunshine Act Meeting

TIME AND DATE: Tuesday, June 10, 1997, 1:00 pm (open portion), 1:30 pm (closed portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting open to the Public from 1:00 pm to 1:30 pm. Closed portion will commence at 1:30 pm (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Approval of March 11, 1997 Minutes (open portion).
4. Meeting schedule through March, 1998.

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 pm).

1. Finance Project in Guatemala.
2. Insurance Project in Brazil.
3. Pending Major Projects.
4. OPIC's Small Business Initiative.
5. OPIC's Reauthorization.
6. Africa Initiative.
7. Personnel Appointment.
8. Approval of March 11, 1997 Minutes (closed portion).

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: May 23, 1997.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 97–14066 Filed 5–23–97; 12:32 pm]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7 and 42 U.S.C. § 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *Shiny Rock Mining Corporation*, Civil Action No. 97–764–JO, was lodged on May 20, 1997 with the United States District Court for the District of Oregon. The proposed consent decree resolves claims against Shiny Rock Mining Corporation (Shiny Rock) and Persis Corporation (Persis) under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9607 and 9613 (CERCLA), for response costs incurred and to be incurred by the United States Department of Agriculture, Forest Service (Forest Service) to address releases and threatened releases of hazardous substances at or from the Shiny Rock Amalgamated Mill Site, Marion County, Oregon (Site). In a complaint filed contemporaneously with the lodging of the proposed consent decree, the United States alleged that defendants Shiny Rock and Persis are liable under CERCLA as owners or operators of the Site at the time hazardous substances were disposed of at the Site.

The proposed consent decree provides that defendants will pay $112,500 to the United States for the past and future response costs incurred and to be incurred by the Forest Service and will perform the Remedial Action as set forth in the March 19, 1997 Record of Decision (ROD) issued by the Forest Service. The proposed consent decree also provides that the Forest Service will contribute up to $750,000 in federal funding towards the costs associated with the implementation of the Remedial Action. In addition, the proposed consent decree provides that the United States covenants not to sue defendants under Sections 106, 107, and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613, and that defendants will receive contribution protection under Section 113 of CERCLA, 42 U.S.C. § 9613.

DOJ will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Shiny Rock Mining Corporation*, DPK Ref/ #90–11–2–1047.

The proposed consent decree may be examined at the Office of the United States Attorney, 888 Southwest 5th Avenue, Suite 1000, Portland, Oregon; Willamette National Forest, 211 E. 7th Ave., Eugene, Oregon; Detroit Ranger Station, Highway 22, Mill City, Oregon; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $26.75 (25 cents per page reproduction costs), for a copy of the proposed consent decree only or $51.75, for a copy of the proposed consent decree with appendices, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section.

[FR Doc. 97–13859 Filed 5–27–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; 30 CFR 77.1901, Records of Preshift and Onshift Inspections of Slope and Shaft Areas

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed reinstatement of the information collection related to Records of Preshift and Onshift Inspections of Slope and Shaft Areas. MSHA 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 submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the For Further Information Contact section of this notice.

DATES: Submit comments on or before July 28, 1997.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy.

FOR FURTHER INFORMATION CONTACT: George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mr. Fesak can be reached at gfesak@msha.gov (Internet E–mail), (703) 235–8378 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The sinking of slopes and shafts is a particularly hazardous operation where conditions change drastically in short periods of time. Explosive methane and other harmful gases can be expected to infiltrate the work environment at any time. The working environment is typically a confined area in close proximity to moving equipment. Mandatory safety standard 30 CFR 77.1901 requires coal mine operators to conduct examinations of slope and shaft areas for hazardous conditions, including tests for methane and oxygen deficiency, within 90 minutes before each shift and once during each shift, and before and after blasting. The surface area surrounding each slope and shaft is also required to be inspected for hazards.

The standard also requires that a record be kept of the results of the inspections. The record consists of a description of any hazardous condition found and the corrective action taken to abate it. The record is necessary to ensure that the inspections and tests are conducted in a timely fashion and that corrective action is taken when hazardous conditions are identified. The record is maintained at the mine site for the duration of the operation.

II. Current Actions

MSHA proposes to continue the information collection requirement related to records of preshift and onshift inspections of slope and shaft areas for an additional 3 years. MSHA believes that eliminating this requirement would expose miners to unnecessary risk of injury or death. The records are used by slope and shaft supervisors and employees, State mine inspectors, and Federal mine inspectors. The records show that the examinations and tests were conducted and give insight into the hazardous conditions that have been encountered and those that may be encountered. The records of inspections greatly assist those who use them in making decisions that will ultimately affect the safety and health of slope and shaft sinking employees.

Type of Review: Reinstatement without change.

Agency: Mine Safety and Health Administration.

Title: Records of Preshift and Onshift Inspections of Slope and Shaft Areas.

OMB Number: 1219–0082.

Recordkeeping: Records are required to be kept for the duration of the operation.

Affected Public: Business or other for-profit institutions.

Cite/Reference/Form/etc.: 30 CFR 77.1901.

Total Respondents: 30.

Frequency: Twice per shift.

Total Responses: 10,164.

Average Time per Response: 1.25 hours.

Estimated Total Burden Hours: 12,705 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 20, 1997.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 97–13935 Filed 5–27–97; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Advisory Committee for Veterans Employment and Training; Notice of Open Meeting

The Secretary's Advisory Committee for Veterans Employment and Training was established under section 4100 of title 38, United States Code, to bring to the attention of the Secretary, problems and issues relating to veterans' employment and training.

Notice is hereby given that the Secretary of Labor's Advisory Committee for Veterans Employment and Training will meet on Monday June 16, 1997, in the Department of Labor Secretary's Conference Room, S–2508, 200 Constitution Avenue, N.W., Washington, D.C. from 8:30 a.m. to 4:00 p.m.

Written comments are welcome and may be submitted by addressing them to: Mr. Thomas S. Keefe, Chief of Staff, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–1313, Washington, D.C. 20210.

The primary items on the agenda are:

- Adoption of minutes of the previous meeting.
- Briefing on Fiscal Year 1998 President's budget request.
- Legislative update.
- Draft plan of annual ACVET report.

The meetings will be open to the public.

Persons with disabilities, needing special accommodations, should contact Thomas S. Keefe at telephone number 202–219–9116 no later than Friday, June, 13, 1997.

Signed at Washington, D.C. this 21st day of May, 1997.

Preston M. Taylor Jr.,

Assistant Secretary of Labor for Veterans' Employment and Training.

[FR Doc. 97–13936 Filed 5–27–97; 8:45 am]

BILLING CODE 4510–79–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–075)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: NASA hereby gives notice that Electro-Tech Systems, Inc., P.O. Box 561, New Town Branch, Boston, Massachusetts 02258, has applied for an

exclusive license to practice the invention described and claimed in U.S. Patent No. 5,373,110, entitled ''Ion Exchange Polymer and Method of Making,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Lewis Research Center.

DATES: Responses to this notice must be received by July 28, 1997.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Attorney, NASA Lewis Research Center, Mail Stop 500–118, Cleveland, OH 44135, telephone (216) 433–8855.

Dated: May 20, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–13921 Filed 5–27–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–074]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Hyperthermia Technologies, Inc., of Plymouth, NM 55447, has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,261,874, entitled Extra-Corporeal Blood Access, Sensing, and Radiation Methods and Apparatus and U.S. Patent No. 5,429,594, entitled Extra-Corporeal Blood Access, Sensing, and Radiation Methods and Apparatus, which are both assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Johnson Space Center.

DATES: Responses to this notice must be received by July 28, 1997.

FOR FURTHER INFORMATION CONTACT: James M. Cate, Patent Attorney, Johnson Space Center, Mail Code HA, Houston, TX 77058–3696, telephone (281) 483–1001.

Dated: May 20, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–13920 Filed 5–27–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–076)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: NASA hereby gives notice that Solar Universal Technologies, Inc., of 13308 Euclid Avenue, Cleveland, OH 44112, has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,373,110, entitled ''Ion Exchange Polymer and Method of Making,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Lewis Research Center.

DATES: Responses to this notice must be received by July 28, 1997.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Attorney, NASA Lewis Research Center, Mail Stop 500–118, Cleveland, OH 44135, telephone (216) 433–8855.

Dated: May 20, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–13919 Filed 5–27–97; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 398, ''Personal Qualification Statement—Licensee.''

2. *Current OMB approval number:* 3150–0090.

3. *How often the collection is required:* On occasion and every six years (at renewal).

4. *Who is required or asked to report:* Individuals requiring a licensee to operate the controls at a nuclear reactor.

5. *The number of annual respondents:* 1,660 annually.

6. *The number of hours needed annually to complete the requirement or request:* 1,730; approximately 1.04 hours per response.

7. *Abstract:* NRC Form 398 requests detailed information that should be submitted by a licensing candidate when applying for a new or renewal license to operate the controls at a nuclear reactor facility. This information, once collected, would be used for licensing actions and for generating reports on the Operator Licensing Program.

Submit, by July 28, 1997, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6–F33, Washington, DC, 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 21st day of May, 1997.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 97–13868 Filed 5–27–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–01786, License No. 19–00296–10, EA No. 96–027]

Department of Health and Human Services, National Institutes of Health Bethesda, Maryland; Order Imposing a Civil Monetary Penalty

I

The National Institutes of Health (NIH or Licensee), part of the United States Department of Health and Human Services, is the holder of Byproduct Materials License No. 19–00296–10 (license) issued by the former Atomic Energy Commission on December 7, 1956, and most recently renewed by the Nuclear Regulatory Commission (NRC or Commission) on May 19, 1990. The license is currently under timely renewal. The license authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein at the Licensee's facilities in Bethesda, Rockville, Poolesville, and Baltimore, Maryland.

II

Inspections of the Licensee's activities were conducted by the NRC Augmented Inspection Team (AIT) from June 30 through November 15, 1995, and by a Special Inspection Team on October 23–24, and November 6–10, 1995, at the Licensee's facility located in Bethesda, Maryland. The results of these inspections 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 August 23, 1996. The Notice states the nature of the violations, the provisions of the NRC requirements that the Licensee had violated, and the amount of the civil penalty proposed for one of the violations (Violation I). The Licensee responded to the Notice in a letter dated September 23, 1996. In its response, the Licensee disputes Violation I as well as the severity level associated with the violation, and requests withdrawal of the civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the Licensee has not provided an adequate basis for withdrawing Violation I or mitigating the severity level of this violation, or for mitigating the civil penalty associated with this violation. Therefore, a civil penalty in the amount of $2,500 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 $2,500 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 James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 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 I, 475 Allendale Road, King of Prussia, PA 19406.

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:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violation I of the Notice referenced in Section II above, and

(b) Whether on the basis of this violation, this Order should be sustained.

Dated at Rockville, Maryland this 20th day of May 1997.

For the Nuclear Regulatory Commission.

Edward L. Jordan,

Deputy Executive Director for Regulatory Effectiveness, Program Oversight, Investigations and Enforcement.

Appendix

Evaluations and Conclusion

On August 23, 1996, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during two NRC inspections conducted at the Licensee's facility. The Licensee responded to the Notice in a letter dated September 23, 1996. In its response, the Licensee disputes Violation I, for which the civil penalty was assessed, disputes the severity level of the violation, and requests withdrawal of the civil penalty. The NRC's evaluation and conclusions regarding the Licensee's requests are as follows:

I. Restatement of Violation I

10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. As defined in 10 CFR 20.1003, unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above:

(a) On July 6, 1995, the licensee did not secure from unauthorized removal or limit access to licensed material stored in laboratory 5D12 of Building 37, an unrestricted area. Specifically, a member of the NRC AIT found the licensed material inside an unlocked refrigerator that was located within the unlocked laboratory 5D12, and no one was present to control access to this material. The licensed material consisted of approximately 20 millicuries of tritium (H–3) and 2.5 millicuries of carbon-14 (C–14).

(b) On October 23, 1995, the licensee did not secure from unauthorized removal or limit access to licensed material stored in laboratories 4D25,

4D06, 4B03, 6C13, 1B03, and 3C01 of Building 37, unrestricted areas. Specifically, members of the NRC Special Inspection Team found the licensed material inside unlocked refrigerators located in unlocked laboratories, and no one was present to control access to this material. The licensed material consisted of 234 microcuries of phosphorus-32 (P–32) and 720 of microcuries of sulphur-35 (S–35) in Lab 4D25; 20 microcuries of P–32 in Lab 4D06; 3.4 millicuries of H–3 in 4B03; 900 microcuries of S–35 in Lab 6C13; 200 microcuries of S–35, 1140 microcuries of P–32, and 3.7 millicuries of chromium-51 (Cr–51) in Lab 1B03; and 41 microcuries of P–32 and 250 microcuries of S–35 in Lab 3C01.

II. Summary of Licensee's Response to Violation I

NIH disputes that a violation occurred because, according to NIH, ''there is no definition of the term 'secured from unauthorized removal or access' within the NRC regulations.'' NIH also disputes that this violation should be categorized at Severity Level III, and in support references its May 23, 1996 submission (''Specific Responses of NIH to the Apparent Violations Found in Inspection Reports 030–01786/95–002 (REDACTED) and 030–01786/950203'' at pages 1–3 and 21–25, and ''Factors for Consideration in Determining Severity Levels of Apparent Violations.'')

In particular, NIH contends that Violation I was not ''significant'' such as to constitute a Severity Level III violation under Supplement IV.C.12 of the Enforcement Policy, NUREG–1600, because:

(1) According to NIH, it maintained control of licensed material through posting laboratories at all times and storage in posted refrigerators in properly labeled containers, and the period of time during which materials were not under surveillance was brief. NIH contends that this degree of control had been acceptable to the NRC for many years, that the violations arose because of the adoption of more stringent enforcement standards, and that the violations occurred within three months of the adoption of NIH's final security policy responding to these more stringent enforcement standards.

(2) According to NIH, it has made extensive good faith corrective efforts during the transition to more stringent enforcement standards to ensure compliance, but human oversight has resulted in violations.

(3) According to NIH, the violations pose little or no risk of harm because of the low levels of radioactivity involved. NIH claims that there has been no more than minimum risk to health and safety and that none of the violations resulted in any radiation exposure of an NIH employee or a member of the public.

NIH contends that the violations do not constitute a failure to control access to licensed materials for radiation purposes as specified by NRC requirements, such as to constitute a Severity Level III violation under Supplement VI.C.1 of the Enforcement Policy, for two reasons: (1) NIH claims that this standard conflicts with the ''significant failure'' standard of Supplement IV.C.12 of the Enforcement Policy; and (2) NIH argues that ''access* * * for radiation purposes'' refers to access for medical treatment or diagnostic purposes, which were not involved in the violations.

NIH argues that only Severity Level IV or greater violations can be the basis for considering aggregation or repetition, and that to categorize Violation I at Severity Level IV would be questionable. NIH contends that escalating this violation to Severity Level III on the basis of repetitive or aggregated violations is contrary to the Enforcement Policy, because the number of violations is small compared to the number of restricted use areas (0.2%) or to the number of workers using radioactive material. NIH further maintains that this violation should not be considered a repeat violation unless it occurs in the same laboratory, because the cause of this violation is not a failure of the NIH Radiation Safety Branch to train workers, promulgate security requirements, or respond quickly to violations, but rather lack of attention and carelessness by individual researchers. NIH contends that under the Enforcement Policy, aggregation is appropriate only where the violations have the same underlying cause or programmatic deficiencies or the violations contributed to or were unavoidable consequences of the underlying problem. NIH contends that these were unconnected occurrences that have no fundamental underlying cause or common cause that can be eliminated by NIH. NIH argues that these violations are unconnected and are not an indication of the adequacy of previous corrective actions, which should be judged on the basis of their scope, content, and potential deterrent effect, and not on the basis of whether they eliminate all human error.

NIH states that its corrective actions, described in its May 23, 1996 response, have made all researchers aware of, or they should be aware of, security requirements. These corrective actions include: (1) Confiscating the licensed material identified by the NRC AIT on July 6, 1995; (2) adopting the Interim Security Policy as permanent on July 20, 1995; (3) the RSO performing extensive surveillance and taking appropriate enforcement action for violations of the NIH Security Policy; and (4) conducting a follow-up investigation after the Special Inspection of October 23–24 and November 6–10, 1995. NIH states that full compliance has largely been achieved and that it will continue to diligently pursue the current corrective actions. Further, NIH states that the most reasonable and effective corrective action will be the establishment of an enforcement policy that is directed toward quantities of radioactive materials that pose a real risk of harm, thus limiting the potential for human error by focusing on significant safety risks that all will recognize as such.

III. NRC Evaluation of Licensee's Response to Violation I

The failures of NIH to secure licensed material from unauthorized removal or access do constitute a violation. Contrary to NIH's contentions, the meaning of the phrase ''secured from unauthorized removal or access'' is abundantly clear. Among the common meanings of the verb ''to secure'' is to guard, to shield from interference, or to restrain or make fast. Webster's Third New International Dictionary (unabridged) (1986). The statements of consideration for 10 CFR 20.1801 and 1802 and their predecessor requirements, 10 CFR 20.207 (a) and (b), make it clear that Section 1801 and 1802 were intended to require licensees to guard or make licensed material safe from unauthorized removal or access, by use of physical restraint. For example, when Part 20 was first promulgated in 1957, section 20.207 required that ''[l]icensed materials stored in an unrestricted area shall be secured against unauthorized removal from the place of storage.'' In 1975 the Commission modified this requirement by an immediately effective rule, explaining in the statements of consideration that the ''references to 'storage' might not convey clearly the intention that constant control be maintained over all licensed radioactive materials in unrestricted areas [emphasis added]'' (40 FR 26679, June 25, 1975). Section 20.207(b) was added, requiring that ''licensed materials in an unrestricted area and not in storage shall be tended under the constant surveillance and immediate control of the licensee.'' When 10 CFR 20.1801 and 1802 were promulgated, the statements of consideration further discussed the need to secure even small

quantities of licensed materials (56 FR 23360 at 23379, May 21, 1991).

[Commenter]: * * * the requirement to secure small quantities of licensed radioactive materials when they are not in use would interfere with university research.

[Commission Response]: * * * locking radiotracer laboratories when they are not being used is a small nuisance compared to the consequences of unauthorized access to, or theft of, radioactive materials, which could result in contamination of unrestricted areas or exposure to individuals, as well as having to report a loss of licensed material to the NRC.

Contrary to NIH's contention, Violation I was a ''significant failure to control licensed material'' within the meaning of Supplement IV.C.12 of the Enforcement Policy. The NRC acknowledges that NIH posted rooms and refrigerators in which radioactive materials were stored, and radioactive material was in properly labeled containers. Accordingly, the NRC did not cite NIH for violation of NRC requirements for posting or labeling radioactive material. However, NIH does not deny that licensed material was left unattended inside unlocked refrigerators in unlocked laboratories. While the measures taken by NIH provided a method of warning individuals of the presence of radioactive material and potential hazards, they did not secure licensed materials from unauthorized removal or access, which is the requirement.

The significance of Violation I is based on the potential for harm, which involves the type of licensed material left unsecured and accessible by the public, the number of examples of the violation (i.e. the number of times licensed radioactive material was identified to be unsecured), and the repetitive nature of the violation. As stated in NRC's August 23, 1996, letter ''[I]t is a significant regulatory concern that NRC inspectors repeatedly have been able to gain access to licensed material at your facility without challenge * * * Given the repetitive nature and the number of examples of the violation, the violation has been categorized in accordance with the ''General Statement of Policy and Procedure for NRC Enforcement Actions'' (Enforcement Policy), NUREG–1600, at Severity Level III.''

Categorizing Violation I at Severity Level III is appropriate pursuant to Sections IV.A. and IV.B. of the Enforcement Policy, based on the number of examples of the violation and the repetitive nature of the violation. NIH is correct that escalation of Severity Level IV violations into a Severity Level III violation is based in part upon the violations having a common underlying cause. Aggregating the failures to control licensed material and characterizing them as a Severity Level III violation is appropriate in this case because numerous isotopes were left unsecured in numerous locations, not as a result of isolated occurrences, but due to the same underlying cause, which was the Licensee's failure to effectively oversee and ensure compliance with security requirements by its employees. NIH also is correct that in escalating Severity Level IV violations to Severity Level III for repetitiveness, a factor to be considered is the adequacy of corrective action for previous similar violations. Escalation of the numerous failures to control licensed material to a Severity Level III violation is also appropriate in this case because of the repetitive nature of the violation. NIH had been cited previously for failures involving security of licensed radioactive materials. Specifically, security failures were identified by the NRC during an NRC inspection conducted in April and May of 1994, which resulted in the issuance of Confirmatory Action Letter 1–94–006 and subsequent issuance of a Severity Level IV violation. As explained in the Notice of Violation, a violation need not occur in the same laboratory in order for it to be considered repetitive.

NIH argues that the number of violations in this case is small compared to the total number of restricted use areas at NIH. However, NRC did not inspect the total number of restricted use areas at NIH. Additionally, NRC chose not to cite some of the security failures that the NRC inspectors identified because, although the presence of unsecured radioactive material was confirmed by survey meter, the activity of the material was not known. See, for example, NRC Inspection Report No. 030–011786/95–203 (December 21, 1995), Section 3.d. Moreover, the programmatic issue of significant regulatory concern involves much more than just the number of violations. Specifically, these violations, viewed in the context of the history of security violations at NIH beginning in 1994, indicate that previous corrective actions were not effective. Contrary to NIH's assertion that there is no common underlying cause for the violations that can be eliminated by NIH, the common root cause for these violations is NIH's failure to effectively oversee its employees and ensure their compliance with security requirements. NIH must recognize that, in order to assure that public health and safety are protected, the Commission expects and requires that its regulations be met by all licensee employees, regardless of the licensee's size or the volume of the licensee's activities. NRC licenses the entity. NRC does not separate licensee management from licensee employees. Licensees are responsible for the acts of their employees. In the matter of Atlantic Research Corporation, (CLI–80–7), 11 NRC 413, 422 (1980).

Further, the violations do pose a credible risk of harm, given the types and quantities of licensed material listed in the citation. Radiation exposure and/or contamination may be posited through both accidental and intentional pathways anytime a member of the public has access to such materials. The purpose of the requirement is to prevent access to such materials by unauthorized individuals because access could result in unnecessary radiation exposure as well as harm to the environment.

The violation did not arise from more stringent enforcement standards, as claimed by NIH, but from the failure of NIH to effectively ensure compliance with NRC requirements. NIH does not identify new or more stringent NRC requirements or standards. The only new policy identified by NIH was its July 1995 final security policy, adopted as part of the Licensee's corrective action for previously cited violations of security and control requirements of 10 CFR Part 20.

NIH offers no explanation for its contention that Supplements IV.C.12 and VI.C.1 of the NRC Enforcement Policy conflict with each other. Supplement IV.C.12 gives as an example of a Severity Level III health physics violation, ''a significant failure to control licensed material,'' and Supplement VI.C.2 gives as an example of a Severity Level III fuel cycle and materials operation violation, ''a failure to control access to licensed materials for purposes as specified by NRC requirements.'' Supplement IV.C.12 concerns control of material and Supplement VI.C.1 addresses access to material. A failure to control access to licensed material is one type of a failure to control licensed material. In the circumstances of this case, NIH's failure to secure licensed material constitutes a Severity Level III violation under both Supplements IV and VI.

NIH incorrectly asserts that Supplement VI.C.1. applies only to violations concerning access to licensed material used for medical treatment or diagnostic purposes. Supplement VI is titled ''Fuel Cycle and Materials Operations'', and does not single out uses for medical or diagnostic purposes, but refers by its title and content to all

uses of byproduct materials. Based on the above, the NRC concludes that NIH did not provide an adequate basis to mitigate the Severity Level of Violation I.

IV. Summary of Licensee's Request for Withdrawal of the Civil Penalty

The Licensee protests the proposed civil penalty based on the following contentions: (1) Violation I was improperly categorized as an escalated Severity Level III violation; (2) Violation I arose from unconnected instances of human error, despite NIH's extensive, good faith efforts to enforce more stringent NRC requirements during a period of transition to those requirements; and (3) the NRC did not apply the civil penalty assessment factors to Violation I in accord with the Enforcement Policy, NUREG–1600. NIH contends that three of the four civil penalty assessment factors favor no civil penalty because:

(a) NIH has not had any escalated enforcement action against it during the past two years or past two inspections, whichever is longer; in over three decades of using radioactive materials in research, NIH has never before been the subject of escalated enforcement action by the NRC and NIH's use of radioactive materials has never resulted in any negative health consequences to workers or the public.

(b) NIH's corrective actions were prompt and comprehensive in the context of transition to more stringent security standards and the violations arose from human error that could not have been prevented by prompt and comprehensive corrective action. NIH contends that the NRC erroneously relied entirely on the occurrence of additional security violations instead of focusing on the scope and content of earlier corrective actions, in denying NIH credit for its corrective actions. NIH further contends that the violations found by NRC in October 1995 cannot reasonably be considered recurring because, at that time, NIH had not been informed that the July 1995 inspection finding was considered a violation, and notification did not occur until the AIT Report was forwarded to NIH on January 29, 1996. NIH also states that its July 20, 1995 final security policy was instituted after the July 6, 1995, violation, and thus was prompt and comprehensive corrective action. NIH argues that the root cause of Violation I is unrelated to earlier similar violations, and that NUREG–1600 does not indicate that the determinative factor in assessing the adequacy of corrective action is whether similar violations occur after corrective action has been taken. NIH further states that a civil penalty would penalize NIH for fine-tuning and strengthening its newly-adopted more stringent security policy, and is not consistent with the purpose of the Corrective Action factor. According to NIH, that purpose is to encourage licensees to take immediate action to address violations. Finally, NIH states that there is no indication that the NRC considered the adequacy of NIH's root cause analysis. NIH contends that it prevented recurrence of the security violations because the laboratory involved in the July 6 violation was not the same as the laboratories involved in violations after July 6.

(c) NRC should exercise its discretion under Section VII.B.6 of the Enforcement Policy to refrain from imposing a penalty because of the lack of safety significance of the violation, the overall sustained excellent performance of NIH prior to the violation, and NIH's comprehensive good faith corrective actions. NIH states that its corrective actions were prompt and comprehensive when properly reviewed in the context of the transition to more stringent security standards, and that the violations arose from human error and could not have been prevented by prompt and comprehensive corrective action.

NIH generally contends that contrary to the requirements of due process, the NRC failed to explain why it accepted or rejected all evidence and each argument presented by NIH in its May 23, 1996, response to the AIT Report and Special Team Inspection (STI) Report before issuing the August 23, 1996, Notice of Violation and Proposed Imposition of Civil Penalty (Notice), and failed to indicate in any meaningful way that it considered the May 23, 1996, submission before issuing the Notice. In support, NIH cites *Administrative Law Treatise*, Kenneth C. Davis, Volume II, § 9.5 at p. 48 (3d ed. 1994) and *Some Kind of Hearing*, Friendly, 123 U. Pa. L. Rev. 1267 (1975).

V. NRC Evaluation of Licensee's Request for Withdrawal of the Civil Penalty

The Violation I failure to secure licensed material from unauthorized removal was properly categorized as a Severity Level III violation. See Section III, *supra*. The NRC's letter, dated August 23, 1996, transmitting the civil penalty, states that the base civil penalty amount of $2,500 was warranted in this case because the violation was identified by the NRC, and NIH's corrective actions were not appropriately comprehensive to prevent recurrence after NIH was made aware of the repetitive July 6, 1995, security violation, and were not adequate to prevent similar violations from occurring as evidenced by the results of the October 23, 1995, inspection. As a result, a penalty of $2,500 was proposed. Violation I arose from NIH's failure to implement effective corrective action to prevent recurrence of the previously-cited Severity Level IV security and control failures, and from the failure to implement effective corrective action to prevent recurrence of the July 6, 1995, security violation, not from ''unconnected instances of human error.''

The NRC correctly applied the civil penalty assessment factors in accordance with the Enforcement Policy. NIH misapprehends the basic provisions of the Enforcement Policy. Because the NRC identified Violation I and because NIH's corrective actions were inadequate to prevent recurrence of the violation, even though NIH had not been the subject of escalated enforcement action during the past two years or past two inspections, the NRC correctly proposed the base civil penalty of $2,500. See Enforcement Policy, NUREG–1600, Section VI.B.2.a.–c.

NIH erroneously contends that the occurrence of similar violations after corrective action has been taken is not a factor in assessing the adequacy of corrective action. The Enforcement Policy states that one of the purposes of the corrective action factor is to encourage licensees to implement lasting action that will ''prevent recurrence of the violation at issue.'' In this case, the October 23, 1995, violation is repetitive not only of the July 6, 1995, violation, but also of the previously-cited Severity Level IV violations. The $2,500 proposed civil penalty does not penalize NIH for fine-tuning or strengthening its July 1995 final security policy, but rather is a result of the Licensee's failure to effectively implement corrective actions to prevent recurring violations. NIH is mistaken in contending that as long as the same laboratories are not involved in security violations, the violations cannot be considered recurring or repetitive. Finally, NIH is mistaken in arguing that the October 23, 1995, example of the violation cannot be considered recurring because NIH did not have notice of the July 6, 1995, example of the violation until January 1996. NIH had notice of the July 6, 1995, example of the violation long before January 1996. NIH claims, as one of its corrective actions, that it confiscated the licensed material identified as unsecured by the AIT on July 6, 1995. Further, the preliminary findings of the AIT inspection were

discussed with NIH in a technical briefing held on August 8, 1995.

NIH's argument that the NRC did not indicate that it considered the adequacy of NIH's root cause analysis does not provide a basis to disturb the proposed civil penalty. The NRC did not deny credit for corrective action because of an inadequate root cause analysis, but because of the failure to implement effective corrective actions to prevent recurrence of the violations between the time of the repetitive July 6, 1995, violation and the October 23, 1995, violations. For example, during the October 1995 STI, NRC inspectors found that the Licensee's staff lacked a complete understanding of the Licensee's Enhanced Interim Security Policy (EISP), confirmed by the NRC in Confirmatory Action Letter 1–95–011 on July 21, 1995. As noted in NRC Inspection Report No. 030–01786/95–203 (December 21, 1995), Section 3.b:

> The degree of understanding of how the EISP was to be implemented varied among the individuals interviewed. In general, individuals understood that the EISP called for certain materials to be locked, but there was not a clear understanding of what quantities were to be locked and when. A common understanding was that laboratories were to be locked at night when unattended * * * However, individuals interviewed stated that laboratory locking was not required if an individual's absence was of short duration for a break or while the researcher was working in a nearby laboratory * * * Many researchers stated that they thought it was acceptable to leave laboratories open under these circumstances.

In addition, at the time of the October 1995 STI, NIH was not conducting security audits during lunch periods and after normal working hours, which are times when non-compliance logically may be expected to occur. Additional procedures to address these shortcomings had to be confirmed in Confirmatory Action Letter 1–95–018, issued by the NRC staff on October 23, 1995. Under these circumstances, the NRC staff cannot conclude that NIH implemented effective corrective action.

NIH fails to demonstrate a basis for the NRC to exercise discretion to refrain from imposing a civil penalty. As explained in Section III, supra, Violation I is a significant regulatory concern. Additionally, the Licensee's corrective actions were not sufficiently comprehensive to prevent recurrence until after the recurring violations were identified by the STI on October 23, 1995, and the NRC staff took additional measures by issuing Confirmatory Action Letter 1–95–018 on October 27, 1995. Comprehensive corrective action is a necessary element in considering the exercise of discretion.

NIH erroneously contends that due process requirements were violated because the NRC did not explain why it accepted or rejected the evidence and arguments presented by NIH in its May 23, 1996, response to the AIT Report and SIT Inspection Report before issuing the August 23, 1996, Notice of Violation and Proposed Imposition of Civil Penalty. In essence, NIH argues that before even proposing a civil penalty, the NRC must issue the equivalent of an initial decision weighing all evidence and argument presented at a ''hearing.'' The Licensee's argument rests upon a fundamental misapprehension of the procedural steps in NRC's enforcement process and the nature of a Notice of Violation and Proposed Imposition of Civil Penalty. The authority cited by NIH does not mandate a ''hearing'' meeting the basic requirements of due process before an agency may merely propose a civil penalty.

The August 23, 1996, Notice merely proposes a civil penalty. In accordance with the Enforcement Policy, NIH was offered, by letter dated January 29, 1996, from Charles W. Hehl, Director, Division of Nuclear Materials Safety, U.S. NRC Region I, the opportunity to attend a predecisional enforcement conference, the very purpose of which is to provide an opportunity for the licensee to present information concerning the facts associated with the apparent violations, corrective action taken or planned, and the significance of the apparent violations. NIH, however, by letter dated April 16, 1996, from Harriet S. Rabb, General Counsel, Department of Health and Human Services, declined this opportunity. Instead, NIH contested the NRC's identification of apparent violations and their significance by responding in writing to NRC inspection reports on May 23, 1996. That submission was considered by the NRC staff before issuance of the August 23, 1996, Notice of Violation and Proposed Imposition of Civil Penalty. Additionally, NIH responded to the August 23, 1996, Notice by its September 23, 1996, written submission, the factual and legal arguments of which have been considered and evaluated herein. Finally, under the Commission's regulations, NIH may request a hearing to contest this Order Imposing Civil Monetary Penalty. NIH has been provided all the process that is due at this stage of the proceeding.

VI. NRC Conclusion

The NRC staff concludes that the Licensee did not provide an adequate basis for mitigating either the Severity Level of Violation I or the civil penalty for Violation I. Accordingly, an order imposing a civil penalty in the amount of $2,500 should be issued.

Evaluation of Violations Not Assessed a Civil Penalty

Of the violations not assessed a civil penalty, the Licensee admits Violation II.A in part; admits Violation II.B; denies the first and second examples of Violation II.A; denies Violations II.C and II.D; and disputes the severity level assigned to Violations II.A and II.B and the first example of Violation II.C.

Restatement of Violation II.A

Condition 29 of License No. 19–00296–10 requires, in part, that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the application dated July 28, 1986.

Attachment 10–D of the July 28, 1986, application, requires, in part, that an extremity monitor be worn when using greater than 0.5 millicuries of phosphorus-32 (P–32), and that film badges and ring badges be returned promptly each month.

Contrary to the above, during 1995:

1. The licensee did not supply extremity dosimetry to eight individuals who worked with greater than 0.5 millicuries of P–32; and
2. Five individuals did not wear the extremity dosimetry that was issued to them while working with greater than 0.5 millicuries of P–32; and
3. Numerous individuals failed to return the monitoring devices (film badges and ring badges) monthly.

Summary of Licensee's Response to Violation II.A

NIH disputes that this violation should be classified at Severity Level IV, and also denies Examples 1 and 2 of the violation. In support, NIH references its May 23, 1996, submission (''Specific Responses of NIH to the Apparent Violations Found in Inspection Reports 030–01786/95–002 (REDACTED) and 030–01786/950203'' at pages 29–33).

NIH states that records of the NIH Radiation Safety Branch (RSB) do not support Examples 1 and 2 of the violation. NIH contends that a RSB investigation found that all 13 users had been issued badges, that all but one researcher was wearing the dosimetry, and that researcher was not required to wear dosimetry because of the small amount of P–32 (0.047 microcuries) he was using.

Additionally, NIH states that Example 3 of the violation is not of sufficient significance to warrant the Severity

Level IV classification, particularly given that persons using P–32 at NIH are not required to wear dosimetry, the RSB identified the failure to return badges, and no measurable exposures were detected.

NIH further contends that Violation II.A. is of minor safety or environmental concern and should be treated as a Non-Cited Violation and not formalized into a Notice of Violation based on the Special Team Inspection (STI) Report and NRC Information Notice No. 90–01. NIH states that the STI Report concluded that the NIH dosimetry program was in compliance with 10 CFR Part 20, Subpart C, and was effective in monitoring occupational external doses. NIH notes that NRC Information Notice No. 90–01 (January 12, 1990) states: ''NRC will not generally issue a Notice of Violation for a non-repetitive Severity Level IV or V violation that is self-identified, properly corrected and reported (if required).'' NIH states that corrective action for this self-identified violation had been completed at the time of the NRC Special Team Inspection and will prevent further violations, and that there was no continuing violation.

NRC Evaluation of Licensee's Response to Violation II.A

NIH failed to support its denial of Examples 1 and 2 of Violation II.A. with the documentation which NIH claims disprove those violations. Accordingly, the NRC staff concludes that the violation occurred as stated in the Notice. Additionally, NIH asserts that persons using P–32 at NIH are not required to use dosimetry, but does not dispute that Condition 29 of the License and Attachment 10–D of the July 28, 1996, application require extremity dosimetry to be worn by individuals using more than 0.5 millicuries of P–32.

NRC chose to treat Violation II.A. as a cited violation in order to highlight interrelated concerns over failures to supply, wear, and return dosimetry, particularly as related to the use of P–32. Under the Enforcement Policy, NRC may refrain from citing a violation under certain circumstances, but is not compelled to do so. See NUREG–1600, Section VII.B.

NIH mischaracterizes the STI Report, NRC Inspection Report No. 030–01786/95–203 (December 20, 1996) by implying that the Special Inspection Team found perfect compliance with NRC requirements. To the contrary, the STI Report concluded that ''one apparent violation was identified involving the failure to issue, wear and return individual monitoring devices [Violation II.A. herein]. Otherwise, the licensee's external dosimetry program was in compliance with Subpart C of 10 CFR Part 20, and was effective in monitoring occupational external dose.''

The Licensee's failure to meet its commitments, formalized by license condition, regarding extremity dosimetry for individuals who work with greater than 0.5 millicuries of P–32 does involve potential safety significance and therefore is appropriately classified as a Severity Level IV violation.

Restatement of Violation II.B

Condition 29 of License No. 19–00296–10 requires, in part, that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the application dated July 28, 1986.

Item 10.6 of the July 28, 1986, application requires, in part, that the Authorized User provide to the Radiation Safety organization a completed Form NIH 88–1, ''Request for Purchase and Use of Radioactive Materials'', for each incoming shipment before the materials will be released to the investigator. Form NIH 88–1 was provided as Attachment 10–F to the July 28, 1986, application. Form NIH 88–1 requires, in part, that the radiation safety identification number and names of all persons who will use the radioactive material, the name of the authorized investigator, and the signature of the authorized investigator, be entered on the form.

Contrary to the above:

Users did not provide the Radiation Safety organization with a completed Form NIH 88–1 for each incoming shipment before the materials were released to the investigator. Specifically, between October 3 and November 20, 1995, the licensee allowed users to request the purchase of radioactive materials electronically without the signature of the authorized investigator.

An NIH 88–1 form, submitted for purchase and use of radioactive materials received on September 9, 1994, did not include the radiation safety identification number and names of all persons who were intended to use the radioactive material. Specifically, the NIH 88–1 form listed as the only user an individual who had left NIH.

Summary of Licensee's Response to Violation II.B

NIH disputes that Violation II.B. is a Severity Level IV violation. In support, NIH references its May 23, 1996 submission (''Specific Responses of NIH to the Apparent Violations Found in Inspection Reports 030–01786/95–002 (REACTED) and 030–01786/950203'' at pages 8–10 and 26–28, or ''May 23, 1996, submission''). NIH asserts that the two examples of Violation II.B. individually and collectively posed only minor safety or environmental concerns below the significance for Severity Level IV violations, and thus should not have been formalized in a Notice of Violation. NIH states that full compliance was achieved through its corrective actions.

In regard to the first example, NIH states that its electronic system for ordering radioactive materials collects the same data as did the Form 88–1, but in electronic form without a signature of an authorized user, and that the failure to provide a signature of the ordering authorized user was a technical violation resulting from implementation of the electronic system one month before NRC approval of the license amendment permitting use of the electronic system. NIH argues that since the NIH license amendment adopting the electronic system was approved one week after submission, the violation is not of more than minor significance and cannot be a Severity Level IV violation. NIH asserts in its August 23, 1996, response that by approving a license amendment which permitted continuation of the same practice for which NIH is being cited, the lack of the authorized users' signatures cannot raise a significant regulatory concern. NIH states that no apparent unauthorized use of radioactive materials or unnecessary exposure to radiation resulted.

In regard to the second example, NIH states in its May 23, 1996, submission that there is no NRC regulation requiring the use of NIH Form 88–1 or for collection of the information contained therein. NIH further states that Form 88–1 is an internal mechanism used to verify that users of materials have proper training and dosimetry, and that the single inadvertent failure to list the proper user on Form 88–1 is a technical violation that did not result in use of materials by untrained users.

NRC Evaluation of Licensee's Response to Violation II.B

With respect to the first example of the violation, the NRC acknowledges that a license amendment was approved that authorized an electronic method of ordering licensed radioactive material without the signature of an authorized user. However, the NRC approved this amendment only after receiving specific commitments from NIH that the electronic process would provide the same level of control of licensed material that Form 88–1 did, such that materials would be released and used

only by qualified or authorized individuals. For a licensee to take it upon itself to decide that it may proceed in violation of a license condition without a safety review by the NRC licensing authority is of more than minor regulatory concern in and of itself.

With regard to the second example of Violation II.B, the Licensee's procedures for ordering licensed radioactive material are not a mere internal mechanism. Those procedures are incorporated into the NIH license by license condition, and as a result, constitute regulatory requirements. Violation II.B is of more than minor regulatory concern because individuals who have not been trained, and therefore, not authorized, could have obtained licensed material, which could have resulted in improper use or disposal of the material.

Restatement of Violation II.C

Condition 29 of License No. 19–00296–10 requires, in part, that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the application dated July 28, 1986.

Item 10.3 of the July 28, 1986, application states that all radioactive material users are required to successfully complete an initial training course entitled, ''Radiation Safety in the Laboratory''.

Contrary to the above:

1. One or two researchers working in Laboratory 5D18 of Building 37 did not successfully complete the initial training course entitled, ''Radiation Safety in the Laboratory'' prior to their use of radioactive material. Specifically, during the month of October 1994, the researcher(s) used sulfur-35, phosphorous-32 and phosphorous-33, but did not receive ''Radiation Safety in the Laboratory'' training until November 29, 1994.

2. During the months of October and November 1995, an individual worked with microcurie quantities of C–14 in a Building 10 clinical pathology laboratory, and as of November 10, 1995, this individual had not completed the ''Radiation Safety in the Laboratory'' training.

Summary of Licensee's Response to Violation II.C

NIH denies the first and second examples of Violation II.C. In support, NIH references its May 23, 1996, submission (''Specific Responses of NIH to the Apparent Violations Found in Inspection Reports 030–01786/95–002 (REACTED) and 030–01786/950203'') at pages 11–13 and 38–41.

In regard to Example 1 of Violation II.C., NIH contends that the Notice does not accurately state the violation, and states that to the extent there was any violation, it was a technical violation of failing to certify the provision of orientation training in accordance with its license, which was a technical violation that did not amount to a Severity Level IV violation. NIH asserts that no NRC regulation or NIH license condition requires researchers to complete the formal Radiation Safety in the Laboratory training prior to their use of radioactive materials, and that the AIT Report recognized at pages 21–22 that the NIH license permits the use of radioactive materials by individuals under the supervision of an Authorized User (AU) before receipt of formalized training as long as the AU certifies to training described in the ''Radiation Safety Orientation for New Personnel Planning to Use Radioactive Material'' packet. On March 23, 1994, the NRC approved a license amendment to modify the NIH Radiation Safety Training Program, such that individuals working with radioactive materials must receive the ''Initial Orientation; Entry Level or Advanced 'Radiation Safety in the Laboratory course.' '' Accordingly, NIH concludes that the violation was a failure by the AU to certify such orientation training, which is of minor regulatory concern and not appropriate for formal enforcement action.

In regard to Example 2 of Violation II.B, NIH states that the individual involved was working with BacTec vials containing 10 microcuries of carbon-14, which under 10 CFR 31.11(a)(3) was subject to a general license and thus not subject to the training requirements applicable to materials subject to a specific license, because 10 CFR 31.11(f) excludes such generally licensed materials from the requirements of 10 CFR Parts 19 and 20. NIH contends that neither NIH license conditions nor NRC regulations required training of this individual.

NRC Evaluation of Licensee's Response to Violation II.C

With respect to the first example of Violation II.C, the NRC concludes that the violation occurred as stated. Condition 29 of NIH's license and Item 10.3 of the July 28, 1986 application require that all radioactive material users successfully complete an initial training course entitled ''Radiation Safety in the Laboratory''. Contrary to NIH's assertions, the license amendment issued on November 23, 1994, did not permit individuals to begin using radioactive materials prior to taking the ''Radiation Safety in the Laboratory'' if they had received orientation training. The language of the license amendment and of the February 14, 1994 amendment request refer to the orientation training as part of the NIH training program, not as an alternative to the required ''Radiation Safety in the Laboratory'' course. Condition 29 of the NIH license, which incorporates Item 10.3 of the July 28, 1986, application, was not modified by the license amendment issued on November 23, 1994. The AIT Report mistakenly stated that the NIH license permits the use of radioactive materials by individuals under the supervision of an Authorized User (AU) before receipt of formalized training, as long as the AU certifies to provision of orientation training.

With respect to the second example of Violation II.C, the NRC agrees that NIH is not required by license condition to provide training to individuals who use BacTec vials that were obtained under the provisions of a general license issued pursuant to NRC regulations. Therefore, the NRC is hereby withdrawing this example of the violation.

Restatement of Violation II.D

Condition 29 of License No. 19–00296–10 requires, in part, that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the application dated July 28, 1986.

Item 10.9.2 of the July 28, 1986, application requires that the licensee conduct its bioassay program in accordance with Regulatory Guide 8.20, ''Applications of Bioassay for Iodine-125 and Iodine-131''. Section C.1.a. of Regulatory Guide 8.20 states that routine bioassay is necessary when, over any 3 month period, an individual handles in open form unsealed quantities of radioactive iodine exceeding those in Table 1. Table 1 of Regulatory Guide 8.20 states that bioassay is necessary for activity levels greater than 10 mCi of iodine-125 used in processes within a fume hood.

Contrary to the above, the licensee failed on two occasions to conduct bioassay measurements after workers handled greater than 10 mCi of volatile iodine-125 in an open unsealed form in gloveless containment boxes located in a fume hood. Specifically, as of November 10, 1995, two researchers had not received a thyroid bioassay measurement after handling 17 mCi and 15 mCi of volatile iodine-125 on June 21 and September 18, 1995, respectively.

Summary of Licensee's Response to Violation II.D

NIH denies Violation II.D. In support, NIH references its May 23, 1996, submission (''Specific Responses of NIH to the Apparent Violations Found in Inspection Reports 030–01786/95–002 (REDACTED) and 030–01786/950203'') at pages 34–37.

NIH argues that Section C.4.c. of Regulatory Guide 8.20, ''Applications of Bioassay for 1–125 and 1–131'' (September 1979), does not require when, but only makes recommendations as to when, quarterly bioassay measurements are to be taken, because of the use of the word ''should'' rather than ''shall'': ''For individuals placed on a quarterly bioassay schedule, the sampling should be randomly distributed over the quarter, but should be done within one week after a procedure involving the handling of I–125 or I–131. This will provide a more representative assessment of exposure conditions.'' NIH claims that both researchers were bioassayed within the calendar quarters in which they handled iodine-125, and that the fact that both researchers did additional iodination work within the quarter is irrelevant because there is no requirement that there be a bioassay after the additional iodination work. NIH states that a bioassay at one week post-iodination is unnecessary, based upon the detection capabilities of the NIH thyroid analysis system and because air monitoring is performed for each and every iodination. NIH further states that in the case of the two researchers, the actual airborne concentrations were so low that follow-up bioassays were not necessary to assess possible internal dose.

NIH further argues that 10 CFR 20.1204 requires that for purposes of determining compliance with occupational dose limits, the licensee shall make suitable and timely measurements of either concentrations of radioactive material in air in work areas, or quantities of radionuclides in the body, or quantities of radionuclides excreted from the body, or a combination of these measurements, and thus the air sampling conducted was sufficient to satisfy 10 CFR 20.1204.

NRC Evaluation of Licensee's Response to Violation II.D

NIH does not dispute that License Condition 29 and Reg. Guide 8.21 require bioassay of individuals working with the quantities of I–125 involved. Regarding NIH's explanation that both researchers were bioassayed within the calendar quarters in which they handled iodine-125, Section C.4.b of Reg. Guide 8.21 does allow quarterly bioassays if initial bioassays are performed within 72 hours after use of iodine for the first three month period and provided that the use falls within certain quantities specified in the Guide. After the initial three month period, the Guide allows the Licensee to change the frequency to quarterly provided that other conditions specified in the Guide are met. NIH did not submit documentation to the NRC to show that all of the conditions necessary to move to a quarterly bioassay frequency were met. Even if the Licensee had met the conditions for a quarterly bioassay schedule, Section C.4.c. of Reg. Guide 8.21 provides that for individuals placed on a quarterly schedule, bioassay samples should be done within one week after a procedure involving the handling of I–125 or I–131 in order to provide a more representative assessment of exposure conditions. NIH has not provided the dates on which the workers were bioassayed to demonstrate that they were in fact conducted during the quarter or within one week after handling I–125.

NIH's argument that no violation occurred because of the detection capabilities of the NIH thyroid analysis system and because air monitoring is performed for each and every iodination is incorrect. Reg. Guide 8.21, which the Licensee agreed to follow, does not carve out an exception to the necessity of performance of bioassays for licensees, depending upon the quality of their thyroid analysis system or air sampling program. NIH's air sampling program does not support NIH's denial of the violation. NIH conducts its air sampling program to ensure compliance with 10 CFR 20.1204. The air sampling program does not address the requirements of License Condition 29 and Reg. Guide 8.21, which are concerned solely with criteria for conducting bioassays of individuals working with I–125 and I–131.

Accordingly, the NRC staff concludes that Violation II.D. occurred as stated.

[FR Doc. 97–13865 Filed 5–27–97; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414; Docket Nos. 50–369 and 50–370]

Catawba Nuclear Station, Units 1 and 2; McGuire Nuclear Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. NPF–35, NPF–52, NPF–9, and NPF–17. These licenses are issued to Duke Power Company (the licensee) for operation of the Catawba Nuclear Station Units 1 and 2, located in York County, South Carolina, and the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed action is in response to the licensee's application dated February 24, 1997, for exemption from the requirements of 10 CFR 50.71(e)(4) regarding submission of revisions to the Updated Final Safety Analysis Report (UFSAR) and design change reports for facility changes made under 10 CFR 50.59 for the Catawba and McGuire nuclear stations. Under the proposed exemption, the licensee would schedule updates to the single, unified UFSAR for each of its two-unit sites based on the refueling cycle of Unit 2 of each station.

The Need for the Proposed Action

Section 50.71(e)(4) requires licensees to submit updates to their FSAR within 6 months after each refueling outage providing that the interval between successive updates does not exceed 24 months. Since Units 1 and 2 of Catawba and McGuire nuclear stations share a common UFSAR, the licensee must update the same document within 6 months after a refueling outage for either unit. Allowing the exemption would maintain the UFSAR current within 24 months of the last revision and still would not exceed a 24-month interval for submission of the 10 CFR 50.59 design change report for either unit.

Environmental Impacts of the Proposed Action

No changes are being made in the types or amounts of any radiological effluent that may be released off site. There is no significant increase in the allowable individual or cumulative

occupational radiation exposure. The Commission concludes that granting the proposed exemption would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. The Commission concludes that there are no significant nonradiological impacts associated with the proposed exemption.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the exemption would result in no change in current environmental impacts. The environmental impacts of the proposed exemption and this alternative are similar.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statement related to Catawba Nuclear Station and McGuire Nuclear Station.

Agencies and Persons Contacted

In accordance with its stated policy, on May 13, 1997, the staff consulted with the South Carolina and North Carolina State officials, respectively, regarding the environmental impact of the proposed action. The State officials had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's request for the exemption dated February 24, 1997, 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 rooms located at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730 for the Catawba Nuclear Station; and the J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina 28223 for the McGuire Nuclear Station.

Dated at Rockville, Maryland, this 21st day of May 1997.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–13866 Filed 5–27–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. DPR–72 issued to Florida Power Corporation, (the licensee), for operation of the Crystal River Unit 3 Nuclear Generating Plant (CR3) located in Citrus County, Florida.

Environmental Assessment

Identification of Proposed Action

The proposed action is in accordance with the licensee's application dated April 7, 1997 for exemption from certain requirements of 10 CFR 50.60, ''Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation'' which would allow the licensee to utilize the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) Case N–514, ''Low Temperature Overpressure Protection,'' to determine its low temperature overpressure protection (LTOP) setpoints. The licensee requests an exemption from certain requirements of 10 CFR 50.60, to allow application of an alternate methodology to determine the LTOP setpoints for CR3. The proposed alternate methodology is consistent with guidelines developed by the ASME Working Group to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. These guidelines have been incorporated into Code Case N–514, ''Low Temperature Overpressure Protection,'' which has been approved by the ASME Code Committee. The content of Code Case N–514 has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. However, 10 CFR 50.55a, ''Codes and Standards,'' and Regulatory Guide 1.147, ''Inservice Inspection Code Case Acceptability'' have not been updated to reflect the acceptability of Code Case N–514.

The philosophy used to develop Code Case N–514 guidelines is to ensure that the LTOP limits are still below the pressure/temperature (P/T) limits for normal operation but allow the pressure that may occur with activation of pressure-relieving devices to exceed the P/T limits, provided acceptable margins are maintained during these events. This philosophy protects the pressure vessel from LTOP events and still maintains the Technical Specifications P/T limits applicable for normal heatup and cooldown in accordance with 10 CFR part 50, Appendix G, and Sections III and XI of the ASME Code.

The Need for the Proposed Action

Pursuant to 10 CFR 50.60, all lightwater nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary as set forth in 10 CFR part 50, Appendix G, which defines P/T limits during any condition of normal operation including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in 10 CFR part 50, Appendix G, may be used when an exemption is granted by the Commission pursuant to 10 CFR 50.12.

To prevent transients that would produce excursions exceeding the 10 CFR part 50, Appendix G, P/T limits while the reactor is operating at low temperatures, the licensee installed an LTOP system. The LTOP system includes a pressure-relieving device in the form of a power-operated relief valve (PORV). The PORV is set at a pressure below the LTOP enabling temperature that would prevent the pressure in the reactor vessel from exceeding the P/T limits of 10 CFR part 50, Appendix G. To prevent the PORV from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting or stopping) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint. The licensee indicates that its LTOP PORV setpoint based on the 10 CFR part 50, Appendix G, would restrict the P/T operating window and could potentially result in undesired actuation of the PORV during normal heatup and cooldown operation. The operating window is restricted by the difference between the P/T limit curves and the

reactor coolant pump net positive suction head curve. Therefore, the licensee proposed to use the safety margins developed in an alternate methodology in lieu of the safety margins required by 10 CFR part 50, Appendix G for determining the allowable pressure, and the PORV setpoint for LTOP events. The alternate methodology is consistent with ASME Code Case N–514. The content of Code Case N–514 was incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for LTOP considerations. By application dated April 7, 1997, the licensee requested an exemption from 10 CFR 50.60 to allow it to utilize the alternate methodology of Code Case N–514 for computing its LTOP setpoints.

Environmental Impacts of the Proposed Action

Appendix G of the ASME Code requires that the P/T limits be calculated (a) Using a safety factor of 2 on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter (¼) of the vessel wall thickness and a length of 6 times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the CR3 reactor vessel material.

In determining the PORV setpoint for LTOP events, the licensee proposed the use of safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514, which allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel will not exceed 110 percent of the P/T limits of the existing ASME Appendix G. All other factors, including assumed flaw size and fracture toughness, will be consistent with the 10 CFR 50.60, Appendix G. Although this methodology would reduce the safety factor on pressure, the margins with respect to toughness are acceptable for LTOP transients. Thus, applying Code Case N–514 will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements. Further, by relieving the operational restrictions, the potential for undesirable lifting of the PORV would be reduced, thereby improving plant safety.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of CR3, dated May 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on May 12, 1997 the staff consulted with the Florida State Official, Mr. Bill Passetti of the Florida Department of Health and Rehabilitative Services, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated April 7, 1997 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the local public document room located at Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Dated at Rockville, Maryland, this 21st day of May 1997.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–13867 Filed 5–27–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of May 26, June 2, 9, and 16, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of May 26

There are no meetings scheduled for the week of May 26.

Week of June 2—Tentative

Wednesday, June 4

11:30 a.m.
Affirmation Session (PUBLIC MEETING) (if needed)

Week of June 9—Tentative

Wednesday, June 11

9:00 a.m.
Briefing by the Executive Branch (Closed—Ex. 1)

Thursday, June 12

1:30 p.m.
Briefing on Status of License Renewal, (Public Meeeting), (Contact: P.T. Kuo, 301–415–3147)

3:00 p.m.
Briefing on Steam Generator Issues, (Public Meeting), (Contact: Brian Sheron, 301–415–2722)

4:30 p.m.
Affirmation Session (Public Meeting), (if needed)

Friday, June 13

9:00 a.m.
Briefing on Medical Regulation Issues, (Public Meeting), (Contact: Catherine Haney, 301–415–6852)

Week of June 16—Tentative

Thursday, June 19

11:30 a.m.
Affirmation Session (Public Meeting), (if needed)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

ADDITIONAL INFORMATION:

By a vote of 5–0 on May 12, the Commission determined pursuant to U.S.C. 552b(e) and 10 CFR Sec. 9.107(a) of the Commission's rules that ''Meeting with Foreign Dignitaries'' (Closed—Ex. 1) be held on May 12, and on less than one week's notice to the public.

By a vote of 5–0 on May 15, the Commission determined pursuant to U.S.C. 552b(e) and 10 CFR Sec. 9.107(a) of the Commission's rules that ''Classified Security Briefing'' (Closed—Ex. 1) be held on May 15, and on less than one week's notice to the public.

By a vote of 4–0 on May 20, the Commission determined pursuant to U.S.C. 552b(e) and 10 CFR Sec. 9.107(a) of the Commission's rules that ''Affirmation of Ralph L. Tetrick, Presiding Officer's Initial Decision and Memorandum and Order Denying Reconsideration and Stay, LBP–97–2 and LBP–97–6'' be held on May 20, and on less than one week's notice to the public.

By a vote of 4–0 on May 21, the Commission determined pursuant to U.S.C. 552b(e) and 10 CFR Sec. 9.107(a) of the Commission's rules that ''Affirmation of Final Rule on Radiological Criteria for License Termination'' be held on May 21, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: May 23, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–14110 Filed 5–23–97; 2:31 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22678; 811–4496]

Altius-Beta Fund, Inc.; Notice of Application

May 21, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Altius-Beta Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on September 9, 1996, and an amendment thereto on May 12,1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 13,1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, c/o B.V. Capital Management, Inc., 575 Fifth Ave., New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company organized as a Maryland corporation. On November 21, 1985, applicant filed a notification of registration on Form N–8A pursuant to section 8(a) of the Act. On July 28, 1987, applicant filed a registration statement on Form N–1A pursuant to section 8(b) of the Act. However, applicant's registration statement was never declared effective, and the applicant never made a public offering of its shares.

2. Applicant had one shareholder, a German life insurance company, with whom shares were privately placed. As of March 31, 1996, applicant had 1,049,837.542 shares outstanding, an aggregate net asset value of $10,965,515.28 and a per share net asset value of $10.44. On April 11, 1996, applicant's sole shareholder redeemed most of its shares.

3. Applicant retained $43,627.19 to cover its liquidation expenses, including any remaining operating expenses of any kind. All remaining funds after payment of expenses have been distributed to applicant's sole shareholder (which redeemed all its remaining shares on November 26 and December 31, 1996) in the form of an extraordinary distribution.

4. Applicant has no securityholders, debts or other liabilities, or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

5. Applicant intends to file Articles of Dissolution in accordance with Maryland law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13875 Filed 5–27–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Federal Register citation of previous announcement: [To be Published].

Status: Closed Meeting.

Place: 450 Fifth Street, N.W., Washington, D.C.

Date Previously Announced: To be Published.

Change in the Meeting: Cancellation of Meeting.

The closed meeting scheduled for Friday, May 23, 1997, at 12:00 noon, has been cancelled.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if

any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary (202) 942–7070.

Dated: May 23, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–14020 Filed 5–23–97; 10:52 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38664; International Series Release No. 1082; File No. SR–Amex–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing and Trading of Indexed Term Notes

May 21, 1997.

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 April 30, 1997, the American Stock Exchange, Inc. (''Amex'' 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 Amex proposes to approve for listing and trading under Section 107A of the Amex Company Guide indexed term notes based in whole or in part on changes in the value of the Major 8 European Index (''the Index'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Amex *Company Guide,* the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[1] The Amex now proposes to list for trading under Section 107A of the Company Guide indexed term notes whose value in whole or in part will be based upon an index consisting of the major market indices of eight European countries.

The indexed term notes will be non-convertible debt securities and will conform to the listing guidelines under Section 107A of the Company Guide. Although a specific maturity date will not be established until the time of the offering, the indexed term notes will provide for maturity within a period of not less than one nor more than ten years from the date of issue. Indexed term notes may provide for periodic payments and/or payments at maturity based in whole or in part on changes in the value of the Index. At maturity, holders of the indexed term notes will receive not less than 90% of the initial issue price. The notes will not be callable or redeemable prior to maturity and will be cash settled in U.S. currency. Consistent with other structured products, the Exchange will distribute a circular to its membership, prior to the commencement of trading, providing guidance with regard to member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines.

The Index: The sub-indices that form the Major 8 European Index represent 341 of the largest and most liquid securities from each of the eight European markets. Initial weighings will be assigned to each sub-index at the closing of trading on the day immediately prior to the listing of the indexed term notes and based upon the index's market capitalization. Based on market data as of April 3, 1997, the UK's Financial Times SE 100 Index (''FT–SE 100'') would have an assigned weight of approximately 38.36%; the Deutscher Aktienindex (''DAX'') would have an assigned weight of approximately 14.50%; the Compagnie des Agents de Change 40 Index (''CAC 40'') would have an assigned weight of approximately 11.82%; the Swiss Market Index (''SMI'') would have an assigned weight of approximately 10.28%; the Amsterdam European Options Exchange Index (''AEX'') would have an assigned weight of approximately 5.94%; the Milano Italia Borsa 30 Index (''MIB 30'') would have an assigned weight of approximately 9.42%; the Stockholm Options Market Index (''OMX'') would have an assigned weight of approximately 4.60%; and the IBEX 35 would have an assigned weight of approximately 5.08%. three of the eight subindices, FT–SE 100, DAX, and CAC 40 (combined weight of approximately 64.68%) have been approved by the Commission for warrant trading within the last few years.[2] A description of each of the sub-indices is set forth below:

FT–SE 100: The FT–SE is a capitalization-weighted index of 102 of the most highly capitalized companies traded on the London Stock Exchange. The total market capitalization of the index was $1,201 billion on April 3, 1997.

DAX: The DAX is a total rate of return index of 30 selected German blue chip stocks traded on the Frankfurt Stock Exchange. The total market capitalization of the index was $454 billion on April 3, 1997.

CAC 40: The CAC 40 is a capitalization-weighted index of the most liquid and most highly capitalized stocks traded on the Paris Bourse. The total market capitalization of the index was $370 billion on April 3, 1997.

SMI: The SMI is a capitalization-weighted index of the largest and most liquid stocks traded on the Geneva, Zurich, and Basle Stock Exchanges. The total market capitalization of the index was $322 billion on April 3, 1997.

AEX: The AEX is a capitalization-weighted index of the 25 leading Dutch stocks traded on the Amsterdam Stock Exchange. The total market capitalization of the index was $295 billion on April 3, 1997.

MIB 30: The MIB 30 is a capitalization-weighted index of 30 of the most liquid and most highly capitalization stocks traded on the Milan Stock Exchange. The total market

[1] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[2] The FT–SE 100 was approved for warrant trading in 1990 (Securities Exchange Act Release No. 27769 (March 6, 1990), 55 FT 9380 (March 13, 1990)). the FT–SE 100 was also approved for options trading on the CBOE (Securities Exchange Act Release No. 32679 (July 27, 1993), 58 FR 41300 (August 3 1993)); the DAX was approved for warrant trading in 1995 (Securities Exchange Act Release No. 36070 (August 9, 1995), 60 FR 42205 (August 15, 1995)); and the CAC 40 was approved for warrant trading in 1990 (Securities Exchange Act Release No. 28544 (October 17, 1990), 55 FR 42792 (October 23, 1990)).

capitalization of the index was $186 billion on April 3, 1997.

OMX: The OMX is a capitalization-weighted index of the 30 stocks that have the largest volume of trading on the Stockholm Stock Exchange. The total market capitalization of the index was $159 billion on April 3, 1997.

IBEX 35: The IBEX 35 is a capitalization-weighted index of the 35 most liquid Spanish stocks continuously traded and quoted on the Joint Stock Exchange System made up of four Spanish stock exchanges (Barcelona, Bilbao, Madrid, and Valencia). The total market capitalization of the index was $144 billion on April 3, 1997.

The Exchange has in place surveillance sharing agreements with the appropriate regulatory organizations in each country represented in the European Eight Index except Sweden and Switzerland, which together currently represent 14.88% of the Index value.

Index Calculation: The Index will be calculated using a ''capitalization-weighted'' methodology. As noted above, each sub-index will be given its assigned weighting at the close of trading on the day immediately prior to the listing of the indexed term note. The number of shares in each sub-index will be fixed on that day and will equal its weighting in the Index times 100 divided by the sub-index level. There will be no periodic rebalancing of the index to reflect changes in relative market capitalization among the sub-indices. The initial sub-index value used in the Index calculation will equal the product of the number of shares in the sub-index times its representatives sub-index level. The Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the day preceding the listing of the indexed term note. The Exchange will calculate the Index and, similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B each trading day until the last individual sub-indexes ceases updating in its home market. The Exchange will then disseminate the Index based on the closing values for each sub-index.

The shares for each sub-index will remain fixed during the life of the note, except in the event of a significant action taken by the publisher of the sub-index such as a split of the value of the sub-index or a change in the method of calculation. If a sub-index ceases to be published, it may be replaced with a substitute or successor index, or the calculation agent may undertake to publish the sub-index using the same procedures last used to calculate the sub-index prior to its discontinuance.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [3] in general and furthers the objectives of Section 6(b)(5) [4] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed and 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–97–19 and should be submitted by June 18, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13876 Filed 5–27–97; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38665; International Series Release No. 1083; File No. SR–Amex–97–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing and Trading of indexed Term Notes

May 21, 1997.

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 April 30, 1997, the American Stock Exchange, Inc. (''Amex'' 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 Amex proposes to approve for listing and trading under Section 107A of the Amex Company Guide, indexed term notes based in whole or in part on changes in the value of the Major 11 International Index (''the Index'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Amex Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[1] The Amex now proposes to list for trading under Section 107A of the Company Guide indexed term notes whose value in whole or in part will be based upon an index consisting of the major market indices of eight European countries, two Asian countries and Australia.

The indexed term notes will be non-convertible debt securities and will conform to the listing guidelines under Section 107A of the Company Guide. Although a specific maturity date will not be established until the time of the offering, the indexed term notes will provide for maturity within a period of not less than one nor more than ten years from the date of issue. Indexed term notes may provide for periodic payments and/or payments at maturity based in whole or in part on changes in the value of the Index. At maturity holders of the indexed term notes will receive not less than 90% of the initial issue price. The notes will not be callable or redeemable prior to maturity and will be cash settled in U.S. currency. Consistent with other structured products, the Exchange will distribute a circular to its membership, prior to the commencement of trading, providing guidance with regard to member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines.

The Index: The sub-indices that form the Major 11 International Index represent 911 of the largest and most liquid securities from eight European markets, two Asian markets and the Australian market. Initial weightings will be assigned to each sub-index at the close of trading on the day immediately prior to the listing of the indexed term notes and based upon the index's market capitalization. Based on market data as of April 3, 1997, the Nikkei 225 Index (''NKY'') would have an assigned weight of approximately 27.80%; the UK's Financial Times SE 100 Index (''FT–SE 100'') would have an assigned weight of approximately 23.44%; the Deutscher Aktienindex (''DAX'') would have an assigned weight of approximately 8.86%; the Compagnie des Agents de Change 40 Index (''CAC 40'') would have an assigned weight of approximately 7.22%; the Swiss Market Index (''SMI'') would have an assigned weight of approximately 6.29%; the Amsterdam European Options Exchange Index (''AEX'') would have an assigned weight of approximately 5.76%; the Hong Kong 30 Index (''HKX'') would have an assigned weight of approximately 5.15%; the Australian All Ordinaries Index (''AS 30'') would have an assigned weight of approximately 5.94%; the Milano Italia Borsa 30 Index (''MIB 30'') would have an assigned weight of approximately 3.63%; the Stockholm Options Market Index (''OMX'') would have an assigned weight of approximately 3.10%; and the IBEX 35 would have an assigned weight of approximately 2.81%. Five of the eleven sub-indices, Nikkei 225, FT–SE 100, DAX, CAC 40 and HKX (combined weight of approximately 72.47%) have been approved by the Commission for warrant trading within the last few years.[2] A description of each of the sub-indices is set forth below:

Nikkei 225: The Nikkei 225 Index is a price-weighted index of 225 actively-traded Japanese companies listed in the First Section of the Tokyo Stock Exchange. The total market capitalization of the index was $1,424 billion on April 3, 1997.

FT–SE 100: The FE–SE is a capitalization-weighted index of 102 of the most highly capitalized companies traded on the London Stock Exchange. The total market capitalization of the index was $1,201 billion on April 3, 1997.

DAX: The DAX is a total rate of return index of 30 selected German blue chip stocks traded on the Frankfurt Stock Exchange. The total market capitalization of the index was $454 billion on April 3, 1997.

CAC 40: The CAC 40 is a capitalization-weighted index of the most liquid and most highly capitalized stocks traded on the Paris Bourse. The total market capitalization of the index was $370 billion on April 3, 1997.

SMI: The SMI is a capitalization-weighted index of the largest and most liquid stocks traded on the Geneva, Zurich, and Basle Stock Exchanges. The total market capitalization of the index was $322 billion on April 3, 1997.

AEX: The AEX is a capitalization-weighted index of the 25 leading Dutch stocks traded on the Amsterdam Stock Exchange. The total market capitalization of the index was $295 billion on April 3, 1997.

HKX: The HKX is a capitalization-weighted index of 30 stocks that are actively traded on the Hong Kong Stock Exchange. The total market capitalization of the index was $264 billion on April 11, 1997.

AS30: The AS30 is a capitalization-weighted index of 341 common stocks listed on the Australian Stock Exchange. The total market capitalization of the index was $304 billion on April 3, 1997.

MIB 30: The MIB 30 is a capitalization-weighted index of 30 of the most liquid and most highly capitalized stocks traded on the Milan Stock Exchange. The total market capitalization of the index was $186 billion on April 3, 1997.

OMX: The OMX is a capitalization-weighted index of the 30 stocks that have the largest volume of trading on the Stockholm Stock Exchange. The total market capitalization of the index was $159 billion on April 3, 1997.

IBEX 35: The IBEX 35 is a capitalization-weighted index of the 35 most liquid Spanish stocks continuously trade and quoted on the Joint Stock Exchange System made up of four Spanish stock exchanges (Barcelona, Bilbao, Madrid, and Valencia). The total market capitalization of the index was $144 billion on April 3, 1997.

The Exchange has in place surveillance sharing agreements with

[1] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[2] The Nikkei 225 was approved for warrant trading in 1989 (Securities Exchange Act Release No. 27565 (December 12, 1989), 55 FR 376 (January 4, 1989)), and the FT–SE 100 was approved for warrant trading in 1990 (Securities Exchange Act Release No. 27769 (March 6, 1990), 55 FR 9380 (March 13, 1990)). The FT–SE 100 was also approved for options trading on the CBOE (Securities Exchange Act Release No. 32679 (July 27, 1993), 58 FR 41300 (August 3, 1993)); the DAX was approved for warrant trading in 1995 (Securities and Exchange Act Release No. 36070 (August 9, 1995), 60 FR 42205 (August 15, 1995)); the CAC 40 was approved for warrant trading in 1990 (Securities Exchange Act Release No. 28544 (October 17, 1990), 55 FR 42792 (October 23, 1990)); and the HKX was approved for warrant trading in 1993 (Securities Exchange Act Release No. 33036 (October 8, 1993), 58 FR 53588 (October 15, 1993)).

the appropriate regulatory organizations in each country represented in the Major 11 International Index except Sweden and Switzerland, which together currently represent 9.39% of the Index value.

Index Calculation: The Index will be calculated using a ''capitalization-weighted'' methodology. As noted above, each sub-index will be given its assigned weighting at the close of trading on the day immediately prior to the listing of the indexed term note. The number of shares in each sub-index will be fixed on that day and will equal its weighting in the Index times 100 divided by the sub-index level. There will be no periodic rebalancing of the Index to reflect changes in the relative market capitalizations among the sub-indices. The initial sub-index value used in the Index calculation will equal the product of the number of shares in the sub-index times its representative sub-index level. The Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the day preceding the listing of the indexed term note. The Exchange will calculate the Index and, similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B each trading day until the last individual sub-indexes ceases updating in its home market. The Exchange will then disseminate the Index based on the closing values for each sub-index.

The shares for each sub-index will remain fixed during the life of the note, except in the event of a significant action taken by the publisher of the sub-index, such as a split of the value of the sub-index or a change in the method of calculation. If a sub-index ceases to be published, it may be replaced with a substitute or successor index, or the calculation agent may undertake to publish the sub-index using the same procedures last used to calculate the sub-index prior to its discontinuance.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [3] in general and furthers the objectives of Section 6(b)(5) [4] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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, 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–97–20 and should be submitted by June 18, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13877 Filed 5–27–97; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38656; File No. SR–BSE–97–01]

Self-Regulatory Organizations; Boston Stock Exchange; Notice of Filing of Proposed Rule Change Amending the Minor Rule Violation Plan

May 20, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 13, 1997, the Boston Stock (''BSE'' 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 BSE. 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 Exchange seeks to amend its Minor Rule Violation Plan to add or increase summary fine provisions for carrying weapons, fighting on the Exchange premises, and failure to comply with Floor Official rulings.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSE 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. BSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] The text of the proposed rule change is attached as Exhibit 2 to File No. SR–BSE–97–01, and is available for review at the principal office of BSE and in the Public Reference Room of the Commission.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend various provisions of the Minor Rule Violation Plan. The first change is to increase the summary fine for possession of a firearm or other weapon on the Exchange premises from $2500 for any offense to $5000 for any offense. In initially adopting this fine provision, the Market Performance Committee sought to attach the highest fine available as a deterrent in an effort to ensure the safety of members, Exchange staff, and guests.

The Exchange seeks to add a summary fine provision for unauthorized physical contact with the intent to cause harm or intimidate another on the Exchange premises, with summary fines of $500 for the first offense, $1000 for the second offense, and $2500 for subsequent offenses. The corresponding rule provision is Article XIV, Section 5 of the Exchange Constitution. The intent of the Market Performance Committee in adopting such a provision is to prevent member disputes from escalating to a physical confrontation.

The Exchange also seeks to add a summary fine provision for failure to comply with an appealed Floor Official ruling that stands.[3] The intent of the Market Performance Committee in adopting this provision is to ensure that rule interpretations and execution quality issues on which Floor Officials are asked to make rulings are addressed in a timely fashion for the benefit of the customer.

Finally, the Exchange seeks to amend the rule provision regarding appeals to summary fines to require filing with the Office of the General Counsel, rather than with the Surveillance Department, in an effort to provide a more efficient coordination of the appeal process.

In regard to these proposed changes, the Market Performance Committee stressed its belief that the violation of any of these fine provisions may in and of itself warrant a full disciplinary hearing, as they deal with the safety of others and the protection of customers.

The Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act,[4] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customer, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety 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 BSE consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street 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 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 BSE. All submissions should refer to File No. SR–BSE–97–01 and should be submitted by June 18, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13878 Filed 5–27–97; 8:45 am]

BILLING CODE 8010–01–M

[3] In conjunction with this filing the Exchange plans to file File No. SR–BSE–97–02, which will seek to amend the corresponding rule provision relating to Floor Officials.

[4] 15 U.S.C. § 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38663; File No. SR–NSCC–97–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating Revision of Service Fees

May 21, 1997.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on April 24, 1997, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on May 12, 1997, and May 15, 1997, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies NSCC's fee structure.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to revise the position record fee in connection with NSCC's networking service. NSCC has determined it is appropriate to reduce its fees for position records. Therefore, effective May 1, 1997, for billing in June 1997, the new fee structure will permit participating networking firms to receive position records twice a month for each account at no additional charge rather than the present once a month. The current charge for excess or extra position records will remain unchanged.[3] In connection with the revised fee structure, NSCC's procedures are updated to reflect that all participating networking firms will be permitted to receive position records from NSCC.

The proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because it provides for the equitable allocation of fees among NSCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[5] of the Act and pursuant to Rule 19b–4(e)(2)[6] promulgated thereunder in that the proposed rule change establishes or changes a due, fee, or other charge imposed by NSCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–97–05 and should be submitted by June 18, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13879 Filed 5–27–97; 8:45 am]

BILLING CODE 8010–01–M

[3] If a networking firm requests more than 5,000 records in excess of twice its total number of subaccounts, the firm is charged $1.50 for every thousand subaccount records in excess of twice the firm's total number of subaccounts.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences and Caribbean Basin Initiative; Intellectual Property Rights; Notice of Partial Withdrawal of Honduras' Benefits

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of intention to recommend withdrawal of certain benefits with respect to Honduras.

SUMMARY: This notice informs the public that in light of a determination that Honduras fails to provide adequate and effective means under its laws for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, the Trade Policy Staff Committee (TPSC) will recommend to the President that he partially withdraw duty-free treatment accorded Honduras under the Generalized System of Preferences (GSP) program and the Caribbean Basin Initiative (CBI)

Specifically, the TPSC will recommend that $5 million in combined GSP and CBI trade benefits be withdrawn. These benefits will be suspended in four months if the intellectual property rights problems discussed below are not remedied. The public will be given an opportunity to comment on the specific products to be affected.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, N.W., Room 518, Washington, D.C. 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. The GSP Program

The GSP program grants duty-free treatment to designated eligible articles that are imported from designated beneficiary developing countries. The GSP program was authorized by Title V of the Trade Act of 1974, as amended (''The Trade Act'') (19 U.S.C. 2461 *et seq.*) and was implemented by Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations. Once granted, GSP benefits may be withdrawn, suspended or limited by the President with respect to any article or with respect to any country. In making this determination, the President must consider several factors, one of which is the extent to which a beneficiary country is providing adequate and effective means under its laws for foreign nationals to secure, exercise and enforce exclusive rights in intellectual property, including patents, trademarks and copyrights. 19 U.S.C. 2462(c)(5). The Caribbean Basin Economic Recovery Act contains similar requirements. 19 U.S.C. 2702(c)(9). Honduras is a beneficiary of both the GSP and CBI programs. In 1996, over $5 million of Honduran imports benefitted from GSP. In 1996 imports under CBI from Honduras were valued at approximately $160 million.

II. IRP Protection in Honduras

In June 1992 the Motion Picture Export Association of America (now renamed the Motion Picture Association) filed a petition under the GSP program alleging that Honduras had failed to provide adequate and effective copyright protection and enforcement to U.S. copyright owners. This petition dealt primarily with the unauthorized broadcasting of pirated

videos and rebroadcasting of U.S. satellite-carried programming. During the Caribbean Basin Initiative designation process in the mid-1980's the Government of Honduras was officially informed of this problem and gave assurances that it would be resolved. This has not happened. Three major television stations, one in Tegucigalpa and two in San Pedro Sula, are the major offenders at present. Other piracy in Honduras affects our sound recording and book publishing industries.

As a result, the Trade Policy Staff Committee (TPSC) will recommend to the President that he partially withdraw duty-free treatment accorded Honduras under the Generalized System of Preferences (GSP) program and the Caribbean Basin Initiative (CBI). Specifically, the TPSC will recommend that $5 million in combined GSP and CBI trade benefits be withdrawn. These benefits will be suspended in four months if the intellectual property rights problems are not remedied. The public will be given an opportunity to comment on the specific products to be affected.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 97–13855 Filed 5–27–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

AGENCY: Information Collection Activity Under OMB Review

AGENCY: Department of Transportation, Federal Aviation Administration (DOT/FAA).

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 described below has been forwarded to the Office of Management and Budget (OMB) for review. The FAA is requesting an emergency clearance by June 5, 1997, in accordance with 5 CFR 1320.13. The following information describes the nature of the information collection and its expected burden.

DATES: Submit any comments to OMB and FAA by July 28, 1997.

SUPPLEMENTARY INFORMATION:

Title: Pilot's Opinion Survey.

Need: In accordance with the Government Performance and Results Act of 1993 (GPRA) and Executive Order No. 12862, which mandate surveying customer satisfaction, the FAA is seeking to better understand pilots' opinions of the air traffic management and weather information services they receive. This information will be used by the FAA to track national airspace system service performance and identify trends and areas for improvement. It will also be used to support the FAA's work prioritization and resource allocation efforts.

Respondents: Individuals (a maximum of 6,700 licensed pilots with current medical certificates).

Frequency: Annually.

Burden: 12 minutes per pilot for a maximum total of 1,340 hours.

FOR FURTHER INFORMATION CONTACT: You may contact: Federal Aviation Administration, James McMahon, Office of System Capacity, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may be submitted to the agency at the address above and to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, Attention FAA Desk Officer, 725 17th Street, NW., Washington, DC 20503.

Issued in Washington, DC on May 21, 1997.

Steve Hopkins,

Manager, Corporate Information Division, ABC–100.

[FR Doc. 97–13952 Filed 5–27–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety, Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications and Exemptions Correction.

The original notice published in the **Federal Register**/Vol. 62 No. 94/Thursday, May 15, 1997, Page 26847, contained several editorial errors.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions & Approvals.

Application No.	Docket No.	Applicant	Nature of exemption thereof
11866–N	RSPA–972454	Sea-Land Service, Inc. Charlotte, NC.	To authorize the transportation in commerce of cars and other motor vehicles, with batteries connected with some fuel in the fuel tank without required ventilation of each hold or compartment of a vessel.
11886–N	RSPA–972490	Standard Chlorine of Delaware, Inc. Delaware City, DE.	To authorize the transportation in commerce of Environmentally Hazardous Substance, Solid, n.o.s., Class 9, in 5M1 bags.

[FR Doc. 97–13850 Filed 5–27–97; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

Agency Research and Special Programs Administration, DOT.

ACTION List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to "Reasons for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis.

4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application
M—Modification request
PM—Party to application with modification request

Issued in Washington, DC on May 21, 1997.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
10581–N	Luxfer UK Limited, Nottingham, England	4	07/31/1997
11193–N	U.S. Department of Defense, Falls Church, VA	4	07/31/1997
11409–N	Pure Solve, Inc., Irving, TX	1	07/31/1997
11442–N	Union Tank Car Co., East Chicago, IN	4	07/31/1997
11443–N	Hercules Inc., Wilmington, DE	4	07/31/1997
11465–N	Monsanto Co., St. Louis, MO	4	07/30/1997
11511–N	Brenner Tank Inc., Fond du Lac, WI	4	7/31/1997
11523–N	Bio-Lab, Inc., Conyers, GA	4	07/31/1997
11537–N	Babson Bros. Co., Romeoville, IL	4	06/30/1997
11540–N	Convenience Products, Fenton, MO	1	06/30/1997
11559–N	Japan Oxygen, Inc. Long Beach, CA	4	06/30/1997
11561–N	Solkatronic Chemicals, Fairfield, NJ	4	07/31/1997
11572–N	North American Biologicals, Inc., Miami, FL	4	06/30/1997
11578–N	General Alum & Chemical Co., Searsport, MA	4	08/29/1997
11586–N	Chem Coast Inc., La Porte, TX	4	07/31/1997
11591–N	Clearwater Distributors, Inc., Woodridge, NY	4	08/29/1997
11592–N	Amtrol Inc., West Warwick, RI	4	08/29/1997
11597–N	Zeneca, Inc., Wilmington, DE	4	06/30/1997
11606–N	Safety-Kleen Corp., Elgin, IL	4	08/29/1997
11613–N	Monsanto Co., St. Louis, MO	4	09/30/1997
11621–N	Aerojet Industrial Products, North Las Vegas, NV	4	08/29/1997
11627–N	Cabot Corporation, Revere, PA	4	06/30/1997
11646–N	Barton Solvents, Inc., Des Moines, IA	4	07/31/1997
11653–N	Phillips Petroleum Co., Bartlesville, OK	4	08/29/1997
11654–N	Hoechst Celanese Corp., Dallas, TX	4	08/29/1997
11662–N	FIBA Technologies, Inc., Westboro, MA	4	08/29/1997
11664–N	Breed Technologies, Inc., Lakeland, FL	4	08/29/1997
11667–N	Weldship Corp., Bethlehem, PA	4	08/29/1997
11668–N	AlliedSignal, Inc., Morristown, NJ	4	08/29/1997
11671–N	Matheson Gas Products, Secaucus, NJ	4	08/29/1997
11678–N	Air Transport Association, Washington, DC	4	07/31/1997
11679–N	Dorbyl Engineering Container Division (DHE), Republic of South Africa	4	06/30/1997
11682–N	Cryolor, Argancy, 57365 Ennery—France	4	08/29/1997
11687–N	Tri Tank Corp., Syracuse, NY	4	08/29/1997
11699–N	GEO Specialty Chemicals, Bastrop, LA	4	08/29/1997
11701–N	Dept. of Defense, Falls Church, VA	4	08/29/1997
11711–N	N.C. Department of Agriculture, Raleigh, NC	4	06/30/1997
11721–N	The Coleman Co., Inc., Wichita, KS	4	08/29/1997
11722–N	Citergaz S.A., 86400 Civray, FR	1	08/29/1997
11735–N	R.D. Offutt Co., Park Rapids, MN	4	08/29/1997
11739–N	Oceaneering Space Systems, Houston, TX	4	08/29/1997
11740–N	Morton International, Inc., Ogden, UT	4	08/29/1997
11742–N	Advanced Packaging Laboratories, Ontario, CA	4	08/29/1997
11748–N	Frank W. Hake Associates, Memphis, TN	4	08/29/1997
11751–N	Delta Resigns & Refractories, Detroit, MI	4	08/29/1997
11757–N	Ovation Semiconductor Inc., Rochester, MN	1	08/29/1997
11759–N	E.I. DuPont de Nemours & Co., Inc., Wilmington, DE	4	09/30/1997
11761–N	Vulcan Chemicals, Birmingham, AL	4	09/30/1997
11762–N	Owens Fabricators, Inc., Baton Rouge, LA	4	08/29/1997
11765–N	Laidlaw Environmental Services Inc., Columbia, SC	4	08/29/1997
11767–N	Ausimont USA, Inc., Thorofare, NJ	4	07/31/1997
11768–N	Flotec Inc., Indianapolis, IN	4	08/29/1997
11769–N	Great Western Chemical Co., Portland, OR	4	08/30/1997
11772–N	Kleespie Tank & Petroleum Equipment, Morris, MN	4	08/29/1997
11773–N	West Coast Air Charter, Ontario, CA	4	08/29/1997
11774–N	Safety Disposal System, Inc., Opa Locka, FL	1	09/30/1997
11779–N	Columbia Helicopters, Inc., Portland, OR	4	06/30/1997
11780–N	Hewlett-Packard Co., Washington, DC	4	09/30/1997
11782–N	Aeronex, Inc., San Diego, CA	4	09/30/1997
11783–N	Peoples Natural Gas, Rosemount, MN	4	09/30/1997
11796–N	Morton International, Inc., Ogden, UT	4	09/30/1997
11823–N	Dyno Nobel Inc., Salt Lake City, UT	4	09/30/1997

NEW EXEMPTION APPLICATIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
11843–N	Shell Chemical Co., Houston, TX	4	09/30/1997

MODIFICATIONS TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
970–M	Callery Chemical Corp., Pittsburgh, PA	4	08/29/1997
4354–M	PPG Industries, Inc., Pittsburgh, PA	1	08/29/1997
4453–M	Dyno Nobel Inc., Salt Lake City, UT	4	08/29/1997
5493–M	Montana Sulphur & Chemical Co., Billings, MT	4	08/29/1997
5876–M	FMC Corp., Philadelphia, PA	4	08/29/1997
6117–M	Montana Sulphur & Chemical Co., Billings, MT	4	08/29/1997
6610–M	ARCO Chemical Co., Newtown Square, PA	4	09/30/1997
7517–M	Trinity Industries, Inc., Dallas, TX	4	09/30/1997
8556–M	Air Products & Chemicals, Inc., Allentown, PA	4	08/29/1997
9184–M	The Carbide/Graphite Group, Inc., Louisville, KY	4	06/30/1997
9266–M	ERMEWA, Inc., Houston, TX	4	09/30/1997
9413–M	EM Science, Cincinnati, OH	4	06/30/1997
9706–M	Taylor-Wharton, Harrisburg, PA	4	08/29/1997
9758–M	Suunto, Carlsbad, CA	4	09/30/1997
9819–M	Halliburton Energy Services, Duncan, OK	4	09/30/1997
10511–M	Schlumberger Technology Corporation, Houston, TX	4	08/29/1997
10741–M	Northern Natural Gas Co., West Des Moines, IA	4	09/30/1997
10798–M	Olin Corp., Stamford, CT	4	08/29/1997
11058–M	Spex Certiprep Inc., Metuchen, NJ	4	08/29/1997
11262–M	Caire, Inc., Burnsville, MN	4	08/29/1997
11275–M	Dorbyl Engineering Container Division (DHE), Denver, CO	4	06/30/1997
11321–M	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE	4	06/30/1997
11458–M	Creative Products Inc. of Rossville, Rossville, IL	4	06/30/1997
11579–M	Dyno Nobel Inc., Salt Lake City, UT	4	09/30/1997

[FR Doc. 97–13840 Filed 5–27–97; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–318 (Sub–No. 4X)]

Louisiana and Delta Railroad, Inc.—Abandonment Exemption—In Lafourche and Assumption Parishes, LA

On May 8, 1997, Louisiana and Delta Railroad, Inc. (Louisiana and Delta), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903–04 [1] to abandon a line of railroad known as the Napoleonville Branch. This line extends from milepost 1.0, located at or near Thibodaux, Lafourche Parish, LA, to milepost 15.28, located at or near Supreme, Assumption Parish, LA, for a distance of 14.28 miles. The line traverses U.S. Postal Service Zip Codes 70301, 70302, 70372, and 70390.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interests of the employees will be protected by Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued within 90 days (by August 26, 1997.)

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 and any request for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 17, 1997.[2] Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–318 (Sub-No. 4X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Eric M. Hocky or Sebastian Ferrer, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the

[1] While Louisiana and Delta's petition recites that exemption is sought from the provisions of section 10904, as well as section 10903, the petition offers no basis for an exemption from the offer of financial assistance provisions of section 10904.

[2] The City of Thibodaux, LA has requested a public use condition and interim trail use/rail banking. Its request is supported by the Governor of Louisiana.

hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or, if necessary, an environmental impact statement (EIS)) prepared by SEA will be served on all parties of record and on any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in these abandonment proceedings normally will be available within 60 days from the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: May 15, 1997.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 97–13933 Filed 5–27–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–318 (Sub–No. 3X)]

Louisiana & Delta Railroad, Inc.—Abandonment Exemption—in Terrebonne Parish, LA

Louisiana & Delta Railroad, Inc. (L&D) has filed notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon 1.8 miles of its line of railroad known as the Houma Branch between milepost 0.20 to milepost 2.0, in Terrebonne Parish, LA.[1] The line traverses United States Postal Service Zip Code 70395.

L&D has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 27, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by June 9, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 17, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Sebastian Ferrer, Esquire, Gollatz, Griffin & Ewing, P.C., 213 W. Miner Street, P. O. Box 796, West Chester, PA 19381–0796.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

L&D has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by June 2, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), L&D shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by L&D's filing of a notice of consummation by May 28, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: May 21, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–13934 Filed 5–27–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. The applicant in its verified notice, indicated a proposed consummation date of June 26, 1997. However, because the verified notice was filed on May 8, 1997, consummation should have not been proposed to take place prior to June 27, 1997. Applicant's representative has been contacted and has confirmed that the correct consummation date is on or after June 27, 1997.

The Terrebonne Parish Consolidated Government (TPCG) filed a request for issuance of a notice of interim trail use (NITU) for the line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The Board will address TPCG's trail use request, and any others that may be filed, in a subsequent decision.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. See 49 CFR 1002.2(f)(25).

[4] The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Application for Foreign Trade Zone Admission and/or Status Transaction, Application for Foreign Trade Zone Activity Report

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Foreign Trade Zone Admission and/or Status Transaction, Application for Foreign Trade Zone Activity Report. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before July 28, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the 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 estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Application for Foreign Trade Zone Admission and/or Status Transaction, Application for Foreign Trade Zone Activity Report.

OMB Number: 1515–0086.

Form Number: Customs Forms 214, 214A, 214B, 214C, and 216.

Abstract: Customs Forms 214, 214A, 214B, and 214C, Application for Foreign-Trade Zone Admission and/or Status Designation, are used by business firms which bring merchandise into a foreign trade zone, to register the admission of such merchandise to zones and to apply for the appropriate zone status.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 6,514.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 18,001.

Estimated Total Annualized Cost on the Public: $279,300.

Dated: May 19, 1997.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 97–13912 Filed 5–27–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Application/Permit/Special Licence, Unlading/Lading Overtime Service

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application/Permit/Special Licence, Unlading/Lading Overtime Service. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before July 28, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the 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 estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Application/Permit/Special Licence, Unlading/Lading Overtime Service.

OMB Number: 1515–0013.

Form Number: Customs Form 3171.

Abstract: Customs Form 3171, is used by commercial carriers and importers as a request for permission to unlade imported merchandise, baggage, or passengers and for overtime services of Customs officers in connection with lading or unlading of merchandise, or the entry or clearance of a vessel, including the boarding of a vessel for preliminary supplies, ship's stores, sea stores, or equipment not to be reladen, which is subject to free or duty-paid entry.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 1,500.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 39,900.

Estimated Total Annualized Cost on the Public: N/A.

Dated: May 19, 1997.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 97–13913 Filed 5–27–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Application To Establish Centralized Examination Station

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general

public and other Federal agencies to comment on an information collection requirement concerning the Application to Establish Centralized Examination Station. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before July 28, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 6216, 1301 Constitution Ave., NW, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the 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 estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Application to Establish Centralized Examination Station.

OMB Number: 1515–0183.

Form Number: N/A.

Abstract: A port director decides when their port needs one or more Centralized Examination Stations (CES). They announce this need and solicit applications to operate a CES. The information contained in the application will be used to determine the suitability of the applicant's facility, the fairness of his fee structure, his knowledge of cargo handling operations and his knowledge of Customs procedures.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 2 hours (120 minutes).

Estimated Total Annual Burden Hours: 100.

Estimated Total Annualized Cost on the Public: N/A.

Dated: May 19, 1997.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 97–13914 Filed 5–27–97; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register

Vol. 62, No. 102

Wednesday, May 28, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580-AA52

Fees for Official Inspection and Official Weighing Services

Correction

In proposed rule document 97–12435 beginning on page 26252 in the issue of Tuesday, May 13, 1997, make the following correction:

§ 800.71 [Corrected]

On page 26253 under § 800.71, in Schedule A, Table 1, the table should read as set forth below:

Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]

	Monday to Friday (6 a.m to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and Overtime [2]	Holidays
(1) Inspection and Weighing Services Hourly Rates (per service representative)				
1-year contract	$23.80	$25.60	$33.40	$40.20
6-month contract	25.80	27.60	35.40	46.20
3-month contract	29.60	30.80	38.60	48.00
Noncontract	34.00	36.00	44.20	54.20

(2) Additional Tests (cost per test, assessed in addition to the hourly rate) [3]	
(i) Aflatoxin (other than Thin Layer Chromatography)	8.50
(ii) Aflatoxin (Thin Layer Chromatography method)	20.00
(iii) Soybean protein and oil (one or both)	1.50
(iv) Wheat protein (per test)	1.50
(v) Sunflower oil (per test)	1.50
(vi) Vomitoxin (qualitative)	7.50
(vii) Vomitoxin (quantitative)	12.50
(viii) Waxy corn (per test)	1.50
(ix) Fees for other tests not listed above will be based on the lowest noncontract hourly rate.	
(x) Other services	
(a) Class Y Weighing (per carrier)	
(1) Truck/container	.30
(2) Railcar	1.25
(3) Barge	2.50

(3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier)	
(i) All outbound carriers (per-metric-ton) [4]	
(a) 1–1,000,000	0.090
(b) 1,000,001–1,500,000	0.082
(c) 1,500,001–2,000,000	0.042

(d) 2,000,001–5,000,000	0.032
(e) 5,000,001–7,000,000	0.017
(f) 7,000,001–	0.002
(ii) Additional services (assessed in addition to all other fees) [3]	
(a) Submitted sample (per sample—grade and factor)	1.50
(b) Submitted sample—Factor only (per factor)	0.70

[1] Fees apply for original inspection and weighing, reinspection, and appeal inspection service include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

[2] Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

[3] Appeal and reinspection services will be assessed the same fee as the original inspection service.

[4] The administrative fee is assessed on an accumulated basis beginning at the start of the Service's fiscal year (October 1 each year).

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review: Comment Request

Correction

In notice document 97–12957 appearing on page 27271 in the issue of Monday, May 19, 1997, make the following correction:

In the second column, the eighth line should read ''David__Guzy@smtp.mms.gov.''

BILLING CODE 1505-01-D

DEPARMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA Number 162C]

Schedules of Controlled Substances: Proposed Removal of Fenfluramine From the Controlled Substances Act; Correction

Correction

In proposed rule document 97–12955, appearing on page 27214, in the issue of Monday, May 19, 1997, in the second column, in the second full paragraph, in the ninth line, ''June 5, 1997'' should read ''June 18, 1997''.

BILLING CODE 1505-01-D

federal register

Wednesday
May 28, 1997

Part II

Department of Housing and Urban Development

24 CFR Part 92

HOME Investment Partnerships Program: Technical Amendment to Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 92

[Docket No. FR–3962–F–04]

RIN 2501–AC06

HOME Investment Partnerships Program: Technical Amendment to Final Rule

AGENCY: Office of the Secretary, HUD.

ACTION: Technical amendment to final rule.

SUMMARY: This document makes a number of technical amendments to a final rule issued by the Department of Housing and Urban Development (Department) to implement the HOME Investment Partnerships Program.

DATES: Effective date: June 27, 1997.

Retroactive applicability: This technical amendment applies retroactively to the final rule published September 16, 1996 (61 FR 48736), that became effective on October 16, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, Room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–2470. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: On September 16, 1996 (61 FR 48736), the Department published a final rule for the HOME Investment Partnerships Program (the HOME program). This document makes a number of technical amendments, described below, to the final rule.

Section 92.50(d)(1) contains an incorrect reference to paragraph (a)(1). The reference is changed to paragraph (a).

Section 92.202(b) incorrectly cites 24 CFR 893.6(b). The correct cite should be to 24 CFR 983.6(b). This section is also amended to clarify that the participating jurisdiction, not the Department, is responsible for determining and documenting that proposed sites for new construction of HOME-assisted housing meet the standards of § 983.6(b).

Section 92.203(a)(1) is amended to clarify that participating jurisdictions must make the initial determination of income eligibility for families to be assisted with HOME funds, using source documentation as described in paragraph (a)(1)(i), and also must conduct periodic income determinations for tenants in HOME-assisted rental units during the period of affordability. Although this provision appears in § 92.252(h), *Rental Housing,* it is added to the *Income Determination* section to avoid any confusion.

The October 18, 1996 **Federal Register**, at 61 FR 54492, contains a final rule that removes 24 CFR part 813 (Definition of income, income limits, rent and reexamination of family income for the Section 8 program) and creates a new subpart F to part 5 which covers income, income limits, and related issues for public housing and Section 8 programs. The HOME final rule at §§ 92.203 (b)(1) and (c), and § 92.353(c)(2)(i)(C)(*1*)(*ii*), refers to part 813 and therefore must be amended to reference part 5 instead.

The text of § 92.203(c) is amended because the current language might lead to the assumption that only the Section 8 definition of income had to be adjusted, and not the IRS or Census definitions. The reference in this section is also amended from citing paragraph (a) of the section to citing paragraph (b).

Section 92.205(d) is amended to clarify that the eligible HOME development costs for multi-unit projects include all costs made eligible for HOME funding under § 92.206. The final rule inadvertently limited the eligible costs to those listed in paragraphs (a), (b), and (c) of § 92.206.

Section 92.206(a)(5) is amended to clarify that utility connections and site improvements are eligible project-related soft costs in connection with the acquisition of standard housing. The language in the final rule inadvertently limited the eligibility of these costs to rehabilitation and new construction of housing. However, the Department recognizes that such improvements may be necessary in instances where standard housing is being acquired with HOME funds.

Section 92.209(c)(2) contains language reflecting a provision in HUD's FY 1996 appropriations act that the Federal preferences do not apply for FY 1996. This section is amended to reflect the same provision for FY 1997 included in HUD's FY 1997 appropriations act. A reference to a special provision affecting the Federal preferences for FY 1995 is deleted because it is no longer applicable.

Section 92.209(j) is amended to clarify that the income determination and Housing Quality Standards inspection requirements apply to security deposit assistance only at the point at which the assistance is provided. It was not HUD's intention to apply ongoing requirements to this limited form of assistance.

To implement a provision of HUD's FY 1997 appropriations act which permits the use of HOME funds for a priority purchaser under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA), § 92.214(a)(6) is amended.

Section 92.219(b)(1)(i) is amended to more accurately reflect the requirements of § 92.209 that apply to tenant-based rental assistance programs not funded with HOME that will be counted as match. The final rule specifically exempted these programs only from the term of rental assistance contract requirements of paragraph (e). However, paragraphs (b) (General requirement), (e) (Term of rental assistance contract), (g) (Tenant protections), (h) (Maximum subsidy), (j) (Security deposits), (k) (Program operation) and (l) (Use of Section 8 assistance) contain requirements that should apply only to HOME-assisted TBRA and not to tenant-based rental assistance funded through other sources. The provisions of paragraph (d) (Portability of assistance) are descriptive only and need not be included in the provisions applicable to non-HOME tenant-based rental assistance. The paragraphs that apply to non-HOME tenant-based rental assistance are (a) (Eligible costs), (c) (Tenant selection), (f) (Rent reasonableness), and (i) (Housing quality standards).

Section 92.219(b)(2)(iv) is amended to correct an internal inconsistency in the rule and reflect that two sources of match credit (supportive services at § 92.220(a)(10) and homebuyer counseling at 92.220(a)(11)) in addition to those presently listed are limited to HOME-assisted units.

Section 220(a)(10) is amended to add as eligible match the direct cost of supportive services provided to recipients of HOME-funded tenant-based rental assistance. The final rule established the direct cost of supportive services as a new source of match. However, the language in the rule limited eligibility to residents of HOME-assisted units. It was not the Department's intention to prohibit the value of supportive services provided to other HOME-assisted tenants, those receiving HOME tenant-based rental assistance, from being counted as match. The direct cost of supportive services provided to families residing in HOME-eligible units or receiving tenant-based rental assistance not funded with HOME is not an eligible match contribution.

Section 92.220(b)(4) is amended to eliminate an internal inconsistency in

the final rule. Section 92.220(a)(8) permits the value of donated or voluntary labor or professional services in connection with the provision of affordable housing to be counted as match. Section 92.220(b)(4) contradicts that provision by establishing as ineligible cash or other contributions from recipients of HOME contracts. It was not HUD's intention to eliminate as eligible match the value of labor or professional services provided to affordable housing at a reduced rate as a donation by an individual or entity that has a contract to provide labor or services to a HOME-assisted project. If, for example, an architect enters into a contract to provide services to a HOME-assisted project and agrees, as a donation to affordable housing, to accept a lower rate, the participating jurisdiction may count the value of the difference between architect's normal rate and the reduced rate.

As part of the recent effort to streamline regulations, 24 CFR 221.514 was deleted. To reflect this change with respect to maximum per-unit subsidy amounts for the HOME Program, the citations to various paragraphs of § 221.514 are deleted from § 92.250(a) and replaced with citations to the appropriate section of the National Housing Act.

The preamble to the final rule mischaracterized the provisions of § 92.251 (property standards). In explaining changes to this section, the preamble stated that units rehabilitated or constructed with HOME funds must meet local codes, rehabilitation standards, ordinances and zoning ordinances or, in the absence of local codes, the units must meet one of several model codes specified in the regulation. The preamble went on to state that ''(A)ll other HOME units including those occupied by tenants receiving HOME tenant-based rental assistance, must meet the Section 8 Housing Quality Standards (HQS).'' This language may lead to the conclusion that housing that is acquired with HOME funds must meet HQS. In fact, § 92.251(a)(2) provides that all other HOME-assisted housing (i.e., housing that is not rehabilitated or constructed with HOME funds) must meet all applicable State or local codes or, in the absence of such codes, HQS. Units occupied by recipients of HOME tenant-based rental assistance are required to meet HQS, in accordance with § 92.251(d). No changes to the text of the rule are required.

Section 92.251(a)(1) of the final rule established the Standard Building Code as one of the three model codes that may be used for HOME-assisted rehabilitation or new construction in the absence of State or local codes. This model code, which was established by the Southern Building Code Congress International (SBCCI), was formerly known as the Southern Building Code. To avoid confusion, a parenthetical reference to the former, commonly used title of this code has been added to this paragraph.

As a point of clarification, the word ''acquisition'' is added as a parenthetical reference to § 92.251(a)(2) as an example of other HOME-assisted housing.

Section 92.251(a)(3) cited 24 CFR 5.105(a) as the implementing regulations for accessibility requirements under section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act. The reference has been amended to be more specific and now cites to 24 CFR part 8, which contains the implementing regulations for section 504, and to the design and construction standards of the Fair Housing Act at 24 CFR 100.205, which apply to multifamily dwellings assisted with HOME funds.

In revising § 92.251 with respect to the property standards applicable to all HOME-assisted units, the Department did not specifically address manufactured housing. In doing so, it created some confusion among participating jurisdictions and omitted language stating that all new manufactured housing (whether or not it receives HOME assistance) must meet the construction and safety standards in 24 CFR 3280. A new paragraph (a)(4) is added to explain the property standards applicable to manufactured housing. The Federal construction and safety standards preempt State and local codes or laws covering the same aspects of performance for such housing. For installation, participating jurisdictions must follow State or local codes or comply with the manufacturer's written installation instructions. Manufactured housing rehabilitated with HOME funds is subject to the requirements of paragraph (a)(1) of this section.

In § 92.252(h), the reference to § 92.203 is clarified to read more precisely § 92.203(a)(1)(i). Initial income determinations must be based upon source documents in accordance with § 92.203(a)(1)(i). The original reference included initial determinations of income eligibility based upon written statements and certifications provided by the applicant family or written statements provided by the administrators of other government programs under which the HOME applicant is assisted. These two methods may be used for verifying income in subsequent years, consistent with the provisions in § 92.252(h).

In § 92.300(a)(1), the fourth sentence is corrected to clarify that funds can be provided not only to a community housing development organization (CHDO) or its subsidiary, but also to a partnership of which the CHDO or its subsidiary is the managing general partner.

In § 92.300(f), the paragraph heading is amended to read *Limitation on community housing development organization operating expenses*. This change is made to further clarify the content of the paragraph.

In § 92.350(a), the reference to the nondiscrimination and equal opportunity provisions in 24 CFR 5.105(a) has been changed. The correct reference is to 24 CFR part 5, subpart A and the requirements included in this subpart are listed.

Section 92.350(b), which provides for obtaining OMB circulars, is redesignated as paragraph (c) of § 92.505, which lists applicable OMB circulars.

A new § 92.350(b) is added. This paragraph applies the nondiscrimination requirements at section 282 of the Cranston Gonzalez National Affordable Housing Act (NAHA), which had been erroneously omitted from the final rule, to the HOME Program. The paragraph also implements section 213 of HUD's FY 1997 appropriations act, which permits HUD to waive the nondiscrimination requirements of the HOME statute at section 282 of NAHA in connection with the use of HOME funds on lands set aside under the Hawaiian Homes Commission Act, 1920 (42 Stat. 108).

Although the Department made the Section 8 HQS provisions optional in the final rule, it intended to continue to apply the HQS lead-based paint provisions to HOME-assisted housing. To accomplish this, § 982.401(j) was cited in section 92.355. This change has led to some confusion because the HQS provisions state that they supersede 24 CFR part 35, which also applies to the HOME Program. The provisions of both part 35 and § 982.401(j) continue to apply to all HOME-assisted housing. To avoid further confusion, language has been added to § 92.355 to clarify that the HQS provisions do not supersede part 35, but constitute additional lead-based paint requirements applicable to HOME-assisted housing.

The term ''elected or appointed official'' is added to the conflict of interest provisions applicable to owners and developers under § 92.356(f)(1), so that the language will parallel that in paragraph (c), *Persons covered*. The

language in this paragraph is also amended to make clear that an *individual* who receives HOME funds to acquire or rehabilitate his or her principal residence is exempt from this provision. Organizations do not qualify as homebuyers or owner-occupants.

A new § 92.358 is added to implement a provision in HUD's appropriation act that imposes limitations on compensation of consultants to be paid with HOME funds. The regulatory language, similar to that established for the Community Development Block Grant (CDBG) Program, was erroneously omitted from the final rule.

In § 92.500(d), paragraphs (1), (2), and (3) are revised to remove from each the parenthetical phrase stating that HUD will notify the participating jurisdiction of its execution of the HOME Investment Partnership Agreement on the date that HUD executes the agreement. Notification of participating jurisdictions must be performed in accordance with congressional notification procedures and the date of notification is often not the same date that HUD signs the grant agreement. To avoid the confusion caused by the reference to the notification on the date that HUD executes the agreement, these parenthetical references are deleted. In addition, these paragraphs are redesignated as paragraphs (d)(1) (A), (B), and (C), to permit the addition of a new paragraph (d)(2), as discussed immediately below.

In § 92.500(d), a new paragraph (2) is added to explain the Department's practice with respect to the reduction of a participating jurisdiction's HOME Investment Partnership Account when funds are not committed or expended in accordance with the 24-month or 5-year deadlines, respectively. For a participating jurisdiction to be deemed to have met the requirement for commitment of a fiscal year's allocation by its deadline, the sum of commitments from that allocation and all subsequent allocations must be equal to or greater than the amount of the allocation being examined, and the sum of funds reserved for and/or committed to community housing development organizations from that allocation and all subsequent allocations must be equal to or greater than 15 percent of the allocation being examined. For a participating jurisdiction to be deemed to have met the requirement for the expenditure of a fiscal year's allocation by its deadline, the amount of funds expended from that allocation and all subsequent allocations must be equal to or greater than the amount of the allocation being examined.

List of Subjects in 24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 92 is amended as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

2. In § 92.50, paragraph (d)(1) is revised to read as follows:

§ 92.50 Formula allocation.

* * * * *

(d) *Calculating formula allocations for units of general local government.* (1) Initial allocation amounts for units of general local government described in paragraph (a) of this section are determined by multiplying the sum of the shares of the six factors in paragraph (c) of this section by 60 percent of the amount available under paragraph (b) of this section for formula allocation. The shares are the ratio of the weighted factor for each jurisdiction over the corresponding factor for the total for all of these units of general local government.

* * * * *

3. In § 92.202, paragraph (b) is revised to read as follows:

§ 92.202 Site and neighborhood standards.

* * * * *

(b) *New rental housing.* In carrying out the site and neighborhood requirements with respect to new construction of rental housing, a participating jurisdiction is responsible for making the determination that proposed sites for new construction meet the requirements in 24 CFR 983.6(b).

4. In § 92.203, paragraphs (a)(1) introductory text, (b)(1) and (c) are revised to read as follows:

§ 92.203 Income determinations.

(a) * * *

(1) For families who are tenants in HOME-assisted housing and not receiving HOME tenant-based rental assistance, the participating jurisdiction must initially determine annual income using the method in paragraph (a)(1)(i) of this section. For subsequent income determinations during the period of affordability, the participating jurisdiction may use any one of the following methods in accordance with § 92.252(h):

* * * * *

(b) * * *

(1) ''Annual income'' as defined at 24 CFR 5.609 (except when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family Assets); or

* * * * *

(c) Although the participating jurisdiction may use any of the three definitions of ''annual income'' permitted in paragraph (b) of this section, to calculate adjusted income it must apply exclusions from income established at 24 CFR 5.611. The HOME rents for very low-income families established under § 92.252(b)(2) are based on adjusted income. In addition, the participating jurisdiction may base the amount of tenant-based rental assistance on the adjusted income of the family.

* * * * *

5. In § 92.205, paragraph (d) is amended by revising the second sentence to read as follows:

§ 92.205 Eligible activities: general.

* * * * *

(d) *Multi-unit projects.* * * * Only the actual HOME eligible development costs of the assisted units may be charged to the HOME program. * * *

* * * * *

6. Section 92.206 is amended by adding a new paragraph (a)(5) to read as follows:

§ 92.206 Eligible project costs.

* * * * *

(a) * * *

(5) Costs to make utility connections or to make improvements to the project site, in accordance with the provisions of § 92.206(a)(3) (ii) and (iii) are also eligible in connection with acquisition of standard housing.

* * * * *

7. Section 92.209 is amended by revising paragraph (c)(2) and paragraph (j)(5) to read as follows:

§ 92.209 Tenant-based rental assistance: Eligible costs and requirements.

* * * * *

(c) * * *

(2) *Federal preferences.* At least 50 percent of the families assisted must qualify, or would qualify in the near future without tenant-based rental assistance, for one of the three Federal preferences under section 6(c)(4)(A) of

the 1937 Act. These are families that occupy substandard housing (including families that are homeless or living in a shelter for homeless families); families that are paying more than 50 percent of their annual income for rent; or families that are involuntarily displaced. [During FY 1996 and FY 1997, the Federal preferences do not apply.]

* * * * *

(j) * * *

(5) Paragraphs (b), (c), (d), (f), (g), and (i) of this section are applicable to HOME security deposit assistance, except that income determinations pursuant to paragraph (c)(1) of this section and Housing Quality Standard inspections pursuant to paragraph (i) of this section are required only at the time the security deposit assistance is provided.

* * * * *

8. In § 92.214, paragraph (a)(6) is revised to read as follows:

§ 92.214 Prohibited activities.

(a) * * *

(6) Provide assistance to eligible low-income housing under 24 CFR part 248 (Prepayment of Low Income Housing Mortgages), except that assistance may be provided to priority purchasers as defined in 24 CFR 248.101;

* * * * *

9. In § 92.219, paragraphs (b)(1)(i) and (b)(2)(iv) are revised to read as follows:

§ 92.219 Recognition of matching contribution.

* * * * *

(b) * * *

(1) * * *

(i) The contribution must be made with respect to a tenant who is assisted with tenant-based rental assistance that meets the requirements of § 92.203 (Income determinations) and paragraphs (a), (c), (f), and (i) of § 92.209 (Tenant-based rental assistance); and

* * * * *

(2) * * *

(iv) The match may be in any eligible form of match except those in § 92.220(a)(2) (forbearance of fees), (a)(4) (on-site and off-site infrastructure), (a)(10) (direct cost of supportive services) and (a)(11) (direct costs of homebuyer counseling services).

* * * * *

10. Section 92.220 is amended by revising the first sentence in paragraph (a)(10) and by revising paragraph (b)(4) to read as follows:

§ 92.220 Form of matching contribution.

(a) * * *

(10) The direct cost of supportive services provided to families residing in HOME-assisted units during the period of affordability or receiving HOME tenant-based rental assistance during the term of the tenant-based rental assistance contract. * * *

* * * * *

(b) * * *

(4) Cash or other forms of contributions from applicants for or recipients of HOME assistance or contracts, or investors who own, are working on, or are proposing to apply for assistance for a HOME-assisted project. The prohibition in this paragraph (b)(4) does not apply to contractors (who do not own any HOME project) contributing professional services in accordance with paragraph (a)(8) of this section or to persons contributing sweat equity in accordance with paragraph (a)(9) of this section.

11. In § 92.250, paragraph (a) is revised to read as follows:

§ 92.250 Maximum per-unit subsidy amount and subsidy layering.

(a) *Maximum per-unit subsidy amount.* The amount of HOME funds that a participating jurisdiction may invest on a per-unit basis in affordable housing may not exceed the per-unit dollar limits established under section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for elevator-type projects that apply to the area in which the housing is located. These limits are available from the Multifamily Division in the HUD Field Office. If the participating jurisdiction's per-unit subsidy amount has already been increased to 210% as permitted under section 221(d)(3)(ii) of the National Housing Act, upon request of the Field Office, HUD will allow the per-unit subsidy amount to be increased on a program-wide basis to an amount, up to 240% of the original per unit limits.

* * * * *

12. Section 92.251 is amended by revising paragraph (a) to read as follows:

§ 92.251 Property standards.

(a) (1) Housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion, except as provided in paragraph (b) of this section. The participating jurisdiction must have written standards for rehabilitation that ensure that HOME-assisted housing is decent, safe, and sanitary. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR 200.925 or 200.926. To avoid duplicative inspections when FHA financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

(2) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.

(3) The housing must meet the accessibility requirements at 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601–3619).

(4) Construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards established in 24 CFR part 3280. These standards pre-empt State and local codes covering the same aspects of performance for such housing. Participating jurisdictions providing HOME assistance to install manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the participating jurisdiction must comply with the manufacturer's written instructions for installation of manufactured housing units. Manufactured housing that is rehabilitated using HOME funds must meet the requirements set out in paragraph (a)(1) of this section.

* * * * *

13. Section 92.252 is amended by revising the first sentence of paragraph (h) to read as follows:

§ 92.252 Qualification as affordable housing: Rental housing.

* * * * *

(h) *Tenant income.* The income of each tenant must be determined initially in accordance with § 92.203(a)(1)(i).

* * *

* * * * *

14. Section 92.300 is amended by revising the fourth sentence of

paragraph (a)(1), and the paragraph heading of paragraph (f) to read as follows:

§ 92.300 Set-aside for community housing development organizations (CHDOs).

(a) (1) * * * The funds must be provided to a community housing development organization, its subsidiary, or a partnership of which it or its subsidiary is the managing general partner. * * *

* * * * *

(f) *Limitation on community housing development organization operating funds.* * * *

15. Section 92.350 is revised to read as follows:

§ 92.350 Other Federal requirements and nondiscrimination.

(a) The Federal requirements set forth in 24 CFR part 5, subpart A, are applicable to participants in the HOME program. The requirements of this subpart include: nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended or ineligible contractors; and drug-free workplace.

(b) The nondiscrimination requirements at section 282 of the Act are applicable. These requirements are waived in connection with the use of HOME funds on lands set aside under the Hawaiian Homes Commission Act, 1920 (42 Stat. 108).

16. In § 92.353, paragraph (c)(2)(i)(C)(*1*)(*ii*) is revised to read as follows:

§ 92.353 Displacement, relocation, and acquisition.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(C) * * *

(*1*) * * *

(*ii*) The total tenant payment, as determined under 24 CFR 5.613, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

* * * * *

17. Section 92.355 is revised to read as follows:

§ 92.355 Lead-based paint.

Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 *et seq.*) and 24 CFR part 35. The lead-based paint provisions of 24 CFR 982.401(j), except 24 CFR 982.401(j)(1)(i), also apply, irrespective of the applicable property standard under § 92.251. In a project in which not all units are assisted with HOME funds, the lead-based paint requirements apply to all units and common areas in the project. Unless otherwise provided, the participating jurisdiction is responsible for testing and abatement activities.

18. In § 92.356, paragraph (f)(1) is revised to read as follows:

§ 92.356 Conflict of interest.

* * * * *

(f) *Owners and Developers.* (1) No owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, developer or sponsor) whether private, for profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

* * * * *

19. A new § 92.358 is added to subpart H to read as follows:

§ 92.358 Consultant activities.

No person providing consultant services in an employer-employee type relationship shall receive more than a reasonable rate of compensation for personal services paid with HOME funds. In no event, however, shall such compensation exceed the limits in effect under the provisions of any applicable statute (e.g., annual HUD appropriations acts which have set the limit at the equivalent of the daily rate paid for Level IV of the Executive Schedule, see the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, Pub. L. 104–204 (September 26, 1996)). Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation. Consultant services provided under an independent contractor relationship are not subject to the compensation limitation of Level IV of the Executive Schedule.

20. In § 92.500, paragraph (d) is revised to read as follows:

§ 92.500 The HOME Investment Trust Fund.

* * * * *

(d)(1) *Reductions.* HUD will reduce or recapture HOME funds in the HOME Investment Trust Fund by the amount of:

(A) Any funds in the United States Treasury account that are required to be reserved (i.e., 15 percent of the funds) by a participating jurisdiction under § 92.300 that are not reserved for a community housing development organization pursuant to a written agreement within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement;

(B) Any funds in the United States Treasury account that are not committed within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement;

(C) Any funds in the United States Treasury account that are not expended within five years after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement; and

(D) Any penalties assessed by HUD under § 92.552.

(2) For purposes of determining the amount by which the HOME Investment Trust Fund will be reduced or recaptured under paragraphs (d)(1)(A), (B) and (C) of this section, HUD will consider the sum of commitments to CHDOs, commitments, or expenditures, as applicable, from the fiscal year allocation being examined and from subsequent allocations. This sum must be equal to or greater than the amount of the fiscal year allocation being examined, or in the case of commitments to CHDOs, 15 percent of that fiscal year allocation.

21. Section 92.505 is amended by adding a new paragraph (c) to read as follows:

§ 92.505 Applicability of uniform administrative requirements.

* * * * *

(c) OMB Circulars referenced in this part may be obtained from: Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G–2200, Washington, DC 20503; telephone: (202) 395–7332.

Dated: April 23, 1997.

Andrew Cuomo,

Secretary.

[FR Doc. 97–13730 Filed 5–27–97; 8:45 am]

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May 28, 1997

Part III

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From Motor Vehicles and New Motor Vehicle Engines; Modification of Federal On-board Diagnostic Regulations for Light-Duty Vehicles and Light-Duty Trucks; Extension of Acceptance of California OBD II Requirements; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–5827–6]

Control of Air Pollution From Motor Vehicles and New Motor Vehicle Engines; Modification of Federal On-board Diagnostic Regulations for Light-Duty Vehicles and Light-Duty Trucks; Extension of Acceptance of California OBD II Requirements

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Today's action proposes modifications to the federal on-board diagnostics regulations, including: harmonizing the emission levels above which a component or system is considered malfunctioning (i.e., the malfunction thresholds) with those of the California Air Resources Board (CARB) OBD II requirements; mandating that EPA OBD systems fully evaluate the entire emission control system, including the evaporative emission control system; indefinitely extending the allowance of deficiencies for federal OBD vehicles; indefinitely extending the allowance of optional compliance with the California OBD II requirements for federal OBD certification while also updating the allowed version of those California OBD II regulations to the most recently revised version; extending the current flexibility afforded alternate fueled vehicles through the 2004 model year rather than providing that flexibility only through the 1998 model year; updating the incorporation by reference of several recommended practices developed by the Society of Automotive Engineers (SAE) to incorporate recently published versions, while also incorporating by reference two standardization protocols developed by the International Organization for Standardization (ISO). OBD systems in general provide substantial ozone benefits.

DATES: Comments must be received on or before July 28, 1997. A public hearing will be held on July 9, 1997. The hearing will begin at 10:00 a.m. and continue until all testimony has been presented. Requests to present oral testimony must be received on or before June 27, 1997.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: the EPA, Air Docket, Room M–1500 (Mail Code 6102), Waterside Mall, Attn: Docket A–96–32, 401 M Street, SW., Washington, DC 20460.

Materials relevant to this rulemaking are contained in Docket No. A–96–32. The docket is located at The Air Docket, 401 M. Street, SW., Washington, DC 20460, and may be viewed in room M1500 between 8:00 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 260–7548 and the facsimile number is (202) 260–4400. A reasonable fee may be charged by EPA for copying docket material. The hearing will be held at the Holiday Inn North Campus, 3600 Plymouth Road, Ann Arbor, MI.

FOR FURTHER INFORMATION CONTACT: Holly Pugliese, Vehicle Programs and Compliance Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone 313–668–4288, or Internet e-mail at ''pugliese.holly@epamail.epa.gov.''

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I. Electronic Availability

Electronic copies of the preamble and the regulatory text of this final rulemaking are available via the Internet on the Office of Mobile Sources (OMS) Home Page (http://www.epa.gov/OMSWWW/). Users can find OBD related information and documents through the following path once they have accessed the OMS Home Page: ''Automobiles,'' ''I/M & OBD,'' ''On-Board Diagnostics Files.''

Electronic copies of the preamble and the regulatory text of this final rulemaking are also available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTN BBS). Users are able to access and download TTN BBS files on their first call. After logging onto TTN BBS, to navigate through the BBS to the files of interest, the user must enter the appropriate command at each of a series of menus. The steps required to access information on this rulemaking are listed below. The service is free, except for the cost of the phone call.

TTN BBS: 919–541–5742 (1,200—14,400 bps, no parity, eight data bits, one stop bit). Voice help: 919–541–5384 Internet address: TELNET ttnbbs.rtpnc.epa.gov Off-line: Mondays from 8:00–12:00 Noon ET.

1. Technology Transfer Network Top Menu: <T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards) (Command: T)
2. TTN TECHNICAL INFORMATION AREAS: <M> OMS–Mobile Sources Information (Command: M)
3. OMS BBS === MAIN MENU FILE TRANSFERS: <K> Rulemaking & Reporting (Command: K)
4. RULEMAKING PACKAGES: <7> Inspection & Maintenance (Command: 7)
5. Inspection & Maintenance Rulemaking Areas: File Area # . . . On-Board Diagnostics (Command: 2)

At this stage, the system will list all available OBD Review files. To download a file, select a transfer protocol which will match the terminal software on your computer, then set your own software to receive the file using that same protocol.

If unfamiliar with handling compressed (i.e., ZIP'd) files, go to the TTN top menu, System Utilities (Command: 1) for information and the necessary program to download in order to unZIP the files of interest after downloading to your computer. After getting the files you want onto your computer, you can quit TTN BBS with the <G>oodbye command.

II. Introduction and Background

On February 19, 1993, pursuant to Clean Air Act section 202(m), 42 U.S.C. § 7521(m), the EPA published a final

rulemaking (58 FR 9468) requiring manufacturers of light-duty vehicles (LDVs) and light-duty trucks (LDTs) to install on-board diagnostic (OBD) systems on such vehicles beginning with the 1994 model year. The regulations promulgated in that final rulemaking require that manufacturers install OBD systems which monitor emission control components for any malfunction or deterioration causing exceedance of certain emission thresholds, and alert the vehicle operator to the need for repair. That rulemaking also requires that, when a malfunction occurs, diagnostic information must be stored in the vehicle's computer to assist the technician in diagnosis and repair.

Additionally, the original federal OBD regulations provide an allowance for manufacturers to satisfy federal OBD requirements through the 1998 model year by installing systems satisfying the California OBD II requirements pertaining to those model years. Beginning with the 1999 model year, manufacturers are required to satisfy the unique requirements of federal OBD.

In August 1996, EPA published a final rulemaking (61 FR 45898) updating the version of the California OBD II requirements that are acceptable for federal OBD compliance demonstration. The February 1993 final rulemaking allowed compliance with the 1992 version of California OBD II (Mail-Out #92–56). California subsequently revised their OBD II requirements in December of 1994. The August 1996 federal rule served to allow compliance with the revised California OBD II requirements (Mail-Out #95–34) rather than the 1992 version of OBD II.

In today's action, EPA is proposing a revision to the federal OBD regulations such that the allowance of compliance with the California OBD II regulations (excluding anti-tampering provisions) extends indefinitely, rather than applying only through the 1998 model year. EPA seeks this revision as a result of comments from the domestic and major import original equipment manufacturers who claim that the efforts to meet the unique federal OBD requirements will divert resources away from broader OBD development and calibration efforts. EPA believes that the benefits of a robust OBD program outweigh the benefits of the unique requirements of the federal OBD regulations. EPA also believes, as was noted in an August 30, 1996 final rule (61 FR 45898), that the California OBD II program fully meets the requirements of the 1990 Clean Air Act and fulfills the intent of the federal OBD program.

Today's action also proposes to amend federal OBD requirements to harmonize with those of the California OBD II requirements for 1999 and later model year light-duty vehicles (LDVs) and light-duty trucks (LDTs). This harmonization will result in federal OBD malfunction thresholds consistent with the California OBD II thresholds, and it will require monitoring of all emission-related powertrain components similar to the California OBD II regulations. EPA believes that this harmonization is consistent with the requirements of section 202(m) of the CAA and will not compromise the stringency of the federal OBD program.

Also being proposed is an extension of the current flexibility within the federal OBD requirements for alternate fueled vehicles. In a direct final rulemaking published in March 23, 1995 (60 FR 15242), EPA made an allowance for alternate fueled vehicles to comply with OBD requirements to the extent feasible through the 1998 model year, with full compliance required in the 1999 model year. With today's proposal, the flexibility provisions of the March 1995 direct final rule will extend through the 2004 model year, with full compliance required in the 2005 model year.

Also being proposed is the continuation of the allowance of deficiencies for federal OBD compliance. This allowance will extend indefinitely. Also being proposed is an updating of materials incorporated by reference. These materials, developed by the Society of Automotive Engineers (SAE) and the International Organization for Standardization (ISO), have been incorporated or proposed for incorporation in earlier rulemakings. More recent versions have been developed and/or published and are proposed for incorporation today.

III. Requirements of the Proposed Rule

A. Federal OBD Malfunction Thresholds and Monitoring Requirements

EPA is proposing that, beginning in the 1999 model year, OBD systems on spark-ignition LDVs and LDTs must be able to detect and alert the driver of the following emission-related malfunctions or deterioration: [1]

(1) Catalyst deterioration or malfunction before it results in an increase in HC emissions equal to or greater than 1.5 times the HC standard, as compared to the HC emission level measured using a representative 4000 mile catalyst system.

(2) Engine misfire before it results in an exhaust emission exceedance of 1.5 times the applicable standard for HC, CO or NO_X.

(3) Oxygen sensor deterioration or malfunction before it results in an exhaust emission exceedance of 1.5 times the applicable standard for HC, CO or NO_X.

(4) Any vapor leak in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice shall also be detected. The absence of evaporative purge air flow from the complete evaporative emission control system shall also be detected.

(5) Any deterioration or malfunction occurring in a powertrain system or component directly intended to control emissions, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard for HC, CO or NO_X shall also be detected.

(6) Any other deterioration or malfunction occurring in an electronic emission-related powertrain system or component not otherwise described above that either provides input to or receives commands from the on-board computer, and has a measurable impact on emissions or is used as part of the diagnostic strategy for any other monitored system or component. Monitoring of components required by this paragraph shall be satisfied by employing electrical circuit continuity checks and, for computer input components, rationality checks (input values within manufacturer specified ranges) and, for output components, functionality checks (proper functional response to computer commands).

For compression-ignition engines, paragraphs 2, 3, and 4 above would not apply.

Upon detection of a malfunction, the malfunction indicator light (MIL) is to be illuminated and a fault code stored no later than the end of the next driving cycle during which monitoring occurs provided the malfunction is again detected. The only exception to this would be if, upon Administrator approval, a manufacturer is allowed to use a diagnostic strategy that employs statistical algorithms for malfunction determination (e.g., Exponentially Weighted Moving Averages (EWMA)). The Administrator considers such strategies beneficial for some monitors because they reduce the danger of

[1] The text presented here does not constitute proposed regulatory text, which can be viewed immediately following this preamble.

illuminating the MIL falsely since more monitoring events are used in making pass/fail decisions. However, the Administrator will only approve such strategies provided the number of trips required for a valid malfunction determination is not excessive (e.g., six or seven monitoring events). Manufacturers are required to determine the appropriate operating conditions for diagnostic system monitoring with the limitation that monitoring conditions are encountered at least once during the first engine start portion of the applicable Federal Test Procedure (FTP) or a similar test cycle as approved by the Administrator.

B. Similar Operating Conditions Window

Also being proposed today is a revision to the engine operating conditions window associated with extinguishing the MIL for engine misfire and fuel system malfunctions. Currently, the federal OBD regulations require that, upon MIL illumination and diagnostic trouble code storage associated with engine misfire or fuel system malfunctions, the manufacturer is allowed to extinguish the MIL provided the same malfunction is not again detected during three subsequent sequential trips during which engine speed is within 375 rpm, engine load is within 10 percent, and the engine's warm-up status is the same as that under which the malfunction was first detected, and no new malfunctions have been detected. Today's proposed revision is to widen the engine load parameter from the current 10 percent value to 20 percent.

C. Extension of Allowance of California OBD II

EPA is proposing to extend the existing provision allowing optional compliance with the California OBD II requirements, excluding the California OBD II anti-tampering provisions, as satisfying federal OBD. This allowance will continue indefinitely, rather than being eliminated after the 1998 model year as currently specified. EPA is also proposing to update the version of California OBD II allowed for optional federal OBD compliance. Rather than the currently allowed CARB Mail-Out #95–34, the allowed version will be CARB's recently updated version contained in Mail-Out #96–34. This version of the California OBD II regulations contains proposed amendments to the OBD II regulations and is intended primarily for public comment purposes. After the final version of the revised OBD II regulations is completed, EPA will, in its final action on this proposal, allow compliance with that revised version provided relevant portions of that version are acceptable for federal OBD compliance demonstration. Manufacturers choosing the California OBD II demonstration option need not comply with portions of that regulation pertaining to vehicles certified under the Low Emission Vehicle Program as those standards are not federal emission standards. Additionally, manufacturers choosing the California OBD II demonstration option need not comply with section (b)(4.2.2) which pertains to all vehicles regardless of emission standards. That section requires evaporative system leak detection monitoring down to a 0.02 inch diameter orifice and represents a level of stringency beyond that ever appropriately considered for federal OBD compliance. Lastly, manufacturers choosing the California OBD II demonstration option need not comply with section (d) which contains the anti-tampering provisions of the California OBD II regulations.

D. Extension of Allowance of OBD Deficiencies for Federal OBD Vehicles

Today's action proposes to extend the current flexibility provisions (i.e., ''deficiency provisions'') contained in § 86.094–17(i) indefinitely, rather than being eliminated beyond the 1998 model year. This will allow the Administrator to accept an OBD system as compliant even though specific requirements are not fully met. This provision neither constitutes a waiver from federal OBD requirements, nor does it allow compliance without meeting the minimum requirements of the CAA (i.e., oxygen sensor monitor, catalyst monitor, and standardization features).

E. Provisions for Alternate Fueled Vehicles

EPA is proposing to extend the current flexibility provision for alternate fuel vehicles through the 2004 model year. Such vehicles will be expected to comply fully with the OBD requirements proposed today during gasoline operation (if applicable), and during alternate fuel operation except where it is technologically infeasible to do so. Any manufacturer wishing to utilize this flexibility provision must demonstrate technological infeasibility concerns to EPA well in advance of certification application.

F. Applicability

Today's proposed revisions to federal OBD malfunction thresholds, monitoring requirements, deficiency provisions, alternate fuel provisions, and the recommended practices incorporated by reference apply to all 1999 and later model year light-duty vehicles and light-duty trucks for which emission standards are in place or are subsequently developed and promulgated by EPA. Today's proposed actions to extend the allowance of optional compliance with California OBD II and to update the acceptable version of the California OBD II regulation apply to 1998 and later model year vehicles.

G. Update of Materials Incorporated by Reference

Also being proposed is the adoption of ISO 9141–2 entitled ''Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information,'' as an acceptable protocol for standardized on-board to off-board communications. This standardized procedure was proposed in September 24, 1991 (56 FR 48272), but could not be adopted in the February 1993 final rule because the ISO document was not yet finalized. ISO 9141–2 has since been finalized and is incorporated by reference in today's proposed regulatory language.

Today's action also proposes the incorporation by reference of ISO 14230–4, ''Road vehicles—Diagnostic systems—KWP 2000 requirements for Emission-related systems,'' as an acceptable protocol for standardized on-board to off-board communications. This standardized procedure contains a more up-to-date communication protocol than that contained in ISO 9141–2. Today's action also proposes to incorporate updated versions of the SAE procedures referenced in the current OBD regulation. These SAE documents are J1850, J1979, J2012, J1962, J1877 and J1892.

H. Certification Provisions

The certification provisions associated with OBD, contained in proposed section 86.099–30, will be appropriately revised to reflect the proposed changes to the OBD malfunction thresholds and monitoring requirements.

IV. Discussion of Issues

A. Federal OBD Malfunction Thresholds

The OBD malfunction thresholds promulgated by EPA in 1993 are based on emission increases above a baseline level for any particular vehicle. In other words, any malfunction or component deterioration should be detected prior to emissions increasing above the non-malfunctioning and/or non-deteriorated

emission level by an amount equal to the given threshold. For example, all OBD systems currently must be able to detect oxygen sensor deterioration before it results in an exhaust emissions increase of greater than 0.2 g/mi HC, 1.7 g/m CO, or 0.5 g/mi NO_X. The emission increase would be measured relative to the baseline level for the vehicle. EPA interprets the baseline level to be the vehicle's emissions under normal, properly operating conditions.

EPA is proposing to substitute this approach with an approach consistent with that in the California OBD II regulations. Manufacturers have argued on several occasions that EPA should continue to allow optional compliance with California OBD II for the purpose of demonstrating compliance with the federal OBD program. Their primary purpose in making this argument is to avoid the need to recalibrate their OBD systems to the unique federal OBD thresholds. EPA agrees with that argument and can see no cost effective value in requiring calibration to two similar but distinct sets of OBD thresholds. In addition, EPA believes revision of its OBD thresholds is appropriate because EPA's current thresholds, based on increases over baseline emission levels, could result in requirements for MIL illumination even at emission levels below the applicable standards.

Today's proposal will revise the federal OBD malfunction thresholds such that, in general, they are based not on baseline emissions, but rather the emission standards themselves. The proposed regulations will require identification of misfires and malfunction of oxygen sensors and all other powertrain systems or components directly intended to control emissions (e.g., evaporative purge control, EGR, secondary air system, fuel control system) when emissions exceed the specified emission threshold, which will be set at 1.5 times the applicable emission standard. For evaporative leak detection, as discussed in more detail in section C, ''Expanded Federal OBD Monitoring Requirements,'' today's proposal eliminates the current 30 g/test emission threshold and instead requires detection of any hole equivalent to or greater in size to one with a 0.04 inch diameter. For catalyst deterioration, the proposed threshold is an increase of 1.5 times the applicable standard compared to emissions from a representative catalyst run for 4000 miles. This threshold is consistent with California's threshold for detection of catalyst malfunction or deterioration. As discussed further in section C, this proposal also would require monitoring of emission-related powertrain components that provide information to and receive commands from the on-board computer whose malfunction may impact emissions or may impair the ability of the OBD system to perform its job (e.g., throttle position sensor, coolant temperature sensor, vehicle speed sensor, etc.). Monitoring of these components must include, at a minimum, electrical circuit continuity checks, and effective rationality and/or functionality checks. Deterioration or malfunction of these components would be identified when a component failed the circuit continuity check or the rationality and/or functionality checks.

While EPA believes that the proposed changes to the malfunction thresholds will not be controversial to OEMs in general, issues still exist. The Agency is concerned that this proposal may penalize those OEMs who have proactively set out to meet the federal OBD thresholds ahead of the existing 1999 model year cutoff of optional California OBD II compliance. It may also penalize those small volume manufacturers who may not have any plans for California vehicle sales and have thus concentrated development efforts solely on the existing federal OBD thresholds. EPA requests comment on the significance of this issue, and requests suggestions on how best to resolve the issue while also satisfying the Agency's desire to harmonize the federal and California OBD requirements.

Another issue for discussion is that of threshold stringency. In most cases, the California OBD II thresholds are more stringent than the current federal thresholds. However, in some cases, the current federal OBD malfunction thresholds are actually more stringent than the California OBD II thresholds, particularly for Tier I light-duty trucks. In particular, the current federal OBD thresholds can in some cases require OBD detection and MIL illumination for malfunctions in systems and components specifically used for emission control (e.g., EGR, evaporative purge, secondary air) even though vehicle emissions may be below the emission standards. This, by definition, is lower than requiring MIL illumination at 1.5 times the standard. Given that vehicles are required to meet emission standards, it can be argued that manufacturers should not be required to illuminate the MIL when emissions are below those standards. EPA is sympathetic to the consumer and the potential for seeking repair of systems or components used specifically for emission control when no direct emission standards are being violated. It should be noted that the revised malfunction thresholds will effectively be no different, and in some cases will be more stringent, for the major emission control component monitors (i.e., catalyst, oxygen sensor, and engine misfire).

EPA is interested in any comments surrounding this issue and the significance of its concern. Since the majority of the OEM industry has repeatedly requested that EPA continue allowing optional compliance with California OBD II as satisfying federal OBD, and this proposed change results in federal OBD thresholds consistent with those contained in the California OBD II requirements, EPA believes that the proposed change to federal OBD malfunction thresholds should be satisfactory and noncontroversial to those OEMs. In addition, EPA believes that these revisions are consistent with the requirements of CAA Section 202(m) and are technologically feasible.

B. Similar Operating Conditions Window

Another provision proposed today is to widen the engine load range defining the similar operating conditions window. The proposal is to widen that range from the current 10 percent value to 20 percent. This window is used to determine when operating conditions for fuel system and misfire malfunctions are again within the same operating window to determine whether or not a previously detected malfunction is still present. This window is used because malfunctions in the fuel control system and those associated with engine misfire tend to happen at specific operating conditions, rather than occurring during all modes of operation. As a result, when a fuel system or misfire malfunction is detected, the operating conditions window is stored in memory. During a subsequent trip where operating conditions again enter that similar conditions window, the presence of a malfunction will result in MIL illumination. If, after three trips where similar operating conditions are again encountered without the malfunction recurring, the MIL can be extinguished provided no other MIL illuminating malfunction has been detected.

This similar operating conditions window is being widened due to difficulties in entering the current 10 percent window during subsequent trips. This can result in an inability to extinguish a MIL for a malfunction that is no longer occurring. For example, if a cylinder misfires on a four cylinder car due to water in the gasoline, then it will likely be very difficult to extinguish

the MIL after refilling with better gasoline because the engine load characteristics at any given RPM will be very different while again running consistently on all four cylinders.

The result of this proposed change is an increased latitude in entering the wider similar conditions window on subsequent trips resulting in a greater likelihood of extinguishing the MIL for malfunctions that are no longer occurring. This proposed change will not make it easier for the manufacturer to extinguish the MIL for malfunctions that are still occurring, nor will it make it less likely that the malfunction will be appropriately identified and flagged. For these reasons, EPA knows of no issues surrounding this proposed change, but is open to any comments.

C. Expanded Federal OBD Monitoring Requirements

The federal OBD requirements contained in 40 CFR 86.094–17 require that the OBD system monitor proper functionality of the catalyst and oxygen sensor, and monitor and detect engine misfire (including identification of the particular misfiring cylinder(s)) and detect electrical disconnection of the evaporative purge control and any emission-related powertrain component or system which directly or indirectly sends information to or receives information from the vehicle's computer. Implied in those requirements is that any functional deterioration or malfunction of an emission-related powertrain component other than the catalyst, the oxygen sensor, or an engine misfire related component not causing exceedance of the malfunction thresholds does not require detection. The philosophy of the original federal OBD program was that those emission-related powertrain components unlikely to malfunction or unlikely to malfunction in a way so as to increase emissions above the malfunction thresholds need not be monitored for anything more than electrical circuit continuity (i.e., functionality and rationality checks need not be done).[2]

Also, the malfunction detection threshold placed on evaporative leak detection is currently 30 g/test. Because of advancements made to evaporative emission control systems, this threshold is proving to be insufficiently stringent, and provides little incentive to place an evaporative system leak detection monitor on the vehicle or prevent leaks from occurring because even relatively large leaks can sometimes emit fewer vapors than 30 grams during a diurnal test.[3]

With today's proposal, the federal OBD program adopts the philosophy originally built into the California OBD II program, in that all emission-related powertrain components must be monitored. The proposed regulation would require that all powertrain components specifically intended to control emissions (e.g., evaporative purge control, EGR, secondary air system, fuel control system) be monitored. This proposal also would require monitoring of all other emission-related powertrain components that provide information to and receive commands from the on-board computer whose malfunction may impact emissions or may impair the ability of the OBD system to perform its job (e.g., throttle position sensor, coolant temperature sensor, vehicle speed sensor, etc.). Monitoring of these components must include, at a minimum, electrical circuit continuity checks, and effective rationality and/or functionality checks.

The primary OBD monitoring system impacted by this proposed change is the evaporative system leak detection monitor. The proposed regulations require an evaporative leak detection monitor while, originally, the Agency intended the federal OBD requirement to allow for certification without the evaporative leak detection monitor provided both the manufacturer and EPA were confident that the design of the evaporative emission control system was robust enough so as not to fail during in-use operation. However, only one major manufacturer has taken advantage of this allowance, and even that manufacturer has used this allowance on only a portion of their production fleet. All other major manufacturers have apparently decided that they do not have sufficient confidence in their evaporative emission control system to warrant removing the monitor, or they have decided that it is more cost effective to implement the monitor on federally certified vehicles rather than to recalibrate those vehicles for sale without it. Additionally, many state I/M representatives have expressed concerns with the current federal OBD allowance for certification without an evaporative leak detection monitor. These representatives are eager for widespread OBD implementation such that their I/M programs can rely on OBD checks as replacement for emission tailpipe and/or evaporative tests. They are concerned about their ability to rely solely on the OBD system for I/M purposes given the future potential that more manufacturers will sell vehicles without the OBD evaporative leak detection monitor. Should more manufacturers make use of that current federal OBD allowance, and without some form of I/M evaporative system test, they will be left without any kind of evaporative system evaluation.

The Agency has altered its OBD philosophy, in part, as an effort to enhance the role of OBD in future I/M programs. Like the state representatives referred to above, the Agency also hopes that current emission test based I/M programs can be replaced with a much less time consuming and more cost efficient check of the OBD system. However, without monitors on all emission-related components, particularly the evaporative system leak detection monitor, the OBD-only based I/M program is not as likely to occur due to its potential for more limited evaluation of the vehicle.

Further, the Agency believes that mandating these monitors will not adversely affect the federal OBD program nor will it pose undue burden on the OEMs. In fact, under the federal OBD rulemaking in February 1993, though EPA did not mandate all the monitors mentioned, the manufacturer was still held responsible for any adverse affects that those systems, if malfunctioning, could potentially cause. Additionally, the Agency fully believes that the feasibility of expanded monitoring requirements is well established as argued in the recent California OBD II waiver decision (61 FR 53371, October 11, 1996). Further, many OEMs have already certified to federal OBD by demonstrating compliance with California OBD II requirements. Lastly, many OEMs have indicated their willingness to participate in the National Low Emission Vehicle (NLEV) program, which includes California OBD II

[2] A rationality check is a diagnostic strategy whereby the on-board computer analyzes the electronic signal sent by a sensor and compares that to a known range of appropriate values. For example, a coolant temperature sensor reading 70 degrees F after 10 minutes of vehicle operation is not providing rational information to the on-board computer because coolant temperature should be much higher after 10 minutes of operation. Therefore, the system should be identified as malfunctioning. A functionality check is a diagnostic strategy whereby the on-board computer analyzes the functional response of a component after first sending a functional command to that component. If the desired functional response does not occur, the component should be identified as malfunctioning.

[3] While below 30 grams, the vapors emitted should by no means be considered insignificant. See EPA's rulemaking decision on the enhanced evaporative emission control system for more information on the significance of evaporative emissions on urban air quality (58 FR 16002, March 24, 1993).

monitoring requirements. This suggests that expanded monitoring requirements as proposed today are fully acceptable to at least the majority of the OEM industry. For these reasons, today's proposed change is not expected to result in any increased costs associated with the federal OBD program over original estimates.[4]

The Agency does have some concerns regarding this issue, similar to the concerns expressed in Section IV(A). The expansion of mandatory monitors may penalize those OEMs who have proactively set out to design a federal OBD system ahead of the 1999 model year cutoff of optional California OBD II compliance. It may also penalize those small volume manufacturers who may not have any plans for California vehicle sales and have thus concentrated development efforts solely on a federal OBD system. However, the Agency also has concerns over the effectiveness of an OBD based I/M program without having OBD monitoring of essentially the entire emission control system.

The Agency requests comment on today's proposed expansion of mandatory monitors under the federal OBD program. Of particular interest are comments from those manufacturers that have concentrated on designing a unique federal OBD system due to the more limited mandatory monitoring requirements. The Agency will consider the possibility of providing a two year phase-in period in the form of a carry-over allowance for compliance with the proposed federal OBD revisions; any phase-in period will apply only to those vehicles certified to the unique federal OBD requirements in the 1998 model year. Also of interest are comments from state Inspection and Maintenance program officials regarding their concern over the potential that, without the revisions proposed, federal OBD systems will not have all of the monitors currently required in the California OBD II program.

D. Extension of Allowance of California OBD II

Today's action proposes to extend indefinitely the allowance for manufacturers to comply with federal OBD requirements by optionally complying with California OBD II. The allowance for optional compliance with California OBD II has already been established in the federal OBD program and was incorporated into the federal OBD final rulemaking in February 1993 [58 FR 9468, February 19, 1993]. However, in that final rulemaking, and in an August 1996 final rule [61 FR 45898, August 30, 1996], the Agency provided that allowance only through the 1998 model year.

Additionally, today's proposed action seeks to update the version of the California OBD II regulation that is applicable for federal OBD compliance beginning with the 1998 model year. This action is similar to an action taken in the August 1996 final rule that updated the applicable version of the California OBD II regulation. However, since that time, CARB has again made several revisions to the California OBD II regulations, some of which apply to federal Tier I type vehicles. These revisions provide some relief from earlier versions of OBD II, but they are relatively minor and do not affect the overall soundness of the OBD II program.

Both of these changes, updating the applicable version of the OBD II regulations and extending indefinitely the allowance of California OBD II for federal OBD compliance, are being proposed for the sake of harmonization of OBD related requirements between California and EPA. Most of the original equipment industry has repeatedly requested that EPA continue to accept the California OBD II regulations so as to avoid the need for major vehicle recalibrations as part of complying with the similar but distinct federal OBD requirements. Further, all 1998 and beyond model year California OBD II vehicles will be designed and certified according to the recently revised OBD II regulation, rather than the 1995 version. As a result, EPA must update the applicable version of the OBD II regulation to which compliance can be shown for federal OBD purposes.

As a result of this proposed action, any federal vehicles complying with federal OBD by optionally complying with California OBD II are allowed the same deficiencies as allowed under the California OBD II provisions. Note, however, that a manufacturer requesting certification of a deficient California OBD II system must receive EPA acceptance of any deficiency independently of an acceptance made by CARB. The Agency will use the same criteria specified by CARB in their OBD II regulation. (Those criteria being the extent to which the requirements are satisfied overall on the vehicle applications in question, the extent to which the resultant diagnostic system design will be more effective than earlier OBD systems, and a demonstrated good-faith effort to meet the requirements in full by evaluating and considering the best available monitoring technology.) Except that EPA will not provide deficiency allowances for lack of catalyst monitors or oxygen sensor monitors because the Clean Air Act specifically requires these monitors no later than the 1996 model year. Moreover, EPA will grant such deficiencies based upon the same premise expressed in section IV(E) with regard to granting deficiencies for federal OBD vehicles. The Agency will make every effort to determine the acceptability of California OBD II deficiency requests in concert with CARB staff to avoid the potential for conflicting determinations. However, the extent to which the agencies can make concurrent and coordinated findings will rely heavily on the manufacturer, who will be expected to provide any necessary information to both agencies in parallel rather than pursuing deficiency determinations on a separate basis.

E. Extension of Allowance of OBD Deficiencies for Federal OBD Vehicles

Despite the best efforts of manufacturers, many have needed to certify vehicles with some sort of deficiency when unanticipated problems have arisen that could not be remedied in time to meet production schedules. Given the relative newness and, most importantly, the considerable complexity of designing, producing, and installing the components and systems that make up the OBD system, manufacturers have expressed and demonstrated difficulty in complying with every aspect of the OBD requirements. Furthermore, this difficulty appears likely to continue indefinitely. The Agency believes that 100 percent compliance can be achieved, but EPA believes that some sort of relief must be provided to allow for certification of vehicles that, despite the best efforts of the manufacturers, have deficient OBD systems.

The EPA ''deficiency'' allowance should not be seen as a waiver of any kind. Though EPA will accept minor deficiencies, EPA will not accept any deficiency requests that include the complete lack of a required diagnostic monitor, with the possible exception of the special provisions being proposed today for alternate fueled vehicles. In fact, EPA expects to implement this deficiency allowance primarily for software or calibration type problems, as opposed to cases where hardware is at fault. This is EPA's expectation due to a belief that, despite unintended and unforseen software problems occurring on these complicated computer controlled systems, manufacturers

[4] The original cost estimate outlined in 58 FR 9468, February 19, 1993, included the costs associated with evaporative leak detection monitoring.

should have functioning OBD hardware in place, especially now that OBD regulations have been in existence for several years. Furthermore, EPA does not intend to certify vehicles with federal OBD systems that have more than one OBD system deficiency, and EPA will not allow carryover of any deficiency to the following model year unless it can be demonstrated that correction of the deficiency requires hardware modifications that absolutely cannot be accomplished in the time available, as determined by the Administrator. These limitations are intended to prevent a manufacturer from using the deficiency allowance as a means to avoid compliance or delay implementation of any OBD monitors or to compromise the overall effectiveness of the OBD program. The Agency proposes that the ''deficiency'' allowance be provided indefinitely, and requests comment on concerns surrounding this proposal.

F. Diagnostic Readiness Codes

Because of the considerable confusion regarding the setting and clearing of diagnostic readiness codes, or I/M readiness codes, this section serves to provide EPA's interpretation of its regulations on these codes. The original OBD final rulemaking of February 1993, required that, absent the presence of any fault codes, separate status codes shall be used to identify correctly functioning emission control systems and those systems which need further vehicle operation to be fully evaluated. The purpose behind the readiness code is to allow an inspection and maintenance (I/M) official to determine whether or not a vehicle has undergone sufficient operation to allow the OBD system to fully evaluate the emission control system. This way, the I/M official could be certain that the lack of OBD diagnostic trouble codes could be interpreted to mean that the vehicle was operating cleanly, rather than perhaps being an indication that the OBD system simply had not had time to fully evaluate the vehicle.

Many manufacturers have had difficulty interpreting exactly what was expected via this requirement. Some manufacturers have interpreted the requirement to mean that with every ''key-on,'' the readiness codes should be set to ''not ready'' status. However, such an approach effectively defeats the purpose behind the readiness code since any vehicle having been turned off while waiting for the I/M inspection would subsequently be interpreted as ''not ready'' for I/M inspection.

Therefore, to clarify, the readiness code, for those monitors having associated readiness codes, should be set to ''ready'' status only after sufficient vehicle operation such that the monitor has been properly exercised and a valid determination can be made as to the component's or system's operational status. Generally, this equates to two driving cycles, where driving cycle is defined as vehicle operation during which a particular monitor is exercised. Note that a driving cycle may be different for different monitors, and not all monitors have associated readiness codes. For example, continuously operating monitors are considered ''ready'' since they operate continuously rather than during only limited operating conditions; therefore, such monitors may not have an associated readiness code.

The readiness codes should never be set to ''not ready'' status by any means other than intentional resetting via a scan tool or perhaps due to battery power interruption. Further, when setting a readiness code to ''not ready'' status using a scan tool (after conducting any necessary repairs), all readiness codes should be set to ''not ready'' rather than resetting only the readiness code associated with the repaired component. In other words, readiness codes should be set to ''not ready'' status as a group rather than individually. This will serve to ensure adequate vehicle operation and OBD system evaluation following vehicle repairs and prior to subsequent I/M inspections.

G. EPA Recall Policy

Because the Agency has received numerous questions regarding its recall policy relative to OBD, this section serves to clarify the issue. Under the federal OBD program, a decision to recall the OBD system for recalibration or repair, or a replacement of a malfunctioning component, will depend on factors including, but not limited to, the level of emissions above applicable standards, whether the defect is uniform over the entire engine family or limited to a sub-class of the engine family, or the presence of any identifiable faulty or deteriorated components which affect emissions with no MIL illumination.

In the case of an OBD system failing to identify an infrequent component failure, the OBD system, not the component, would be the subject of the recall and that recall would occur only if the determination were made that the ''failure to identify'' would occur on a substantial number of vehicles of the same general OBD design and/or monitoring strategy. Therefore, in the Agency's opinion, if evidence supports that an identical malfunction could occur with sufficient probability without being flagged by a similar OBD system design and/or monitoring strategy, that OBD system design is inadequate and has failed or would fail to detect that malfunction. Such a determination would provide little confidence in that OBD monitor or strategy to properly monitor during in-use operation, and, therefore, it should be recalled.

H. Extension of Provisions for Alternate Fueled Vehicles

In a direct final rulemaking published March 23, 1995 (60 FR 15242), EPA made an allowance for alternate fueled vehicles to comply with federal OBD requirements to the extent feasible through the 1998 model year, without being required to include monitoring strategies for which the effects of alternate fuels are of technological concern. Beginning with the 1999 model year, full compliance with all federal OBD requirements would be expected. This one to two year delay in full OBD implementation was provided because industry argued they had not had sufficient lead time to properly assess the effects of alternate fuels on OBD monitoring strategies. As a result, there was considerable concern within industry and EPA regarding whether monitoring strategies for alternate fueled vehicles could be developed within the available time. Thus, the OBD requirements were presenting a roadblock to development of alternate fueled vehicles. The delay allowed manufacturers more lead time to design and develop OBD strategies suited for alternate fuels, and thus allowed greater production of alternate fueled vehicles.

All of these arguments for additional lead time still exist at this time. Many technological aspects of alternate fueled vehicles that provide environmental benefits also cause problems in terms of OBD monitoring strategies. The uncertainty involved with alternate fueled vehicles is a result of their unknown effects on emission components, and the variability of deterioration characteristics of monitors and sensors with which the fuels come into contact. The technology-forcing nature of OBD regulations has required industry to concentrate almost exclusively on developing new OBD strategies for gasoline vehicles and making improvements to existing strategies. Additional lead time, beyond that mentioned above, would provide the opportunity for more data collection from in-use alternate fueled vehicles to evaluate the unique effects of these fuels on emission control system components

and the corresponding OBD system monitors.

EPA recently contracted SouthWest Research Institute to study the technological feasibility and lead time issues associated with OBD systems and alternate fueled vehicles. The study (On-Board Diagnostics—Second Generation (OBD–II) System Criteria for Alternate-Fueled Vehicles, Final Report, Melvin N. Ingalls, Sep. 1996) (EPA Air Docket A–96–32, I–A–01) supports EPA's independent analyses that the manufacturers of alternate fueled vehicles still face considerable challenges in incorporating fully functional OBD systems into the design of these vehicles. The report concluded, as stated in the Executive Summary, ''Aftermarket conversions (the majority of gaseous fuel vehicles are conversions) have a particularly great need for further OBD system development. The CNG and LPG industry press (magazines, newsletters, and the like) identify OBD–II as the biggest problem facing vehicle conversion companies.''

Therefore, EPA is proposing to extend the existing provision for alternate fueled vehicles to allow additional lead time for full compliance with federal OBD through the 2004 model year with full compliance required in the 2005 model year. The additional OBD development time will allow manufacturers (both OEM and converters) to evaluate the effects of alternate fuels on emission control system performance and thus ensure that OBD diagnostic strategies will be reliable in-use. EPA believes that EPA certified alternate fueled vehicles can provide environmental benefits relative to gasoline vehicles, and EPA is committed to seeing larger volumes of EPA certified alternate fueled vehicles produced and sold. Note that this flexibility is intended to apply only during operation on an alternate fuel and even then the flexibility applies only to the extent manufacturers can show that diagnostic strategies for alternate fuel operation are technologically infeasible. Manufacturers will be required to implement monitoring strategies to the extent feasible, but will not be required to include monitoring strategies the reliability of which are still doubtful for alternate fuel operation. To further clarify, EPA will expect that vehicles designed for use on more than one fuel (i.e., flexible fuel vehicles) have fully operating OBD systems upon initial sale. Should a non-gasoline fuel then be introduced, the monitors affected by the alternate fuel could be deactivated to the extent the manufacturer can show that reliable diagnostic strategies are infeasible. Therefore, if the vehicle is not fueled by an alternate fuel, the OBD system will be fully functioning.

Authority for this proposal exists under section 202(m)(1)(A). That section clearly states that OBD systems be required that can accurately identify emission-related system deterioration or malfunction. While gasoline technologies have been developed that can accurately detect such problems, EPA does not believe that sufficient evidence has been demonstrated at this time showing that OBD systems will perform accurately while operating on alternate fuels. To the extent such evidence becomes available prior to model year 2005, or to the extent technological infeasibility cannot be demonstrated, manufacturers will be less able to use these flexibility provisions.

I. Update of Materials Incorporated by Reference

The Agency is not aware of any potential issues surrounding the inclusion of either ISO 9141–2, or ISO 14230–4 into the federal OBD regulations, or updating the SAE Recommended Practices already incorporated by reference. ISO 9141–2 and ISO 14230–4 are similar in nature to SAE J1850, which outlines standardized means of on-board to off-board computer communications. The details of all the materials proposed for Incorporation by Reference are contained in 40 CFR 86.1 and 86.099–17 (h). Nonetheless, the Agency is open to any comments regarding the materials proposed today for incorporation by reference.

V. Cost Effectiveness

This proposed rulemaking alters an existing provision by revising the current federal OBD malfunction thresholds. These revisions will result in essentially equivalent stringency for the major emission control system monitors, while slightly relaxing stringency in certain cases for some more minor emission control system monitors. Because most of industry has requested that EPA harmonize emission thresholds with the California OBD II thresholds as a means to minimize resource requirements, EPA believes that today's proposal will provide cost savings to those OEMs certifying solely to the California OBD II thresholds by eliminating the need to incur significant recalibration costs and efforts for the 1999 model year.

However, EPA is aware that some OEMs, particularly extremely small volume import manufacturers, may have concentrated their efforts on the unique federal OBD malfunction thresholds. EPA believes that the primary cost imposed on these particular OEMs associated with today's proposal would be for the mandatory evaporative system leak detection monitoring. These systems have been estimated by EPA to cost $18 per vehicle (58 FR 9483). The Agency believes that mandating the evaporative system leak detection monitor would not increase the cost of the federal OBD program. The cost of this monitor was taken into consideration in the original federal OBD regulations (58 FR 9468) even though this monitor was originally optional. Additionally, these extremely small volume import manufacturers will be required to reevaluate their OBD calibrations since they are set for compliance with the current federal OBD thresholds and would require potential rework to comply with the thresholds proposed today. Because this recalibration effort could be resource intensive, EPA requests comments on the level of burden and potential means of resolving this concern should it be warranted based on the burden imposed.

The automotive aftermarket industry is likely to argue that the provisions of today's proposal will impose heavy economic burdens on that industry. The automotive aftermarket has made claims of heavy economic burdens during development of the California OBD II regulations and the ensuing waiver process during which California requested a waiver from federal preemption for the purpose of enforcing their unique OBD program. In response to today's proposed revisions, the aftermarket may argue that excessive costs will be incurred because the anti-tampering measures required under the California OBD II regulations will present more difficulty for the automotive aftermarket in carrying out their business of reverse engineering original equipment manufacturer (OEM) parts and designing replacement or specialty parts. However, EPA is not including CARB's anti-tampering provisions in its incorporation of California's regulations. Failure to incorporate these provisions still allows OEMs to voluntarily implement anti-tampering measures, but such is also the case under federal OBD. Moreover, CARB has eliminated the anti-tampering provisions considered most egregious by the aftermarket.[5] Therefore, EPA believes that the provisions of this proposed rulemaking are not

[5] CARB Mail-Out #96–34, proposed amendments to the California Code of Regulations section 1968.1, paragraph (d).

responsible for any potential increased costs on the automotive aftermarket.

The costs and emission reductions associated with the federal OBD program were developed for the February 19, 1993, final rulemaking. The changes being proposed today do not affect the costs or emission reductions published as part of that rulemaking, with the possible exception of decreasing costs for larger volume manufacturers.

VI. Public Participation

A. Summary of Specific Comments Requested by EPA

This section serves only to highlight the issues upon which EPA specifically requests public comment. This section does not preclude in any way the submittal of comments not requested here. Furthermore, this section does not provide details on the proposed requirements, nor potential issues surrounding those proposals; such detail can be found in sections III and IV, above.

1. Federal OBD Malfunction Thresholds

As discussed in section IV.A., the Agency is proposing changes to the current federal OBD malfunction thresholds. The Agency requests comment regarding the impact of these proposed changes on those manufacturers having proactively set out to meet the current federal OBD thresholds ahead of the 1999 model year. The Agency also requests comment regarding the impact of the proposed changes on small volume manufacturer who may not have any plans for California vehicle sales and have thus concentrated development efforts solely on the existing federal OBD thresholds. Furthermore, realizing that EPA has requested comment on the appropriateness of a two year grace period for those manufacturers having certified to the current EPA thresholds in the 1998 model year, EPA requests comment on how best to resolve the issue while also satisfying the Agency's desire to harmonize the federal and California OBD requirements.

The Agency is also requesting comment on the stringency of the proposed thresholds given that thresholds for some monitors will be relaxed somewhat, while others will become more stringent.

2. Expanded Federal OBD Monitoring Requirements

The Agency requests comment on today's proposed expansion of mandatory monitors under the federal OBD program. Of particular interest are comments from those manufacturers that have concentrated on designing a unique federal OBD system due to the more limited mandatory monitoring requirements.

Also of interest are comments from state Inspection and Maintenance program officials regarding their concern over the potential for OBD systems on vehicles that do not have all of the monitors currently required in the Californian OBD II program.

3. Extension of Allowance of OBD Deficiencies for Federal OBD Vehicles

As discussed in section IV.D., the Agency is proposing to indefinitely extend the current ''deficiency'' provisions of the federal OBD program. The Agency believes that this is a reasonable proposal given the intricate nature of OBD systems and the likelihood that minor software glitches will occur. Comment is requested on concerns regarding this proposal.

4. Extension of Provisions for Alternate Fueled Vehicles

The Agency is proposing that special OBD flexibilities be afforded to alternate fueled vehicle. Comments are specifically requested on the need for such flexibility, and the need for that flexibility to extend through the 2004 model year as opposed to a nearer term model year. Comments are also requested regarding EPA's expectation that bi-fuel alternate fuel vehicles (i.e., those vehicles with one fuel delivery system capable of operation on two different fuels or any combination of those fuels) and dual-fuel alternate fuel vehicles (i.e., those vehicles with two separate fuel delivery systems) have fully compliant OBD systems during gasoline operation.

5. Update of Materials Incorporated by Reference

As discussed in section IV.H., the Agency is proposing to Incorporate by Reference a series of standardized SAE and ISO procedures. The Agency is not aware of any issues surrounding the proposed Incorporation by Reference, but is open to any comments regarding this issue.

6. Cost Effectiveness

As discussed in section V, EPA is aware that some OEMs, particularly extremely small volume import manufacturers, have concentrated their efforts on the unique federal OBD malfunction thresholds. Because the proposed changes may require recalibration efforts, and those efforts could be resource intensive, EPA requests comments on the level of burden and potential means of resolving this concern should it be warranted based on the burden imposed.

B. Comments and the Public Docket

EPA welcomes comments on all aspects of this proposed rulemaking. Commenters are especially encouraged to give suggestions for changing any aspects of the proposal. All comments, with the exception of proprietary information should be addressed to the EPA Air Docket Section, Docket No. A–96–32 (see **ADDRESSES**).

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by (1) labeling proprietary information ''Confidential Business Information'' and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help insure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, the submission may be made available to the public without notifying the commenters.

C. Public Hearing

Anyone wishing to present testimony about this proposal at the public hearing (see **DATES**) should, if possible, notify the contact person (see **FOR FURTHER INFORMATION CONTACT**) at least seven days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. Testimony will be scheduled on a first come, first serve basis. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first come, first serve basis to follow the previously scheduled testimony.

EPA requests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advanced copy of any

statement or material to be presented at the hearing at least one week before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advanced copies should be submitted to the contact person listed.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket Section, Docket No. A–96–32 (see **ADDRESSES**). The hearing will be conducted informally, and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

VII. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, 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.

B. Reporting and Recordkeeping Requirements

Today's action does not impose any new information collection burden. The modifications proposed above do not change the information collection requirements submitted to and approved by OMB in association with the OBD final rulemaking (58 FR 9468, February 19, 1993; and, 59 FR 38372, July 28, 1994). The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in 40 CFR 86.084–17 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0104 (EPA ICR No. 783.35).

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.

Copies of the ICR document(s) may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (mail code 2136); Washington, DC 20460 or by calling (202) 260–2740. Include the ICR and/or OMB number in any correspondence.

C. Impact on Small Entities

The Regulatory Flexibility Act requires federal agencies when proposing a rule, to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to develop a proposed Regulatory Flexibility Analysis.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. This rule will not have a significant adverse economic impact on a substantial number of small businesses. This rulemaking will provide regulatory relief to both large and small volume automobile manufacturers by maintaining consistency with California OBD II requirements. It will not have a substantial impact on such entities. This rulemaking will not have a significant impact on businesses that manufacture, rebuild, distribute, or sell automotive parts, nor those involved in automotive service and repair, as the revisions affect only requirements on automobile manufacturers.

In the absence of the proposed rule, the expiration of the § 86.094–17(j) provision allowing optional demonstration of compliance with California OBD II requirements to suffice for EPA certification purposes, would necessitate full vehicle manufacturer compliance with the current federal OBD requirements at § 86.094–17(a) through (h), beginning with the 1999 model year. Manufacturers have thus far chosen to reduce their costs by producing vehicle OBD systems to California specifications, thereby avoiding the necessity of developing significantly different OBD calibrations meeting the existing federal specifications, for the non-California market. Because the proposed rule modifies federal requirements to capture many benefits of the California option, EPA believes that it reduces manufacturer costs over a no-action baseline for 1999 and later model years.

Further, figures provided by the U.S. Departments of Labor and Commerce show the estimated cost of vehicle changes to meet 1996 model year OBD II requirements to be less than 1% of total vehicle cost. Because these changes already incorporate increased monitoring that is required to meet California OBD II requirements and is also required by the proposed rule, the rule is not expected to significantly increase OBD system cost beyond the estimate given.

Therefore, the Administrator certifies that this regulation does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Act

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, or $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 action proposed today would 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.

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: May 14, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 86 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 revised to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 86.1 is amended by adding the following entries in numerical order to the table in paragraph (b)(2) and by adding paragraph (b)(5) to read as follows:

§ 86.1 Reference materials.

* * * * *

(b) * * *

(2) * * *

Document No. and name	40 CFR part 86 reference
* * * * *	
SAE J 1850 July 1995, Class B Data Communication Network Interface	86.099–17
SAE J1877 October 1993, Recommended Practice for Bar-Coded Vehicle Identification Number Label	86.095–35
SAE J1892 July 1994, Recommended Practice for Bar-Coded Vehicle Emission Configuration Label ...	86.095–35
SAE J1962 January 1995, Diagnostic Connector	86.099–17
SAE J1979 E/E July 1996, Diagnostic Test Modes	86.099–17
SAE J2012 July 1996, Recommended Format and messages for Diagnostic Trouble Code Definitions, Part C	86.099–17

* * * * *

(5) *ISO material.* The following table sets forth material from the International Organization of Standardization that has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of this part, other than § 86.1, in which the matter is referenced. The second column is presented for information only and may not be all inclusive. Copies of these materials may be obtained from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland.

Document No. and name	40 CFR part 86 reference
ISO 9141–2 February 1994, Road vehicles—Diagnostic systems Part 2	86.099–17
ISO 14230–4 April 1996, Road vehicles—Diagnostic systems	86.099–17

Subpart A—[Amended]

§ 86.094–21 [Amended]

3. Section 86.094–21 is amended by removing and reserving paragraph (i).

4. Section 86.094–38 is amended by revising paragraphs (a) through (f) to read as follows:

§ 86.094–38 Maintenance instructions.

(a) through (f) [Reserved]. For guidance see § 86.087–38.

* * * * *

5. Section 86.095–35 is amended by revising paragraph (i) to read as follows:

§ 86.095–35 Labeling.

* * * * *

(i) All light-duty vehicles and light-duty trucks shall comply with SAE Recommended Practices J1877 ''Recommended Practice for Bar-Coded Vehicle Identification Number Label,'' (October 1993), and J1892 ''Recommended Practice for Bar-Coded Vehicle Emission Configuration Label,'' (July 1994). SAE J1877 and J1892 are incorporated by reference (see § 86.1).

6. Section 86.098–17 is amended by revising paragraphs (b)(2) through (j) to read as follows:

§ 86.098–17 Emission control diagnostic system for 1998 and later light-duty vehicles and light-duty trucks.

* * * * *

(b)(2) through (i) [Reserved]. For guidance see § 86.094–17.

(j) Demonstration of compliance with California OBD II requirements (Title 13 California Code Sec. 1968.1), as modified pursuant to California Mail Out #96–34 (October 25, 1996), shall satisfy the requirements of this section, except that compliance with Title 13 California Code Secs. 1968.1(b) (4.2.2), pertaining to evaporative leak detection, and 1968.1(d), pertaining to tampering protection, are not required to satisfy the requirements of this section.

7. A new § 86.099–17 is added to read as follows:

§ 86.099–17 Emission control diagnostic system for 1999 and later light-duty vehicles and light-duty trucks.

(a) All light-duty vehicles and light-duty trucks shall be equipped with an on-board diagnostic (OBD) system capable of monitoring, for each vehicle's useful life, all emission related powertrain systems or components. All systems and components required to be monitored by this section shall be evaluated periodically, but no less frequently than once per Urban Dynamometer Driving Schedule as defined in paragraph (a) of Appendix I of this part, or similar trip as approved by the Administrator.

(b) *Malfunction descriptions.* The OBD system shall detect and identify malfunctions in all monitored emission-related powertrain systems or components according to the following malfunction definitions as measured and calculated in accordance with test procedures set forth in subpart B of this part. Paragraphs (b)(2) and (b)(3) of this section do not apply to diesel cycle light-duty vehicles or light-duty trucks.

(1) Catalyst deterioration or malfunction before it results in an increase in HC emissions 1.5 times the HC standard, as compared to the HC emission level measured using a representative 4000 mile catalyst system.

(2) Engine misfire resulting in exhaust emissions exceeding 1.5 times the applicable standard for HC, CO or NO_X; and any misfire capable of damaging the catalytic converter.

(3) Oxygen sensor deterioration or malfunction resulting in exhaust emissions exceeding 1.5 times the applicable standard for HC, CO or NO_X.

(4) Any vapor leak in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice; and the absence of evaporative purge air flow from the complete evaporative emission control system.

(5) Any deterioration or malfunction occurring in a powertrain system or component directly intended to control emissions, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard for HC, CO or NO_X.

(6) Any other deterioration or malfunction occurring in an electronic

emission-related powertrain system or component not otherwise described above that either provides input to or receives commands from the on-board computer and has a measurable impact on emissions; monitoring of components required by this paragraph shall be satisfied by employing electrical circuit continuity checks and, for computer input components, rationality checks (input values within manufacturer specified ranges) and, for output components, functionality checks (proper functional response to computer commands); malfunctions are defined as a failure of the system or component to meet the electrical circuit continuity checks or the rationality or functionality checks.

(7) Oxygen sensor or any other component deterioration or malfunction which renders that sensor or component incapable of performing its function as part of the OBD system shall be detected and identified on vehicles so equipped.

(c) *Malfunction indicator light.* The OBD system shall incorporate a malfunction indicator light (MIL) readily visible to the vehicle operator. When illuminated, it shall display ''Check Engine,'' ''Service Engine Soon,'' or a similar phrase or symbol approved by the Administrator. A vehicle shall not be equipped with more than one general purpose malfunction indicator light for emission-related problems; separate specific purpose warning lights (e.g. brake system, fasten seat belt, oil pressure, etc.) are permitted. The use of red for the OBD-related malfunction indicator light is prohibited.

(d) *MIL illumination.* The MIL shall illuminate and remain illuminated when any of the conditions specified in paragraph (b) of this section are detected and verified, or whenever the engine control enters a default or secondary mode of operation considered abnormal for the given engine operating conditions. The MIL shall blink once per second under any period of operation during which engine misfire is occurring and catalyst damage is imminent. After no more than two such misfire detections, the MIL shall maintain a steady illumination when the misfire is not occurring and shall remain illuminated until the MIL extinguishing criteria of this section are satisfied. The MIL shall also illuminate when the vehicle's ignition is in the ''key-on'' position before engine starting or cranking and extinguish after engine starting if no malfunction has previously been detected. If a fuel system or engine misfire malfunction has previously been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which engine speed is within 375 rpm, engine load is within 20 percent, and the engine's warm-up status is the same as that under which the malfunction was first detected, and no new malfunctions have been detected. If any malfunction other than a fuel system or engine misfire malfunction has been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which the monitoring system responsible for illuminating the MIL functions without detecting the malfunction, and no new malfunctions have been detected. Upon Administrator approval, statistical MIL illumination protocols may be employed, provided they result in comparable timeliness in detecting a malfunction and evaluating system performance, i.e., three to six monitoring events would be considered acceptable.

(e) *Storing of computer codes.* The emission control diagnostic system shall record and store in computer memory diagnostic trouble codes and diagnostic readiness codes indicating the status of the emission control system. These codes shall be available through the standardized data link connector per SAE J1979 specifications as referenced in paragraph (h) of this section.

(1) A diagnostic trouble code shall be stored for any detected and verified malfunction causing MIL illumination. The stored diagnostic trouble code shall identify the malfunctioning system or component as uniquely as possible. At the manufacturer's discretion, a diagnostic trouble code may be stored for conditions not causing MIL illumination. Regardless, a separate code should be stored indicating the expected MIL illumination status (i.e., MIL commanded ''ON,'' MIL commanded ''OFF'').

(2) For a single misfiring cylinder, the diagnostic trouble code(s) shall uniquely identify the cylinder, unless the manufacturer submits data and/or engineering evaluations which adequately demonstrate that the misfiring cylinder cannot be reliably identified under certain operating conditions. The diagnostic trouble code shall identify multiple misfiring cylinder conditions; under multiple misfire conditions, the misfiring cylinders need not be uniquely identified if a distinct multiple misfire diagnostic trouble code is stored.

(3) The diagnostic system may erase a diagnostic trouble code if the same code is not re-registered in at least 40 engine warm-up cycles, and the malfunction indicator light is not illuminated for that code.

(4) Separate status codes, or readiness codes, shall be stored in computer memory to identify correctly functioning emission control systems and those emission control systems which require further vehicle operation to complete proper diagnostic evaluation. A readiness code need not be stored for those monitors that can be considered continuously operating monitors (e.g., misfire monitor, fuel system monitor, etc.). Readiness codes should never be set to ''not ready'' status upon key-on or key-off; intentional setting of readiness codes to ''not ready'' status via service procedures must apply to all such codes, rather than applying to individual codes.

(f) *Available diagnostic data.* (1) Upon determination of the first malfunction of any component or system, ''freeze frame'' engine conditions present at the time shall be stored in computer memory. Should a subsequent fuel system or misfire malfunction occur, any previously stored freeze frame conditions shall be replaced by the fuel system or misfire conditions (whichever occurs first). Stored engine conditions shall include, but are not limited to: engine speed, open or closed loop operation, fuel system commands, coolant temperature, calculated load value, fuel pressure, vehicle speed, air flow rate, and intake manifold pressure if the information needed to determine these conditions is available to the computer. For freeze frame storage, the manufacturer shall include the most appropriate set of conditions to facilitate effective repairs. If the diagnostic trouble code causing the conditions to be stored is erased in accordance with paragraph (d) of this section, the stored engine conditions may also be erased.

(2) The following data in addition to the required freeze frame information shall be made available on demand through the serial port on the standardized data link connector, if the information is available to the on-board computer or can be determined using information available to the on-board computer: Diagnostic trouble codes, engine coolant temperature, fuel control system status (closed loop, open loop, other), fuel trim, ignition timing advance, intake air temperature, manifold air pressure, air flow rate, engine RPM, throttle position sensor output value, secondary air status (upstream, downstream, or atmosphere), calculated load value, vehicle speed, and fuel pressure. The signals shall be provided in standard units based on SAE specifications incorporated by

reference in paragraph (h) of this section. Actual signals shall be clearly identified separately from default value or limp home signals.

(3) For all emission control systems for which specific on-board evaluation tests are conducted (catalyst, oxygen sensor, etc.), the results of the most recent test performed by the vehicle, and the limits to which the system is compared shall be available through the standardized data link connector per SAE J1979 specifications as referenced in paragraph (h) of this section.

(4) Access to the data required to be made available under this section shall be unrestricted and shall not require any access codes or devices that are only available from the manufacturer.

(g) The emission control diagnostic system is not required to evaluate systems or components during malfunction conditions if such evaluation would result in a risk to safety or failure of systems or components.

(h) *Reference materials.* The emission control diagnostic system shall provide for standardized access and conform with the following Society of Automotive Engineers (SAE) standards and/or the following International Standards Organization (ISO) standards. The following documents are incorporated by reference (see § 86.1):

(1) *SAE material.* (i) SAE J1850 ''Class B Data Communication Network Interface,'' (July 1995) shall be used as the on-board to off-board communications protocol. All emission related messages sent to the scan tool over a J1850 data link shall use the Cyclic Redundancy Check and the three byte header, and shall not use inter-byte separation or checksums.

(ii) Basic diagnostic data (as specified in sections 86.094–17(e) and (f)) shall be provided in the format and units in SAE J1979 ''E/E Diagnostic Test Modes,'' (July 1996).

(iii) Diagnostic trouble codes shall be consistent with SAE J2012 ''Recommended Format and Messages for Diagnostic Trouble Code Definitions,'' (July 1996) Part C.

(iv) The connection interface between the OBD system and test equipment and diagnostic tools shall meet the functional requirements of SAE J1962 ''Diagnostic Connector,'' (January 1995).

(2) *ISO materials.* (i) ISO 9141–2 ''Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information,'' (February 1994) may be used as an alternative to SAE J1850 as the on-board to off-board communications protocol.

(ii) ISO 14230–4 ''Road vehicles—Diagnostic systems—KWP 2000 requirements for Emission-related systems'' (April 1996) may also be used as the on-board to off-board network communications protocol.

(i) *Deficiencies and alternate fueled vehicles.* Upon application by the manufacturer, the Administrator may accept an OBD system as compliant even though specific requirements are not fully met. Such compliances without meeting specific requirements, or deficiencies, will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to, technical feasibility of the given monitor, lead time and production cycles including phase-in or phase-out of engines or vehicle designs and programmed upgrades of computers, and if any unmet requirements are not carried over from the previous model year except where unreasonable hardware modifications would be necessary to correct the non-compliance, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. Furthermore, EPA will not accept any deficiency requests that include the complete lack of a required diagnostic monitor, with the possible exception of the special provisions for alternate fueled vehicles. For alternate fueled vehicles (e.g. natural gas, liquefied petroleum gas, methanol, ethanol), beginning with the model year for which alternate fuel emission standards are applicable and extending through the 2004 model year, manufacturers may request the Administrator to waive specific monitoring requirements of this section for which monitoring may not be reliable with respect to the use of the alternate fuel. At a minimum, alternate fuel vehicles shall be equipped with an OBD system meeting OBD requirements to the extent feasible as approved by the Administrator.

(j) Demonstration of compliance with California OBD II requirements (Title 13 California Code Sec. 1968.1), as modified pursuant to California Mail Out #96–34 (October 25, 1996), shall satisfy the requirements of this section, except that compliance with Title 13 California Code Secs. 1968.1(b)(4.2.2), pertaining to evaporative leak detection, and 1968.1(d), pertaining to tampering protection, are not required to satisfy the requirements of this section, and 1968.1(m)(5.1), pertaining to alternate fuel vehicles, shall not apply.

8. A new section 86.099–30 is added to read as follows:

§ 86.99–30 Certification.

Section 86.099–30 includes text that specifies requirements that differ from § 86.094.30, § 86.095–30, § 86.096–30, or § 86.098–30. Where a paragraph in § 86.094.30, § 86.095–30, § 86.096–30, or 86.098–30 is identical and applicable to § 86.099–30, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.094.30.'' or ''[Reserved]. For guidance see § 86.095–30.'' or ''[Reserved]. For guidance see § 86.096–30.'' or ''[Reserved]. For guidance see § 86.098–30.''.

(a)(1) and (a)(2) [Reserved]. For guidance see § 86.094–30.

(a)(3)(i) [Reserved]. For guidance see § 86.098–30.

(a)(3)(ii) through (a)(4)(ii) [Reserved]. For guidance see § 86.095–30.

(a)(4)(iii) introductory text through (a)(4)(iii)(C) [Reserved]. For guidance see § 86.094–30.

(a)(4)(iv) introductory text [Reserved]. For guidance see § 86.095–30.

(a)(4)(iv)(A) through (a)(12) [Reserved]. For guidance see § 86.094–30.

(a)(13) [Reserved]. For guidance see § 86.095–30.

(a)(14) [Reserved]. For guidance see § 86.094–30.

(a)(15) through (a)(18) [Reserved]. For guidance see § 86.096–30.

(a)(19) introductory text through (a)(19)(iii) [Reserved]. For guidance see § 86.098–30.

(b)(1) introductory text through (b)(1)(i)(B) [Reserved]. For guidance see § 86.094–30.

(b)(1)(i)(C) [Reserved]. For guidance see § 86.098–30.

(b)(1)(ii) through (b)(1)(iv) [Reserved]. For guidance see § 86.094–30.

(b)(2) [Reserved]. For guidance see § 86.098–30.

(b)(3) through (b)(4)(i) [Reserved]. For guidance see § 86.094–30.

(b)(4)(ii) [Reserved]. For guidance see § 86.098.30.

(b)(4)(ii)(A) [Reserved]. For guidance see § 86.094–30.

(b)(4)(ii)(B) through (b)(4)(iv) [Reserved]. For guidance see § 86.098–30.

(b)(5) through (e) [Reserved]. For guidance see § 86.094.30.

(f) For engine families required to have an emission control diagnostic system (an OBD system), certification will not be granted if, for any emission data vehicle, assembly line vehicle, or other test vehicle approved by the Administrator, the malfunction indicator light does not illuminate under any of the following circumstances. Only paragraph (f)(4) of this section applies to diesel cycle

vehicles where such vehicles are so equipped.

(1) A catalyst is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in an increase of 1.5 times the HC standard above the HC emission level measured using a representative 4000 mile catalyst system.

(2) An engine misfire condition is induced resulting in exhaust emissions exceeding 1.5 times the applicable standards for HC, CO or NO_X.

(3) Any oxygen sensor is replaced with a deteriorated or defective oxygen sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard for HC, CO or NO_X.

(4) A vapor leak is introduced in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice, or the evaporative purge air flow is blocked or otherwise eliminated from the complete evaporative emission control system.

(5) A malfunction condition is induced in any emission-related powertrain system or component, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard for HC, CO or NO_X.

(6) A malfunction condition is induced in an electronic emission-related powertrain system or component not otherwise described above that either provides input to or receives commands from the on-board computer resulting in a measurable impact on emissions.

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Part IV

Nuclear Regulatory Commission

10 CFR Parts, 30, 34, 71 and 150

Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations; Final Rule

Revision of the NRC Enforcement Policy; Notice

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 34, 71 and 150

RIN 3150–AE07

Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing industrial radiography. This final rule updates radiation safety requirements in order to enhance the level of protection of radiographers and the public. By a separate action published today in the **Federal Register**, the Commission has issued a modification to the Enforcement Policy that reflects these amendments to 10 CFR Part 34.

EFFECTIVE DATE: June 27, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. Nellis or Mary L. Thomas, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555; Telephone: (301) 415–6257 or 415–6230.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Final Rule Provisions and Response to Public Comments on the Proposed Rule.
III. Conforming Rule Changes.
IV. Agreement State Compatibility.
V. Implementation.
VI. Finding of No Significant Environmental Impact: Availability.
VII. Paperwork Reduction Act Statement.
VIII. Regulatory Analysis.
IX. Regulatory Flexibility Analysis.
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I. Background

Part 34 of Title 10 of the Code of Federal Regulations was first published in 1965 (30 FR 8185; June 26, 1965) during the recodification of existing 10 CFR Parts 30 and 31. Part 34 established a new part devoted specifically to regulating the safe use of sealed sources of byproduct material in industrial radiography. Numerous modifications made by a number of Agreement States to corresponding regulations led to a decision, in 1991, to develop an overall revision to 10 CFR Part 34. Subsequently, the NRC published a proposed rule on February 28, 1994 (59 FR 9429), that incorporated a number of recommendations made at meetings with the Agreement States and industry in 1991 and 1992. The NRC also reviewed the radiography regulations from Texas, Louisiana, Canada, and the ''Suggested State Regulations for Control of Radiation,'' developed by the Conference of Radiation Control Program Directors (CRCPD), Inc., in developing the proposed regulation.

The proposed rule also addressed the potential resolution of a petition from the International Union of Operating Engineers (IUOE), Local No. 2, requesting an amendment to the radiography regulations to require the presence of a minimum of two radiographic personnel when performing industrial radiography at temporary jobsites (PRM–34–4). Based on comments received on this petition (35 out of 38 comments) in favor of a two person requirement, the proposed revision to 10 CFR Part 34 included a provision for at least two qualified individuals to be present anytime radiographic operations are undertaken outside a permanent installation.

The other major provisions of the proposed rule were to: (1) Require mandatory certification of radiographers, (2) specify the qualifications and duties for a radiation safety officer, (3) include additional training requirements for radiographers' assistants, and (4) clarify the definition of a permanent radiographic installation. The proposed rule also revised the format of 10 CFR Part 34 to place requirements into categories that more accurately describe the requirements found in the rule.

II. Response to Public Comments on the Proposed Rule and Final Rule Provisions

The comment period on the proposed rule closed May 31, 1994, but the NRC continued to receive comments while developing the final rule. By mid-December 1994, a total of 58 public comment letters were received on the proposed rule. Many commenters expressed opinions and recommendations on several sections of the proposed rule while others commented on only a single section. In developing a final rule, the NRC held a workshop in Houston, Texas, on December 13–15, 1994, to discuss the resolution of public comments received up to that date on the proposed rule. In addition, the NRC discussed its views and sought comments on several of the key provisions of the proposed rule at an industry workshop held in Las Vegas, Nevada, on March 20, 1995, and the April 1995 workshop for Agreement State program managers. The transcripts of these meetings, which are available for inspection and copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington DC, were reviewed in developing the final rule. Following these workshops, an additional 31 comment letters were received, bringing the total to 89 public comment letters.

This final rule includes a partial granting of the petition, PRM–34–4, in that it requires, at a minimum, a two-person crew whenever radiographic operations are being conducted outside of a permanent radiographic installation. The NRC has decided not to adopt the term ''radiographer trainee,'' (which was one of the options proposed in the petition) but is requiring instead that the second person be another qualified radiographer or an individual who has met, at a minimum, the requirements for a radiographer's assistant. The NRC recognizes that, in Agreement States, the training of those individuals designated as trainees would meet and generally exceed the NRC's training requirements for a radiographer's assistant. Trainees are required to successfully complete the 40-hour course on the subjects listed in § 34.43(g), while a radiographer's assistant has to meet only those requirements in § 34.43(c) and is not required to complete the 40-hour course described.

The estimated cost of requiring the two-person crew could be significant for licensees who currently send only one radiographer to a temporary jobsite. However, the current regulation requires direct surveillance of the operation to prevent unauthorized entry into a high radiation area. To comply with this regulation, most licensees already must use more than one qualified individual in many situations.

In summary, the Commission believes that by requiring at least two qualified individuals to always be present when radiographic operations are being conducted, there will be a significant increase in assurance that operational safety measures and emergency procedures will be effectively implemented. The expectation is that violations involving failures to perform adequate radiation surveys of radiographic exposure devices and the surrounding area, failures to adequately post and monitor the restricted area, and failures to lock and secure the camera when not in use will become less frequent. Louisiana and Texas adopted two-person crews several years ago and report a significant reduction in incidents and exposures. Many of the other Agreement States have since adopted the requirement because of the implicit safety benefit implied in having two persons available to cope with emergency situations. Furthermore, if an incapacitating injury to a radiographer should occur at a remote location, the

presence of a second individual could be an important factor in preventing unnecessary radiation exposures. The Commission is amending the Enforcement Policy as a result of this final rulemaking to provide, as an example of a Severity Level III violation, the conduct of radiography operations without the required second radiographer or individual with, at least, the qualifications of a radiographer's assistant as provided in § 34.41.

The remaining issues addressed in the comments received on the proposed rule and the NRC responses to those comments are discussed under the applicable CFR section.

Section 34.1: Purpose and Scope

This section of the final rule is basically unchanged from the existing regulation, with the exception of minor clarifying changes. Other NRC regulations, such as, Parts 19, 20, 21, 30, 71, 150, 170, and 171, that apply to radiography licensees are now referenced by number in this section, and ''radiography'' is changed to ''industrial radiography'' to distinguish it from medical uses. No comments were received on this section.

Section 34.3: Definitions

This section provides definitions for terms used in this part. The proposed rule included a number of new definitions, as well as proposed revisions to a number of existing definitions.

The proposed rule contained definitions for the following new terms not previously addressed in 10 CFR Part 34: ALARA, Annual safety review, Associated equipment, Becquerel, Certifying entity, Collimator, Control tube, Exposure head, Field examination, Field station, Gray, Independent certifying organization, Projection sheath, Radiation safety officer, Radiographer certification, Radiographic operations, S-tube, Shielded position, Sievert, Source assembly, and Temporary jobsite.

The term ALARA (as low as is reasonably achievable) was added to describe a key element of the revised standards for protection against radiation in 10 CFR Part 20. The terms Becquerel, Gray, and Sievert were added to define the metric units used in all new or revised regulations. The term Annual safety review was added to clarify what was meant by the term periodic training used previously in § 34.11. The terms Certifying entity, Independent certifying organization, and Radiographer certification were added to describe terms associated with the proposed requirements for verification of radiographer training. The terms Collimator and S-tube were added to describe pieces of equipment that are used in conducting radiographic operations. The terms Field station and Temporary jobsite were added to clarify the meaning of these commonly used terms. The term Radiation safety officer was added to define the role of this individual in industrial radiography. The terms Associated equipment, Control tube, Exposure head, Practical examination, Projection sheath, and Source assembly were added because, while used in the regulation, they were not previously defined.

The proposed rule presented modifications to the definitions of Permanent radiographic installation, Storage area, and Storage container. The definition of Permanent radiographic installation was modified to remove ambiguities in the existing definition concerning what the phrase, ''intended for radiography,'' meant. The definitions of Storage area and Storage container were modified to remove references to transportation.

Comment

The six comment letters that addressed this section requested several additions, clarifications, and changes to the proposed and existing definitions. One commenter requested adding a section addressing the unique aspects of underwater, offshore platform, and lay-barge radiography. Another commenter requested defining the term ''control drive mechanism'' because it is used in the definition of control tube. Clarification of the meaning of the terms ''annual safety review,'' ''field examination,'' and ''radiographer's assistant'' was requested. One Agreement State (Illinois) requested that the definition of permanent radiographic installation not be changed as proposed, that the definition of radiographer certification be broadened to included authorization by an Agreement State, that the Commission adopt the term radiographer trainee, and the term working position be explained. They further requested that definitions of malfunction, defect, transport, and transport container be added and suggested a number of editorial changes to the definitions to make them similar to definitions in the Suggested State Regulations used by many of the Agreement States.

Response

In response to public comments, the NRC has added five new definitions to the final rule: Control cable, Control drive mechanism, Lay-barge radiography, Offshore platform radiography, and Underwater radiography. Some of the definitions in the proposed rule were changed in response to comments. Annual safety review was changed to Annual refresher safety training to clarify that its purpose is training. Projection sheath was changed to the more commonly used term, Guide tube, and Beam limiter was changed back to its original term, Collimator. The term working position as used in the definition of Exposure head means the location of the equipment during operation. Radiography was changed to Industrial radiography to reduce any confusion with medical uses. Field examination was changed to Practical examination to clarify that it need not occur in the field. In response to a comment raised on § 34.43, Training, a definition for hands-on experience was added to the final rule. The other new definitions in the proposed rule are adopted in the final rule without change.

Definitions for defect and malfunction, which are defined in 10 CFR Part 21 were not added to 10 CFR Part 34 to avoid the potential for confusion should 10 CFR Part 21 be revised without any subsequent revision to 10 CFR Part 34, and as a result these terms were to be defined differently in Parts 34 and 21. The definition of Radiographer certification already includes individuals certified by certifying entities (i.e., Agreement States) and therefore no change was made to the final rule. No definition was added for transport or transport container, although the Agreement States are free to adopt or use definitions for these terms.

Changing the definition of Radiographer's assistant was discussed at the November 1992 workshop in Dallas, Texas. Some Agreement States use the term ''trainee'' to refer to a radiographer's assistant and also require training in the subjects in § 34.43(g). NRC only requires this training for radiographers. Although the NRC is not adopting the term trainee or requiring radiographers' assistants to have the same training as radiographers, the Agreement States are not prohibited from using the term in their requirements or from requiring the additional training.

Section 34.5: Interpretations

This section, while not in 10 CFR Part 34 previously, was added to the proposed rule because this is standard regulatory language used to state that only the General Counsel of the NRC has the authority to provide interpretations of the regulations which

will be binding on the Commission. No comments were received on this section.

Section 34.8: Information Collection Requirements: OMB Approval

This section was basically unchanged in the proposed rule, except for changing the section numbers to conform to the new format of the proposed rule and to list any new requirements that require OMB approval. No comments were received on this section.

Section 34.13: Specific License for Industrial Radiography

This section (previously § 34.11), provides the basic requirements for submittal of a license application which must be met satisfactorily before NRC will approve the application. A number of changes to this section were proposed, including a reduction in the inspection frequency of job performance for radiographers and assistants, a requirement for submitting procedures for verifying and documenting the certification status of radiographers, a requirement to designate and identify a Radiation Safety Officer (RSO) responsible for the licensee's radiation safety program, provisions for leak testing for depleted uranium leakage on those radiographic exposure devices that use depleted uranium for shielding, and a requirement to provide the location and description of all field stations and permanent radiographic installations.

The requirement for conducting field inspections of job performance of radiographers and assistants was moved to § 34.43 to more accurately reflect its role in the training program. In addition, a requirement for conducting annual refresher safety training was substituted for the previously used term of periodic training. These changes are described more fully under the discussion of § 34.43.

The requirement to conduct tests to identify depleted uranium (DU) contamination was added to detect wear through the ''S'' tube into the DU shielding. Such a condition could cause binding of the control cable in the groove and possibly prevent the radiographer from retracting the source. A new requirement was proposed to identify procedures for conducting leak tests for sealed sources and radiographic exposure devices containing (DU) shielding if the licensee intends to perform the leak testing.

Comment

Nine comment letters addressed this section. Six opposed changing the frequency of required licensee inspections of radiographers and radiographers' assistants from quarterly to annually. They stated that there is great benefit in conducting quarterly inspections and recommended keeping the quarterly requirement. Three commented favorably on the requirement to designate and identify an RSO (§ 34.13(g)). One commenter suggested that the RSO should only be responsible for ensuring that a radiation safety program was implemented rather than being the one who must implement it as the proposed rule had suggested.

Response

Although some commenters suggested that the quarterly inspections of radiographers and radiographers' assistants should be maintained, the Commission believes that the increased training required for radiographers' assistants, the requirement for the certification of radiographers, and the appointment of an RSO to oversee training and job performance, will compensate for the reduction in the numbers of inspections performed. However, the Commission agrees with the commenters that the benefits gained by these inspections indicate that a semiannual frequency may be preferable and has modified the final rule to require semiannual inspections. The requirement for conducting the field inspections for radiographers and radiographers' assistants has been moved to § 34.43 to more accurately reflect its role in the training program. Additional information concerning the specifics of these inspections is given in § 34.43(e).

Paragraph (b) specifies that training for industrial radiographers and radiographers' assistants must meet the requirements of § 34.43. The new requirement to establish procedures to verify the certification status of radiographers applies to previously certified radiographers hired by the licensee. However, the licensee will be required to ensure that all radiographers are certified when this requirement becomes effective, (2 years after the final rule is published in the **Federal Register**). Section 34.13(b)(2) permits licensees to use certified radiographers before the mandatory 2-year implementation date in lieu of describing its initial training program in the subjects outlined in § 34.43(g). With the adoption of mandatory certification for industrial radiographers, the final rule has been revised to delete the requirement that licensees include a description of their training program in the radiation safety topics in § 34.43(g) for radiographers in their license application.

The final rule specifies that licensees must designate an RSO and potential RSO designees. No change was made in the final rule as requested in the comment described above, because the rule is clear that the RSO's responsibility is to ensure that the radiation safety program is implemented in accordance with NRC regulations and with the licensee's operating and emergency procedures. Further discussion on the qualifications and duties of this individual are addressed under § 34.42.

In response to comments on § 34.27 that testing of radiographic devices for DU contamination should be incorporated in the section on testing of sealed sources for leakage, § 34.13(h) was added. This paragraph requires that DU shielding, in addition to sealed sources, be tested for leakage. In response to comments received on § 34.89 that provisions in the proposed rule requiring retention of records at specific locations was overly burdensome, a new § 34.13(k) was added to require license applicants to identify the locations where all records will be maintained. This provides the licensees with greater flexibility.

Section 34.20: Performance Requirements for Industrial Radiography Equipment

This section specifies requirements for industrial radiographic equipment performance and use. Only a few changes to this section were presented in the proposed rule. The proposed changes primarily addressed equipment modifications and labelling requirements. The proposed rule would have prohibited modification of radiographic exposure devices, and associated equipment. The term, source assembly, was added to § 34.20(c) to make it clear that it is one of the pieces of equipment that must meet the requirements of § 34.20. Section 34.20(f) was added in the proposed rule to require labeling of all associated equipment acquired after January 10, 1996, to identify that the components have met the requirements of § 34.20.

Comment

Six comment letters addressed this section. Three commenters were concerned that § 34.20(b)(1) specifies that the label required for the device was to be attached by the user when in practice most of the information required is supplied or attached by the supplier.

Two commenters expressed concern that the proposed rule did not seem to allow modifications whether they compromised safety or not, which

differed from the existing § 34.20(b)(3). One commenter requested examples of ''reasonably foreseeable abnormal conditions'' discussed in § 34.20(c)(1). One commenter expressed concern over the crushing and kinking tests for the guide tube listed in § 34.20(c)(5) and stated that the rule implied that each guide tube had to be tested instead of testing a prototype and then using Quality Assurance/Quality Control (QA/QC) procedures in the design of subsequently manufactured guide tubes.

Finally, one commenter was concerned with § 34.20(f) in the proposed rule that requires labeling of all associated equipment acquired after January 10, 1996. The commenter was concerned that a large amount of associated equipment that meets ANSI N432–1980 and 10 CFR 34.20, and is currently in use is not labelled. Because compliance can be determined only at the time equipment is manufactured, the commenter was concerned that qualified associated equipment may not be authorized for use. The commenter also raised another concern as to what components would have to be labelled. The commenter stated that control gears, guide tube fittings, or outlet nipples are examples of items that it may not be practical to label. The commenter also pointed out that a properly labelled control assembly may not meet the ANSI requirements if one of its components is replaced by a labelled replacement component from a different manufacturer.

Response

Sections 34.20(a) and (b)

Minor changes were made in each of these paragraphs to clarify what is meant by radiographic equipment. The terms ''source assembly'' and ''sealed source'' were added to § 34.20(a) and (b) because these items are addressed in the ANSI Standard N432–1980.

Section 34.20(b)

The Commission recognizes that the manufacturer generally provides much of the information required concerning the equipment initially and generally affixes a label to the device. If a replacement source or source assembly is installed or a licensee's name, telephone number, etc., changes, it is the licensee's responsibility to make appropriate changes to the label. Although the requirement to have the label attached to the radiographic exposure device by the user has been part of the regulation since 1990 and was not a change made in the proposed rule, the paragraph has been rewritten in the final rule to state that the licensee shall ensure that the information required is attached, whether the information is added by the licensee or by the manufacturer.

In light of the comments received, paragraph (b)(3) of the proposed rule, which prohibited any modification of exposure devices and associated equipment, has been deleted and the existing (b)(3) modification language is retained.

Section 34.20(c)

In response to a comment requesting an example of a ''reasonably foreseeable abnormal condition'' one example would be where the coupling between the source assembly and the control cable cannot be unintentionally disconnected should the guide tube be severed.

Section 34.20(c)(5)

With respect to the comment received relating to this paragraph, stating that the rule implied that each guide tube had to be tested; this is neither true nor practical. It is the NRC's intent that the tests prescribed involve prototype devices and components. The ANSI Standard N432 covers criteria for the design of new devices and for qualifying *prototypes* to performance standards. This paragraph, § 34.20(c)(5), is included in the rule because ANSI N432–1980 contains crushing and kinking tests that are specific for the control cable and the control cable sheath (tube) only. The existing paragraph (c)(5) was intended to apply the crushing tests specified for the controls to the guide tubes, and to apply a kinking resistance test that approximated the forces encountered during use. However, the NRC received a few requests for the use of guide tubes in special applications where the guide tubes could not comply with the crushing test criteria stipulated in the standard. Comments received from the airline industry on the 1990 equipment rule (55 FR 843), indicated that the special guide tubes used in testing aircraft engines would not pass either the kinking test or crushing test specified in the ANSI standard. The NRC's response, at that time, was to state that persons with special requirements apply for an exemption under § 34.51. However, the Commission has reconsidered its decision, and while concluding that the crushing tests specified in ANSI N432 should be adequate for the majority of guide tubes in use, the NRC also recognizes that the tests specified in ANSI N432 are not sufficient for all cases and that other tests may provide an equal level of safety and may be more appropriate, provided the tests used closely approximate the crushing forces likely to be encountered in normal use. Rather than continue to review case specific exemptions to achieve this, the rule has been modified to specify the use of both crushing and kinking tests appropriate to the conditions of use.

Section 34.20(f)

Paragraph 34.20(f) in the proposed rule, which specified that all associated equipment acquired after January 10, 1996, had to be labelled to identify that components met the requirements of § 34.20, is deleted in the final rule. The NRC is currently re-evaluating the applicability of the ANSI Standard N432–1980 for associated equipment. In response to comments raised on the proposed rule and subsequent comments from a number of licensees requesting interpretation of Information Notice 96–20, issued on April 4, 1996, the NRC will consider the need for an amendment to § 34.20. In the interim, NRC inspections will focus on safety issues and incidents relating to associated equipment.

Section 34.21: Limits on Levels of Radiation for Storage Containers and Source Changers

This section specifies the limits on radiation exposure levels for various equipment associated with industrial radiography. Metric equivalents to values previously cited were added to the proposed rule. Because radiation exposure instruments currently use units of roentgens to measure radioactivity, the proposed rule specified that measurements taken in roentgens could continue to be recorded in terms of roentgens, provided the limits described in the rule would not be exceeded.

Comment

One comment was received on this section that indicated § 34.21(b) was confusing as written because the language in the proposed rule stated that § 34.21 would only apply to storage containers.

Response

NRC agrees and has rewritten § 34.21 in the final rule to specify the radiation exposure limits for storage containers and source changers and to delete requirements for radiographic exposure devices from this section. Because all radiographic equipment in use after January 10, 1996, will be required to meet ANSI N432–1980, the reference to requirements for equipment manufactured before January 10, 1992,

is no longer needed and has been deleted from the final rule.

Section 34.23: Locking of Radiographic Exposure Devices, Storage Containers and Source Changers

This section requires locking of radiographic equipment to protect the public from inadvertent exposure to radiation. The proposed rule included additional requirements for locking radiographic exposure devices before movement and, if there is a keyed-lock, for removing the key at all times, when not under the direct surveillance of a radiographer or a radiographer's assistant.

Comment

Twelve comments were received on the new proposed § 34.23(b), ten opposed the provision and two suggested word changes. Examples were:

(1) The requirement to disconnect the control cables from the exposure device before moving from one location to another in the same immediate area involves too much wear and tear on the source assembly connection. This could lead to equipment fatigue.

(2) Industrial radiographers work under less than friendly situations in deep and muddy ditches and often under stress. They may also work in situations where one pipeline is tied into another and many radiographs, all within a short distance of each other, are required. Stress is high on the radiographer under these conditions because people are waiting. Requiring the disconnecting and re-connecting of cables before moving the radiographic exposure device for successive exposures only a few feet apart would only add to that stress and result in judgment errors which in turn could result in possible overexposures.

(3) Because many exposure devices now have, and all will soon be required to have, an automatic source securing device, requiring that the control cables be removed before moving the device as little as a few feet is unnecessary and adds no additional measure of radiation safety.

(4) All of this connecting and disconnecting would drastically increase the introduction of contaminants into the control tube or guide tube and cause excessive wear and would also increase radiation exposure to the extremities of the radiographers concerned.

Response

The NRC agrees with the commenters and has deleted the proposed § 34.23(b) from the final rule and modified the proposed § 34.23(a). The final rule contains requirements that the source be secured after each exposure [§ 34.23(a)]. Paragraph (a) in the final rule requires the radiographic exposure device to have a lock or a locked outer container and specifies that it shall be kept locked with the key removed, when not under the direct surveillance of a radiographer or a radiographer's assistant. In addition, § 34.49(b) requires the licensee to survey the radiographic exposure device and guide tube after each exposure when approaching the device or the guide tube to ensure that the source has been returned to the shielded position. The Commission has determined that this requirement provides for adequate safety without the need for additional requirements to disconnect guide tubes before any movement. The proposed rule included the statement that the source be manually secured in those exposure devices manufactured before January 10, 1992. This statement has been deleted in the final rule because all devices in use after the effective date of this final rule, must meet the requirements of § 34.20 including automatic securing.

Section 34.25: Radiation Survey Instruments

This section (previously § 34.24) specifies requirements for radiation survey instruments. The proposed rule included a requirement to perform an operability check before use. The proposed rule also reduced the frequency of survey meter calibrations from quarterly to semiannually and provided specific calibration protocols for linear, logarithmic, and digital scale instruments, including an accuracy requirement of plus or minus 20 percent. These changes were made to reflect current calibration standards and to address the variety of survey meters currently available. In addition, the proposed rule required that records of the instrument calibrations be maintained.

Comment

Ten comments were received on this section. Three commented on the necessity for performing a daily operability check. One commenter objected to using the projection sheath (guide tube) port of a radiographic exposure device as a suitable radiation field for the operability check, and stated that if the source were not properly locked and shielded within the device, it would be possible for the operator to receive an overexposure if the survey meter being checked for operability were malfunctioning. This commenter suggested that a safer method was to use an appropriate check source for the radiation field. Two commenters suggested that some of the newer instruments could retain their calibration for up to 6 months as required by § 34.25(b)(1), but five felt that a 3-month calibration period should be maintained, citing the rough treatment and hostile environment in which field radiography was performed. One commenter suggested that the calibrations should be made by persons licensed by the NRC or an Agreement State.

Response

The operability check, originally proposed for § 34.25, has been moved to § 34.31 because this section is a more appropriate location for the requirement. As recommended, the suggested method for performing an operability check has been changed to use a check source or other appropriate means. The suggestion that the regulations specify that persons performing calibrations be licensed by the Commission or an Agreement State is not adopted at this time. The Commission does not believe that the suggested requirement is necessary because licensees must submit operating and emergency procedures with their application under § 34.13. Because these would include a licensee's calibration procedures, an adequacy review of the calibration procedures would be conducted prior to granting a license. These procedures are reviewed in detail as part of the licensing process, thus adopting an additional requirement to license individuals performing these calibrations could be an unnecessary burden.

The time interval for calibration under § 34.25(b)(1) was not changed from the 6-month frequency specified in the proposed rule. However, a requirement to conduct inspection and maintenance of these instruments on a quarterly basis has been included in § 34.31. Equipment malfunctions are generally not due to the instrument being out of calibration, but to some other failure. The Commission believes that more frequent calibrations are not needed because significant changes in instrument response should be detected during the daily operability check.

Section 34.27: Leak Testing and Replacement of Sealed Sources

This section (previously § 34.25) stipulates that licensees leak test sealed sources while in use and radiographic exposure devices that employ DU for shielding. The proposed rule included a requirement that the performance of a source exchange or a leak test must be

made by persons authorized by the Commission or an Agreement State. The proposed rule also included a requirement that radiographic exposure devices using DU shielding be tested for contamination at intervals not to exceed 12 months unless the device was in storage. The presence of DU contamination could be an indication of ''S'' tube wear that could lead to the binding of the control cable with the resultant inability to retract the source. The proposed rule also specified that leaking radiographic exposure devices be disposed of at a facility licensed to handle low-level waste.

Comment

Six comments were received on this section. One commenter stated that the additional test requiring a check for DU contamination could probably not discriminate between a leaking source and DU contamination. Two commenters suggested that DU testing not be required for devices in storage. Another suggested that the DU testing be integrated into the required 6-month leak test for the sealed source. One commenter stated that disposal should not be limited to a facility licensed under 10 CFR Part 61. The last commenter pointed out that DU testing was important since the drive cable travels through the worn part of the ''S'' tube, and if the wear is significant, the cable picks up uranium contamination and users are exposed to this contamination during connecting and disconnecting controls etc., and while the contamination level is low, it is poor health physics practice to allow individuals to have unprotected contact with contaminated items.

Response

The NRC recognizes that the detection of DU contamination does not imply that the wear on the ''S'' tube is sufficient to remove the exposure device from use. However, it is sufficient to require that a borescope or other suitable inspection be made to establish the degree of wear. Most nondestructive evaluation (NDE) firms have the capability to conduct their own inspection. Firms that do not have this capability could send the device to the manufacturer or to some other inspection service company for the inspection and evaluation.

The NRC has determined that leak testing services are available that can discriminate between DU contamination and sealed source contamination. The NRC has no objection to increasing the frequency for the DU contamination tests so that they are performed concurrently with the sealed source leak tests. However, the interval between the DU tests must not exceed 12 months, unless the device is in storage, with the provision that it be tested before use or transfer. Section 34.27(e) in the final rule has been modified to reflect this change. The requirement for disposal of a DU contaminated device in a facility licensed under 10 CFR Part 61 has been deleted since 10 CFR 40.13(c)(6) exempts natural or depleted uranium metal used as a shielding constituent in a shipping container, provided it is appropriately labelled and the metal is encased in mild steel or equally fire resistant metal of minimum wall thickness of ⅛ inch (3.2 millimeters).

Section 34.29: Quarterly Inventory

This section (previously § 34.26) specifies requirements for conducting a quarterly inventory. The proposed rule was essentially unchanged from the existing regulation, with the exception of moving all recordkeeping requirements to § 34.69.

Comment

One commenter requested an editorial change to this section.

Response

In response to the comment, the final rule clarifies that an inventory of all devices that utilize DU shielding is also required.

Section 34.31: Inspection and Maintenance of Radiographic Exposure Devices, Transport and Storage Containers, Associated Equipment, Source Changers, and Survey Instruments

This section (previously § 34.28) addresses requirements for the various types of inspection and maintenance activities that licensees must perform to ensure that equipment is in good operating condition, sources are properly shielded, required labels are present, and components important to safety are functioning properly. Records of these inspections and maintenance performed are to be kept for 3 years.

The proposed rule extended inspection and maintenance checks to include associated equipment. Associated equipment includes various items used for specific tasks which may not be supplied with the radiographic exposure device. Experience has shown that defects in associated equipment can have an effect on safety. The term routine maintenance was used in the proposed rule to clarify that licensees are not required to perform all maintenance. Many equipment repairs may require returning the device to the manufacturer. A requirement to remove defective equipment from service until repaired was also included, and that a record of the defect, as well as the corrective actions taken, must be made.

Comment

Three comments were received on this section. Commenters indicated that the daily checks should be more than just visual checks and that they should include operability checks to reveal any equipment problems. The commenters indicated that the components should be maintained in accordance with the manufacturer's specifications and that the recording requirements should include maintenance performed even if this is performed by another, such as the manufacturer.

Response

The NRC agrees that both visual and operability checks of equipment should be made daily and has modified paragraph (a) accordingly. The proposed rule would have only required that survey instrument operability be evaluated daily with a check source or other appropriate means. By requiring a daily operability check, the likelihood of the radiographer relying on a defective instrument should be reduced. Although it may be a good practice to maintain the equipment in accordance with the manufacturer's specifications, requiring this in the final rule is not necessary, provided the licensee has appropriate procedures for conducting routine inspection and maintenance. The final rule will now require the licensee to have written procedures for the inspection and routine maintenance of radiographic equipment.

In response to a comment on § 34.35 regarding moving the transportation requirements in 10 CFR Parts 71 and 34 to reduce the confusion to licensees, the QA requirements for maintenance of transport packages have been included in this section. This, together with a minor conforming change to 10 CFR Part 71, will relieve an existing burden on radiography licensees, who will no longer need to separately submit a transport package QA program description for approval. The prescribed written procedures must include procedures necessary to inspect and maintain Type B packaging used to transport radioactive material.

Section 34.33: Permanent Radiographic Installations

This section (previously § 34.29) specifies the safety requirements that must be in place for any permanent radiographic installation. The proposed rule was basically unchanged from the existing regulation except that daily

checks would be required for both the visible and audible alarms in place of testing the alarm systems at intervals not to exceed three months. Entrance controls of the type described in § 20.1601(a)(1) would be tested monthly under the proposed rule, instead of every 3 months.

Finally, the proposed rule would have required that, if an entrance control device or an alarm is operating improperly, it would be labelled as defective and repaired before operations are resumed.

Comment

Six comments were received on this section. Two of the commenters believed that the monthly testing of entrance controls was redundant if there was also a requirement for a daily test. Two others were concerned that no provision was made for surveillance of high radiation areas around the roof of those installations where the shielding is insufficient to reduce the radiation below the level of a high radiation area. One commenter expressed a concern that there was no provision for use of the facility should the visual and audible alarms become defective and require some time to repair. Two commenters also suggested that the alarm system be tested with a source rather than by turning on the exposure device.

Response

The NRC agrees that the exposure device need not be used to check the alarm system and has changed paragraph (b) in the final rule accordingly. The NRC has added words to help clarify the difference between entrance control devices described in § 20.1601(a)(1) and the alarm systems described in § 34.33(a)(2). Daily testing is required for the audible and visual alarms described in § 34.33(a)(2). Systems whereby the radiation level is automatically reduced upon entry (§ 34.33(a)(1)) require monthly testing. The final rule has been revised to allow licensees to continue to use the facility if the alarm system is found to be defective, for a period of up to 7 calendar days, provided the controls needed for a temporary jobsite are in place. The NRC will review any applications where high radiation areas exist outside the permanent installation on a case-by-case basis to ensure that adequate safety controls are in place for these installations.

Section 34.35: Labeling, Storage, and Transportation

This is a new section that specifies requirements for labeling, storage, and transportation of radioactive material used in industrial radiography. The proposed rule contained requirements to lock and physically secure transport packages and to store licensed material in a manner that minimizes the danger from explosions or fire. The proposed rule also contained a requirement for a QA program, as described in § 71.105.

Comment

Three comments were received on this section. All requested that the applicable Department of Transportation (DOT) regulations, including the QA requirements on packages, be included in 10 CFR Part 34.

Response

The NRC agrees that certain requirements in 10 CFR Part 71 relating to a QA program should be relocated in 10 CFR Part 34. The Commission has made a determination that inspection programs for industrial radiography containers meeting the requirements of § 34.31(b) will satisfy the requirements in § 71.101. While radiography licensees have always had to comply with the QA requirement for transport packages in 10 CFR Part 71, there have been numerous cases where they were unaware of this requirement and, therefore, failed to comply. The inclusion of this requirement in 10 CFR Part 34 will reduce the burden on radiography licensees to submit a QA program for NRC approval separately. Much of the same information on inspection and maintenance that was required as part of the license application was similar to that information required for a QA program under 10 CFR Part 71. A revision to § 71.101 has been made to state that the inspection and maintenance programs for radiographic exposure devices, source changers, or packages transporting these devices that meet the provision of § 34.31(b) or equivalent Agreement State regulations, need not be submitted separately as a QA program for Commission approval. This change eliminates the potential for duplicate submission of information and reduces the monetary burden on radiography licensees because they will no longer be required to pay the fees associated with the QA program in 10 CFR Part 71. This change, however, does not relieve radiography licensees from complying with the transport requirements in 10 CFR Part 71.

Section 34.41: Conducting Industrial Radiographic Operations

This new section specifies certain conditions that must be met before performing radiographic operations in order to ensure that adequate safety measures are in place before conducting radiographic operations. The proposed rule specified that all radiographic operations conducted at locations of use listed on the license must be conducted in a permanent radiographic installation. The NRC has always believed that radiography performed in a fixed facility, meeting the requirements of § 34.33, would provide a safer environment for workers and the public. If licensees need to perform radiography at their place of business outside of a permanent facility due to some unique circumstances, i.e., item to be radiographed is too large for the facility, Commission authorization would be required. The proposed rule included a requirement for two individuals to be present whenever radiographic operations occur outside of a permanent installation. One of these individuals is required to be a fully qualified radiographer and the other individual is required to be a radiographer's assistant meeting the requirements specified in § 34.43(c).

Comment

More than 50 comments were received on this section, 42 in favor and 11 opposed. Those not in favor of adopting the two-person requirement cited the additional cost for the second individual as the major reason. Some suggested modifying the requirement to allow use of less qualified people such as security guards for the second individual. Another suggestion was to allow the RSO to determine when a second individual was required. One comment addressed radiography performed within a factory environment where access could be controlled by one radiographer who could lock access to the site to prevent persons from entering during radiography operations. Those in favor of the requirement cited the increased safety provided by having two individuals present at all times. Several commenters pointed out that the additional cost of this provision would be borne by the users with little impact on the licensees. One commenter was concerned that unless explicitly stated, unqualified individuals could be asked to perform duties that should be performed by qualified individuals, for example, rather than using a 2-person crew comprised of a radiographer and a radiographer's assistant, the customer may propose the use of one of its employees as a method to reduce the nondestructive testing company's fees.

Response

The Commission has decided to adopt the requirement for at least two

qualified individuals to be present whenever radiographic operations are performed outside of a permanent radiographic installation. The Commission believes that the safety issues involved mandate the adoption of this requirement, particularly when radiography is performed in high places or in trenches, where problems can most often occur, and where the radiographer alone is not able to control access. It should also be evident that in case of accident or injury, the second person needed at the site must be more than an observer. The person should have sufficient radiography and safety training to allow him/her to take charge and secure the radioactive material, provide aid where necessary, and prevent access to radiation areas by unauthorized persons, whereas an untrained person, such as a security guard or contractor's employee as suggested by one commenter, would be unable to perform these functions in a safe manner. The text of this section has been modified to emphasize that the purpose of the second individual is to provide immediate assistance when required and to prevent unauthorized entry into the restricted area.

Section 34.41(d) was added to include a requirement to have approved procedures before conducting specific types of radiographic operations such as lay-barge, underwater, and off-shore platform radiography to make NRC regulations more compatible with Agreement State requirements.

Section 34.42: Radiation Safety Officer for Industrial Radiography

This new section identifies the qualifications and duties of the RSO for industrial radiography. Previously, these requirements were referenced in regulatory guides and included as license conditions on a case-by-case basis, but not spelled out in the regulations. The NRC believes the RSO is the key individual for oversight of the licensee's radiography program and the person responsible for ensuring safe operation of the program.

The proposed rule specified that to be considered eligible for the RSO position, an individual must have a minimum of 2000 hours of documented experience as a qualified radiographer in industrial radiographic operations. Among the responsibilities of the RSO specified in the proposed rule, were the establishment and oversight of all operating, emergency, and ALARA procedures and conduct of the annual review of the radiation protection program required by § 20.1101(c).

Comment

Twenty comment letters were received on this section in the proposed rule. More than half opposed the provision, primarily on the grounds that mandatory certification and the required 2000 hours of experience in radiographic operations would cause many well trained persons to be disqualified. Several commenters stated that they used RSOs with broad radiation protection experience and academic training for oversight of the radiography and other programs but not for active supervision of radiographic operations. Other commenters stated that NRC should modify its requirement of 2000 hours documented experience in radiographic operations partly because the documented experience could be difficult to verify. One commenter pointed out that there is no existing 40-hour course to prepare someone to be an RSO for a radiography license. This commenter also pointed out that there was a 2-day course available entitled Administrators Seminar that covered the specific regulations pertaining to radiography and how to implement an effective program. One Agreement State requested that the experience required for the RSO be broad enough to encompass X-ray radiography. Another commenter suggested that the NRC should consider modifying its requirements to permit fulfillment of the qualifications by more than one individual.

Response

The requirement for 2000 hours of documented experience in radiographic operations has been changed to read 2000 hours of hands-on experience in industrial radiographic operations as a qualified radiographer, which is essentially 1 year full-time of field experience after reaching the level of a qualified radiographer, and formal training in the establishment and maintenance of a radiation protection program. What is meant by ''hands-on experience'' is experience in all those areas considered to be directly involved in the radiography process. These include taking radiographs, surveying devices and radiation areas, calibration of survey instruments, operational and performance testing of survey instruments and devices, film development, posting of radiation areas, transportation of radiography equipment and travel to temporary jobsites, posting of records and radiation area surveillance etc. Excessive time spent in only one or two of these operations (such as film development or radiation area surveillance) should not be counted toward the 2000 hours under consideration. Limited experience with radiography utilizing X-rays can be included. However, because there are greater safety concerns associated with the use of exposure devices utilizing gamma radiation than there is with use of an X-ray device where the radiation field can be shut off, the majority of this experience should be in isotope radiography. The 2000 hours time period was selected to ensure that the RSO has sufficient radiographic experience to be able to clearly oversee the safety aspects associated with industrial radiography. Because utilization logs are already kept for 3 years, no additional documentation of a radiographer's experience would need to be maintained. This change is based in part on the comments received at the December 1994, workshop held in Houston, Texas. A number of licensees attending the workshop maintained that requiring documentation of 2000 hours would be overly burdensome.

A provision for the NRC to consider alternatives, based upon the licensee's submittal of the proposed RSO's credentials, has also been added to provide flexibility for licensees that engage in other activities involving NRC licensed material where the RSO would not likely be a radiographer but would be a radiation protection professional. The qualifications, training, and experience required of the RSO will vary depending upon the complexity of the licensee's operations and the number of individuals potentially involved.

In response to comments at the December 1994, workshop in Houston, Texas, the requirement for the RSO to have formal classroom training related to the radiation protection program, has been modified to delete the requirement that it be a 40-hour course. The primary requirement is that the training properly addresses the appropriate subjects without regard to specification of the hours spent. Other minor word changes have been made for clarification. In response to a comment, paragraph (c)(5) has been changed to clarify that the RSOs must have the authority to assume control for instituting corrective actions, including stopping operations when necessary in emergency situations or unsafe conditions.

Section 34.43: Training

This section addresses training requirements for industrial radiographers and radiographers' assistants. Section 34.43(a) in the proposed rule was revised to require radiographers to be certified by a

certifying entity meeting the criteria specified in Appendix A to 10 CFR Part 34.

In addition, the proposed rule incorporated some additional training in NRC regulations for radiographers' assistants, required written tests for radiographers' assistants, required annual refresher safety training for radiographers and assistants, and reduced the frequency of inspection of radiographers and assistants from quarterly to annually.

Training subjects previously listed in Appendix A were moved to § 34.43 (g) in the proposed rule. Several additional topics were also included: pictures or models of source assemblies; training in storage, control, and disposal of licensed materials; and other pertinent Federal regulations (i.e., DOT). The requirement for annual refresher safety training was included in the proposed rule to clarify what was meant by the term ''periodic training'' in the existing regulation. Licensees are expected to address new information since the employee's last training, such as new equipment or revised operating and emergency procedures, and safety issues.

Comment

Sixty-one comment letters were received on this section, most commenting on the certification provision. Four of the comment letters were directed against § 34.43(d), which reduced the inspection of the job performance of radiographers and radiographers' assistants to an annual inspection in place of the current quarterly inspections. The remainder of the comments addressed mandatory certification. Forty-three were in favor and 14 opposed to certification. Some of the larger licensees stated that their training programs were superior to what was being proposed and that adopting this requirement would force them into having to participate in a duplicate program without any corresponding safety benefit. Other commenters were opposed because of the cost involved in implementing the program. Also, some licensees believed that they should be granted exemptions because their in-house certification programs were somewhat site specific and specialized and would not qualify their radiographers to compete in the commercial industrial radiography market without further, more generalized training.

Response

After consideration of the comments received, the Commission has decided to adopt mandatory certification requirements for industrial radiographers to provide a consistent standard by which training of all radiographers can be measured. Individual licensees will have less of a burden in confirming the training status of a newly hired radiographer through a national certification system. While the final rule reduces the burden on licensees by no longer requiring them to submit descriptions of their training programs for the subjects listed in § 34.43(g), licensees still must ensure that newly hired individuals have completed, or are provided, the appropriate training in the subjects listed in § 34.43(g) and a period of on-the-job training. Licensees still must provide instruction in emergency and operating procedures, as well as any specific requirements in their NRC license. The final rule includes additional flexibility, in that, either written or oral tests may be used to test a radiographer's knowledge of this information but that in either case, the records required by § 34.79 must be maintained as specified.

To be recognized as a certifying entity, an independent organization meeting the criteria specified in Part I of Appendix A will have to apply as specified in § 34.43(a)(1). A list of certifying entities will be made available to licensees on request by contacting the appropriate regional office listed in Appendix D to 10 CFR Part 20 and will be published annually in the **Federal Register**. Licensees will have 2 years to implement this certification requirement. During this time, the licensee may allow an individual who has not met the certification requirements to act as a radiographer if the individual has received training in the subjects outlined in paragraph (g) of this section and has successfully completed a written test approved by the NRC.

The Commission recognizes that some of the larger licensees may believe they have a superior program to that currently being offered by the existing certifying organizations. These licensees will still be able to provide training as they currently do. Any additional burden from having their radiographers tested by an independent certifying organization should be minimal.

In response to comments, § 34.43(e) is modified in the final rule to require inspections of radiographers and radiographers' assistants on at least a semiannual basis. With the required certification of radiographers and the additional training required of radiographers' assistants, the Commission believes that reducing these inspections from a quarterly to a semiannual basis is justified. Nothing in the regulations prevents a licensee from conducting these inspections more frequently. Radiographers or radiographers' assistants who have not participated in industrial radiographic operations for more than 6 months will be required to demonstrate their knowledge of the training requirements of § 34.43(b)(3) and § 34.43(c)(3), respectively, by a practical examination before their next participation in radiographic operations. Flexibility has been provided in § 34.43(e) of the final rule for situations where the RSO also serves as a radiographer. In such cases, licensees must include information in their application as to how they will ensure that the proficiency of the radiographer is maintained.

Section 34.45: Operating and Emergency Procedures

This section (previously § 34.32) identifies the procedures that licensees must develop and submit to the NRC in their application. The proposed rule included only minor changes to this section to assure that all activities (e.g. source recovery) carried out by the licensee involving radioactive material were covered by appropriate procedures.

Comment

Four commenters addressed this section. One commenter was opposed to allowing an organization to retrieve a source unless they had submitted extensive emergency and training procedures to the NRC. Another commenter stated that, although there are basic principles that apply to any source recovery, each specific source recovery exhibits unique characteristics and/or peculiarities and that specifics for source recovery would be better addressed in a separate procedure that is referenced in the regulation. The third commenter requested adding a requirement for inspection, maintenance, and operability checks on survey instruments, clarification of procedures for identifying and reporting defects and malfunctions under 10 CFR Part 21 and § 34.101, and recommended that source recovery procedures should include the topics: advance preparations, initial response, retrieval planning guidelines, retrieval operation guidelines, and post-retrieval tasks. The fourth commenter noted that each source recovery is unique so the procedures need to be kept generic and flexible. Comments on another section suggested that the Commission should address procedures for lay-barge, offshore platform, and underwater

radiography because licensees may elect to perform these activities.

Response

Because the Commission believes that licensees should have the flexibility to recover sources, no change has been made in the final rule concerning source recovery procedures. In response to other comments, survey instruments and transport containers have been included in the paragraph requiring inspection, maintenance, and operability checks. With regard to clarification of procedures for identifying and reporting defects and malfunctions, § 34.101 requires notification of the NRC only when a defect or malfunction is observed that corresponds to any of the incidents described under § 34.101(a). Additional reporting may be required for incidents that meet the definition of a ''defect'' under 10 CFR Part 21, and do not fall into any of the three categories in § 34.101.

In response to comments made at the December 1994 workshop in Houston, Texas, paragraph (a)(8) was revised to clarify that corrective action is not required if the alarm ratemeter alarms at an expected time, such as when the source is being cranked in or out of the device.

The NRC did not adopt a provision for submitting procedures for lay-barge, offshore platform, or underwater radiography for licensees who intend to perform these activities. Licensees who elect to perform these activities must address the applicable procedures with license submission.

Section 34.46: Supervision of Radiographers' Assistants

This section (previously § 34.44) specifies requirements for radiographers' assistants to handle equipment associated with radiographic operations. The proposed rule included no changes to this section.

Comment

No comments were received on this section.

Section 34.47: Personnel Monitoring

This section (previously § 34.33) addresses requirements for monitoring radiation exposures to radiographic personnel. The proposed rule specified that pocket dosimeters must have a range of 0–200 millirems, and included a requirement to read pocket dosimeters at the beginning and end of each shift to ensure that the dose is correctly estimated. This requirement was included because it is nearly impossible to recharge a pocket dosimeter to zero. Therefore, licensees must take a reading before and after use and determine the difference. The proposed rule provided criteria for allowing a worker to return to work when a pocket dosimeter is found to be off-scale. Paragraph (a) of the final rule requires workers to wear their dosimeters on the trunk of the body in order to measure whole body dose as defined in 10 CFR 20.1003. The dose to the extremities (again as defined in 10 CFR 20.1003) is to be measured only with appropriate extremity dosimeters. Paragraph (e) in the proposed rule specified that a worker must cease work whenever a film badge or a thermoluminescent dosimeter (TLD) is lost until a replacement is provided to ensure that there is an accurate means to determine the worker's dose. The proposed rule included a provision that, after replacement, each film badge and TLD must be promptly processed and that alarming ratemeters be capable of alerting the wearer regardless of the environmental conditions.

Comment

The NRC received twenty-eight comment letters on this section. Several commenters wanted to be able to use additional dosimeters with higher ranges to supplement those specified in § 34.47(a)(1). One commenter asked whether digital dosimeters (electronic personal dosimeters) could be used in place of pocket dosimeters since their range was considerably greater than the range specified for pocket dosimeters and also asked whether they could be used in place of an alarm ratemeter. Two commenters opposed replacing TLDs on a monthly basis because of the additional cost with no discernable increase in safety. A commenter wanted pocket dosimeters to be calibrated every 6 months in place of the specified 12 months and requested that the acceptable range for dosimeter readings be set within plus or minus 20 percent. Nine commenters opposed § 34.47(g)(3) because it required alarm ratemeters to alert the wearer regardless of environmental conditions. A number of comments were received at the December 1994 workshop in Houston, Texas relating to proposed requirements for TLD exchanges, alarming ratemeters, and the use of electronic personnel dosimeters. Suggestions were made to lower the preset dose rate specified in the rule below 5 mSv/hr to allow licensees the flexibility of using a lower dose rate if they choose. Other comments indicated that radiographers often rely on alarming ratemeters to alert them that the source has not been retracted into the camera rather than performing a survey to verify that the source is properly stored. Because of this, these commenters believed that the requirement to always wear an alarming ratemeter should be removed from the regulations. A number of licensees at the workshop stated that it would be extremely difficult and costly to obtain ratemeters that are capable of alerting the wearer in the wide variety of environmental conditions under which they work. A number of commenters at the workshop did not agree with lengthening the replacement frequency for TLDs to quarterly on the basis that frequent checks of workers' doses were needed due to the potential for high doses. Several commenters requested flexibility to use electronic personnel dosimeters in place of pocket dosimeters and stated that pocket dosimeters were increasingly difficult to obtain. One commenter recommended continued use of pocket dosimeters rather than electronic personal dosimeters and reported that supplies of pocket dosimeters were still available.

Response

The final rule allows replacement of TLDs on a 3-month basis. The comments of the Agreement States requesting continuation of the monthly frequency were not adopted. The RSO is responsible for ensuring that worker doses are maintained ALARA. The purpose for requiring pocket dosimeter readings to be recorded daily is to ensure that worker doses are maintained ALARA. The requirement to replace film badges monthly was not changed because film badges are not rugged enough to withstand environmental conditions for 3 months without the film housing developing light leaks or absorbing moisture.

The NRC did not change the final rule to permit use of pocket dosimeters with ranges greater than 0–200 millirems. This ensures that emergency procedures are implemented when doses exceed 200 mrem. Licensees are free to use additional pocket dosimeters with higher ranges for informational purposes. The NRC has agreed to change the accuracy requirement for pocket dosimeters to ±20 percent to more closely match the recommendations in ANSI N322 and ANSI N13.5. The calibration period of pocket dosimeters was not changed because this is the maximum period recommended in ANSI N323.

The requirement that alarming ratemeters be sufficient to alert the wearer regardless of environmental conditions has been dropped from the final rule. Licensees are expected to make a reasonable attempt to select

alarming ratemeters that will function properly for the conditions under which they will be used.

Although a number of individuals at the December 1994 workshop in Houston, Texas, believed that the use of alarming ratemeters results in radiographers failing to make the proper surveys, the evidence the Commission has seen demonstrates that overexposures have decreased since this requirement went into effect. Therefore, the NRC continues to believe that the proper use of alarming ratemeters may be an effective means for preventing overexposures. The NRC has decided not to make any changes in the alarm point requirement. The use of a lower limit would likely result in frequent alarms that could have a negative impact because the wearer would be more likely to turn off the ratemeter to avoid an alarm. The purpose of alarming ratemeter is to alert the wearer of an abnormal condition requiring prompt action to reduce the likelihood of an inadvertent overexposure.

Finally, in response to comments from licensees at the Houston, Texas, workshop, the final rule has been revised to allow the use of electronic personnel dosimeters in lieu of pocket dosimeters as a direct reading dosimeter. Those electronic personal dosimeters that also have alarm ratemeter capabilities are not to be used as a substitute for alarm ratemeters at the present time. Individuals acting as a radiographer or radiographer's assistant must wear direct reading dosimeters, an operating alarm ratemeter, and either a film badge or a TLD during radiographic operations.

Section 34.49: Radiation Surveys

This section (previously § 34.43) addresses requirements for surveys that must be made during and after radiographic operations to ensure that the radioactive source is safely secured when radiographic operations are not being performed and that public dose limits in 10 CFR Part 20 are met. The proposed rule included a number of revisions to this section. The first of these was to replace the 360° survey of the exposure device with a requirement to conduct a survey when approaching the exposure device and the guide tube prior to exchanging film, repositioning the collimator, or dismantling equipment. The proposed rule also required conducting an adequate survey any time the source is exchanged and whenever a radiographic exposure device is placed in storage.

Comment

Eight comment letters were received on this section. One commenter noted that a number of NRC licensees have been fined in the past for failing to do the 360° survey of the radiographic exposure device and the guide tube exactly as designated and now the NRC is deleting the requirement. One commenter pointed out that it is unnecessary to survey the storage area at the time of quarterly inventory because there is already a requirement for surveying whenever storage conditions change, i.e., whenever radioactive material is added to or removed from the storage area. The last commenter noted that § 34.49(f) would require the maintenance of records per § 34.85, which in turn states that survey records to be maintained are those of the last survey performed in the work day as specified in § 34.49(d). The commenter was concerned that records would be interpreted as measurements of all of the 12 to 18 measurements specified in § 34.21, and suggested a single measurement made at the outlet port of the radiography device each day would provide an adequate record and also any significant change in the reading obtained at this position would be an indication that the source was not in its fully shielded position.

Response

In response to these comments and additional comments from the workshop in Houston, Texas, the final rule has been changed to clarify that the intent of the requirements in §§ 34.49(b) and (c) is to conduct a survey to ensure that the source is in the shielded position. This can be accomplished by surveying the radiographic exposure device and comparing the reading obtained to the reading expected when the source is known to be in the device.

The requirement in the proposed rule to survey the storage area initially and at the time of the quarterly inventory has been removed. Because § 34.49(c) requires a survey whenever a radiographic exposure device is placed in storage, and § 20.1302 already requires licensees to demonstrate compliance with the public dose limits, licensees are expected to establish a program to ensure that storage areas meet these requirements. Section 34.49(d) requires that a record of the last survey be maintained for each device prior to placing the device in storage for the day.

Section 34.51: Surveillance

This section (previously § 34.41) specifies requirements for radiographers to maintain surveillance of a high radiation area during industrial radiographic operations to protect against unauthorized entry. The proposed rule was basically unchanged from the existing rule except the requirement specified ''continuous'' direct surveillance. References to 10 CFR Part 20 were updated to reflect the changes made to § 34.33, Permanent Radiographic Installations. In response to comments at the December 1994, workshop in Houston, Texas, the final rule has been amended to clarify that, for radiographic operations that employ 2-person crews, surveillance may be performed by the radiographer's assistant.

Comment

No comments were received on this section.

Section 34.53: Posting

This section addresses requirements for identifying areas where radioactive material is being used to comply with radiation protection requirements discussed in 10 CFR Part 20. The proposed rule made only minor changes to this section.

Comment

One comment letter was received on this section. The commenter suggested that areas where radiography was being performed should be posted with signs bearing the words ''KEEP OUT'' because the usual ''CAUTION'' and ''DANGER'' signs are inadequate at temporary job sites. The commenter also suggested that the rope or tape used to post restricted areas for radiography be colored magenta and yellow. The commenter believed that it was important to clarify that ''Very High Radiation Areas'' need not be posted during industrial radiography because radiographic operations may create areas which meet the posting requirements of § 20.1903(c).

Response

No change was made to the final rule to exempt posting of very high radiation areas. Most industrial radiography programs are limited to the use of sources that do not create very high radiation areas as defined in § 20.1003. For licensees who intend to use radiation devices capable of creating very high radiation areas, considerations of posting and restricting these areas will be dealt with on a case-by-case basis during the licensing process.

Subpart E-Recordkeeping Requirements

This new subpart places all recordkeeping and notification

requirements for 10 CFR Part 34 in one location.

Section 34.61: Records of Specific Licenses for Industrial Radiography

This new section in the proposed rule requires licensees to maintain a copy of their licenses until their licenses are terminated by the Commission.

Comment

No comments were received on this section.

Section 34.63: Records of Receipt and Transfer of Sealed Sources

This new section in the proposed rule requires licensees to maintain records of receipt and disposition of radioactive sources used under their license. The requirement includes any devices containing shielding material using DU. In the case of such devices, the mass of DU designated by the manufacturer would be included in place of the activity.

Comment

Only minor editorial comments were received on this section.

Section 34.65: Records of Radiation Survey Instruments

This new section of the proposed rule contains the recordkeeping requirements for radiation instruments required under § 34.25. The recordkeeping requirements were previously included in existing § 34.24. This section would require licensees to maintain calibration records for radiation survey instruments for 3 years after the record is made.

Comment

One comment letter was received on this section. The commenter requested that the operability check required under § 34.25 be included in the records maintained under this section.

Response

The financial burden involved in recording daily operability checks under this section is felt to be prohibitive. Section 34.73 has been modified in the final rule to only require records of any problems encountered during operability checks.

Section 34.67: Records of Leak Testing and Replacement of Sealed Sources

This new section contains recordkeeping requirements previously included in § 34.25(c) and requires licensees to maintain records of leak tests for 3 years after the record is made.

Comment

No comments were received on this section.

Section 34.69: Records of Quarterly Inventory

This new section contains recordkeeping requirements previously contained in § 34.26 and requires licensees to maintain records of quarterly inventories for 3 years after the record is made. The proposed rule required some additional information be kept, such as model number, serial number, and manufacturer of the sealed source.

Comment

One comment letter was received stating that the record should include all licensed devices whether or not they contain a sealed source at the time of inventory.

Response

Section 34.29 was revised in the final rule to include devices containing depleted uranium.

Section 34.71: Utilization Logs

This new section contains recordkeeping requirements previously included in § 34.27. The proposed rule would have required additional pieces of information including the serial number of the device in which the sealed source is located, the radiographer's signature, and the dates the device is removed from and returned to storage. This information is needed to assist in verifying the location of sources.

Comment

Three comment letters were received on this section. One commenter pointed out that the RSO may control the utilization log at the main office and, because the device could be at a field station many miles from the main office, signatures of the radiographers on the utilization log was not practical. The second commenter stated that the utilization log should include all devices removed from storage, not only those containing a sealed source at the time of removal. The third commenter requested removal of the requirement to include the radiographer's signature.

Response

Licensees at the December 1994 workshop in Houston, Texas, stated that their radiographers were signing the log as required and either mailing or faxing a copy of the document to the RSO after all signatures for the day were collected. The radiographer's signature is needed to ensure that only a qualified individual has checked out a radiographic exposure device. This provision was retained in the final rule.

An exposure device not containing a sealed source will not be utilized within the context intended in § 34.71. If the radiographer intends to load a sealed source into the empty exposure device, then a storage container which contains a sealed source must be checked out as specified in § 34.71(a)(1) and an entry made in the utilization log. This provision was retained in the final rule.

Section 34.73: Records of Inspection and Maintenance of Radiographic Exposure Devices, Storage Containers, Associated Equipment, Source Changers, and Survey Instruments

This new section contains recordkeeping requirements previously contained in § 34.28(b). The proposed rule specified that inspection and maintenance records must be maintained by the licensee for 3 years. Licensees must maintain records of equipment problems and of any maintenance performed under § 34.21 (a) and (b). The records must include information, such as dates of checks, name of inspector, equipment inspected, any defects found, and repairs made.

Comment

Two comment letters were received addressing this section. The first letter requested that the highest radiation level measured at the beginning of each day from devices or source changers removed from storage should be recorded and used as a reference to provide a baseline for comparison with measurements taken from later surveys to ensure no change in the shielding was occurring. The second letter requested that the records compiled under § 34.73 should include inspection records of survey instruments, equipment problems, and records of maintenance performed.

Response

The first comment was not adopted because sufficient requirements are already in place under § 34.49 and § 20.1302 to ensure that licensees are in compliance with the public dose limits. Licensees may choose to include additional information in their records to assist them in assuring that there are no changes occurring in the shielding integrity. The requests of the second commenter have been incorporated in § 34.31 in the final rule.

Section 34.79: Records of Training and Certification

This new section includes recordkeeping requirements previously included in § 34.31(c). The proposed rule also specified that records verifying radiographer certification and annual safety reviews are to be retained for 3 years after the record is made. For annual safety reviews, the records include copies of tests, dates administered, names of instructors and attendees, and the topics covered. The proposed rule also specified that records of inspections of radiographers and radiographers' assistants must include a list of items checked and any non-compliances observed by the RSO.

Comment

Two comment letters were received on this section. One requested that the wording be changed to eliminate ''copies of written tests'' and replace it with ''licensee administered written tests.'' The other requested minor editorial changes.

Response

The wording has not been changed because in many cases the training and testing may be given by outside consultants or companies that specialize in such training and testing. The term ''annual safety review'' was changed in the final rule to ''annual refresher safety training'' to clarify its role in the licensees'' training program.

Section 34.81: Copies of Operating and Emergency Procedures

This new section includes requirements previously included in § 34.32 and would have required licensees to maintain copies of emergency and operating procedures until the Commission terminates the license.

Comment

No comments were received on this section.

Section 34.83: Records of Personnel Monitoring

This new section includes recordkeeping requirements previously included in § 34.33(b) and would have required licensees to maintain records of alarm ratemeter calibrations, pocket dosimeter readings, and operability checks for 3 years from the date the record was made, and maintain records of film badge or TLD reports until the Commission terminates the license(s).

Comment

One commenter requested that records of daily operability checks and quarterly inspections of survey instruments should be included in this section.

Response

These records are already required under § 34.65. Therefore, no change was made to this section.

Section 34.85: Records of Radiation Surveys

This section (previously § 34.43(d)) was essentially unchanged in the proposed rule. The proposed rule would require the licensee to maintain records of exposure device surveys conducted before the radiographic exposure device is placed in storage for 3 years from the date the record was made.

Comment

No comments were received on this section.

Section 34.87: Form of Records

This section (previously § 34.4) of the proposed rule was unchanged from the current regulations. This section of the proposed rule specified how records must be maintained, including storage by electronic media.

Comment

No comments were received on this section.

Section 34.89: Location of Documents and Records

This new section addresses requirements for licensees to maintain certain records at locations where radiographic operations occur, such as at a permanent installation, temporary jobsite, or field station, where radioactive material is stored and from which it is dispatched for use at a temporary jobsite. Two sections were included in the proposed rule to ensure that licensees have records available at the appropriate locations to maintain safe operations. The records include a copy of the license, copies of pertinent NRC regulations, utilization records for the devices in use at the temporary jobsite, records of equipment problems, records of alarm system checks for permanent installations located at a temporary jobsite or field station, personnel monitoring records, operating and emergency procedures, evidence of latest calibrations and operability checks of personnel monitoring devices, latest survey records, and shipping papers.

Comment

Three comment letters addressed this section. One commenter believed that the licensee should have more discretion regarding which records to keep at each particular site, while all three commenters stated that the requirements were confusing and would lead to voluminous record keeping.

Response

In the final rule, § 34.89 specifies requirements for the minimum set of records to be maintained at field stations and temporary jobsites. This set of records is the minimum needed to ensure that the licensee can conduct radiographic operations safely and to demonstrate that they are in compliance with NRC regulations. The licensee has the discretion to determine the location for all other records required to be kept under 10 CFR Part 34 and other applicable parts of NRC regulations.

Section 34.101: Notifications

This section of the proposed rule addressed requirements previously in § 34.30, for licensees to notify the NRC of incidents having safety significance. The proposed rule contained a new requirement to inform the appropriate NRC regional office (generally, where the license was issued) in writing before using or storing radioactive material in any location for more than 180 days.

Comment

One comment was received requesting clarification between malfunctions that are to be reported under this section and defects that require reporting under 10 CFR Part 21.

Response

The final rule was changed to acknowledge the reporting requirements in 10 CFR Parts 21 and 30. However, as noted in the response to § 34.45, § 34.101 requires NRC notification when a defect or malfunction is observed that corresponds to any of the incidents described under that § 34.101(a), regardless of whether additional reporting is required by other parts of this chapter, such as 10 CFR Parts 21 and 30.

Section 34.111: Applications for Exemptions

This section of the proposed rule addressed exemptions and was basically the same as § 34.51 in the existing 10 CFR Part 34, with the exception of minor wording changes to make it consistent with current language used in other parts of the rule.

Comment

No comments were received on this section.

Section 34.121: Violations

This section in the proposed rule addressed violations and was basically the same as § 34.61 in the current 10 CFR Part 34.

Comment

No comments were received on this section.

Section 34.123: Criminal Penalties

This section of the proposed rule addressed criminal penalties and was basically the same as § 34.63 in the current 10 CFR Part 34.

Comment

No comments were received on this section.

Appendix A

This appendix was new in the proposed rule. The requirements in Appendix A in the current 10 CFR Part 34 were relocated to § 34.43(g). Part I of Appendix A in the proposed rule provided the requirements for an independent certifying organization and only applied to organizations other than the Agreement States. Parts II and III of Appendix A in the proposed rule provided the requirements for certification programs and written examinations for a certifying entity, and included the Agreement States.

The proposed rule specified that to be recognized as an independent certifying organization, the applicant should be a national society or association involved in setting national standards of practice for industrial radiography.

An acceptable certification program would include training in the subjects listed in § 34.43(g), completion of a written and practical examination, and a minimum period of on-the-job experience.

Comment

Four comment letters addressing this section were received. One commenter questioned how the technical content of the examination could be at a ninth-grade reading level and expressed a view that the requirement for a scientifically analyzed question base in III.4. was vague and should be clarified. Another commenter felt that III.4., 5., and 6. should be deleted and combined into a new section that should specify analysis using nationally-recognized psychometric examination methods. Several of the commenters asked why such a large population of questions was required. The G–34 Committee of the Conference of Radiation Control Program Directors (CRCPD) on Industrial Radiography provided numerous comments of a clarifying nature, including that:

An independent certifying organization should be open to nonmembers as well as members;

A full-time staff may not be needed if the program is small;

References to applicable 10 CFR Part 34 sections should also include ''applicable Agreement State regulations'';

Provisions in II.4, 6, and 8 (revocation, sanctions, and renewals) be incorporated into one section;

Written procedures should be required for all aspects of the program, including safeguards for ensuring adequate proctoring of examinations.

Response

The final rule was changed to clarify that the certification program for any independent organization should be open to nonmembers as well as members. The provision in I.5 of the proposed rule that specified a full-time staff has been changed to specify an ''adequate staff'' to reduce any possible burden on organizations operating a small program. The organization would still have to demonstrate that the staff was adequate to administer the program. Section I.11 was expanded to specify that independent certifying organizations must have procedures for proctoring examinations, including proctor qualifications, which clarify that there are other qualifications beside the proctor not being employed by the same corporation as the examinees. Sections II. 4, 8, and 9 were removed and replaced with a revised requirement that the certifying entity must have procedures for denying an application, revoking, suspending, and reinstating a certification, because a number of Agreement States expressed concern at the December 1994 workshop in Houston, Texas, that they would be prohibited from revoking a certificate without providing an opportunity for due process.

In regard to the questions relating to the scientific analysis of tests and to the number of questions required in the question bank, the NRC consulted experts in the testing field and has revised the final rule to specify that test items must be drawn from a question bank containing psychometrically valid questions. Additional guidance on the creation and analysis of tests will be provided in Regulatory Guide 10.6.

10 CFR Part 150: Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274

Section 150.15b of the proposed rule was added to clarify that the Commission reserves the authority to establish minimum standards regarding radiographer certification and independent certifying organizations, and to identify acceptable certifying entities.

Comment

Two comments were received regarding this section from Agreement States objecting to the language that reserves the authority over certification to the NRC. Part of the objection was based on the fact that the first testing for radiographer certification began in Texas and that the current state of the national certification program is the result of cooperative development by a working partnership of Agreement States, the NRC, ASNT, CRCPD, and others. The commenters believe that the current wording of this section is contrary to the working partnership that led to the current state of certification development. The commenters also believe that the restriction imposed by this section would prevent current certifying entities from making improvements in their programs as the process for certifying radiographers continues to evolve. They also expressed concern that the language could result in automatic noncompliance for many and suggests that the Commission consider grandfathering those entities already operating and established at the effective date of the revision to 10 CFR Part 34.

Response

The use of the language in § 150.15b was chosen in the proposed rule because the requirements identified in Appendix A only apply to independent certifying organizations and certifying entities. The Commission agrees that certain States may wish to identify an independent certifying organization and has deleted this section from the final rule. The Commission does not intend to retain sole authority for establishing standards for independent certifying organizations or certifying entities. However, in order to maintain a national certification program, whereby radiographers would be able to work in several States without needing to be recertified in each State, uniformity of these programs is essential. Any State choosing to identify an independent certifying organization or choosing to be

a certifying entity would be expected to follow criteria compatible with those in Appendix A. NRC will continue to work cooperatively with the Agreement States to coordinate activities associated with the implementation of the radiographer certification program.

III. Conforming Rule Changes

As a result of the overall revision to 10 CFR Part 34, conforming changes to 10 CFR 30.4 and 10 CFR 150.20 are required. These changes include removal of definitions in 10 CFR Part 30 for Radiographer, Radiographer's assistant, Radiography. These definitions are different from those in the final 10 CFR Part 34, and because they are not used in 10 CFR Part 30, they are being deleted from this part. Section 150.20 (b) is being revised to include the new subparts that were added to the final 10 CFR Part 34.

IV. Agreement State Compatibility

Sections of the rule will be a matter of compatibility between the NRC and the Agreement States, providing consistency between Federal and State safety requirements. Under current NRC procedures, radiographic equipment safety standards, training standards, operational safety standards, and technical definitions, are identified as Division 2 matters of compatibility. The final rule is retaining the existing Division 2 designations for most requirements.

The definitions and sections that will not be compatibility Division 2 are as follows:

A. The definitions for ALARA, becquerel, gray, sealed source, and sievert are compatibility division 1 in this rule. These definitions, however, duplicate definitions contained in other parts of this Chapter. The States will only need to adopt them once.

B. The definitions for lay-barge radiography, radiographer's assistant, and underwater radiography are considered to be special cases of Division 2. If a State does not authorize licensees to perform lay-barge, or underwater radiography, or does not permit the use of radiographer's assistants, then it will not be required to adopt these definitions.

C. The following sections are compatibility Division 3: §§ 34.1, 34.5, 34.11, 34.111, 34.121, and 34.123.

D. The following definitions and sections are compatibility Division 4: The definition of offshore platform radiography in §§ 34.3, 34.8, and 34.41(d) as it relates to offshore platform radiography. An Agreement State will need to adopt a definition of platform radiography if it authorizes such activity on inland waters or tidal waters subject to the State's jurisdiction.

E. Although Appendix A is designated as compatibility Division 2, the Agreement States are not required to implement a program unless they choose to become a certifying entity and then would only need to adopt Sections II and III of Appendix A. If an Agreement State chooses to identify an independent certifying organization, then it would need to also adopt Section I of Appendix A.

V. Implementation

The new requirements become effective 30 days after publication of the final rule in the **Federal Register**, although the Commission intends to have different implementation dates for particular requirements of this final rule.

For use/storage locations not previously identified on the license (e.g., field stations, permanent radiographic installations, and temporary jobsites exceeding 180 days), licensees must request amendments or notify the NRC, as appropriate, within 60 days of the effective date of the rule. Few amendment requests are anticipated.

Licensees will have 1 year from the effective date of the rule to comply with the additional training requirements specified in § 34.43 (a) and (b). Licensees should consider combining this training with the annual refresher safety training.

Licensees will have 1 year from the effective date of the rule to hire and train individuals to meet the requirements of § 34.41(a).

All current RSOs will have two years to implement the additional RSO training requirements specified in § 34.42(a), and to comply with the mandatory certification requirements in § 34.43(a)(2).

Licensees will have 2 years from the effective date of the rule to affirm that all radiographers have met the certification requirements of § 34.43(a)(1). This will allow industrial radiography licensees operating in NRC jurisdiction 2 years to obtain certification for their employees who act as radiographers.

Licensees are required within 60 days of the effective date of the rule to develop and implement revised procedures needed to implement the final rule. Procedures requiring submittal to the NRC will not need to be submitted until the next license renewal.

Regarding changes to § 71.101, *Quality assurance requirements*, providing that 10 CFR Part 34 licensees are no longer required to apply for separate approval of their QA program for transport packages provided they meet the requirements of § 34.31(b), or equivalent Agreement State requirements, those licensees who already have NRC approval of their QA program are deemed to have acceptable procedures. Those licensees without a prior QA program approval must develop these procedures before using applicable transport packages. Licensees are expected to implement any necessary procedural changes into their programs within 60 days of the effective date of the rule, but will not need to amend their licenses until the next renewal. Expiration dates of any existing QA program approvals will no longer be valid.

VI. Finding of No Significant Environmental Impact: Availability

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 the rule is not a major Federal action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required.

The revision of 10 CFR Part 34 involves some revisions to regulations authorizing the use of sealed sources in the field of industrial radiography. In particular, the revisions include: upgrades in the testing of radiographers, qualifications and duties for radiation safety officers, reductions in inspection frequencies for radiographers and assistants, requirements for periodic testing of the shielding integrity of the radiography device and operability checks of radiation survey equipment, and new recordkeeping and labeling requirements. No requirements for significant quantities of materials, water, electricity or other forms of energy have been identified, and no environmental or radiation impacts will be involved.

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 at 2120 L Street, NW. (Lower Level), Washington DC. Single copies of the environmental assessment and finding of no significant impact are available from Dr. Donald O. Nellis, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6257.

VII. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1996 (44 U.S.C. 3501 *et seq.*). These requirements were approved by Office of Management and Budget; approval number 3150–0007.

The public reporting burden for this collection of information is estimated to average 83 hours per licensee, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on any aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T–6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0007), 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.

VIII. Regulatory Analysis

The Commission prepared a regulatory analysis on this final rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. See the discussion in the Regulatory Flexibility Certification concerning the final regulatory analysis. This analysis is available for inspection in the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

IX. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. The NRC has prepared a final regulatory analysis of the impact of this rule on small entities. A copy of the final regulatory analysis is available for inspection or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level) Washington, DC. The regulation affects about 170 industrial radiography licensees, of which most are small entities. The regulatory analysis for the final rule shows that there will be an average net savings of $18,000 per licensee per year for most licensees. For those licensees who will need to hire additional assistants to meet the two-person requirement, the cost used in the regulatory analysis was between $5,000 and $53,000 per year.

X. 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 submitted this determination to the General Accounting Office and the Congress, as required.

XI. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule and, therefore, that a backfit analysis is not required for this rule. The final rule does not involve any provisions that impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 34

Byproduct material, Criminal penalties, Nuclear material, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 150

Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For 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. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 30, 34, 71, and 150.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83, Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

§ 30.4 [Amended]

2. In § 30.4, the definitions of *Radiographer, Radiographer's assistant,* and *Radiography* are removed.

3. Part 34 is revised to read as follows:

PART 34—LICENSES FOR INDUSTRIAL RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHIC OPERATIONS

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34.41 Conducting industrial radiographic operations.

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Subpart H—Violations

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34.123 Criminal penalties.
Appendix A to 10 CFR Part 34—Radiographer Certification.

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 34.45 also issued under sec. 206, 88 Stat. 1246 (42 U.S.C. 5846).

Subpart A—General Provisions

§ 34.1 Purpose and scope.

This part prescribes requirements for the issuance of licenses for the use of sealed sources containing byproduct material and radiation safety requirements for persons using these sealed sources in industrial radiography. The provisions and requirements of this part are in addition to, and not in substitution for, other requirements of this chapter. In particular, the requirements and provisions of 10 Parts 19, 20, 21, 30, 71, 150, 170, and 171 of this chapter apply to applications and licenses subject to this part. This rule does not apply to medical uses of byproduct material.

§ 34.3 Definitions.

ALARA (acronym for ''as low as is reasonably achievable'') means making every reasonable effort to maintain exposures to radiation as far below the dose limits specified in 10 CFR Part 20 as is practical consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed materials in the public interest.

Annual refresher safety training means a review conducted or provided by the licensee for its employees on radiation safety aspects of industrial radiography. The review may include, as appropriate, the results of internal inspections, new procedures or equipment, new or revised regulations, accidents or errors that have been observed, and should also provide opportunities for employees to ask safety questions.

Associated equipment means equipment that is used in conjunction with a radiographic exposure device to make radiographic exposures that drives, guides, or comes in contact with the source, (e.g., guide tube, control tube, control (drive) cable, removable source stop, ''J'' tube and collimator when it is used as an exposure head.

Becquerel (Bq) means one disintegration per second.

Certifying Entity means an independent certifying organization meeting the requirements in appendix A of this part or an Agreement State meeting the requirements in appendix A, Parts II and III of this part.

Collimator means a radiation shield that is placed on the end of the guide tube or directly onto a radiographic exposure device to restrict the size of the radiation beam when the sealed source is cranked into position to make a radiographic exposure.

Control (drive) cable means the cable that is connected to the source assembly and used to drive the source to and from the exposure location.

Control drive mechanism means a device that enables the source assembly to be moved to and from the exposure device.

Control tube means a protective sheath for guiding the control cable. The control tube connects the control drive mechanism to the radiographic exposure device.

Exposure head means a device that locates the gamma radiography sealed source in the selected working position. (An exposure head is also known as a source stop.)

Field station means a facility where licensed material may be stored or used and from which equipment is dispatched.

Gray means the SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 Joule/kilogram. It is also equal to 100 rads.

Guide tube (Projection sheath) means a flexible or rigid tube (i.e., ''J'' tube) for guiding the source assembly and the attached control cable from the exposure device to the exposure head. The guide tube may also include the connections necessary for attachment to the exposure device and to the exposure head.

Hands-on experience means experience in all of those areas considered to be directly involved in the radiography process.

Independent certifying organization means an independent organization that meets all of the criteria of Appendix A to this part.

Industrial radiography (radiography) means an examination of the structure of materials by nondestructive methods, utilizing ionizing radiation to make radiographic images.

Lay-barge radiography means industrial radiography performed on any water vessel used for laying pipe.

Offshore platform radiography means industrial radiography conducted from a platform over a body of water.

Permanent radiographic installation means an enclosed shielded room, cell, or vault, not located at a temporary jobsite, in which radiography is performed.

Practical Examination means a demonstration through practical application of the safety rules and principles in industrial radiography including use of all appropriate equipment and procedures.

Radiation Safety Officer for industrial radiography means an individual with the responsibility for the overall radiation safety program on behalf of the licensee and who meets the requirements of § 34.42.

Radiographer means any individual who performs or who, in attendance at the site where the sealed source or sources are being used, personally supervises industrial radiographic operations and who is responsible to the licensee for assuring compliance with the requirements of the Commission's

regulations and the conditions of the license.

Radiographer certification means written approval received from a certifying entity stating that an individual has satisfactorily met certain established radiation safety, testing, and experience criteria.

Radiographer's assistant means any individual who under the direct supervision of a radiographer, uses radiographic exposure devices, sealed sources or related handling tools, or radiation survey instruments in industrial radiography.

Radiographic exposure device (also called a camera, or a projector) means any instrument containing a sealed source fastened or contained therein, in which the sealed source or shielding thereof may be moved, or otherwise changed, from a shielded to unshielded position for purposes of making a radiographic exposure.

Radiographic operations means all activities associated with the presence of radioactive sources in a radiographic exposure device during use of the device or transport (except when being transported by a common or contract transport), to include surveys to confirm the adequacy of boundaries, setting up equipment and any activity inside restricted area boundaries.

S-tube means a tube through which the radioactive source travels when inside a radiographic exposure device.

Sealed source means any byproduct material that is encased in a capsule designed to prevent leakage or escape of the byproduct material.

Shielded position means the location within the radiographic exposure device or source changer where the sealed source is secured and restricted from movement.

Sievert means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor (1 Sv = 100 rems).

Source assembly means an assembly that consists of the sealed source and a connector that attaches the source to the control cable. The source assembly may also include a stop ball used to secure the source in the shielded position.

Source changer means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those also used for transporting and storage of sealed sources.

Storage area means any location, facility, or vehicle which is used to store or to secure a radiographic exposure device, a storage container, or a sealed source when it is not in use and which is locked or has a physical barrier to prevent accidental exposure, tampering with, or unauthorized removal of the device, container, or source.

Storage container means a container in which sealed sources are secured and stored.

Temporary jobsite means a location where radiographic operations are conducted and where licensed material may be stored other than those location(s) of use authorized on the license.

Underwater radiography means industrial radiography performed when the radiographic exposure device and/or related equipment are beneath the surface of the water.

§ 34.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission, other than a written interpretation by the General Counsel, will be recognized to be binding upon the Commission.

§ 34.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements contained in this part under control number 3150–0007.

(b) The approved information collection requirements contained in this part appear in §§ 34.13, 34.20, 34.25, 34.27, 34.29, 34.31, 34.33, 34.35, 34.43, 34.45, 34.47, 34.49, 34.61, 34.63, 34.65, 34.67, 34.69, 34.71, 34.73, 34.75, 34.79, 34.81, 34.83, 34.85, 34.87, 34.89, 34.91, and 34.101.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. The information collection requirement and the control number under which it is approved are as follows:

(1) In § 34.11, NRC Form 313 is approved under control number 3150–0120.

(2) [Reserved]

Subpart B—Specific Licensing Provisions

§ 34.11 Application for a specific license.

A person may file an application for specific license for use of sealed sources in industrial radiography, in duplicate, on NRC Form 313, ''Application for Material License,'' in accordance with the provisions of § 30.32 of this chapter.

§ 34.13 Specific license for industrial radiography.

An application for a specific license for the use of licensed material in industrial radiography will be approved if the applicant meets the following requirements:

(a) The applicant satisfies the general requirements specified in § 30.33 of this chapter for byproduct material, as appropriate, and any special requirements contained in this part.

(b) The applicant submits an adequate program for training radiographers and radiographers' assistants that meets the requirements of § 34.43.

(1) After May 28, 1999, a license applicant need not describe its initial training and examination program for radiographers in the subjects outlined in § 34.43(g).

(2) From June 27, 1997 to May 28, 1999 a license applicant may affirm that all individuals acting as industrial radiographers will be certified in radiation safety by a certifying entity before commencing duty as radiographers. This affirmation substitutes for a description of its initial training and examination program for radiographers in the subjects outlined in § 34.43(g).

(c) The applicant submits procedures for verifying and documenting the certification status of radiographers and for ensuring that the certification of individuals acting as radiographers remains valid.

(d) The applicant submits written operating and emergency procedures as described in § 34.45.

(e) The applicant submits a description of a program for inspections of the job performance of each radiographer and radiographers' assistant at intervals not to exceed 6 months as described in § 34.43(e).

(f) The applicant submits a description of the applicant's overall organizational structure as it applies to the radiation safety responsibilities in industrial radiography, including specified delegation of authority and responsibility.

(g) The applicant identifies and lists the qualifications of the individual(s) designated as the RSO (§ 34.42) and potential designees responsible for ensuring that the licensee's radiation safety program is implemented in accordance with approved procedures.

(h) If an applicant intends to perform leak testing of sealed sources or exposure devices containing depleted uranium (DU) shielding, the applicant must describe the procedures for

performing and the qualifications of the person(s) authorized to do the leak testing. If the applicant intends to analyze its own wipe samples, the application must include a description of the procedures to be followed. The description must include the—

(1) Instruments to be used;

(2) Methods of performing the analysis; and

(3) Pertinent experience of the person who will analyze the wipe samples.

(i) If the applicant intends to perform ''in-house'' calibrations of survey instruments the applicant must describe methods to be used and the relevant experience of the person(s) who will perform the calibrations. All calibrations must be performed according to the procedures described and at the intervals prescribed in § 34.25.

(j) The applicant identifies and describes the location(s) of all field stations and permanent radiographic installations.

(k) The applicant identifies the locations where all records required by this part and other parts of this chapter will be maintained.

Subpart C—Equipment

§ 34.20 Performance requirements for industrial radiography equipment.

Equipment used in industrial radiographic operations must meet the following minimum criteria:

(a)(1) Each radiographic exposure device, source assembly or sealed source, and all associated equipment must meet the requirements specified in American National Standards Institute, N432–1980 ''Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography,'' (published as NBS Handbook 136, issued January 1981). This publication has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)and 1 CFR part 51. This publication may be purchased from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018 Telephone (212) 642–4900. Copies of the document are available for inspection at the Nuclear Regulatory Commission Library, 11545 Rockville Pike, Rockville, Maryland 20852. A copy of the document is also on file at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(2) Engineering analysis may be submitted by an applicant or licensee to demonstrate the applicability of previously performed testing on similar individual radiography equipment components. Upon review, the Commission may find this an acceptable alternative to actual testing of the component pursuant to the above referenced standard.

(b) In addition to the requirements specified in paragraph (a) of this section, the following requirements apply to radiographic exposure devices, source changers, source assemblies and sealed sources.

(1) The licensee shall ensure that each radiographic exposure device has attached to it a durable, legible, clearly visible label bearing the—

(i) Chemical symbol and mass number of the radionuclide in the device;

(ii) Activity and the date on which this activity was last measured;

(iii) Model (or product code) and serial number of the sealed source;

(iv) Manufacturer's identity of the sealed source; and

(v) Licensee's name, address, and telephone number.

(2) Radiographic exposure devices intended for use as Type B transport containers must meet the applicable requirements of 10 CFR part 71.

(3) Modification of radiographic exposure devices, source changers, and source assemblies and associated equipment is prohibited, unless the design of any replacement component,including source holder, source assembly, controls or guide tubes would not compromise the design safety features of the system.

(c) In addition to the requirements specified in paragraphs (a) and (b) of this section, the following requirements apply to radiographic exposure devices, source assemblies, and associated equipment that allow the source to be moved out of the device for radiographic operations or to source changers.

(1) The coupling between the source assembly and the control cable must be designed in such a manner that the source assembly will not become disconnected if cranked outside the guide tube. The coupling must be such that it cannot be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.

(2) The device must automatically secure the source assembly when it is cranked back into the fully shielded position within the device. This securing system may only be released by means of a deliberate operation on the exposure device.

(3) The outlet fittings, lock box, and drive cable fittings on each radiographic exposure device must be equipped with safety plugs or covers which must be installed during storage and transportation to protect the source assembly from water, mud, sand or other foreign matter.

(4)(i) Each sealed source or source assembly must have attached to it or engraved on it, a durable, legible, visible label with the words: ''DANGER—RADIOACTIVE.''

(ii) The label may not interfere with the safe operation of the exposure device or associated equipment.

(5) The guide tube must be able to withstand a crushing test that closely approximates the crushing forces that are likely to be encountered during use, and be able to withstand a kinking resistance test that closely approximates the kinking forces that are likely to be encountered during use.

(6) Guide tubes must be used when moving the source out of the device.

(7) An exposure head or similar device designed to prevent the source assembly from passing out of the end of the guide tube must be attached to the outermost end of the guide tube during industrial radiography operations.

(8) The guide tube exposure head connection must be able to withstand the tensile test for control units specified in ANSI N432–1980.

(9) Source changers must provide a system for ensuring that the source will not be accidentally withdrawn from the changer when connecting or disconnecting the drive cable to or from a source assembly.

(d) All radiographic exposure devices and associated equipment in use after January 10, 1996, must comply with the requirements of this section.

(e) Notwithstanding paragraph (a)(1) of this section, equipment used in industrial radiographic operations need not comply with § 8.9.2(c) of the Endurance Test in American National Standards Institute N432–1980, if the prototype equipment has been tested using a torque value representative of the torque that an individual using the radiography equipment can realistically exert on the lever or crankshaft of the drive mechanism.

§ 34.21 Limits on external radiation levels from storage containers and source changers.

The maximum exposure rate limits for storage containers and source changers are 2 millisieverts (200 millirem) per hour at any exterior surface, and 0.1 millisieverts (10 millirem) per hour at 1 meter from any exterior surface with the sealed source in the shielded position.

§ 34.23 Locking of radiographic exposure devices, storage containers and source changers.

(a) Each radiographic exposure device must have a lock or outer locked

container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The exposure device and/or its container must be kept locked (and if a keyed-lock, with the key removed at all times) when not under the direct surveillance of a radiographer or a radiographer's assistant except at permanent radiographic installations as stated in § 34.51. In addition, during radiographic operations the sealed source assembly must be secured in the shielded position each time the source is returned to that position.

(b) Each sealed source storage container and source changer must have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. Storage containers and source changers must be kept locked (and if a keyed-lock, with the key removed at all times) when containing sealed sources except when under the direct surveillance of a radiographer or a radiographer's assistant.

§ 34.25 Radiation survey instruments.

(a) The licensee shall keep sufficient calibrated and operable radiation survey instruments at each location where radioactive material is present to make the radiation surveys required by this part and by 10 CFR part 20 of this chapter. Instrumentation required by this section must be capable of measuring a range from 0.02 millisieverts (2 millirems) per hour through 0.01 sievert (1 rem) per hour.

(b) The licensee shall have each radiation survey instrument required under paragraph (a) of this section calibrated—

(1) At intervals not to exceed 6 months and after instrument servicing, except for battery changes;

(2) For linear scale instruments, at two points located approximately one-third and two-thirds of full-scale on each scale; for logarithmic scale instruments, at mid-range of each decade, and at two points of at least one decade; and for digital instruments, at 3 points between 0.02 and 10 millisieverts (2 and 1000 millirems) per hour; and

(3) So that an accuracy within plus or minus 20 percent of the calibration source can be demonstrated at each point checked.

(c) The licensee shall maintain records of the results of the instrument calibrations in accordance with § 34.65.

§ 34.27 Leak testing and replacement of sealed sources.

(a) The replacement of any sealed source fastened to or contained in a radiographic exposure device and leak testing of any sealed source must be performed by persons authorized to do so by the NRC or an Agreement State.

(b) The opening, repair, or modification of any sealed source must be performed by persons specifically authorized to do so by the Commission or an Agreement State.

(c) Testing and recordkeeping requirements.

(1) Each licensee who uses a sealed source shall have the source tested for leakage at intervals not to exceed 6 months. The leak testing of the source must be performed using a method approved by the Commission or by an Agreement State. The wipe sample should be taken from the nearest accessible point to the sealed source where contamination might accumulate. The wipe sample must be analyzed for radioactive contamination. The analysis must be capable of detecting the presence of 185 Bq (0.005 microcurie) of radioactive material on the test sample and must be performed by a person specifically authorized by the Commission or an Agreement State to perform the analysis.

(2) The licensee shall maintain records of the leak tests in accordance with § 34.67.

(3) Unless a sealed source is accompanied by a certificate from the transferor that shows that it has been leak tested within 6 months before the transfer, it may not be used by the licensee until tested for leakage. Sealed sources that are in storage and not in use do not require leak testing, but must be tested before use or transfer to another person if the interval of storage exceeds 6 months.

(d) Any test conducted pursuant to paragraphs (b) and (c) of this section which reveals the presence of 185 Bq (0.005 microcurie) or more of removable radioactive material must be considered evidence that the sealed source is leaking. The licensee shall immediately withdraw the equipment involved from use and shall have it decontaminated and repaired or disposed of in accordance with Commission regulations. A report must be filed with the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, within 5 days of any test with results that exceed the threshold in this subsection, describing the equipment involved, the test results, and the corrective action taken. A copy of the report must be sent to the Administrator of the appropriate Nuclear Regulatory Commission's Regional Office listed in appendix D of 10 CFR part 20 of this chapter ''Standards for Protection Against Radiation.''

(e) Each exposure device using depleted uranium (DU) shielding and an ''S'' tube configuration must be tested for DU contamination at intervals not to exceed 12 months. The analysis must be capable of detecting the presence of 185 Bq (0.005 microcuries) of radioactive material on the test sample and must be performed by a person specifically authorized by the Commission or an Agreement State to perform the analysis. Should such testing reveal the presence of DU contamination, the exposure device must be removed from use until an evaluation of the wear of the S-tube has been made. Should the evaluation reveal that the S-tube is worn through, the device may not be used again. DU shielded devices do not have to be tested for DU contamination while in storage and not in use. Before using or transferring such a device however the device must be tested for DU contamination, if the interval of storage exceeds 12 months. A record of the DU leak-test must be made in accordance with § 34.67.

§ 34.29 Quarterly inventory.

(a) Each licensee shall conduct a quarterly physical inventory to account for all sealed sources and for devices containing depleted uranium received and possessed under this license.

(b) The licensee shall maintain records of the quarterly inventory in accordance with § 34.69.

§ 34.31 Inspection and maintenance of radiographic exposure devices, transport and storage containers, associated equipment, source changers, and survey instruments.

(a) The licensee shall perform visual and operability checks on survey meters, radiographic exposure devices, transport and storage containers, associated equipment and source changers before use on each day the equipment is to be used to ensure that the equipment is in good working condition, that the sources are adequately shielded, and that required labeling is present. Survey instrument operability must be performed using check sources or other appropriate means. If equipment problems are found, the equipment must be removed from service until repaired.

(b) Each licensee shall have written procedures for:

(1) Inspection and routine maintenance of radiographic exposure devices, source changers, associated equipment, transport and storage containers, and survey instruments at intervals not to exceed 3 months or

before the first use thereafter to ensure the proper functioning of components important to safety. Replacement components shall meet design specifications. If equipment problems are found, the equipment must be removed from service until repaired.

(2) Inspection and maintenance necessary to maintain the Type B packaging used to transport radioactive materials. The inspection and maintenance program must include procedures to assure that Type B packages are shipped and maintained in accordance with the certificate of compliance or other approval.

(c) Records of equipment problems and of any maintenance performed under paragraphs (a) and (b) of this section must be made in accordance with § 34.73.

§ 34.33 Permanent radiographic installations.

(a) Each entrance that is used for personnel access to the high radiation area in a permanent radiographic installation must have either:

(1) An entrance control of the type described in § 20.1601(a)(1) of this chapter that reduces the radiation level upon entry into the area, or

(2) Both conspicuous visible and audible warning signals to warn of the presence of radiation. The visible signal must be actuated by radiation whenever the source is exposed. The audible signal must be actuated when an attempt is made to enter the installation while the source is exposed.

(b) The alarm system must be tested for proper operation with a radiation source each day before the installation is used for radiographic operations. The test must include a check of both the visible and audible signals. Entrance control devices that reduce the radiation level upon entry (designated in paragraph (a)(1) of this section) must be tested monthly. If an entrance control device or an alarm is operating improperly, it must be immediately labeled as defective and repaired within 7 calendar days. The facility may continue to be used during this 7-day period, provided the licensee implements the continuous surveillance requirements of § 34.51 and uses an alarming ratemeter. Test records for entrance controls and audible and visual alarm must be maintained in accordance with § 34.75.

§ 34.35 Labeling, storage, and transportation.

(a) The licensee may not use a source changer or a container to store licensed material unless the source changer or the storage container has securely attached to it a durable, legible, and clearly visible label bearing the standard trefoil radiation caution symbol conventional colors, i.e., magenta, purple or black on a yellow background, having a minimum diameter of 25 mm, and the wording

CAUTION*
RADIOACTIVE MATERIAL
NOTIFY CIVIL AUTHORITIES (or
''NAME OF COMPANY'')
*_____ or ''DANGER''

(b) The licensee may not transport licensed material unless the material is packaged, and the package is labeled, marked, and accompanied with appropriate shipping papers in accordance with regulations set out in 10 CFR part 71.

(c) Locked radiographic exposure devices and storage containers must be physically secured to prevent tampering or removal by unauthorized personnel. The licensee shall store licensed material in a manner which will minimize danger from explosion or fire.

(d) The licensee shall lock and physically secure the transport package containing licensed material in the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal of the licensed material from the vehicle.

Subpart D—Radiation Safety Requirements

§ 34.41 Conducting industrial radiographic operations.

(a) Whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or an individual who has at a minimum met the requirements of § 34.43(c). The additional qualified individual shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry. Radiography may not be performed if only one qualified individual is present.

(b) All radiographic operations conducted at locations of use authorized on the license must be conducted in a permanent radiographic installation, unless specifically authorized by the Commission.

(c) A licensee may conduct lay-barge, offshore platform, or underwater radiography only if procedures have been approved by the Commission or by an Agreement State.

§ 34.42 Radiation Safety Officer for industrial radiography.

The RSO shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's program.

(a) The minimum qualifications, training, and experience for RSOs for industrial radiography are as follows:

(1) Completion of the training and testing requirements of § 34.43(a);

(2) 2000 hours of hands-on experience as a qualified radiographer in industrial radiographic operations; and

(3) Formal training in the establishment and maintenance of a radiation protection program.

(b) The Commission will consider alternatives when the RSO has appropriate training and/or experience in the field of ionizing radiation, and in addition, has adequate formal training with respect to the establishment and maintenance of a radiation safety protection program.

(c) The specific duties and authorities of the RSO include, but are not limited to:

(1) Establishing and overseeing all operating, emergency, and ALARA procedures as required by 10 CFR part 20 of this chapter, and reviewing them regularly to ensure that the procedures in use conform to current 10 CFR part 20 procedures, conform to other NRC regulations and to the license conditions.

(2) Overseeing and approving all phases of the training program for radiographic personnel, ensuring that appropriate and effective radiation protection practices are taught;

(3) Ensuring that required radiation surveys and leak tests are performed and documented in accordance with the regulations, including any corrective measures when levels of radiation exceed established limits;

(4) Ensuring that personnel monitoring devices are calibrated and used properly by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made as required by § 20.2203 of this chapter; and

(5) Ensuring that operations are conducted safely and to assume control for instituting corrective actions including stopping of operations when necessary.

(d) Licensees will have until May 28, 1999 to meet the requirements of paragraph (a) or (b) of this section.

§ 34.43 Training.

(a) The licensee may not permit any individual to act as a radiographer until the individual—

(1) Has received training in the subjects in paragraph (g) of this section, in addition to a minimum of 2 months of on-the-job training, and is certified

through a radiographer certification program by a certifying entity in accordance with the criteria specified in appendix A of this part. (An independent organization that would like to be recognized as a certifying entity shall submit its request to the Director, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC. 20555–0001.) or

(2) The licensee may, until May 28, 1999, allow an individual who has not met the requirement of paragraph (a)(1) of this section, to act as a radiographer after the individual has received training in the subjects outlined in paragraph (g) of this section and demonstrated an understanding of these subjects by successful completion of a written examination that was previously submitted to and approved by the Commission.

(b) In addition, the licensee may not permit any individual to act as a radiographer until the individual—

(1) Has received copies of and instruction in the requirements described in NRC regulations contained in this part; in §§ 30.7, 30.9, and 30.10 of this chapter; in the applicable sections of 10 CFR parts 19 and 20, of this chapter, in applicable DOT regulations as referenced in 10 CFR part 71, in the NRC license(s) under which the radiographer will perform industrial radiography, and the licensee's operating and emergency procedures;

(2) Has demonstrated understanding of the licensee's license and operating and emergency procedures by successful completion of a written or oral examination covering this material.

(3) Has received training in the use of the licensee's radiographic exposure devices, sealed sources, in the daily inspection of devices and associated equipment, and in the use of radiation survey instruments.

(4) Has demonstrated understanding of the use of radiographic exposure devices, sources, survey instruments and associated equipment described in paragraphs (b)(1) and (b)(3) of this section by successful completion of a practical examination covering this material.

(c) The licensee may not permit any individual to act as a radiographer's assistant until the individual—

(1) Has received copies of and instruction in the requirements described in NRC regulations contained in this part, in §§ 30.7, 30.9, and 30.10 of this chapter, in the applicable sections of 10 CFR parts 19 and 20 of this chapter, in applicable DOT regulations as referenced in 10 CFR part 71, in the NRC license(s) under which the radiographer's assistant will perform industrial radiography, and the licensee's operating and emergency procedures;

(2) Has developed competence to use, under the personal supervision of the radiographer, the radiographic exposure devices, sealed sources, associated equipment, and radiation survey instruments that the assistant will use; and

(3) Has demonstrated understanding of the instructions provided under (c)(1) of this section by successfully completing a written test on the subjects covered and has demonstrated competence in the use of hardware described in (c)(2) of this section by successful completion of a practical examination on the use of such hardware.

(d) The licensee shall provide annual refresher safety training for each radiographer and radiographer's assistant at intervals not to exceed 12 months.

(e) Except as provided in paragraph (e)(4), the RSO or designee shall conduct an inspection program of the job performance of each radiographer and radiographer's assistant to ensure that the Commission's regulations, license requirements, and the applicant's operating and emergency procedures are followed. The inspection program must:

(1) Include observation of the performance of each radiographer and radiographer's assistant during an actual industrial radiographic operation, at intervals not to exceed 6 months; and

(2) Provide that, if a radiographer or a radiographer's assistant has not participated in an industrial radiographic operation for more than 6 months since the last inspection, the radiographer must demonstrate knowledge of the training requirements of § 34.43(b)(3) and the radiographer's assistant must re-demonstrate knowledge of the training requirements of § 34.43(c)(2) by a practical examination before these individuals can next participate in a radiographic operation.

(3) The Commission may consider alternatives in those situations where the individual serves as both radiographer and RSO.

(4) In those operations where a single individual serves as both radiographer and RSO, and performs all radiography operations, an inspection program is not required.

(f) The licensee shall maintain records of the above training to include certification documents, written and practical examinations, refresher safety training and inspections of job performance in accordance with § 34.79.

(g) The licensee shall include the following subjects required in paragraph (a) of this section:

(1) Fundamentals of radiation safety including—

(i) Characteristics of gamma radiation;

(ii) Units of radiation dose and quantity of radioactivity;

(iii) Hazards of exposure to radiation;

(iv) Levels of radiation from licensed material; and

(v) Methods of controlling radiation dose (time, distance, and shielding);

(2) Radiation detection instruments including—

(i) Use, operation, calibration, and limitations of radiation survey instruments;

(ii) Survey techniques; and

(iii) Use of personnel monitoring equipment;

(3) Equipment to be used including—

(i) Operation and control of radiographic exposure equipment, remote handling equipment, and storage containers, including pictures or models of source assemblies (pigtails).

(ii) Storage, control, and disposal of licensed material; and

(iii) Inspection and maintenance of equipment.

(4) The requirements of pertinent Federal regulations; and

(5) Case histories of accidents in radiography.

(h) Licensees will have until May 28, 1998 to comply with the additional training requirements specified in paragraphs (b)(1) and (c)(1) of this section.

§ 34.45 Operating and emergency procedures.

(a) Operating and emergency procedures must include, as a minimum, instructions in the following:

(1) Appropriate handling and use of licensed sealed sources and radiographic exposure devices so that no person is likely to be exposed to radiation doses in excess of the limits established in 10 CFR part 20 of this chapter ''Standards for Protection Against Radiation'';

(2) Methods and occasions for conducting radiation surveys;

(3) Methods for controlling access to radiographic areas;

(4) Methods and occasions for locking and securing radiographic exposure devices, transport and storage containers and sealed sources;

(5) Personnel monitoring and the use of personnel monitoring equipment;

(6) Transporting sealed sources to field locations, including packing of radiographic exposure devices and

storage containers in the vehicles, placarding of vehicles when needed, and control of the sealed sources during transportation (refer to 49 CFR parts 171–173);

(7) The inspection, maintenance, and operability checks of radiographic exposure devices, survey instruments, transport containers, and storage containers;

(8) Steps that must be taken immediately by radiography personnel in the event a pocket dosimeter is found to be off-scale or an alarm ratemeter alarms unexpectedly.

(9) The procedure(s) for identifying and reporting defects and noncompliance, as required by 10 CFR part 21 of this chapter;

(10) The procedure for notifying proper persons in the event of an accident;

(11) Minimizing exposure of persons in the event of an accident;

(12) Source recovery procedure if licensee will perform source recovery;

(13) Maintenance of records.

(b) The licensee shall maintain copies of current operating and emergency procedures in accordance with §§ 34.81 and 34.89.

§ 34.46 Supervision of radiographers' assistants.

Whenever a radiographer's assistant uses radiographic exposure devices, associated equipment or sealed sources or conducts radiation surveys required by § 34.49(b) to determine that the sealed source has returned to the shielded position after an exposure, the assistant shall be under the personal supervision of a radiographer. The personal supervision must include:

(a) The radiographer's physical presence at the site where the sealed sources are being used;

(b) The availability of the radiographer to give immediate assistance if required; and

(c) The radiographer's direct observation of the assistant's performance of the operations referred to in this section.

§ 34.47 Personnel monitoring.

(a) The licensee may not permit any individual to act as a radiographer or a radiographer's assistant unless, at all times during radiographic operations, each individual wears, on the trunk of the body, a combination of direct reading dosimeter, an operating alarm ratemeter, and either a film badge or a TLD. At permanent radiography installations where other appropriate alarming or warning devices are in routine use, the wearing of an alarming ratemeter is not required.

(1) Pocket dosimeters must have a range from zero to 2 millisieverts (200 millirems) and must be recharged at the start of each shift. Electronic personal dosimeters may only be used in place of ion-chamber pocket dosimeters.

(2) Each film badge and TLD must be assigned to and worn by only one individual.

(3) Film badges must be replaced at periods not to exceed one month and TLDs must be replaced at periods not to exceed three months.

(4) After replacement, each film badge or TLD must be processed as soon as possible.

(b) Direct reading dosimeters such as pocket dosimeters or electronic personal dosimeters, must be read and the exposures recorded at the beginning and end of each shift, and records must be maintained in accordance with § 34.83.

(c) Pocket dosimeters, or electronic personal dosimeters, must be checked at periods not to exceed 12 months for correct response to radiation, and records must be maintained in accordance with § 34.83. Acceptable dosimeters must read within plus or minus 20 percent of the true radiation exposure.

(d) If an individual's pocket dosimeter is found to be off-scale, or if his or her electronic personal dosimeter reads greater than 2 millisieverts (200 millirems), and the possibility of radiation exposure cannot be ruled out as the cause, the individual's film badge or TLD must be sent for processing within 24 hours. In addition, the individual may not resume work associated with licensed material use until a determination of the individual's radiation exposure has been made. This determination must be made by the RSO or the RSO's designee. The results of this determination must be included in the records maintained in accordance with § 34.83.

(e) If a film badge or TLD is lost or damaged, the worker shall cease work immediately until a replacement film badge or TLD is provided and the exposure is calculated for the time period from issuance to loss or damage of the film badge or TLD. The results of the calculated exposure and the time period for which the film badge or TLD was lost or damaged must be included in the records maintained in accordance with § 34.83.

(f) Reports received from the film badge or TLD processor must be retained in accordance with § 34.83.

(g) Each alarm ratemeter must—

(1) Be checked to ensure that the alarm functions properly (sounds) before using at the start of each shift;

(2) Be set to give an alarm signal at a preset dose rate of 5 mSv/hr (500 mrem/hr); with an accuracy of plus or minus 20 percent of the true radiation dose rate;

(3) Require special means to change the preset alarm function; and

(4) Be calibrated at periods not to exceed 12 months for correct response to radiation. The licensee shall maintain records of alarm ratemeter calibrations in accordance with § 34.83.

§ 34.49 Radiation surveys.

The licensee shall:

(a) Conduct surveys with a calibrated and operable radiation survey instrument that meets the requirements of § 34.25.

(b) Using a survey instrument meeting the requirements of paragraph (a) of this section, conduct a survey of the radiographic exposure device and the guide tube after each exposure when approaching the device or the guide tube. The survey must determine that the sealed source has returned to its shielded position before exchanging films, repositioning the exposure head, or dismantling equipment.

(c) Conduct a survey of the radiographic exposure device with a calibrated radiation survey instrument any time the source is exchanged and whenever a radiographic exposure device is placed in a storage area (as defined in § 34.3), to ensure that the sealed source is in its shielded position.

(d) Maintain records in accordance with § 34.85.

§ 34.51 Surveillance.

During each radiographic operation the radiographer, or the other individual present, as required by § 34.41, shall maintain continuous direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area, as defined in 10 CFR part 20 of this chapter, except at permanent radiographic installations where all entryways are locked and the requirements of § 34.33 are met.

§ 34.53 Posting.

All areas in which industrial radiography is being performed must be conspicuously posted as required by § 20.1902 of this chapter. Exceptions listed in § 20.1903 of this chapter do not apply to industrial radiographic operations.

Subpart E—Recordkeeping Requirements

§ 34.61 Records of the specific license for industrial radiography.

Each licensee shall maintain a copy of its license, license conditions,

documents incorporated by reference, and amendments to each of these items until superseded by new documents approved by the Commission, or until the Commission terminates the license.

§ 34.63 Records of receipt and transfer of sealed sources.

(a) Each licensee shall maintain records showing the receipts and transfers of sealed sources and devices using DU for shielding and retain each record for 3 years after it is made.

(b) These records must include the date, the name of the individual making the record, radionuclide, number of becquerels (curies) or mass (for DU), and manufacturer, model, and serial number of each sealed source and/or device, as appropriate.

§ 34.65 Records of radiation survey instruments.

Each licensee shall maintain records of the calibrations of its radiation survey instruments that are required under § 34.25 and retain each record for 3 years after it is made.

§ 34.67 Records of leak testing of sealed sources and devices containing depleted uranium.

Each licensee shall maintain records of leak test results for sealed sources and for devices containing DU. The results must be stated in units of becquerels (microcuries). The licensee shall retain each record for 3 years after it is made or until the source in storage is removed.

§ 34.69 Records of quarterly inventory.

(a) Each licensee shall maintain records of the quarterly inventory of sealed sources and of devices containing depleted uranium as required by § 34.29 and retain each record for 3 years after it is made.

(b) The record must include the date of the inventory, name of the individual conducting the inventory, radionuclide, number of becquerels (curies) or mass (for DU) in each device, location of sealed source and/or devices, and manufacturer, model, and serial number of each sealed source and/or device, as appropriate.

§ 34.71 Utilization logs.

(a) Each licensee shall maintain utilization logs showing for each sealed source the following information:

(1) A description, including the make, model, and serial number of the radiographic exposure device or transport or storage container in which the sealed source is located;

(2) The identity and signature of the radiographer to whom assigned; and

(3) The plant or site where used and dates of use, including the dates removed and returned to storage.

(b) The licensee shall retain the logs required by paragraph (a) of this section for 3 years after the log is made.

§ 34.73 Records of inspection and maintenance of radiographic exposure devices, transport and storage containers, associated equipment, source changers, and survey instruments.

(a) Each licensee shall maintain records specified in § 34.31 of equipment problems found in daily checks and quarterly inspections of radiographic exposure devices, transport and storage containers, associated equipment, source changers, and survey instruments; and retain each record for 3 years after it is made.

(b) The record must include the date of check or inspection, name of inspector, equipment involved, any problems found, and what repair and/or maintenance, if any, was done.

§ 34.75 Records of alarm system and entrance control checks at permanent radiographic installations.

Each licensee shall maintain records of alarm system and entrance control device tests required under § 34.33 and retain each record for 3 years after it is made.

§ 34.79 Records of training and certification.

Each licensee shall maintain the following records (of training and certification) for 3 years after the record is made:

(a) Records of training of each radiographer and each radiographer's assistant. The record must include radiographer certification documents and verification of certification status, copies of written tests, dates of oral and practical examinations, and names of individuals conducting and receiving the oral and practical examinations; and

(b) Records of annual refresher safety training and semi-annual inspections of job performance for each radiographer and each radiographer's assistant. The records must list the topics discussed during the refresher safety training, the dates the annual refresher safety training was conducted, and names of the instructors and attendees. For inspections of job performance, the records must also include a list showing the items checked and any non-compliances observed by the RSO.

§ 34.81 Copies of operating and emergency procedures.

Each licensee shall maintain a copy of current operating and emergency procedures until the Commission terminates the license. Superseded material must be retained for 3 years after the change is made.

§ 34.83 Records of personnel monitoring Procedures.

Each licensee shall maintain the following exposure records specified in § 34.47:

(a) Direct reading dosimeter readings and yearly operability checks required by § 34.47(b) and (c) for 3 years after the record is made.

(b) Records of alarm ratemeter calibrations for 3 years after the record is made.

(c) Reports received from the film badge or TLD processor until the Commission terminates the license.

(d) Records of estimates of exposures as a result of: off-scale personal direct reading dosimeters, or lost or damaged film badges or TLDs, until the Commission terminates the license.

§ 34.85 Records of radiation surveys.

Each licensee shall maintain a record of each exposure device survey conducted before the device is placed in storage as specified in § 34.49(c), if that survey is the last one performed in the workday. Each record must be maintained for 3 years after it is made.

§ 34.87 Form of records.

Each record required by this part must be legible throughout the specified retention period. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of reproducing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, must include all pertinent information, such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

§ 34.89 Location of documents and records.

(a) Each licensee shall maintain copies of records required by this part and other applicable parts of this chapter at the location specified in § 34.13(k).

(b) Each licensee shall also maintain copies of the following documents and records sufficient to demonstrate compliance at each applicable field station and each temporary jobsite;

(1) The license authorizing the use of licensed material;

(2) A copy of 10 CFR parts 19, 20, and 34 of NRC regulations;

(3) Utilization records for each radiographic exposure device dispatched from that location as required by § 34.71.

(4) Records of equipment problems identified in daily checks of equipment as required by § 34.73(a);

(5) Records of alarm system and entrance control checks required by § 34.75, if applicable;

(6) Records of direct reading dosimeters such as pocket dosimeter and/or electronic personal dosimeters readings as required by § 34.83;

(7) Operating and emergency procedures required by § 34.81;

(8) Evidence of the latest calibration of the radiation survey instruments in use at the site, as required by § 34.65;

(9) Evidence of the latest calibrations of alarm ratemeters and operability checks of pocket dosimeters and/or electronic personal dosimeters as required by § 34.83;

(10) Latest survey records required by § 34.85;

(11) The shipping papers for the transportation of radioactive materials required by § 71.5 of this chapter; and

(12) When operating under reciprocity pursuant to § 150.20 of this chapter, a copy of the Agreement State license authorizing the use of licensed materials.

Subpart F—Notifications

§ 34.101 Notifications.

(a) In addition to the reporting requirements specified in § 30.50 and under other sections of this chapter, such as § 21.21, each licensee shall provide a written report to the U.S. Nuclear Regulatory Commission, Division of Industrial and Medical Nuclear Safety, Washington, DC 20555–0001, with a copy to the Director, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, within 30 days of the occurrence of any of the following incidents involving radiographic equipment:

(1) Unintentional disconnection of the source assembly from the control cable;

(2) Inability to retract the source assembly to its fully shielded position and secure it in this position; or

(3) Failure of any component (critical to safe operation of the device) to properly perform its intended function;

(b) The licensee shall include the following information in each report submitted under paragraph (a) of this section, and in each report of overexposure submitted under 10 CFR 20.2203 which involves failure of safety components of radiography equipment:

(1) A description of the equipment problem;

(2) Cause of each incident, if known;

(3) Name of the manufacturer and model number of equipment involved in the incident;

(4) Place, date, and time of the incident;

(5) Actions taken to establish normal operations;

(6) Corrective actions taken or planned to prevent recurrence; and

(7) Qualifications of personnel involved in the incident.

(c) Any licensee conducting radiographic operations or storing radioactive material at any location not listed on the license for a period in excess of 180 days in a calendar year, shall notify the appropriate NRC regional office listed in § 30.6(a)(2) of this chapter prior to exceeding the 180 days.

Subpart G—Exemptions

§ 34.111 Applications for exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant an exemption from the requirements of the regulations in this part if it determines the exemption is authorized by law and would not endanger life or property or the common defense and security and is otherwise in the public interest.

Subpart H—Violations

§ 34.121 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to these Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under Section 234 of the Atomic Energy Act;

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section.

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

§ 34.123 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1952, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under one or more of §§ 161b, 161i, or 161o of the Act. For purposes of Section 223, all the regulations in 10 CFR part 34 are issued under one or more of §§ 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in 10 CFR part 34 that are not issued under sections 161b, 161i, or 161o for the purposes of Section 223 are as follows: §§ 34.1, 34.3, 34.5, 34.8, 34.11, 34.13, 34.111, 34.121, 34.123.

Appendix A to 10 CFR Part 34—Radiographer Certification

I. Requirements for an Independent Certifying Organization

An independent certifying organization shall:

1. Be an organization such as a society or association, whose members participate in, or have an interest in, the fields of industrial radiography;

2. Make its membership available to the general public nationwide that is not restricted because of race, color, religion, sex, age, national origin or disability;

3. Have a certification program open to nonmembers, as well as members;

4. Be an incorporated, nationally recognized organization, that is involved in setting national standards of practice within its fields of expertise;

5. Have an adequate staff, a viable system for financing its operations, and a policy-and decision-making review board;

6. Have a set of written organizational by-laws and policies that provide adequate assurance of lack of conflict of interest and a system for monitoring and enforcing those by-laws and policies;

7. Have a committee, whose members can carry out their responsibilities impartially, to review and approve the certification guidelines and procedures, and to advise the organization's staff in implementing the certification program;

8. Have a committee, whose members can carry out their responsibilities impartially, to review complaints against certified individuals and to determine appropriate sanctions;

9. Have written procedures describing all aspects of its certification program, maintain records of the current status of each individual's certification and the administration of its certification program;

10. Have procedures to ensure that certified individuals are provided due process with respect to the administration of

its certification program, including the process of becoming certified and any sanctions imposed against certified individuals;

11. Have procedures for proctoring examinations, including qualifications for proctors. These procedures must ensure that the individuals proctoring each examination are not employed by the same company or corporation (or a wholly-owned subsidiary of such company or corporation) as any of the examinees;

12. Exchange information about certified individuals with the Commission and other independent certifying organizations and/or Agreement States and allow periodic review of its certification program and related records; and

13. Provide a description to the Commission of its procedures for choosing examination sites and for providing an appropriate examination environment.

II. Requirements for Certification Programs

All certification programs must:

1. Require applicants for certification to (a) receive training in the topics set forth in § 34.43(g) or equivalent Agreement State regulations, and (b) satisfactorily complete a written examination covering these topics;

2. Require applicants for certification to provide documentation that demonstrates that the applicant has: (a) received training in the topics set forth in § 34.43(g) or equivalent Agreement State regulations; (b) satisfactorily completed a minimum period of on-the-job training; and (c) has received verification by an Agreement State or a NRC licensee that the applicant has demonstrated the capability of independently working as a radiographer;

3. Include procedures to ensure that all examination questions are protected from disclosure;

4. Include procedures for denying an application, revoking, suspending, and reinstating a certificate;

5. Provide a certification period of not less than 3 years nor more than 5 years;

6. Include procedures for renewing certifications and, if the procedures allow renewals without examination, require evidence of recent full-time employment and annual refresher training.

7. Provide a timely response to inquiries, by telephone or letter, from members of the public, about an individual's certification status.

III. Requirements for Written Examinations

All examinations must be:

1. Designed to test an individual's knowledge and understanding of the topics listed in § 34.43(g) or equivalent Agreement State requirements;

2. Written in a multiple-choice format;

3. Have test items drawn from a question bank containing psychometrically valid questions based on the material in § 34.43(g).

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

4. The authority citation for Part 71 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, secs. 1701, 106 stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under sec. 301, Pub. L. 96–295, 14 stat. 789–790.

5. In § 71.101 a new paragraph (g) is added to read as follows:

§ 71.101 Quality assurance requirements.

* * * * *

(g) *Radiography containers.* A program for transport container inspection and maintenance limited to radiographic exposure devices, source changers, or packages transporting these devices and meeting the requirements of § 34.31(b) or equivalent Agreement State requirement, is deemed to satisfy the requirements of §§ 71.12(b) and 71.101(b) of this chapter.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

6. The authority citation for Part 150 continues to read as follows:

Authority: Sec. 161.68 Stat. 948, as amended, sec. 274.73 Stat. 688 (42 U.S.C. 2201, 2021): sec. 201.88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 201.4(e), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930 as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122.66 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234.83 Stat. 444 (42 U.S.C. 2282).

7. In § 150.20, paragraph (b) introductory text is revised to read as follows:

* * * * *

§ 150.20 Recognition of agreement State licenses.

* * * * *

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person engaging in activities in a non-Agreement State, in an area of exclusive Federal jurisdiction within an Agreement State, or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to all the provisions of the Act, now or hereafter in effect, and to all applicable rules, regulations, and orders of the Commission including the provisions of §§ 30.7 (a) through (f), 30.9, 30.10, 30.14(d), 30.34, 30.41, and 30.51 to 30.63, inclusive, of part 30 of this chapter; §§ 40.7 (a) through (f), 40.9, 40.10, 40.41, 40.51, 40.61, 40.63 inclusive, 40.71 and 40.81 of part 40 of this chapter; §§ 70.7 (a) through (f), 70.9, 70.10, 70.32, 70.42, 70.51 to 70.56, inclusive, 70.60 to 70.62, inclusive, and to the provisions of 10 CFR parts 19, 20 and 71 and subparts C through H of part 34, §§ 39.15 and 39.31 through 39.77, inclusive, of part 39 of this chapter. In addition, any person engaging in activities in non-Agreement States, in areas of exclusive Federal jurisdiction within Agreement States, or in offshore waters under the general licenses provided in this section:

* * * * *

Dated at Rockville, Maryland, this 19th day of May, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–13786 Filed 5–27–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Revision of the NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: Modification.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing a modification to its Enforcement Policy to add examples for categorizing the significance of violations of 10 CFR Part 34, Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations. By a separate action published today in the **Federal Register**, the Commission has issued a final rule amending 10 CFR Part 34. The modification to the Enforcement Policy reflects those amendments.

DATES: Consistent with the amendments to 10 CFR Part 34, this action is effective in 90 days or on the day the particular provision of 10 CFR Part 34 becomes effective. Comments submitted within 60 days of publication of this modification will be considered.

ADDRESSES: Send written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–2741.

SUPPLEMENTARY INFORMATION: The Commission's Enforcement Policy was first issued on September 4, 1980. Since that time, the Enforcement Policy has been revised on a number of occasions, most recently on June 30, 1995 (60 FR 34381). The Enforcement Policy was also published as NUREG–1600, General Statement of Policy and Procedure for NRC Enforcement Actions. As a result of amendments to 10 CFR Part 34 being published today as a final regulation, revisions are warranted to the Enforcement Policy to provide guidance on categorizing potential violations of the amended requirements. The revisions to the Enforcement Policy are being issued concurrently with the new rule.

The Policy recognizes that violations have differing degrees of safety significance. As reflected in the severity levels, safety significance includes actual safety consequence, potential safety consequence, and regulatory significance. Changes are being made to Supplement VI, Fuel Cycle and Materials Operations, to provide additional or amended examples of violations that are of significant concern and therefore should be categorized at Severity Level III. The changes are:

1. Example C.4 is being amended to add a reference to uncertified persons. Conduct of licensed activities by an uncertified person is significant because the certification demonstrates that the person has received training in accordance with 10 CFR Part 34 or equivalent Agreement State regulation, has satisfactorily completed a minimum period of an on-the-job training, and has received verification by an Agreement State or an NRC licensee that the person has demonstrated the capability of independently working as a radiographer.

2. Example C.8 is being amended to add a reference to have present at least two qualified individuals. A failure, during radiographic operations, to have present at least two qualified individuals as required by 10 CFR Part 34 is significant because the requirement provides assurance that operational safety measures and emergency procedures will be effectively implemented.

3. Example C.12 is being added to address a failure, during radiographic operation, to stop work after a pocket dosimeter is found to be off-scale, or after an electronic dosimeter reads greater than 200 mrem, and before a determination of the individual's actual radiation exposure has been made. This example is significant because of the need to evaluate the potential to exceed regulatory limits and the need to take corrective action.

Conforming changes have been made in the sections affected by these revisions.

The existing examples for Severity Level III violations presently address other significant violations of the amendments to 10 CFR Part 34 such as a failure to perform surveys to determine that the sealed source has been returned to its shielded position, to properly monitoring site boundaries for access control, and to utilize qualified RSOs.

Therefore, the following revision is made to Supplement VI and will be reflected in the next publication of NUREG 1600:

SUPPLEMENT VI—FUEL CYCLE AND MATERIALS OPERATIONS

* * * * *

C. Severity Level III—Violations involving for example:

* * * * *

4. Conduct of licensed activities by a technically unqualified or uncertified person:

* * * * *

8. A failure, during radiographic operations, to have present at least two qualified individuals or to use radiographic equipment, radiation survey instruments, and/or personnel monitoring devices as required by 10 CFR Part 34:

* * * * *

10. A failure to receive required NRC approval prior to the implementation of a change in licensed activities that has radiological or programmatic significance, such as, a change in ownership; lack of an RSO or replacement of an RSO with an unqualified individual; a change in the location where licensed activities are being conducted, or where licensed material is being stored where the new facilities do not meet the safety guidelines; or achange in the quantity or type of radioactive material being processed or used that has radiological significance;

11. A significant failure to meet decommissioning requirements including a failure to notify the NRC as required by regulation or license condition, substantial failure to meet decommissioning standards, failure to conduct and/or complete decommissioning activities in accordance with regulation or license condition, or failure to meet required schedules without adequate justification; or

12. A failure, during radiographic operations, to stop work after a pocket dosimeter is found to have gone off-scale, or after an electronic dosimeter reads greater than 200 mrem, and before a determination is made of the individual's actual radiation exposure have been made.

* * * * *

Dated at Rockville, Maryland, this 19th day of May, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–13787 Filed 5–27–97; 8:45 am]

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West Coast States and Western Pacific fisheries—
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DEFENSE DEPARTMENT
Civilian health and medical program of uniformed services (CHAMPUS):
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ENERGY DEPARTMENT
Federal Energy Regulatory Commission
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ENVIRONMENTAL PROTECTION AGENCY
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FEDERAL TRADE COMMISSION
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Consumer products written warranties; informal dispute settlement procedures; comments due by 6-2-97; published 4-2-97
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Negative option plans use by sellers in commerce; costs and benefits; comment request; comments due by 6-2-97; published 3-31-97
Ophthalmic practice rules; comments due by 6-2-97; published 4-3-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

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Net quantity of contents; compliance; comments due by 6-2-97; published 3-4-97

Food for human consumption:

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INTERIOR DEPARTMENT

Indian Affairs Bureau

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INTERIOR DEPARTMENT

Fish and Wildlife Service

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Blackburn's sphinx moth (Hawaiian Islands); comments due by 6-2-97; published 4-2-97

Pallid Manzanita; comments due by 6-4-97; published 5-5-97

INTERIOR DEPARTMENT

Minerals Management Service

Royalty management:

Administrative appeals process and alternative dispute resolution; release of third party proprietary information; comments due by 6-3-97; published 4-4-97

INTERIOR DEPARTMENT

National Park Service

Special regulations:

Cape Cod National Seashore; off-road vehicle use; comments due by 6-5-97; published 5-6-97

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Initial and permanent regulatory programs:

Surface coal mining and reclamation operations—

Subdidence due to underground mining; prohibition as a surface coal mining operation; interpretation; comments due by 6-2-97; published 1-31-97

Valid Existing Rights (VER) determination to conduct surface coal mining in areas where it is otherwise prohibited; comments due by 6-2-97; published 1-31-97

NATIONAL INSTITUTE FOR LITERACY

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TRANSPORTATION DEPARTMENT

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TRANSPORTATION DEPARTMENT

Federal Aviation Administration

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Aviat Aircraft, Inc.; comments due by 6-4-97; published 3-6-97

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McDonnell Douglas; comments due by 6-2-97; published 4-24-97

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TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

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Child restraint systems; air bag warning label on rear-facing child seats; modification; comments due by 6-2-97; published 4-17-97

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Practice and procedure:

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TREASURY DEPARTMENT

Fiscal Service

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Thrift Supervision Office

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